

# QLD- Pharmacy Industry Audit Program Report 2011

Final report – February 2012

A report by the Fair Work Ombudsman under the *Fair Work Act 2009*.

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Australian Government

**Fair Work**  
OMBUDSMAN

## 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 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 Pharmacy Industry Audit Program 2011.

For further information and media enquiries please contact Ryan Pedler ([ryan.pedler@fwo.gov.au](mailto: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 - Regional Services and Targeting ([steven.ronson@fwo.gov.au](mailto:steven.ronson@fwo.gov.au)).

## Summary

The Queensland Pharmacy Industry Audit Program (the program) was conducted by the Fair Work Ombudsman (FWO) in order to assess the level of compliance with rates of pay, minimum hours of engagement, meal break entitlements, time and wage record - keeping and pay slip obligations.

Fair Work Inspectors assessed the records of 575 employers operating pharmacies throughout Queensland. Of the 575 audits completed, 320 (56%) employers were found to be compliant and 255 (44%) to be in contravention. Of the 255 non compliant employers, 298 separate contraventions were identified; the majority of which were monetary contraventions. The program recovered \$194 905 for 1,334 employees.

Most of the monetary contraventions resulted from employers not being familiar with their obligations, incorrectly calculating rates of pay and allowances, or not engaging staff for the required minimum hours.

The program also disclosed some employers utilising what appeared to be 'standardised' Individual Flexibility Arrangements (IFAs).

## Background

Motivated in part by the Fair Work Ombudsman's National Retail Industry Campaign 2010-2011, the Queensland office of the Fair Work Ombudsman decided to undertake a regional audit program targeting the pharmaceutical sector. While pharmacies form part of the broader retail industry, employment terms and conditions are informed by the *Pharmacy Industry Award 2010*.

An audit program involving the sector was considered appropriate in the light of the Pharmacy Guild of Australia being awarded a grant under the Fair Work Ombudsman's Shared Industry Assistance Projects (SIAP) to develop educational resources for the industry.

### **Shared Industry Assistance Program (SIAP) Funding**

On 1 October 2010 the Fair Work Ombudsman offered \$2.5 million in grants under the Shared Industry Assistance Projects (SIAP) Grant Program to a number of employer and industry groups.

Twenty five (25) Modern Awards were included in SIAP as they were identified as being most in need of additional information and educational materials

SIAP offered 15 organisations grants (to a maximum value of \$104,000) to provide materials on one or more award/s. The Pharmacy Guild received a maximum grant to develop educative materials on the Pharmacy Industry Award 2010 [PIA]. The educative material developed by the Pharmacy Guild contained information on:

- Classification translations – prepared on a State/Territory basis
- Self audit checklist
- Transitional rate calculator
- Industry Specific Clauses Explained – concise fact sheets covering:
  - ~ Pharmacy Industry Award [PIA] terms and conditions– broad overview of the terms and conditions underpinned by the PIA (clauses 4, 10, 18, 28, 26, 25, Schedule B)
  - ~ Annualised salaries for Pharmacists (clause 27)
  - ~ IFA for annualised salaries for Pharmacy Assistants (clause 7)
  - ~ Allowances (clause 19)
  - ~ Part-time employment (clause 12)
  - ~ Rostering under the award (clause 25.4)
  - ~ Sale of pharmacies (transfer of business implications)
  - ~ Overtime award entitlements (clauses 26.3, 26.2(a), 26.1, 25.4, 12, 26.2)
  - ~ On-premise meal allowance for Pharmacists (clause 19.2)
  - ~ Casual employees (clause 13, Sch A.8)

These materials were distributed in March 2011 via email, direct mail and are available online at

[http://www.guild.org.au/pia/Information\\_and\\_Resources/Background.page](http://www.guild.org.au/pia/Information_and_Resources/Background.page)

The materials were made available free of charge to industry members and non-members.

It was hoped the program would enable the Fair Work Ombudsman to gain additional insight into the level of compliance within the sector in Queensland and identify issues where further education is required. The Fair Work Ombudsman had already held discussions with the Pharmacy Guild of Australia in relation to the National Retail Industry Campaign 2010 - 2011 so it was considered that the program could capitalise on the promotional work already undertaken.

### **Aim & Objectives**

The aim of the program was to ensure targeted pharmacies in Queensland are compliant with Australian workplace laws, specifically in relation to wages, record - keeping, payslips and minimum hours of engagement obligations.

