

# Caltex Compliance Activity Report

March 2018

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Australian Government

Fair Work  
OMBUDSMAN



# CALTEX RETAIL FUEL OUTLETS COMPLIANCE ACTIVITY OUTCOMES

OVER 700 CALTEX RETAIL FUEL OUTLETS ACROSS AUSTRALIA



## 25 FRANCHISE-OPERATED CALTEX OUTLETS CHECKED



76% OF BUSINESSES  
NON-COMPLIANT



UNDERPAYMENTS OF  
\$9,329 FOR 26 EMPLOYEES



ISSUES FOUND WITH AWARD  
RATES, PENALTIES, RECORD  
KEEPING AND PAYSLIPS



60% OF EMPLOYEES  
VISA HOLDERS

## COMPLIANCE AND ENFORCEMENT ACTIONS



9

INFRINGEMENT  
NOTICES



11

COMPLIANCE  
NOTICES



16

FORMAL  
CAUTIONS



2

LITIGATIONS

## Summary

The Fair Work Ombudsman (**FWO**) investigated 25 Caltex retail stores nationally, as part of a compliance activity (**Activity**). The Activity was in response to a number of concerns the FWO had about underpayments and other non-compliance issues within the Caltex network of franchise-operated stores.

The Activity found significant non-compliance with Commonwealth workplace laws contained in the *Fair Work Act 2009* (**FW Act**) and the relevant modern award, the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (**Modern Award**).

Of the 25 Caltex stores inspected, the Activity found 19 stores were non-compliant.

In reviewing a month of wage payments at each store, the Activity recovered \$9 329.85 for 26 workers by disclosing underpayment of wages, non-payment of overtime and weekend penalty rates, as well as record-keeping and pay slip contraventions.

The Activity focused on 23 employers (25 stores) and resulted in:

- 16 Formal Cautions
- Nine (9) Infringement Notices
- 11 Compliance Notices
- Two (2) litigations

for a range of contraventions.

The FWO notes the steps taken by Caltex to address the non-compliance throughout its franchise network by self-auditing franchise outlets and dedicating a \$20 million fund to repay workers their minimum entitlements. Given the extent of the non-compliance identified in outlets that were the subject of FWO's activity, Caltex will need to be diligent in addressing what appears to be significant issues in its network.

The lack of, and unreliability of, records provided by franchise operators during the Activity suggests serious and systemic non-compliance.<sup>1</sup>

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<sup>1</sup> [Media Release, 24 Jan 2018, "More allegedly false Caltex franchisee wage records sparks further legal action"](#).

## Background

The FWO commenced a compliance activity into Caltex Australia Limited (**Caltex**) retail fuel stores in October 2016. FWO had been engaging with Caltex up to this point, about the risks that may exist within its network and the opportunity to understand and address them through committing to systems changes in a Compliance Partnership.

This Activity was in response to intelligence that the FWO had received indicating a recent upsurge in non-compliance with Commonwealth workplace laws in Caltex's retail fuel stores.

Between 1 January 2010 and 4 May 2016, the FWO had received 791 enquiries and 137 formal requests for assistance relating to the Caltex network.

The allegations that surfaced in mid-2016 suggested an exploitation of vulnerable workers was occurring through:

- non-payment and underpayment for time worked;
- cash payments being made to employees "off the books" and outside official recording systems; and
- threats of termination or visa cancellation for any complaints made by employees or attempts to secure their lawful entitlements.

The aim of the Activity was to understand the nature of the dynamics in the network and the impact this was having on compliance with work laws. It was designed to identify failings and take steps to address them, including by recovering minimum entitlements owed to employees and, in appropriate cases, ensuring businesses and persons involved in serious non-compliance were dealt with through the courts.

