

A report on the compliance partnership between the Fair Work Ombudsman and Compass Group

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Australian Government

Fair Work
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Executive summary

On 4 June 2014, the Fair Work Ombudsman (FWO) entered into a two-year formal compliance partnership with one of the world's largest food services and hospitality providers, Compass Group (Australia) Pty Ltd (ACN 000 683 125) [Compass Group].¹

Employing over 10 000 people across its 500 Australian workplace sites, Compass Group's chief objective of partnering with the FWO was to improve the company's general workplace compliance.

Underpinned by a Proactive Compliance Deed (PCD), the partnership involved Compass Group providing the FWO with details of the systems and processes already in place (or to be implemented) to ensure ongoing compliance by Compass Group and its related entities, with relevant Commonwealth workplace laws.

From the commencement of the PCD to June 2016, the FWO received 54 requests for assistance from employees of Compass Group or their related entities.

The majority of the requests for assistance received by the FWO concerned underpayment of wages or allowances, non-payment of wages for all hours worked, non-payment of leave entitlements and non-payment of redundancy pay.

Of the total number received, 40 requests for assistance were regarded by the FWO as of a 'routine-low' nature and referred to Compass Group for assessment and rectification. In response, Compass Group:

- resolved 14 matters resulting in a total of \$51 404.91 being repaid to employees
- reported that in 25 matters there was no evidence of any claim and provided reasons for their decisions
- resolved one matter without the need for payment to be made.

On review of these findings, the FWO validated these outcomes.

It was determined that 12 of 14 requests for assistance retained by the FWO did not require further action on the part of Compass Group and these requests were not referred for further action. Examples included:

- where the dispute was resolved soon after lodgement with the FWO and the employee requested to withdraw their matter

¹ <http://www.compass-group.com.au/who-we-are/our-company>

- it was found upon preliminary review that the allegations of non-compliance lacked any substance.

However, two requests for assistance were deemed worthy of further consideration by the FWO.

The first related to allegations of non-compliance made by the Maritime Union of Australia (MUA). However, despite requesting further details from the MUA about the allegations, no response was received and in the absence of any substantial information or evidence, the FWO was unable to progress the matter.

The second matter related to an allegation from an employee alleging pregnancy discrimination due to not being transferred to a safe job. In this matter, the FWO conducted a thorough investigation and concluded there was insufficient evidence of discrimination or failure to provide a safe job. However, the FWO was concerned about the nature of an email sent to the employee that may have breached the employee's workplace rights. The FWO issued a letter of caution² and strongly encouraged Compass Group to improve their handling procedures in relation to pregnant workers and their rights and entitlements.

In addition, as a key element of the self-regulation inherent in a compliance partnership, Compass Group conducted a self-audit of security officers at sites in Western Australia following a series of related requests for assistance which resulted in the back payment of \$40 707.00 to 21 workers.

Significantly, over the course of the partnership, the FWO observed a declining trend in the number of requests for assistance received from Compass Group employees.

Other benefits from the partnership included Compass Group refining its systems and processes to improve its capability in ensuring workers who were leaving employment promptly received their correct notice pay and annual leave entitlements. The group also developed new toolkits and guides to assist managers.

At the conclusion of the partnership, the FWO considers Compass Group is well placed to better manage compliance within its network.

² A letter of caution is a written warning given to an employer to place them on notice that future contraventions may result in the FWO seeking financial penalties.

Background

Compass Group (Australia) Pty Ltd (ACN 000 683 125) [Compass Group] is wholly owned by the British based Compass Group PLC, which is one of the world's largest food services and hospitality providers. In Australia, Compass Group employs more than 10,000 people at over 500 client sites.

Compass Group provides on-site catering and other support services to its clients and operates the following portfolio of brands and businesses; Chartwells, Eurest, ESS, DeltaFM, Medirest, Restaurant Associates and Omega Security Services.

It operates across a wide range of market sectors including Business & Industry, Education, Hospitals & Senior Living, Defence, Leisure & Retail, Security and the Remote & Offshore sector (which services the oil and gas industry, mining and major resources industry construction projects).³

From September 2012 to August 2013, the FWO received a number of requests for assistance regarding alleged underpayment of wages and entitlements concerning Compass Group and its related entities. While investigations showed that in a number of these matters there were no contraventions of workplace laws, the FWO experienced considerable difficulty dealing with Compass. As a consequence, the FWO initiated discussions to offer a formal compliance partnership with Compass in an attempt to focus on resolving matters in a timelier and transparent manner. The main premise of such an offer by the FWO was that an entity the size of Compass Group should not be 'outsourcing' its compliance commitment and responsibilities to the taxpayer through the agency of the FWO. Any formal partnership would be underpinned by a PCD, which is a key tool of the FWO's compliance framework⁴.

