



Fair Work
OMBUDSMAN

NSW Retail liquor stores audit program 2013

Final report – January 2014

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Program snapshot

Total of

178

audits were conducted during the program

Total of

44%

of employers were in contravention

Over

\$107k

was recovered on behalf of 133 employees

Summary

The Fair Work Ombudsman (FWO) commenced the NSW Retail liquor stores audit program (the program) in January 2013.

We initiated the program to promote compliance with Commonwealth workplace laws and applicable industrial instruments in the New South Wales (NSW) liquor retailing industry, specifically, the *General Retail Industry Award 2010* (the Award), *Fair Work Act 2009* (the Act) and the *Fair Work Regulations 2009* (the Regulations).

During the program we audited 178 businesses across NSW. We found 56% (100) were compliant with their obligations and 78 (44%) were in contravention.

The majority of the contraventions we identified related to underpayments, which resulted in the recovery of \$107 406 for 133 employees.

Purpose of the audit program

The specific objectives of the program were as follows:

- To engage with employers and provide them with information about compliant workplace practices
- To assess employer compliance in relation to wages and entitlements, including penalty rates and minimum hours of engagement
- To review employer records to ensure compliance with record keeping and pay slip obligations
- To promote the role of the FWO and the resources available to assist employers.

Our industry partners

In January 2013 we contacted the following stakeholders to inform them of the program:

- Liquor Stores Association NSW Inc.
- Shop, Distributive, and Allied Employees Association (NSW Branch)
- Australian Retailers Association (NSW Branch)

We invited stakeholders to provide feedback and we sought their support in promoting the program.

Why did we conduct the audit program?

We analysed complaint data received by FWO during the 2010 and 2011 calendar years. In doing so, we recognised high rates of both complaints received and contraventions identified amongst complaints lodged by employees working in NSW retail liquor stores.

Specifically, we found that for 77% of the complaints received, underpayments were identified.

We therefore selected these stores for a targeted audit program, to both assess current compliance and to promote increased compliance into the future.

What did we do?

Our communication strategy

We started the program by contacting industry stakeholders in January 2013 to inform them of the program and invite their feedback.

Having informed the industry of our plans, we then wrote to a sample of employers in the industry

across NSW. In the letter we outlined the program and requested copies of time and wage records for assessment.

In addition, the letter directed employers to our tools and resources available at www.fairwork.gov.au

Our assessment strategy

Fair Work Inspectors checked the records against the requirements of the Award, the Act and the Regulations.

Where we found an employer was compliant, we advised them and issued a letter confirming the outcome.

For cases where we found contraventions relating to record keeping and pay slips, we contacted employers to discuss our findings and the action required to ensure compliance.

Where we identified underpayments, we advised the employer about the minimum entitlements under the Award, and required them to rectify the underpayments and provide proof of back-payment to affected employees.

In working with employers during the assessment phase, we referred them to our suite of online resources to assist them in future compliance.

What did we find?

Of the 178 audits conducted:

- 100 (56%) employers were compliant
- 78 (44%) employers were in contravention
- \$107 406 in underpayments was recovered
- 133 employees were back-paid

Of the 78 employers with contraventions, over half had monetary contraventions (56%), 30% had contraventions relating to pay slips and record keeping (technical contraventions), and 14% had both.

Audit results:



We found a total of 103 individual contraventions.

Over half of the contraventions (51%) related to wages, and more than a quarter (26%) to pay slips.

The majority of wage contraventions related to an underpayment of hourly rate, while the majority of pay slip contraventions were due to a failure to provide pay slips in the prescribed form.

Contravention types:

The Central Coast region of NSW had the highest percentage of employers with monetary contraventions (45%), while the South Western Sydney region had the highest percentage of non-monetary contraventions (38%).

