

Victorian - Regional Transport Industry Campaign 2010-2011

Final report – August 2012

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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 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 Victorian Regional Transport Campaign 2010 - 2011.

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

The Fair Work Ombudsman (FWO) has received and continues to receive a significant number of complaints from the Victorian transport industry.

With the introduction of modern awards, including the *Road Transport & Distribution Award 2010 (MA000038)* and *Road Transport (Long Distance Operations) Award 2010 (MA000039)* on 1 January 2010, the FWO considered it appropriate to conduct the Victorian Regional Transport Campaign (the campaign).

Commencing in September 2010, the campaign trialled a two phase approach.

The first phase of the campaign was primarily an educational assessment, (recognising the 'newness' of the modern awards), and involved FWO reviewing the records of 32 businesses. The principal aim of this first phase was to provide employers with specific information and advice to assist them voluntarily meet their obligations and rectify any non-compliance prior to the campaign's second phase, the audit assessment.

In July 2011 we commenced the second phase, contacting the 27 non-compliant employers from phase one. We requested copies of their records for an audit assessment and to check if they had rectified the contraventions previously identified.

It was disappointing to find 18 of the 27 employers were still in contravention during phase two. While we found employers had made attempts to rectify the contraventions previously identified, the total number of contraventions had only reduced from 105 in phase one to 55 contraventions.

As at 1 August 2012, a total of \$98,158 has been recovered for 86 employees. The findings of this campaign support the need for further intervention in the transport industry in the form of a national campaign.

Background

The Fair Work Ombudsman (FWO) has received a large number of complaints from the transport industry in the past and we find that this trend is continuing. During the 2010 calendar year, FWO received 209 complaints from the Victorian road freight transport industry sector. This was the second highest number of industry complaints received in Victoria.

Some of the complaints are lodged confidentially as we find employees in regional and rural areas are sometimes reluctant to come forward fearing reprisals. Often the outcomes of these complaints result in the recovery of significant underpayments. This complaint history together with the changes introduced by *the Fair Work Act 2009* provided an opportunity for the FWO to be proactive in educating transport industry employers on their obligations and demonstrate to employees that FWO will address the issue of non-compliance in the Victorian industry.

Campaign aim & objectives

The aim of the Victorian Regional Transport Campaign was to assist employers in the industry to understand and meet their obligations under Commonwealth workplace laws including the modern awards.

The specific objectives were to

- Undertake a first phase educational assessment of the compliance levels with wages, record- keeping and payslip obligations
- Provide information to assist the non compliant employers rectify their contraventions
- Undertake a second phase compliance assessment of the non-compliant employers in phase one to determine changes in compliance behaviour.

Stakeholder involvement

During August and September 2010 we notified the following stakeholders of the campaign;

- the Victorian Transport Association
- the Livestock Transport Association of Victoria
- the Transport Workers Union of Australia

The Victorian Road Transport Association subsequently sent a circular to its members advising of the campaign and reporting on the FWO's prosecution of Ron Priddle Transport and Logistics Pty Ltd¹.

Method

In September 2010, we identified 513 regional transport businesses from the White Pages. We wrote to each of these businesses informing them of the recent changes to workplace relations legislation. The letter also encouraged employers to access the FWO's online information and compliance tools and contact the Fair Work Infoline or their employer association and seek information regarding their obligations.

On 27 September 2010 we selected a sample of 32 employers for the first phase educational assessment. We wrote to them requesting that they forward us employment records for September 2010 so we could conduct a review of their compliance with workplace laws.

As the modern awards and legislation were relatively new, where we identified contraventions, we called or met with the employer, explained their obligations to them and informed them how to rectify their contravention(s). We also directed them to the various FWO online tools available to assist them be compliant. We advised the employer to rectify the contraventions and informed them that we would be returning in the following months to assess their compliance.

¹ (<http://www.fairwork.gov.au/media-centre/media-releases/2010/02/Pages/20100210-Ron-Priddle-prosecution.aspx>)

In June 2011 we commenced the second phase audit assessment. This involved revisiting all employers found to be in contravention during phase one. We asked the employers to supply employment records for June 2011 so we could undertake a standard audit assessment.

Where we found employers who were once again in contravention or had not produced evidence that they had back paid employees as recommended during the educational assessment, we issued a formal letter requiring them to rectify the contraventions. They were also warned of the enforcement action FWO may take should they be found to be non-compliant in the future.

Results

On 1 August 2012, we analysed the assessment findings of phase one and two of the campaign.

The results are illustrated below in Table 1.

