



National Hair and Beauty Campaign Final Report

December 2009

Summary

This report provides a summary of the Fair Work Ombudsman's¹ national campaign in the hair and beauty industries which was conducted between March 2009 and November 2009.

Prior to undertaking compliance audits, we wrote to 35 stakeholders informing them of the campaign. We provided relevant articles and web links for stakeholders' websites and newsletters as requested, and met with several stakeholders to discuss the campaign and to share valuable information.

During April 2009, we sent over 2000 educative letters to employers in the hair and beauty sectors Australia-wide. The aim of this letter was to provide employers with information about the campaign as well as time and resources to assist them to comply with Commonwealth workplace laws.

From June to November 2009, 640 employers were targeted and 362 were identified as suitable for a compliance audit.

Of the 330 audits undertaken and finalised to date, we have found 200 (61%) employers to be compliant in terms of the parameters of the audit and 130 (39%) employers having about 191 contraventions.

52 (40%) of the non-compliant employers had monetary contraventions, the other 78 (60%) had minor contraventions relating to payslips and time and wage records.

We are due to recover \$139,040 for more than 223 workers as a result of this campaign.

An encouraging outcome of the campaign is the fact that 116 employers found to be in contravention of federal workplace laws have resolved their matters voluntarily.

The specific statistical results and anecdotal findings by state are detailed below.

Results²

Status of Audits

Between June and November 2009, we initially targeted 640 employers for an audit Australia-wide. At 30 November 2009, when the results of the campaign were compiled:

- 278 (43%) of the employers targeted could not be audited for reasons including: they did not fall under our jurisdiction, the enterprise had no employees, the inspector was unable to contact the employer, or the enterprise was no longer trading.

¹ This campaign commenced before the start of the Fair Work Ombudsman on 1 July 2009. Any reference to the agency prior to 1 July 2009 refers to the Workplace Ombudsman.

² The statistics in this report were compiled on 30 November 2009. Due to ongoing investigations following the publication of this report, some of these statistics will change, particularly the amount of money recovered.

- Of the remaining 362 (57%) audits that we were able to undertake:
 - 330 (91%) audits have been finalised
 - 32 (9%) audits remain outstanding as they have required ongoing investigation.

The following table provides an overview of the status of audits by state as at 30 November 2009.

Status of audits								
	NSW	VIC	TAS	SA	WA	NT	QLD	Total
Number of employers targeted	130	79	21	59	22	20	309	640
Number unsuitable for audit	30	26	4	29	4	2	183	278
Number of audits commenced	100	53	17	30	18	18	126	362
○ Number of audits completed	86	40	16	30	17	18	123	330
○ Number of audits outstanding	14	13	1	-	1	-	3	32

Findings of audits

Of the 330 audits undertaken and finalised to date we have found:

- 200 (61%) employers to be compliant within the scope of the campaign
- 130 (39 %) employers were found to have contraventions with 78 (60%) being monetary contraventions relating to underpayment of wages, penalty rates and allowances.

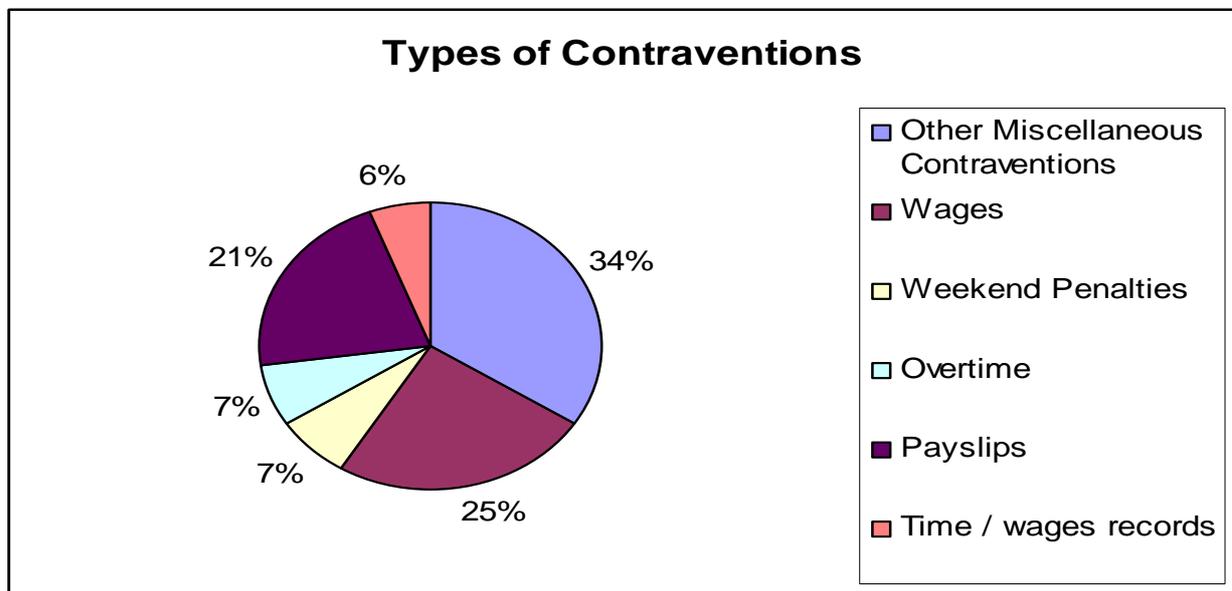
Findings of Audits								
	NSW	VIC	TAS	SA	WA	NT	QLD	Total
Employers compliant	56	13	9	13	15	7	87	200
Employers found to be in contravention	30	27	7	17	2	11	36	130
• <i>Sustained - no further action</i>	5	3		2			4	14
• <i>Resolved - voluntary compliance</i>	25	24	7	15	2	11	32	116
Level of employer non-compliance								
	NSW	VIC	TAS	SA	WA	NT	QLD	Total

