



Australian Government

Fair Work

OMBUDSMAN

National Food Services Campaign July 2009

Final Report

Summary

This report provides a summary of the Workplace Ombudsman's national food services campaign which was conducted between October 2008 and May 2009.

Prior to undertaking compliance audits we wrote to 45 stakeholders informing them about the campaign. We provided relevant articles and web links for stakeholders' websites and newsletters as requested, and met with several stakeholders to discuss the campaign and to share valuable information.

During October/November 2008 we sent nearly 18,000 educative letters to employers in the food services sectors selected by each state. The aim of the letter was to provide information about the campaign as well as time and resources to assist them to comply with Commonwealth workplace laws.

From December 2008 to May 2009, 879 employers were targeted for a compliance audit.

Of the 481 audits undertaken and finalised to date we have found 278 (58%) employers to be compliant in terms of the parameters of the audit and 203 (42%) employers having about 292 breaches.

Non compliance with the correct payment of wages accounted for 29% of the breaches we identified and a further 21% were as a result of employers not complying with payslip requirements.

We are due to recover \$469,502 for more than 714 workers as a result of this campaign.

An encouraging outcome of the campaign is the fact that all employers found to be in breach of federal workplace laws have resolved their matters voluntarily.

The specific results by state, industry sector and anecdotal findings by state are detailed below.

Results

Between December 2008 and May 2009, we initially targeted 879 employers for an audit Australia wide.

The breakdown by state and sector is detailed in the table below.

| Initial number of employers targeted | | | | | | | | |
|---|------------|------------|------------|------------|-----------|-----------|--------------|--------------|
| | QLD | NSW | VIC | TAS | SA | WA | NT | Total |
| Take away food | | 48 | 85 | | | 222 | | 355 |
| S'market and grocery | | | 1 | | | | 44 | 45 |
| Bread and cakes | | 28 | 17 | | 15 | | | 60 |
| Meat fish and poultry | 207 | 14 | 7 | 40 | 26 | | | 294 |
| Specialised food | | 8 | 16 | | 25 | | | 49 |
| Dairy m'facturer | 22 | | | | | | | 22 |
| Markets | | 54 | | | | | | 54 |
| | | | | | | | Total | 879 |

Status of Audits

At 30 May 2009 when the results of the campaign were compiled:

- 262 (30%) of the targeted employers could not be audited for reasons including; they did not fall under our jurisdiction, the enterprise had no employees, the Workplace Inspector was unable to contact the employer or the enterprise was no longer trading.
- 481 (55%) audits had been undertaken and finalised.
- 136 audits (15%) remained outstanding due to ongoing investigations.

The following tables provide an overview of the status of audits by state as at 1 June 2009.

| Number of audits that could not be undertaken | | | | | | | | |
|--|------------|------------|------------|------------|-----------|-----------|--------------|--------------|
| | QLD | NSW | VIC | TAS | SA | WA | NT | Total |
| Take away food | | 5 | 9 | | | 96 | | 110 |
| S'market and grocery | | | - | | | | 8 | 8 |
| Bread and cakes | | 2 | 2 | | 7 | | | 11 |
| Meat fish and poultry | 83 | 1 | 1 | 10 | 12 | | | 107 |
| Specialised food | | 1 | 4 | | 10 | | | 15 |
| Dairy m'facturer | 9 | | | | | | | 9 |
| Markets | | 2 | | | | | | 2 |
| | | | | | | | Total | 262 |

| Number of audits outstanding | | | | | | | | |
|-------------------------------------|------------|------------|------------|------------|-----------|-----------|--------------|--------------|
| | QLD | NSW | VIC | TAS | SA | WA | NT | Total |
| Take away food | | 12 | 29 | | | 37 | | 78 |
| S'market and grocery | | | 1 | | | | 3 | 4 |
| Bread and cakes | | 6 | 6 | | 2 | | | 14 |
| Meat fish and poultry | 14 | 4 | 1 | 7 | 4 | | | 30 |
| Specialised food | | 1 | 2 | | 2 | | | 5 |
| Dairy m'facturer | 2 | | | | | | | 2 |
| Markets | | 3 | | | | | | 3 |
| | | | | | | | Total | 136 |

| Number of audits undertaken and finalised | | | | | | | | |
|--|------------|------------|------------|------------|-----------|-----------|--------------|--------------|
| | QLD | NSW | VIC | TAS | SA | WA | NT | Total |
| Take away food | | 31 | 47 | | | 89 | | 167 |
| S'market and grocery | | | - | | | | 33 | 33 |
| Bread and cakes | | 20 | 9 | | 6 | | | 35 |
| Meat fish and poultry | 110 | 9 | 5 | 23 | 10 | | | 157 |
| Specialised food | | 6 | 10 | | 13 | | | 29 |
| Dairy m'facturer | 11 | | | | | | | 11 |
| Markets | | 49 | | | | | | 49 |
| | | | | | | | Total | 481 |

