



Australian Government

Fair Work OMBUDSMAN

Victorian Rolling Monthly Campaign 2009-2010 Mornington Peninsula Hotels & Restaurant Report

Summary

Following the success of the Victorian Monthly Rolling Campaign during 2008–2009, The Fair Work Ombudsman (FWO) decided to continue and expand the campaign during the 2009–2010 financial year.

As part of the Victorian Monthly Rolling Campaign, Fair Work Inspectors (FWIs) audit different regional areas and industries on a monthly basis, to assess compliance with Commonwealth workplace laws. Regions and industries are selected for audit based on intelligence received, whether the region or industry has been subject to a previous compliance audit and analysis of the Fair Work Ombudsman's complaint data.

Mornington Peninsula Hotels and Restaurants were selected for inclusion in the campaign after FWO received intelligence that some hotel and restaurant operators in the region were gaining an unfair competitive advantage through the cost cutting of employee entitlements.

The audits commenced in May 2010 with the FWO writing to each of the employers selected for audit requesting that they supply records for assessment. FWIs assessed compliance with record keeping obligations as well as minimum hourly rates of pay.

A total of 35 employers were audited as part of the campaign. Of the 34 audits completed, 12(35%) employers were found to be compliant and 22(65%) in contravention. One audit remains ongoing.

To date, a total of \$120,182 has been recovered for 119 employees. Further information on the findings of this campaign is detailed below.

Background

The Victorian Monthly Rolling Campaign was implemented with a focus on educating employers on record keeping and current issues at the time of the FWIs field visit.

This Mornington Peninsula stage of the campaign was modified to take into account information received regarding the target industry. Information supplied by a credible source suggested that a number of employers in the region were not meeting their workplace obligations and consequently obtaining an unfair advantage over their competitors.

Campaign aim & objectives

The aim of the campaign was to assess compliance with record keeping and hourly rates of pay obligations, and increase awareness of the changes associated with the introduction of the *Fair Work Act 2009 (the Act)*.

The specific objectives were to;

- provide educational opportunities for hotel and restaurant operators on the Mornington Peninsula and adjoining areas, in particular concerning time and wages record keeping requirements
- promote FWO's small business aids and templates
- assess current compliance in the industry
- increase FWO's visible presence in the selected areas

Stakeholder involvement

Both the Australian Hotels Association (AHA) and the Liquor Hospitality & Miscellaneous Union (LHMU) (now United Voice) were advised in writing of the campaign and asked to provide feedback on the campaign.

Methodology

During the planning stage we asked the AHA and LHMU to provide any intelligence they had which would have any relevance to the campaign. FWIs were also asked to nominate any hotel and restaurant employers in the region they had prior dealings with and which they thought should be followed up as part of this campaign.

This intelligence was supplemented by selecting further employers from the White Pages. In May 2010 we wrote to the selected employers advising them of the audit and requested they return time and wage records for assessment.

Where records were returned, we reviewed the records to assess compliance with record and pay slip requirements, minimum wage rates and week end and evening penalty rates. Where contraventions were identified we notified the employer and assisted the employer to rectify the contravention(s) voluntarily.

We visited those employers who did not return records and formally requested documents from the employers by serving a statutory notice. In addition, we visited a number of employers by request, or because, in the opinion of the investigating FWI, the matter could be better investigated and resolved by way of a face to face meeting.

