



Fair Work
OMBUDSMAN

NSW/QLD/VIC Horse racing industry audit program 2013

Final report – December 2013

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Performance snapshot

Total of

86

businesses audited

Found

40%

employers non-compliant

More than

\$39k

recovered on behalf of
employees

Total of

61

employees back-paid

NSW/QLD/Vic horse racing industry audit program 2013

Summary

The Fair Work Ombudsman (FWO) conducted an audit program in the horse racing industry in Queensland, New South Wales and Victoria.

We initiated the NSW/QLD/VIC Horse racing industry audit program (the program) in response to information we received alleging underpayments of strappers and stable hands in the horse racing industry.

Our complaint data for the 2010/11 and 2011/12 financial years also showed that we had received almost 90 complaints from the horse racing industry. The majority (84%) were received from the eastern states.

In conducting the program, we selected 86 horse racing trainers for assessment. We found 34 (40%) employers in contravention and 52 (60%) compliant.

We recovered \$39 502 for 61 employees.

Purpose of the audit program

The aim of the program was to determine the level of compliance with the *Fair Work Act 2009* (the Act), the *Fair Work Regulations* (the Regulations), and the *Horse and Greyhound Training Award 2010* (the Award) in New South Wales (NSW), Queensland (QLD) and Victoria (VIC).

The program was designed as a pilot program to determine if further activity in the industry was required. In planning the program, we specifically focused on employers employing

strappers and stable hands, given the allegations and complaints received.

In particular, we wanted to:

- test the level of compliance in the horse racing industry
- inform employers about their workplace obligations
- promote our self-help tools available at fairwork.gov.au among employers
- assess compliance with record keeping and pay slip obligations, and
- assess compliance with correct rates of pay.

Our industry partners

We contacted the following stakeholders to inform them of the campaign and seek their support in promoting the campaign amongst their members:

- Racing NSW
- Racing Queensland
- Racing Victoria
- Australian Trainers Association
- Australian Workers Union.

Why did we target this industry

We conducted the program after we had received intelligence concerning possible underpayments of strappers and stable hands in the horse racing industry.

When we analysed our complaints data from 2010/11 and 2011/12 we found that 89 complaints were received from the horse racing

industry. The majority of those complaints were received from the eastern states:

- VIC – 35
- NSW – 21
- QLD – 19.

The rates of contraventions related to underpayments recorded for these three states were:

- NSW – 65%
- VIC – 49%
- QLD – 39%.

What did we do?

We randomly selected trainers from those who had attended particular race meets across the three states during February and March 2013.

We wrote to the selected employers and requested time and wage records for a two week period, which included the selected race meeting.

Fair Work Inspectors then assessed the records to determine whether the employer was compliant with the following obligations:

- pay slips
- record keeping
- hourly rates of pay, penalty rates and loadings.

Where we identified record keeping and pay slip contraventions, we explained our findings to the employer and provided them with information about correct record keeping practices. We also required them to agree in writing that they would maintain compliant records in the future.

In cases where we found underpayments, we discussed our findings with the employer and explained the action required of them to rectify their contraventions. We also confirmed our findings in writing.

Where necessary we assisted the employer to calculate underpayments. Finally, we confirmed that all underpayments had been paid to affected employees.

In conducting assessments we took the opportunity to answer employers' questions and offer further information regarding their obligations. Importantly, this presented the opportunity to inform employers of our online resources to assist them into the future.

What did we find?

We analysed the results of the program in October 2013. Of the 86 audits completed:

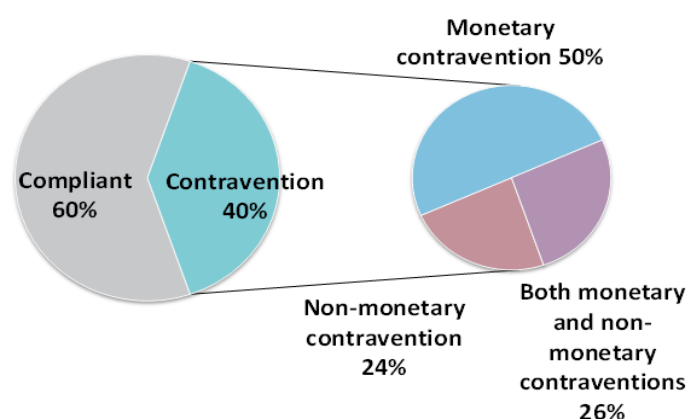
- 52 (60%) of businesses were compliant
- 34 (40%) of businesses were in contravention.

We had recovered \$39 502 for 61 employees.

As shown in Chart 1, of the 34 businesses we found in contravention:

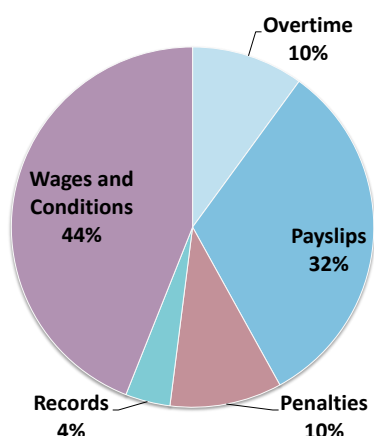
- 17 (50%) had monetary contraventions (for example had underpaid staff)
- 8 (24%) had non-monetary contraventions (for example record keeping and pay slip contraventions)
- 9 (26%) had both monetary and non-monetary contraventions.

