

National Road Transport Campaign November 2008

Executive summary

This report provides a summary of the National Road Transport Campaign, including the compliance audit phase which was conducted by the Workplace Ombudsman between August and October 2008.

Prior to the audit phase commencing, the Workplace Ombudsman wrote to 54 stakeholders informing them of the campaign. This resulted in several stakeholders circulating information to their members via their website, or newsletters. Eight face to face meetings were arranged providing the opportunity for sharing valuable information.

During late May/early June, over 9,000 educative letters were sent to employers in the road transport industry around Australia. The aim of this communication was not only to inform the target industry about the campaign, but to provide the time and information to assist employers to comply with Commonwealth workplace laws.

During the campaign period the Workplace Ombudsman's National Road Transport Campaign webpage was viewed 433 times.

Between August and October 2008, 806 enterprises were targeted for a compliance audit Australia wide, 95 in the long distance freight and 571 in short distance freight and 140 in passenger transport. However, 321 (40%) enterprises targeted could not be audited because they did not fall under the Workplace Ombudsman's jurisdiction, the enterprise had no employees, the inspector was not able to contact the employer or the enterprise was no longer trading.

Of the 362 audits undertaken and finalised 246 (68%) enterprises were found to be compliant in terms of the parameters of the audit and 114 (32%) enterprises were identified as having a total of 223 breaches.

- Of the 43 audits undertaken and finalised in the long distance freight sector there were 27 (63%) employers found to be compliant in terms of the parameters of the audit and 16 (37%) found to be in breach.
- Of the 253 audits undertaken and finalised in the short distance freight sector there were 194 (77%) employers found to be compliant in terms of the parameters of the audit and 59 (23%) found to be in breach.
- Of the 66 audits undertaken and finalised in the passenger transport sector there were 25 (38%) employers found to be compliant in terms of the parameters of the audit and 41 (62%) found to be in breach.

A total of \$74,036 is due to be recovered for more than 123 workers as a result of this campaign.

- \$13,965 in the long distance freight sector for approximately 10 employees.
- \$52,939 in the short distance freight sector for approximately 75 employees.
- \$7,125 in the passenger transport sector for approximately 38 employees.

Background

One of the key factors that led the Workplace Ombudsman to embark on a national campaign in the road transport industry was an analysis of complaints received between March 2006 and October 2007, showing that road freight transport rated 7th nationally in regard to the total number of

complaints received across 396 industry sectors¹.

A further analysis of its Claims 11 database, by individual states between March 2006 and October 2007 is detailed below in table 1.

¹ The Workplace Ombudsman claims data is categorised by Australian and New Zealand Standard Industrial Classification (ANZSIC). Division I sub-division 6.1 is 'Road Transport' and incorporates 'Road Freight Transport' and 'Road Passenger Transport'

Table 1 Industry activity type

Industry Activity type	ANZSIC	ACT	NSW	NT	QLD	SA	WA	TAS	VIC	Total	Ranks
Road freight transport	Class 6110	10	153	2	189	68	24	28	82	556	7th
Long distance bus transport	Class 6121	-	1	-	7	7	-	5	-	20	136
Short distance bus transport	Class 6122	-	5	-	29	2	-	-	3	-	175

Further, an analysis of the Workplace Authority's industry statistics from 1 July to 30 November 2007 showed that 26.47% of calls came from the 'transport, postal and warehousing' industries. This equates to 9,617 calls and the third highest industry category from which calls had been received.

Campaign aim and objectives

The aim of this campaign was to improve education and compliance with the *Workplace Relations Act 1996* and *Workplace Relations Regulations 2006* in the following road transport industry sectors:

- road freight – short distances in Western Australia, Northern Territory, Tasmania, Queensland and metropolitan New South Wales.
- road freight - long distance haulage in South Australia and regional New South Wales.
- bus transport - charter, school, tourist and public transport in Victoria and Tasmania.

