



**Fair Work**  
OMBUDSMAN

# Eastern Seaboard Live production industry campaign 2013

Final report – July 2014

# Contents

<b>Summary</b>	<b>4</b>
<b>Purpose of the campaign</b>	<b>4</b>
<b>Why we chose this industry</b>	<b>4</b>
<b>What we did</b>	<b>4</b>
<b>What we found</b>	<b>5</b>
<b>Other findings</b>	<b>6</b>
<b>Concluding remarks</b>	<b>7</b>
<b>About the Fair Work Ombudsman</b>	<b>7</b>

## Campaign snapshot

Total of

54

businesses assessed

We Found

69%

of employers were paying their employees correctly

Almost

\$3k

was recovered on behalf of 6 employees

We found

83%

of employers were compliant with pay slip and record-keeping obligations

# Eastern Seaboard Live production industry campaign 2013

## Summary

In February 2013 the Fair Work Ombudsman (FWO) commenced the Eastern Seaboard Live production industry campaign (the campaign) in Queensland (QLD), New South Wales (NSW) and Victoria (VIC).

The campaign was initiated after intelligence was received indicating that some employers in the live production industry (the industry) operating in QLD, NSW and VIC were underpaying staff. The industry consists of businesses involved in the various elements of producing live performances, such as staging, lighting and sound engineering.

During the campaign we assessed the time and wage records of 54 businesses across the three states. We found that:

- 37 (69%) businesses were paying their employees correctly
- 45 (83%) businesses were compliant with record-keeping and pay slip requirements

We recovered \$2 848 from three businesses, on behalf of six employees who had been underpaid.

For further information on our findings, please refer to the body of this report.

## Purpose of the campaign

The aim of the campaign was to assess compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations* (the Regulations) and the *Live Performance Award 2010* (the Award) amongst a sample of businesses in the industry in NSW, VIC and QLD.

Our specific objectives were to:

- test allegations of underpayments within the industry by checking pay rates that employers were paying their employees
- assess compliance with required pay slip and record-keeping practices
- provide employers with information to help make compliance easier, in particular, by introducing them to the tools and resources available at [Our Website](#)

## Why we chose this industry

We received intelligence relating to allegations that employees of some live production businesses operating along the Eastern Seaboard were being under paid.

In analysing the data relating to complaints we had previously received from within the industry, we found no significant issues relating to the allegations. However, our analysis did reveal that many vulnerable employees, in particular young workers, are employed in the industry. Vulnerable workers can be reluctant to make complaints about being underpaid, or may be unsure of where to seek assistance.

To follow up on the allegations and ensure vulnerable workers were receiving their correct entitlements we initiated this campaign as a scheduled targeted campaign across QLD, NSW and VIC.

## What we did

We selected a sample of businesses from the industry in NSW, VIC and QLD for an assessment of their time and wage records. We

wrote to the selected businesses and requested time and wage records for a two week period.

Fair Work Inspectors assessed the records to determine compliance with:

- pay slips and record-keeping obligations
- correct pay rates and loadings
- overtime and penalty rate entitlements

At the completion of each assessment we discussed our findings with the employer.

Where we identified record-keeping and pay slip contraventions, we explained our findings to the employer and provided information about correct record-keeping practices. We also required the employer agree in writing to maintain compliant records in the future.

In cases where we found errors relating to pay rates, we discussed our findings with the employer and what was required to rectify the errors.

Where necessary we assisted the employer to calculate underpayments. Before we finalised such matters we required confirmation that all back pay had been paid to affected employees.

During the assessment process we also provided employers with advice and information about their workplace obligations. In particular, we encouraged employers to access the tools and resources available at [Our Website](#) including [PayCheck Plus](#) and our [Pay slips](#) information page.

