

Commonwealth Games Compliance Activity

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Summary

The Fair Work Ombudsman (FWO) initiated the Commonwealth Games Compliance Activity to test the levels of compliance by employers providing general security services at the Gold Coast 2018 XXI Commonwealth Games (the Games).

The FWO considered:

- the size and scope of the Games, the reliance on security subcontractors and the large number of employees involved
- the short term, casual nature of the employment and the long hours of work, entitling security officers to penalty rates
- its experience with the security industry.

After interviewing security officers during the event and reviewing intelligence, Fair Work Inspectors selected nine employers for audit. They found that:

- two employers were non-compliant in respect of penalty rates
- three were in breach of the record-keeping and pay slip requirements of Fair Work Act 2009 (the Act) and Fair Work Regulations 2009 (the Regulations)
- five failed to pay their employees in full
- all were non-compliant with the frequency of payment provisions of the award or agreement covering their employees.

Non-compliance resulted from the failure of employers to maintain adequate employee time records or ensure they had sufficient funds to pay employees on time and in full.

Fair Work Inspectors issued:

- eight contravention letters requiring employers to take action to rectify their non-compliance
- a Formal Caution warning an employer about the possibility of legal action in response to any future non-compliance
- four Infringement Notices, amounting to \$12 600 in penalties for record-keeping and pay slip breaches.

The FWO recovered \$24 309.79 for ten security officers from five employers.

Background

Labour ‘supply chains’

Supply chains occur when a business, or ‘principal’ enters into a contract to provide labour for another business. The principal may then subcontract that responsibility on to another business or individual, or ‘subcontractor’, who directly employs the workers.¹ Subcontracting is common in the security industry, and provides a flexible supply of labour in periods of peak demand.

The Games

The XXI Commonwealth Games (the Games) were held on Queensland’s Gold Coast from 4-15 April 2018. The Gold Coast 2018 Commonwealth Games Corporation (GOLDOC) planned and coordinated the event.

Commonwealth and State Government agencies were responsible for the security of dignitaries, counter-terrorism operations and any national security issues. GOLDOC organised general security at the Games’ venues and events.

GOLDOC engaged four principal contractors to provide security services:

- Wilson Security Pty Ltd (ABN 90 127 406 295) (Wilson’s)
- Securecorp (QLD) Pty Ltd (ABN 76 108 335 155) (Securecorp)
- MSS Security Pty Ltd (ABN 29 100 573 966) (MSS)
- Sydney Night Patrol and Inquiry Co. Pty Ltd (ABN 11 000 013 098) (SNP).

The principals engaged approximately 65 subcontractors to find and employ 4200 security officers for the event. Approximately 3000 were Queensland-based: the remaining 1200 were recruited from interstate or New Zealand.

The majority of security officers were employed on a casual basis. Officers worked for one entity only. Most were engaged to work only during the 11-day period of the Games, and generally worked 12-hour shifts over a 24-hour period, with some overtime.

The FWO met regularly with GOLDOC and the Australian Security Industry Association Limited (ASIAL) before the Games to observe contractual, organisational and record-keeping arrangements.

¹ Principals may engage workers directly, in addition to subcontracting out this responsibility. There may also be multiple levels of subcontractors in a supply chain.

The FWO identified a potential risk that security officers would not receive their minimum entitlements due to:

- the high number of subcontractors and security officers involved
- officers being engaged on a casual basis, for long hours over short employment periods
- the number of workplace disputes the FWO receives from security industry employees.²

In response to this risk, the FWO commenced an activity to assess employer compliance during the Games.

Methodology

Fair Work Inspectors interviewed security officers over a two-day period during the event and provided them with FWO information and contacts details. They questioned officers about their employment experiences, hours of work, rates of pay, record-keeping arrangements and the provision of pay slips.

Inspectors used information gathered from these interviews and intelligence contained in enquiries made by security officers after the Games to identify employers for audit. Nine contractors and subcontractors were issued with formal Notices to Produce Records and/or Documents, requiring them to provide the FWO with employment records for assessment. Inspectors also required GOLDOC to provide time records for officers who worked during the Games.

Inspectors assessed compliance with the following provisions of the Act:

- Section 44 – the National Employment Standards
- Section 45 – Contravening a Modern Award
- Section 50 – Contravening an Enterprise Agreement
- Section 323 – Method and frequency of payment
- Section 535 – Employer obligations in relation to employee records
- Section 536 – Employer obligations in relation to pay slips.

² During the 2016-2018 and 2017-2018 financial years the security Industry ranked in the top ten industries by number of disputes lodged with the FWO.

Findings

Instrument coverage

Security officers working for three of the principals were covered by the Commonwealth Games Security Services Agreement 2018 (the 'MEEBA'). The fourth principal (MSS) signed a common law contract with GOLDOC that provided similar employee entitlements. No subcontractors employing security officers for the Games were covered by the MEEBA.

The FWO determined that employees not covered by the MEEBA were covered by either the:

- Security Services Industry Award 2010 (the Award), or
- an Enterprise Agreement (Agreement).

Employee entitlements varied according to the award or agreements that applied. For example, only officers covered by the MEEBA were entitled to:

- 'out of pocket' allowances
- meal allowances
- a 3% Games bonus allowance.