Employers with monetary contraventions	16	13	5	7	2	6	29	78
Employers with non-monetary contraventions	14	14	2	10		5	7	52
Total	30	27	7	17	2	11	36	130

Types of contravention

Across Australia, non-compliance with the correct payment of wages accounted for 25% of contraventions identified and a further 21 % were as a result of employers not complying with payslip requirements.

The table below shows the breakdown by types of contraventions identified.



Money Recovered

We are due to recover a total of \$139,040 for more than 223 workers as a result of this campaign. The breakdown by state and sector is detailed in the table below.

Amount of money recovered on behalf of employees								
	NSW	VIC	TAS	SA	WA	NT	QLD	Total
Amount of money	\$30827	\$22902	\$6863	\$14555	\$2083	\$6953	\$54857	\$139040
Number of employees	29	20	15	26	6	21	106	223

Issues

The following are the key issues identified by our Fair Work Inspectors undertaking the audits in each state.

New South Wales/ACT

In New South Wales and ACT, we found there was uncertainty among employers as to how the terms of the industry NAPSA applied to the payment of casual staff. This issue not only caused delays in completing the campaign audits, but pointed to the importance of information and advice being readily available to employers. Fair Work Inspectors found that many workers were receiving a higher flat rate than the basic periodic rate of pay, but this flat rate did not cover all employee entitlements such as after hours, weekends or public holidays. Some third year apprentices were not paid at the correct rate.

Victoria

Victoria's key findings also focused on pay rates for casual staff, and payment of correct entitlements, including weekend penalties and overtime. Fair Work Inspectors noted some inadequate record keeping practices. Some businesses relied on salon appointment books as a record of time worked. Inspectors needed to educate the employers in the use of correct record keeping practices. Victoria recorded twice as many monetary contraventions as non-monetary contraventions.

Queensland

Queensland employers demonstrated a good standard of record keeping and payslip accuracy. Where contraventions were found, employers were cooperative and keen to rectify them. Some employers were uncertain if the state or federal jurisdiction applied, and where to go for information regarding their obligations. There was a lack of clarity from some employers as to whether their workers were employed or contracted, and some employers were found to be hiring and firing apprentices, purely on the basis of a downturn in work. A positive outcome was reached for a Gold Coast business in which workers were being underpaid, and remunerated in foreign currency. Following contact with a Fair Work Inspector, the employer voluntarily complied, and further requested that a Fair Work Ombudsman speaker attend the local Chamber of Commerce to discuss our role, and to provide information on the *Fair Work Act 2009*.

South Australia

In South Australia, most underpayments occurred in the remuneration of apprentices. Other contraventions resulted from non payment of meal break allowances, and pay slip content not meeting regulatory requirements. Two employers had engaged employees on non-approved Australian Workplace Agreements (AWAs). Inspectors reported that employers tended to delay forwarding documents to the Fair Work Ombudsman for review, but also reported a lack of awareness in areas such as pay rates for public holidays, access to current information on pay scales and other relevant information. It is considered that additional education and advice in this area would be beneficial.

Western Australia

In Western Australia, the majority of employers were found to be compliant. There were technical contraventions involving content of pay slips, particularly in provision of incomplete superannuation information. A few employers were underpaying casual workers. Employers said they intended to do the right thing, but did not know where to access accurate information to assist them to do so. Some employers said that they were not familiar with the role of the Fair Work Ombudsman, and so did not immediately attend to the request for records. Anecdotally, Western Australia found that several employers deducted monies from employees' pay for purchases of hair and beauty products. Sometimes the employees paid off these purchases in instalments. Fair Work Inspectors educated employers about the need to have the employee's authority in writing before taking such action.

Tasmania

Tasmania audited twenty employers as the majority of businesses in the state were sole traders or partnerships. Intelligence received indicated that many of these smaller businesses paid workers flat rates without recognising penalty loadings and other entitlements. Fair Work Inspectors may carry out a future audit of these entities. Employers resolved pay slip contraventions voluntarily. As in other states, Tasmanian employers would benefit from greater exposure to and awareness of current information on pay and entitlements.

