



Fair Work
OMBUDSMAN

WA/SA/NT record keeping follow up audit program

Final report – September 2013

Contents

Summary	4
Why did we conduct the program?	4
Purpose of the program	4
What did we do?	4
What did we find?	5
Concluding remarks	6
About the Fair Work Ombudsman	6

Program snapshot

More than
90

audits were conducted during the program

Nearly
75%

of employers were compliant

Summary

From March 2013, the Fair Work Ombudsman (FWO) conducted the WA/SA/NT record keeping and pay slip compliance follow up audit program 2013 (the program).

During the program we assessed compliance levels of a group of employers we had previously identified as having pay slip contraventions during the 2011-2012 financial years.

Our aim was to ensure that employers had made the necessary changes to their record keeping and pay slip practices since the initial contraventions were identified. In addition, the program provided an opportunity to monitor our effectiveness in achieving longer-term compliance.

We assessed the records of 99 businesses during the program and found that 73 (74%) were now complying with their payslip and record keeping requirements.

Why did we conduct the program?

Record keeping is the bedrock of compliance. It is an important part of an employer's obligations to keep accurate records and issue pay slips with sufficient detail. If they fail to issue compliant pay slips it denies employees the opportunity to check their entitlements. Incomplete pay slips and inaccurate record keeping also impede the FWO's ability to determine whether employees have received their entitlements.

An employer can easily rectify record keeping and pay slip deficiencies with little impact on their business. It is reasonable therefore to expect that once a payslip or record keeping contravention has

been pointed out to an employer, they will take the necessary steps to ensure compliance.

Purpose of the program

The aim of the program was to ensure long-term compliance with the *Fair Work Act 2009* (the Act) and the *Fair Work Regulations 2009* (the Regulations) amongst employers who have previously contravened pay slip and record keeping provisions.

The specific objectives of this program included:

- assessing compliance with the record keeping and pay slip requirements of the Act and Regulations amongst previously non-compliant employers.
- educating employers about the importance of record keeping and pay slip obligations
- ensuring compliance through penalty infringement notices where appropriate.

What did we do?

In March 2013 we sent letters to employers who had contraventions relating to record keeping and pay slips recorded during the 2011-2012 financial years, across Western Australia (WA) South Australia (SA and Northern Territory (NT).

We asked employers to provide us with copies of their pay slips and time and wage records, which we then assessed against the Act and the Regulations.

For some of the businesses selected, we visited their premises to assess their records and to provide them with information about their obligations. When we conducted assessments on site, we were able to advise employers immediately of our findings.

When we conducted office based assessments, we notified employers in writing of their compliance as soon as possible and provided additional information about our website tools and resources.

Where we determined contraventions of the Act had occurred, we directed employers to rectify these. In some cases we issued formal Infringement Notices to employers we found were still non-compliant.

What did we find?

We conducted 99 audits during the program. We found 73 (74%) employers compliant and 26 (26%) employers in contravention of the pay slip requirements of the Act and Regulations.

To date we have issued two formal Infringement Notices and it is likely a third Infringement Notice will be issued against a business where we have found repeated contraventions.

Note: An Infringement Notice may be issued by a Fair Work Inspector in respect of the following provisions of the *Fair Work Act 2009*:

- **Subsection 535 (1) - failing to make or keep time and wage type records**
- **Subsection 535 (2) - failing to comply with the contents requirements for records**
- **Subsection 536 (1) - failing to issue pay slips within one working day of paying an amount**
- **Subsection 536 (2) - failing to comply with the contents requirements for pay slips**

A Fair Work Inspector may impose (see case study below) any amount up to one tenth of the maximum penalty that a court could order a person to pay as set out in section 558(2) of the FW Act. The maximum penalty able to be imposed via the Infringement

Notice process is 3 penalty units for an individual or 15 penalty units for a body corporate. A maximum penalty for an individual is \$10,200 and for a body corporate is \$51,000.

We chose not to issue formal Infringement Notice where contraventions were of a relatively minor nature, for example where employers failed to rectify pay slip omissions involving superannuation details. In such instances, we informed employers of their error in writing and sought their written commitment to rectify.

Case study – Issuing an Infringement Notice

Robert* is the owner of one of the businesses we audited.

In the 2011/12 audit program, we had identified Robert had several pay slip contraventions including: failure to include the pay period, the hourly rate, the name of the superannuation fund and the amount paid into it. Robert had signed at the time an agreement to rectify the contraventions identified.

During this 2013 program, we found that Robert had failed to rectify the contraventions previously identified and had continued to issue pay slips with the same information omitted.

As Robert was still failing his payslip obligations we issued him with a formal Infringement Notice.

Robert initially denied that he had signed an agreement to comply or received information about required pay slip contents.

We showed him a copy of our initial advice and highlighted the importance of compliance with the Act and the Regulations.

Robert then agreed to pay the \$550 fine and to rectify his payslip contraventions.

* Pseudonym

Concluding remarks

The results of the program indicate our proactive targeting strategies help achieve longer-term compliance.

Follow up audit programs provide an excellent opportunity to monitor the effectiveness of our previous targeted programs and provide the opportunity to ensure compliance amongst the small minority of businesses who may have disregarded our initial findings.

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 those 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 WA/SA/NT record keeping follow up audit program.

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

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation.

Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved.

Requests and enquiries concerning reproduction and rights should be emailed to communications@fwo.gov.au

Copyright Act 1968 (ComLaw website) 