

QLD Cafe, Restaurant and Catering Campaign

Introduction

This report provides a summary of the Queensland (QLD) Café, Restaurant & Catering Industry Targeted Campaign which was conducted by the Workplace Ombudsman between December 2007 and July 2008. The focus Industrial Instrument applied to all QLD areas excluding South-East QLD, however all QLD offices and teams were involved in conducting the audits.

A total of 225 Cafes, Restaurants and Catering businesses were contacted during the initial mail out and 151 of these were targeted for an audit. At the time of writing this report 128 compliance audits were completed and 63 (42%) employers were found to be compliant.

Of the 33 suspected breaches identified 24 (73%) related to rates of pay, 5 (15%) related to record keeping and payslip requirements whilst the remaining related to loadings and penalty rates. To date, all employers notified of breaches have voluntarily complied with the Breach Notice.

A total of \$ 96,793 (with 13% of audits pending) has been recovered for 271 workers.

Background

The QLD State Director and Deputy State Directors met with a representative of the Restaurant and Caterers Association (RCA) in November 2007 as a result of an investigation into a claim in Gladstone. It was identified during this meeting that the 40 hour clause from within the Café, Restaurant and Catering NAPSA (Excluding South-East QLD) had been misinterpreted and therefore had potentially provided incorrect advice to their members.

Therefore the need for an industry wide audit was identified.

With potentially hundreds of members whose employees are covered by the Café, Restaurant and Catering NAPSA 2003 (excluding south-east QLD), it is possible that employees who are covered by this award may be currently or have previously been receiving less than they are entitled to. This is a possibility, should employers be acting on advice from the RCA regarding the effect of the 40 hour week and the minimum rates as outlined in the Australian Pay and Classification Scale derived from the NAPSA.

As the Workplace Ombudsman has an obligation to ensure that employees are receiving their correct entitlements, further investigation into the Café, Restaurant and Catering industry was warranted based on the discussions held with the representative of the RCA and the incorrect advice potentially being provided by the RCA to its many members.

The campaign was approved at all levels and commenced in December 2007.

Campaign Aim and Objectives

The proposed aim of the campaign was to improve compliance with the Workplace Relations Act 1996 in the Café, Restaurant and Catering Industry in Queensland, excluding South-East QLD and specifically:

1. To scope the size and list of employers within Workplace Ombudsman's jurisdiction

2. To conduct a first stage educative campaign providing information to those employers
3. To assess and where necessary, increase compliance with workplace laws particularly with respect to minimum wages and penalties relating to shift work or late/early work
4. To commence litigation action in cases of serious breaches and
5. To conduct a random follow-up audit to measure the effectiveness of the campaign

Stakeholder Involvement

The following stakeholders were contacted by letter (see Appendix 1) prior to the start of the campaign.

- Minister for Employment and Workplace Relations
- Members of Parliament
- Restaurant & Caterers Association (RCA)
- Liquor Hospitality and Miscellaneous Union (LHMU)
- Australian Chamber of Commerce and Industry
- Media

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

Federal Members of Parliament (MP) in the focus areas of the campaign were also contacted by letter (see Appendix 2). The general response was positive and we received two in particular from MPs who advised they were very interested in the work we were doing and requested to be informed of our outcomes.

Due to the previous Workplace Ombudsman compliance work, a relationship had been formed with QLD representatives of the RCA and they were advised personally of plans to commence a campaign in the Café, Restaurant and Catering Industry. Meetings were held with representatives from RCA in the month prior to the commencement of the campaign. QLD Director and Deputy State Directors requested the cooperation of the RCA, asking if they would provide a list of their members to enable us to include a portion in the campaign. The RCA declined to provide a list of its members.

An article containing information about the campaign was placed on the Workplace Ombudsman Internet (see Appendix 3).

Methodology

The project plan followed the standard desk based campaign format of an industry wide and stakeholder mail-out and educative phase, followed by individual employers being selected for auditing.

