

Queensland aged care audit program

Report

About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent statutory agency, created by the *Fair Work Act 2009* (the 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 and/or regions 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.

This report covers the background, methodology and results of the Queensland aged care audit program.

For further information and media enquiries please contact Ryan Pedler (ryan.pedler@fwo.gov.au) in the Fair Work Ombudsman's Media Unit.

If you would like further information about the Fair Work Ombudsman's campaigns please contact, Steve Ronson, Executive Director – Dispute Resolution and Compliance (steven.ronson@fwo.gov.au).

Summary

Between February and September 2012, the Fair Work Ombudsman (FWO) conducted the Queensland aged care audit program (the program). We targeted aged care operators across Queensland, to assist them to both understand and comply with the requirements of Commonwealth workplace laws.

In recent years we have received a number of complaints from employees in the Queensland aged care sector. Many of these resulted in contraventions relating to underpayments or record keeping issues. By running the program, we sought to work with the sector to increase compliance.

We have completed 204 of 205 audits commenced and of these, we have found 197 (97%) employers compliant, and only seven (3%) in contravention. One audit remains ongoing.

We have recovered \$8,809 for 55 employees.

Background

Queensland aged care facilities had been the subject of a number of complaints lodged with FWO. Recent analysis of complaints received showed that many of the complaints resulted in contraventions.

We have also received several requests from stakeholders in the aged care sector, asking that FWO undertake compliance activity in the sector.

In 2008, we conducted the National human services campaign, targeting the aged care and childcare sectors. However, in Queensland we targeted only the childcare sector. Therefore, the aged care sector has not been included in any of our previous targeted activity.

Considering the factors outlined above, we decided that the program would be timely and beneficial for both employers and employees in the sector.

Campaign aim & objectives

The aim of the program was to work with the Queensland aged care sector to increase compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and relevant industrial instruments, including the *Aged Care Award 2010* (the Award).

The objectives of the program were to:

- ensure employees in the aged care sector receive their minimum entitlements
- assist employers to correctly apply the Award and its associated phasing provisions
- ensure that employers have correct record keeping practices
- increase awareness of the role of FWO among both employers and employees and promote our many educational resources and online tools

Stakeholder involvement

We contacted the following stakeholders, to inform them of the program and to invite their feedback and assistance:

- Aged Care Queensland
- Commonwealth Department of Health and Ageing
- Queensland Health
- Aged and Community Services Australia
- National Aged Care Alliance
- Aged Care Association Australia
- Carers Queensland
- United Voice
- Health Services Union
- Queensland Nurses Union.

Method

During February 2012, we selected a random sample of retirement village and nursing home operators for assessment. We wrote to the selected employers, requesting a sample of their time and wage records for a two week pay cycle.

We included in the letter information to assist employers to comply with their workplace obligations. In particular, we directed them to our educational resources available online.

We assessed all records received, to ensure the following requirements were correct:

- base rates of pay
- rates for overtime / casual loading / penalty rates
- minimum engagement
- pay slip & record keeping practices

Once we had completed the assessments, we contacted employers to advise them of our findings. Where we found contraventions, we spoke with employers and explained the nature of the contraventions and the action required to correct them. We confirmed all outcomes by letter.

Results

Statistical findings

As at October 2012, when we analysed the results of the program, we had completed 204 audits. One audit was ongoing. Of the 204 completed audits, we found 197 (97%) businesses compliant and 7 (3%) in contravention.

