

The Motor Vehicle Retailing Campaign

Report – June 2015

A report by the Fair Work Ombudsman under the Fair Work Act 2009

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Campaign Snapshot

Total of

462

Businesses audited

Total of

93%

Of businesses were found to
be paying in line with
industry practice

Total of

\$129k

Recovered on behalf of
70 employees.

About Campaign

In 2013 the Fair Work Ombudsman (FWO) undertook the Motor Vehicle Retailing Campaign (the campaign) in New South Wales (NSW), Queensland (Qld) and the Australian Capital Territory (ACT). The campaign was conducted in response to the high number of complaints and high error rate from the complaints received by FWO from the vehicle retailing industry (the industry).

In the 2010/11 financial year, FWO received 141 complaints from the Motor Vehicle Retailing Industry in Qld and NSW, recording a 60% error rate in Qld (from 71 complaints) and a 70% error rate in NSW (from 70 complaints).

As part of this campaign, we assessed time and wages records of Motor Vehicle Retailing businesses located in Qld, NSW and ACT for compliance with the *Vehicle Manufacturing, Repair, Services and Retail Award 2010 (MA000089)* (The Award), *Fair Work Act 2009* (the Act) and the *Fair Work Regulations 2009* (the Regulations).

Outcomes at a Glance

Of the 462 businesses assessed we found:

- 424 (92%) of employers compliant with all requirements
- 38 (8%) of employers had at least one error of which:
 - 6 (1%) had errors relating to pay slips or record-keeping;
 - 30 (6.5%) had errors relating to rates of pay; and
 - 2 (0.5%) related to error of both rates and pay slips/record-keeping.

This means that of the 462 businesses we assessed:

- 430 (93%) were paying their employees in line with current industry practices; and
- 454 (98%) were compliant with record-keeping and pay slip requirements.

During this campaign we found most employers were paying commission and bonus payments in addition to the minimum weekly wage as part of the worker's negotiated compensation. Hours worked in excess of 38 hours per week were generally not paid, the view of the employers being that commission and bonuses compensated the employee for the additional hours.

The industry associations (the Motor Traders Associations in Queensland, New South Wales and ACT) view this practice as consistent with the Award.

This differs from the FWO's view which is:

- hours worked by vehicle salespersons in excess of 38 hours per week must be paid at the ordinary rate of pay
- the award allows employers and employees to make an agreement for the payment of commission to vehicle salespersons and that any sum payable under such an agreement is deemed to be payable under the award. Further, there is no express provision in the award that provides for the ability to offset entitlements against amounts of commission payable under a commission agreement.

In light of these divergent views we are seeking clarification of these award provisions as part of the Modern Award Review process currently being conducted by the Fair Work Commission (FWC). Submissions on this issue were also made by the Motor Traders Associations of NSW, SA and WA and the Victorian Automobile Chamber of Commerce and also the Australian Manufacturing Workers Union – Vehicle Division.

The audit disclosed that employers were relying and acting on the advice received from the industry associations in relation to commission and additional hours for vehicle salespeople and as such we took no further action in relation to those employers.

The audit also found there was no evidence to conclude that these employees would have been better off receiving an hourly rate of pay for additional hours rather than the commission payments.

In the event the FWC determines the FWO's view is the correct interpretation, we will work with the industry associations to educate employers on this issue.

Industry Profile

The vehicle retailing industry (the industry) generally comprises the sale of cars, trucks, bikes, scooters, caravans, boats and trailers. According to Ibis World (February 2015), there are approximately 4,500 businesses engaged in motor vehicle retailing in Australia, employing approximately 68,000 people¹.

The industry continues to have a strong emphasis on the use of commission pay structures for salespersons, where many vehicle salespersons receive both a retainer and commission which is generally based upon the number of vehicles sold.

¹ Ibis World – [Motor Vehicle Dealers in Australia: Market Research Report](#)

Industry Stakeholders

We engaged with the following stakeholders to inform them of the campaign and to seek their support in promoting it amongst their members;

- The Motor Trades Association of Queensland (MTAQ);
- The Motor Trades Association of New South Wales (MTA NSW);
- The Motor Trades Association of the Australian Capital Territory (MTA ACT);
- The Shop, Distributive and Allied Employees Association NSW; and
- The Shop, Distributive and Allied Employees Association Qld.

We have had ongoing engagement with these stakeholders during the campaign, particularly in relation to award interpretation and will continue to do so to achieve an agreed future compliance framework.

Of interest, was the high industry association membership identified (75% or 348/462 businesses), with 95% of these being members of one of the three Motor Trader's Associations (Qld, NSW or ACT).

Wages Audit

We randomly selected 462 businesses from the industry and notified them in writing of their inclusion in this campaign. We requested time and wages records for assessment for a two week period, assessing these records against the *Award*, *Act* and *Regulations* to ensure employers were meeting their obligations for:

- pay slips and record-keeping;
- minimum rates pay (including penalties and loadings); and
- commission arrangements.

Of the 462 businesses assessed we found:

- 424 (92%) employers compliant with all requirements
- 38 (8%) employers had at least one error, of which:
 - 6 (1%) had errors relating to pay slips or record-keeping
 - 30 (6.5%) had errors relating to pay rates (base pay rates and shift loadings); and
 - 2 (0.5%) related to errors of both underpayment of hourly rates and pay slips or

record-keeping.

