

National Cleaning Industry Follow Up Campaign 2012 - 2013

Report – February 2015

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Campaign Snapshot

Total of
578

Businesses audited for the National Cleaning Services Follow-Up Campaign 2012-13.

Total of
8

Shopping Centres had their cleaning contract procurement practices reviewed.

Total of
169

Businesses from the 2010 National Cleaning Industry Campaign were re-audited.

Total of
\$763k

Was recovered for 1,212 employees.

A total of
62%

Of businesses were meeting their minimum rates of pay, record keeping and pay-slip obligations.

Total of
63%

Of businesses re-audited were meeting their obligations

About Campaign

The National Cleaning Industry Follow Up Campaign 2012- 2013 (the Campaign) commenced in November 2012 and assessed compliance with monetary entitlements and record-keeping obligations. The Campaign also examined sub-contracting arrangements across eight large shopping centres to assess the effects of competitive tendering on compliance rates for workers engaged in the supply chain.

Outcomes at a Glance

During the Campaign, 578 businesses were audited for compliance with wages and record-keeping obligations. Of these, 356 (62%) were compliant and 222 (38%) employers had not met all their workplace relations obligations. The majority of contraventions identified related to wage entitlements.

The outcomes of the Campaign were:

- \$762,766 in underpayments was recovered for 1,212 employees
- 8 Letters of Caution were issued to employers
- 3 Enforceable Undertakings were entered into

Why we conducted the campaign

The decision to conduct a second campaign in the cleaning services industry was based on four factors:

- Results from the National Cleaning Campaign 2010 which reported 40% of employers were not meeting all their workplace relation obligations.
- Internal Fair Work Ombudsman (FWO) complaint data from 2010 to 2012 showing more than half of the complaints received from the cleaning services industry had resulted in monetary contraventions.
- Findings from a Sham Contracting operation conducted by the FWO in 2011. The operation focussed on contract for service arrangements in the cleaning industry and disclosed contracting issues in the cleaning industry.
- Ongoing media reports regarding exploitation of workers in the cleaning services industry.

Industry Profile

Data from the Australian Business Register (ABR) suggests there were 24,765 businesses operating in the cleaning services industry as at January 2013.

Census data shows that of the 99,164 workers in the industry:

- 55% were female
- 64% were over 40 years of age
- 47% were born in countries other than Australia
- 10% are students

Further, the cleaning services industry is characterised by layers of subcontracting, tight margins and a competitive tendering processes.

In some circumstances intense competition between businesses to secure contracts can result in the undercutting of minimum wages to present the lowest cost tender. It is the FWO's view that the tenderer

bears the responsibility to ensure their procurement arrangements do not create circumstances where compliance with workplace laws is unachievable.

Industry stakeholders

Briefings were held with stakeholders between December 2012 and February 2013 to share information and explore opportunities to work collaboratively on the campaign. These stakeholders were:

- Facility Management Association of Australia
- Building Services and Cleaning Association of Australia
- United Voice
- Australian Cleaning Contractors Association of Australia

Campaign Delivery

There were three components to the campaign:

- Communication and Public Awareness
- Procurement Compliance Assessment, and;
- Wage Audit

Communication and Public Awareness

In April 2013, 28,215 businesses were notified of the upcoming campaign. The businesses were directed to our self-help resources on our dedicated Cleaning Industry page fairwork.gov.au/cleaning and invited to attend a webinar held on 14 May 2013.

The campaign was also promoted through digital advertising on Google and Facebook with the following results:

- 3,025 views of the dedicated webpage between 1 April 2013 – 29 July 2013
- 170 views of the webinar as at 29 July 2013
- 209,315 views by Google users searching “cleaning” (with 980 hits on the dedicated webpage from this advertising medium), and
- Facebook advertising reaching 152,994 users

The campaign also received extensive coverage through traditional media channels including an article in the industry publication “inClean”.

