

WA Traffic Controller campaign

Final report – March 2013

A report by the Fair Work Ombudsman under the *Fair Work Act 2009*.

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About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent statutory agency, created by the *Fair Work Act 2009* (the Act) 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. We promote harmonious, productive and cooperative workplace relations and ensure compliance with Australia's workplace laws, by:

- offering people a single point of contact for them to receive accurate and timely advice and information about Australia's workplace relations system
- educating people working in Australia about their workplace rights and obligations
- monitoring compliance with, inquiring into and investigating any act or practice that may be contrary to workplace laws, awards and agreements
- litigating to enforce workplace laws and to deter people from not complying with their workplace responsibilities.

Education and compliance campaigns that focus on specific industries and/or regions are a proactive strategy we use to achieve compliance with national workplace laws. They are also effective in recovering employee entitlements, particularly when the campaign targets high-risk areas and industries that employ vulnerable workers.

This report covers the background, methodology and results of the Western Australia Traffic Controller campaign.

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

Summary

In March 2012, the Fair Work Ombudsman (FWO) commenced the WA Traffic Controller campaign (the campaign).

The campaign sought to promote and monitor compliance with the *Fair Work Act 2009* (the Act), *Fair Work Regulations 2009* (the Regulations) and the *Building and Construction General On-site Award 2010* (the Award).

During the campaign we assessed the time and wage records of 21 businesses, of which we have found 10 (48%) employers to be compliant and 11 (52%) in contravention.

To date, we have recovered \$313,343 for 372 employees.

Further information about the campaign can be found within the body of this report.

Background

The traffic control industry is responsible for the regulation of traffic flow and public safety in and around construction sites, road maintenance and special events.

In 2010 we ran an educational campaign in the Queensland traffic control industry. Following this campaign, we received information from industry associations in Western Australia relating to concerns they had about workplace practices in their state's traffic control sector. The key issues raised related to possible underpayment of penalty rates, loadings and overtime. The industry associations were particularly concerned that such practices were undermining the operation of a level playing field in what is a competitive industry.

Enquiries we received from both employees and employers in WA also reinforced concerns about rates of pay in the industry.

We decided that the campaign was an opportunity to address these issues and to ensure that employees' received their due entitlements.

Campaign aim and objectives

The aim of the campaign was to promote and assess compliance with the Act, the Regulations and the Award in the traffic management industry in WA.

The specific objectives of the campaign were to:

- engage with industry stakeholders to encourage a collaborative approach to ensuring compliance
- increase employer awareness of their obligations under Commonwealth workplace laws
- assess compliance with correct wage rates including penalties, loadings and overtime entitlements
- assess compliance with correct time and wage record-keeping and pay slip practices
- provide a public report on the findings of the campaign.

Stakeholder engagement

In February 2012 we notified the following stakeholders of the campaign and invited them to provide feedback:

- Traffic Management Association of WA
- The Civil Contractors Federation (CCF)
- The Australian Workers Union (AWU)

Each of these bodies was supportive of the campaign. The Traffic Management Association of WA promoted the campaign amongst its members.

Method

From information we received from the industry and data available through the Australian Business Register database, we selected a random sample of traffic management businesses in WA.

In March 2012 we sent the selected businesses a letter advising them of their selection for assessment. The letter included information about our website and the tools and resources available to assist employers in understanding their workplace obligations.

In the letter we requested that the employer provide us with time and wage records for a two week period. Fair Work Inspectors assessed the records against the following requirements of the Act, the Regulations and the Award:

- time and wage records and pay slips
- hourly rates, loadings and penalties
- overtime entitlements
- allowances

Those businesses compliant with their obligations were notified in writing.

Where we identified record-keeping and pay slip contraventions, we informed employers of the contraventions and provided them with information about correct record keeping practices. We then sought commitment from them that they would maintain compliant records and pay slips in the future.

Employers with apparent underpayments were advised by a Fair Work Inspector of the contraventions identified. We asked employers to review their time and wage records and calculate total underpayments owing. We also asked employers to provide evidence of having rectified the contraventions and paid affected employees any outstanding entitlements.

On completion of the assessments, we advised each employer in writing of the outcome and of the closure of the audit.

Results

Statistical findings

In March 2013 we compiled the results of this campaign. Of the 21 audits completed, we found 10 (48%) employers to be compliant, and 11 (52%) employers to be in contravention of their workplace obligations.