This varied coverage meant that security officers didn't know which award or agreement they should refer to and were unclear about their entitlements.

Record-keeping

Due to the Games' unique security arrangements, and to help ensure it paid principal contractors correctly, GOLDOC kept its own records of times worked by security officers. Although security employers were themselves obligated under the Act to keep and maintain time records, the FWO found they relied instead on GOLDOC's record keeping system.

GOLDOC used an electronic rostering system to record employee work times. The system:

- assumed security officers would attend and complete each rostered shift
- allowed only for minimal changes to rosters.

However, set rosters were not followed because:

- the security environment of the Games was fluid, leading to changing labour needs across events
- casual staff were not obligated to complete rostered shifts.

As a result, subcontractors, principals and GOLDOC had to manually reconcile time records for thousands of security officers against GOLDOC's electronic rostering system. This led to late, and in some cases incorrect, employee payments.

Invoicing and payment processes

FWO found that employee wages were also impacted by the time taken to process invoices in the supply chain. Although GOLDOC provided 40% of the estimated total labour cost to principals ahead of the event, some employers complained to FWO about the slow movement of money down the supply chain.³

However, the FWO noted that one principal reduced the time taken to pay employees by maintaining time records independent of GOLDOC and by paying subcontractors without waiting on GOLDOC to pay invoices. The FWO did not receive any enquiries or requests for assistance from employees of this principal or its subcontractors. As a result, they were not audited as part of the compliance activity.

Contraventions of the Act, Award and Agreements

Of the nine employers (principals and sub-contractors) audited:

- two were in breach of provisions relating to overtime, weekend and public holiday penalty rates
- three contravened the record-keeping and/or pay slip provisions of the Act and the Regulations
- five contravened Section 323(1) (a) of the Act, requiring an employer to pay employees in full for the work they perform (for the reasons that caused delays and errors in employee payments, noted above)
- all were in breach of the provisions of the Award or Agreement that required them to pay their employees on time.

³ GOLDOC advised the FWO that it had remitted advance payment to each of the four principal contractors in the total amount of \$12 970 985.

Compliance and enforcement outcomes

Where appropriate, Fair Work Inspectors used compliance and enforcement tools to ensure employers rectified their non-compliance. They issued:

- eight contravention letters⁴ requiring employers to take action to rectify their non-compliance with the Act, Award and/or Agreement.
- one Formal Caution, putting the employer on notice that FWO may commence legal proceedings if it identifies any future breaches of workplace laws
- four Infringement Notices, amounting to \$12 600 in penalties for record-keeping and pay slip breaches.

Fair Work inspectors recovered \$24 309.79 from five employers for ten workers. This included:

- \$5521.81 recovered from the three principal contractors
- \$15 016.48 recovered from five sub-contractors.

In most cases, underpayments arose as a result of employees not being paid for all time worked.

⁴ Although nine employers were in breach of their obligations, one went into liquidation before the FWO could issue a contravention letter.

Conclusion

The FWO's Commonwealth Games Compliance Activity revealed compliance issues that arose as a result of:

- the size and scope of the event
- the number of security officers and sub-contractors involved
- reliance by employing principals and subcontractors on GOLDOC to keep and maintain employee time records, leading to the need for manual reconciliation
- the timeframes involved in invoice processing.

As a result, employers experienced difficulty in paying security officers or issuing accurate pay slips on time. Most security officers were required to wait weeks—in some cases months—for full payment for their work at the Games.

Maintaining employee records and making sure there are sufficient funds to pay wages on time and in full are fundamental employer obligations. Principals and subcontractors audited in this activity failed to ensure they were able to fulfil these basic commitments to their employees.

The FWO will continue to engage with security industry employers and their workers and to promote the free tools and resources it has developed to support compliance. This includes:

- PACT - which calculates award pay rates, leave entitlements and termination pay⁵
- Online learning centre which provides videos on record-keeping and pay slip obligations⁶
- Record My Hours - an app that enables employees to keep a digital record of their hours, add rosters to a calendar and receive notification about upcoming shifts⁷
- My Account – which provides access to tailored updates and industry specific information.⁸

Industries using labour supply chains will continue to be a strategic priority for the FWO. Principals and subcontractors can expect compliance and enforcement action to recover unpaid entitlements. Where there is evidence of serious, systemic or deliberate non-compliance, this can include court proceedings.⁹

⁵ <https://calculate.fairwork.gov.au/>

⁶ <https://www.fairwork.gov.au/how-we-will-help/online-training/online-learning-centre>

⁷ <https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app>

⁸ <https://www.fairwork.gov.au/my-account/registerpage.aspx>

⁹ Courts may impose penalties up to \$12 600 per breach for an individual, and \$63 000 per breach for companies. Where non-compliance is proven to be deliberate or systemic, penalties can amount to \$126 000 per breach for individuals and \$630 000 per for companies.

About the Fair Work Ombudsman

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

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

The FWO supports compliance with Australian workplace laws by:

- providing education, assistance, advice and guidance to employers, employees, outworkers, outworker entities and organisations
- promoting and monitoring compliance with workplace laws
- inquiring into and investigating breaches of the Fair Work Act
- taking appropriate enforcement action
- performing our statutory functions efficiently, effectively, economically and ethically.

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

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

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