

National Structural Metal Product Manufacturing Campaign 2012

Final report - January 2013

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Australian Government

Fair Work
OMBUDSMAN

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About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent statutory agency, created by the *Fair Work Act 2009* (the Fair Work Act) on 1 July 2009.

Our vision is fair Australian workplaces, and our mission is to work with Australians to educate, promote fairness and ensure justice in the workplace. We promote harmonious, productive and cooperative workplace relations and ensure compliance with Australia's workplace laws, by:

- offering people a single point of contact for them to receive accurate and timely advice and information about Australia's workplace relations system
- educating people working in Australia about their workplace rights and obligations
- investigating complaints or suspected contraventions of workplace laws, awards and agreements
- litigating to enforce workplace laws and to deter people from not complying with their workplace responsibilities.

Education and compliance campaigns that focus on specific industries are a proactive strategy we use to achieve compliance with national workplace laws. They are also effective in recovering employee entitlements, particularly when the campaign targets high-risk areas and industries that employ vulnerable workers.

Education and compliance campaigns have a strong emphasis on engagement with relevant industry associations and unions to deliver national educational campaigns. This approach provides industry-specific knowledge that shapes the educational activities we undertake, and shares information through industry association and union communication channels.

This report covers the background, methodology and results of the National Structural Metal Product Manufacturing Campaign 2012.

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Summary

The Fair Work Ombudsman commenced planning the National Structural Metal Product Manufacturing Campaign (the campaign) in January 2012.

During the 2010/2011 financial year, we found that businesses that manufacture structural metal products made up 10% of the complaints FWO received from the manufacturing industry (994). Considering the number of complaints received, we decided to undertake an education and compliance campaign within the structural metal product manufacturing sector.

In March 2012, we implemented a comprehensive communication strategy directing manufacturers of structural metal products to our dedicated online resource, www.fairwork.gov.au/structuralmetal and the Fair Work Infoline.

In April 2012, we selected a sample number of employers Australia-wide for compliance audits. The audits assessed compliance with rates of pay, pay slip and time and wage records.

Of the 253 audits we have finalised, 182 (72%) employers were found to be compliant and 71 (28%) were in contravention. One audit remains outstanding due to ongoing investigations.

Of the 71 employers found to be in contravention, 25 had underpayment contraventions and 40 had record-keeping and pay slip contraventions. A further six employers were identified as having both underpayment and record-keeping/pay slip contraventions.

We found the highest compliance rate was in businesses that manufacture gates, shutters, skylights and window frames with just over 74% (57) of employers found to be compliant. The lowest compliance rate, 64% (9), was recorded against businesses that manufacture garages, kit homes and sheds.

To date, the campaign has recovered \$51,848 for 37 employees.

Key results:

- More than 250 employer audits finalised
- 72% of employers found to be compliant
- Almost \$52,000 recovered for 37 employees

Background

Several factors led the Fair Work Ombudsman (FWO) to undertake a national campaign targeting manufacturers of structural metal products. A review of FWO complaint data showed that in the 2010/2011 financial year we closed 994 complaints from the Australian manufacturing industry. Of these complaints, 93 were received from the structural metal product manufacturing sector (the sector). The majority of the complaints from the sector were lodged against employers in New South Wales (30%).

Further FWO had created a comprehensive range of self-help tools which are now available at Fair Work Online. By developing a dedicated web page (www.fairwork.gov.au/structuralmetal), the campaign provided us with an ideal opportunity to promote the online self-help tools to the sector.

Finally, we considered a campaign was an opportunity to determine how well national employers had transitioned to the modern award, *the Manufacturing and Associated Industries and Occupations Award 2010*.

Campaign aim, scope and objectives

The aim of the campaign was to promote and assess compliance with the *Manufacturing and Associated Industries and Occupations Award 2010* (the Award), *Fair Work Act 2009* (the Act) and the *Fair Work Regulations 2009* (the Regulations) in the sector.