Compass and the FWO entered a formal compliance partnership on 4 June 2014.⁵

³ <http://www.compass-group.com.au/who-we-are> accessed 17 August 2016

⁴ <http://www.fairwork.gov.au/about-us/our-vision/compliance-and-enforcement-policy>

⁵ <https://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/august-2014/20140823-compass-pcd> accessed 17 August 2016

Detail of milestones reached under the compliance partnership

1. Communication

One of the main obligations under the PCD was for Compass Group to communicate its compliance partnership with the FWO to all employees of Compass Group and its related entities.

The reasons for this were to:

- demonstrate to all employees, related entities and the community that Compass Group was committed to working with the FWO to promote harmonious, productive and cooperative workplaces
- ensure that all related entities committed to complying with their workplace obligations to enhance the Compass Group brand and the ongoing success of the business.

Compass Group was required to:

- communicate the existence of the PCD and provide a copy to all its employees and employees of its related entities within 14 days of the PCD being signed
- communicate the existence of the PCD to all future employees within 14 days of the commencement of their employment
- advise all employees how they could access information about their entitlements and rights at work, either through Compass Group directly or with the FWO.

On 25 August 2014, Compass Group advised all employees via its online employee portal that it had entered into a compliance partnership with the FWO. At the same time, a notice was sent by mail to all of the related entities advising them of the compliance partnership with the FWO. Compass Group confirmed with the FWO that a copy of the PCD was made available for all employees on an ongoing basis via its employee portal.

In addition, all employees were advised of the Compass Group's contact details for information about their workplace rights and entitlements, as well as the contact details of the FWO.

2. Systems and processes to promote compliance

An objective of compliance partnerships is to give workers certainty that the various systems and processes are working effectively and to help build a culture of compliance in the brand.

Regardless of the size of any business, it is critical to have effective and current systems, processes and controls in place to ensure that issues such as records relating to employees are made and kept and employees are paid correctly, for all hours worked.

Compass Group uses software which has an award interpreter module that seeks to ensure each employee is paid the correct rates of pay from their industrial instrument when working hours are entered into the system. This is based on the information completed and signed by employees on their timesheets. This is the primary way that Compass Group ensures employees are paid correctly for all hours worked. Managers are trained in how to use the payroll software and the relevant payroll codes.

Compass Group was required, within 28 days of the PCD being signed, to provide the FWO with details of the systems and processes already in place or to be implemented to ensure ongoing compliance by Compass Group and its related entities with relevant Commonwealth workplace laws.

These details were not formally provided by Compass Group at this time. However, as part of the reporting requirements under the PCD, Compass Group advised the FWO of the systems and processes that had been refined to ensure compliance with Commonwealth workplace laws across all of its brands and businesses. For instance:

Notice pay paid correctly on termination

The Termination Advice Form that is submitted by site managers to the payroll team for the processing of entitlements on termination was updated to include the following:

- a record of the notice provided
- the anticipated working hours during the notice period so that a notice in lieu payment was calculated correctly.

Annual leave entitlements on termination to be paid in a timely manner

All Site Managers were reminded of their responsibility to complete termination advices correctly and in a timely manner, which ensured that annual leave on termination was paid promptly to employees. As an additional check, a monthly report is generated and sent to the Human Resources Team to advise of any employees who are still active in the payroll system, but with no hours being processed.

Development of toolkits and guides for Managers

Toolkits and guides for managers on topics such as parental leave and absence management were developed and communicated to all staff in a management role. To improve each manager's knowledge of industrial instruments, manager guides were also developed on the *Hospitality*

Industry (General) Award 2010 and the main enterprise agreements applicable to Compass Group and their related entities.

We can never be confident that we will pay people accurately 100% of the time, as there will always be human error. However, our central systems and processes are designed to promote compliance.