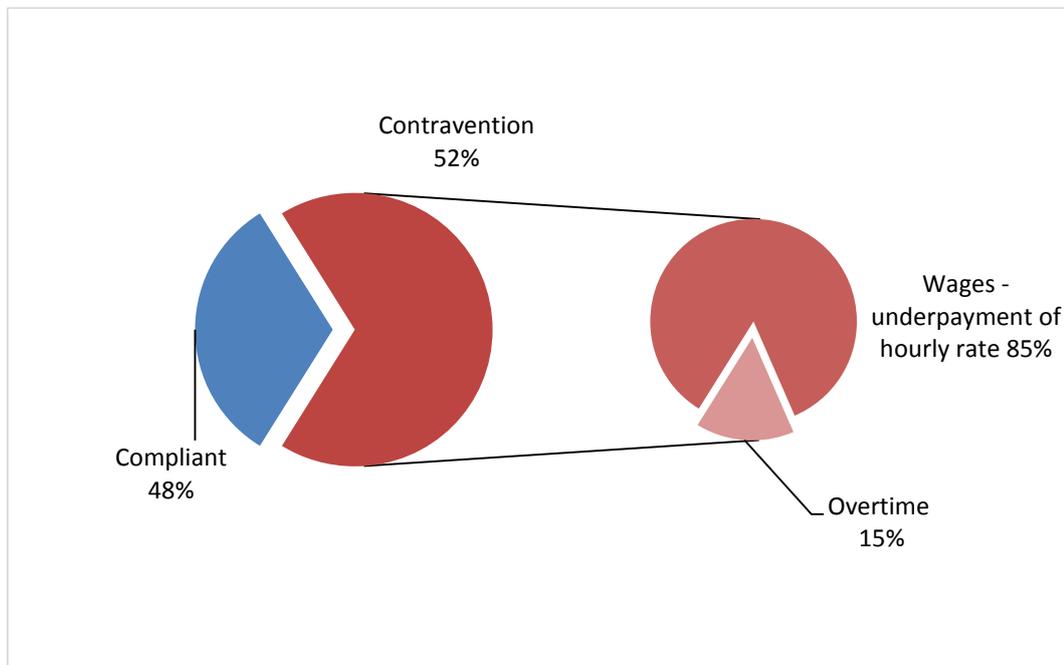
As at March 2013 we have recovered \$313,343¹ in underpayments for 372 employees.

Table 1: Campaign results	
Audits finalised	21
• <i>Employers compliant</i>	10
• <i>Employers in contravention</i>	11
Money recovered	\$313,343
Number of employees receiving payments	372

Contraventions

The 11 (52%) businesses found to be in contravention had a collective total of 13 individual contraventions. As illustrated in Chart 1, 11 (85%) of contraventions related to underpayment of hourly rates, and 2 (15%) to underpayment of overtime.

Chart 1: Audit results with individual contraventions identified



¹ One business is currently making payments under an instalment plan – the portion of monies yet to be paid has not been included.

Underpayments

Underpayments recovered from individual businesses ranged from just over \$1,700 to over \$80,000. Over half of the businesses found in contravention had underpayments exceeding \$10,000, with over a third exceeding \$50,000.

Other findings

Additionally, Fair Work Inspectors reported that:

- Most traffic controllers were employed on a casual basis.
- Most employers were not aware of the commencement of the Award and its coverage of their industry.
- Amongst businesses with contraventions, there was uncertainty surrounding application of transitional arrangements. This accounted for some of the underpayments identified.
- A lack of understanding existed in relation to the requirement of the Act that collective agreements must meet the base hourly rate of the Award.
- Paying flat rates of pay was a common practice in the industry. For some businesses, this flat rate was not sufficient to cover the overtime entitlements provided for in the Award.

We also received feedback from employers and industry bodies throughout the campaign which highlighted the competitive nature of the industry, and the pressures on employers competing for contracts based on total costs. The industry was therefore supportive of the campaign, in order to promote a level playing field amongst competitors.

Case Study

An employer selected for assessment provided records in response to our audit notification letter. They had a collective agreement which covered their employees.

We assessed their time and wage records against the collective agreement, and the base hourly rate was assessed against the transitional base hourly rate of the Award and the AWU Road Markings, Traffic Management State Award.

Our assessment identified an underpayment of the base hourly rate of pay. We advised the employer of our findings and the employer agreed to voluntarily comply with our findings and rectify all underpayments.

The employer explained that they were unaware of the requirements of s206 of the Act regarding how the Award interacted with their collective agreement.

The employer raised concerns about the rates of pay, given their current contracts were based on their collective agreement rates of pay. The Fair Work Inspector reinforced with the employer their obligation to ensure compliance with their agreement and the Act, which includes the Award transitional base rate of pay.

The employer accepted their responsibility to ensure compliance and calculated the total underpayments, committing to a payment plan arrangement totalling over \$50,000.

For the FWO, this matter demonstrates the educative role we fulfil as well as our role in ensuring compliance to help create a level playing field.

Concluding remarks

The campaign findings indicate that the reasons for the campaign were well founded.

The contravention rate of 50% was concerning, but we were pleased that employers voluntarily rectified their contraventions. This response indicated most employers audited were insufficiently aware of their obligations, rather than wilfully disregarding them.

The campaign provided an opportunity to ensure that employers are correctly informed about their obligations and are aware of the educational resources FWO has available to assist them.

Given our engagement with the industry during the campaign, we are hopeful that increased compliance will continue into the future. Subject to an evidential evaluation, we are also considering whether we should be auditing this sector in other regions of Australia.

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