The specific objectives were to:

- engage with key industry stakeholders
- direct retail pharmacy industry to the FWO Infoline and the online self help resources to assist them comply
- audit the level of compliance of a sample number of employers in relation to wages and entitlements
- ensure audited employers were compliant with their obligations
- provide a public report on the findings

## Stakeholder involvement

Prior to commencing the audits we contacted:

- The Pharmacy Guild of Australia [the Guild]
- The Shop, Distributive and Allied Employees Association [SDA]

The purpose of this contact was to explain the purpose of the program and what activities would be involved.

In July 2011, whilst the program was underway, the Pharmacy Guild's National President made several media statements pre-empting the findings of this audit program<sup>1</sup>. In response to these public statements, the Fair Work Ombudsman contacted the Guild and requested that any representations regarding the findings of the program not be made until the Fair Work Ombudsman had completed and released a report on its findings.

## Method

Planning for this program commenced in December 2010. Using the Yellow Pages we identified a sample number of pharmacies across the following regions of Queensland for audit.

Region	Entities targeted for audit
Brisbane South & Gold Coast	183
Brisbane North	177
North Queensland	59
Central Queensland	90
South West Queensland	85

In March 2011 we selected and wrote to the pharmacies and notified them of their selection for assessment. The letter directed employers to the Fair Work Ombudsman's resources including the Infoline and online self help resources. It also requested that a sample of records be forwarded to the Fair Work Ombudsman office for assessment.

Having received the records back from employers who were suitable for audit we reviewed them and assessed the following:

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<sup>1</sup> Media release issued by the Pharmacy Guild on 22 July 2011

- Payslips and time records
- Hourly rate, loadings, and penalties
- Overtime entitlements
- Minimum hours of engagement
- Meal break entitlements

Those pharmacies that did not respond to the written request for records were contacted and where there was a need to speak with the employer field visits were made.

Employers found to be compliant with their obligations were notified in writing of the outcome of the audit. Those employers with contraventions were contacted by telephone and advised of the contravention and were educated on their obligations. They were also issued with an audit findings letter and provided the opportunity to rectify the contraventions voluntarily.

## **Results**

During February 2012, we undertook the statistical analysis of all 575 audits. Of the 575 audits, we found 320 (55.7%) employers to be compliant and 255 (44.3%) employers to be in contravention of Australian workplace laws.

The campaign has recorded and recovered \$194,905 in underpayments for 1334 employees. Whilst one employer was found to have underpaid his employees a total of \$3.79 the employer with the greatest monetary contravention was found to have underpaid his staff a total of \$11,638.

Table 1: Key results from audits at 14 November 2011		
Audits finalised	575	
Employers compliant	320	(55.7%)
Employers in contravention	255	(44.3%)
Money recovered	\$194 905	
Number of employees receiving payments	1334	

Of the 255 employers found to be in contravention, 186 (72.9%) were identified as having monetary contraventions, whilst 54 (21.2%) had contraventions related to time and wage records or pay slip requirements. A further 15 (5.9%) employers were identified as having both monetary and non monetary contraventions.