FWO media releases were picked up by:

- 14 regional newspapers, including the Geelong Independent, Tasmania's Burnie Advocate and Queensland's Toowoomba Chronicle
- Over 100 radio stations (mentioned more than 185 times) including ABC News Radio
- Southern Cross TV in Canberra, Shepparton and SA which covered the campaign launch including an interview with the Media Director
- Approximately 50 websites, including selected APN websites, covered the campaign's launch

Procurement compliance assessment

The 2010 campaign disclosed a common practice of paying workers a 'market rate' or 'competitor rate' of pay. This often occurred due to the intense competitive nature of businesses trying to secure cleaning contracts, resulting in contracts being so low that minimum wages were unable to be paid to workers.

The current campaign examined the flow-on consequences of the competitive tendering and procurement processes for cleaners across eight major metropolitan shopping centres. The shopping centres were located in New South Wales, South Australia, Queensland and Victoria and each was owned by one of five different companies.

A review of these sub-contracting arrangements disclosed the contract price was sufficient to allow contractors to meet minimum wage obligations for their employees.

The sub-contracting arrangements contained protections for the shopping centres to ensure contractors were meeting their workplace relations obligations.

Specifically, three of the five companies had conditions in their cleaning contracts relating to compliance with workplace relations laws. These varied from an initial undertaking from the contractor at commencement of the contract to more involved protections, including:

- Regular monitoring/review of records confirming compliance with workplace laws;
- Service agreement clauses, where if the contractor failed to pay employees, the entitlements would be paid to the employees directly, deducting monies from the contractor; and
- A requirement that written requests be submitted for the use sub-contractors.

The remaining two companies, whilst not directly undertaking monitoring activities or stipulating clauses in their service agreements, performed a general supervisory role of their cleaning contractors and engagement of their staff.

Investigation revealed that six of the seven principal contractors engaged to provide cleaning services to the eight shopping centres were paying their employees correctly. One of the principle contractors underpaid eight employees more than \$14,000. The FWO entered into an Enforceable Undertaking with this employer.

Principal contractor enters into an enforceable undertaking with FWO

NewKlean Management Services is a principal cleaning contractor for a shopping centre in Adelaide. During the National Cleaning Campaign 2012, Fair Work Inspectors found that the company was not meeting its workplace relations obligations regarding wages, casual loading, overtime, penalty rates and shift allowances.

The company's employees (seven part-time and one casual) were paid a flat hourly rate of pay ranging from \$17.00 to \$20.00 for all hours worked, including work performed at weekends. Their primary duties were sweeping and mopping floors, cleaning toilets, rubbish collection and dusting hard surfaces.

Under the Modern Award, employees were entitled to \$19.16 to \$34.10 per hour, subject to the shift worked. The underpayments which occurred over a nine month period totalled more than \$14,000.

The employer entered into an Enforceable Undertaking with the FWO requiring them to pay all outstanding amounts to employees and to regularly conduct self-audits of their time and wage records, reporting back to FWO with the outcomes.

Wage Audit

Of the 578 businesses assessed found:

- 356 (62%) employers were compliant with all requirements
- 222 (38%) employers had at least one contravention, of which:
 - 63 (11%) had contraventions relating to pay slips and record keeping or other non-monetary contraventions
 - 116 (20%) were paying incorrect rates of pay
 - 43 (7%) related to both wages and pay slip, record keeping or other non-monetary contraventions
- \$762,766 was recovered for 1,212 employees from 141 employers.

In summary, of the 578 businesses audited:

- 356 (62%) employers were found to be compliant with all requirements
- 419 (73%) were paying their employees correctly
- 472 (82%) were compliant with record-keeping, pay slip and other non-monetary requirements.
- The 222 businesses found to have contraventions had a collective total of 354 individual contraventions.

Figure 1 provides a detailed overview of the specific contraventions that were found. The majority of which, related to underpayment of the hourly rate (108 or 31%) followed by pay slip obligations (96 or 27%). Four (1%) of all contraventions identified were grouped under 'other' and they included contraventions relating to public holidays, classification (non-monetary), leave loading and annual leave.

