



Fair Work
OMBUDSMAN

Tasmanian residential building apprentices program

Final report – August 2013

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Performance snapshot

Found

60%

employers in contravention

Total

150

audits of employers in the
Tasmanian residential building
industry

Found

40%

employers to be compliant

More than

\$116 K

recovered for employees

Total of

86

employees repaid

Summary

In August 2012, the Fair Work Ombudsman (FWO) commenced the Tasmanian residential building industry apprentices audit program (the program).

We had received a high number of complaints from employees in the Tasmanian residential building industry (the industry) in recent years. In investigating these complaints we found that in many cases employees were underpaid.

The industry employs many apprentices. FWO considers apprentices a vulnerable group of employees. We therefore designed the program to have a particular emphasis on employers with first year apprentices.

During the program we assessed the records of 150 employers. We found 90 (60%) in contravention of workplace laws, while 60 (40%) were compliant.

We recovered a total of \$116 412 on behalf of 86 employees who were underpaid.

Further details of our findings can be found in the body of the report.

Purpose of the program

The aim of the program was to promote and assess compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations 2009* (the Regulations) and the *Building and Construction General On-site Award 2010* (the Award) in the Tasmanian residential building industry. We specifically targeted employers who engage first year apprentices.

The objectives of the program were to:

- assess compliance with time and wage record-keeping and pay slip requirements
- assess the interaction between training contracts / arrangements and workplace relations laws

- assess compliance with rates of pay, including penalty rates and allowances
- provide employers with information about the many resources provided by FWO, including our online tools.

Our industry partners

We wrote to the following stakeholders:

- Tasmanian Department of Justice
- Tasmanian Chamber of Commerce and Industry
- Unions Tasmania
- Construction, Forestry, Mining and Energy Union
- Workplace Standards Tasmania
- Tasmanian Small Business Council
- Master Builders Association of Tasmania
- Housing Industry Association – Tasmania

We advised them of the program and sought their assistance in promoting it amongst their members.

We also informed the following parliamentarians of the program:

- Senator Eric Abetz
- Senator Catryna Bilyk
- David O’Byrne MP (Tasmanian Minister for Industrial Relations).

Skills Tasmania provided us with assistance in identifying employers for inclusion in the program, by providing details of businesses that employ first year apprentices.

Why did we target this industry?

In recent years, we had received a high number of complaints from employees in the Tasmanian residential building industry. When we investigated these complaints we often identified contraventions.

The majority of the contraventions have related to the underpayment of employees.

The residential building industry employs a number of apprentices. We consider apprentices to be vulnerable employees as they are usually young workers, often in their first job and generally lacking awareness of their entitlements. They may also be uncomfortable discussing or enquiring about their entitlements with their employer.

We therefore decided to focus on businesses that engage first year apprentices and use the opportunity to assist employers to establish correct practices for the ongoing relationship with their employees.

The Award contains a number of entitlements and allowances which some employers are unaware of. The program therefore provided the opportunity to ensure that employers are aware of all such provisions.

What did we do?

Skills Tasmania provided us with a list of employers who engage first year apprentices. We randomly selected employers from the list for inclusion in the program.

We wrote to each of the selected employers to inform them of the program and to request copies of time and wage records for a two week period. In the letter we included information about the online tools and resources available on our website and directed employers to information about apprentices and trainees:

<http://www.fairwork.gov.au/employment/apprentices-and-trainees>

When our Fair Work Inspectors received the records they assessed them against the requirements of the

Act, the Regulations and the Award in regards to the following:

- record-keeping and pay slips
- base rates of pay
- week end penalties
- public holiday rates
- overtime rates
- travel and tool allowances.

Where we found businesses to be compliant with their obligations we notified them in writing.

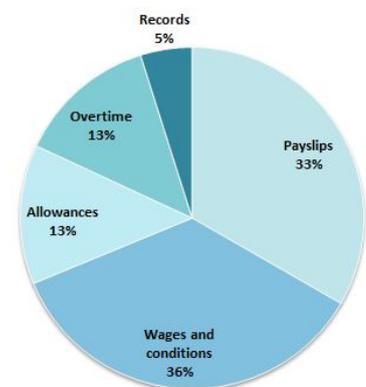
Where we identified record-keeping or pay slip contraventions we informed employers of the contraventions and provided them with information about correct record-keeping practices. We sought written commitment from them that they would maintain compliant records and pay slips in the future.

