



Fair Work OMBUDSMAN

QLD – Real Estate Industry Regional Campaign 2011 Final Report September 2011

Summary

The Fair Work Ombudsman (FWO) recently completed an audit of the Queensland real estate industry. The campaign, which commenced in February 2011, was undertaken in response to reports from concerned Queensland realtors alleging they were not receiving their correct entitlements.

The campaign assessed compliance with the *Real Estate Industry Award 2010* (the Award) provision regarding the lodgement of agreements for both commission only and non commission real estate sale representatives. Our primary focus was on employers operating businesses in south east Queensland; however businesses in regional areas were also audited.

Fair Work Inspectors (FWIs) reviewed 156 employers' records, assessing compliance with the requirement to lodge agreements that outlined how employees are paid in accordance with the award provisions.

Of the 156 employers audited 75 (48%) were found to be compliant and 81 (52%) non compliant. The contraventions all related to the failure to lodge agreements outlining the remuneration structure that apply to employees.

Further details relating to the findings can be found in the body of the report.

Background

The Queensland office of FWO and its predecessors had received a number of complaints and enquiries associated with the payment of wages and commission to real estate sales staff. In such a competitive industry, employers not adhering to workplace obligations may gain an unfair competitive advantage over their competitors at the expense of employees receiving due entitlements.

One of the provisions contained within Schedule E in the Award is that employers are required 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 Queensland Property Industry Register (QPIR).

We consider the agreements to be important as they clearly set out the pay entitlements of the real estate sales representative. In the event of a dispute or complaint, the agreement specifies the obligation of the employer and entitlement of the employee, resulting in the matter being resolved more easily and efficiently.

Campaign aim & objectives

The aim of the campaign was to ensure compliance with the *Fair Work Act 2009*, *Fair Work Regulations 2009*, and the Award.

The specific objectives of the campaign were to:

- educate employers on the correct application of the Award and associated phasing provisions
- increase awareness of, and compliance with, lodgement of agreements as per Schedule E
- increase the industry's awareness of FWO's role
- move towards creating a level playing field for employers in the industry
- inform businesses of our online resources which provide assistance with transitional arrangements.

Methodology

Stakeholder Engagement

We contacted the following bodies prior to the commencement of the campaign and invited them to provide comments and feedback:

- Real Estate Institute of Queensland (REIQ)
- Property Sales Association of Queensland (PSAQ)
- Real Estate Employer's Association (REEA)
- Queensland Property Industry Registry (QPIR)

The QPIR, REEA and the PSAQ expressed a keen interest in the campaign and we worked closely with them to develop an effective campaign strategy. They also assisted us by educating the industry employers on their legislative obligations prior to the campaign.

Audit Phase

We randomly selected 156 real estate businesses in south east and regional Queensland for audit from a list provided by QPIR and supplemented with data from the Internet, White and Yellow Pages.

On 31 March 2011 we wrote to the selected businesses requesting lists of their employees covered by the Award, and evidence that agreements for those employees had been lodged with the QPIR.

Once the documentation was returned, we assessed it to ensure that agreements had been lodged for all employees as specified by the Award. Where records indicated that the employer was compliant, we finalised the audit and advised the employer of the audit finding in writing.

Where the assessment identified the employer to be in contravention, we advised them of the contraventions in writing and the action they were required to take.

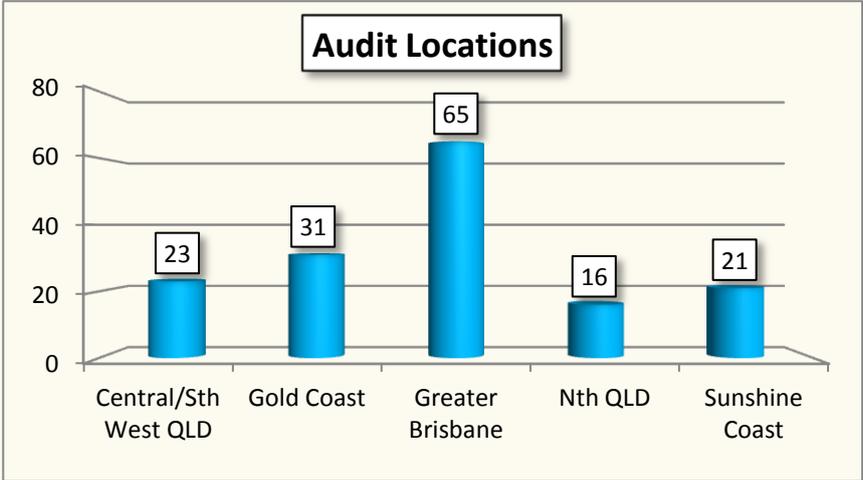
To rectify the contravention we required the employer to sign and return a written undertaking that any outstanding agreements would be made with employees, and lodged with the QPIR within 14 days of receiving our correspondence.