### Caltex Australia Ltd - The Legal Entities

Caltex Australia Limited [ACN 004 201 307] is the ultimate holding company of its subsidiaries and derives its revenue from the refinement, wholesale and retail of petroleum. In 2016, Caltex Australia generated total revenue of around \$17 billion including sales and other revenue, with the convenience arm of the business generating sales of \$1.17 billion. Caltex has more than 3000 employees in Australia including employees from all subsidiaries under the company's control.<sup>2</sup>

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<sup>2</sup> [Caltex Annual Report 2016](#)

The sales and marketing activities of the company include the operation of service stations and convenience stores selling retail fuel, automotive products, groceries, fast foods and other goods, with some also offering car wash facilities and automotive services.

The retail fuel industry is a highly competitive market with customer choice predominantly driven by marginal price point variations. This has led to the industry's focus on the customer experience and leveraging 'brand loyalty' through claims to petrol quality and the ready availability of a variety of convenience goods and services.

## The Activity's Methodology

Fair Work Inspectors inspected 25 retail fuel stores operated by 23 Caltex franchisees in Brisbane, Sydney, Melbourne and Adelaide (two of the franchisees operated two separate stores).

The stores were inspected to assess compliance with the FW Act and their employee's entitlements contained in the relevant modern award. Employees working behind the counter in the Caltex retail stores (defined as console operators) are covered by the *Vehicle Manufacturing, Repair, Services and Retail Award 2010*.

During the site visits, inspectors initiated one-on-one interviews with the franchisee and their employees separately. This gave employees the opportunity to discuss any concerns they had away from their employer.

The FWO inspected employment records that were held on site, including reviewing and taking photographs to determine if they met the record-keeping requirements under the FW Act. The FWO also formally requested records through issuing Notices to Produce records or documents, for a one-month period (the assessment period) to assess compliance with the applicable workplace instrument and the FW Act.

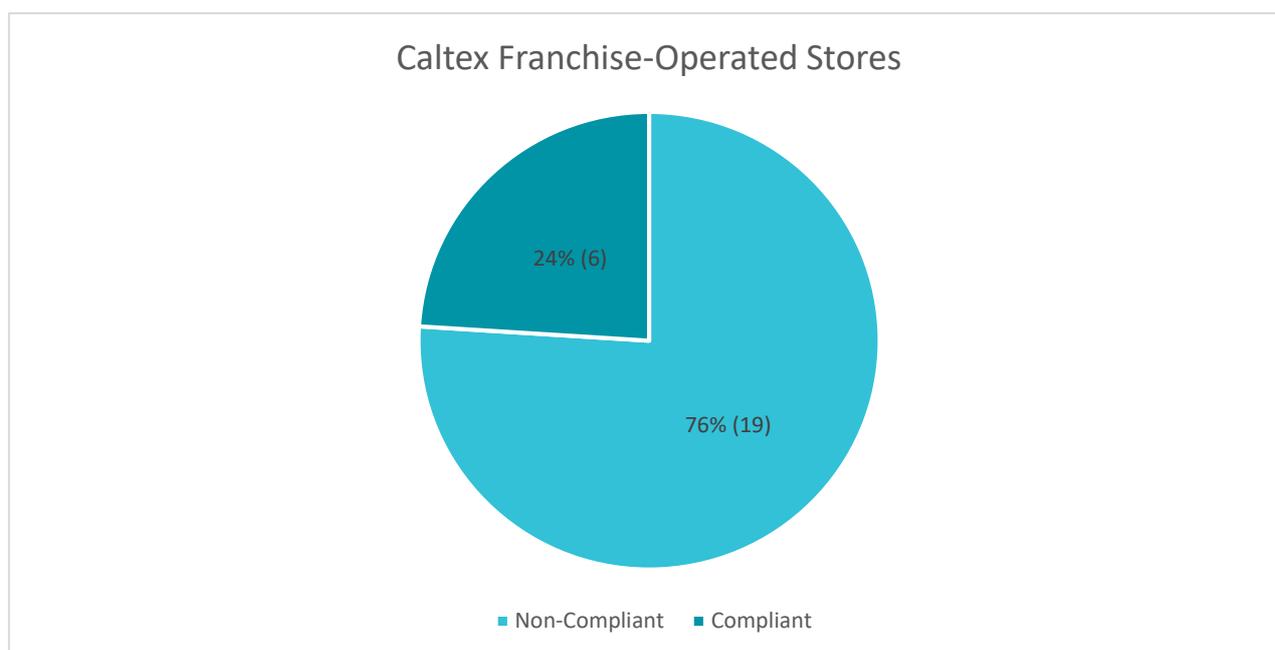
As a result of the above activities, the FWO obtained records for 194 employees during the course of the Activity and interviewed 52 employees.

