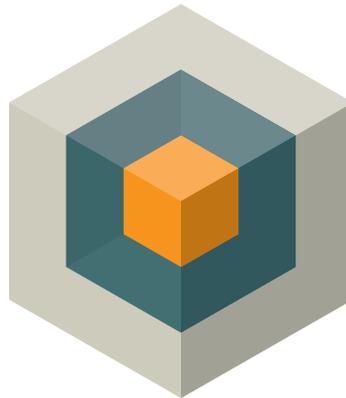




Australian Government

**Fair Work Building
& Construction**



FWBC

**National Targeted Audit:
Record Keeping, Payslip and
Base Ordinary Wage**

Final Report July 2013

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Report Summary

The National Record Keeping, Payslip and Base Ordinary Wage Audit (the Audit) was conducted between February and May 2013 to proactively assess compliance with sections 45, 50 and s 535 and 536 of the Fair Work Act 2009 (FW Act). The audit was conducted as it became evident in investigations undertaken by Fair Work Building & Construction (FWBC) that employers often failed to maintain compliant records and issue payslips.

Audit methodology was developed to facilitate an educative process with the employer by providing factual information to employers about record keeping and payslip obligations, including how to calculate the applicable base rate of pay. Fair Work Building Industry Inspectors worked with employers to help them better understand why contraventions had occurred and implement changes to avoid future non-compliance.

Four hundred and thirteen companies were audited resulting in:

- 70 monetary contraventions of workplace laws identified
- 88 non-monetary contraventions of workplace laws identified
- recovery of underpayments totalling \$241,994.61 for 407 employees
- ten ongoing audits.

Audit Objectives

The objectives of the Audit were to:

1. educate employers and employees about their workplace rights and obligations
2. assess employment records for compliance with the base ordinary rate and compliance with record keeping and payslip obligations
3. resolve identified contraventions through voluntary compliance.

Methodology

Stakeholder Engagement

In January 2013 Master Builders Australia, the Chamber of Commerce and Industry and the Construction, Mining, Forestry and Energy Union in each State and Territory were informed of the Audit and invited to provide feedback and/or input. Each association was asked to advise their members that FWBC was conducting an audit and provide relevant education as to what their members' obligations were.

The response and engagement in the Audit from stakeholders was positive. Stakeholders assisted their members through the audit process and worked with FWBC to ensure that all parties were aware of their rights and obligations.

Audit Phase

FWBC audited 413 building industry participants to assess their compliance with workplace laws.

While some companies were selected at random for auditing, FWBC also gave consideration, on a State by State basis, to other criteria in selecting business' for audit, including:

- information received from other government agencies e.g. the Department of Immigration and Citizenship and the Fair Work Ombudsman
- information gained from prior FWBC site visits from both head contractors and subcontractors regarding participation on a project
- information gained from previous investigations
- information received via the FWBC 1800 Hotline
- general research including identifying companies through the ABN Lookup website and companies previously found to be in contravention of the FW Act recorded in FWBC's internal database.

Selected employers received a letter advising them of their selection for the audit and information about the audit process. Employers were provided with a 'question and answer' document explaining how the audits would be conducted and the interaction employers could expect to have with the Agency during the campaign (see Attachment A).

The situation in Western Australia (WA) departed from the above due to the separate industrial relations jurisdictions that exist within the State. In WA companies were contacted by telephone to ascertain whether it fell within the jurisdiction of FWBC. Once this was determined a letter was sent outlining the requirements of the audit.

Charts

Snapshots of National Findings

National Record Keeping, Payslips and Ordinary Base Rates Audit
National outcomes for audits