The specific objectives of the campaign for the Workplace Ombudsman were to:

- engage with relevant stakeholders in relation to the campaign to identify key issues and to provide an opportunity for key stakeholders to assist with the education phase
- 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
- audit the level of compliance with a targeted number of employers in relation to minimum wages and entitlements
- ensure the targeted employers comply with their minimum wage and entitlements obligations and
- 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 and employee associations
- federal and state Ministers with road transport portfolios and
- state jurisdictions

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

Responses to the stakeholder letter were received from 12 organisations and several of these organisations circulated information to their members via their websites and bulletins.

Meetings were arranged with representatives from the Australian Road Transport Organisation, NSW Department of Commerce, Bus Association Victoria, South Australian Road Transport Association, the Transport Workers Union and via national phone conference, the Australian Services Union.

The Australian Services Union was particularly interested in our findings in regards to clerical workers within the transport industry. They maintained regular contact with the Workplace Ombudsman throughout the campaign including a further meeting with the Workplace Ombudsman's Queensland office.

The Campaign Coordinator in Victoria was an invited speaker at the BusVic Conference and Expo held in the first week of July, attracting around 1,400-1,500 registered participants. This proved to be an excellent opportunity to make contact with the industry and to understand their issues.

The following table provides an overview of stakeholder engagement.

Stakeholder engagement	Total
Sent a letter	54
Responded to stakeholder letter	12
Meeting held	8

Education phase

During late May/early June, over 9,000 educative letters were sent to employers in:

- long distance road freight in South Australia and regional New South Wales;
- short distance freight in Northern Territory, Queensland, metropolitan New South Wales, Australian Capital Territory Tasmania and Western Australia; and
- passenger transport in Victoria and Tasmania.

The aim of this communication was not only to inform the targeted industry 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 Road Transport Services Campaign webpage was viewed 433 times.

Audit phase

Following the educative mail out, 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 failed to resolve the matter, the case and evidence would be considered in light of the Workplace Ombudsman's litigation policy, and if considered suitable a prosecution brief would be prepared. At the time of writing this report one case was being considered for litigation.

Results

Between August and October 2008, 806 enterprises were targeted for an audit Australia wide, 95 in long distance freight, 567 in short distance freight and 140 in passenger transport in the relevant states.

The breakdown by state and sector is detailed in the table below.

Number of Enterprises Targeted for Audit

	SA	NSW	ACT	WA	NT	QLD	TAS	VIC	Total
Long distance freight	29	66							95
Short distance freight		106	16	29	13	368	39		571
Passenger transport		2					12	126	140
Total	29	174	16	29	13	368	51	126	806

Status of Audits

At 31 October 2008 when the results of the campaign were compiled,

- 321 (40%) enterprises targeted could not be audited as; they did not fall under the Workplace Ombudsman's jurisdiction, or the enterprise having no employees, or the inspector not being able to contact the employer or the enterprise no longer trading.
- 362 (45%) audits had been undertaken and finalised.
- 123 audits (15%) remained outstanding due to ongoing investigations.

The following tables provide an overview of the status of audits by state as at 31 October 2008.

Number of enterprises unable to be audited

	SA	NSW	ACT	WA	NT	QLD	TAS	VIC	Total
Long distance freight	7	19							26
Short distance freight		41	13	15	3	155	8		235
Passenger transport		-					4	56	60
Total	7	60	13	15	3	155	12	56	321

Number of audits finalised

	SA	NSW	ACT	WA	NT	QLD	TAS	VIC	Total
Long distance freight	10	33							43
Short distance freight		62	3	13	-	155	20		253
Passenger transport		2					5	59	66
Total	10	97	3	13	0	155	25	59	362

Number of audits outstanding

	SA	NSW	ACT	WA	NT	QLD	TAS	VIC	Total
Long distance freight	12	14							26
Short distance freight		3	-	1	10	58	11		83
Passenger transport		-					3	11	14
Total	12	17	-	1	10	58	14	11	123

Findings of audits

Of the 362 audits undertaken and finalised 246 (68%) enterprises were found to be compliant in terms of the parameters of the audit and 116 (32%) enterprises were identified as having a total of 223 breaches.