Findings of audits

Of the 481 audits undertaken and finalised to date we have found 278 (58%) employers to be compliant in terms of the parameters of the audit and 203 (42%) employers having about 292 breaches relating to wages, payslips, time/wage records, penalty rates, weekend penalties, allowances and other miscellaneous reasons.

Take away food

In the take away food sector (in New South Wales, Victoria, and Western Australia) we found 97 (58%) employers to be compliant in terms of the parameters of the audit and 70 (42%) to be in breach with about 104 breaches.

Western Australia showed the highest compliance rate with 72% of employers audited found to be compliant and New South Wales the lowest with 36% of employers found compliant.

The following table provides an overview of the outcome of audits by state in the takeaway food sector.

| Takeaway food | | | | |
|--|------------|------------|-----------|-----------------|
| | NSW | VIC | WA | Total |
| Employers compliant (in terms of the parameters of the audit) | 11 (36%) | 22 (47%) | 64 (72%) | 97 (58%) |
| Employers found to be in breach | 20 (64%) | 25 (53%) | 25 (28%) | 70 (42%) |
| <ul style="list-style-type: none"> <i>Sustained - no further action</i> | 1 | 8 | 1 | 10 |
| <ul style="list-style-type: none"> <i>Sustained - resolved - Voluntary compliance</i> | 19 | 17 | 24 | 60 |
| Total | 31 | 47 | 89 | 167 |

Supermarket and grocery stores

In the supermarket and grocery sector in Northern Territory we found 15 (45%) employers to be compliant in terms of the parameters of the audit and 18 (55%) to be in breach with approximately 34 breaches. All breaches were resolved through voluntary compliance.

Victoria has one ongoing investigation in the supermarket and grocery sector.

Bread and cakes

In the bread and cakes sector in New South Wales, Victoria and South Australia we found 10 (29%) employers to be compliant in terms of the parameters of the audit and 25 (71%) to be in breach with a total number of 43 breaches.

Victoria demonstrated the highest rate of compliance (67%) compared with New South Wales (25%) and South Australia (22%).

The following table provides an overview of the outcome of audits by state in the bread and cakes sector.

| Bread and cakes | | | | |
|--|------------|------------|-----------|-----------------|
| | NSW | VIC | SA | Total |
| Employers compliant (in terms of the parameters of the audit) | 4 (25%) | 4 (67%) | 2 (22%) | 10 (29%) |
| Employers found to be in breach | 16 (75%) | 2 (33%) | 7 (78%) | 25 (71%) |
| <ul style="list-style-type: none"> <i>Sustained - no further action</i> | 2 | - | 1 | 3 |
| <ul style="list-style-type: none"> <i>Sustained - resolved through voluntary compliance</i> | 14 | 2 | 6 | 22 |
| Total | 20 | 6 | 9 | 35 |

Meat fish and poultry

In the meat, fish and poultry sector in New South Wales, Queensland, Victoria, Tasmania and South Australia we found 102 (65%) employers to be compliant in terms of the parameters of the audit and 55 (35%) to be in breach with a total number of 69 breaches.

We found the highest levels of non compliance were in Victoria and Tasmania with respectively 60% and 61% of employers non compliant.

The following table provides an overview of the outcome of audits by state in the meat, fish and poultry sector.

| Meat, fish and poultry | | | | | | |
|---|------------|------------|------------|------------|-----------|-------------------|
| | NSW | QLD | VIC | TAS | SA | Total |
| Employers compliant (in terms of the parameters of the audit) | 6 67% | 81 74% | 2 40% | 9 39% | 4 | 102 65% |
| Employers found to be in breach | 3 33% | 29 26% | 3 60% | 14 61% | 6 | 55 35% |
| • <i>Sustained - no further action</i> | | 6 | | 3 | | 9 |
| • <i>Sustained - resolved through voluntary compliance</i> | 3 | 23 | 3 | 11 | 6 | 46 |
| Total | 9 | 110 | 5 | 23 | 10 | 157 |

Specialised food

In the specialised food sector in New South Wales, Victoria and South Australia we found 15 (52%) employers to be compliant in terms of the parameters of the audit and 14 (48%) to be in breach with a total number of 20 breaches.