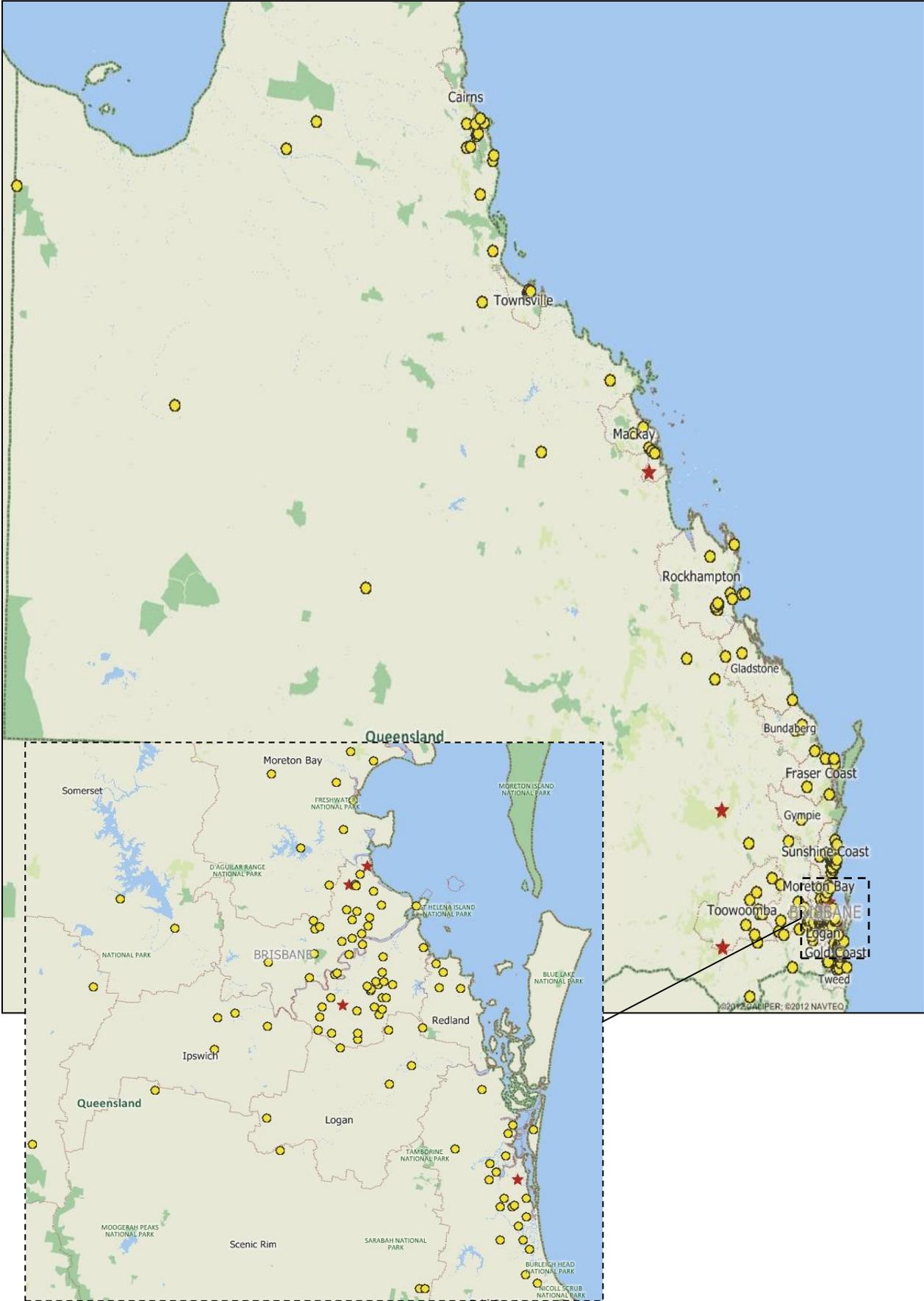
We had recovered \$8,809 on behalf of 55 employees.

Audit Results	
Number of completed audits	204
<ul style="list-style-type: none"> • <i>Employers compliant</i> 	197 (97%)
<ul style="list-style-type: none"> • <i>Employers in contravention</i> 	7 (3%)
Total amount recovered	\$8,809
Number of employees paid	55
Number of ongoing investigations	1

Of the seven employers in contravention, we identified the following contraventions:

- three failed to pay the correct hourly rate
- one failed to pay casual loading
- three failed to keep time and wage records in the correct format.

Location of entities audited



Other findings

The results of the program indicate a very good level of compliance amongst the employers we selected.

Many of the businesses we audited employed dedicated human resources staff to oversee their industrial relations. As a result, the vast majority of businesses audited were familiar with their obligations, including wages and conditions.

We believe this to be a significant factor in the high rate of compliance recorded.

Case Study

Fair Work Inspectors audited an aged care facility that employs 15 staff. We found that although the business was paying the correct base rate of pay to their employees, they were not paying the correct casual loading.

We identified that the employer was applying a casual loading of 23% to its casual employees. The award prescribes a 25% casual loading with transitional provisions allowing for the increase in the casual loading to be phased in over five years.

We notified them of this discrepancy and requested that they calculate any underpayment that may have occurred to the casual employees. The employer calculated that 13 of their employees had been underpaid a total of \$1240.

Once we confirmed the figure as being correct, the employer voluntarily paid each of the affected employees the money owed.

Conclusion

We are very pleased to have found such a high rate of compliance among the businesses audited in the program.

However, we will continue to monitor and analyse the complaints received from the sector to identify if there are other issues, such as termination or classification issues, which may not have been identified in the methodology we used in the campaign.

We strongly encourage employers to utilise our educational resources to remain up to date with their obligations and continue this high rate of compliance into the future.

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