

# National Human Services Campaign September 2008

## Executive Summary

This report provides a summary of the National Human Services Campaign, the compliance audit phase of which was conducted by the Workplace Ombudsman between April and July 2008. Prior to the audit phase commencing, the Workplace Ombudsman wrote to 95 stakeholders informing them of the campaign and this resulted in 15 stakeholders being provided with articles and relevant web links for posting on their website, and inclusion in their newsletters, as well as 10 face to face meetings providing the opportunity for sharing valuable information.

In March over 3,800 educative letters were sent to employers in the aged care sector in New South Wales, Australian Capital Territory, Victoria, Tasmania and South Australia and employers in the child care sector in Western Australia, Queensland and the Northern Territory. The aim of this communication was not only to inform about the campaign but to provide the time and information to assist employers to comply with the Workplace Relations Act 1996.

During the campaign period the Workplace Ombudsman's National Human Services Campaign webpage was viewed 412 times.

Between April and July 2008, 492 compliance audits were undertaken Australia wide, 179 in the aged care sector and 313 in the child care sector. Of the 429 audits finalised at the time of writing this report, a total of 135 breaches had been identified, relating to rates of pay, time and wage records, non-remunerated hours, payslips, agreement making and other miscellaneous reasons.

In the aged care sector there were 100 (68%) employers found to be compliant in terms of the parameters of the audit and 31 (21%) found to be in breach. In the child care sector there were 210 (75%) employers found to be compliant in terms of the parameters of the audit and 45 (16%) found to be in breach. The remaining 11% (aged care) and 9% (child care) were not suitable for audit for such reasons as no longer trading or having no employees etc.

A total of \$155,316.00 is due to be recovered for more than 600 workers as a result of this campaign, \$114,209.00 in the aged care sector for approximately 480 employees and \$41,107.00 in the child care sector for approximately 120 employees.

## Background

A range of factors led the Workplace Ombudsman to embark on a national campaign in the human services industries incorporating aged care and child care. Notably, an analysis of the number of claims received by the Workplace Ombudsman between March 2006 and October 2007 by the Australia New Zealand Industry Code (ANZIC) showed that Health and Community Services (which incorporates Child Care, Aged Care and Nursing Homes) rated 11th out of all industry sectors. A further analysis by the ANZIC industry activity level showed that Child Care rated 14th for the number of Claims received.

Furthermore, it was recognised that these industry sectors have a significant number of vulnerable workers for example, employees on traineeships and apprenticeships; hence this campaign met the Workplace Ombudsman's focus on compliance audit programs that targeted vulnerable workers.

## Campaign Aim and Objectives

The aim of the national campaign was to improve compliance with the Workplace Relations Act 1996, in relevant sectors of the human services industries with the focus on:

- Aged Care in New South Wales (NSW), Australian Capital Territory (ACT), Victoria (VIC), Tasmania (TAS) and South Australia (SA).
- Child Care in Western Australia (WA), Northern Territory (NT) and Queensland (QLD).

The specific objectives of the campaign were to:

1. Engage with relevant stakeholders in relation to the campaign.
2. Provide information to the relevant industry sector in each state to assist employers to meet their obligations under federal legislation and to promote the role of the Workplace Ombudsman.
3. To audit the level of compliance with a targeted number of employers in relation to minimum wages and entitlements.
4. To ensure the targeted employers comply with their minimum wage and entitlements obligations.
5. To provide a public report on the findings of the campaign.

### **Stakeholder Involvement**

A range of stakeholders were contacted by letter prior to the start of the campaign including:

- relevant federal and state industry associations;
- relevant federal and state employee associations;
- Federal and State Ministers with aged care and child care portfolios; and
- State jurisdictions.

The letter provided information about the campaign and employer and employee associations were invited to circulate information to their members.

Written responses to the stakeholder letter were received from 10 organisations and meetings were arranged with representatives from the New South Wales, Victorian, Tasmanian and South Australian branches of the Aged and Community Services Association (ACSA) and the Aged Care Association Australia (ACCA), both of which are part of the National Aged Care Industry Council. These associations showed considerable interest in the campaign and a willingness to share information with their members prior to the campaign, and to provide feedback to their members on the results of the campaign.