The highest rates of non compliance were in New South Wales and Victoria with 50% and 60% non compliance rates respectively.

The following table provides an overview of the outcome of audits by state in the specialised food sector.

| Specialised food | | | | |
|--|------------|------------|-----------|------------------|
| | NSW | VIC | SA | Total |
| Employers compliant (in terms of the parameters of the audit) | 3 50% | 4 40% | 8 62% | 15 52% |
| Employers found to be in breach | 3 50% | 6 60% | 5 38% | 14 48% |
| <ul style="list-style-type: none"> <i>Sustained - no further action</i> | | 1 | 2 | 3 |
| <ul style="list-style-type: none"> <i>Sustained - resolved through voluntary compliance</i> | 3 | 5 | 3 | 11 |
| <ul style="list-style-type: none"> <i>Sustained – prepared for possible litigation</i> | | | | |
| Total | 6 | 10 | 13 | 29 |

Dairy Manufacturing

In the dairy manufacturing sector in Queensland we found 7 (64%) employers to be compliant in terms of the parameters of the audit and 4 (36%) to be in breach with a total number of 4 breaches. All breaches have been resolved through voluntary compliance.

Markets

In NSW Markets we found 32 (65%) employers to be compliant in terms of the parameters of the audit and 17 (35%) to be in breach with a total number of 18 breaches. All breaches have been resolved through voluntary compliance. It should be noted that three investigations stemming from the markets audit are ongoing.

Money Recovered

We are due to recover a total of \$469,502 for more than 714 workers as a result of this campaign.

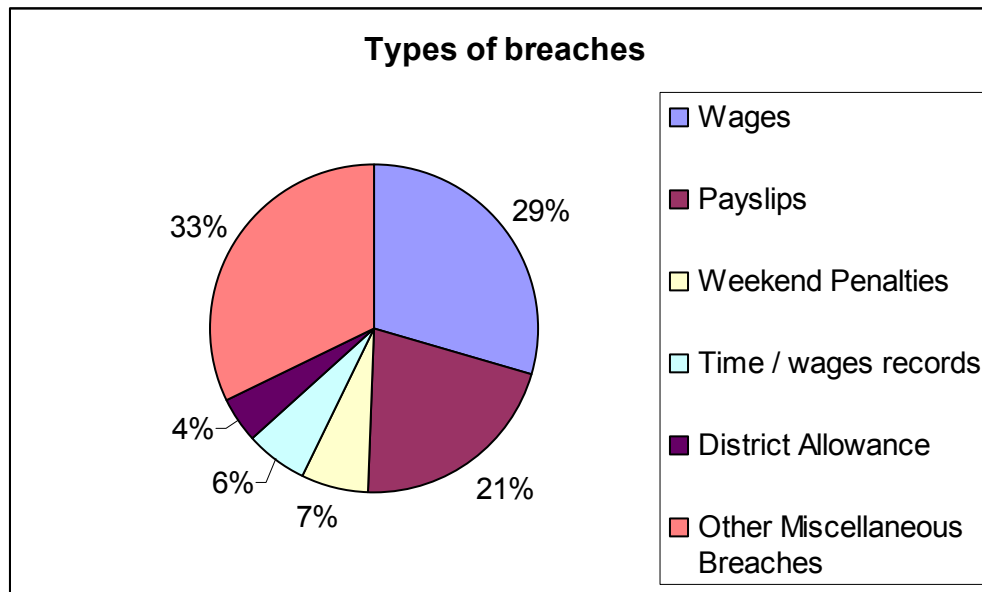
- \$227,946 in the take away food sector for about 221 employees.
- \$38,664 in the supermarket and grocery sector for approximately 195 employees.
- \$71,126 in the bread and cake for about 88 employees.
- \$47,278 in the meat fish and poultry sector for about 107 employees.
- \$26,448 in the specialised food sector for about 57 employees.
- \$10,492 in the dairy manufacturing for about 34 employees.
- \$47,548 from businesses in NSW markets for about 12 employees.