Upon receipt of those undertakings, we finalised the audit.

Results

Statistical findings

Analysis of our findings on 19 August 2011 showed we had completed 156 audits throughout Queensland. Almost 42% (65) were conducted in the Brisbane metropolitan area, 20% (31) in the Gold Coast and approximately 15% (23) in central and south west Queensland. The chart below shows the regions in which audits were conducted.

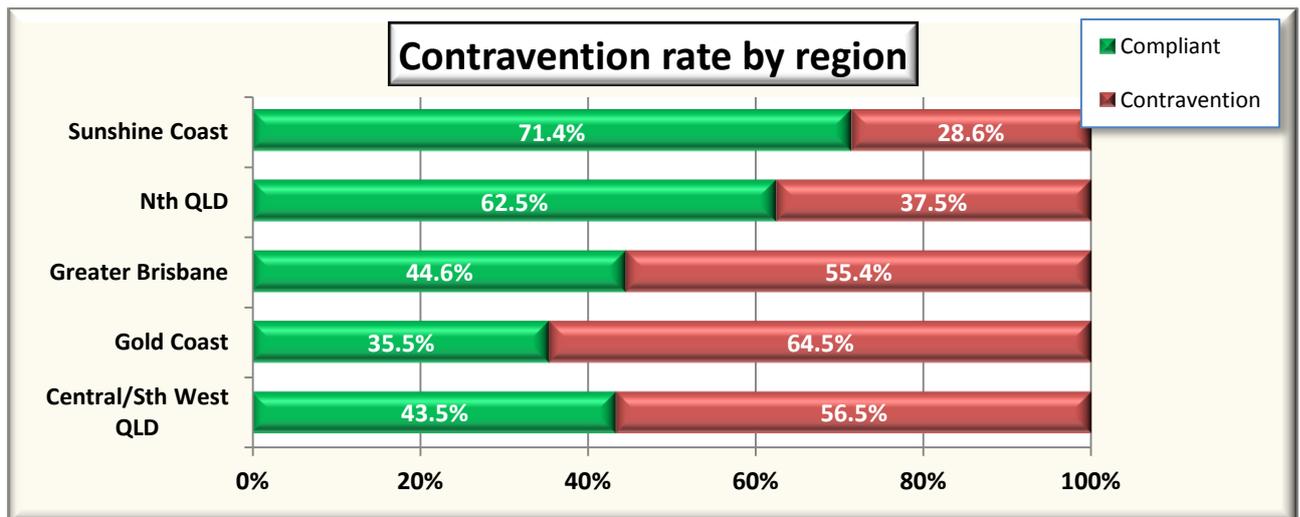


Of the 156 completed audits we found:

- 75 (48%) employers to be compliant
- 81 (52%) employers had contraventions

Contravention rates varied amongst regions with the Gold Coast recording the highest contravention rate with 20 (64.5%) employers in contravention.

The lowest contravention rate was recorded in the Sunshine Coast region with 6 (28.6%) employers in contravention.



Other findings

Most of the employers we contacted were aware of the campaign. Many advised they had been notified of the campaign by the QPIR, REEA or PSAQ. Interestingly, a large number of employers selected for audit were in the process of lodging their agreements when we contacted them.

Despite the high contravention rate, most employers were aware of their obligations. Some advised that they simply had not had an opportunity to lodge the agreements. A small number indicated that they had not lodged agreements due to the cost involved. Generally, we found that larger business and franchises were more likely to be compliant than smaller or independent businesses.

We found some employers to be confused about which of their employees they were required to lodge agreements for. These employers welcomed the opportunity to discuss their obligations with FWIs.

In addition, some businesses were not aware of the fact that there is a new award, so we took the opportunity to provide such businesses with information on materials available on our website which contain information on the Award and transitional arrangements.

Conclusion

The program was successful in meeting its overall aim and objectives.

We found that employers generally welcomed the opportunity to find out details regarding their obligations under the legislation.

The campaign reinforced the importance of both employees and employers in the real estate industry to agree on and properly register written agreements outlining how those employees will be paid.

Considering the overall level of non-compliance that we found in the Queensland real estate industry, a follow up program has been recommended. We anticipate that the scope will be to both assess the continuing compliance of employers audited in this campaign, as well as auditing businesses that were not selected.

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