Long distance freight sector

In the long distance freight sector (in regional New South Wales and South Australia) there were 27 (63%) employers found to be compliant in terms of the parameters of the audit and 16 (37%) found to be in breach with a total number of 19 breaches. All sustained breaches were resolved through voluntary compliance.

The following table provides an overview of the outcome of audits by state in the long distance freight sector.

Long distant freight			
	NSW (regional)	SA	Total
Employers compliant (in terms of the parameters of the audit)	18	9	27 (63%)
Employers found to be in breach	15	1	16 (37%)
<ul style="list-style-type: none"> • Sustained - no further action 	1	-	1
<ul style="list-style-type: none"> • Sustained - resolved through voluntary compliance 	14	1	15
<ul style="list-style-type: none"> • Sustained – prepared for litigation 	-	-	-
Total	33	10	43

Short distance freight sector

In the short distance freight sector (Australian Capital Territory, metropolitan New South Wales, Western Australia, Northern Territory, Queensland and Tasmania) there were 194 employers found to be compliant in terms of the parameters of the audit and 59 found to be in breach with a total

number of 114 breaches. The majority of breaches were resolved by voluntary compliance with just one matter being prepared for litigation.

The following table provides an overview of the outcome of audits by state in the short distance sector.

Short distance freight							
	ACT	NSW	WA	NT	QLD	TAS	Total
Employers compliant (in terms of the parameters of the audit)	2	46	3	-	130	13	194 (77%)
Employers found to be in breach	1	16	10	-	25	7	59 (23%)
• Sustained - no further action	-	1	8	-	4	1	14
• Sustained - resolved - Voluntary Compliance	1	15	2	-	20	6	44
• Sustained – prepared for litigation	-	-	-	-	1	-	1
Total	3	62	13	-	155	20	253

Passenger transport sector

In the passenger transport sector in Victoria, Tasmania (and one in New South Wales) there were 25 employers found to be compliant in terms of the parameters of the audit and 41 found to be in breach with a total number of 90 breaches. All sustained breaches were resolved by voluntary compliance. The following table provides an overview of the outcome of audits by state in the passenger sector.

Passenger transport				
	VIC	TAS	NSW	Total
Employers compliant in terms of the parameters of the audit)	20	4	1	25 (38%)
Employers found to be in breach	39	1	1	41 (62%)
• Sustained - no further action	9	-	-	9
• Sustained - resolved - Voluntary Compliance	30	1	1	32
• Sustained – prepared for litigation	-	-	-	-
Total	59	5	2	66

Money Recovered

A total of \$74,036 is due to be recovered for more than 123 workers as a result of this campaign.

- \$13,695 in the long distance freight sector for approximately 10 employees.
- \$52,939 in the short distance freight sector for approximately 75 employees.
- \$7,132 in the passenger transport sector for approximately 38 employees.

The breakdown by state and sector is detailed in the table below.

Money recovered			
	Long distance freight	Short distance freight	Passenger transport
State	\$	\$	\$

NSW/ACT	\$13,965	\$11,959	-
VIC			\$7,132
TAS	-	\$2,509	-
SA	-		
WA		\$2,320	
NT		-	
QLD		\$36,151 *	
Sub totals	\$13,965	\$52,939	\$7,132
TOTAL			\$74,036.00

* It is anticipated that from investigations yet to be finalised a further \$60,000 will be recovered on behalf of employees.

Types of breach

Of the 220 breaches identified 158 could be analysed, the analysis shows that the top five types of breaches were as follows:

Breach	Long Distance Freight	Passenger Transport	Short Distance Freight	Total
Pay slips	1	26	26	53 (34 %)
Wages	1	7	25	33 (21%)
Annual Leave		8	2	10 (6%)
Time/Wage records		5	6	11 (6%)
Overtime	1	1	7	9 (6%)
	3	47	66	116

The majority (66%) of the analysed breaches in passenger transport were minor breaches relating to payslip and time and wage record requirements.