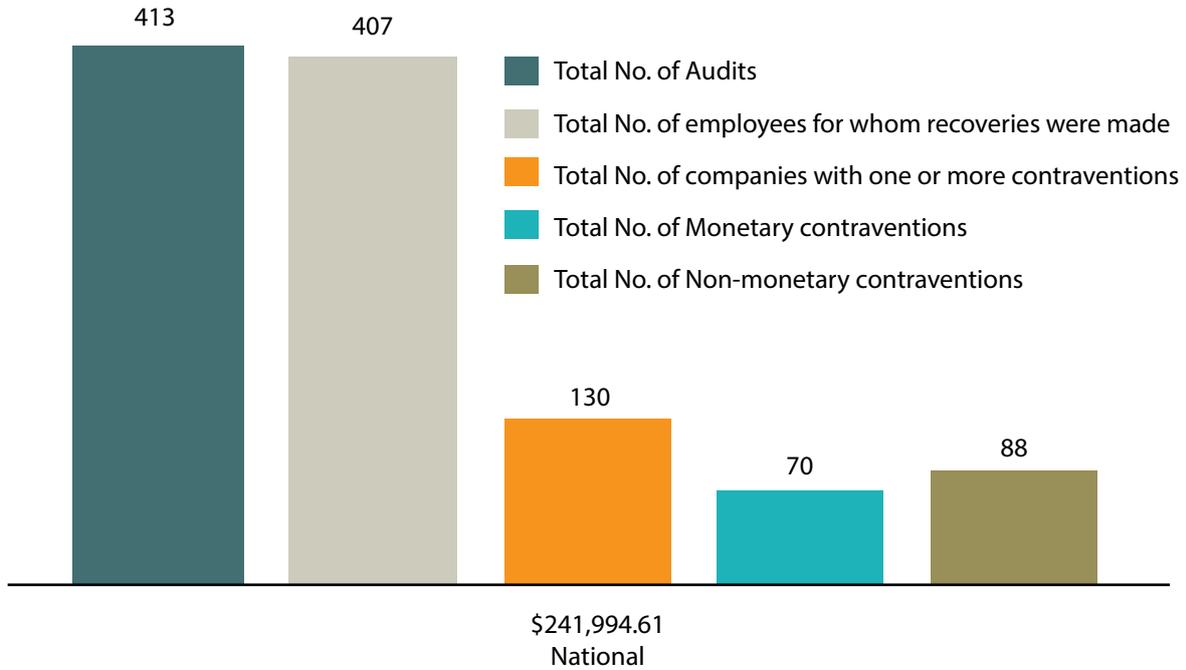


Chart 1 demonstrates the national overall findings of the Audit

National Record Keeping, Payslips and Ordinary Base Rates Audit
Outcomes for audits by State