The breakdown by state and sector is detailed in the table below.

| Money recovered by state | | | | | | | |
|--------------------------|----------|-----------|-----------|---------|---------|----------|----------|
| | QLD | NSW | VIC | TAS | SA | WA | NT |
| Take away food | | \$91,157 | \$108,029 | | | \$28,760 | |
| Supermarket & grocery | | | | | | | \$38,664 |
| Breads & cakes | | \$46,659 | \$23,902 | | \$565 | | |
| Meat, fish & poultry | \$32,289 | \$2,301 | \$1,732 | \$5,215 | \$5,741 | | |
| Specialised food | | \$16,254 | \$7,312 | | \$2,882 | | |
| Dairy | \$10,492 | | | | | | |
| Markets | | \$47,548 | | | | | |
| TOTALS | \$42,781 | \$203,919 | \$140,975 | \$5,215 | \$9,188 | \$28,760 | \$38,664 |

Types of breach

Non compliance with the correct payment of wages accounted for 29% of breaches identified and a further 21% were as a result of employers not complying with payslip requirements.



Issues

The following are the key issues identified by our Workplace Inspectors undertaking audits in each state.

New South Wales

In New South Wales our focus was on both the Sydney Produce Markets and the Sydney Fish Markets. In addition, New South Wales focused on various franchise operations in coffee shops, bakers/hot bread shops and salad bars.

The most significant aspect of New South Wales's campaign was in relation to the produce and fish markets. In this aspect of the campaign significant stakeholder engagement was initiated prior to the conduct of the field visits to these markets.

Following this stakeholder engagement a team of our Workplace Inspectors conducted field visits to both the produce and fish markets in February 2009. These field visits were conducted over a period of two weeks. Audits were conducted outside of usual business hours to ensure that Workplace Inspectors could speak with the workers at these markets.

The field visits to the markets were very productive both in terms of raising compliance within those industries and also in terms of raising the profile of the Workplace Ombudsman and highlighting the need for employers to comply with their obligations.

As a result of these field visits a number of investigations are continuing in relation to alleged underpayments to a large number of workers.

Overall New South Wales recovered in excess of \$203,000 during the campaign.

Victoria

In Victoria our focus was on restaurants and cafés and our Workplace Inspectors made cold calls to clusters of businesses in food strips or courts. This had both positive and negative effects. For example:

- Because we were visibly visiting every restaurant and café in the area, employers appeared to be happier to deal with us as we were treating all employers the same.
- Records were often not on the premises except for later in the week when pays were being organised and we could view a payslip.
- We believe that as our Workplace Inspectors were able to meet with an employer and explain the purpose of our audit before serving a request for records we achieved a high rate of response to our request.
- The nature of the industry meant that we needed to time our visits carefully, for example not visiting during busy lunchtime periods.
- It was pleasing to find that many employers are aware of the Workplace Ombudsman's role and our powers.

Tasmania

In Tasmania we found that over 60% of the butchers we audited to be in breach of federal workplace laws.

Many of these contraventions related to record keeping and payslip requirements. For example, some butchers were keeping hand written records on lined paper. In other cases timesheet records were missing therefore we could not establish whether employees were being paid cash in hand for weekends.

Some butchers were not paying under the correct award. For example, paying under the *Meat Processing Industry Award* instead of the *Meat Retailing Award*.

Others had failed to adjust wages in line with last wage increase and we found one butcher who missed the last four or five wage increases.

South Australia

In South Australia our focus was on bread, cakes, meat, fish and poultry, and other specialised food stores.

Our Workplace Inspectors in South Australia noted how willing and forthcoming most employers were in providing us with documentation for audit when requested. As a result we only had to issue a few formal notices to produce and request for records.

We issued several compliance undertakings for breaches relating to payslip requirements and underpayment of the hourly rate.

Where we identified breaches in relation to underpayment of wages, we found that the underpayments were for a few employees as opposed to all the employees in a given workplace. The underpayments detected were due to employer oversights such as employers not being aware that a junior employee recently had a birthday or the employer classifying the employee at a lower classification.