In the initial stages of the campaign, information packs containing a selection of Workplace Ombudsman fact sheets, Role of the Workplace Ombudsman' 'Time and Wages Records', 'Payslips' 'Hospitality Industry', and 'Young Workers' were included with the letter that was sent as part of the industry wide mail out (see Appendix 4). A total of 225 Cafes, Restaurants and Catering businesses were contacted during the initial mail out. Employers were sought via the Yellow and White pages online directories.

Employers were selected for a compliance audit from those who were on the initial mailing list. The selected employers were informed in writing (see Appendix 5) with a request for time and wage

records and other specified information for the period 4 June 2007 to 1 July 2007. This focus period was relevant to the Café, Restaurant and Catering Campaign for a number of reasons.

The pay increase of 1/12/2006 was not correctly applied and therefore a period containing those rates was selected. There was a public holiday in the period allowing checks to be performed on penalty rates. Consideration was also given to the large number of young workers and casual employees who are employed within the industry. These numbers of young workers and casual employees could have potentially increased in the month of June due to mid-year holidays from schools, universities and other educational institutions, thereby increasing the number of vulnerable workers.

To assist selected employers with the request they were provided with an Entity Information Form to complete which was attached to the Audit Letter.

Workplace Inspectors then assessed the information received for compliance against the relevant industrial instrument. If the employer was found to be non-compliant the Workplace Inspector would undertake further investigation as appropriate. This could have included interviewing the employer and witnesses, undertaking calculations and in most cases would include negotiating voluntary compliance.

Audits were largely desk based. It was necessary for inspectors to visit or inspect some sites and field work was undertaken as deemed necessary.

Where non compliance was confirmed a Breach Notice was issued. To date, all employers notified of breaches have voluntarily complied with the Breach Notice.

Results

225 information packs were distributed to Cafes, Restaurants & Catering businesses in QLD during the information stage of the campaign.

During the compliance audit period, January 2008 to May 2008, 128 compliance audits were completed in QLD as part of the Café, Restaurant & Catering Industry Targeted Campaign. The total is detailed in the table below:

State	No. audits finalised	No. audits to be completed
TOTAL	128	23

Status of Audits

At 31 July when the results of the campaign were compiled:

- 128 of the 151 audits (85%) were finalised. Of these, 35 of the 128 (19.5%) had resulted in a quick outcome for such reasons as finding that the enterprise had no employees or that the enterprise was no longer trading.
- 23 of the 151 audits (15%) remained outstanding due to ongoing investigations.

Ongoing Investigations

Although the original timeframe for the campaign has lapsed, there are a number of ongoing investigations. Some of the ongoing investigations relate to outstanding breaches which are likely to result in further monies recovered for employees. This report will be updated once the outstanding audits have been finalised.

Identified Breaches and Money Recovered

At 31 July 2008, there were a total of 33 suspected breaches identified. Of these 24 (73%) related to rates of pay, 5 (15%) related to record keeping and payslip requirements whilst the remaining 1 related to loadings and penalty rates.

A total of \$96,793 (with 15% of audits pending) was recovered for 271 workers.

From the ongoing investigations, additional breaches may be identified and further amounts recovered for employees however amounts cannot be estimated at this time.

Employer compliance was quite high with nearly double the amount of employers who were compliant as to those where breaches were identified.

Outcomes

The effectiveness of the campaign was to be measured against the aim and objectives in the following way:

Measure	Number
No. employers contacted during the initial mail out stage	225
No. compliant employers	63
No. employers not within WO jurisdiction	13
No. breaches identified	33
Monies recovered for employees	\$96,793
No. audits which result in litigation	0
No. Breach Notices issued	33
Result of a follow up audit 6 months after the campaign	

Conclusions

This campaign was undertaken due to a specific area of non-compliance identified through previous Workplace Ombudsman compliance work. The results present evidence that this campaign achieved positive outcomes in both providing education and achieving compliance in the industry.

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[Restaurants, cafes reimburse 270 staff after random audits find underpayments of \\$97,000](#)