Where we found employers had underpaid their employees we advised them of the contraventions and asked them to review their time and wage records and to calculate any underpayments owing. We worked with employers to confirm amounts owing and to ensure that all back payments were made

to the affected employees.

Whilst working with employers to

rectify contraventions, we took the opportunity to ensure they were familiar with our online pay tools to



assist them in identifying correct rates of pay in the future.

At the conclusion of each audit we wrote to the employer to formally notify them of the outcome and advise that the audit was concluded.

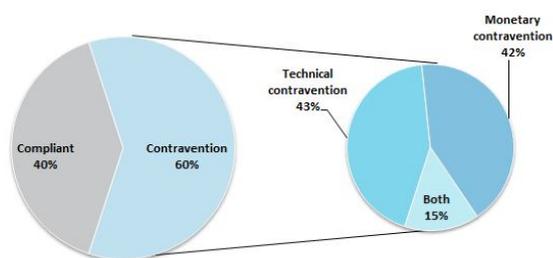
What did we find?

In July 2013 we had completed 150 audits. We found 60 (40%) businesses compliant with their obligations and 90 (60%) were in contravention.

We recovered a total of \$116 412 for 86 employees.

One audit is ongoing as further investigation is required.

Chart 1: contraventions identified



Of the 90 businesses we found in contravention:

- 38 (42%) had monetary contraventions
- 39 (43%) had technical (i.e. record-keeping or pay slip) contraventions, and
- 13 (15%) had both monetary and technical contraventions.

Chart 2: Contravention types

The 90 businesses in contravention accounted for a total of 144 individual contraventions. Chart 2 shows the different types of contraventions identified. Pay slip contraventions accounted for 33% of contraventions and 36% of contraventions related to wages and conditions.

Inspectors reported that most of the pay slip contraventions related to missing details. The most common omissions were the ABN of the employer or the name of the superannuation fund to which payments were made.

Chart 3: Compliance rates by region

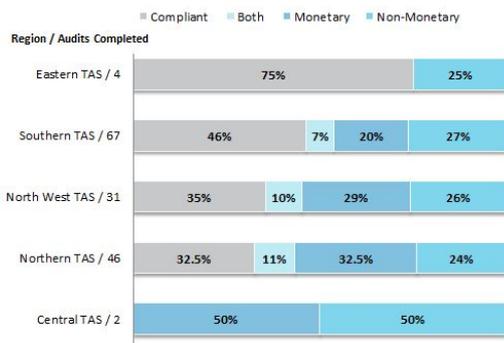


Chart 3 shows the rates of compliance by region. Eastern Tasmania had a 75% compliance rate from four audits conducted. Southern Tasmania had a compliance rate of 46% from 67 audits conducted, North West had a 35% compliance rate from 31 audits conducted and Northern Tasmania had compliance rates of 32.5%, from 46 audits conducted. We only conducted two audits in Central Tasmania and both were in contravention.

Case Study – Importance of checking all pay rates

XYZ Builders* had an enterprise agreement which provided that adult apprentices would be paid the CW1 (labourer) rate of pay.

XYZ Builders engaged James* as an adult apprentice but inadvertently paid him at the junior apprentice rate of pay.

As this incorrect rate of pay was used to calculate other entitlements, the underpayment compounded to all other wage related entitlements.

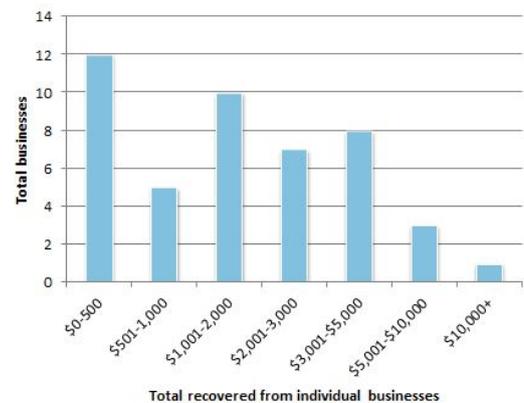
We asked XYZ Builders to review James’ entitlements and to calculate the amount owing over the previous 12 months. The total amount owing was \$22,000.