A number of the employers were aware of the Workplace Ombudsman and the awards and/or agreements which governed their employees' entitlements. The majority of employers audited kept detailed time records

Western Australia

In Western Australia our focus was on take away foods which are either covered by *Notional Agreement Preserving State Restaurant, Tearoom and Catering Workers' Award 1979* or the Standard. Most of the businesses covered by the Standard were formed post March 2006 and they will need to adapt to paying modern award conditions in due course.

We found that quite a number of food chains (company-owned businesses and franchisor-franchisee arrangements) selected for audit were consistent and compliant in terms of their workplace practices in relation to pay rate, record keeping and pay slip requirements. Often these food chains have their own certified or collective agreements.

We found one particular food chain where five out of seven of the franchisees selected for audit were underpaying their employees. Historically many of the franchisees used AWAs. There seems to be confusion amongst the franchisees with regards to what pay rates to apply and the franchisor provides limited assistance in this regard. Many of the franchisees are currently negotiating a collective agreement. The underpayments are the result of a genuine lack of understanding about which rates apply while the negotiation is still in progress.

We found that small independent businesses are less aware of their workplace obligations and identified quite a high number of breaches or non compliance in this sector. These included incorrect hourly rates of pay resulting from paying casual rates rather than part-time rates or paying the wrong rate for the classification or age group.

Northern Territory

In the Northern Territory we focussed our audits on suburban supermarkets and grocery stores located in remote areas who employ indigenous workers.

The relevant instruments in all audits was the preserved *Retail, Wholesale and Distributive Employees (NT) Award 2000* and payscale.

We found that 18 (55%) of 34 audited employers to be in breach with 13 of the breaches relating to underpayment issues, in particular, not paying the current wage rate under the relevant payscale, incorrect payment of loadings and non-payment of penalty rates. Non-monetary breaches were related to non-issue of payslips, incorrect information on payslips and failure to keep proper records.

We recovered \$38,644 for 195 employees that is an average of \$200 per employee. We consider this is a significant outcome in terms of employees receiving their minimum entitlements in this industry. The number of complaints lodged with us is low from remote store workers so a proactive approach through targeting is required to ensure compliance.

Queensland

In Queensland we found the majority of employers were compliant in the meat, fish and poultry industry and the dairy manufacturing industry.

Record keeping was generally of a good quality and the majority of employers were cooperative throughout the process.

Where breaches were identified, the issues related to non payment of overtime, penalty rates and general underpayment of hourly rates.

In particular we found that butchers who were members of the Australian Meat Industry Council (AMIC) had up to date information regarding their obligations.

Background to the campaign

In making the decision to target the food services sector for a national campaign we took the following into consideration.

- An analysis of Workplace Ombudsman's database
- The Workplace Ombudsman's litigation history
- The practical experience and 'head knowledge' of State Directors
- The intent to select industry sectors that have significant number vulnerable workers. For example, young workers and employees on traineeships.

The broad theme of food services (incorporating takeaway food, supermarket and grocery stores, bread and cake retailing meat, fish and poultry retailing, dairy, markets and specialised foods), enabled each state/territory to choose one or more specific food services sectors relevant to their state/territory.

An analysis of the Workplace Ombudsman's database for the period between 1 July 2007 and March 2008 showed that:

- Of the 21,840 claims received 4,416 were classified at the industry classification of 'Retail Trade'. This was the highest number of claims for the period from any industry classification.
- Analysis by sub-industry classification showed that 'Food retailing' rated 4th in regard to the number of claims received.
- Analysis by 'industry activity' showed that Takeaway food retailing rated 11th, Supermarket and grocery stores rated 16th, Bread and cake retailing 17th, Specialised foods 22nd and Meat, fish and poultry retailing 24th.

The analysis of Claims II data by state is shown in the table below.

| State | Industry | Sub Industry | Industry Activity | | | | |
|---------------|-------------|----------------|-------------------|--------------------------|----------------|-------------------|-------------------|
| | Retail | Food Retailing | Take away food | S'market/ grocery stores | Bread and Cake | Special-ised food | Meat Fish Poultry |
| ACT/ NSW | 1257 | 223 | 57 | 30 | 24 | 34 | 26 |
| NT | 68 | 11 | 4 | 4 | 2 | - | - |
| QLD | 1047 | 238 | 70 | 40 | 35 | 20 | 23 |
| SA | 327 | 60 | 12 | 6 | 11 | 5 | 9 |
| TAS | 88 | 29 | 11 | 8 | 4 | 2 | - |
| VIC | 1265 | 218 | 50 | 43 | 35 | 16 | 17 |
| WA | 364 | 45 | 6 | 11 | 6 | 4 | 4 |
| TOTAL | 4416 | 824 | 210 | 142 | 117 | 81 | 79 |
| Rating | 1st | 4th | 11th | 16th | 17th | 22nd | 24th |

The Workplace Ombudsman had also been involved with 14 litigations associated with retail food and take-away (fast food) industries. The investigations associated with these litigations indicate that 285 employees have been affected by alleged underpayments of \$187,880. Five of these matters have been through the courts and incurred a total of \$756,350 in penalties.

