

WA- Avon Valley Audit Program Report 2011

Final report – November 2011

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

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Fair Work
OMBUDSMAN

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
- 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 WA Avon Valley Audit Program 2011.

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Summary

The Avon Valley is situated an hour east of Perth. A popular tourist destination, the region comprises the towns of Beverley, Brookton, Goomalling, Northam, Toodyay, York and New Norcia.

On 24 and 25 May 2011 the Fair Work Ombudsman visited the region, specifically Toodyay, Northam and York to assess compliance with the *Fair Work Act 2009 (the Act)*, the *Fair Work Regulations 2009 (the Regulations)*. The majority of the businesses audited were retail businesses.

Of the 51 employers visited and audited as part of the program, 15 (29%) employers were found to be non compliant. The majority of the contraventions identified related to records and/or pay slips not meeting the *Regulations*. One employer was found to have underpaid two of his employees a total of \$368. Currently two audits remain outstanding.

Further campaign findings are detailed below.

Background

The Avon Valley region is located an hour's drive east of Perth. The area features mostly countryside getaways and is a popular destination for weekend getaways and day trips from Perth.

The region has a number of retail and hospitality businesses. Both industry sectors typically employ a number of vulnerable workers and are industries which the Fair Work Ombudsman receives numerous complaints about at a national and state level. The region also has a number of tourist related businesses such as museum and adventure tourist operators (i.e. operators offering ballooning and skydiving activities).

Prior to this program the Fair Work Ombudsman had little knowledge about the level of compliance amongst Avon Valley employers. The Fair Work Ombudsman had not received many complaints from the region suggesting either employers are for the most part compliant, or the region's employees are uninformed of their workplace entitlements.

Based on the information above and the fact that the region has not been the subject of a previous compliance audit, an audit program was undertaken.

Campaign aim & objectives

The aim of the campaign was to raise awareness of the role of the Fair Work Ombudsman and improve compliance with the *Act* and the *Regulations* amongst businesses in the Avon Valley region. The specific objectives were to;

- educate employers on their obligations under the modern awards
- educate employers on the various FWO online tools
- assess compliance with minimum hourly rates of pay
- assess compliance with record keeping and pay slip obligations

Stakeholder involvement

In mid April 2011 we wrote and notified the following stakeholders of the program and requested their feedback.

- Shire of Northam
- Shire of Toodyay
- Shire of York
- Small Business Centre Wheatbelt West
- Chamber of Commerce & Industry WA
- Department of Commerce – Labour Relations

During the audit program the Labour Relations¹ section of the Department of Commerce, in partnership with the Fair Work Ombudsman, conducted national industrial relations system seminars in Northam, Toodyay and York. The seminars were timely in terms of promoting the role of the Fair Work Ombudsman.

Method

Using Australia Post's unaddressed mail service we wrote to 176 businesses in Northam, Toodyay and York and advised them of our audit program. The letter detailed the requirements of the audit, the date Fair Work Inspectors would be conducting the audits and where they could find further information regarding the program and their employer obligations.

We visited businesses in York and Toodyay on 24 May 2011 and businesses in Northam were visited on 25 May 2011. Having confirmed with the employer that the business was a trading as a corporation², we proceeded to examine the employers' records assessing compliance with base hourly rate, overtime, penalty rates, pay slip and record keeping obligations.

Where no contraventions were identified, we reported the findings and issued the employer with a copy of our report. Employers found to have pay slip or record keeping contraventions were required to sign a form as a commitment that the business would rectify the contravention and moving forward would comply with pay slip and record keeping obligations.

Where we identified underpayments, we took a copy of the records for further assessment. If we established that a monetary contravention had occurred, an audit finding letter was issued requesting the employer to voluntarily rectify the contraventions and back pay all affected employees.

¹ Labour Relations' National System Education Services, provides an educative service to those employers who have moved into the national industrial relations system from the WA state system. This service is provided under contract with the FWO.

² Western Australia has not joined the national workplace relations system. Some employers (essentially incorporated entities) and their employees are covered by the national workplace relations system, but sole traders, partnerships, other unincorporated entities and non-trading corporations and their employees continue to operate under the WA state system (though some of these may be covered by transitional awards until 27 March 2011).