Figure 1: Contraventions identified

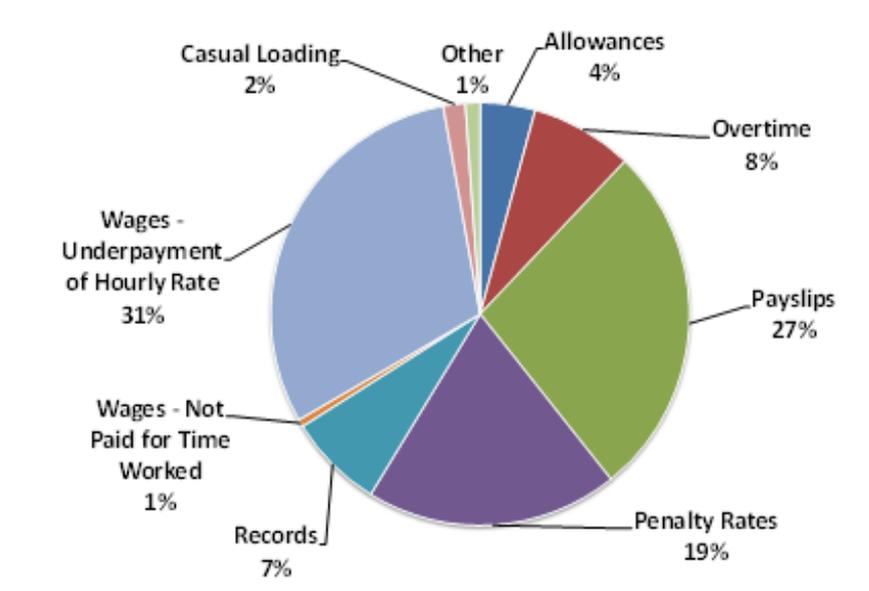


Figure 2: Money recovered by region

Region	Sum of Recovery	Employees paid	Number of businesses with errors
ACT	\$ 2 659	3	2
NSW	\$215 278	294	40
NT	\$34 624	22	2
QLD	\$111 206	163	32
SA	\$68 418	288	14
TAS	\$2 668	5	1
VIC	\$246 206	268	36
WA	\$81 707	169	14
Grand Total	\$762 766	1212	141

Figure 2 provides an overview of the monies recovered in each state or territory. The underpayments per business ranged from \$30 to \$50,000. A breakdown of the findings of each state has been included in the regional findings.

Follow- up findings

Of the 578 businesses assessed, 169 of those were previously audited in the 2010 campaign. As illustrated in Figure 3, the majority of employers who were compliant in 2010 were once again compliant. The results also demonstrate more than half of the businesses with contraventions in 2010 were now meeting all of their obligations.

There were 27 businesses compliant in 2010 but who had contraventions in this campaign. These contraventions either occurred accidentally or as a result of misunderstanding specific obligations.

There were also 35 businesses who were not meeting all of their obligations in the 2010 campaign and were still not meeting all of their obligations in the 2013 campaign. In both campaigns these employers voluntarily rectified their contraventions. However, continued non-compliance indicates this group of employers have not taken steps toward ongoing compliance despite intervention on two occasions.

As such, further auditing of this group of employers will occur in 2014-15 with a view to detecting and acting upon deliberate and wilful non-compliance with a view to taking enforcement action where appropriate.

Figure 3: Compliance matrix

2010 Campaign result	Follow-up campaign result	Number of businesses
Compliant	Compliant	64 (38%)
Compliant	Contravention	27 (16%)
Contravention	Compliant	43 (25%)
Contravention	Contravention	35 (21%)
Total		169

A further breakdown of the results is detailed in Figure 4.

Figure 4: Follow - up audit findings

Audit finding	2010 campaign result	Current campaign result
Compliant	91 (54%)	107 (63%) 
Contravention	78 (46%)	62 (37%) 
-monetary	45 (27%)	31 (18%) 
-non-monetary	19 (11%)	21 (13%) 

