

## NSW Real Estate Audit Program 2011-12

### Summary

In October 2011, the Fair Work Ombudsman (FWO) commenced an audit program (the program) in the New South Wales real estate industry. The aim of the program was to assess the level of compliance with the *Real Estate Industry Award 2010* (the Award) and the *Clerks Private Sector Award 2010* (Clerks Award), in particular if clerical staff were receiving their correct rates of pay.

Of the 192 businesses audited, 159 (83%) were compliant and 33 (17%) in contravention. The majority (64%) of the contraventions were of a monetary nature. Nearly all of the monetary contraventions were a result of employers underpaying their clerical staff. The program recovered \$36,945 for 34 employees.

Further information on the program findings are detailed below.

### Background

Schedule E of the Award requires real estate employers to lodge agreements for non commission and commission only real estate sales representatives. These agreements are required to be negotiated by employers and employees, recorded in writing, signed and then lodged with the Real Estate Employers' Federation of New South Wales.

The FWO considers the agreements to be important as they clearly set out the pay entitlements of the real estate sales representatives. In the event of a dispute or complaint, the agreement specifies the obligation of the employer and entitlement of the employee. This enables the matter to be resolved more easily and efficiently.

In 2011, the FWO conducted the Queensland real estate industry campaign (the Queensland campaign). The Queensland campaign assessed compliance with the lodgement of remuneration agreements, with the Queensland Property Industry Register. Of the 156 Queensland realtors audited 81 (52%) were found to be non compliant. The contraventions all related to the failure to lodge agreements outlining the remuneration structure that apply to employees.

Based on the Queensland results, a decision was made to run a similar program in NSW and extend the audit parameters to include the assessment of hourly rates of pay for clerical staff employed in the industry.

### Aim & objectives

The aim of the program was to ensure compliance with the *Fair Work Act 2009*, *Fair Work Regulations 2009* (Regulations), the Award and the Clerks Award. The specific objectives of the program were to:

- increase employers awareness of the lodgement of remuneration agreements as per Schedule E of the Award
- assess compliance with the lodgement of remuneration agreements as per Schedule E
- assess compliance with record-keeping and payslip obligations
- assess if clerical staff were receiving their correct hourly rate of pay
- increase the industry's awareness of FWO's role
- move towards creating a level playing field for employers in the industry

## Stakeholder involvement

In November 2011, we formally notified the following stakeholders of the campaign and invited them to provide feedback;

- Real Estate Institute (NSW) (REI NSW)
- Real Estate Employers Federation (REEF)
- Real Estate Association of NSW (REA NSW)
- United Services Union (USU)

In December 2011 we met with REEF and REI NSW to further discuss the program and share information on the industry in general. They were both able to assist us by promoting the program via their communication channels.

## Method

Using the Australian Business Register database, we identified businesses operating within the New South Wales real estate industry. In January 2012 we wrote to a sample number of the identified businesses and advised them of their selection for audit.

Our letter explained what the audit would involve and asked the employer to send copies of their employees' employment records for a two week consecutive period including the June 2011 long weekend.

When we received the records, we reviewed them to assess if employers had lodged remuneration agreements for their real estate agents and if clerical staff had been paid the correct hourly rates. We also assessed if employers were complying with record-keeping obligations.

We contacted those employers suspected of being in contravention and in some cases asked them to provide further information. Where contraventions were confirmed we asked the employer to rectify the contravention/s and pay any outstanding wages where an employee had been underpaid. On completion of the assessment, all employers were notified in writing of the outcome of the audit.

## Results

### Statistical findings

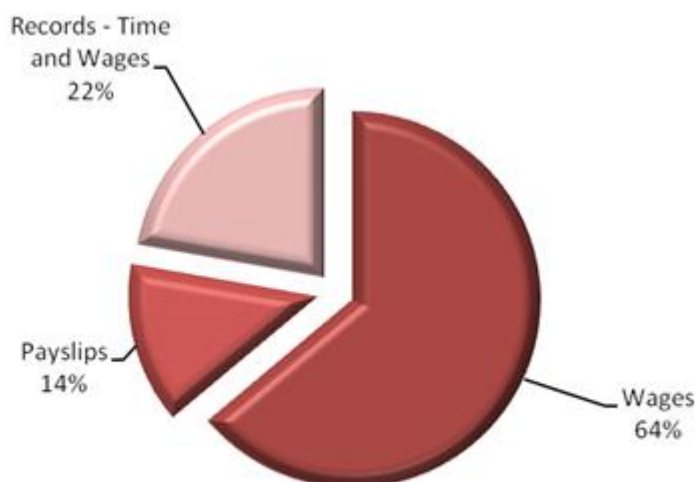
In October 2012, we compiled the audit results. Of the 192 employers audited, we found 159 (83%) employers to be compliant and 33 (17%) employers to be in contravention with Australian workplace laws. One employer is being further investigated. As at October 2012, we have recovered \$36,945 in underpayments for a total of 34 employees.