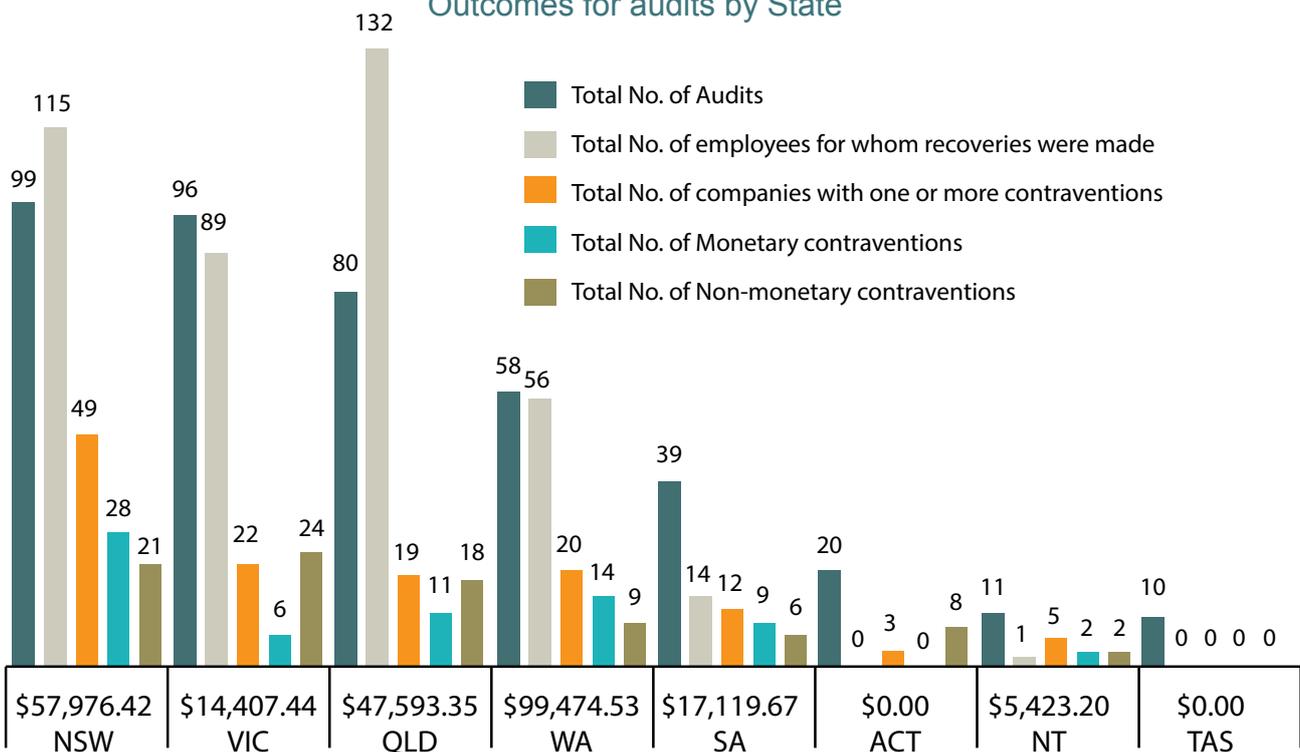


Chart 2 demonstrates the regional audit findings. This chart represents the total number of audits conducted in each state, findings of monetary and non-monetary contraventions and monies recovered for workers.

Charts

Snapshots of National Findings

Total number of contraventions per audited companies

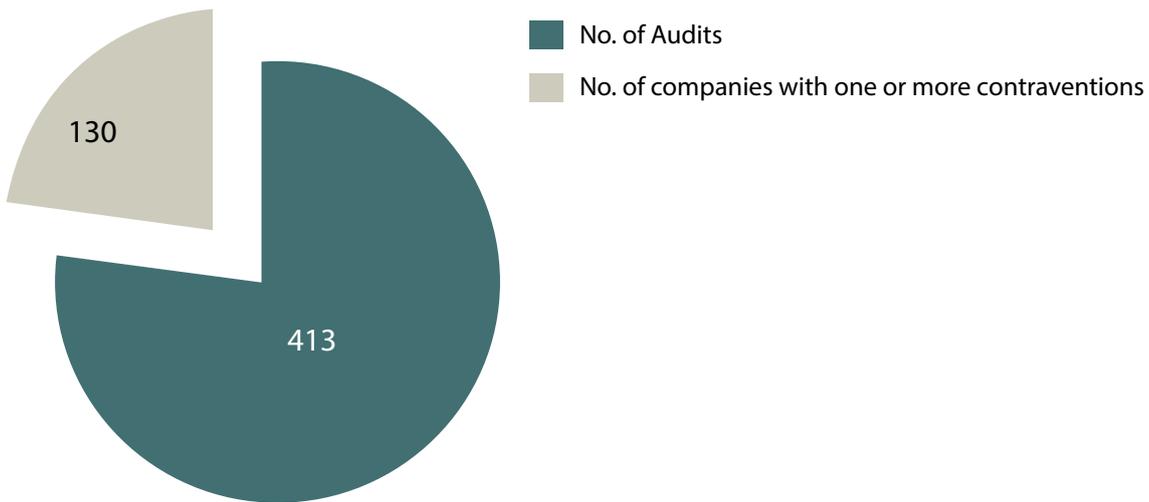


Chart 3 shows that just over 30 per cent of companies audited were found to have a monetary or non-monetary contravention of the FW Act.

Percentage of contraventions per audited companies by State

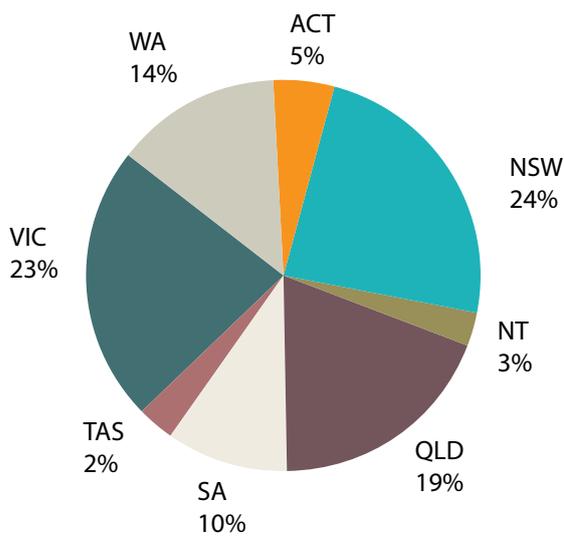


Chart 4 shows the percentage of companies audited per region that were found to have contravened one or more provisions of the FW Act.