We were satisfied that it was an unintentional mistake as all other employees were paid all entitlements correctly.

XYZ Builders voluntarily repaid James the total amount owing.

*not the actual name.

Chart 4: Amounts recovered



We recovered \$116,412 in underpayments in total for 86 employees, from 46 businesses. Monies recovered from individual businesses ranged from less than \$100 to just over \$22,000.

Other findings

Our inspectors reported that a significant number of monetary contraventions resulted from employers failing to pay the annual wage increase due from 1 July 2012. Many employers only reviewed wages for their apprentices when they had progressed to the next level of the apprenticeship.

Case Study – Employees or contractors?

Joseph* advised us that he had four apprentices who were self-employed with registered ABNs. He stated that his role was to oversee their training and progress.

Joseph explained that the apprentices had been contracting in the industry for some years but had never attained qualifications. Joseph had agreed to sign them on as apprentices so they could obtain qualifications for the work that they were already doing as contractors.

He further explained that the apprentices did not work solely for him but also worked for other builders. Joseph supervised the arrangement but the apprentices would invoice the other builders directly.

We checked the ABN registrations and confirmed they were obtained prior to the dates the apprenticeships commenced. We further conducted a multi-factor test to determine whether the workers were employees or contractors.

We also assessed the apprentices' payments and found they received well in excess of the award entitlements for employees.

Our assessment was that the arrangements had some characteristics of genuine contracting arrangements, however, we recommended Joseph contact Skills Tasmania

for further advice on the arrangements, in particular whether the State training laws provided for contractors. Skills Tasmania later confirmed that Joseph had contacted them and that they were working through the various issues together.

*not their actual name.

Another observation was that although the Award allows for industry, special and tool allowances for employees to be included in an 'all purpose' rate of pay, many employers preferred to show these allowances separately on pay slips. Several underpayments resulted from this practice, as employers had calculated overtime or other penalty rates from the base rate of pay instead of the 'all purpose' rate.

Case Study – Seek advice when unsure

Paul*, a builder who had engaged three apprentices as contractors, contacted the Housing Industry Association (HIA) for assistance when he received our initial request for records.

The HIA advised Paul that he could not engage the apprentices as contractors. Paul then contacted FWO to arrange a meeting with an inspector to discuss the situation and to seek further clarification as to his obligations as an employer.

The inspector provided Paul with a copy of the Award, current pay rates and allowance rates and information about record and pay slip requirements.

The inspector also advised Paul to contact the Australian Tax Office regarding superannuation obligations.

Paul appreciated the information received and understood the requirement to change the status of the three apprentices to that of employees.

In addition to assisting Paul to understand his obligations, we also assessed the apprentices' existing pay rates and found these well above the minimum entitlements due to them as employees.

* not their actual names

Concluding remarks

The findings of the program highlight the importance and the need for ongoing education and compliance activity in this sector.

We recognise the majority of contraventions identified appeared to be genuine errors by employers rather than deliberate attempts to underpay their employees. The fact that employers voluntarily rectified all of the contraventions we identified illustrates this point.

Because of the program, those employers found in contravention now have correct information about their obligations and are aware of the resources we provide to assist them.

We are hopeful that the program will prove to be of benefit for both employers and employees and will assist enhanced compliance in the industry.

About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent agency created by the *Fair Work Act 2009* 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.

Our education and compliance campaigns target specific industries to assist them achieve compliance with national workplace laws. Our focus is usually industries that need assistance with compliance and employ vulnerable workers.

We like to work with relevant industry associations and unions to deliver our campaigns. We rely upon their 'real world' knowledge and communication channels to design and deliver our education activities and products.

This report covers the background, method and findings of the Tasmanian Residential Building Industry Apprentices Audit Program 2012

For further information and media enquiries please contact media@fwo.gov.au.

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

Commonwealth of Australia 2013

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