During the site visits we took the time to answer any questions employers had regarding their obligations under Modern Awards or the *Act* and referred them to the Fair Work Ombudsman's online tools.

There were instances where records were not available during the field visit, in this situation we issued the employer with a statutory notice requesting them to provide the records to our office within 14 days.

Results

At 11 October 2011 when the results of this program were compiled, we had finalised 49 of the 51 audits. Of the audits finalised 34 (69%) employers were found to be compliant and 15 (31%) were in contravention. We recovered \$368 for 2 employees. Two employers remain under further investigation as a result of suspected monetary contraventions.

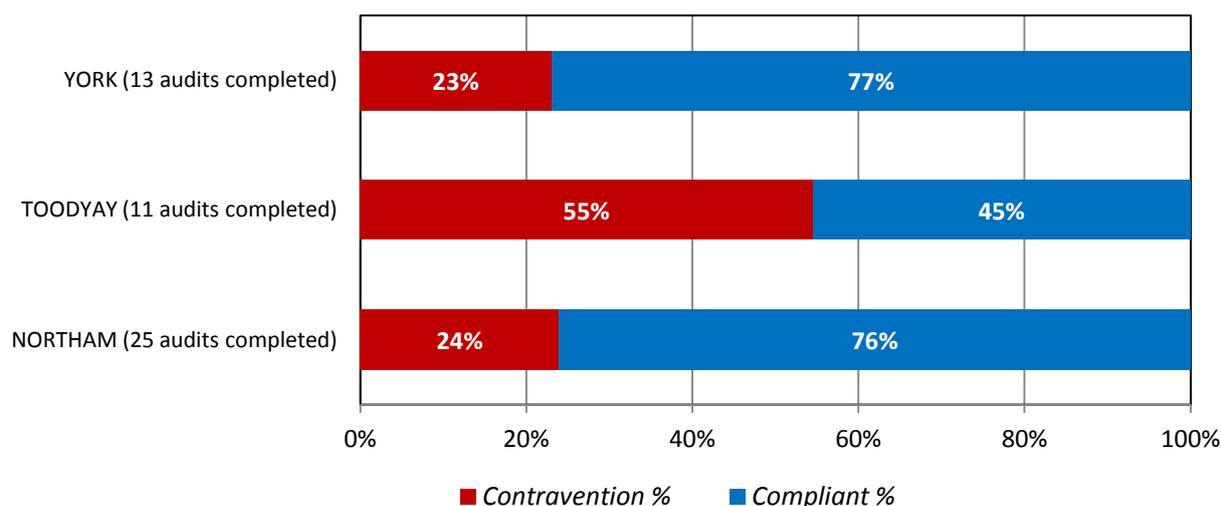
Status of Audits – WA Avon Valley Campaign 2011	
Number of employers Audited	49
<ul style="list-style-type: none"> Employers compliant 	34 (69%)
<ul style="list-style-type: none"> Employers in contravention (voluntary compliance) 	15 (31%)
Total amount recovered	\$368
Number of employees paid	2

Of the 15 employers in contravention, 14 (93%) were identified as having time/wage record or pay slip contraventions, whilst one (7%) was found to have both an underpayment and a record keeping contravention identified.

Findings by region

The audits were conducted in York, Northam and Toodyay (see Appendix A for locations). Chart 1 illustrates the contravention rates recorded in each region. Toodyay had the highest percentage of non compliance (55%).

Chart 1 – Contravention by location



Emerging issues

We found that the larger employers had a better awareness of the role of the Fair Work Ombudsman prior to the audit, compared to their smaller counterparts. Nevertheless, employers were generally quite receptive of the field audits and were willing to engage in conversations with our Fair Work Inspectors regarding their obligations. The most common questions raised was where they could obtain pay rate information. Further many of the employers were not adverse to us speaking with and engaging with their employees. Some employers remarked that they were surprised that a government department would visit their area to conduct a compliance activity.

Although we did not encounter much resistance from most of the employers, we did and continue to encounter resistance from one employer who remains under further investigation for suspected contraventions.

Conclusion

It was pleasing to find a high level of compliance amongst employers in these regions. Overall, the campaign was successful in raising awareness of the role of the Fair Work Ombudsman and informing employers where they can obtain further information regarding their obligations under the Commonwealth workplace laws.

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