

Victorian Hairdressing Apprenticeship Audit Program

Final report – May 2013

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

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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
- monitoring compliance with, inquiring into and investigating any act or practice that may be contrary to 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 Victorian Hairdressing Apprenticeship Audit Program.

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Summary

In August 2011, the Fair Work Ombudsman (FWO) commenced the Victorian hairdressing apprenticeship audit program (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 other industrial instruments, among Victorian hairdressing salons that employ apprentice hairdressers.

Although the program primarily focussed on apprentice hairdressers, we also assessed the time and wage records of other staff employed at the selected hairdressing salons, such as beauty therapists.

During the program, we assessed the records of 243 employers to ensure their compliance with the following requirements:

- hourly rates of pay
- allowances
- record-keeping and pay slip obligations.

Of the 243 employers audited, we found only 70 (29%) compliant. The 173 (71%) employers in contravention had 269 contraventions. To date, we have recovered a total of \$134,521 for 178 employees who were underpaid.

Background

In recent years, we have received a high number of complaints from employees in the hairdressing and beauty industry.

In investigating these complaints, we have identified a significant number of contraventions relating to underpayments of basic entitlements such as evening and weekend penalty rates, as well as apprentices being required to complete unpaid training in their own time. Apprentices are usually young workers, often in their first job, who have a limited understanding of their workplace rights.

The FWO has identified apprentices as a priority group of employees in terms of ensuring compliance. By conducting the program, we were able to provide information to employers of first year apprentices in the hairdressing and beauty industry to assist them comply with their workplace obligations.

Aim, scope and objectives

The aim of the program was to ensure apprentices in the Victorian hairdressing and beauty industry were receiving their entitlements as prescribed by the *Hair and Beauty Industry Award 2010* (the award).

The specific objectives of the program were to:

- assess compliance with time and wage record-keeping and pay slip requirements
- assess compliance with lawful rates of pay, including penalty rates for evening and weekend work
- assess the interaction between training contracts / arrangements for training and workplace relations laws

- provide employers with information about the many resources provided by FWO, including our online tools
- provide a public report on the findings of the program.

Stakeholder engagement

Before commencing the audits, we contacted the following stakeholders and provided them with a program briefing letter:

- Hairdressing and Beauty Industry Association
- Skills Victoria
- Department of Education, Employment and Workplace Relations (DEEWR)

We sought their feedback and assistance in promoting the fair work message in order to maximise the impact of the program.

We obtained a list of entities engaging first year apprentices in the Victorian hairdressing industry in the period leading up to the program from the Department of Education and Workplace Relations (DEEWR).

Method

In October 2011, we selected a random sample of businesses from all regions of Victoria who had employed first year apprentice hairdressers. A letter was sent requesting time and wage records covering a two-week period.

Where potential contraventions were identified, we phoned the employer to discuss our findings and the action required to correct the contraventions identified. We also confirmed this information by letter.

In some cases, it was necessary to meet with an employer in person to ensure they correctly understood their obligations. We visited their business premises and took the opportunity to spend time answering their questions about their obligations.

Results

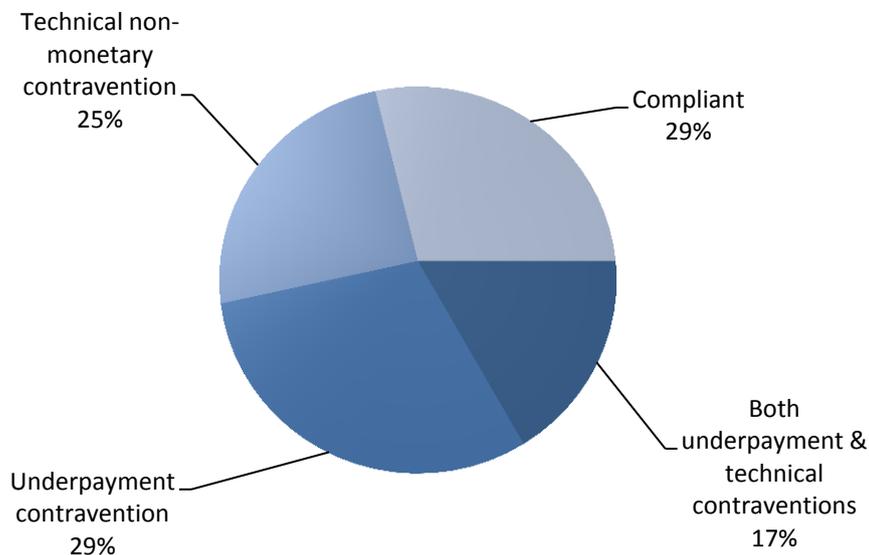
We compiled the results of this program in April 2013. We found that of the 243 businesses audited, 70 (29%) businesses were compliant and 173 (71%) were in contravention of Australian workplace laws.