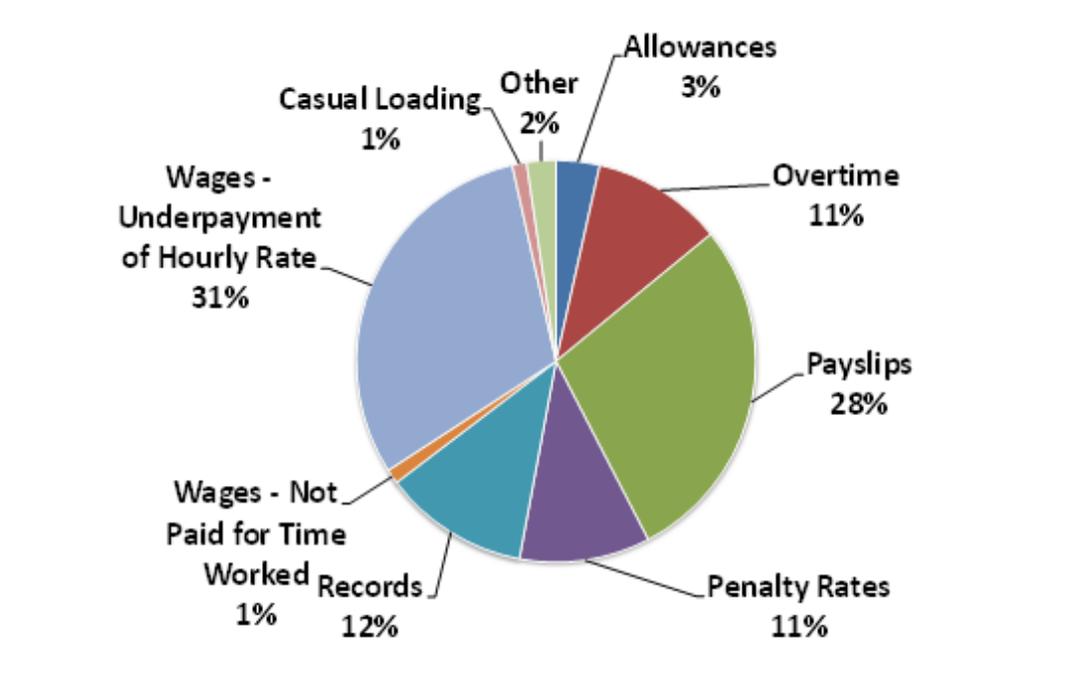
- both	14 (8%)	10 (6%)	↓
\$ recovered	\$388,256	\$125,568	↓
Employees paid	622	355	↓

Since the 2010 campaign, the overall compliance rate for employers in the cleaning services industry increased from 54% to 63%.

Positively, monetary contraventions decreased from 27% to 18%. The effect of the monetary contraventions we identified was also far less, with our total recoveries from this group of employers in the 2013 campaign less than a third of what it was in the 2010 campaign.

Figure 5 provides a further break down of the types of contraventions found for the abovementioned businesses. The majority of the contraventions related to underpayment of wages (31%), pay slips (28%) and penalty rates (11%).

Figure 5: Types of contraventions identified



Regional Findings

Victoria

Of the 132 businesses we assessed in Victoria:

- 74 (56%) employers were compliant with all requirements
- 58 (44%) had at least one contravention of which:
 - 24 (18%) were paying incorrect rates of pay
 - 21 (16%) had contraventions relating to pay slips or record-keeping
 - 13 (10%) had both monetary and non-monetary contraventions

A total of \$246,206 was recovered for 268 employees from 14 employers.

The majority of contraventions identified related to pay slips, penalty rates and underpayment of correct minimum hourly rates of pay.

Tasmania

Of the 14 businesses we assessed in Tasmania:

- 11 (79%) employers were compliant with all requirements
- 3 (21%) had at least one contravention of which:
 - 1 (7%) was paying incorrect rates of pay
 - 2 (14%) had contraventions relating to pay slips

A total of \$2,668 was recovered for five employees from one employer.

New South Wales

Of the 165 businesses assessed in NSW:

- 100 (61%) employers were compliant with all requirements
- 65 (39%) employers had at least one contravention, of which:
 - 38 (23%) were paying incorrect rates of pay
 - 18 (11%) had contraventions relating to pay slips, record keeping
 - 9 (5%) had both monetary and non-monetary contraventions

The 65 employers had a combined 91 separate contraventions identified. A breakdown of these reveals underpayment of hourly rate (39 or 43%) made up the majority, followed by pay slips (18 or 20%) and penalty rates (15 or 16%).

A total of \$215,278 was recovered for 294 employees from 40 employers.