Our research, which was clarified in our discussions with stakeholders, determined that the manufacture of structural metal products is very specific. The sector according to IBIS World December 2011, includes businesses, which manufacture architectural steel, wrought iron or other products used as inputs into the construction of buildings and other structures. It excludes items involved in maintaining the structural integrity of buildings, which falls under Structural Steel Fabricating. Provided the coverage of the Award, we decided to limit the focus of the campaign to the following Australian New Zealand Standard Industrial Classification (ANZSIC) codes:

- 22210 - Joists, roof trusses, scaffolding, girders
- 22220 - Garages, kit homes, sheds
- 22230 - Gates, shutters, skylights, window frames, guttering
- 22290 - All of the above (except aluminium)

Further, our focus was limited to those businesses that manufactured products as opposed to those that installed products. Also we targeted the likes of welders as opposed to engineers.

The specific objectives of the campaign were to:

- Engage with relevant employer associations, employee representative organisations and industry bodies
- Educate industry employers on their rights and responsibilities by directing them to our self-help resources at www.fairwork.gov.au/structuralmetal
- Assess compliance with hourly rates of pay, record-keeping and pay slip obligations
- Ensure any identified contraventions were addressed and particularly, that workers in the targeted businesses received their correct entitlements.

Stakeholder engagement

In January 2012, we wrote to the following stakeholders announcing our intention to conduct the campaign and requested the opportunity to meet with them.

- Australian Manufacturing Workers Union (AMWU)
- Australian Steel Institute (ASI)
- Australian Industry Group (AiG)
- Australian Chamber of Commerce and Industry (ACCI)

The meetings aimed to inform the stakeholders about the campaign, identify any key issues facing the sector and to seek their assistance in promoting our fair work message and our dedicated webpage www.fairwork.gov.au/structuralmetal

We also contacted additional stakeholders, listed at Appendix A, to seek their assistance in promoting the campaign.

It was pleasing that ASI, AiG, Manufacturing Skills Australia and Master Builders Australia all assisted to promote the campaign by including an article on the campaign in their respective member publications.

Method

Information and awareness phase

Between March and May 2012 we implemented a comprehensive communication strategy within the sector. Our aim was to reach as many employers and workers in the sector as possible and to direct them to the online resources at www.fairwork.gov.au/structuralmetal.

In March 2012, we notified 4 879 employers in the sector of the campaign. We advised the majority of employers by letter, however, an email was sent to the 1 431 employers that had an email address listed with the Australian Business Register (ABR). In addition to promoting the campaign via traditional media channels, we used social media. Between April and June we posted six tweets regarding the campaign and promoted the webinar.

We also used Facebook digital advertisements to drive industry apprentices and trainees to the dedicated webpage. The advertisement appeared on 313, 305 targeted Facebook users profile, with 68 users clicking through to the dedicated webpage. We also posted information about the campaign on our Facebook page.

We invited employers to register for a webinar on 2 May 2012. The webinar provided details of the campaign, an overview of the Award and information about self help tools available on our website. The webinar presentation, along with the questions and answers provided during the session, were subsequently posted on our website and our YouTube channel. As at 4 December 2012, the webinar had been viewed 117 times on YouTube.

Audit phase

In May 2012, we selected a random sample of businesses for audit, using the ABR database and Yellow Pages.

We wrote to these businesses requesting them to provide us with a sample of their employees' pay slips and time and wage records for a consecutive two-week period, which included the public holiday on 25 April 2012.

We then assessed the records, ensuring employees were receiving their correct hourly rates of pay and that the employer was maintaining the prescribed time and wage records and issuing pay slips.

Where we found employers to be compliant, we notified them of the outcome of their audit in writing and closed the file.

Where we identified potential contraventions we made contact with the employer to discuss the issue and in some cases requested further documentation. Once we confirmed the contravention, we asked the employer to rectify it. For those employers found to be

underpaying staff, rectifying the contravention involved back paying the affected employees.

