



Australian Government

Fair Work

OMBUDSMAN

Queensland Fitness Industry Program 2011

Final Report

Summary

Between February and July 2011 the Fair Work Ombudsman (FWO) completed the Queensland Fitness Industry Program. This audit program was conducted as a result of a number of time and wage complaints emerging from the Queensland fitness industry. The audit program predominantly focussed on employers operating businesses in South East Queensland, however, a handful of businesses in regional areas were also audited.

Fair Work Inspectors (FWIs) reviewed 106 employers' records, assessing compliance with base rates of pay, overtime and penalty rates, minimum engagement periods and record keeping requirements

The audit identified 88 (84%) employers to be compliant with their obligations and 17 (16%) employers to be non compliant. The majority of the contraventions identified related to underpayment of wages with the program recovering \$5,991 for 11 employees. One audit currently remains ongoing, with the employer in the process of calculating the amount of underpayments to staff.

Background

The Queensland fitness industry has been the subject of a number of time and wage complaints, under the current *Fair Work Act 2009* and former *Workplace Relations Act 1996*.

It is recognised that the industry employs a number of vulnerable employees. Further, that there can be a number of businesses located in the area all vying for the same customers. This program seeks to address the issue of employers gaining an unfair advantage over their competitors by underpaying employees their due entitlements.

Aim & objectives

The aim of the program was to ensure compliance with the *Fair Work Act 2009*, *Fair Work Regulations*, the *Fitness Industry Award 2010*, and the correct application of phasing provisions from pre-Modern Award instrument/s.

The specific objectives were to:

- educate employers and employees covered by the *Fitness Industry Award 2010*
- create awareness of the Fair Work Ombudsman's functions and role
- assess compliance with the *Fair Work Act 2009*, *Fair Work Regulations*, the *Fitness Industry Award 2010*, and the correct application of phasing provisions from pre-modern award instrument/s.
- create a level playing field amongst industry employers

Stakeholder involvement

On 10 March 2011 the Fair Work Ombudsman wrote to Fitness Australia to advise them of the program and provide them an opportunity to make comment.

Methodology

We used the White Pages, Yellow Pages and internet searches to randomly select fitness businesses for audit.

On the 5 April 2011 we sent letters to the selected businesses requesting time and wage records for a two week period in January 2011. The date for the records to be returned to us was 19 April 2011.

Once we received the employment records, we assessed them against the *Fitness Industry Award 2010*. Where records indicated that employers were complying with their obligations, we finalised the audit and advised the employer of the audit finding in writing.

Where the assessment identified the employer to be in contravention, we issued audit findings letters to those businesses, advising them of the contraventions and the action they needed to take to rectify the issues.

If the contravention related only to record keeping issues, the employers were required to complete a compliance commitment undertaking to keep the correct records in future.

Where the contraventions related to monetary issues, the businesses were required to rectify any underpayments and provide evidence of this to us.

Results

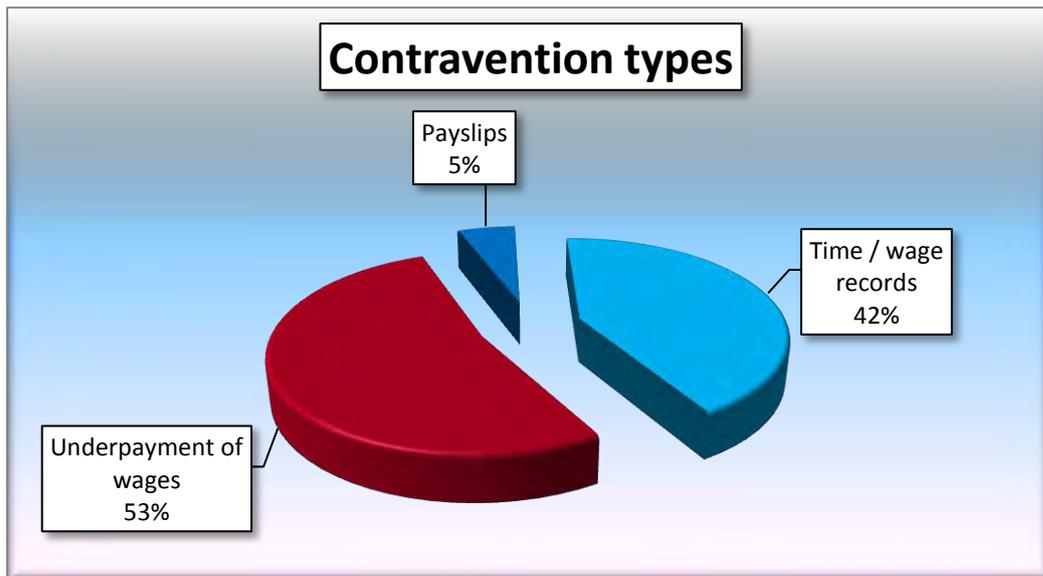
The statistical findings of the audits are detailed in the table below.

Statistical findings— QLD Fitness Industry Program 2011	
Number of employers audited	106
• <i>Employers compliant</i>	88 (84%)
• <i>Employers in contravention (voluntary compliance)</i>	17 (16%)
Ongoing investigations	1
Total amount recovered	\$5991
Number of individuals receiving payment	11

From the 17 employers found to be in contravention, 8 (47%) employers had minor contraventions relating to pay slip and record keeping regulations.

A further 9 (53%) of the 17 non compliant employers were found to have monetary contraventions attributed to underpayments of wages.

The chart below summarises the types of contraventions identified.



We found the level of compliance to be encouraging. Given the competitive nature of the industry we were expecting to find a greater number of employers with underpayment contraventions.

All employers found to be in contravention voluntarily rectified the matter.

Conclusion

The program was successful in meeting its overall aims and objectives. We found that employers generally welcomed the opportunity to find out details regarding their obligations under the legislation. Employers were also keen to learn about the FWO's role and how to use FWO resources and tools to access further information in the future or as required.

Considering the overall level of compliance in the Queensland fitness industry, a follow up program is unlikely to be conducted in the immediate future. However, Fair Work Inspectors will continue to monitor complaints and enquiries received from the industry to ensure employees are receiving their correct entitlements thus, creating a level playing field amongst employers.

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