Audit outcomes by region:

Region (number of audits)	Compliant	Contravention		
		Monetary	Non-Monetary	both
Mid-Western (3)	100%	0%	0%	0%
Macquarie (2)	100%	0%	0%	0%
Sydney CBD (12)	75%	17%	0%	8%
Hunter (18)	72%	22%	6%	0%
Mid North Coast (16)	69%	19%	0%	12%
Northern Sydney (21)	67%	19%	5%	9%
Northern Rivers (8)	63%	25%	12%	0%
Western Sydney (20)	60%	20%	10%	10%
South Eastern Sydney (9)	56%	22%	22%	0%
Central Coast (20)	50%	45%	5%	0%
Greater Murray (2)	50%	0%	0%	50%
Wentworth (5)	40%	40%	20%	0%
Southern (9)	33%	33%	23%	11%
South Western Sydney (16)	31%	25%	38%	6%
Illawarra (17)	29%	29%	36%	6%
Grand Total	56%	25%	13%	6%

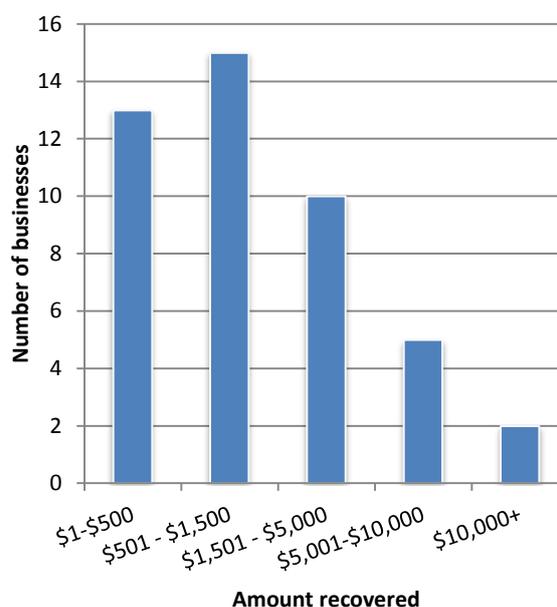
We recovered a total of \$107 406 for 133 employees, from 45 businesses.

Although we identified 55 employers with monetary contraventions, for 10 of these, employees had not been financially disadvantaged overall.

Amounts we recovered from individual businesses ranged from less than \$10 to more than \$13 000.

Nearly two-thirds (62%) of the recoveries were for amounts less than \$1 500.

Amounts recovered:



Other findings

In most cases in which we found underpayments, there was a lack of knowledge about transitional rates of pay and a lack of awareness about Award provisions. This meant that some employers were paying flat hourly rates of pay unaware of applicable base hourly rates and / or the entitlement to penalties and loadings.

In some cases there was a misunderstanding about which award actually applied to the business, leading at least one employer to mistakenly believe that the rates they paid were compliant.

Case study – check award coverage

Steven* engaged several staff on a casual basis. Unfortunately, he was using the *Hospitality Industry Award 2010* which covers the sale of liquor in a hotel or tavern. The business was in fact covered by the *General Retail Industry Award 2010*, which contains higher rates of pay for employees than the award that Steven applied.

As a result, even though he had been paying some penalty rates, Steven's contraventions included underpayments of the applicable base hourly rates, as well as weekend and public holiday rates of pay.

Although Steven rectified these underpayments, paying over \$2600 to affected staff, his example illustrates the importance of obtaining accurate advice about award coverage, and the risk involved in not doing so.

*pseudonym

Concluding remarks

The results of the campaign clearly demonstrate the need for employers to correctly identify and meet the requirements of their applicable award, in addition to satisfying the obligations of the Act and the Regulations.

Our findings emphasise the importance of employers referring to our online tools and resources to ensure that they have correct information about award coverage, rates of pay, record keeping and pay slips.

The receptive attitude displayed by most employers was encouraging and all contraventions identified were voluntarily rectified.

We hope that as a result of the program employers in the industry will have both a greater awareness of their workplace obligations and also the various resources offered by FWO to assist them in meeting these.

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 which 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 NSW Retail liquor store campaign 2013.

For further information and media enquiries please contact Ryan Pedler (ryan.pedler@fwo.gov.au).

If you would like further information about the Fair Work Ombudsman's targeted campaigns please contact Steve Ronson, Executive Director - Dispute Resolution and Compliance (steven.ronson@fwo.gov.au).

Commonwealth of Australia 2014

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