The Victorian and New South Wales branches of the Australian Nursing Federation (ANF) responded to our letter and a meeting was held with the national branch who were willing to share valuable information about the aged care sector. The Tasmanian office met with their local branch of the ANF as well as the Nursing Board of Tasmania and the Health and Community Services Union. The Campaign Coordinator in Victoria addressed the Service Industry Advisory Group (SIAG) Aged Care Forum in regard to this campaign.

Child Care Associations Australia (CCAA) also responded to our letter and circulated information to their members and the State Director of Queensland met with Employer Services Childcare Queensland.

To further promote and raise awareness of the Workplace Ombudsman's national campaign

additional promotional opportunities were sought to assist in reaching the target audience by contacting up to 15 key stakeholders by phone and providing them with articles and relevant web links for consideration, for posting on their website and inclusion in their newsletters.

The following table provides an overview of stakeholder engagement

<b>Stakeholder Engagement</b>	<b>Total</b>
Sent a letter	95
Responded to stakeholder letter in writing	10
Meeting held	10
Provided with further information as promotional opportunity	15

### **Education Phase**

Employers in the aged care sector in NSW, ACT, VIC, TAS, SA and the child care sector in WA, NT, and QLD, who were identified to be under the Workplace Ombudsman's jurisdiction, were sent a letter outlining the details of the campaign, how to obtain further information on complying with federal workplace relations law if required, and either an information pack or web information to access the Workplace Ombudsman fact sheets including; 'Role of the Workplace Ombudsman' 'Time and Wages Records', 'Payslips' 'Independent Contractors' 'Workplace Rights and Rules' and 'Young Workers'.

During the campaign period the Workplace Ombudsman's National Human Services Campaign webpage was viewed 412 times.

### **Audit Phase**

Each state identified a random selection of employers to target for a compliance audit. The selected employers were informed of this fact in writing with a request for time and wage records and other particular information for a specified two week period including a public holiday. To assist selected employers with this request they were provided with an Entity Information Form to complete. Workplace Inspectors then assessed the information received against the relevant industrial instrument (see Appendix 1). If the employer was found to be non-compliant the Workplace Inspector would undertake further investigation as appropriate. This could include interviewing the employer and witnesses, undertaking calculations and in most cases included negotiating voluntary compliance.

Where non compliance was confirmed a Breach Notice was issued. It is the practice of the Workplace Ombudsman that in the event that the Breach Notice and a following Final Notice fails to resolve the matter, the case and evidence would be considered in light of the Workplace Ombudsman' Litigation Policy, and if considered suitable a prosecution brief would be prepared. At the time of writing this report no cases were being considered for litigation.

### **Results**

Over 1,700 information packs were distributed to employers in the aged care sector in NSW, ACT, VIC, TAS and SA and employers in the child care sector in WA, QLD NT. Over 2,100 additional letters were sent out in a supplementary mail out in the child care/aged care industry when it was found that the original database was not comprehensive.

During the compliance audit period, April to July 2008, 492 compliance audits were undertaken Australia wide, 179 in the aged care sector and 313 in the child care sector. The breakdown by state and sector is detailed in the table below.

### **Number of Audits Undertaken**

	<b>ACT</b>	<b>NSW</b>	<b>QLD</b>	<b>SA</b>	<b>NT</b>	<b>TAS</b>	<b>VIC</b>	<b>WA</b>	<b>Total</b>
Aged Care	15	78		25		19	42		179
Child Care			278		1			34	313
<b>Total</b>	<b>15</b>	<b>78</b>	<b>278</b>			<b>19</b>	<b>42</b>	<b>34</b>	<b>492</b>

### Status of Audits

At 15 August 2008 when the results of the campaign were compiled:

- 429 of the 492 audits (87%) had been finalised. Of these 43 of the 429 (10%) had resulted in a quick outcome for such reasons as finding that the employer did not fall under the Workplace Ombudsman's jurisdiction, the enterprise having no employees, the inspector not being able to contact the employer or the enterprise no longer trading.
- 63 of the 492 audits (13%) remained outstanding due to ongoing investigations.

The following tables provide an overview of the status of audits by state as at 15 August 2008.