**Chart 1: Campaign results**

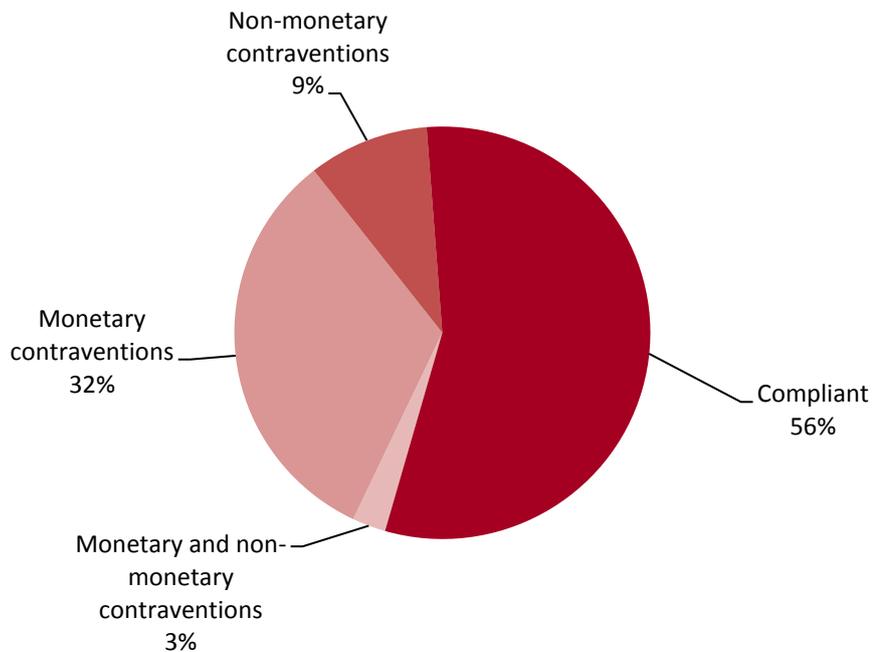
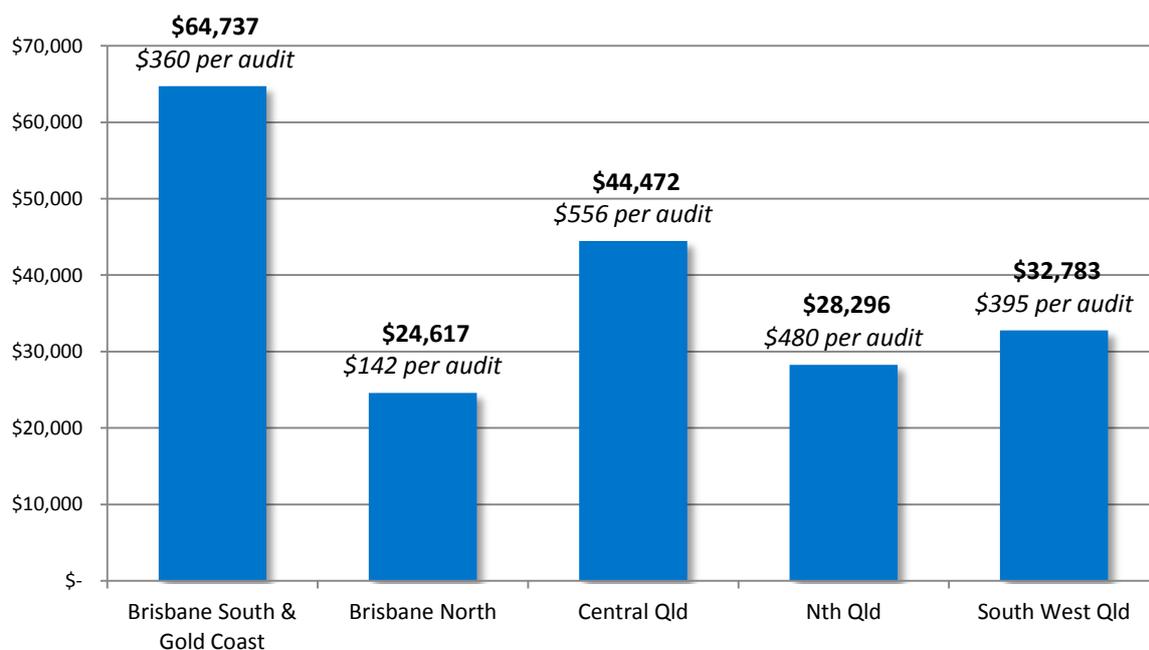


Table 2: Money recovered by region			
	Percentage of audits undertaken	Money recovered	Number of employees receiving payment
Brisbane South & Gold Coast	31.3%	\$64 737	656
Brisbane North	30.1%	\$24 617	120
Central Qld	13.9%	\$44 472	279
North Qld	10.3%	\$28 296	130
South West Qld	14.4%	\$32 783	149
<b>Total</b>	<b>100%</b>	<b>\$194 905</b>	<b>1334</b>

As at 16 February 2012 we had recovered a total of \$194,905 for 1334 workers during this campaign.

The region of Brisbane South and Gold Coast where 31% of audits were undertaken recorded the highest total recoveries of \$64,737, representing 33% of total recoveries. Central Queensland where 14% of the audits were undertaken recorded the second highest total recovery of \$44,472. This region also recorded the highest average recovery per audit (\$556).

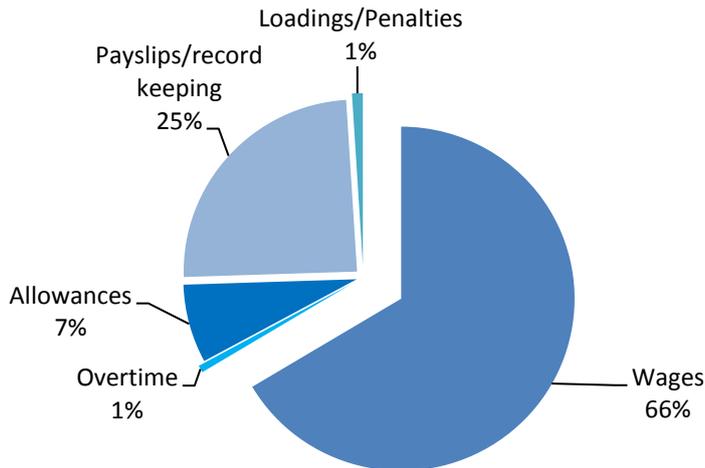
**Chart 2: Money recovered by region**



### Contraventions identified

Of the 255 employers found to be in contravention, we identified a total of 298 separate contraventions. Of the 298 contraventions identified, 66% related to underpayment of wages, 25% related to pay slip issues and time and wage record - keeping requirements, and 7% related to allowances.

