



Fair Work
OMBUDSMAN

SA/WA/NT Fuel Retailing Campaign 2012-2013

Final report – June 2013



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Campaign snapshot

Over
190

Fuel retailing business across SA,
WA, and NT audited

Total of
57%

Of businesses audited found to
be compliant

More than
\$245K

Recovered on behalf of 462
employees

Total of
38%

Of NT businesses audited were in
contravention

Total of
47%

Of SA businesses audited were in
contravention

Total of
40%

Of WA businesses were in
contravention

Summary

In August 2012, the Fair Work Ombudsman (FWO) commenced the SA/WA/NT Fuel Retailing Campaign (the campaign).

The campaign aimed to promote and assess compliance with workplace law obligations, in particular, the Vehicle Manufacturing, Repair, Services and Retail Award 2010 (the Modern Award).

We promoted the campaign by first informing industry stakeholders and then by writing to all industry employers across South Australia (SA), Western Australia (WA) and Northern Territory (NT). The letter also provided employers with information about the tools and resources available on the fairwork.gov.au website to assist them comply with their obligations.

We audited 193 fuel retail sites across SA, WA and NT including both independent and national retailers. We found that 81 (43%) employers were non-compliant. The majority of contraventions were non-monetary in nature (44%) with NT the most compliant of the three regions (62%).

To date, through this campaign, we have recovered \$249 870 in unpaid entitlements for 462 employees.

Purpose of the campaign

The purpose of this campaign was to promote and assess compliance with the Fair Work Act 2009 (the Act), Fair Work Regulations 2009 (the Regulations) and the Modern Award in the fuel retailing industry in SA, WA and NT.

The campaign objectives were to:

- work with industry stakeholders to encourage compliance within the industry
- create and deliver a dedicated webpage, where industry employers can learn about their obligations and access free tools and resources

- assess compliance with rates of pay, record-keeping and pay slip obligations
- provide a public report on the campaign findings

Specifically we assessed the records of employees classified as console operators, driveway and roadhouse attendants.

Our industry partners

In August 2012, we notified the following stakeholders of the campaign:

- Royal Automobile Association of SA Inc
- Automobile Association of NT
- Royal Automobile Club of WA
- Australian Institute of Petroleum
- Shop, Distributive & Allied Employees Association
- Australasian Convenience and Petroleum Marketers Association
- Australian Retailers Association

We invited stakeholders to provide feedback and asked for their support in promoting the campaign.

Why did we target this industry?

In 2010 and 2011 we received a total of 20 complaints against fuel retailers in Western and South Australia. We identified that in half of the complaints we received, the employer had not met their workplace obligations.

Such a high non-compliance rate coupled with the industry employing many casual employees working across 24 /7 rosters warranted FWO attention.

What did we do?

Our communication strategy

In September 2012, we wrote to all employers in the industry in SA, WA and NT to inform them of the campaign. The letter provided details about the campaign and directed employers to free resources, information and tools on the dedicated industry web page www.fairwork.gov.au/fuelretailing.

Our assessment strategy

In October 2012, we randomly selected a sample of employers for audit and advised them of their selection in writing. We sent some letters by post and hand delivered others.

We requested the selected employers forward to us copies of time and wage records for their console operators, driveway and roadhouse attendants.

We assessed these records to ensure employers were complying with their following obligations:

- Pay slips and record-keeping
- Hourly rates of pay, loadings and penalties
- Overtime entitlements

Where we found employers with record-keeping and/or pay slip contraventions we informed them of their responsibilities under the Act and Regulations.

We also asked them to make a commitment in writing that they would keep compliant records in the future.

Where we identified possible underpayments, we sought further information from the employer. Where we established monetary contraventions we notified the employer and requested they calculate and pay any outstanding amounts for all employees.

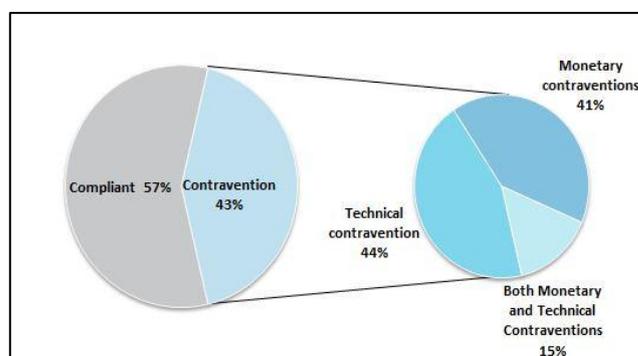
What did we find?

We have completed 190 audits and three remain ongoing.