Issues – Long distance freight

South Australia

Specific issues identified in South Australia are as follows:

- Many long distant freight companies in South Australia were identified as being award free. Those found not to be named a respondent to the federal *Transport Workers (Long Distant Drivers) Award 2000* (as at 26 March 2006) were also identified as not being covered by the state *Transport Workers (SA) Award* because their drivers operate substantially outside of South Australia.

Note - Long distant transport operations do not fall within the scope or coverage provisions of the state award. If the majority of the driving duties are performed within the state (SA) then the state award will apply however, if the majority of the driving is performed outside of the state (SA) then the functions are deemed 'award free'.

- It was found that most employers, even those that are not a respondent the federal award, pay in accordance with the cents per kilometre (CPK) rate as listed in the Federal Award.

- Some employers that are respondent to the federal award were uncertain whether they were bound by it post the Work Choices amendments in March 2006.
- A significant number of employers, even larger employers, believe the living away from home allowance is included in the CPK rate whereas this allowance is a requirement to be paid in addition to the CPK rate.
- It was found that many employees are very transient moving between companies.
- In the main the double drivers receive wages equal to or above that specified by the industrial instrument.
- A particular concern brought to the attention of inspectors is the fact that the CPK rate has remained at 29.54c, the same rate as at 26 March 2006. This is possibly because it is seen as an allowance and not as a pay scale. It is considered that this matter needs to be addressed as it means workers on this rate are being severely disadvantaged having received no mandatory pay rise since late 2005.

Regional New South Wales

The main breaches identified in regional New South Wales include the following:

- Employers under the federal jurisdiction paying according to state award rates instead of the federal pay scales.
- Employers failing to pay allowances.
- Pay slips not complying with the legislation.

All identified breaches in regional New South Wales were voluntarily complied with.

Issues – Short distance freight

Metropolitan New South Wales and Australian Capital Territory

In metropolitan New South Wales and the Australian Capital Territory it was found that a high percentage of local couriers were found to be employed as contractors.

Of the employers audited:

- 74% were found to be compliant.
- The main breaches identified were in relation to overtime rates not being paid and pay slips not complying with the legislation.
- All identified breaches were voluntarily complied with.

Tasmania

The predominant issues identified in Tasmania are as follows:

- Employers lacking knowledge of the appropriate instrument.
- Businesses paying flat rates of pay. It was found that this rate was usually above the award rate however in instances where drivers work long hours the rate could be inadequate.
- Insufficient record keeping by the drivers. For example, not maintaining adequate timesheets and log books etc.

Most of these issues are being addressed through voluntary compliance.

Western Australia

The campaign findings in Western Australia distinctively suggest that a significant proportion of businesses, largely general couriers, only engage sub-contractors. Evidence was sought from such

businesses to confirm that the nature of the engagement was indeed a sub-contractual arrangement. From the evidence provided, it appeared that all sub-contracting arrangements were legitimate.

As a result of the above, many of the businesses selected as part of the campaign could not be audited as they were not within the Workplace Ombudsman's jurisdiction.

Audits of the remaining businesses suggest the following general patterns within the transport industry.

- Most employees are engaged on a casual basis. This could possibly be attributed to the flexibility of hours and/or lesser complexity in terms of calculating overtime and penalty rates.
- Many employees are paid well above the award/NAPSA (Notional Agreement Preserving a State Award) rate for ordinary hours worked and receive overtime and/or penalty rates. This could be attributed to environmental factors, such as shortage of labour and the difficulty in retaining employees.
- Most breaches are mainly non-monetary or minor technical breaches such as failure to provide pay slips or failure to maintain time and wage records in accordance with the regulations. In terms of time keeping, many employers were found to have failed to record when meal breaks were taken.

With regards to record keeping requirements, smaller employers tended to have poor record keeping practices and many failed to meet the requirements in relation to issuing accurate pay slips. One particular employer did not provide pay slips at all and another provided hand-written pay slips that did not have all of the necessary information, such as the name of the employee's superannuation fund and the contribution amount.

