

United Trolley Collections (UTC) compliance partnership

Final report

November 2018

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Summary

United Trolley Collections Pty Ltd (UTC) [ACN 115 452 946] is the largest trolley collection company in Australia.

Established in 2005, UTC has arrangements with more than 60 independent contractors to provide trolley collection services to large supermarket and retail businesses such as Coles, Woolworths, Kmart, Target and Big W.

In May 2014, UTC entered into a compliance partnership with the Fair Work Ombudsman (FWO) in order to promote and ensure compliance within its network of sub-contractors responsible for employing trolley collectors.

Underpinned by a proactive compliance deed [PCD]¹, the compliance partnership involved a number of commitments from both parties, including:

- UTC's provision of workplace relations information, training and support for its sub-contractors
- UTC's responsibility for resolving requests for assistance from employees of sub-contractors
- implementing a payroll system for use by UTC subcontractors
- a requirement for UTC to audit its service network and remedy any non-compliance.

During the term of the partnership, UTC:

- resolved five requests for assistance that were referred by the FWO plus a further 80 requests made via the hotline it setup as a requirement of the PCD
- undertook a program of self-audits that exceeded the terms of the PCD, with a total of nine independent audits, covering 102 weeks and 2397 employees
- implemented staff training, communications activities and a number of changes to systems and processes, including the introduction of mobile apps for employees and UTC management for better access and recording of payroll information
- terminated its relationship with a subcontractor the FWO took to court who was found to have provided false records to UTC to hide alleged underpayments of \$30 000 to 2 employees over a six-month period
- recovered a total of \$89 476.96 for employees as a result self-audits, complaints and referrals.

This report outlines the background to the FWO's compliance partnership with UTC, the workplace relations framework that applies to the company's sub-contractor network and the steps taken to enhance compliance.

¹ <https://www.fairwork.gov.au/ArticleDocuments/762/utc-proactive-compliance-deed.pdf.aspx>

The FWO and UTC are discussing the possibility of a second compliance partnership following the formal expiration of the PCD. The terms of any new compliance partnership would reflect the current market environment, operating models and UTC's contractual arrangements with retailers.

Background

Underpayment of trolley collectors at sites operated by different supermarkets across Australia has been a serious issue for the FWO, and its predecessors, for many years.

A large number of trolley collectors are migrant workers², a cohort of workers vulnerable to underpayment due to language difficulties and cultural constraints. The FWO's experience is that such workers are often less likely to seek FWO advice and assistance due to a general reluctance to engage with the regulator and 'go on the record'.

Between 2006 and 2012, the FWO commenced legal proceedings against a number of individual trolley collecting businesses, securing just over \$800 000 in employee entitlements and a further \$800 000 in penalties.

Since 2014, the FWO has actively promoted compliance in supply chains by working with major retailers to effect real and sustained behavioural change throughout their subcontracting networks. For instance, the FWO has entered into an Enforceable Undertaking with Coles³ and a compliance partnership with Woolworths⁴ to improve compliance in their trolley collecting networks. These arrangements address the issue of governance by major retailers with regard to their procurement arrangements. In particular, the arrangements provide for transparency and accountability relating to the various roles performed by multiple contractors and sub-contractors within a particular labour supply chain and help foster a culture of compliance was contributing to significant compliance issues.

Prior to 2012, UTC had been one sub-contractor among many who provided trolley collection services to Coles [ACN 139 368 451]. In 2012, Coles decided to change their trolley collection operations from using multiple sub-contractors to a single contractor. As a result, Coles entered into a contract with UTC as their sole national provider of trolley collection services.

Following the appointment of UTC as Coles' national trolley collection contractor, the FWO proposed that UTC enter into a partnership arrangement with the FWO to improve compliance in Coles' trolley collection network. UTC responded positively to the invitation and expressed its commitment to working with the FWO to establish a benchmark for compliance in the trolley collection industry.

On 13 May 2014, UTC entered into a Proactive Compliance Deed (PCD) with the FWO for a period of three years.

² FWO Inquiry into trolley collection services procurement by Woolworths Ltd:

<https://www.fairwork.gov.au/ArticleDocuments/763/inquiry-into-trolley-collection-services-procurement-by-woolworths-limited.pdf.aspx>

³ FWO media release: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/october-2014/20141007-coles-eu-presser>

⁴ FWO media release: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/october-2017/20171011-woolworths-pcd-trolley-collectors-release>

Workplace relations settings

The *Cleaning Services Award 2010* (the Award) applies to employees working within the UTC's network of contractors, unless a relevant enterprise agreement is in place.

If an enterprise agreement applies, the provisions of the agreement will apply to the exclusion of the Award. However, the applicable wages in the agreement cannot be less than in the Award and the National Employment Standards (NES)⁵ apply.

The Award covers employers in the cleaning services industry and trolley collectors employed by trolley collection businesses contracted by a retail shop.