Of the 190 completed audits, we found 109 (57%) employers to be compliant and 81 (43%) employers to be in contravention. We recovered \$249 870 for 462 employees

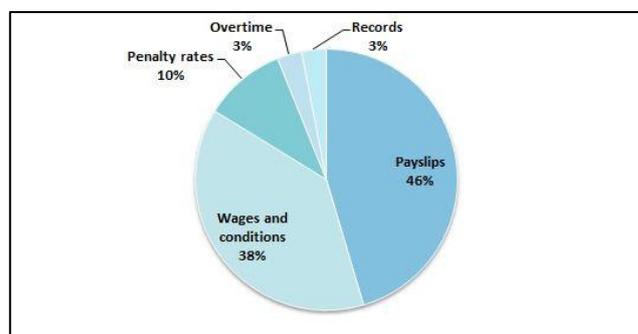
Of the 81 employers in contravention, 33 (41%) had monetary contraventions, 36 (44%) had record-keeping/pay slip (technical) contraventions and 12 (15%) had both.

Figure 1: Contraventions chart



We found the 81 non-compliant employers had 99 contraventions between them. Figure 2 below shows the types of contraventions. It shows wages and conditions made up 38% of the contraventions, pay slips 46%, penalty rates 10% and overtime rates and record-keeping both 3%.

Figure 2: Types of contraventions



Results by region

As shown in Figure 3, NT had the highest compliance rate (62%) followed by WA (60%). WA had the greatest percentage of monetary contraventions (10%) and NT the greatest percentage of non-monetary contraventions (29%).

Figure 3: Results by region



South Australia

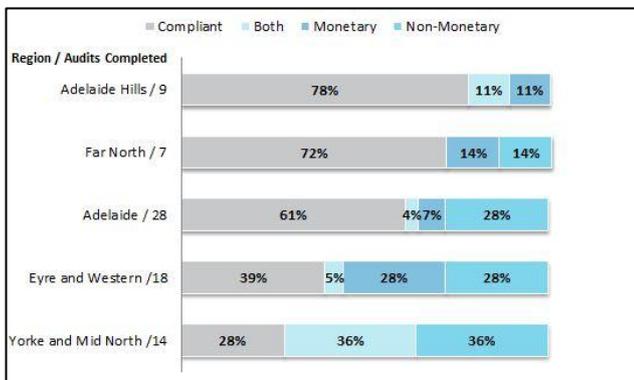
In SA, we completed 76 audits where we:

- found 40 (53%) employers to be compliant
- found 36 (47%) employers to be in contravention
- recovered \$28 229 for 54 employees

Figure 4 shows the compliance rates by SA regions. We conducted the majority (28) of the audits in and around Adelaide.

In the regional areas of Yorke - Mid North and Eyre Peninsula - Western, over half the employers audited were in contravention.

Figure 4: Results for South Australia



Yorke - Mid North had the greatest regional underpayments totalling \$13 238.75.

Figure 5: Map of South Australian regions



Figure 6: Map of metropolitan regions



Many fuel retail sites in regional SA provide roadhouse food services and have employees who primarily cook and serve food. In many instances, the records showed that these employees were classified as console operators. Based on their

duties, they should have been classified as roadhouse attendants.

The classification issue was identified during our assessment of pay rates. It appeared that the workers were being underpaid, however after seeking further documentation, it was clear that we had to assess their pay rates against that of a roadhouse attendant rather than that of a console operator. The campaign provided us an opportunity to educate employers on the difference between the classifications.

In other cases, we found employees classified as roadhouse attendants, who should have been classified as console operators. In many cases this resulted in the employer having underpaid the affected staff.

Mary*, a regional fuel retailer was selected for audit. When we reviewed her records, we identified potential underpayments due to Mary incorrectly classifying her staff.

When we contacted Mary, she advised she had paid her staff as advised by her employer association. However, it seemed that Mary might have misinterpreted the information provided to her.

After discussing the underpayments with her employer association Mary agreed that she should classify her employees primarily as console operators, not roadhouse attendants. As a result, Mary calculated that she owed four employees a total \$7000.

Given Mary's willingness to comply and the financial impact of the back-payments on her business, we accepted a payment plan arrangement.

We are confident that Mary's employees are now receiving their correct entitlements.

*Pseudonym

We found many of the employers we visited appreciated the information we provided to them

and many took the opportunity to learn more about their obligations.