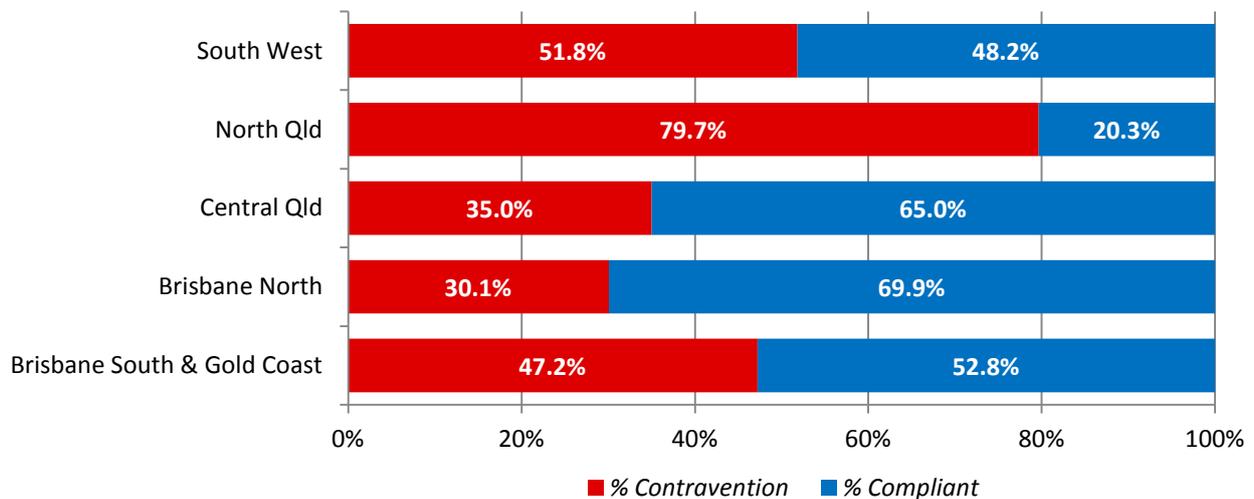
**Chart 3: Contraventions identified**



### Findings by region

The lowest contravention rate was recorded in the Brisbane North region with just over 30% of employers in contravention. The highest contravention rate was found in North Queensland (79.7%) followed by South West Queensland (51.8%).

**Chart 4: Contravention rate by region**



<b>Table 3: Audit findings by region</b>					
<b>Region</b>	<b>Compliant</b>	<b>Monetary Contraventions</b>	<b>Non-monetary contraventions</b>	<b>Both Monetary and non-monetary contraventions</b>	<b>Total audits</b>
Brisbane South & Gold Coast	95 (52.8%)	78 (43.3%)	5 (2.8%)	2 (1.1%)	<b>180</b>
Brisbane North	121 (69.9%)	22 (12.7%)	20 (11.6%)	10 (5.8%)	<b>173</b>
Central Qld	52 (65%)	25 (31.3%)	-	3 (3.8%)	<b>80</b>
North Qld	12 (20.3%)	27 (45.8%)	20 (33.9%)	-	<b>59</b>
South West	40 (48.2%)	34 (41%)	9 (10.8%)	-	<b>83</b>
<b>Total completed</b>	<b>320</b> (55.7%)	<b>186</b> (32.3%)	<b>54</b> (9.4%)	<b>15</b> (2.6%)	<b>575</b>

Table 3 provides a further breakdown of statistics. As illustrated the number of monetary contraventions was greater than the non-monetary contraventions in each of the regions audited. The percentage of employers with monetary contraventions was particularly significant in North Queensland (45.8%) and Brisbane South and Gold Coast (43.3%).