The Activity primarily focussed on assessing compliance with the following provisions of 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.

## Key Findings

The results of the activity revealed high levels of non-compliance across the audited franchises, with only six of the stores being compliant with the FW Act and Modern Award. The FWO identified cases of non-compliance at the remaining 19 stores ranging from underpayment of wages, non-payment of penalties and overtime to record-keeping and payslips issues, including no records being kept at some sites.



Breaking down these numbers for each state, the Activity found that all of the Sydney sites audited were non-compliant and the FWO has taken legal action against two of the franchisees in this state (see further details in the Outcomes section below). Melbourne, Adelaide and Brisbane showed similar levels of compliance and non-compliance.

State	Compliant Stores	Non-Compliant Stores
■ Melbourne	■ 33% (2)	■ 67% (4)
■ Adelaide	■ 29% (2)	■ 71% (5)
■ Brisbane	■ 40% (2)	■ 60% (3)
■ Sydney	■ -	■ 100% (7)

## The Types of Non-Compliance Identified

The types of non-compliance identified by the FWO throughout the activity included:

- flat rates of pay for all hours worked;
- cash payments made 'off the books';<sup>3</sup>
- incorrect application of Modern Award penalty rates (in particular weekend and overtime penalties); and
- not issuing payslips or keeping appropriate time and wage records.

While the extent of the non-compliance varied across the stores, the FWO had significant concerns about the accuracy of the time and wage records it was provided (including timesheets, rosters and pay slips) by a number of the non-complaint franchisees which has already lead to the commencement of legal proceedings again two franchisees in relation to records (see below).

## The Franchisees and their employees

A large number of the employees were from cohorts the FWO identifies as vulnerable to differing forms of exploitation; young and migrant workers. These groups of workers are typically unaware of their minimum entitlements and less likely to seek assistance when they do not receive those entitlements. Fifty of the 194 employees whose records were examined were under the age of 24 years (nearly 26 per cent) and a large proportion, 117 employees (60 per cent), held a temporary visa with work rights. The visa worker cohort was significantly overrepresented in the network's workforce; given they make up only 6% of the labour market.

A contributing factor to the high rates of non-compliance found in the Activity was that 17 of the 23 franchisees (the employers in question) were from non-English speaking backgrounds and possessed minimal knowledge or experience of Australian workplace laws.

Appendix A contains a range of case studies from the Activity that illustrate the types of non-compliance encountered by the FWO and the steps taken to remedy them.

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<sup>3</sup> The FWO notes that it is not unlawful to pay wages to employees in cash. However, combined with inadequate records (which is a form of non-compliance), cash payments often coincide with breaches of work, and sometimes, tax laws.

## Outcomes

From an assessment of a month's payment of wages at each outlet, the FWO was able to recover \$9 329.85 in back pay for 26 workers. The underpayments ranged from between \$53.00 at one site to \$3 413.79. The underpayments were a result of these Caltex franchisees either applying a flat rate of pay for all hours worked, and/or incorrectly applying Modern Award penalty rates, in particular weekend and overtime penalties.

The FWO also had a number of enforcement outcomes relating to non-compliance with record keeping and pay slip obligations.