Campaign aim and objectives

The aim of the campaign was to improve compliance with the *Workplace Relations Act 1996* in relevant sectors of the food services industries' group including takeaway food, supermarket and grocery stores, bread and cake retailing, meat, fish and poultry retailing, and dairy and specialised foods.

The specific focus in each state was:

- QLD –butchers, fish and seafood, poultry retailers/wholesalers and dairy manufacturers
- NSW – various franchise operations in coffee shops, bakers/hot bread shops, salad bars and markets
- VIC – café strips and food courts
- TAS – butchers
- SA – butchers, bakers, small goods
- WA - takeaway foods
- NT – small grocers.

The specific objectives of the campaign were to:

1. Engage with relevant stakeholders in relation to the campaign.
2. Provide information to the industry sectors in each state to assist employers to meet their obligations under federal legislation and to promote the role of the Workplace Ombudsman.
3. Audit the level of compliance with a targeted number of employers in relation to minimum wages and entitlements.
4. Ensure the targeted employers comply with their minimum wage and entitlements obligations.
5. Provide a public report on the report the findings of the campaign.

Stakeholder involvement

In September 2008 we wrote to 45 stakeholders informing them about the campaign and providing relevant articles and web links for their websites and newsletters as requested.

Responses to the stakeholder letters were received from 11 organisations and we either met with or had a phone discussion with the following stakeholders:

- Australian Retail Association (ARA)
- National Retail Association (NRA)
- National Baking Industry Association (NBIA)
- National Association of Retail Grocers of Australia (NARGA)
- Australian Meat Industry Council (AMIC)
- Shop Distributive and Allied Employees Association (SDA)
- Australian Meat Industry Employees Union (AMIEU).

Campaign Methodology

Education phase

During October 2008, we sent over 18,000 educational letters to employers in the selected food services sectors for each state.

The aim of this letter was to provide information about the campaign and time and resources to assist them to comply with Commonwealth workplace laws

Audit phase

Following the educative mail out, each state identified a random selection of employers to target for a compliance audit. Apart from in Victoria, we notified the selected employers in writing and requested them to provide time and wage records and other particular information for a specified two week period including a public holiday. To assist with this request we provided employers with an entity information form to complete.

Workplace Inspectors assessed the received documents against the relevant industrial instrument. If the employer was found to be non-compliant the Workplace Inspectors would undertake further investigation as appropriate. This could include interviewing the employer and witnesses and undertaking calculations.

Where non compliance was confirmed the Workplace Inspector would issue a breach notice and encourage and negotiate voluntary compliance.

In the event that the breach notice and a following final notice failed to resolve the matter, the case and evidence would be considered in light of our litigation policy and if considered suitable, a prosecution brief would be prepared.

At the time of writing this report, no cases are being considered for litigation.

Conclusion

We audited different sectors of the food services industry in each state so it's interesting to see the state variations.

In the takeaway food sector compliance varied between 72% in Western Australia and 36 % in New South Wales.

In the bread and cake sector the national compliance rate was poor at 29%, but varied between 22% in South Australia and 67% in Victoria.

Queensland and Tasmania both audited butchers with quite different findings. The results in Tasmania were poor with more than 60% of butchers found to be non compliant whereas in Queensland the non compliance rate was much less at 26%. Queensland found that many of the butchers that we audited were members of the Australian Meat Industry Council members and therefore had up to date information regarding their obligations.

Taking into account the results we consider that there would be value in doing follow up audits in this industry with those employers found to be non compliant.

On a positive note it was encouraging to receive positive feedback from Workplace Inspectors in Victoria, South Australia and Queensland that the employers we audited were cooperative throughout the audit process.

It was also encouraging that all breaches were resolved through voluntary compliance.