### **Number of Audits Finalised**

<b>No. finalised campaigns</b>	<b>ACT</b>	<b>NSW</b>	<b>QLD</b>	<b>SA</b>	<b>NT</b>	<b>TAS</b>	<b>VIC</b>	<b>WA</b>	<b>Total</b>
Aged Care	15	67		21		15	30	148	
Child Care			249		1			31	281
<b>Total</b>									<b>429 (87%)</b>

### **Number of Outstanding Audits**

	<b>ACT</b>	<b>NSW</b>	<b>QLD</b>	<b>SA</b>	<b>NT</b>	<b>TAS</b>	<b>VIC</b>	<b>WA</b>	<b>Total</b>
Aged Care		11		4		4	12	31	
Child Care			29		0			33	32
<b>Total</b>									<b>63 (13%)</b>

### **Findings of Audits**

Of the 429 finalised audits a total of 135 breaches were identified, relating to rates of pay, time and wage records, non-remunerated hours, payslips, agreement making and other miscellaneous reasons.

In the aged care sector there were 100 (68%) employers found to be compliant in terms of the parameters of the audit and 31 (21%) found to be in breach. The following table provides an overview of the outcome of audits by state in the aged care sector.

<b>Aged Care</b>						
	<b>ACT</b>	<b>NSW</b>	<b>SA</b>	<b>TAS</b>	<b>VIC</b>	<b>Total</b>

Breach not identified or not sustained	12	45	15	11	17	<b>100(68%)</b>
No employees/no longer trading /not in the parameters of the campaign etc	0	12	1	1	3	<b>17 (11%)</b>
Breach Identified	3	10	5	3	10	<b>31 (21%)</b>
• Sustained - no further action	2	0	1	0	0	3
• Sustained - resolved - Voluntary Compliance	1	10	4	3	10	29
<b>Total</b>	<b>15</b>	<b>67</b>	<b>21</b>	<b>15</b>	<b>30</b>	<b>148</b>

In the child care sector there were 210 (75%) employers found to be compliant in terms of the parameters of the audit and 45 (16%) found to be in breach. The following table provides an overview of the outcome of audits by state in the child care sector.

<b>Child Care</b>				
	<b>QLD</b>	<b>WA</b>	<b>NT</b>	<b>Total</b>
No Identified Breach	203	6	1	<b>210 (75%)</b>
No employees/no longer trading /not in the parameters of the campaign etc	20	6		<b>26 (9%)</b>
Breach Identified	26	19		<b>45 (16%)</b>
• Sustained - no further action	3	0		6
• Sustained - resolved - Voluntary Compliance	23	19		71
<b>Total</b>	<b>249</b>	<b>31</b>	<b>1</b>	<b>281</b>

### **Money Recovered**

A total of \$155,316.00 is due to be recovered for more than 600 workers as a result of this campaign, \$114,209.00 in the aged care sector for approximately 480 employees and \$41,107.00 in the child care sector for approximately 120 employees. The breakdown by state is detailed in the table below. It is anticipated that further money will be recovered as a result of ongoing investigations however, it is difficult to estimate how much this is likely to be at this point in time.

<b>Money Recovered</b>	<b>Aged Care</b>	<b>Child Care</b>
<b>State</b>	<b>\$</b>	<b>\$</b>
NSW/ACT	\$25,482.00	
VIC	\$63,638.00	
TAS	\$18,068.00	
SA	\$7,021.00	

<b>Sub total</b>	<b>\$114,209.00</b>	
WA		\$34,440.00
NT		\$0
QLD		\$6,667.00
<b>Sub total</b>		<b>\$41,107.00</b>
<b>TOTAL</b>		<b>\$155,316.00</b>

### ***Vulnerable Workers***

One of the reasons why the aged care and child care industries were selected for audit was the understanding that they employ a high percentage of workers that the Workplace Ombudsman would classify as vulnerable. This proved to be the case with women being the predominant workers in the aged care industry and women and young workers being predominant in the child care industries.

### **Issues – Aged care**

#### ***South Australia***

In South Australia 28 % of employers audited were found to be compliant and those that were found to be in breach were generally in breach of Regulation 19 – *Records relating to employees and payslips*. For example, 50% of employers failed to maintain a record of employment status that is casual or full-time and when a casual was converted to a full-time position, 33% were found not to be maintaining accurate superannuation records as required in Regulation 19.8.

Also, a significant number of employers (42%) were found to be recording leave accruals inaccurately in accordance with the *Workplace Relations Act 1996*, namely that annual leave accrues every 4 weeks and not yearly as most claimed.

A small number of employers under the award (about 10%) were not ensuring the assessment of disability support provisions were made and lodged with the Australian Industrial Relations Commission.