As at April 2013, we had recovered \$134,521 for 178 employees.

Table 1: Audit Results	
Number of employers Audited	243
• <i>Employers compliant</i>	70 (28.8%)
• <i>Employers in contravention</i>	173 (71.2%)
Total amount recovered	\$134,520.80
Number of employees paid	178

Of the 243 businesses audited, 72 (29%) had monetary (underpayment) contraventions, 60 businesses (25%) had non-monetary contraventions relating to payslips and record keeping, and 41 (17%) had both underpayment and non-monetary contraventions.

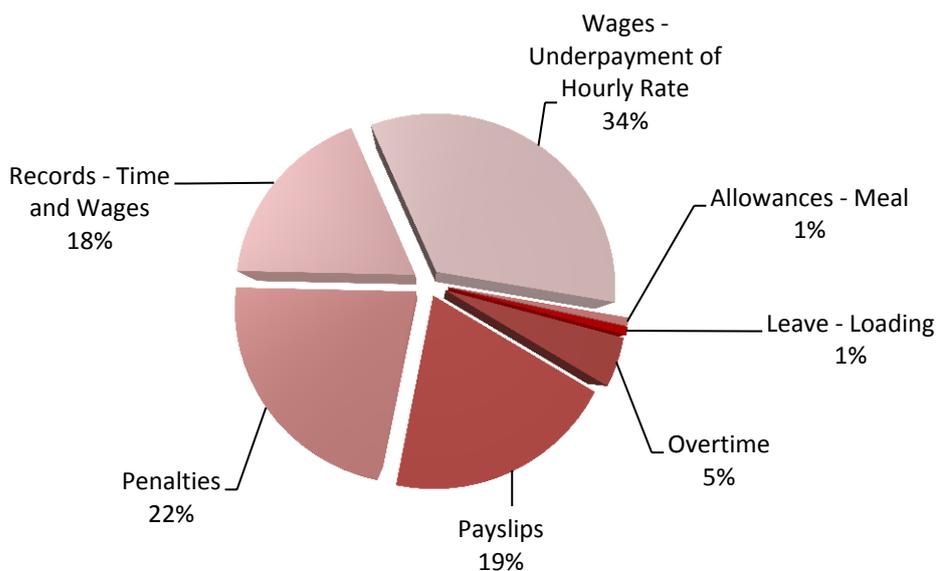
Chart 1: Audit results



Contraventions

The 173 businesses found to be in contravention had a collective 269 contraventions. As illustrated in Chart 2, 92 (34%) related to underpayment of hourly rates, 60 (22%) related to penalty rates underpayments, with 52 (19%) relating to payslip contraventions.

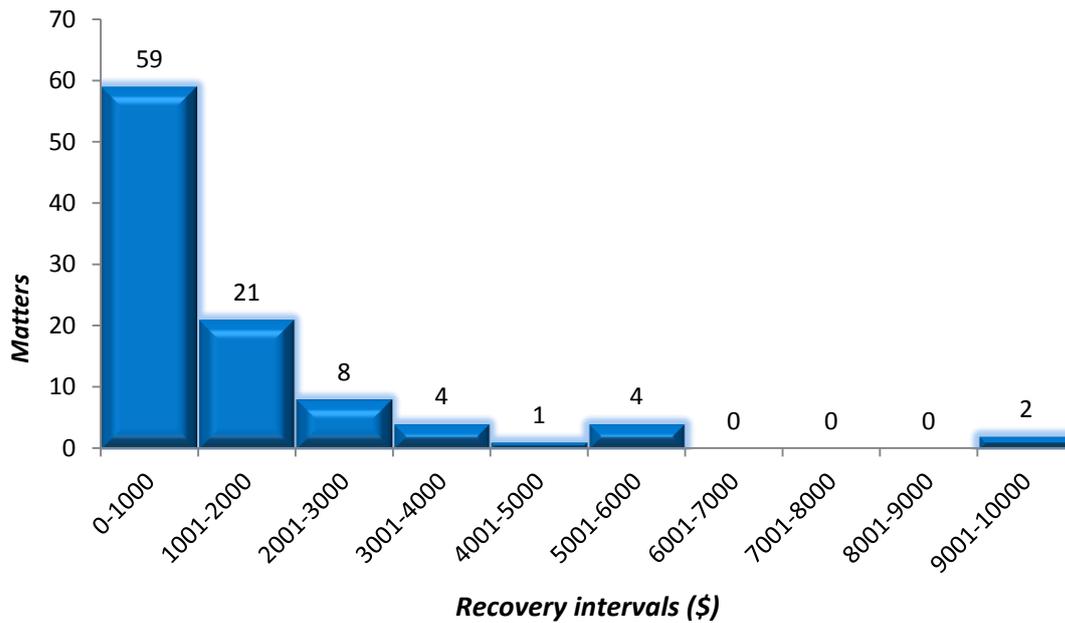
Chart 2: Individual contraventions identified



Underpayments

Of the 99 businesses where underpayments were recovered, amounts ranged from just over \$45 to just under \$10,000 recovered on behalf of employees. Almost 60% of underpayments were less than \$1,000 and nearly 81% were less than \$2,000. We consider this a significant amount for those employees who are first year apprentices.