Results

Statistical findings

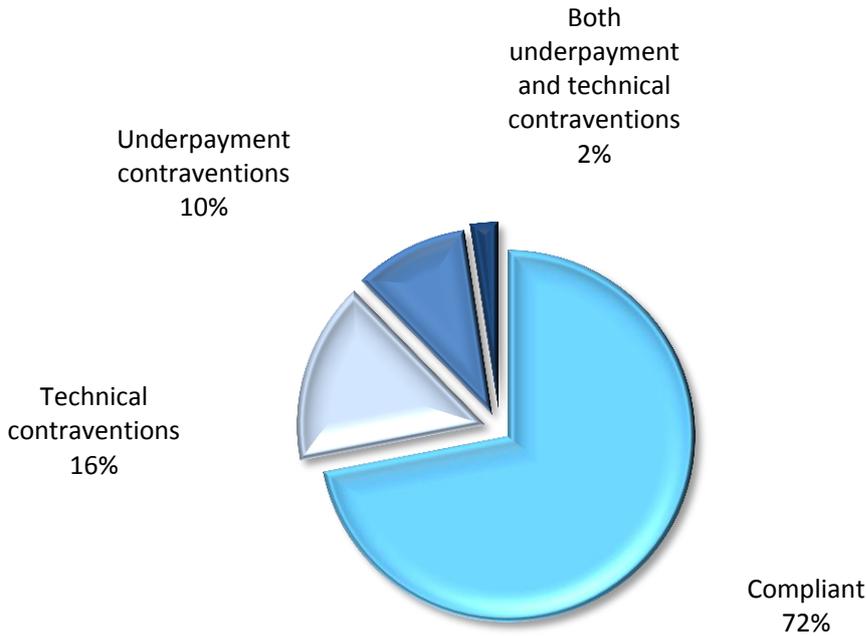
When we analysed the findings of the audits in November 2012, we had completed 253 of the 254 audits commenced.

Of the 253 completed audits, 182 (72%) employers were found to be compliant and 71 (28%) were found to be in contravention. To date, the campaign has recovered \$51,848 in wages and entitlements for 37 employees.

Table 1: Campaign results	
Audits finalised	253
• <i>Employers compliant</i>	182 (72%)
• <i>Employers in contravention</i>	71 (28%)
Ongoing investigations	1
Money recovered	\$51,848.42
Number of employees receiving payments	37

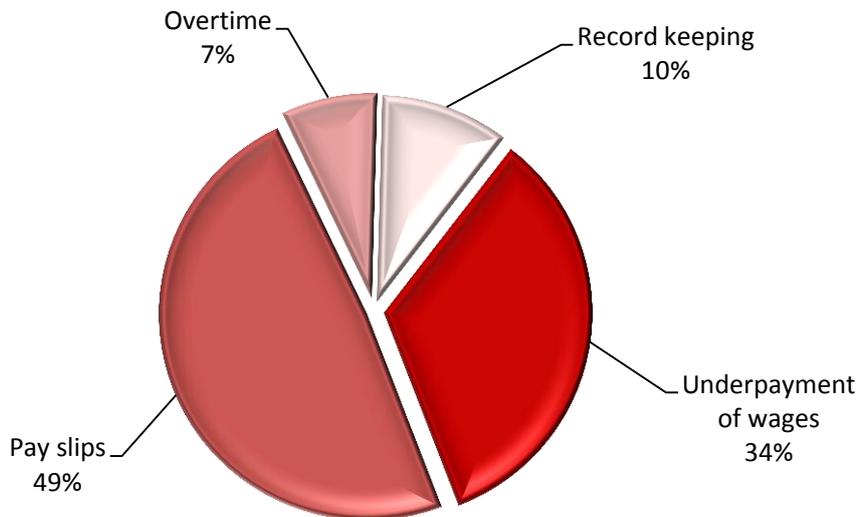
Chart 1 below shows the overall results. Of the 253 completed audits completed, 40 (16%) employers were found to have technical contraventions (record-keeping or pay slip requirements), 25 (10%) employers had underpayment contraventions, and a further 6 (2%) employers were identified as having both underpayment and technical contraventions.