Table 1: Assessment findings		
	Phase One	Phase Two
Assessments completed	32	27
Employers compliant	5 (16%)	9 (33.3%)
Employers in contravention	27 (84%)	18 (66.7%)
Money recovered	NA	\$98 158
Number of employees receiving payments	NA	86

Of the 32 employers assessed in phase one, five (16%) were found to be compliant with their workplace obligations and 27 (84%) were found to have contraventions.

When the 27 non-compliant employers from phase one were audited in phase two, nine (33%) were found to be compliant and 18 (67%) remained in contravention.

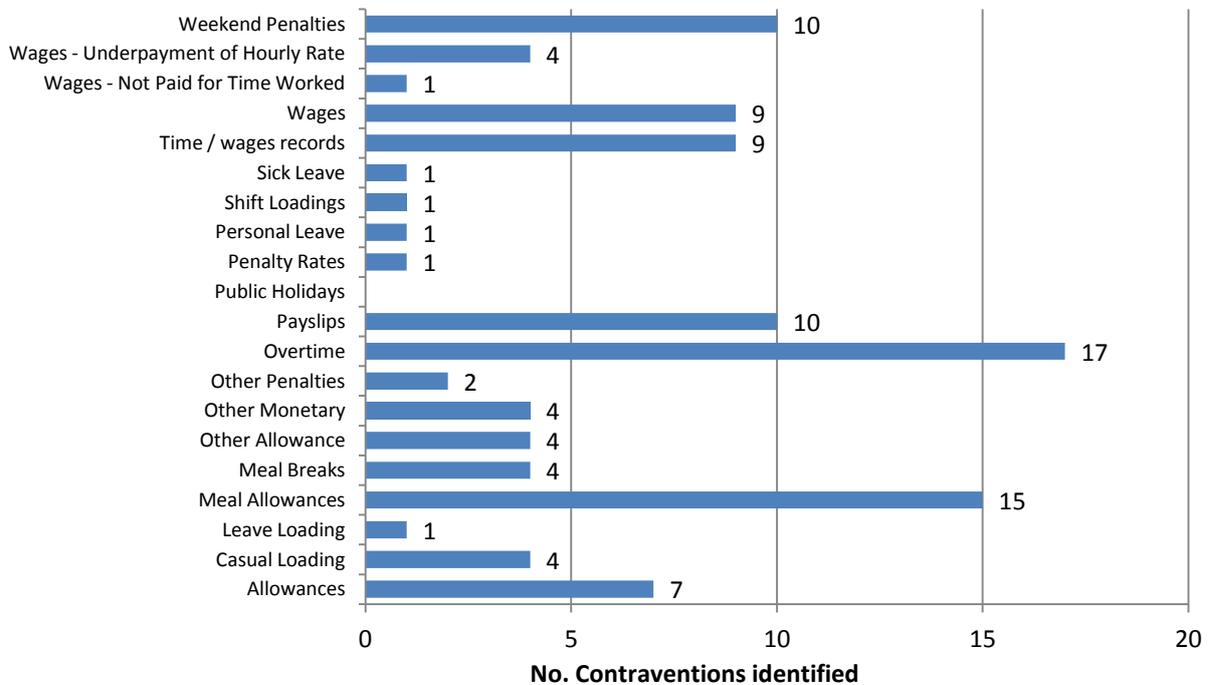
A total of \$98 158 in unpaid wages and entitlements has been recovered for 86 employees. The six employers found to have monetary contraventions had underpayments ranging from \$676 to \$39 736.

Contravention Types

Phase 1

During phase one, we identified 27 employers to have a total of 105 separate contraventions. The most common types of contraventions were in relation to overtime (17), meal allowances (15), payslips (10), weekend penalties (10), wages (9) and time/wage records (9).