Australian Capital Territory

Of the 11 businesses we assessed in the ACT, we found:

- 8 (73%) employers to be compliant with all requirements
- 2 (18%) were paying incorrect rates of pay

- 1 (9%) had non-monetary contraventions

The three employers found to have contraventions had five separate contraventions, of which three (60%) related to underpayment of hourly rates, one (20%) pay slips and one (20%) overtime.

A total of \$2,659 was recovered for three ACT employees from two employers.

The main cause of the contraventions was the payment of flat rates of pay for all hours worked. In such cases, employees were not receiving part time and casual loadings, weekend penalties and/or shift allowances.

Queensland

Of the 160 businesses assessed in Queensland:

- 115 (72%) employers were compliant with all requirements
- 45 (28%) had at least one contravention of which:
 - 28 (18%) were paying incorrect rates of pay
 - 10 (6%) had contraventions relating to pay slips or record-keeping
 - 7 (4%) businesses had both monetary and non-monetary contraventions

In total there were 64 separate contraventions of which the majority related to the underpayment of hourly rate of pay (25 or 39%), pay slips (16 or 25%) penalty rates (15 or 23%).

A total of \$111,206 was recovered for 163 employees from 32 employers.

The main cause of underpayments in Queensland was due to employers paying staff flat rates of pay for all hours worked.

Western Australia

Of the 45 businesses assessed in WA:

- 20 (44%) employers were compliant with all requirements
- 25 (56%) had at least one contravention of which:
 - 14 (32%) were paying incorrect rates of pay
 - 6 (13%) had contraventions relating to pay slips or record keeping
 - 5 (11%) had contraventions relating to monetary and non-monetary entitlements

In total, there were 45 separately identifiable contraventions. Similar to other regions, the majority were contraventions relating to penalty rates (12 or 27%), pay slips (10 or 22%) and underpayment of hourly rate (9 or 20%).

A total of \$81,707 was recovered for 169 employees from 14 employers.

South Australia

Of 44 businesses assessed in South Australia:

- 25 (57%) employers were compliant with all requirements

- 19 (43%) to have at least one contravention, of which
 - 8 (18%) were paying incorrect rates of pay
 - 4 (9%) had non-monetary contraventions
 - 7 (16%) had contraventions relating to both monetary and non-monetary entitlements

Overall there were 30 separate contraventions identified. Pay slips (11 or 37%), underpayment of hourly rate (8 or 27%) and penalty rates (5 or 17%) were the most common contraventions.

A total of \$68,418 was recovered for 288 employees from 14 employers.

Northern Territory

Of the 7 businesses assessed in NT:

- 3 (43%) employers were compliant with all requirements
- 1 (14%) was paying incorrect rates of pay
- 1 (14%) had a pay slip contravention
- 2 (29%) had monetary and non-monetary contraventions

A total of \$34,624 was recovered for 22 employees from 2 employers.

Of the 7 separately identifiable contraventions, three (43%) related to pay slips, two (29%) to the underpayment of hourly rate and two (29%) for overtime.

Conclusion

The results from the procurement assessments are encouraging and it was pleasing to find most property owners playing an active role in ensuring compliance with workplace laws at the lower levels of the procurement chain. This behaviour ensures vulnerable employees are receiving the correct entitlements and creating genuine competition for contracts leading to a level playing field in the industry. Given the systems and checks that these companies have implemented, it is considered lasting compliance will be achieved in this instance as it is driven by the top-end of the procurement chain.

The results of the wage audit showed 73% of employers were paying their employees correctly, 82% were compliant with their record keeping obligations and 62% of employers were meeting both requirements.

There was an improvement in compliance amongst the group of employers audited in both the 2010 campaign and this campaign. The results showed 63% of this group were compliant, an improvement from 54% in 2010. However, 21% of this group of employers were non-compliant in 2010 and were again found non-compliant in this audit.

As such, further auditing of this group of employers will occur in 2014-15 with a view to detecting and acting upon deliberate and wilful non-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 National Cleaning Industry Follow-up Campaign 2012. For further information and media enquiries please contact the media team at 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 at Lynda.McAlary-Smith@fwo.gov.au