Chart 1: Breakdown of results



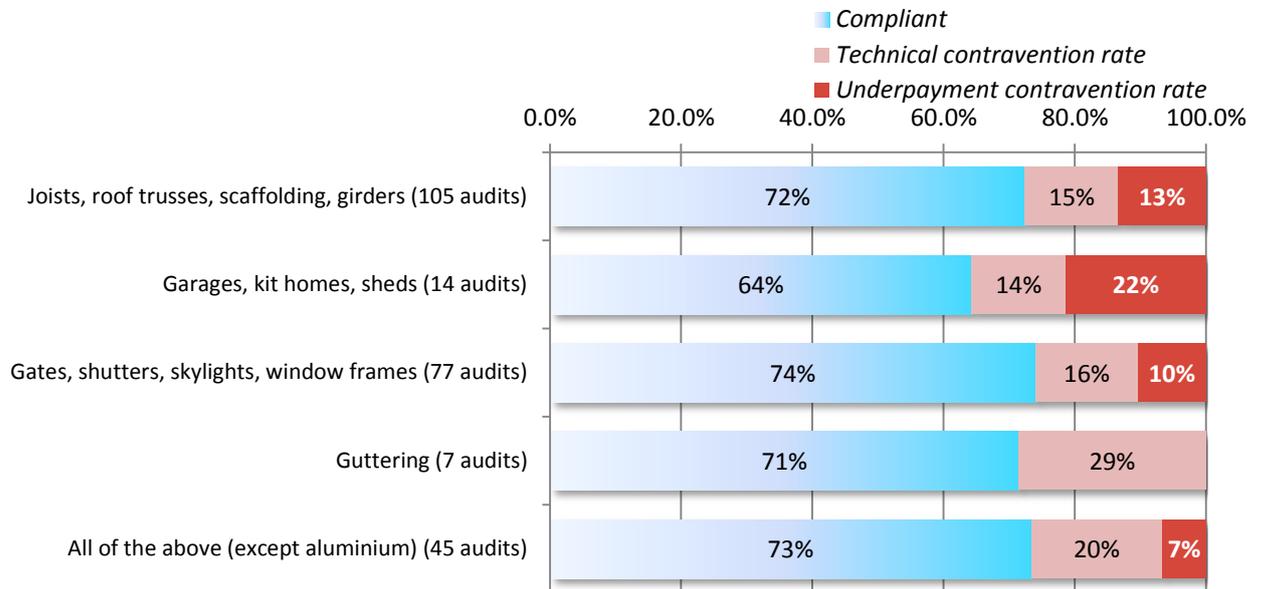
The 71 employers found to be in contravention shared a total of 80 contraventions between them. Chart 2 shows that of the 80 contraventions identified 49% related to pay slip contraventions, 34% related to underpayment of wages, 10% related to time and wage record-keeping requirements and 7% related to overtime provisions.

Chart 2: Contraventions identified



We further analysed the results by the ANZSIC classification codes. These findings are detailed in Chart 3 below. (Note: five businesses were unable to be classified and therefore are not represented).

Chart 3: Compliance rates by ANZSIC classification



Manufacturers of gates, shutters & window frames recorded the highest compliance rate with 74% (57 of 77 audits) of employers found to be compliant.

Manufacturers of garages, kit homes and sheds were found to be the least compliant with 64% (9 of 14 audits) of employers found to have contraventions.

As detailed in Table 2, overall, businesses manufacturing joists, roof trusses, scaffolding and girders were found to have underpaid their employees the most amount of money (\$25, 943).

Table 2: Money recovered by ANZSIC classification			
	Money recovered	Number of employees receiving payment	Proportion of total audits (completed only)
Joists, roof trusses, scaffolding, girders	\$25 943	16	41.5%
Garages, kit homes, sheds	\$16 973	6	5.5%
Gates, shutters, skylights, window frames	\$2 593	10	30%
Guttering	\$ -	-	3%
All of the above (except aluminium)	\$6 007	4	18%
Unable to be specified	\$332	1	2%
Total	\$51 848	37	100%

Our analysis of the results of the audits by state are shown in Table 3.

Table 3: Results by state									
	NSW	ACT	VIC	QLD	WA	SA	TAS	NT	TOTAL
Audits completed	53	6	51	77	25	22	9	10	253
• Employers compliant	37	6	20	63	20	17	9	10	182
• Employers found to be in contravention	16	-	31	14	5	5	-	-	71
Ongoing investigations	-	-	1	-	-	-	-	-	1

We conducted the greatest number of audits (77) in Queensland, with 63 (82%) businesses found to be compliant. While we were particularly pleased to find 100% compliance rates in the Australian Capital Territory, the Northern Territory and Tasmania we only audited 25 businesses in these regions combined.