This means that of the 462 businesses we assessed:

- 430 (93%) were paying their employees in line with current industry practices regarding hours worked over 38 per week and commission payments; and
- 454 (98%) were compliant with record-keeping and pay slip requirements.

Of the 38 businesses found with errors, there were a total of 40 individual errors (as outlined in *Chart 1: Assessment findings*). Of the errors identified (as detailed in *Chart 2: Breakdown of Errors*); underpayment of hourly rate and shift loadings accounted for 80% of all errors, with pay slip or record-keeping errors making up the remaining 20%. In total, we recovered \$129,811 from 26 businesses, on behalf of 70 employees.

Chart 1: Assessment findings

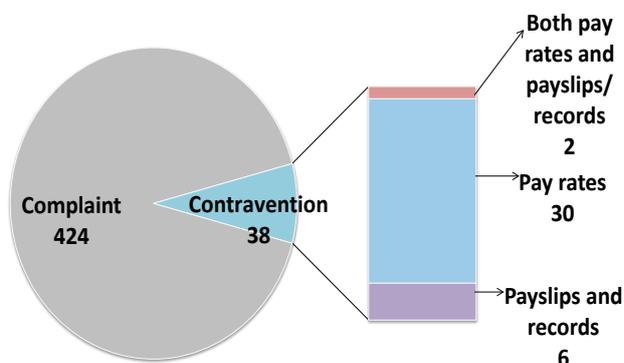
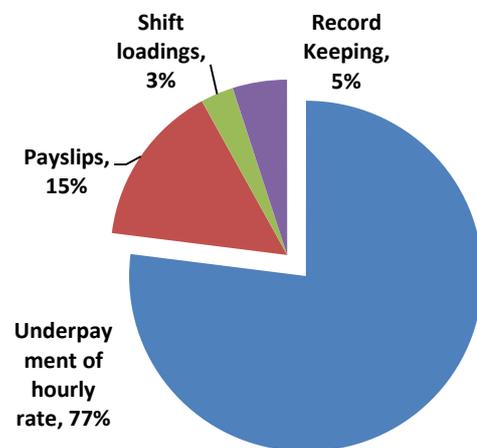


Chart 2: Breakdown of errors



Regional Findings

New South Wales (NSW)

Of the 236 businesses assessed in NSW we found:

- 205 (87%) employers were compliant with all requirements
- 31 (13%) employers had at least one error, of which:
- 5 had errors relating to pay slips or record-keeping
- 25 had errors relating to base rates of pay and shift loadings; and
- 1 had a error relating to both pay rates and pay slips or record-keeping.

This means that of the 236 businesses we assessed:

- 210 (89%) were paying their employees in line with current industry practices regarding hours worked over 38 per week and commission payments; and
- 230 (97%) were compliant with record-keeping and pay slip requirements.

In total, we recovered \$42,683 from 25 employers on behalf of 32 employees.

Australian Capital Territory (ACT)

Of the 23 businesses assessed in the ACT we found:

- 20 (87%) employers were compliant with all requirements
- 3 (17%) employers had at least one error, of which:
 - 2 had errors related to base rates of pay; and
 - 1 had errors relating to both base rates of pay and pay slip or record keeping.

This means that of the 23 businesses we assessed:

- 20 (87%) were paying their employees in line with current industry practices regarding hours worked over 38 per week and commission payments
- 22 (96%) were compliant with record keeping and pay slip requirements.

In total, we recovered \$3,194 from three employers on behalf of five employees.

Queensland

Of the 203 businesses assessed in Queensland, we found:

- 199 (98%) employers compliant with all requirements
- 4 (2%) employers had at least one error, of which:
 - 1 had errors relating to pay slips or record keeping
 - 3 had errors relating to base rates of pay.

This means that of the 203 businesses we assessed:

- 200 (98.5%) were paying their employees in line with current industry practices regarding hours worked over 38 per week and commission payments
- 202 (99%) were compliant with record keeping and pay slip requirements.

In total, we recovered a total of \$83,934 from two employers on behalf of 33 employees (including

a recovery from one employer for the sum of \$81,614 on behalf of 32 employees).

Conclusion

This campaign disclosed differing applications of the award. The view of the industry associations regarding commission payments and hours in excess of 38 per week differs to the FWO's position.

At present submissions on these issues have been made as part of the Modern Award Review process, currently being conducted by the Fair Work Commission.

On clarification of these award provisions, we will liaise further with key industry stakeholders on this issue and consider education activities with employers.

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 main role is to promote harmonious, productive and cooperative workplace relations.

Each year the Fair Work Ombudsman (FWO) runs proactive campaigns to assist employers and employees understand their rights and obligations under Commonwealth workplace relations laws.

These campaigns can focus on particular industries, regions and/or labour market issues and are conducted on a national and state level.

This report covers the background, method and findings of the Motor Vehicle Retailing Campaign 2013. 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 campaigns please contact Lynda McAlary-Smith, Executive Director - Proactive Compliance and Education at Lynda.McAlary-Smith@fwo.gov.au