

# United Petroleum retail fuel outlets: Summary of compliance activity outcomes

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Australian Government

Fair Work  
OMBUDSMAN



# UNITED PETROLEUM RETAIL FUEL OUTLETS COMPLIANCE ACTIVITY OUTCOMES

440 UNITED PETROLEUM OUTLETS ACROSS AUSTRALIA



## 12 BUSINESSES CHECKED



40%+ BUSINESSES  
NON-COMPLIANT



UNDERPAYMENTS  
OF \$20 550.83



ISSUES FOUND WITH AWARD  
RATES AND PENALTIES



50% OF EMPLOYEES  
VISA HOLDERS

## ENFORCEMENT ACTIONS



2

ENFORCEABLE  
UNDERTAKINGS



2

COMPLIANCE  
NOTICES



3

LETTERS OF  
CAUTION

## Background

The Fair Work Ombudsman (FWO) and its predecessor agencies have received a number of requests for assistance from United Petroleum franchise and commission agent employees.

On 3 September 2015, a media article was published containing allegations United Petroleum employees were underpaid minimum hourly rates, in some cases receiving as low as \$10 an hour. These allegations were consistent with the pattern of requests for assistance received by the FWO, and as a result, a broader compliance activity (the Activity) was undertaken to assess United Petroleum retail fuel outlets compliance with Commonwealth workplace laws.

Consistent with other significant compliance activities involving franchise networks, the Activity assessed the levels of compliance by United Petroleum, its associated entities, franchisees and commission agents.

During the Activity, United Petroleum operated a 100% franchise and commission agent model. Approximately 40 of their 440 outlets were franchised and the remainder operated as commission agents. However United Petroleum has since informed the FWO of its intention to move away from a franchise model and operate stores through commission agents, the company directly or on a supply-only basis in the future.

United Petroleum [ACN 085 779 255] is based in Abbotsford Victoria, and is an Australian owned proprietary company first registered in 1999. United Petroleum does not operate any retail fuel sites itself and does not directly enter into the franchise or commission agent agreements. That role is performed by United Petroleum Franchise [ACN 127 764 989], an associated entity also based in Abbotsford. United Petroleum Franchise is an Australian owned proprietary company first registered in 2007. Both entities have common Directors.

United Petroleum franchisees and commission agents operate under different arrangements. Franchisees receive a fixed commission payment per month that equates to a set amount of litres of fuel sold, and an additional amount per litre for additional fuel sold. On top of this, franchisees also receive a commission for all stock sold. Franchisees pay daily fees on total gross shop sales and a fee for licensing and maintenance.

Commission agents individually negotiate the fuel commission received and also receive a commission for all stock sold. Commission agents pay fees daily for insurance and maintenance. Their licence fee is negotiated at the time of entering into the agreement.

Keycomp Pty Ltd is an Australian owned proprietary company, first registered in 1999 and based in Abbotsford. It is an associated entity of United Petroleum and shares common Directors. Keycomp provides staff to United Petroleum outlets transitioning to new ownership. At the time of publication of this report, Keycomp Pty Ltd had ceased employing staff, but remains a registered company. The outlets that were staffed by Keycomp Pty Ltd are now operated by new franchisees and commission agents.

## The compliance activity

The Activity primarily focussed on assessing compliance with the following provisions of the *Fair Work Act 2009* (the FW Act):

- Section 44 – Contravening the National Employment Standards
- Section 45 – Contravening a Modern Award
- Section 535 – Employer obligations in relation to employee records
- Section 536 – Employer obligations in relation to pay slips.

The FWO determines whether prior notification of compliance activities is warranted on a case-by-case basis. With respect to this Activity, the FWO formed the view that prior notification was a low risk to the integrity of the Activity and would assist future compliance by encouraging United Petroleum to take a greater interest and role in the compliance capability of its significant network.

On 16 September 2015 the FWO met with United Petroleum Chief Operating Officer, Senior General Counsel and Company Secretary to advise them of the proposed Activity. During this meeting it was recommended United Petroleum advise its franchisees and commission agents of the pending Activity and possible site visits. However, United Petroleum was not advised of the specific outlets to be visited or the dates and times of visits.

Despite the recommendation, when Fair Work Inspectors conducted site visits, personnel were unaware of the Activity. It did not appear that United Petroleum had alerted its franchisees or commission agents of the impending Activity.