Charts

Snapshots of National Findings

Percentage of Monetary contraventions by State

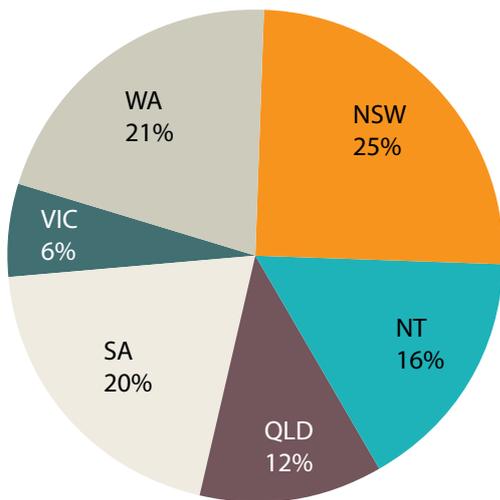


Chart 5 demonstrates the percentage of monetary contraventions identified by State

Percentage of Monies recovered by State

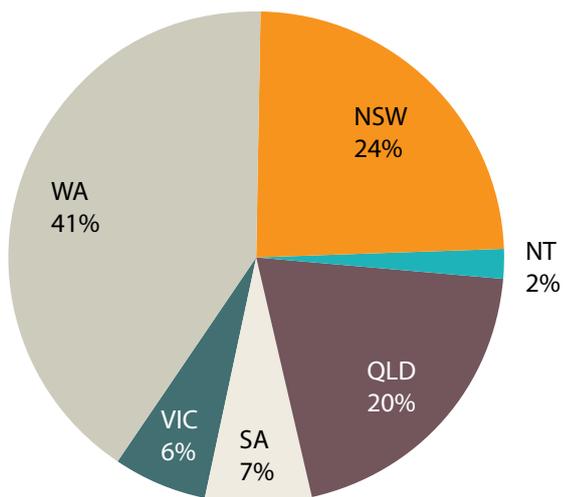


Chart 6 demonstrates the percentage of monies recovered in each State

Charts

Snapshots of National Findings

Percentage of Non-monetary contraventions by State

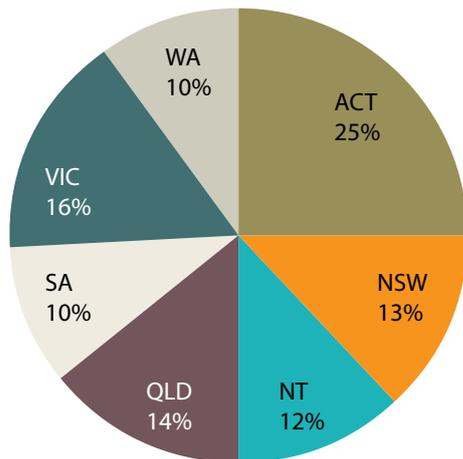


Chart 7 demonstrates the percentage of non-monetary (e.g. payslip and record keeping) contraventions identified in each State

National Record Keeping, Payslips and Ordinary Base Rate Audit
Contraventions breakdown for Sections and Regulations - Fair Work Act 2009