As a business operating primarily in the hospitality industry, we have reasonably high labour turnover so it is always a challenge to train new managers on Compass Group systems and processes. Compass Group has a formal training program in place for new managers, which includes training on the systems they need to perform their key functions. This includes PayGlobal training and People Management Essentials.

(National Workplace Relations Manager, Compass Group).

3. Self-resolution of workplace disputes

Under the terms of the partnership, the FWO undertook to forward any requests for assistance of a routine-low nature it received from employees to Compass Group within seven days of receipt. In turn, Compass Group aimed to resolve each request for assistance within 28 days of receipt from the FWO and to provide evidence to the FWO within seven days of the matter being resolved.

The deed's provision allowing Compass Group to self-resolve workplace disputes recognises that at times unintentional mistakes may occur or employees may believe that a mistake has occurred. The FWO promotes this feature of the partnership as part of its overarching strategic objective to build a culture of compliance by encouraging Australian businesses to manage disputes over workplace entitlements with their employees in the first instance. Not only does this approach empower workplace participants and reduce costs for all parties, it also has the benefit of not transferring the cost of compliance to the taxpayer.

Considering a key aim of the compliance partnership was to encourage the timely resolution of any workplace disputes at the workplace level, it was disappointing that the average time for the resolution of requests for assistance over the life of the partnership was 69.8 days.

The FWO raised strong concerns with the Compass Group about these response times during the course of the partnership which resulted in the Group improving its response efforts over the life of the partnership.

Under the terms of the partnership, the FWO reserved its right to investigate any matter it felt it was in the public interest to do so.

From the commencement of the PCD to June 2016, the FWO received 54 requests for assistance from employees of Compass Group or their related entities. Of these, 14 requests for assistance

were not referred to Compass Group, as the FWO determined there was no further action required on the part of Compass Group. Examples included:

- where the dispute was resolved soon after lodgement with the FWO and the employee requested to withdraw their matter
- it was found upon preliminary review that the allegations of non-compliance lacked any substance.

A total of 40 requests for assistance were referred to Compass Group for assessment and rectification.

The majority of these concerned routine underpayment of wages or allowances, non-payment of wages for all hours worked, non-payment of leave entitlements and non-payment of redundancy pay.

The outcomes of those referrals led to:

- 14 matters being voluntarily resolved with a total of \$51 404.91 being repaid to employees
- 25 matters where Compass Group reported there was no evidence of any claim and provided reasons for their decisions
- one matter being resolved without the need for payment to be made.

On review of these reports, the FWO validated these outcomes.

The FWO also deemed that two requests for assistance were worthy of further consideration as they were considered to indicate serious non-compliance.

One of these related to allegations made by the MUA Western Australia Branch on behalf of members employed by Compass Group on the accommodation vessel MS Silja Europa. The allegations related to sexual harassment, bullying and harassment, employees being threatened with dismissal if they join the MUA or participate in union activities and not complying with the roster requirements under the relevant enterprise agreement.

On initially discussing the matter with the MUA representative, the MUA was advised that the allegations concerning sexual harassment, bullying and harassment were not within the FWO's jurisdiction and that these allegations should be directed to the Australian Human Rights Commission and the Fair Work Commission respectively. With regards to the remaining allegations relating to possible adverse action, the FWO requested further details to commence an investigation. No response was received from the MUA and in the absence of any substantial evidence, the FWO did not progress the matter.

The second matter related to a claim alleging pregnancy discrimination due to not being transferred to a safe job. The FWO conducted a thorough investigation and concluded there was

insufficient evidence of discrimination or failure to provide a safe job, to proceed any further with that aspect of the matter. However, the FWO was concerned about the nature of an email sent to the employee that may have breached the employee's workplace rights. The FWO issued a letter of caution and strongly encouraged Compass Group to improve their handling procedures in relation to pregnant workers and their rights and entitlements.

As stated above, the FWO was disappointed that the average time for resolution of finalised requests for assistance in the first year of the PCD was 85 days. The FWO raised concerns with Compass Group relating to these poor response times. Compass Group accepted the feedback that its response times had not met the expectations under the PCD. Given this, Compass Group developed a new process in dealing with requests for assistance referred by the FWO. With the introduction of this new process, the FWO noted a significant reduction in the average time to resolve requests for assistance.

In the second year of the PCD, the average time for resolution of finalised requests for assistance was 32 days. Given the significant improvement from year one to year two, the average time for resolution of finalised requests for assistance over the life of the PCD was 69.8 days. The FWO regards this average time period as sub-optimum.