An interpretation issue that emerged was whether penalty rates of pay under the Heath Services Employees Award/NAPSA and relevant Collective Agreements are compounding upon the casual hourly loaded rate of pay where the NAPSA and/or Collative Agreement provided that the additional penalty (for example afternoon shift or weekend work) is loaded upon the ordinary rate of pay. At the time of writing this report this issue was still being clarified.

#### ***Victoria***

In Victoria there was a small number of employers who were found to be underpaying their workers (refer to results) and most of the breaches found were only technical breaches such as missing information on payslips, for example, the name of the super fund and the award classification.

A particular issue of concern was that of sleepovers as the most common instrument caters for return to duty, call outs, etc., but does not have any sleepover provision. However, it was found that those few employers which have had sleepover arrangements in place also had remuneration arrangements which appeared more than fair when compared to on call and sleepover arrangements in other industries and instruments

## ***New South Wales***

In New South Wales the majority of aged care facilities are covered by the following Notional Agreements Preserving a State Award (NAPSA).

- Aged Care General State Award (NAPSA)
- Nursing Homes Nurses State Award (NAPSA)
- Charitable Sector, Aged and Disability Care Services State Award (NAPSA).

A number of facilities also have Australian Workplace Agreements (AWAs) and Certified Agreements.

The following provides a summary of inspector's observations.

- Casual conversion clause, requirement to notify tends to get missed.
- Introduction letters for employees have not correctly defined the full name of the NAPSA
- Some employers have failed to include the 10% loading when applying the shift penalty for casual employees.
- Non payment of overtime rates.
- Examination of some AWAs that had been offered did not clearly indicate the agreement commencement date including the nominal expiry date.
- Some employers use their own codes to define the corresponding award classification titles.

## ***Tasmania***

In Tasmania the breaches identified were relatively minor and were predominantly related to underpayment of wages due to missing the last Federal Wage rise in October 2007. These were resolved by the affected employers voluntarily.

## **Issues – Child Care**

### ***Western Australia***

The campaign has supported the rationale behind Western Australia's selection to undertake audits in the child care sectors with rates of pay and penalty rates as the breaches that were the most commonly identified issues in the industry.

The qualitative information collected highlights that the predominant findings (rates of pay) were due to a lack of understanding/knowledge of the pay scale increases that occurred in October last year. However, in some cases it was due to incorrect classification of employees based on their length of service in the child care industry and their qualifications.

Most child care centres in Western Australia are either covered by a Federal Award (specific to Western Australia only) or a Notional Agreement. These instruments are very similar in pay rates and classifications however, they have over 50 classifications and many employers appear to have difficulties with understanding what classification is relevant for each employee's circumstances.

Another common finding was that employers were not engaging their full-time employees for the required hours under the industrial instrument. Both instruments in this case required a 38 hour week to be paid however, at least 6 employers were found to be in breach of this requirement and back payments for some of these businesses are still underway.

An unusual finding was that an employer was only paying one employee the rate that the business was subsidised per hour under the Commonwealth 'Inclusion Support Subsidy'. This subsidy is a contribution towards the costs associated with including a child or children with ongoing high support needs in child care and is part of the Australian Government's Inclusion and Professional Support Program. It does not void an employer from paying an employee their appropriate minimum rate of pay payable under the Act. The employer is currently in the process of rectifying this underpayment.

In Western Australia only 6 businesses (18%) were found to be complying. This is believed to be the lowest compliance figure for a time and wage campaign in Western Australia since March 2006. However, those that were appeared to be up to date on their knowledge of their employer obligations and usually had direct dealings with an external body such as Chamber of Commerce and Industry or a union such as the LHMU.

The Workplace Ombudsman recommended to many employers to log onto the Workplace Authorities website to set themselves up with an email alert as to when there are changes to the published pay scales.

### ***Queensland***

In Queensland very few breaches were identified and those that were identified were relatively minor. Underpayment of hourly rate was the most common of the breaches with time and wages records being the second most common. The largest underpayment for a single employee was around \$1000 and there was only one instance of this high amount. Generally, underpayments were under \$200. Approximately 90% of those audited were compliant.

There was a high level of stakeholder engagement and after a representative (Gwynne Bridge) of Child Care QLD attended the QLD State office to meet with the State directors, our Deputy State directors were invited to speak at their Gold and Sunshine coast meetings which they hold regularly with their members. They were very receptive and interested in the activities we were undertaking. Gill Muir from Employer Services also attended the QLD State Office at the same time as Gwynne Bridge and was very interested in the outcome of the campaign.