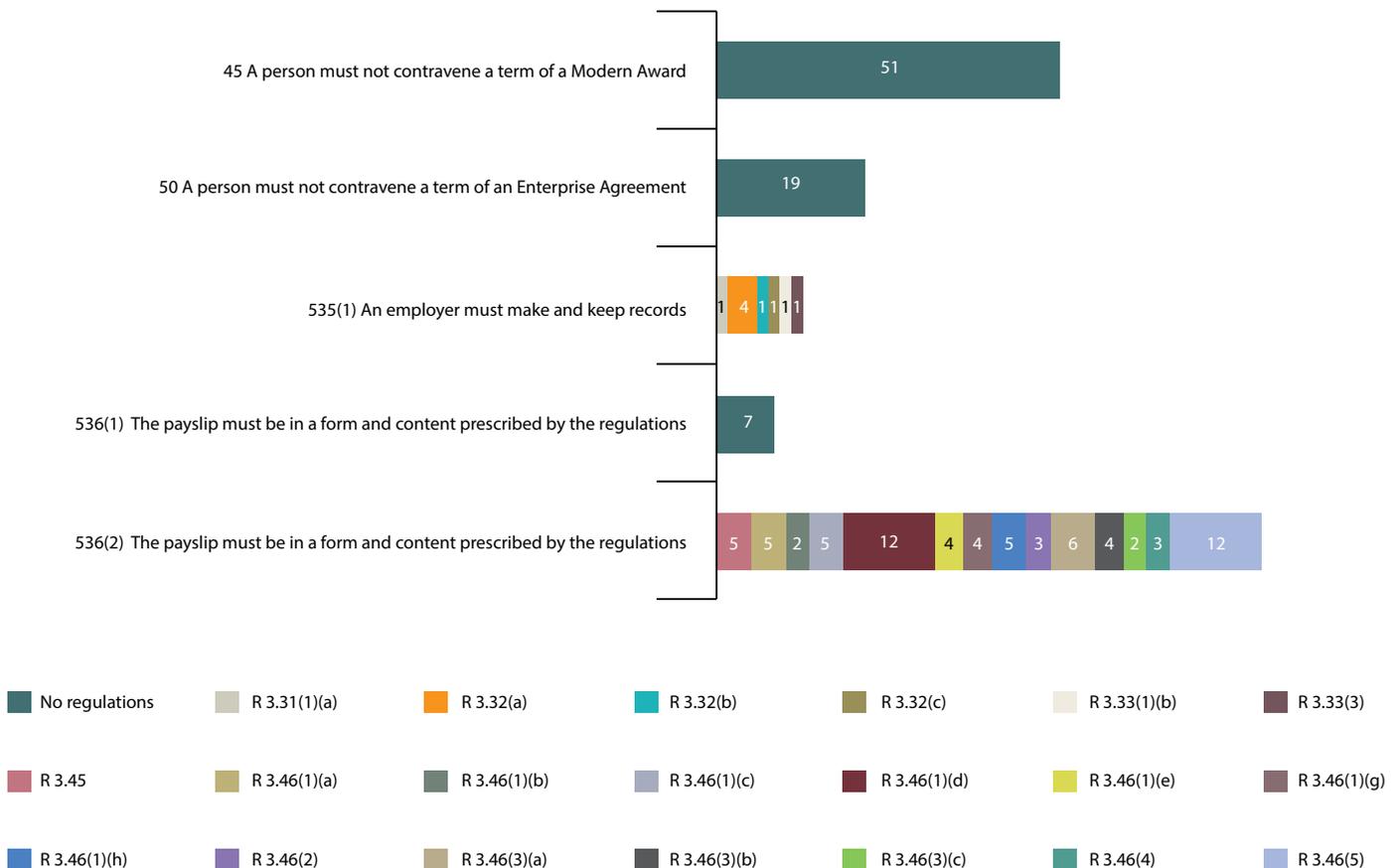


Chart 8 demonstrates what regulation was contravened resulting in a contravention of the FW Act.

Findings

Victoria and Tasmania

In Victoria (VIC), Fair Work Building Industry Inspectors conducted 96 audits and recovered \$14,407 for 89 employees.

Of the six employers found to be contravening monetary provisions of the FW Act, five related to contraventions of the employers own enterprise agreement. A further 17 employers were found to have minor record keeping or pay slip errors that were rectified after an explanation of the obligations provided by the Fair Work Regulations 2009.

In Tasmania 10 audits were conducted with no contraventions identified.

Employers generally showed a positive interest in the campaign and were happy to have their records examined for compliance, as well as have the opportunity to obtain assistance from Fair Work Building Industry Inspectors in relation to understanding their obligations.

Case study: Underpayment of wages

A VIC shop fitting company was selected for the audit and a letter was sent to the employer requesting relevant employment documentation for its employees. An audit of the company's records demonstrated that two employees were being paid less than the base rate provided by the employer's enterprise agreement.

Fair Work Building Industry Inspectors explained the findings to the employer who worked proactively with the Fair Work Building Industry Inspectors to identify the total underpayment. As a result the employer back paid the two employees \$1,382.78

Case study: Underpayment of superannuation

An anomaly was uncovered during an audit of an employer based in VIC's Bayside suburbs. The employer had mistakenly paid the employees superannuation at a rate of nine per cent, instead of the higher rate they were entitled to under their enterprise agreement.

The employer was cooperative with FWBC's audit and voluntarily back paid the unpaid superannuation resulting in \$10,289 being paid to 81 employees.