The Award provides for the engagement of full-time, part-time and casual employees. As of 1 July 2018, under the Award, the rates of pay for a permanent part-time or full-time adult employee are \$20.21 per hour (Level 1).

Juniors (20 years of age or under) receive a percentage of the applicable adult rate, depending on the age of the individual. Some examples include:

- \$10.11 per hour (Level 1) for a 16-year-old (50% of adult rate)
- \$16.17 (Level 1) for a 19-year-old. (80% of adult rate).

Casual employees are entitled to:

- casual loading of 25% on top of the base rates of pay for a full-time employee
- Saturday rates of pay incur a 50% penalty loading depending on the hours worked
- Sunday rates of pay incur a 100% loading depending on the hours worked.

Overtime rates of between 150% and 250% can apply depending on the time and number of hours an employee works.

⁵ <https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>

Communication of the Deed

UTC communication

UTC informed its staff that it had entered into a compliance partnership (as per clause A1 of the PCD).

At the company's 2014 annual conference, FWO representatives explained and discussed the compliance partnership and UTC's commitment to ensuring compliance with workplace laws.

UTC communicated the existence of the PCD to its sub-contractors and their staff through the UTC website with a linked copy of the PCD available as well as information concerning a UTC App that provides employees with information on their entitlements and other resources.

UTC appointed an employee liaison officer to make sub-contractors and their staff aware of who could provide them with information about employee entitlements and rights at work, including any questions regarding:

- workplace entitlements
- rights at work
- where a copy of the PCD can be viewed
- resolution of employee complaints
- any other related enquiries.

The UTC employee liaison officer was also the contact point for managing any requests for assistance referred by the FWO.

FWO communication

The FWO issued a media release⁶ on 29 August 2014 publicly announcing the compliance partnership between the FWO and UTC.

The FWO posted a notice on its internal website to inform its staff about the compliance partnership. The PCD required FWO employees to refer any enquiries and requests for assistance related to UTC to the FWO Strategic Partnerships team.

⁶ FWO media release: www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/august-2014/20140829-trolley-collectors

Workplace relations training

UTC provided the FWO with details about ongoing workplace relations training it provided to its sub-contractors (as per clause A6 of the PCD).

The training included material on:

- compliance with the *Fair Work Act 2009* (the Act) and the Award
- obligations for sub-contractors under the Act
- options available to employees of sub-contractors to raise complaints via UTC or the FWO.

Throughout the course of the partnership, UTC held annual conferences that included education and training sessions for its team of 60 subcontractors. The Conferences provided the network of businesses with knowledge and awareness of their obligations with Australia's workplace laws.

At each conference, UTC invited Fair Work Inspectors to present on the topic of compliance with workplace laws and their employee's lawful entitlements.

The company provided information packs to educate and assist its contractors on Award entitlements. The information provided in these packs addressed common mistakes made by the contractors disclosed in the self-audits.

Systems and processes

UTC was required to develop and implement systems and processes to support its contractor network achieve compliance with workplace laws (as per clause A2 of the PCD).

UTC reported to the FWO that prior to the commencement of the PCD, it had implemented a more structured payroll system by engaging a third party payroll provider, Talent2. In March 2017, UTC transitioned from Talent2 to Australian Payroll Systems (APS) as its third-party provider.

UTC Mobile app for trolley collectors

UTC implemented an app for trolley collectors that enables them to view their entitlements more easily and lodge any queries regarding their employment. The company made the App available to all employees of its subcontractors. The app provides a direct line of communication between its head office and trolley collectors working onsite, which is important in a supply chain environment.

UTC's management team conducted 16 site reviews each week. During these reviews, the company ensured that trolley collectors have downloaded the UTC app.

The app contains the following information:

- an induction video
- a copy of the PCD between the FWO and UTC
- pay rates and classifications
- status of employment
- the ability to contact or send a pay query or any other work related question to UTC directly
- news/updates so members can keep up-to-date with current work-related events.

Site review form app – UTC management team

The company's app assisted the UTC management team with its site reviews. The app has the ability to:

- enable a UTC representative to complete and submit a site audit electronically
- verify the identification of a team member (ID and induction card)
- complete a pay audit section with team member/s onsite (including confirmation that team member/s are using the third party payroll software, TimeTarget)
- send site audit information directly to UTC from the site.

TimeTarget app

UTC also implemented a third party payroll app that allows employees to:

- access their rosters in 'real time'
- to review their timesheets
- communicate through built-in messaging
- access roster templates that give the hours and shifts needed
- clock-on and -off through their mobile phone
- authorise timesheets
- have confidence that payroll information is accurate.