In September 2015, Fair Work Inspectors checked 12 United Petroleum businesses. Eleven of the businesses were independently owned by franchisees and commission agents. The twelfth business was Keycomp Pty Ltd. During these checks Inspectors interviewed franchisees, agents and employees, viewed available employment records and requested records for the period from 1 July 2015 to 1 January 2016 (the Activity Period).

During the Activity Period Keycomp Pty Ltd employed a total of 37 console operators at eight outlets undergoing transition to new franchisees and commission agents.

As Keycomp Pty Ltd was providing console operators to perform work in multiple United Petroleum retail fuel outlets during the Activity Period, it was also asked to provide employment records for assessment.

## Findings

The Activity identified the following:

- the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (modern award) covered the workplace entitlements of employees performing the role of console operators
- United Petroleum franchisees and commission agents underpaid employees a total of \$9186.47 during the Activity Period. These underpayments (which have since been rectified) resulted from United Petroleum franchisees and commission agents applying a flat rate of pay for all hours worked and incorrectly applying modern award penalty rates (in particular weekend and overtime penalties)
- five United Petroleum franchisees and commission agents (two in Victoria, one in South Australia and two in Queensland) were compliant with the FW Act and modern award
- one United Petroleum commission agent did not engage any employees
- five United Petroleum franchisees and commission agents (two in New South Wales, two in Victoria and one in South Australia) were non-compliant with the FW Act and modern award
- one of the non-compliant franchisees employed five student visa holders on a casual basis for \$18.70 per hour (they were entitled to a minimum of \$25.05 per hour)
- 31 of a total of 43 employees working for franchisees and commission agents were visa holders. Their visa types were:
  - 24 student visas<sup>1</sup>
  - one temporary graduate work visa<sup>2</sup>
  - one Regional Sponsored Migration Scheme visa<sup>3</sup>

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<sup>1</sup> [Higher Education Sector visa \(subclass 573\)](#)

<sup>2</sup> [Temporary Graduate visa \(subclass 485\)](#)

<sup>3</sup> [Regional Sponsored Migration Scheme visa \(subclass 857\)](#)

- two Skilled Nominated (dependent) visa<sup>4</sup>
- one Bridging Visa A<sup>5</sup>
- two Resident Skilled visa<sup>6</sup>
- 26 of these visa holders were temporary residents<sup>7</sup>, four were permanent residents<sup>8</sup> and one had a bridging visa<sup>9</sup>
- 10 of Keycomp Pty Ltd's 37 employees were visa holders. Their visa types were:
  - seven student visas<sup>10</sup>
  - one Skilled Independent visa<sup>11</sup>
  - one Skilled Regional visa<sup>12</sup>
  - one Employer Nomination Scheme (dependent) visa<sup>13</sup>
- eight of Keycomp Pty Ltd's 10 visa holders were temporary residents<sup>14</sup> and two were permanent residents<sup>15</sup>
- Keycomp Pty Ltd underpaid three employees (one of these being a skilled temporary visa holder) a total of \$2918.62 incorrectly applying modern award rates of pay, including the ordinary casual rate, weekend penalty rates and overtime penalties<sup>16</sup>.

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<sup>4</sup> [Skilled Nominated visa \(subclass 190\)](#)

<sup>5</sup> [Bridging visa A – BVA – \(subclass 010\)](#)

<sup>6</sup> [Skilled Regional visa \(subclass 887\); Skilled – Sponsored visa \(subclass 886\)](#)

<sup>7</sup> [Australian Government – DIBP, Fact sheet – Temporary Residence](#)

<sup>8</sup> [Australian Government – DIBP - Australian permanent resident information](#)

<sup>9</sup> [Australian Government – DIBP - Bridging Visas](#)

<sup>10</sup> [Higher Education Sector visa \(subclass 573\)](#)

<sup>11</sup> [Skilled Independent visa \(subclass 189\)](#)

<sup>12</sup> [Skilled Regional \(Provisional\) visa \(subclass 489\)](#)

<sup>13</sup> [Employer Nomination Scheme \(subclass 186\)](#)

<sup>14</sup> [Australian Government – DIBP, Fact sheet – Temporary Residence](#)

<sup>15</sup> [Australian Government – DIBP - Australian permanent resident information](#)

<sup>16</sup> Following the Activity, Keycomp Pty Ltd wrote to affected employees informing them the underpayments were inadvertent and the result of applying a different interpretation of the modern award penalty rate provisions.