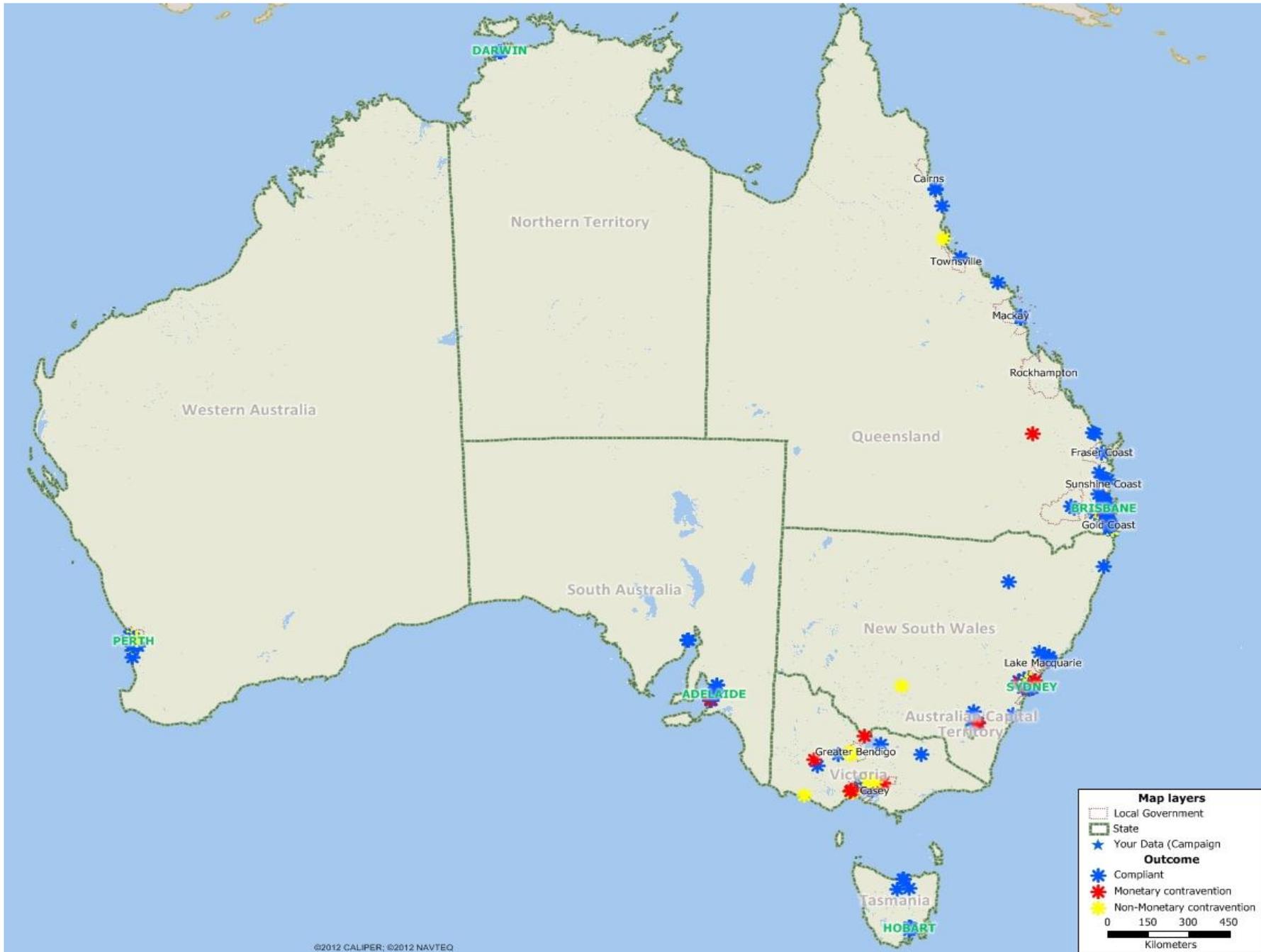
Victoria recorded the highest contravention rate of all states and territories (61%), followed by New South Wales (30%) and South Australia (23%).