Promoting supply chain compliance

UTC worked proactively with its subcontractors, employees and the FWO, to support compliance through the supply chain. The company:

- provided the FWO with the details of its subcontractors
- required contractors to provide their employees with a Fair Work Information Statement and current minimum pay rates and advice about the Award (unless they have an approved enterprise agreement)
- required subcontractors with three or more employees to pay wages and monetary entitlements through a third party payroll provider. The provider system processes employee pay, keeps pay records and issues pay slips. UTC uses the system to run pay-data reports and monitor subcontractor compliance with workplace obligations.

Compliance checks

UTC conducted regular compliance checks in addition to the required self-audits under the PCD. The company also developed a software tool for managers to use during site visits that includes a pay audit, which they can submit electronically to UTC's head office.

The pay audit section of the site review tool checks the most significant entitlements and the ones that present compliance issues. The checklist prompts users to check:

- correct hourly rate
- payslips have been provided
- the 6pm penalty was correctly applied
- overtime was correctly applied
- workers were paid at the correct classification.

UTC training

UTC provided training to subcontractors regarding systems and processes.

The company provided the FWO with a copy of training for:

- managers and subcontractors on its third party payroll service
- all team members on the UTC phone app
- managers and subcontractors on the various audit processes undertaken by UTC, including the self-audit conducted under the PCD

- UTC site review audits
- team members on the UTC phone app that allows trolley collectors to lodge an enquiry with UTC and to receive updates.

Self-resolution of workplace disputes

The FWO forwarded requests for assistance to UTC that it received from employees in UTC's subcontractor network (as per clause A3 of the PCD).

UTC was required to assist its subcontractors rectify any breaches of Australian workplace laws within 35 days of the referral from FWO. If there was reasonable evidence that a subcontractor had underpaid an employee, UTC was required to withhold this amount from any money owing to the subcontractor until the subcontractor rectified the underpayment of their worker.

During the PCD, the FWO referred five requests for assistance from subcontractor employees to UTC concerning pay slips and outstanding wages. UTC reported to the FWO that it also assisted a further 80 employees through its internal network enquiry systems during the partnership. This included 39 employees from its subcontractors and 41 employees who went directly to the company's headquarters.

UTC reported that it had resolved all requests by meeting (or teleconferencing) with both the subcontractor and their employee, ensuring compliance with the Award, and that the parties understood and were satisfied with the outcome.

Enquiries raised with UTC and resolved through the Coles hotline

As a major trolley-collecting contractor for Coles, UTC investigated and attempted to resolve requests about its subcontractors that came through the Coles hotline. Coles reported five complaints during the partnership regarding:

- underpayment of wages
- employees being paid a flat rate of pay, sometimes as low as \$10 an hour
- unpaid superannuation
- non-provision of annual and sick leave entitlements
- non-provision of pay slips.

Because of these five complaints, \$23 419.31 was recovered for affected trolley collectors, and UTC terminated the services of two subcontractors.⁷

Self-audits

The FWO required UTC to nominate and engage a third party to conduct annual audits of its contractor network (as per Attachment B in the PCD).

UTC engaged accounting firm Patison Partners⁸ to conduct all three self-audit programs.

FWO required that self-audits include an assessment of the time and wages records of 10% of all network employees, and cover a four-week period, including a public holiday.

The self-audits assessed compliance with the following entitlements:

- wages
- loadings
- allowances
- penalties.

UTC exceeded these requirements over the course of the PCD by completing a total of nine independent audits, covering 102 weeks and 2397 employees.

First self-audit

The first self-audit reviewed entitlements for 405 employees of 11 subcontractors for the period of 30 March to 26 April 2015.

UTC provided details of breaches to the FWO for each subcontractor along with evidence that it had rectified the matters.

The breaches found were consistent with problems UTC had been proactively identifying throughout the year, and had been working with sub-contractors to resolve, including:

- incorrect application of the 6pm rate
- penalty rates paid inconsistently or incorrectly
- full-time rates being paid to collectors working less than 38 hours per week
- collectors paid for either more or less hours than they had actually worked.

⁷ Over the life of the PCD, UTC terminated the contracts of seven (7) subcontractors in response to employee complaints, including the two referred through the Coles Hotline.

⁸ www.patison.com.au

Second self-audit

The second self-audit reviewed the entitlements of 1105 employees engaged by 44 subcontractors, for the period 7 December 2015 to 20 December 2015. This larger sample exceeded the self-audit requirements of the PCD.⁹

The report for this self-audit identified:

- a reduction in the incorrect application of the 6pm rate
- a mix of underpayments and overpayments
- most underpayments were for minor amounts
- most underpayments resulted from incorrect application of timesheet hours or from incorrectly applying the Award.

UTC reported that 94.8% of these employees were paid correctly. It found that in relation to the remaining 5.2%, some subcontractors had experienced ongoing difficulties in applying the Award, and in recording accurate time entries from timesheets. UTC undertook a follow-up audit to address these issues and ensure its subcontractors rectified these errors.