The Activity also identified the following in relation to United Petroleum and United Petroleum Franchise:

- head office personnel lacked any meaningful involvement or oversight of the employment practices of its franchisees and commission agents
- senior management indicated they did not believe it was the responsibility of United Petroleum to ensure the compliance of its franchisees or commission agents with Commonwealth workplace laws
- United Petroleum did not have any process or system in place to test whether its franchisees or commission agents were paying employees correctly or applying the modern award correctly
- United Petroleum did not provide its franchisees or commission agents pay roll services, alerts about changes to minimum pay rates, updates on amendments to the FW Act, the modern award or any other ongoing support relating to Commonwealth workplace laws
- United Petroleum did not provide any ongoing human resources support or services to its franchisees or commission agents
- many franchisees and commission agents are from non-English speaking backgrounds with minimal knowledge or experience of Commonwealth workplace laws
- many of the employees of the franchisees and commission agents are visa holders or from non-English speaking backgrounds with minimal knowledge or experience of Commonwealth workplace laws.

# Enforcement outcomes

To date, the FWO has issued:

- one Enforceable Undertaking upon AAR DEE Traders Pty Ltd trading as United Petroleum Pooraka (South Australia) for underpaying employees' minimum casual hourly rate for hours worked Monday to Friday<sup>17</sup>
- one Enforceable Undertaking upon E TANNOUS & V TANNOUS trading as United Petroleum Waterloo (New South Wales) for underpaying employees' minimum casual hourly rate for hours worked Monday to Friday, Saturday and Sunday<sup>18</sup>
- two Compliance Notices to a United Petroleum franchisee and United Petroleum commission agent for underpaying employees' minimum casual hourly rate for hours worked Monday to Friday. This resulted in full rectification to a number of employees
- two Letters of Caution were also issued to the above United Petroleum franchisee and Commission agent requiring them to change their non-compliant behaviours and ensure future compliance
- one Letter of Caution to a United Petroleum commission agent for underpaying part-time employees' minimum ordinary hourly rate, evening and night shift penalties, Saturday and Sunday penalties and overtime rates.

In August 2016, the FWO offered senior management of United Petroleum who were responsible for operating Keycomp Pty Ltd an Enforceable Undertaking in relation to the latter's underpayment contraventions. This offer was declined on the basis that Keycomp Pty Ltd was no longer an operating entity. In response, the FWO sought additional evidence from Keycomp Pty Ltd to confirm it was no longer operating and that the underpayments to the three console operators identified during the Activity Period were rectified.

In addition, the FWO sought more information as to what measures had been undertaken by United Petroleum to review and rectify any potential underpayment of wages of Keycomp Pty Ltd employees falling outside of the Activity Period.

While the FWO had received correspondence from United Petroleum confirming that the three console operators have received their due payments, the FWO sought further information concerning any outstanding entitlements owing to the remaining 34 employees. United Petroleum

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<sup>17</sup> <http://www.fairwork.gov.au/about-us/news-media-releases/2016-media-releases/august-2016/20160831-up-eus-mr>

<sup>18</sup> <http://www.fairwork.gov.au/about-us/news-media-releases/2016-media-releases/august-2016/20160831-up-eus-mr>

has subsequently conducted an audit of the remaining 34 employees and committed to rectifying a total of \$8445.74 owed to 27 console operators. These underpayments particularly relate to weekend and overtime penalties. The FWO is awaiting confirmation that all of the employees have received monies owed.

In the event the FWO is not satisfied that this issue has been adequately addressed, it will consider expanding its investigation into the compliance history of Keycomp Pty Ltd, including the potential involvement of its Directors in any contraventions. United Petroleum has been advised of this in writing.

In December 2015 and again in August 2016, the FWO invited United Petroleum to enter into a formal Compliance Partnership<sup>19</sup>. United Petroleum initially advised that it was open to discussing the opportunity of entering into a formal Compliance Partnership at a later time. Since then, the new Chief Executive Officer of United Petroleum (who commenced in November 2016), has entered into discussions with the FWO about systems and processes that can be implemented to ensure compliance and third party approved self-audits.

The FWO recognises any compliance partnership needs to reflect United Petroleum's proposed future business model which may not involve franchise agreements.

The FWO notes that United Petroleum recently commissioned Michael Wyles QC to conduct a full review of all of United Petroleum's compliance practices including a draft pro-active compliance deed which has been offered by the FWO and would underpin any compliance partnership.

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<sup>19</sup> Compliance partnerships are popular with businesses who wish to make a strong and public commitment to their employees, contractors, customers and the broader community about compliance with workplace laws – for more information see #4 of the FWO's Compliance and Enforcement Policy - <https://www.fairwork.gov.au/about-us/our-vision/compliance-and-enforcement-policy>