In response to the types of non-compliance identified, the FWO issued:

- 11 Compliance Notices<sup>4</sup> to 11 franchises relating to underpayments;
- 16 Formal Cautions to 15<sup>5</sup> franchisees for a range of contraventions including pay slips, penalties, overtime, misclassification, permanent part-time hours, underpayments and deductions; and
- Nine (9) Infringement Notices<sup>6</sup> to seven (7) franchises<sup>7</sup> for record-keeping and pay slip contraventions totalling \$1 620 in fines.

Apart from the two franchisees being litigated, all non-compliant franchisees have complied with the FWO's enforcement actions and rectified the underpayments to affected employees. Fair Work Inspectors also educated franchise operators about where to access resources and advice that would ensure they could understand and pay the correct wages, as well as make and maintain records, issue payslips and meet all their legal obligations.

## Litigations

As a consequence of the Activity's findings, the FWO has commenced two litigations against franchisees, both relating to impeding the ability of the FWO to determine if employees had been paid their full entitlements by providing falsified time and wage records to FWO Inspectors.

The FWO commenced legal action in the Federal Circuit Court against Peter Dagher and his company Aulion Pty Ltd in December 2017<sup>8</sup>, who formerly operated the Caltex Five Dock service station in Sydney and in January 2018, the FWO commenced proceedings again Mohammad Arif

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<sup>4</sup> [Compliance Notices](#)

<sup>5</sup> One franchise had two store locations and received a Formal Caution for each of these locations.

<sup>6</sup> [Infringement Notice](#)

<sup>7</sup> Two franchisees each had two store locations and received one Infringement Notice for each store.

<sup>8</sup> [Media Release, 7 Dec 2017, "Caltex franchisee allegedly falsified records of wage rates paid to overseas workers"](#).

Rana and his family's company, Abdul Wahid and Sons Pty Ltd<sup>9</sup> which was formerly the franchisee of a number of Caltex service stations, including two outlets included in the audit in Dural and Ermington. See Appendix A for Case Studies about these litigations.

## Conclusion

The Activity has uncovered evidence of significant non-compliance with Commonwealth workplace laws throughout the sites audited in the Caltex network.

The findings of the Activity are consistent with the types of concerns raised with the FWO through our intelligence channels and requests for assistance prior to commencement.

The auditing of a month's wage payments at each site strongly suggests broader, more systemic issues, within the Caltex franchise network that could be contributing to promoting or enabling non-compliance throughout the network.

The new liability provisions in the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* mean that franchisors and holding companies now have increased responsibilities to ensure that their franchisees and subsidiaries know and follow workplace laws and can be held to responsible if they don't comply. This is particularly relevant for the Caltex network given findings that many of the franchisees appear to have not understood (or deliberately failed to apply) what was required of them under the FW Act and the Modern Award.

Caltex's failure to put effective systems in place to ensure its system complied with work laws has contributed to the underpayment of workers.

The combination of vulnerable workers and low skill work, along with 24-7 operations poses ongoing risks for Caltex. The FWO's offer to work with Caltex on understanding the drivers behind non-compliance its business and to design steps that will overcome it remains on the table.

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<sup>9</sup> [Media Release, 24 Jan 2018, "More allegedly false Caltex franchisee wage records sparks further legal action"](#).

# About the Fair Work Ombudsman

The FWO is an independent statutory agency, created by the Act on 1 July 2009.

The FWO supports compliant, productive and inclusive Australian workplaces. The FWO ensures compliance with Australia's workplace laws by:

- offering people a single point of contact to receive accurate and timely advice and information about Australia's workplace relations system
- educating people working in Australia about their workplace rights and obligations
- monitoring compliance with, inquiring into and investigating any act or practice that may be contrary to workplace laws, awards and agreements
- litigating to enforce workplace laws and to deter people from not complying with their workplace responsibilities.

## Further Information

The FWO has a range of resources and publications for employers and employees on our website at [www.fairwork.gov.au](http://www.fairwork.gov.au), including our [Strategic Intent](#) and [Compliance and Enforcement Policy](#) which explains how we approach fulfilling our role.