**Case Study: How small underpayments become large underpayments**

*Greg's North Queensland business was selected for audit as part of the pharmacy audit program. When the inspector reviewed the sample records supplied the inspector noticed that three of Greg's employees had been underpaid a few cents per hour.*

*The inspector called Greg and advised him of her findings and requested that he produce further records for examination. Having supplied the records the inspector assessed them and found further contraventions.*

*Contraventions identified related to a number of vulnerable workers including juniors and casuals. Whilst the initial assessment only found 3 employees to be underpaid their ordinary hourly rate of pay on closer examination the inspector identified 12 employees to either be underpaid their ordinary hourly rate, overtime rates or not paid in accordance with the minimum hours of engagement award provisions.*

*Although the underpayments were in most cases only a few cents less than the rates prescribed, the employer was found to have underpaid 12 employees in excess of \$6000 which he voluntarily paid.*

*\*As in all featured case studies the names are not the employers' real names*

### **Case Study: Overtime oversight**

*Jason's Toowoomba pharmacy was selected for audit as part of the pharmacy audit program. In assessing the employment records the inspector noted that Jason was compliant with all his obligations except for the payment of overtime and payment of laundry allowances.*

*The inspector notified Jason of the contraventions. In speaking with Jason, Jason explained that he was aware of the introduction of the modern award and the rates of pay as prescribed by the award. However, Jason explained that he had not confirmed what the rate of pay was for overtime and had assumed that the casuals were paid a pro rata laundry allowance.*

*Regarding the overtime, Jason had assumed that like the pre modern award, the overtime penalties of time and a half for the first three hours of overtime and double time for any time thereafter still applied. The inspector explained that the overtime provisions in the modern award were different and as a result he had underpaid his staff their overtime entitlements.*

*Realising his errors Jason promptly rectified the contravention and back paid 7 employees a total of \$1178.*

Across the regions audited, the majority of non - compliant employers attributed their contraventions to a lack of awareness of their workplace obligations.

### **Case Study – Laundry allowance entitlements**

*Fair Work Inspectors requested the records of five independent pharmacies located on the Gold Coast. Each of the pharmacies outsourced their pay roll to a central pay roll office. In assessing the records of the five pharmacies it became evident that each had contravened the laundry allowance award entitlement for their casual employees.*

*In discussing the contraventions with the pay roll office it became clear to the inspectors that the pay roll office had misinterpreted the laundry allowance award provisions. The pay roll office incorrectly assumed that because casuals are paid by the hour that the laundry allowance was also calculated on an hourly basis. As a result casual employees were not receiving their full laundry allowance entitlement.*

A small number of other non-compliant employers advised that the underpayments identified were a result of them not increasing a junior employees' wage on their birthday or relying on incorrect information provided to them by their accountant.

### **Other findings**

During the audit program inspectors noted some employers utilising Individual Flexibility Arrangements (IFAs).

The *Fair Work Act 2009* provides for employers and employees to enter into an IFA. Section 144 of the *Fair Work Act 2009* stipulates;

*'a modern award must include a term (a flexibility term) enabling an employee and his or her employer to agree to an arrangement varying the effect of the award in relation to the employee and the employer, in order to meet the genuine needs of the employee and employer.'*

While IFAs are not required to be submitted to any statutory authority for formal assessment, it is the employer's responsibility to ensure that the employee is 'better off overall'<sup>2</sup> than if there was no IFA. The employer's 'better off overall' assessment will usually involve comparing the employee's financial benefits under the IFA with the financial benefits under the applicable award or enterprise agreement.

Importantly, IFAs must be made through genuine agreement between an employer and employee<sup>3</sup>. For example, the employee must not be coerced or placed under undue influence or pressure by the employer.

Fair Work Inspectors involved in the program reported the use of what appeared to be a 'standardised' or template - driven IFA being used by a small number of employers. A 'template approach' raises the question as to whether the IFA was produced following genuine negotiation.

## Concluding remarks

As this was the first time we have undertaken an audit program within the pharmacy industry, we were uncertain about compliance levels. We note that almost half of all the employers audited recorded contraventions.

Of concern is the number of non - compliant employers who advised that they were unaware of their workplace obligations but who did not seek further advice or assistance.

The Fair Work Ombudsman intends to meet with key stakeholders to discuss the findings and a need for ongoing education.

In addition to alerting employers to their workplace obligations, the program has re - enforced within the sector the role, functions, resources and services of the Fair Work Ombudsman.

In order for this sector to improve its level of compliance we encourage employers in this sector to make use of resources available to them on either the Fair Work Ombudsman's website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Guild's website at [www.guild.org.au](http://www.guild.org.au).

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<sup>2</sup> Section 144(4)(c) of the *Fair Work Act 2009* (the Act)

<sup>3</sup> Section 144(4)(b) of the *Fair Work Act 2009* outlines the need for employer and employee to genuinely agree to the arrangement.

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