

# WA Supermarkets Follow-Up Campaign 2010-2011 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 Western Australian Supermarket Follow - Up Campaign 2010-2011.

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## Summary

Between September 2010 and October 2011 the Fair Work Ombudsman conducted the Western Australian (WA) Supermarket Follow-Up Campaign. The aim of the campaign was to assess compliance of supermarkets, which the Fair Work Ombudsman (FWO) and its predecessor, the Workplace Ombudsman (WO), had previously investigated. Specifically, the campaign assessed compliance with hourly rates of pay, record-keeping and payslip obligations.

Of the 86 supermarkets audited, 83 audits have been completed. Of the completed audits, we

found 63 (76%) to be compliant and 20 (24%) in contravention. Three employers are being further investigated for suspected contraventions.

As at 15 March 2012 we had recovered \$102,130 on behalf of 496 employees.

Further campaign findings are detailed below in the body of the report.

## **Background**

Between August 2007 and June 2010, the FWO and its predecessor, the WO, investigated 103 WA supermarkets as a result of receiving a complaint in relation to their compliance with Commonwealth workplace laws. Through these investigations we identified that the *Independent Retail Establishments and SDA Agreement 2002* covered many supermarket establishments in WA.

The introduction of the Fair Work system has had a significant effect upon the *Independent Retail Establishments and SDA Agreement 2002*. As of 1 January 2010, the prescribed statutory hourly rate is required to be equal to or above the base rate of pay in the relevant Modern Award, i.e. the *General Retail Industry Award 2010*.

As many employees in the supermarket industry are vulnerable or low paid employees, we recognised an opportunity to conduct an education and compliance follow-up campaign in the WA supermarkets industry.

## **Audit aim & objectives**

The aim of the program was to assess compliance with the *Fair Work Act 2009* (the Act) and the *Fair Work Regulations 2009* (the Regulations) amongst WA supermarket establishments. The objectives were to:

- educate employers specifically on the changes to their obligations as of 1 January 2010
- provide employers with useful resources to assist them in meeting their workplace obligations
- assess compliance with time and wage record- keeping and payslip obligations
- assess compliance with wage rates
- encourage voluntary rectification of any contraventions

## **Stakeholder involvement**

In September 2010 we wrote to the following stakeholders:

- Western Australia Independent Grocers' Association
- Retail Traders' Association
- Shop, Distributive and Allied Employees' Association

The purpose of this contact was to inform them of the aim and objectives of the campaign and to invite them to provide feedback. One of the stakeholders raised a concern regarding the

impact of the Fair Work legislation and other legislative changes such as trading hours, on the viability of smaller supermarkets.

## **Method**

The campaign focused on supermarkets which had previously been investigated by FWO (or WO) - both those found to be compliant and in contravention. We were therefore able to compile a list of employers from our own database.

We conducted the audits in three phases based on the geographical location of the supermarkets selected, namely:

- Phase 1: Perth northern suburbs: October – December 2010
- Phase 2: Perth southern suburbs: January – March 2011
- Phase 3: Outside Perth metro area: April – July 2011

In the month before the first phase we wrote to the employers to explain the objectives of the campaign and to direct them to FWO's online self help resources.

At the start of each phase we sent employers a second letter requesting copies of employees' time and wage records for a nominated two week period.

Where an employer did not provide records within the specified timeframe, we visited them to either collect the records and when necessary to serve a statutory notice to obtain the documents.

Once we received records, we assessed them against record-keeping, payslip and wage rate obligations.

Where we identified contraventions we brought these to the attention of the employer and worked with them to ensure that the contraventions were rectified.

## **Results**

As at 15 March 2012, the results showed that we had completed 83 of the 86 audits and found 63 employers (76%) to be compliant and 20 employers (24%) to be in contravention of their obligations. Three matters remained open due to ongoing investigations.