Based on the audits conducted, it would appear that smaller employers are largely unaware of which industrial instrument underpins their business and are unfamiliar with the correct terminology and classifications for their employees. For example, one business listed an employee as being full time as they work an average of 40 hours per week however, further investigation revealed that the employee was actually engaged on a 'casual' basis.

Of the four outstanding audits, two relate to non-payment of meal allowance. This is only a minor breach and in both instances, resulted from the business owner not being aware of allowance provisions of this award.

Only 27.27% of businesses audited in Western Australia were found to be compliant. Due to the small sample of audits actually conducted, this finding might not be indicative of the entire industry.

It should be noted that some of those businesses that were found to be compliant commenced business after 27 March 2006 and would not be bound by the NAPSA, and would therefore be exempt from having to pay additional loadings and penalty rates.

Northern Territory

The predominant issue identified in Northern Territory was the underpayment of the casual hourly rate for employees and penalty rates on public holidays when applicable.

It was also found that in some cases, employers were failing to provide the breakdown of the allowances on pay slips.

Queensland

Specific issues identified in Queensland are as follows.

- Underpayment of wages for cleaners and office staff in some instances.
- Employers under the federal jurisdiction paying according to state award rates instead of the NAPSA.
- Employers not observing hours of work clauses, for example, excessive hours, span of hours, weekend work, late work etc.
- Flat rates being paid which are insufficient to cover award entitlements.
- Underpayment of CPK rate.
- Non-payment of public holiday penalties that is Saturday and Sunday rates.

Most employers rectified the breaches once advised however, there are still breaches outstanding which are yet to be resolved.

Issues - Passenger transport

Victoria

Specific issues identified in Victoria are as follows.

- The audits within the passenger transport industry in Victoria found that most employees are being paid above award. This can be attributed to having an active employer association and the nature of Department of Infrastructure contracts to provide bus services.
- Although the results show that 66% of employers were found to be in breach these were mainly minor technical breaches of record keeping or pay slip requirements, for example, name of super fund not on pay slip, but contained in records. These breaches did not impair the ability of the inspector to determine if employee entitlements were met and record keeping was generally found to be of a high standard.
- The relevant award is quite complex, with different parts containing different conditions applying to different segments of the industry. For example, the minimum engagement for a tour driver is 2 hours, whereas that for a school bus driver is 3 hours. Where drivers were performing mixed duties, the tendency of employers appeared to be to apply the more generous conditions. Nevertheless, errors had occurred and breaches were found. In all cases, employers have been keen to rectify identified breaches and all have been pleasant to deal with.
- Wages and conditions were generally governed by the award and Department of Infrastructure contracts. Where collective agreements were in place, these were not comprehensive, but were limited to varying particular aspects of the award. The inspectors did not come across any AWAs at the driving or workshop level.
- Some issues were identified with payment of service grants being rolled into award payments without clear agreement or documentation. Inspectors allowed offsetting of over award payments against service grants, but advised employers and the Bus Association Victoria of the necessity for proper documentation where intention is for above award payments to incorporate service grants.

Tasmania

The audits demonstrated the passenger transport industry in Tasmania to be relatively compliant.

Conclusion

This campaign was undertaken to promote and ensure compliance with Commonwealth workplace relations in an industry from which the Workplace Ombudsman had received a significant number of complaints. The results demonstrate that this campaign has achieved positive outcomes in both providing education and achieving compliance in the road transport industry sectors. Although 32%

of employers across all road transport sectors nationally were found to be in breach, most have voluntarily complied with their breach notice as a result of this intervention.

Appendix

National Road Transport Campaign Industrial Instruments Table

Long Distant Freight

State	Industrial Instruments
ACT/NSW regional	- Transport Industry (State) Award - Transport Industry - Interstate Carriers Consolidated Contract Determination (State) - Transport Workers (Long Distance Drivers) Award 2000
SA	- AP805988CRV - Transport Workers (Long Distance Drivers) Award 2000 - Transport Workers (SA) Award