For more information about this report or our current compliance and enforcement activities, please email Lynda McAlary-Smith, Executive Director Compliance and Enforcement, at [lynda.mcalary-smith@fwo.gov.au](mailto:lynda.mcalary-smith@fwo.gov.au).

For media enquiries, email [media@fwo.gov.au](mailto:media@fwo.gov.au).

# Appendix A – Case Studies

The FWO has compiled five case studies to better explain the types of contraventions the Activity found; and the enforcement outcomes that followed.

## 1. Compliance Notice

A Caltex franchisee in Queensland had four Console Operators at the time of the review of its wage payments.

The inspector conducting the wages review identified from discussions with employees, evidence obtained during the site visit and directly from the employer, that monies had been deducted for till shortages and a personal loan for three of the four employees. These deductions did not meet the requirements under the FW Act for permitted deductions and breached the FW Act.

The inspector educated the employer about permitted deductions under the FW Act and issued the employer with a Compliance Notice, specifying the amounts to be paid to the three affected employees. The employer fully cooperated with the FWO and back paid the three employees the unlawfully deducted sums in accordance with the Compliance Notice.

## 2. Formal Caution

The Activity identified a long term casual Console Operator at a Caltex franchisee in Victoria that hadn't received a written offer to convert to permanent part-time employment, as required under clause 13.3 of the Modern Award. This employee had a good working relationship with the employer and had no concerns about being a casual, it was just the formality of an offer being made (and being in writing) that had not occurred.

Once the inspector educated the employer about this requirement, a written conversion offer was presented to the employee. Throughout the Activity, the employer demonstrated high levels of cooperation and a willingness to address issues. As there was no history with the FWO and the breaches identified resulted from inexperience with the Modern Award, a decision was made to issue a Formal Caution as an appropriate response from the FWO in the circumstances.

## 3. Infringement Notice

A Caltex franchisee located in Victoria had seven employees working as Console Operators (six casuals, one full-time). The inspectors found pay slips were only provided when employees requested copies from the employer.

The inspector explained to the employer that failure to issue pay slips within one day of being paid was a breach and an Infringement Notice would be issued. The inspector further educated the

employer of the requirements for pay slips to be compliant with the Fair Work Regulations 2009 (the FW Regulations). The employer paid the Infringement Notice within the required timeframe, and committed to providing pay slips within one day of employees receiving their pay in future.

#### **4. Litigation – Aulion Pty Ltd**

The FWO audited Aulion Pty Ltd (Aulion), which formerly operated Caltex Five Docks in New South Wales. The FWO issued Aulion with Notices to Produce Records or Documents (Notice to Produce) and they provided a range of documents, including contracts of employment, time-and-wages records, pay slips and earning summaries for six employees (all of whom were overseas workers, with all but one being international students). The FWO had concerns that the documents provided did not accurately reflect the wage rates paid to employees, so the FWO issued further Notices to Produce to one bank, a superannuation fund, and Aulion's accountant. The information contained in the documents produced by these other parties was inconsistent with the information provided by Aulion.

#### **5. Litigation – Abdul Wahid & Sons Pty Ltd**

The FWO has also commenced legal action against Abdul Wahid & Sons Pty Ltd, who formerly operated a number of Caltex sites in New South Wales including Dural and Ermington. The FWO issued Abdul Wahid with a Notice to Produce and they provided timesheets, payroll records and pay slips purporting to show the hours worked and wage rates for 15 employees across the Dural and Ermington stores.

Subsequently an employee provided the FWO with documents indicating significantly different hours of work. The FWO found that Abdul Wahid had allegedly been knowingly using the company payroll software in a manner that produced inaccurate records. It is further alleged that Abdul Wahid knowingly provided false and misleading records to the FWO.

In both of the case studies above, the absence of accurate records prevented the FWO from completing a full audit to determine if the employees had been paid their full lawful entitlements.

With both Aulion and Abdul Wahid, the FWO has commenced legal action due to the very serious nature of the allegations relating to the provision of false information that frustrated attempts to check whether vulnerable employees had been paid correctly.