

SA - Car Wash Audit Program Final Report September 2010

Summary

In May 2010 the Adelaide office of the Fair Work Ombudsman (FWO) commenced the *SA Car Wash Audit Program*. The audit program was the result of FWO intelligence, public interest and the receipt of a number of complaints.

The audit program focused on operators offering the personalised valet or hand-wash service. It did not include the automated drive-through car wash services, or the 'do-it-yourself' services.

Prior to the audit program, FWO made contact with Safe Work SA (State Partner Agency) and the Australian Car Wash Association and obtained intelligence on a range of concerning practices within the industry.

Our Fair Work Inspectors (FWI) conducted site visits between 17 and 21 May 2010 in the Adelaide CBD, Woodville, Glenelg, Unley and West Lakes. The FWIs provided educational information on site, and conducted eight (8) audits of time and wage records, pay slip details, wage payments and subcontracting relationships.

Of the eight audits undertaken, seven audits have been finalised. Four (57%) businesses were found to be compliant, and three (43%) were found to be in contravention of the *Fair Work Act 2009* and *Fair Work Regulations 2009*. The program did not uncover any contractual relationships in the businesses audited.

The contraventions identified related to unauthorised deductions, underpayment of the correct hourly rate, non-compliance with Fairness Test compensation requirements and non-compliance with pay slip and record keeping regulations.

Of the identified contraventions, the three enterprises all voluntarily resolved their non-compliance issues resulting in the recovery of \$8131 for 18 employees.

One audit remains open and is currently undergoing further assessment. We anticipate this ongoing investigation will result in the recovery of a significant underpayment amount for more than 50 employees.

Cash in hand payments was an industry wide problem identified in this program and we will continue to educate employers and employees to tackle this issue and influence greater industry compliance.

The results of this audit program suggest it is likely that other states may conduct similar compliance activity in the car wash industry.

Background

Concerned that employees of serviced car wash venues may not be receiving their lawful entitlements the FWO planned this targeted compliance activity in order to assess compliance with the *Fair Work Act 2009*.

It was considered appropriate for the pilot audit program be conducted in South Australia in order to determine whether any broader compliance activity in the sector was required.

There is significant public interest in Valet Car Wash businesses not complying with the *Fair Work Act 2009*, particularly in light of the perceived vulnerable characteristics of employees working in the car wash sector, i.e. youth, overseas students and workers of non English speaking backgrounds.

Campaign aim and objectives

The key aim of the Pilot Car Wash Audit Program was to determine the level of compliance with the *Fair Work Act 2009* and *Fair Work Regulations 2009*, in particular, the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* and the National Employment Standards.

The data compiled in the Pilot Car Wash Audit Program will assist the FWO to determine whether, and what type of, ongoing compliance activity is required.

Methodology

There were eight businesses selected for the audit. All of those selected offer a personalised valet car wash service. Businesses selected included both members and non members of the Australian Car Wash Association.

The targeted employers were located in the Adelaide CBD, Woodville, Glenelg, Unley and West Lakes areas. They were advised in writing of the audit program, the information required and a proposed site visit date.

At the site visits employers were:

- issued formal notices requesting time and wage records for all employees for the months of March and April 2010 and contracts for workers if they did not have any employees (or a mix of employees and contractors) as well as documentary evidence to support contractor relationships
- provided education in regard to the role of FWO (fact sheet) and the availability of educative resources (www.fwo.gov.au, 13 13 94)

Businesses engaging employees were audited for wages and conditions compliance and:

- where one or more contraventions were identified, we issued a contravention letter during a second visit to the employer (ensuring there was an understanding of the contraventions identified and the actions to be taken)
- where there were no contraventions, we conducted a second visit to the business premises and spoke with a sample of employees to confirm the accuracy of the records provided

The audit program planning involved an audit approach for assessing the validity of contractor relationships, however after the initial sites visits it was not required as none of the businesses audited indicated the engagement of contractors.

Results

As at 29 September 2010, the results of the audit program were:

- Seven (7) audits finalised
- Four (4) businesses were compliant (57%)
- Three (3) businesses were found to be in contravention of the *Fair Work Act 2009* and *Fair Work Regulations 2009*. The following contraventions were identified:
 - Non-compliance with payslip regulations.
 - Underpayments of the minimum hourly rate.
 - Unauthorised deductions of wages.

Status of audits	
Employers targeted	8
Audits finalised	7
▪ Employers compliant	4 (57%)
▪ Employers in contravention	3 (43%)
Audits not yet finalised	1
Money Recovered	\$ 8,131
Employees Paid	18

Other Findings

Issues which surfaced during the audit program were:

- Cash in hand practices
- High number of vulnerable workers including student visa holders, persons with disabilities and workers of non English speaking backgrounds.

For future compliance activity in this industry, we propose that conducting unannounced site visits may assist in uncovering alleged cash in hand payment arrangements.

One audit is yet to be finalised. This ongoing investigation has identified potential contraventions of the Fairness Test compensation provisions under the *Workplace Relations Act 1996*. The employer has provided calculations indicating potential significant underpayments.

Many of the employers audited appeared to have a reasonable understanding of workplace law requirements to pay the correct Award entitlements.

Conclusion

This audit program received positive support from industry stakeholders such as the Australian Car Wash Association. This support will be important for effecting long term change in the industries compliance with Commonwealth workplace laws.

Of the audits finalised for this program, 3 (43%) employers were not complying with their obligations under the *Fair Work Act 2009* and *Fair Work Regulations 2009*. Although none of the businesses audited engaged contractors, the limited number of audits means this may not be reflective of the entire industry.

The audit program was initiated as a pilot program into the car wash industry. Given the low compliance rate, it is likely that further audit work may now be undertaken in other states. Future work in this industry will need to consider the other issues identified in this audit program, including cash in hand payments and the high number of vulnerable workers. These issues will certainly be factored in to any future compliance activity undertaken in South Australia.

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