Chart 3: Recovery amounts



Emerging Issues

The statistics indicate a high level of non-compliance in this industry, with 47% of employers found to have underpaid staff. The contraventions identified related mainly to underpayment of the basic hourly rate of pay. These contraventions arose, as many employers incorrectly believed that the only review of an apprentice's wage occurred when the apprentice moved to the next year of their apprenticeship.

As well as the pay increase due when an apprentice advances to the next level of their apprenticeship, apprentices are also entitled to receive the pay increase received by all Australian workers from 1 July each year. Therefore, they failed to increase rates from 1 July 2011 until the apprentice progressed to the next year of their apprenticeship after that date.

Other contraventions identified by Fair Work Inspectors related to employers having calculated penalty rates from the incorrect ordinary rate of pay.

Fair Work Inspectors found some businesses were not keeping records or failing to issue pay slips as required by the regulations. The majority of these contraventions related to records or pay slips missing necessary details. For example, several employers neglected to include the name of the superannuation fund on employees' pay slips.

Case study - Collective agreement vs award

As part of the program, we requested a hairdressing salon in regional Victoria to provide time and wage records for their employees for assessment. When the Inspector reviewed the records they noted the business had recently been purchased by the employer and one adult female employee (Sara *) remained with the business under the new ownership.

Sara had previously been employed under a Collective Agreement. When the new employer commenced they paid Sara according to the Modern Award, as they did not understand the terms of the agreement.

The employer thought that Sara had been disadvantaged by being on an agreement, as she had not received a pay increase for some time. The Inspector informed the employer that under the agreement, Sara was also entitled to the national wage increases. The Inspector provided information about the various industrial instruments and advised the employer about the correct process to make application to set aside the current Collective Agreement if they wished to pay under the Modern Award.

Due to the incorrect application of the Collective Agreement, Sara was entitled to a back payment of \$2,300, which the employer voluntarily rectified.

The Inspector also reviewed the remaining records for the employer and found that three female employees with a Certificate IV in Beauty Therapy were incorrectly classified.

The Inspector contacted the Hairdressing and Beauty Industry Association to clarify the award classification structures and then discussed these with the employer. The Inspector provided the employer with the correct pay rates for their employees and information about the online tools and resources available on the FWO website.

The employer voluntarily repaid the employees' underpayments totalling \$5,500. As these underpayments were due to the employer's lack of knowledge about industrial instruments, classifications and wage rates, the audit provided a good opportunity to provide the employer with information to assist them with future compliance.

- *Not the employee's real name*

Case study - Employing family members

A Melbourne based hairdressing salon was audited as part of the program. The Inspector found that three employees at the salon were family members.

These employees were paid at a flat rate of pay for 6 days a week with no extra payments for penalty rates. As a result, their minimum rate of pay was that stated in the modern award. In addition, none of these employees were classified correctly under the modern award.

The Inspector discussed these issues with the employer, who stated that as they were family members and happy to work for the negotiated rates, he did not think he was doing anything wrong. The Inspector provided the employer with information on the correct classifications for his employees, as well as the correct rates of pay and penalty rates.

The employer rectified the underpayments to his employees, which were calculated at \$6,500.

Emerging Issues

We identified a number of businesses paying employees a higher hourly rate of pay for all hours worked instead of paying penalty rates. Not all of these contraventions resulted in financial disadvantage to the employee. In many cases, the total sum paid in a pay period was in excess of the amount the employee would have received if they had complied with the award. We advised these employers that if they wished to continue this arrangement they should obtain independent advice and formalise the details in writing with their employees.

Concluding remarks

It is apparent to FWO that not all young employees will approach us to seek redress of their lawful entitlements. The results of this program highlighted the necessity of this targeted activity as well as the need for ongoing education and compliance activity in the hairdressing sector.

Although we were disappointed to find a high contravention rate, we were pleased that all contraventions were voluntarily rectified.

The contraventions arose from misunderstanding rather than any deliberate or wilful intention to underpay employee entitlements. Since concluding this program, FWO has commenced a national program in the hair and beauty industry, which will provide us with another opportunity to not only monitor compliance with the Act but also educate a wider group of employers on a national scale.

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