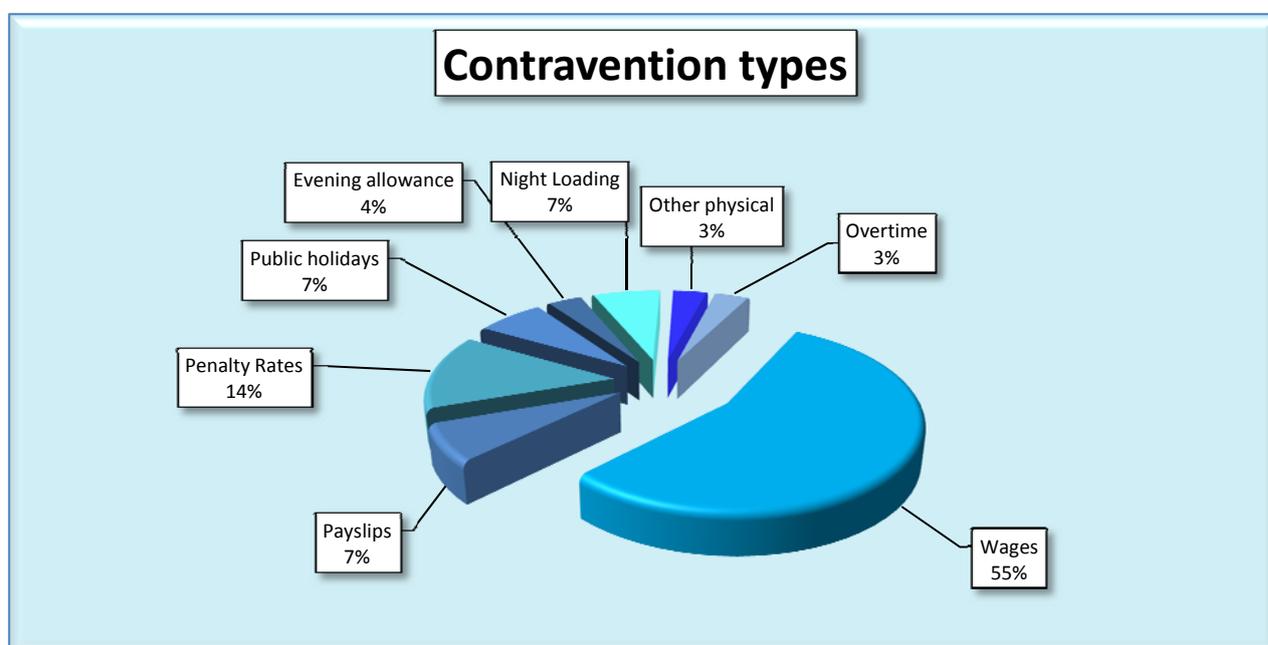
Results

As at 17 June 2011, when the results of this campaign were compiled, we had commenced 35 audits. We have completed 34 of these audits and are continuing to investigate one employer.

Of the 34 audits completed we found 12 employers to be compliant and 22 employers to be in contravention. We have recovered \$120,182 for 119 employees.

Results of Audits – Mornington Peninsula Hotels and Restaurant Campaign	
Audits finalised	34
<ul style="list-style-type: none"> Employers compliant 	12 (35%)
<ul style="list-style-type: none"> Employers in contravention (voluntary compliance) 	22 (65%)
Ongoing investigations	1
Total amount recovered	
	\$120,182
Number of employees paid	
	119

The 22 non compliant employers had a total of 29 contraventions between them. The contraventions are summarised in the chart below;



Other findings

The results of this campaign indicate a high level of non-compliance amongst the targeted group, confirming the intelligence which had initially informed the campaign. The findings are also consistent with previous compliance activities in the hospitality industry.

As shown in the chart above, the monetary contraventions significantly outweigh payslip contraventions. The majority of the 29 contraventions identified related to the underpayment of wages and/or non payment of applicable loadings and allowances. This poor response is possibly due to the short life span of most hospitality businesses and the frequent occurrence of hospitality businesses changing hands. Other possible factors are that industry employers are not finding the time to familiarise themselves with their obligations or the fact that businesses are trying to compete in a highly competitive market and are trying to reduce costs where they believe they can.

Inspectors did not find sufficient evidence to determine that employers were deliberately contravening Commonwealth Industrial Laws, although this may have been suspected in some cases.

Conclusion

This is one of several campaigns with a hospitality focus conducted over the last 18 months, all of which have shown similar results. FWO will continue to revisit sectors of this industry in the future to monitor and ensure compliance in this highly competitive industry.

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