

NSW – Broken Hill Audit Program

Final Report August 2010

Summary

Between April and July 2010, the Orange Regional Office of the Fair Work Ombudsman (FWO) conducted an education and audit campaign. We initiated the campaign in response to a media report in late March 2010 in the Broken Hill press, which raised issues concerning payment of penalty rates to employees working outside of standard hours.

We contacted the Broken Hill Chamber of Commerce, and issued a local media release on 21 May 2010, advising businesses in the Broken Hill area that FWO would be targeting employers in a range of local industries. We conducted an educational seminar at the Broken Hill Legion Club on 25 May 2010. The seminar included the provision of local employers with tailored information about the introduction of modern awards.

Between 26-28 May 2010 we conducted 38 site visits. We provided employers with self-audit checklists, educational materials, and information on transitioning into the federal system for affected employers. We conducted random audits of 38 local businesses in a number of industries including retail, hospitality, engineering and tourism to ensure employers were compliant with their record keeping obligations, and that they were paying their workers correctly.

Of the thirty-eight businesses audited - 27 were constitutional corporations and 11 were sole traders or partnerships. Four businesses were unsuitable for audit as they were outside of federal jurisdiction. Of the 34 finalised audits, we found 33 (97%) to be compliant. One company (3%) had not complied with the provision of pay slip details, nor with the terms of its collective agreement, as employee allowance provisions had not been updated. The employer voluntarily complied with our requirement to pay 42 employees \$682 in underpayments, and he provided us with a signed agreement to comply in future.

The detailed findings are shown below.

Results

At 23 July, 2010, when the results of this campaign were compiled, we had achieved the following:

- Targeted 38 businesses across a range of industries in Broken Hill
- Four businesses were unsuitable for audit, as they were not covered by federal jurisdiction
- Of the 34 audits undertaken:
 - 33 (97%) businesses were compliant
 - 1 (3%) business audited was found to have contravened the *Fair Work Act 2009* [the Act] and the *Fair Work Regulations 2009* [the Regulations]. This business had a total of 3 contraventions, and we recovered \$682 for 42 employees

Campaign outcomes	
Employers targeted for audit	38
Not suitable for audit (not federal jurisdiction)	4
Audits undertaken	34
<ul style="list-style-type: none"> Employers compliant (no contraventions) 	33 (97%)
<ul style="list-style-type: none"> Employer non compliant (pay slip details and underpayment = \$682 recovered for 42 employees) 	1 (3%)

One employer was not compliant in:

- Updating provisions of the employee allowances in the relevant collective agreement
- Incorrect recording of payments and allowances on employee pay slips

The employer agreed in writing to update the allowances from 31 May 2010. We notified the employer of their obligations under the Act and Regulations and the employer is now compliant.

Other Findings

Issues which emerged in the process of conducting this campaign include:

- During the education seminar, local employers generally welcomed the opportunity to meet with Fair Work Inspectors. They asked questions about the introduction of modern awards, including annual leave entitlements, application of the district allowance, good faith bargaining and flexibility provisions
- Fair Work Inspectors took some questions 'on notice' and prepared an information sheet with our responses for the local Chamber of Commerce
- During our site visits, local employers asked questions about annual leave, conditions of employment, award coverage, hourly rates of pay and commencement date of the changes, including transitional rates of pay
- There appeared to be confusion amongst many employers concerning the industrial instrument that applied to their workplace and whether they were covered by the federal or state jurisdiction. We provided educational materials and website reference points to assist them with resolving these issues.

Background

On 31 March 2010 in an article titled '*Union anger at penalty ruling*', the *Barrier Daily Truth* newspaper reported that unions were challenging a Fair Work Australia ruling which allowed employers to request employees to work extra hours without paying penalty rates. The article noted that the Australian Workers' Union (AWU) intended appealing the ruling on the basis that it failed the Act's Better Off Overall Test. The article further mentioned that the National Retail Association was hoping the decision would be applied to other industries so employers could avoid paying penalty rates beyond the standard 38-hour week.

We were aware of this local media coverage and received information from the Broken Hill Chamber of Commerce indicating a high level of employer confusion following the introduction of modern awards. This prompted the Orange Regional Office to initiate a targeted audit program in the Broken Hill area. We issued a local media release and followed this up with an

educational seminar on 25 May 2010, and site visits to conduct audits of randomly selected local businesses from 26 May to 28 May 2010.

Campaign objectives

The statistical information that we had gathered indicated that industries suitable for targeting included hotels/motels, retailers and restaurants. The objectives of the campaign were:

1. To ensure compliance with the requirements of the Act and Regulations with regards to the keeping of time and wage records and pay slip requirements
2. To provide information across the industry about the introduction of modern awards and to assist employers to understand their obligations under current federal legislation
3. To ensure the targeted employers were compliant with their minimum wage and entitlements obligations
4. To raise FWO's profile in the Broken Hill area

Stakeholder involvement

The Broken Hill Chamber of Commerce was instrumental in organising the FWO educational seminar held on 25 May 2010. They assisted in promotion of the event, and in securing the attendance of local businesses in the Broken Hill area.

Methodology

The methodology included the following stages:

- A media release announced the campaign and alerted employers that audits were likely
- We held a local education seminar, in conjunction with the Broken Hill Chamber of Commerce, and local businesses were invited to attend
- We provided educational materials to businesses visited over the period 26-28 May
- We conducted field audits of randomly selected businesses from the accommodation and food sector, retail, hospitality, engineering and tourism industries in the Broken Hill area

Conclusions

This campaign generated a significant amount of media attention and interest from businesses in the Broken Hill area. There were a lot of enquiries made to Business Broken Hill (Chamber of Commerce) from businesses seeking information about their obligations under Commonwealth workplace laws.

This campaign was successful because it tailored its education program to local employers in a remote and regional area. It provided them with information about their rights and responsibilities under Commonwealth workplace laws, and assisted an increase of awareness of the Fair Work Ombudsman in the Broken Hill area.

The campaign highlighted that whilst most employers were genuinely trying to comply with Commonwealth workplace laws, there is still more work that needs to be done to educate employers in Broken Hill with regard to their obligations.

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