Findings

New South Wales and the Australian Capital Territory

In New South Wales (NSW) Fair Work Building Industry Fair Work Building Industry Inspectors conducted 99 audits and recovered \$57,976 for 115 workers. Twenty one audits were upgraded to investigation due to various reasons including underpayment of overtime, loading and allowances.

The Audit uncovered issues relating to interpretation of the *Building and Construction General Onsite Award 2010* and the *Joinery and Building Trades Award 2010*. Employers required assistance to understand the application of their Modern Award, in particular the individual flexibility provisions.

The Australian Capital Territory conducted 20 audits noting only three companies had minor record keeping contraventions. No monetary contraventions were found.

Case study: Underpayment of wages

A NSW commercial interior company was selected as part of the Audit. In examining the pay records of the company, it was established that an employee was incorrectly paid as the employer had incorrectly classified the worker.

Fair Work Building Industry Inspectors attended the business and explained the process of correctly determining the employees' entitlements. The employer back paid the employee \$8,073

Case study: Underpayment of travel allowance

A Sydney based earthmoving company was found to be incorrectly paying travel allowance, paying 38 cents less than what was prescribed by the Modern Award. This issue was brought to the company's attention by Fair Work Building Industry Inspectors during the on-site audit process.

The company made a decision to not only pay the amount prescribed being \$16.78 but to pay in excess of the requirement at \$20 per day. This resulted in 63 employees receiving \$34,625.

Findings

Western Australia

Fair Work Building Industry Inspectors conducted 58 audits in Western Australia (WA) and recovered \$99,474 for 56 employees.

The Audit uncovered that apprentices and junior workers were the most likely employees to be underpaid with nine out of the 14 companies having to rectify payments relating to their apprentice and junior employees. It was noted that where monetary contraventions existed, 11 out of the 14 companies related to the Modern Award as opposed to an Enterprise Agreement.

Four audits were upgraded to investigations: two due to the companies not voluntarily responding to the audit and further failing to comply with a notice requiring the production of records; and, two that required lengthy consultation to rectify identified underpayments. These investigations are ongoing.

One of the audits revealed an employer had failed to pay its employees in accordance with its Enterprise Agreement. The employer calculated that it had underpaid eight employees \$50,585. The company has provided a compliance commitment and commenced back paying affected employees by instalments.

Case study: Underpayment in relation to vulnerable employee

A WA landscaping company was selected as part of the Audit. An assessment of the base rate of pay identified a significant discrepancy with one of the company's employees receiving an hourly rate of \$15 per hour whereas all other employees were receiving between \$22 – \$30 per hour. The company advised that the employee was 16 years old and as he was new to the industry it had had decided to pay him a junior rate.

The Inspector met with the company and explained the terms of the Modern Award and noted that it did not provide for junior rates. The employer reclassified the worker as a labourer and back paid him \$5,545.

Case study: Underpayment of entitlements

In assessing the pay records of a WA painting company an adult apprentice was found to be significantly underpaid his base rate of pay. Fair Work Building Industry Inspectors attended the company's premises and provided education as to how to correctly assess the employee's entitlements.

The resulting rectification led to the employee receiving \$11,842 in back payment of wages and superannuation.

Findings

South Australia

In South Australia (SA), Fair Work Building Industry Fair Work Building Industry Inspectors conducted 39 audits and recovered \$17,119 for 14 employees.

Contraventions identified in SA included breaches of the modern award and incorrect application of wage rates. Other contraventions identified include breaches of enterprise agreements, record keeping and pay slip obligations.

The SA audits focused on a broad selection of building and construction businesses. Fair Work Building Industry Inspectors found the level of employer cooperation and willingness to correct issues was high, with most contraventions being caused by a lack of awareness of their obligations under workplace laws.

Case study: Underpayment of wages

Fair Work Building Industry Inspectors recovered \$5,905 in wages for two employees following an audit of a concreting company that had inadvertently underpaid two junior employees. One 19 year old employee was underpaid \$3.28 an hour over an eight month period resulting in a recovery of \$5,809. Another employee was underpaid a total of \$96 over a five month period.

The employer had not sought any advice from an employer association or regulator on its obligations in relation to the correct industrial instrument. FWBC advised the employer about its obligations to pay the employees under the adult rate of the Modern Award.

The company involved was cooperative throughout the audit and worked with FWBC to rectify ongoing pay rates and back paying monies owed.