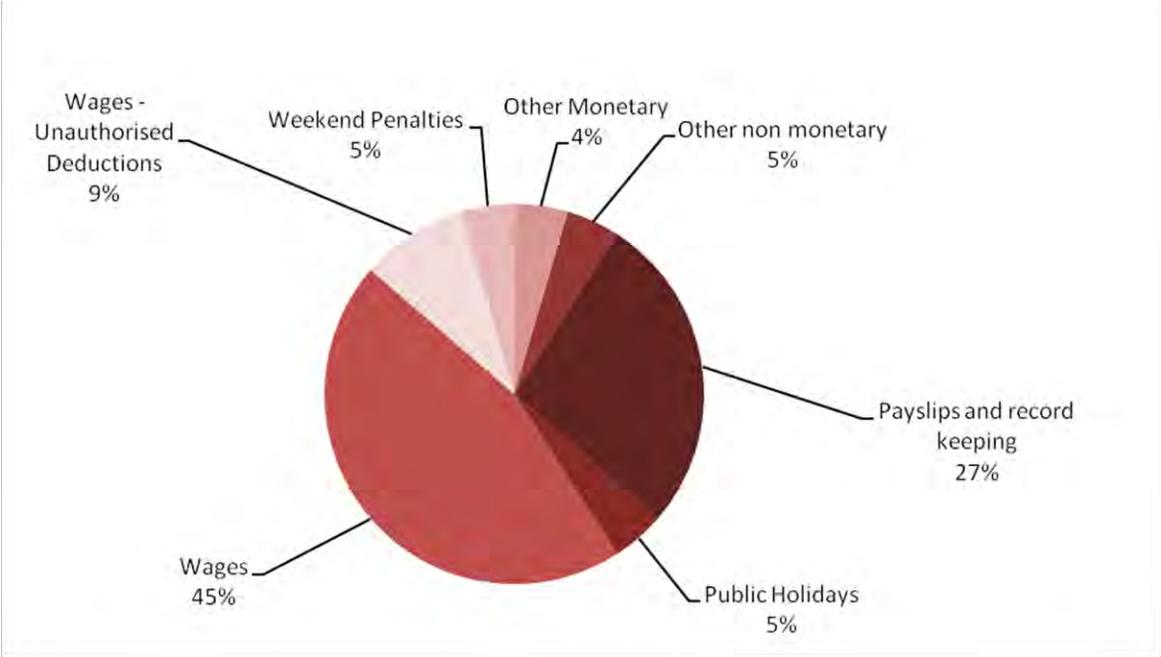
We had also recovered \$102,130 for 496 underpaid employees.

Table 1: Status of audits	
Number of employers Audited	86
• Audits completed	83
• Employers compliant	63 (76%)
• Employers in contravention (voluntary compliance)	20 (24%)
Total amount recovered	\$102,130
Number of employees paid	496
Investigations not yet finalised	3

Of the 20 employers found to be in contravention, 13 employers had underpayment contraventions, 6 employers had non-monetary contraventions and one employer was found to have both monetary and non-monetary contraventions.

The 20 employers found to be in contravention recorded a total of 22 contraventions. Chart 1 below shows that the main contraventions identified were in relation to underpayment of wages (45%) followed by payslip and record-keeping contraventions (27%).

**Chart 1: Contravention types**



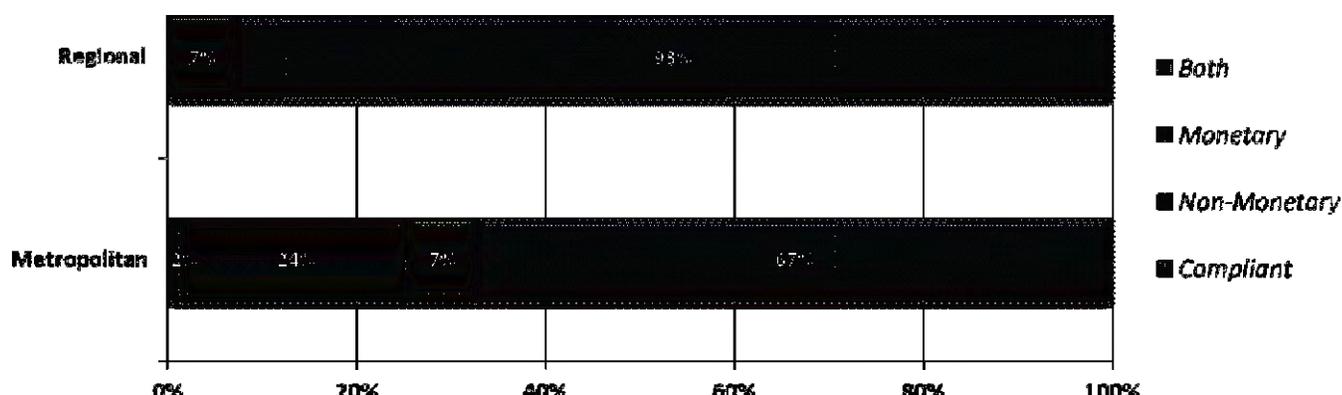
When comparing the results of supermarkets audited in metropolitan areas with those from regional areas, an interesting picture emerges.