Third self-audit

FWO advised UTC that it was not required to complete a third self-audit, given the extensive and proactive nature of its self-auditing activities.

Additional audits

In addition to the yearly self-audit, UTC conducted a number of audits of its trolley collection network. These audits included:

- compliance audits - where regional and state managers visited random sites and checked employees' rates of pay, hours of work against pay records, and sign-in information. Any identified discrepancies resulted in a planned audit.
- planned audits - undertaken to investigate suspected or identified non-compliance
- payroll system audits - weekly reviews of subcontractor payments to trolley collectors
- annual compliance audits of 20% of the network workforce.

⁹ As the audit sample was extensive, FWO accepted a shorter record sampling period of two-weeks.

Litigation

The FWO conducted a targeted campaign into trolley collectors at Woolworths stores in June 2016. From this compliance activity, the FWO brought legal proceedings against a subcontractor, Joban's Trolley Collection Pty Ltd in March 2017. The subcontractor had allegedly underpaid two employees nearly \$30 000 over a period of six months. The Federal Circuit Court made a decision in relation to this matter in March 2018.¹⁰

The court decided the subcontractor had purposely created false records in order to deceive UTC, who were not aware of the payment arrangements. The court subsequently penalised the subcontractor \$230 638.

UTC terminated the subcontractor's services prior to the court's decision on 20 August 2016.

Reports

UTC provided three major reports during the compliance partnership, at the end of the first year, during the second year and at the expiry of the PCD (as per clause A5 of the PCD).

The reports addressed the following:

- actions taken by UTC to carry out the undertakings in the PCD
- the number of complaints referred to the company
- the number of complaints resolved by the company
- the average time taken to resolve
- the average amount of underpayments.

¹⁰ FWO media release: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/april-2018/20180416-jobans-trolley-penalty>

Conclusion

UTC operates in a sector that has a long history of non-compliance and involves a large number of potentially vulnerable workers.

Early in the partnership, UTC identified common compliance issues such as not providing pay slips and incorrectly applying penalty rates or misclassifying employees under the Award.

However, the company engaged productively with the FWO on ways to improve compliance and implemented a range of systems and processes such as:

- a third-party payroll system
- regular and annual self-audits
- an app for trolley collectors to inform them of workplace entitlements and provide them with an avenue to raise complaints.

The audits undertaken by UTC, including those beyond the requirements of the PCD, have shown the company's commitment to driving a culture of compliance in its network.

UTC reported that as a result of self-audits, its self-resolution of issues and all other complaints and enquiries received, the total amount recovered for employees during the period of the PCD was \$89 476.96. With the above measures implemented, the FWO expects a continued increase in compliance in UTC's network.

The monitoring and governance processes that UTC have implemented provide a positive model for the industry for achieving compliance with workplace laws in supply chains.

The FWO has found it effective to work with UTC, who have been prepared to leverage authority over its subcontractors to promote compliance across its network. UTC has engaged in a productive manner with the FWO and has initiated new governance arrangements throughout its network to improve compliance.

Since the formal end of the PCD, the FWO and UTC have maintained close relations while discussing the possibility of a second compliance partnership. The terms of any new compliance partnership will reflect the current market environment, operating models and UTC's contractual arrangements with retailers.

About the Fair Work Ombudsman

The FWO is an independent agency created by the *Fair Work Act 2009* on 1 July 2009. Its main role is to promote harmonious, productive and cooperative workplace relations.

The FWO employs a number of strategies to achieve compliance with national workplace laws. This includes entering into compliance partnerships with employers in the form of a proactive compliance deed. A compliance partnership is an opportunity for businesses to work with the FWO in a positive and constructive manner. It sets out to achieve sustainable self-monitoring arrangements in order to demonstrate commitment to 'fair Australian workplaces'.

Employers may seek to enter into a compliance partnership with the FWO for a variety of reasons. Some of these reasons include:

- ensuring its obligations under the Act are being met
- a method of identifying and minimising business risks with respect to its employees
- to demonstrate that it is a fair Australian workplace and potentially an employer of choice
- to address potential areas of non-compliance with the Act.

A range of activities can be utilised to assist the business meet the intended outcomes of the compliance partnership, for example:

- self-auditing of wages and record-keeping
- initiatives to engage with employees to improve compliance
- mutually beneficial improvements to employment and business outcomes by focussing on supply chain, brand and subcontractor relationships.

A dedicated Fair Work Officer provides support and assistance to a business that enters into a partnership with the FWO. This is to ensure they are able to meet the terms of the proactive compliance deed. The FWO publishes a publically available report at the conclusion of each compliance partnership.

For further information and media enquiries please contact FWO media (media@fwo.gov.au).

If you would like further information about compliance partnerships please contact Steven Ronson, Executive Director – Communications (steven.ronson@fwo.gov.au).