Findings

Northern Territory

In the Northern Territory, Fair Work Building Industry Inspectors conducted 11 audits and recovered \$5,423 for one employee. Businesses audited include painters, concreters, electrical services, carpentry, plumbing, demolition, roofing and glazing, tilers and gyprocking companies.

Of the 11 Audits conducted, four were non-compliant (resolved with education and/or commitment to compliance), one was upgraded to an investigation and six were found to be compliant.

Case study: Incorrect base rate

One roofing company underpaid an employee \$5,423. FWBC worked with the company that had inadvertently paid the incorrect base rate. The business was educated by the Fair Work Building Industry Inspector and the company willingly rectified the underpayment and adopted the correct pay rates prescribed by the Modern Award.

Case study: Illegitimate contracting

An audit of a painting company was upgraded to an investigation of sham contracting after questions were raised as to the engagement practices of a worker. Fair Work Building Industry Inspectors identified that the painting company had improperly engaged a worker on an ABN as an independent contractor, when the worker should have been more appropriately classified as an employee. The evidence suggests that the engagement of workers under an ABN occurred at the insistence of the workers themselves.

The Fair Work Building Industry Inspector worked through the issues with the employer and provided education on appropriate employment engagement practices and obligations. The worker was subsequently engaged as a direct employee.

Findings

Queensland

In Queensland, Fair Work Building Industry Inspectors conducted 80 audits and recovered \$47,593 for 132 employees.

Of the 19 companies identified as contravening monetary provisions of the FW Act, six were in relation to the base rate provided by the Modern Award and the remaining five related to the application of the employers own Enterprise Agreement.

An additional ten companies had non-monetary contraventions, primarily involving information missing from pay slips. All companies cooperated with FWBC and have rectified their record keeping and pay slip information to ensure future compliance with the FW Act.

Case study: Overpayment of wages

An audit conducted in the Brisbane metropolitan area identified an employer who was paying a full time employee the rate applicable for a casual employee. This came about as a result of an administrative error within the business. As a result of this classification the employee was paid \$18,997 in excess of the minimum amount prescribed in addition to receiving entitlements identical to a permanent employee e.g. annual leave and personal leave.

The company has restructured the employee's status, however, is not seeking any reimbursement from the employee.

Case study: Underpayment of wages

A Brisbane metropolitan company underpaid twelve employees a total of \$5,043 after it was determined that the company had not paid the correct meal allowance as prescribed by the Modern Award. The company worked with the Fair Work Building Industry Inspector to calculate the underpayment and has subsequently paid back the monies to the workers.

Conclusion

The findings of the Audit were consistent with investigations and audits previously undertaken by the Agency and its predecessor.

It was noted that monetary contraventions are more likely to occur in relation to the Modern Award as opposed to an enterprise agreement where the terms of employment had been specifically contemplated. Additional errors were noted in relation to calculating transitional wages. The transitional period will finish in 2014 meaning this issue should resolve itself in time.

Employers generally were found to have a good understanding of their obligations in relation to record keeping. The Fair Work Regulations 2009 prescribe the form and content of records. Where contraventions were identified it was typically due to a technicality such as failing to record superannuation or the date the payment pertains to, rather than a failure to make payment or issue a payslip.

Where contraventions occurred, FWBC found they were primarily attributable to an employer's lack of knowledge about their obligations, or mistaken application of an award or agreement.

Once assisted and given information, all employers cooperated and rectified the breaches, including changing processes to become compliant.

In the matters in WA where the employer failed to comply with the s712 notice requiring the production of records, the records were provided once the matter had been upgraded to a formal investigation. As the records demonstrated no contraventions of the FW Act, it was decided that it was not in the public interest to pursue the contravention for failing to provide records. The employer was advised of their obligation under the FW Act and cautioned regarding future non-compliance.

FWBC found the collaboration with employer associations was invaluable in disseminating information about the audits to their members and in identifying particular issues of concern. There was a very positive response from employer associations to the Audit. FWBC found they were willing to assist the process and it was clear their professional advice to members assisted their compliance with workplace laws.

The results of this Audit indicate a good level of compliance among employers involved in all states and territories. While the findings do not indicate widespread non-compliance with workplace laws, it is evident that more education is needed as most of the contraventions and underpayments arose from genuine mistakes or ignorance of requirements and obligations under workplace laws.