Findings from metropolitan supermarkets audited showed that 67% of employers were compliant and 33% in contravention. The 33% in contravention consisted of 24% with contraventions resulting in underpayments, 7% with contraventions related to record-keeping and 2% with both types of contraventions.

Findings from the regional supermarkets audited showed that businesses had a high rate of compliance (93%), with only 7% in contravention. The 7% in contravention consisted entirely of record-keeping contraventions.

These findings are illustrated in Chart 2 below.

**Chart 2: Comparison of results, *Regional to Metropolitan***



### Other findings

There were 42 employers audited in this campaign that we had found to be in contravention when previously investigated. Of these, we found 27 (64%) to be compliant, however 15 (36%) were again in contravention.

We found many large supermarket chains generally have collective workplace agreements in place and dedicated staff to manage their industrial relations. As a result, the compliance level of these supermarkets tended to be higher.

In contrast, the smaller independent supermarkets generally did not have dedicated industrial relations resources.

Many of these smaller operators are respondent to the *Independent Retail Establishments and SDA Agreement 2002* and were not aware they are now obligated to pay their employees equal to or above the *General Retail Industry Award 2010* transitional ordinary hourly rate. Their failure to pay the ordinary hourly rate of the modern award also affected the penalty and overtime rates of pay, and as a result, some employers significantly underpaid their employees.

Further enforcement action is being considered against one of these employers as their underpayments affect a large number of vulnerable workers.

We found a small number of independent supermarkets had their own collective workplace

agreements. Some of these employers also neglected to ensure their employees were paid equal to or above the transitional base rate of pay from the *General Retail Industry Award 2010*.

#### **Case Study: The importance keeping up to date**

A supermarket company bound to a pre - 2006 Certified Agreement was not aware that there was now an obligation to pay employees ordinary hourly rates equal to or above the *General Retail Industry Award 2010*. Fair Work Inspectors found that the employer had not increased the base rate to be in line with the Modern Award rates and this underpayment flowed on to the penalties for work performed on Saturdays and Sundays.

The business employed several young employees as well as foreign students and backpackers. The employer was able to easily calculate the underpayments and eventually paid the amount of \$10,000 to its underpaid current employees.

However, before the employer was able to pay the amount owing to the former employees their store was closed for several weeks because of an electrical fire. The inspector provided the employer with a reasonable timeframe to pay back the amount owing, once the store was re-opened.

The employer paid back \$20,000 to former employees, in the agreed timeframe and was thankful for the understanding shown by the inspector.

## **Conclusion**

It is encouraging to find an overall compliance rate of 76% from this follow-up campaign of WA supermarkets. The compliance rate of 93% in regional WA was particularly encouraging. It is hoped that these results are a positive indicator of the whole industry sector.

However, 68% of the contraventions related to underpayments and we have recovered over \$100,000 for 496 employees. Many of these contraventions resulted from employers' lack of understanding of the interaction between their existing agreements and the *General Retail Industry Award 2010* introduced as part of the Fair Work system.

As this campaign provided the opportunity to educate employers about the changes and promote compliance with the *Fair Work Act 2009*, we are hopeful this campaign will lead to increased levels of compliance within the WA supermarket industry.

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