## What we found

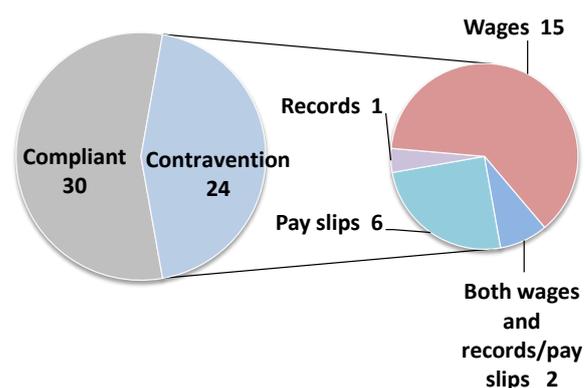
Of the 54 assessments completed we found:

- 37 (69%) employers were paying their employees correctly
- 45 (83%) were compliant with record-keeping and pay slip requirements.

Breaking this down into greater detail, our findings showed that:

- 30 (56%) employers were compliant with all their obligations
- 24 (44%) employers had at least one error, of which:
  - 6 (11%) had errors relating to pay slips
  - 1 (2%) had made record-keeping errors
  - 15 (28%) were paying incorrect rates
  - 2 (4%) had errors concerning rates of pay as well as record-keeping and pay slips

**Chart 1: Results of assessments**



We recovered a total of \$2 848 from three businesses on behalf of 6 employees.

Amounts recovered from individual businesses ranged from just under \$300 to just above \$1300.

## Other findings

There appeared to be some confusion amongst employers about how to follow the rates of pay set out in the Award. Although most employers were aware of the Award, not all of the employers whose records we assessed were following all the terms of the Award.

Several employers were paying flat hourly rates for all hours worked by their employees. These rates tended to be around \$25 to \$30 per hour. Although such rates were above the base hourly rate required, they were below the prescribed rates payable for overtime, late night penalties and Sunday penalty rates.

In most instances the higher hourly base rates were sufficient to cover the rates that should have been paid for penalty rates and overtime. In these instances, a record was made of the error and the employer advised of the correct rates of pay.

Where higher hourly base rates were not sufficient to cover what should have been paid to employees for hours attracting penalty rates, employers were required to pay employees the amount of back pay owing.

All employers were advised that it is correct practice to pay at least the applicable minimum hourly rates of pay prescribed in the Award for all hours worked.

### Case study – flat rates below minimum award entitlements

Danielle\* was the manager of a Brisbane based business which provides sound and lighting for live performances. We selected her business for an assessment as part of the campaign.

When we assessed Danielle's records, we found she was paying her casual audio visual employees \$19.65 per hour.

The rate of pay for casual employees at the employee's level (Level 3) was \$21.37 for all ordinary hours.

When we spoke to Danielle, she thought some of her employees were not covered by an award under the previous state industrial relations system. Danielle was not aware of the coverage of the Award and how it applied to her business.

We explained that when the Award began operating in 2010, it covered a broader range of businesses than the previous state award, including Danielle and her employees.

We showed Danielle how to use our website to look at the details of the Award and how to correctly calculate rates of pay.

Danielle recognised that she was required to increase the rates she was paying her employees, to align with the Award. She also paid the affected employees a total of \$1,165 in back pay.

\*Not her actual name

## Concluding remarks

The results of the campaign indicate an encouraging level of compliance in the industry.

Where we found that employers had made errors, these were voluntarily resolved by the employers concerned.

We will continue to monitor complaints received from the industry and whether subsequent education and compliance activity is required in future.

We encourage employers in the industry to continue to refer to our website and to utilise the free tools and resources, to maintain ongoing compliance.

## 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 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 Eastern Seaboard Live production industry campaign 2013.

For further information and media enquiries please contact [media@fwo.gov.au](mailto:media@fwo.gov.au).

If you would like further information about the Fair Work Ombudsman's campaigns please contact Lynda McAlary-Smith, Executive Director – Proactive Compliance and Education ([lynda.mcalary-smith@fwo.gov.au](mailto:lynda.mcalary-smith@fwo.gov.au))

### Commonwealth of Australia 2014

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](mailto:communications@fwo.gov.au)

*Copyright Act 1968* (ComLaw website) 