The interest and involvement of the stakeholders was very positive.

### **Conclusion**

This campaign was undertaken to promote compliance with Commonwealth workplace relations legislation in industry sectors attracting a high percentage of workers that the Workplace Ombudsman would classify as vulnerable. This proved to be the case with women being the predominant workers in the aged care industry and women and young workers being predominant in the child care industries.

The educative aspect of this campaign provided an opportunity for employers to understand their obligations and information as to where they can obtain relevant information. The active involvement of key stakeholders such as ACCA, ACSA and CCAA and the ANF was invaluable in assisting in this phase.

As a result of this campaign not only have employers become more compliant, but as a direct result a total of \$155,316 .00 is due to be recovered for more than 600 workers as a result of this campaign, \$114,209.00 in the aged care and \$41,107.00 in the child care sector.

Appendix 1

National Human Services Campaign

Industrial Instruments Table

Aged Care

State	Industrial Instruments
<b>NSW</b>	<p>Aged Care General Services (State) Award 2006</p> <p>Private Hospitals Employees (State) Award</p> <p>Charitable Sector, Aged and Disability Care Services (State) Award 2003</p> <p>Aged Care General State Award (NAPSA)</p> <p>Nursing Homes Nurses State Award (NAPSA)</p> <p>Charitable Sector, Aged and Disability Care Services State Award (NAPSA).</p> <p>AFPC Standard</p>
<b>ACT</b>	<p>Nurses Private Employment (ACT) Award 1972</p> <p>Community and Aged Care Services (ACT) Award 2002</p> <p>AFPC Standard</p>
<b>VIC</b>	<p>AW778738-Disability Services Award (Victoria) 1999</p> <p>AW783872-Health and Allied Services – Private Sector – Victoria Consolidated Award 1998</p> <p>AW833755-Health and Welfare Services – Private Hospital Medical Officers – Victoria Award 2003</p> <p>AW833755-Health Services Union of Australia (Victoria – Private Sector – Medical, Scientists, Psychologists and Pharmacists) Award 2004</p> <p>AW816036-Hospital Specialists and Medical Administrators Award 2002</p> <p>AW835426-HSUA (Health Professional Services – Private Sector Victoria) Award 2004</p> <p>AW816358-Medical Practitioners Community Health Centres) Award 2002</p> <p>AW833250-Nurses (Victorian Health Services) Award 2000</p>

	<p>AW806312-Nurses (Victorian Medical Centres and Clinics) Award 2000</p> <p>AW795711- Residential and Support Services (Victoria) Award 1999</p> <p>AW796561-Social and Community Services – Victoria – Award 2000</p> <p>Please Note: Does not include registered Agreements (which there are possibly a number of).</p>
<b>TAS</b>	<p>AN170131 Nurses (Tasmanian Private Sector) NAPSA</p> <p>AN170121 Nursing Homes NAPSA</p> <p>AN170020 Community Services Award</p> <p>AN170017 Clerical &amp; Administrative Employees (Private Sector) NAPSA</p> <p>AN170067 Miscellaneous Workers NAPSA</p> <p>    _Tasmanian Aged Care Nursing Enterprise Bargaining Agreement</p>
<b>SA</b>	<p>AN150064 – Health Services Employees Award</p> <p>AN150097 – Nurses (SA) Award</p> <p>AN150146 – SA Government Health etc Ancillary Employees Award</p> <p>Individual Employers EA &amp; CA</p>

### Child Care

<b>State</b>	<b>Industrial Instruments</b>
<b>WA</b>	<p>Child care (out of school care – play leaders) award</p> <p>Child care (subsidised centres) award</p> <p>Children's services (private) award</p> <p>Children's services consent award</p>
<b>NT</b>	<p>ABC Developmental Learning Centres LHMU Multiple Business Agreement 2006</p>
<b>QLD</b>	<p>Child Care Industry Award State 2003 (NAPSA - AN140060) by common rule</p> <p>Early Childhood Education Award State 2003 (NAPSA - AN140100) by common rule and a couple of specific employers cited in Clauses 1.3.2 &amp; 1.3.3</p>

Family Day Care Services Award 1999 (Pre-reform Federal Award - AP812580) by citation

Employer agreements or individual AWAs where applicable