

Cleaning supply chains in Victorian Government schools: compliance activity report

What we did and why

In late 2017, the Fair Work Ombudsman (FWO) investigated cleaning companies working in 10 Victorian Government schools. The cleaning companies were procured directly by the schools via a Department of Education and Training (DET) approved panel of suppliers.

We acted in response to intelligence and media coverage alleging underpayments and other non-compliance issues.

Fair Work Inspectors visited five regional and five metropolitan schools where cleaning companies operated. They interviewed deputy principals, principals, managers, cleaners and other relevant witnesses. 11 cleaning companies operated at these sites.

Records for a three-month period were assessed for compliance with the *Cleaning Services Award 2010* (the Award) and key provisions of the *Fair Work Act 2009* (the Act). These records related to 35 employees, including 16 visa holders from non-English speaking backgrounds.

Our findings

Of the 11 cleaning companies investigated, 100% were non-compliant in some way.

- 9 of the 11 cleaning companies breached their monetary obligations (i.e. they failed to pay their workers correctly).
- 5 of the 11 breached their non-monetary obligations (i.e. record-keeping breaches that prevented the FWO from checking if employees were receiving their full entitlements).

27 employees were underpaid due to being paid a flat rate for all hours worked and/or incorrect penalty rates. The smallest underpayment for a single worker was \$26.39, and the highest was \$2223.54.

Cleaners reported that they were often unable to finish their work in set timeframes and that they were returning to work unpaid hours as a consequence.

One cleaning company engaged a subcontractor that misclassified staff as independent contractors, resulting in outstanding employee entitlements of \$1604.59 for two workers. The subcontractor, Veracity Property Services Pty Ltd, entered into an Enforceable Undertaking with the FWO.¹

None of the companies were members of the Cleaning Accountability Framework (CAF).

The DET did not have effective systems in place to monitor compliance.

School staff were unaware of their responsibility to ensure cleaning workers were paid correctly, and lacked an understanding of accessorial liability under section 550 of the Act.²

Action taken and next steps

We took the following compliance and enforcement actions:

- 3 formal cautions
- 14 infringement notices
- 4 compliance notices
- 1 enforceable undertaking.

Enforceable undertaking

Veracity Property Services Pty Ltd (Veracity) was subcontracted by a panel-approved cleaning company to provide cleaning services.

Veracity purported the working relationship to the cleaners as an independent contractor arrangement. Fair Work Inspectors' analysis showed, on the totality of the relationship, the workers were employees.

The underpayment arising from this misclassification was calculated to be \$1604.59 for two cleaners. They were not paid correct hourly rates, part time loadings, afternoon shift loadings and minimum engagement periods as required by the Award.

Veracity cooperated with the FWO, entering into an enforceable undertaking that saw them reimburse the cleaners, participate in training, conduct an audit of all workers, and register for a FWO My Account.³

¹ FWO website: <https://www.fairwork.gov.au/ArticleDocuments/1416/veracity-property-services-pty-ltd-eu-redacted.docx.aspx>

² FWO website: <https://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation/accessorial-franchisor-and-holding-company-liability>

³ FWO media release: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/august-2018/20180810-veracity-property-services-eu-release>

All but one cleaning company complied with our enforcement actions and reimbursed their employees.⁴ \$9132.52 was recovered for 27 workers.

Fair Work Inspectors also provided education and guidance to access FWO resources to assist with record-keeping, pay slips and meet all workplace relations obligations.

In 2018, VIC DET implemented a new procurement model and reduced the number of cleaning contractors from 250 to eight companies in metropolitan areas.

In addition, earlier this year, DET introduced a new contract management software system for regional schools, which requires cleaning contractors to submit evidence each year of compliance with workplace laws. The DET say the new tender process ensures cleaning staff receive fair working conditions and industry standard pay and entitlements.

On 28 March 2019, the new Cleaning Accountability Framework (CAF) initiative was publicly launched.⁵ The FWO played a key role in its development. The scheme promotes compliance and rewards best practice throughout cleaning services supply chains and acknowledges that all participants (contract cleaners, tenants, facility managers, property managers and owners) have a role to play in lifting cleaning industry standards.

⁴ One cleaning company entered into external administration

⁵ <https://www.cleaningaccountability.org.au/>