Chart 1 - Audit results



The 34 businesses we found in contravention had a total of 50 separate contraventions. Chart 2 shows the types of contraventions, with wages and conditions accounting for 44%.

Chart 2 - Types of contraventions



We recovered a total of \$39 502 from 15 businesses on behalf of 61 employees. The amounts recovered from individual businesses ranged from \$40 to over \$15 000, as shown in Chart 3.

Chart 3 - Amounts recovered

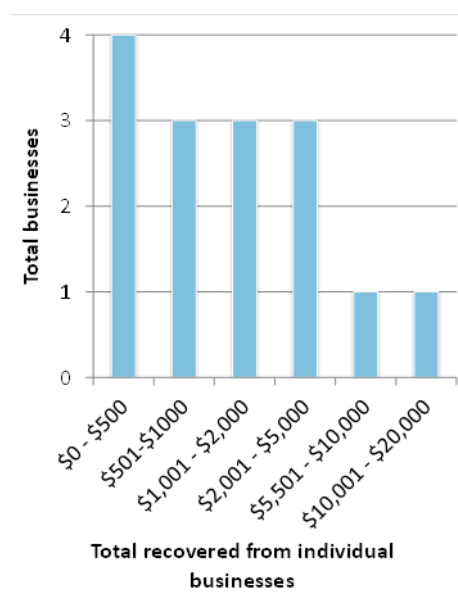


Chart 4 shows the compliance rate by state. New South Wales had the best compliance rate (86%) and Victoria had the poorest compliance rate (31%). In Queensland the compliance rate was 76%.

Chart 4 – Results by state

State Results

State (total audits)	Compliant	Both	Monetary	Non-Monetary
NSW (29)	86%	0%	14%	0%
QLD (21)	76%	0%	14%	10%
VIC (36)	31%	25%	28%	16%

NSW Audit Results	
Number of audits completed	29
• Employers compliant	25 (86%)
• Employers in contravention	4 (14%)
Total amount recovered	\$ 17,038.73
Number of employees paid	10

QLD Audit Results	
Number of audits completed	21
• Employers compliant	16 (76%)
• Employers in contravention	5 (24%)
Total amount recovered	\$ 3,049.75
Number of employees paid	4

VIC Audit Results	
Number of audits completed	36
• Employers compliant	11 (31%)
• Employers in contravention	25 (69%)
Total amount recovered	\$ 19,414.41
Number of employees paid	47

The higher contravention rate in Victoria was mainly due to a failure of a number of Victorian trainers to pay the minimum 3 hour engagement for casual employees. Trainers in New South Wales and Queensland were more compliant with payment of the minimum 3 hour engagement for casuals.

Other findings

Some additional observations reported by the Fair Work Inspectors who conducted the assessments included:

- employers paying 'flat rates' or 'industry rates' which were below the award rate
- employers not paying casual employees for the minimum daily engagement of 3 hours

- employers not keeping up to date with current rates and therefore paying incorrect, out-of-date rates .

Case study – minimum casual engagement

Adam is a horse trainer in Victoria, who we selected for an assessment. When we assessed the time and wage records for Adam's employees, we found that a number of casual stable hands were being engaged for periods of less than 3 hours.

In some cases, the casual stable hands were working for periods of 1.75 hours and only being paid for that time. The Award prescribes that casual employees must be paid for a minimum period of 3 hours per engagement and not more than one engagement per day.

We discussed our findings with Adam. He was not aware that there was a minimum period of engagement for casual employees. To ensure that Adam was familiar with his obligations, we demonstrated our suite of website tools to him, in particular, how to access the Award.

Lastly, we assisted Adam in calculating the amounts owing to affected employees. As a result, Adam paid back a total of \$1985 to eight employees.

*Not his actual name

Case study – underpaying casual rates

Anne* is the owner manager of a business selected for an assessment. When we assessed Anne's records, we found she was paying all her casual stable hands a flat rate of \$20 per hour. This was for all hours worked including work on a Sunday.

The rate of pay prescribed in the Award for casual stable hands was \$20.53 prior to 1 July 2013 and \$21.06 after 1 July 2013. Sunday work also attracts a penalty rate.

We discussed our findings with Ann. She advised that she was not aware of the correct rates for casual employees or that she needed to pay penalty rates for weekends. Anne believed the rate of \$20 per hour was enough to cover casual stable hands for all the hours they worked.

We showed Anne how to use the FWO online resources to calculate rates of pay for all of her staff. We also assisted her to calculate the amounts of back-pay owing to her employees.

As a result Anne paid back a total of \$15 874 to eight of her employees.

*Not her actual name

Concluding remarks

The results of the program reveal there are issues of concern in some areas of the industry. The contravention rate in Victoria is of particular concern. We were disappointed to find both a high rate of contraventions and underpayments.

However we were encouraged by the positive response shown by employers to our activity. Employers were open to our guidance and when our findings were brought to their attention they voluntarily rectified all contraventions. We are therefore hopeful that our intervention will result in increased compliance in the future.

As the program was designed to test allegations received and to gauge compliance rates, we will consider further education and compliance activity in the industry, particularly in Victoria.

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 that 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/Qld/Vic Horse racing industry audit program 2013.

For further information and media enquiries please contact media@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 2013

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