Western Australia

In WA, we completed 93 audits where we:

- found 56 (60 %) employers to be compliant
- found 37 (40%) employers to be in contravention
- recovered \$190 070 for 394 employees

Figure 7: Results for West Australia

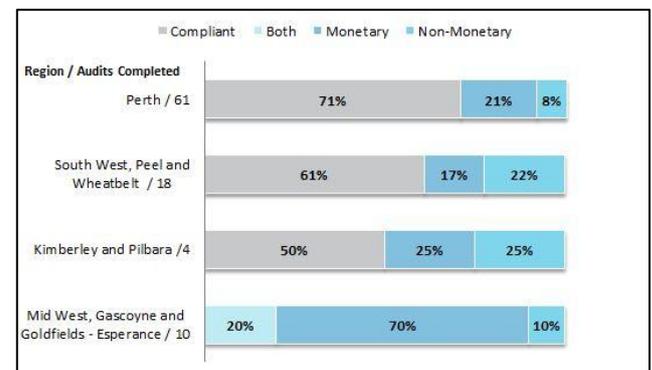
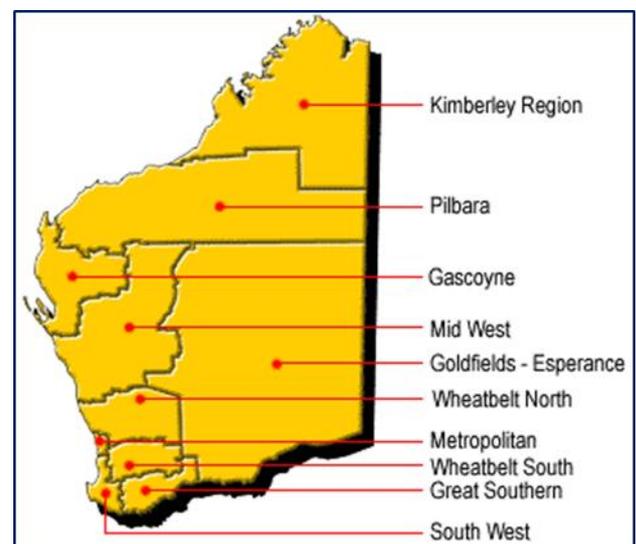


Figure 7 shows that compliance varied amongst the WA regions. Of particular concern, in the Mid West - Gascoyne and Goldfields - Esperance region all ten employers audited were in contravention.

Figure 8: Map of Western Australia



Source: Main Roads Western Australia (accessed 18 June 2013).

Over half the employers audited in Perth and the South West- Wheatbelt regions were compliant.

The Mid West – Gascoyne and Goldfield - Esperance region had the most monetary contraventions. Perth employers with monetary contraventions were found to have underpaid their staff more than any other region (\$122 086.88).

Some underpayments arose due to employers incorrectly applying transitional arrangements from the Motor Vehicle (Service Stations, Sales Establishments, Rust Prevention & Paint Protection) Award (NAPSA) to the Modern Award.

A few years ago, Z Fuels* purchased a fuel retail site in WA.

As requested in the audit notification letter, Z Fuels sent in their employment records for assessment.

In reviewing the documents, inspectors found that the employees had been underpaid.

Working with Z Fuels to find out how the underpayment occurred, inspectors realised that Z Fuels was incorrectly phasing rates of pay from the NAPSA to the Modern Award.

Consequently, Z Fuels was underpaying its employees their hourly rates of pay, loadings and penalties.

Z Fuels calculated the outstanding entitlements and voluntarily rectified the underpayments. Eight employees received approximately \$25 000 in unpaid entitlements.

Northern Territory

In NT, we completed 21 audits where we:

- found 13 (62 %) employers to be compliant
- found 8 (38%) employers to be in contravention
- recovered \$31 571 for 14 employees

The following chart shows NT compliance rates by region:

Figure 9: NT results

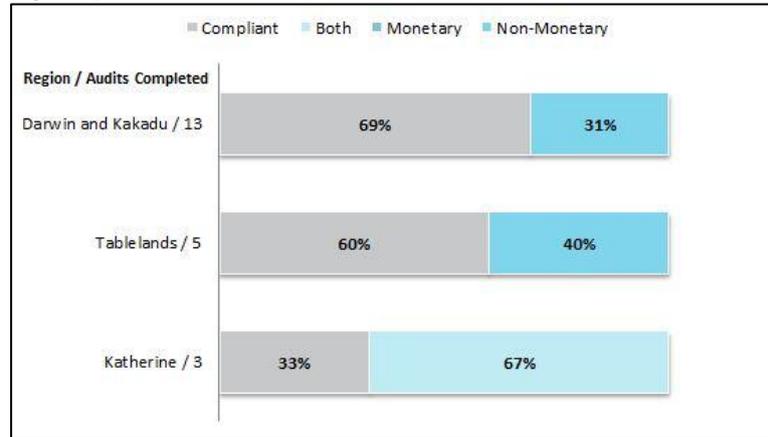
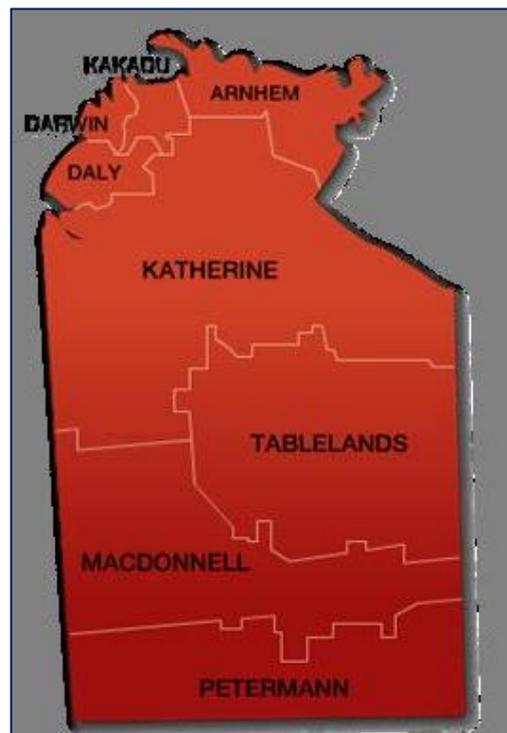


Figure 10: Map of Northern Territory



As illustrated in Figure 9, all of the contraventions identified in the Tablelands, Darwin and Kakadu regions were non-monetary. In Katherine, non-compliant employers had a combination of both monetary and non-monetary contraventions.

We found many of the NT fuel retailers also employed roadhouse attendants, as food services made up a large part of their operation.

Fuel sites belonging to national employers all had collective/ enterprise agreements.

Mark*, an employer of a roadhouse in regional NT, returned employment records to our office for assessment. We found all his employees were backpackers on working holiday visas. They were employed as casuals and worked a 7- day shift work roster.

Based on the records provided, it appeared Mark was underpaying his employees and was not meeting his pay slip and record-keeping obligations.

When we advised Mark of our findings, he contacted his employer association to seek advice. Mark's association explained that as Mark's business also runs an accommodation and restaurant business on the site, and that those are his main business activities, the Hospitality Industry (General) Award 2010 applied as opposed to the Modern Award.

Consequently, we assessed Mark's records against the Hospitality Industry Award. Mark voluntarily paid in excess of \$31 000 to the 14 employees he had underpaid.

Concluding remarks

The findings of our audits in the fuel-retailing sector in SA, WA and NT reflect those of our complaint-based work, in terms of identifying a high level of non-compliance.

Inspectors noted the genuine willingness of employers to do the right thing and rectify all contraventions. In many cases, underpayments arose from a lack of understanding or awareness about the transitional arrangements and the effect this had on rates of pay.

Findings from regional fuel retail sites suggest a need to monitor the industry, ensuring that employees working predominantly as console operators receive their correct entitlements.

Given the nature of the workforce and the significant monetary amounts recovered, we will continue to monitor the fuel industry to ensure businesses maintain compliance and correctly transition to the modern award.

About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent agency created by the Fair Work Act 2009 on 1 July 2009.

Our vision is fair Australian workplaces, and our mission is to work with Australians to educate, promote fairness and ensure justice in the workplace.

Our education and compliance campaigns target specific industries to assist them achieve compliance with national workplace laws. Our focus is usually industries that need assistance with compliance and employ vulnerable workers.

We like to work with relevant industry associations and unions to deliver our campaigns. We rely upon their 'real world' knowledge and communication channels to design and deliver our education activities and products.

This report covers the background, method and findings of the SA/WA/NT Fuel Retailing Campaign.

For further information and media enquiries please contact the media team at media@fwo.gov.au

If you would like further information about the Fair Work Ombudsman's targeted campaigns please contact, Steve Ronson, Group Manager – Infoline Dispute Resolution and Compliance (A/g) (steven.ronson@fwo.gov.au).

Appendix

In conducting audit assessments as part of this campaign, we relied on the following awards:

Vehicle Manufacturing, Repair, Services and Retail Award 2010 (MA000089)

Motor Vehicle (Service Stations, Sales Establishments, Rust Prevention & Paint Protection) Award No.29 of 1980 (AN160222)

Automotive Service (Northern Territory) Award 2002 (AP818846)

Vehicle Industry (South Australia) Repair Service & Retail Award (AN150167)

Hospitality Industry (General) Award 2010 (MA000009)

Hotels, Motels, Wine Saloons, Catering, Accommodation, Clubs and Casino Employees Northern Territory Award 2002 (AP812953)

Commonwealth of Australia 2013

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