Table 4 provides an analysis of the types of contraventions by state. Victoria recorded the greatest number of monetary contraventions.

Table 4: Breakdown of employers in contravention by state									
	NSW	ACT	VIC	QLD	WA	SA	TAS	NT	TOTAL
Employers with monetary contraventions	5	-	13	5	-	2	-	-	25
Employers with non-monetary contraventions	8	-	17	8	5	2	-	-	40
Employers with both	3	-	1	1	-	1	-	-	6
Totals	16	-	31	14	5	5	-	-	71

Table 5 details the amount of money recovered in each state as well as the number of employees back paid. Victoria recorded the highest total recovery of \$24,021, representing 46% of total recoveries. Victoria also had the greatest number of employees back paid (16).

Table 5: Money recovered by state		
	Money recovered	Number of employees
New South Wales	\$15 394	9
Australian Capital Territory	-	-
Victoria	\$24 021	16
Queensland	\$10 142	8
Western Australia	-	-
South Australia	\$ 2291	4
Tasmania	-	-
Northern Territory	-	-
Total	\$51 848	37



Other findings by state

Queensland/New South Wales/Australian Capital Territory

We found the majority of employers we assessed in Queensland, New South Wales and Australian Capital Territory were compliant with their obligations. Those employers we found to be non-compliant had either record - keeping or underpayment of hourly rates of pay contraventions.

The most common record-keeping contravention was that of employers not providing superannuation details or the employer's Australian Business Number on their employees' pay slips.

We found employees who were underpaid were often receiving incorrect overtime rates or being paid a salary that did not cover the large number of overtime hours worked. We also found a number of junior employees were underpaid because the employer had failed to increase pay rates on a birthday. There were a few issues of minor underpayments of hourly rates however these usually affected casual employees.

It was evident from our assessments that businesses in New South Wales, Queensland and ACT were paying rates of pay well above the minimum wage rates contained in the Award, which seemed to be the reason for the low level of monetary contraventions.

Case Study: Overtime

Tony employs two employees at his structural metal product manufacturing business in Queensland.*

The inspector reviewed Tony's records as part of the audit and identified he had not paid one of this employees the prescribed overtime rates. During the two week audit period, the employee had worked a total of 94 hours. Although the employee was paid a higher rate of pay as his ordinary hourly rate, it did not compensate for the overtime hours worked.

The inspector contacted Tony regarding the suspected underpayment, and assisted him by providing the correct overtime rates and an example of how to calculate them.

When Tony calculated the underpayment, he identified that the employee had been underpaid a total of \$411 and rectified the contravention immediately.

*Tony and all other names which appear in case studies are pseudonyms

Victoria

The majority of businesses we audited in Victoria were of a small or medium size. Many required their staff to work regular overtime and Saturdays. Rather than pay penalties, we found some employers paid their staff a higher base hourly rate than prescribed by the Award. Although some employees were not financially disadvantaged by this practice, several were and the money that we recovered reflects this. We provided all employers engaging in this practice with a copy of our Best Practice Guide and we required those that had underpaid their staff to back pay the wages owed.

We also identified underpayments of base hourly rates of pay. Interestingly, almost every employee affected from this underpayment was a casual employee. We found one business where the employer was under-calculating leave entitlements. We provided this employer with the correct accrual rate and he adjusted the leave entitlements for his staff. We also found an employer to be inadvertently paying one of their employees under the incorrect company enterprise agreement.

Inadequate record-keeping/payslip content was the main reason for the non-monetary contraventions. We found instances where employers believed they were meeting their payslip obligations by only detailing gross and nett amounts of pay on their wages sheets.

Interestingly we found very few apprentices in the businesses we audited. However, we found that almost half of the business audited, were members of an employer organisation.

Western Australia

In Western Australia, employers selected for audit provided their records in a timely manner, and our assessments identified very few concerns.