Short Distance Freight

State	Industrial Instruments
WA	- NAPSA Transport Workers' (General) Award
NT	- Transport Workers Award 1998 (Federal)
QLD	- AN140304 – Transport, Distribution and Courier Industry NAPSA (Northern and Mackay Division) - AN140305 – Transport, Distribution and Courier Industry NAPSA (Southern Division) - Transport Workers Award 1998 (Federal) - The Vehicle Industry - Repair, Services and Retail - Award 2002 (Federal) - Metal, Engineering and Associated Industries Award 1998 (Federal)
ACT/NSW metro	- Transport Industry (State) Award NAPSA
TAS	- Carriers NAPSA - Transport Workers General NAPSA

Passenger Transport

State	Industrial Instruments
VIC	Transport Workers (Passenger Vehicles) Award 2002 [Part C only]
TAS	Public Vehicles NAPSA

Broome regional audit

Introduction

Workplace Inspectors from the Broome office of the Workplace Ombudsman visited 115 businesses and audited 105 employers in the remote areas of regional Western Australia (WA), from Port Hedland and Karratha in the south to Kununurra and Wyndham in the east. The audits, conducted between March and June 2008, focused on employer compliance with Commonwealth workplace relations laws on record keeping and payslips.

Key outcomes of the campaign as at 1 November 2008 are:

- 115 businesses were targeted for a compliance audit.
- 105 businesses were audited. Ten employers were not audited because they either had no employees or were not in the Workplace Ombudsman's jurisdiction.
- 86 (82%) of the 105 businesses audited were found to have no breaches of record keeping and payslip requirements.
- 19 (18%) businesses had breaches identified which related to record keeping and payslips.

Background

The Broome office covers a vast area of Western Australia (WA), north and east of Carnarvon to the Northern Territory border. Employers in this area have limited contact with the Workplace Ombudsman so this targeted campaign was undertaken to:

- raise the profile of the Workplace Ombudsman in this region
- provide education and information to employers regarding their obligations under Commonwealth workplace relations laws.

Campaign aim and objectives

The campaign aimed to improve compliance with Commonwealth workplace relations laws in the remote areas of regional WA and specifically to:

- audit employers compliance with record keeping and payslip obligations under Commonwealth workplace laws
- provide education and information to targeted employers to assist them to meet their obligations under these laws
- increase the awareness of the Workplace Ombudsman in remote regional WA
- establish positive relationships between staff from the Broome office of the Workplace Ombudsman and employers in remote regional WA to assist future discussions in relation to complaints or the provision of information
- identify locations not previously audited by the Workplace Ombudsman.

This targeted campaign audited record keeping across all industries to maximise the number of employers visited by the Workplace Ombudsman.

Methodology

Workplace inspectors from the Broome office visited 115 employers across the region from Port Hedland and Karratha in the south to Kununurra and Wyndham in the east. Information packs were distributed to employers and time and wage records were inspected on site.

Where non compliance was identified, the issues were discussed with employers and information on obligations provided. For example, fact sheets and sample templates for timesheets and payslips were provided to assist employers comply with time and wages obligations. Employers were then required to provide a sample of the amended records to the Workplace Ombudsman within 21 days.

Where businesses did not have records on site, a letter was issued requesting records be provided to the Workplace Ombudsman within 14 days. These records were then audited as desk audits in the Broome office.

Employers visited by location

The following table lists the number of employers visited in each location.

Location	Employers
Broome	8
Dampier	1
Derby	12
Karratha	36
Kununurra	42
Port Hedland	12
Wyndham	4
TOTAL	115

Results

The following table provides an overview of the audit findings as at 11 November 2008.

Number of employers visited	115
Number of audits not undertaken (no employees, not in WO jurisdiction)	10
Number of audits undertaken	105 (100%)
Number of compliant employers	86 (82%)
Employers with minor breach/es	4 (4%)
Employers non compliant	15 (14%)

Conclusions

This campaign was successful in raising the awareness of employers in remote regional WA of their obligations under federal legislation in regards to record keeping, of the Workplace Ombudsman, and facilitating a positive working relationships between employers and staff from the Broome office.

Importantly the audit identified that many employers in the region were complying with Commonwealth workplace relations laws.