Chart 1: Phase one contraventions identified



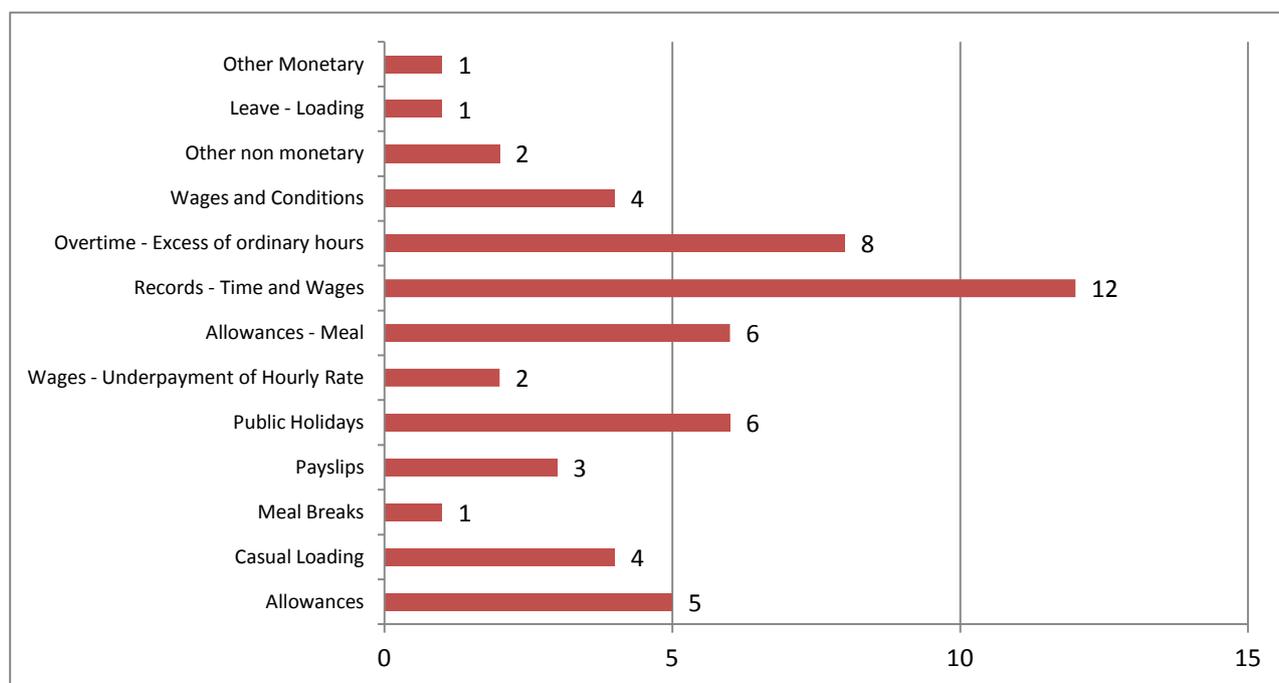
Phase two

Only nine (33%) of the 27 employers reassessed in phase two were found to be compliant, although this is a disappointing result we also found that all employers, with the exception of one, had made an attempt to rectify the contraventions identified in phase one. For example, employers who had commenced paying employees the correct wage rates, had not finalised the back payments owing to their employees, or who had incorrectly calculated the rate of pay.

When we revisited the employer who had yet to rectify the contraventions, the employer had engaged a new human resource officer to oversee the business’ payroll function. The employer wanting to ensure that the business was compliant in the future, arranged a discussion between the inspectors, the human resource staff and himself so they could ensure that business was meeting its obligations.

In total, 55 contraventions were identified against the 18 non-compliant employers in phase two. Of particular concern was that 12 employers were found to have time and wage record-keeping contraventions in phase two compared to nine in phase one.

Chart 2: Phase two contraventions identified



Similar to phase one, overtime (8) and meal allowance contraventions (6) were common in phase two. We also found contraventions in relation to public holiday rates, which had not been relevant in phase one as the assessment period (September 2010) did not include a public holiday.

We continued to find employers uncertain as to whether an employee's entitlements were derived from the *Road Transport & Distribution Award 2010* or *Road Transport (Long Distance Operations) Award 2010*. Consequently, we also found a number of employees who drove locally and then were required to drive interstate had not received their transfer allowance when their entitlements changed from *Road Transport & Distribution Award 2010* to *Road Transport (Long Distance Operations) Award 2010*.

Of the 18 phase two employers found to be non-compliant, five (28%) had monetary contraventions, four (22%) had record-keeping contraventions and nine (50%) employers were identified as having both monetary and non-monetary contraventions.

Conclusion

This was the first time that the FWO has trialled a two phase assessment methodology to undertake a campaign. The phased approach was an attempt to acknowledge the impact of the introduction of the modern awards and the FW Act on the industry.

Whilst we expected a sizeable number of contraventions in phase one, we anticipated a significant improvement in compliance in phase two. However the findings of phase two were disappointing especially considering the opportunity the employers had been given to comply and the fact that the FW Act and modern awards had provided minimum entitlements for almost two years prior to phase two.

The FWO notes the recent introduction of the *Road Safety Remuneration Act* (RSR Act) and takes the opportunity to signal it has an active role in enforcing compliance with the orders and agreements made under the RSR Act.

For these reasons, the FWO has committed to undertaking a national compliance intervention in the transport industry in the second half of 2013. In the meantime we will continue to work with workplace participants in the transport sector and encourage employers to access FWO's online transport industry webpage to ensure they are complying with their obligations.

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