We identified a few contraventions related to pay slips and record -keeping obligations. One of the main payslip errors was the omission of employee superannuation details. Inspectors used the opportunity to inform and educate employers about the requirements under the *Regulations* for pay slips and record-keeping.

Another common issue found were employers paying a flat rate higher than the base rate in the Award. This higher hourly rate was by informal agreement between the employer and employee and not part of a formal written agreement. We provided the employers with, our Best Practice Guide and directed them to our tools and resources on the FWO website.

South Australia/Northern Territory

In South Australia and the Northern Territory, all but a few employers provided records for assessment within the timeframe requested. This was very encouraging and suggested that these employers understood they had an obligation to comply with Commonwealth workplace laws.

It was pleasing to find that the employers that we assessed in both regions had a low contravention rate.

Not all employer records that required further assessment led to contraventions being identified. We identified one employer who was paying his staff an all-purpose high flat

rate of pay and this provided Inspectors the opportunity to inform him about penalty and overtime entitlements under the Award.

Similar to Western Australia, the majority of technical contraventions identified were due to employers not specifying superannuation details on their employees' pay slips. Non-compliant employers acted swiftly to rectify their contraventions.

Case Study: Opportunity to self-audit

Chris, a South Australian employer, received our request for records and began to compile his records to return for assessment.

While he was getting his records together, he reviewed the minimum entitlements under the Award and noticed he was underpaying two of his employees for overtime hours worked.

Chris calculated the amounts owing to his staff and made the necessary back payments. When he sent his records for assessment, he advised he had identified a monetary contravention and provided evidence to support the payments to his employees.

Chris is a great example of how our education and compliance campaigns can assist employers to ensure they are meeting their obligations and doing the right thing by their employees. In cases such as Chris', it is generally an oversight on the part of the business and reviewing the records for assessment provides a good opportunity to identify issues.

Tasmania

In Tasmania, it was pleasing to find all the employers that we assessed were compliant with their obligations. During our assessments, we noted that the majority of employers were paying well above Award minimum wage rates.

Concluding remarks

The campaign findings have shown that the majority of businesses in this sector are compliant with Commonwealth workplace laws. However, the findings in Victoria indicate that further work in that state would be of benefit.

Our advice to those employers found to be non-compliant is to make use of FWO's record keeping and pay slip templates. We recommend making contact with either FWO or their employer association to determine the current rates of pay, especially for casuals.

For those employers who use higher flat hourly rates in place of loadings and penalty rates, we also encourage them to contact either FWO or their registered organisation so as to mitigate any risk of non compliance resulting in the underpayment of employees.

Overall we found the campaign met its objectives. Further, we are pleased that the majority of industry employers had transitioned smoothly to the new Award and Act.

Appendix A –Additional stakeholders

In addition to the key stakeholders referred to in the body of the report, the following general stakeholders were also contacted during the course of the campaign:

- Australian Apprenticeship & Traineeship Information Service
- Australian Chamber of Commerce
- Business SA
- Council of Small Business of Australia
- Department of Industry, Innovation, Science, Research and Tertiary Education
- Group Training Australia
- Manufacturing Skills Australia
- Master Builders Australia
- Northern Territory Chamber of Commerce
- Queensland Chamber of Commerce and Industry
- Sydney Business Chamber
- Tasmanian Chamber of Commerce & Industry
- Victorian Employers' Chamber of Commerce & Industry
- WA Chamber of Commerce & Industry

Appendix B – List of pre modern Awards

- Clerks (Commercial, Social and Professional Services) Award [AN160066]
- Draughtsmen's, Tracers, Planners and Technical Officers Award (WA) 1979 [AN160100]
- Metal, Engineering and Associated Industries Award 1998 [AP789529]
- Metal, Engineering and Associated Industries (NSW) Award [AN120334]
- Metal and Engineering Industry Award (Tasmania) [AN170120]
- Metal Industry (Northern Territory) Award 2003 [AP825130]
- Metal Industry (South Australia) Award [AN150082]
- Metal Trades (Australian Capital Territory) Award 2000 [AP787983]
- Metal Trades (General) Award (WA) 1966 [AN160206]
- Sheet Metal Workers Award (WA) [AN160290]