Northern Territory

In the Northern Territory, some trade qualified staff received a flat rate, but this rate did not cover entitlements such as after hours, weekends or public holidays. Some apprentices were not paid according to pay scale updates. There were also technical contraventions regarding the accuracy of payslips.

Background to the campaign

In making the decision to target the hair and beauty industries for a national campaign, we took the following factors into consideration.

- An analysis of the Workplace Ombudsman's database
- The Workplace Ombudsman's litigation history
- The practical experience and 'head knowledge' of Field Operation Directors in each state
- The intent to select industry sectors with a significant number of vulnerable workers, for example, young workers and employees on traineeships.

An analysis of the Workplace Ombudsman's database of complaints received for the period 1 July 2008 to December 2008 showed that hairdressing and beauty services rated third in the number of complaints received.

The Workplace Ombudsman's litigation history from March 2006 showed our involvement in three litigations associated with the hair and beauty industries. The investigations associated with these litigations indicated that 11 employees had been affected by alleged underpayments of \$86,168.84. Two of these matters, Sterling Crown Pty Ltd trading as Partners for Hair, and Putby Pty Ltd trading as Strath Hill Hair Design, had been through the courts and incurred a total of \$11,500 in penalties. A further two matters were still being assessed for litigation.

Campaign aim, objectives and performance measures

The aim of the campaign was to improve compliance with Commonwealth workplace relations legislation in relevant sectors of the hair and beauty industries across Australia.

The specific objectives of the campaign were to:

- Engage with relevant stakeholders in relation to the campaign;
- Provide information to industries across Australia to assist employers to meet their obligations under federal legislation and to promote the role of the Fair Work Ombudsman ¹;
- To audit the level of compliance with a targeted number of employers in relation to minimum wages and entitlements;
- To ensure the targeted employers comply with their minimum wage and entitlements obligations;
- To provide a public report on the findings of the campaign.

The effectiveness of the campaign was measured by the following performance outcomes:

- The number of stakeholders responding to and or actively engaged in the campaign;
- The improvement in compliance resulting from our intervention demonstrated by the level of voluntary compliance to identified contraventions;
- The amount of money reclaimed on behalf of employees.

Stakeholder involvement

In March 2009, we wrote to 34 stakeholders informing them of the campaign, and provided relevant articles and web links for their websites and newsletters as requested.

We either met with or had a telephone discussion with the following stakeholders:

- Skills Tasmania
- Service Skills South Australia
- Hair and Beauty SA
- Hair and Beauty Australia
- Shop Distributive and Allied Employees Association
- Nail Technician School of SA
- TAFE SA
- Brett Anderson Marketing

Campaign Methodology

During April 2009, we sent over 2,000 educational letters to employers in the hair and beauty industries across Australia. The aim of this letter was to provide employers with information about the campaign, and time and resources to assist them to comply with Commonwealth workplace laws.

Following the educative mail out, each state identified a random selection of employers to target for a compliance audit. We then notified these employers in writing, and requested that they provide time and wage records and other particular information for a specified two week period including a public holiday. To assist with this request, we provided employers with an Entity Information Form to complete.

We then assessed the received documents against the relevant industrial instrument.

If we found a minor contravention that did not disadvantage an employee, for example, a contravention of the payslip and record keeping requirements, or an underpayment of a very small amount, we asked the employer to complete a compliance commitment form in which they agreed to voluntarily rectify the issue.

If we identified a more significant contravention, for example, an underpayment of wages or penalty rates, we requested that the employer undertake an audit of all of their employees and voluntarily rectify all identified underpayments. Once we received evidence of this self audit and payment rectification, the matter was closed.

In a few cases, we were required to escalate the audit to a full investigation. For example, if the employer did not respond to the initial request for records, was not willing to voluntarily rectify the identified contraventions, or if we found an extremely serious and blatant contravention. In serious cases, litigation could be considered.

Conclusion

The hair and beauty industries are distinguished by a number of factors, some relating to vulnerable employee categories. These industries employ a predominantly young female workforce, and a significant proportion of apprentices. We identified a high number of sole traders and partnerships which did not come under our jurisdiction. The hair and beauty industry sector was targeted because of the significant number of complaints from employees within the industry, its litigation history, the experience and intelligence provided by Field Operation Directors, and the significant number of vulnerable workers employed in the sector.

Issues raised by state inspectors demonstrated that wages and record keeping were primary areas of contravention. There were a variety of reasons for this – employer uncertainty as to the correct application of federal or state awards, lack of familiarity with correct record keeping practices, and not keeping abreast of changes in apprentice classifications. It was not clear, in some instances, if workers were employed or contracted. The practice of deducting the cost of hair and beauty products from workers' wages without the required authorisation was also reported. This campaign has highlighted future needs for employer education, advice and compliance in the hair and beauty industry. The Fair Work Ombudsman has an important role in providing additional education and contact points to assist in the resolution of outstanding issues.