<b>Table 1: Campaign results</b>	
Number of employers audited (completed)	192
<ul style="list-style-type: none"> <li>• <i>Employers compliant</i></li> </ul>	159 (83%)
<ul style="list-style-type: none"> <li>• <i>Employers in contravention</i></li> </ul>	33 (17%)
Total amount recovered	\$36,945
Number of employees paid	34

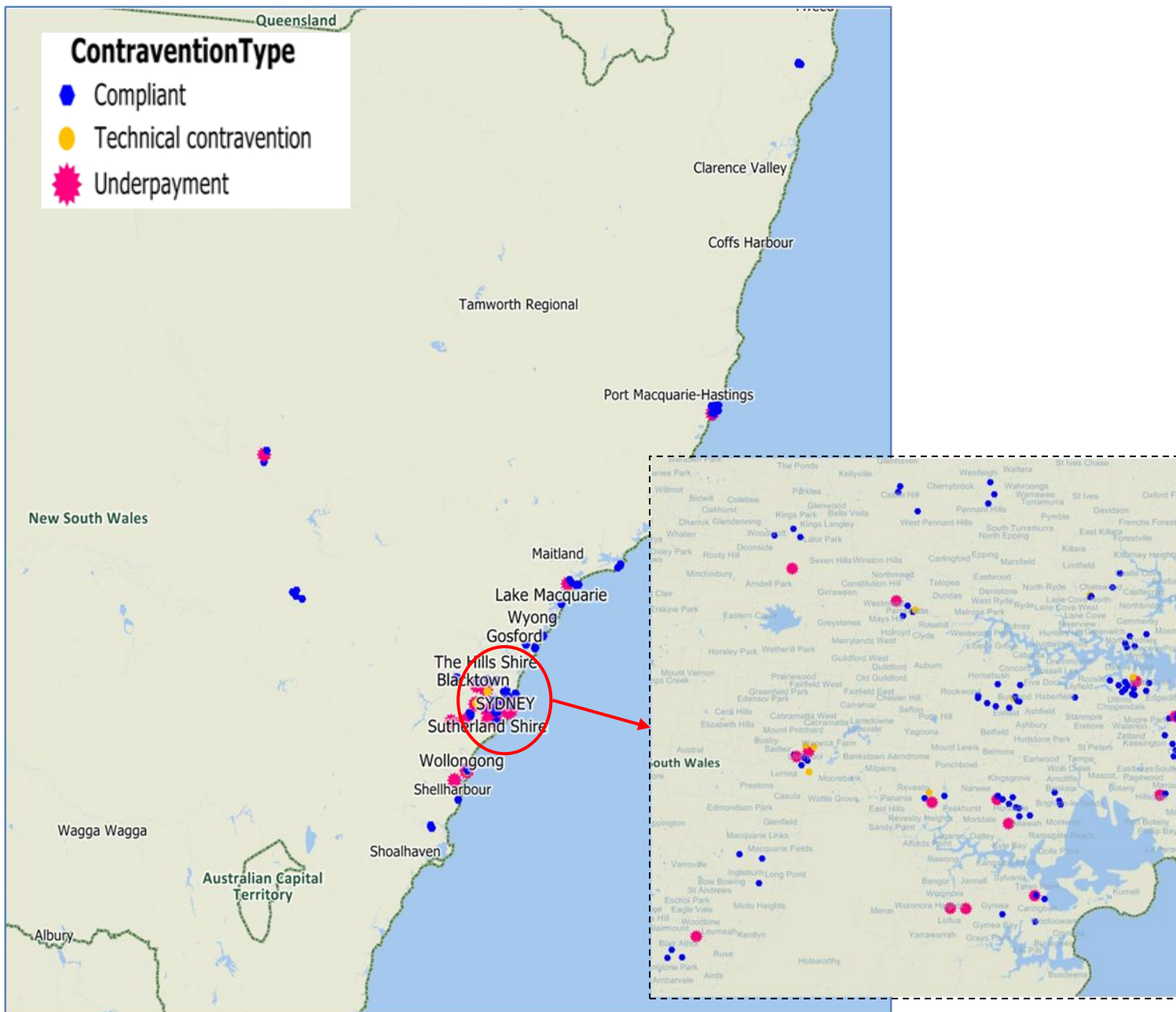
Of the 33 employers in contravention, 10 (30%) had record-keeping or payslip contraventions and 21 (64%) were found to have monetary contraventions. Two employers were identified as having both monetary and non-monetary contraventions.

The 33 non-compliant employers had a total of 36 individual contraventions. Chart 1 below shows that of the 36 contraventions identified, 24 (64%) contraventions were monetary contraventions, 5 (14%) related to payslip issues and 8(22%) to time and wages record-keeping obligations.

**Chart 1 – Contraventions identified**



**Map displaying results of employers audited**



## Other Findings

The findings of this program do not mirror those found in the Queensland real estate industry campaign. We found the compliance rate was greater in New South Wales and that the majority of the monetary contraventions identified were as a result of clerical employees being underpaid. It was pleasing to find that employers, generally, were aware of the Award and their obligations under Schedule E.

However, we found a number of employers to be unfamiliar with obligations regarding their clerical staff. Some employers advised that their employer organisation had provided them with information about rates of pay for clerical staff, but admitted they had not checked their clerical employees' rates of pay to see if they were meeting their obligations.

We found some businesses had not increased their rates of pay with the wage increase, whilst others were relying on out-dated rate sheets for clerical employees. Some employers were paying clerical staff inadequate day rates which resulted in the employee being financially disadvantaged, especially when they worked long hours. We also found one employer who was paying his casual clerical employee part-time rates of pay.

We also identified a number of record-keeping and payslip contraventions. This included payslips that did not contain all the information required by the *Regulations* and inadequate time and wage records.

As suspected, almost all employers were a member of an employer association.

## Conclusion

It was pleasing to find the New South Wales real estate industry has good compliance rate with Schedule E obligations.

However in regard to compliance with the clerical staff entitlements, we strongly encourage employers to regularly check their obligations.

We also recommend that employers with record-keeping and/or payslip contraventions access the free templates available at [www.fairwork.gov.au](http://www.fairwork.gov.au) to ensure they are complying with their record-keeping and payslip obligations.

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