Case Study: Allowances

A request for assistance was lodged by a current Compass Group employee working at an offshore oil site alleging non-payment of an allowance for working in an environment in which contact had been made with synthetic based mud (SBM) under the *Compass Group – ESS Offshore Oil & Gas (MODU) – Enterprise Agreement 2014* (the Agreement).

The request for assistance was referred to Compass Group for self-resolution and the issue was resolved and notified to the FWO within 33 days.

On discussing the request for assistance with the employee, Compass Group advised that all employees identified as working in the laundry for their usual work would be paid the SBM allowance and systems would be put in place to ensure the payment of the allowance when an employee is required to work with SBM.

The employee confirmed their satisfaction with the resolution with the FWO. The employee was back-paid \$1890 gross, which was paid from the commencement date of the Agreement. A further four employees were back-paid a total of \$10 500 gross.

Of positive note, there was a declining trend in the number of requests for assistance received from Compass Group employees over the life of the compliance partnership (as shown by the graph below). Given the number of employees employed by Compass Group is around 10 000, the number of requests for assistance received by the FWO is considered relatively low.

Under the compliance partnership, requests for assistance were referred to Compass Group's National Workplace Relations Manager who determined the best course of action based on the nature of the request. In most cases the request was referred to a member of the relevant Human Resources team who contacted the employee and attempted to resolve the issue. More straightforward or 'one off' issues were usually resolved directly by the Human Resources Advisor, in the same way that pay or conditions enquiries that an employee directly raised with Compass Group were handled. If the matter involved a question about the interpretation of an industrial instrument, which was different to the way their payroll system was set up, then this required the involvement of the Workplace Relations team.

Compass Group advised satisfaction with the 'single point of contact' arrangement made available through the compliance partnership.

One of the major benefits of the compliance partnership is that we had the opportunity to resolve matters first with employees in the same way as an employee pay query, and that we dealt with one person at the FWO who understands our business rather than inspectors dealing with different parts of Compass Group and directly with managers. If we find non-compliance for one employee as a result of a request for assistance, then we ensure that the issue is rectified for other employees as well. It also allows us to identify any opportunities to develop new toolkits and processes that arise from the issues raised in the requests for assistance so we do not have the same issues recur.

(National Workplace Relations Manager, Compass Group).

4. Self-audits

The FWO received a small number of requests for assistance from employees engaged as security officers by Omega Security Services Pty Ltd in Western Australia. These requests for assistance related to underpayment of wages due to the alleged incorrect application of classification levels. After resolving these matters, pleasingly, Compass Group decided to undertake an audit of all security officers engaged by Omega Security Services Pty Ltd in Western Australia.

Compass Group advised the FWO that the audit resulted in over 50 security officers being reclassified. Whilst not all of these security officers were underpaid, Compass Group determined that 21 security officers were not paid correctly and were subsequently back-paid a total of \$40 707.

We place a high level of importance on self-audits and prefer to fix any issues proactively before they result in employee queries and concerns. If an underpayment of wages is discovered then we fix it up and make the necessary back pay without the need for an

employee to raise the issues first. This demonstrates to our employees that we are vigilant about complying with the law.

(National Workplace Relations Manager, Compass Group).

The FWO acknowledges that there was no requirement on Compass under the PCD to undertake this self-audit. However, the length of time taken to complete the self-audit and remedy underpayments highlights the importance of having efficient and effective processes in place to prevent non-compliance and then fix it when it occurs.

Reports

Reports were to be provided to the FWO, after the completion of the one-year anniversary and at the expiry of the PCD. Both reports were required to address the following matters:

- (a) the actions taken by Compass Group to address the requirements of the PCD
- (b) the number of requests for assistance referred to Compass Group
- (c) the number of requests for assistance resolved by Compass Group
- (d) the average time taken to resolve each request for assistance
- (e) the average amount of underpayments.

Compass Group provided both reports, which were comprehensive. They include details on the communication of the PCD, the systems and processes implemented during the life of the compliance partnership, as well as details on the self-resolution of requests for assistance..

Concluding comments

Compass Group is a large and diverse company. Throughout the two-year period of the compliance partnership, the FWO observed improvements in the systems and processes implemented by Compass Group to ensure they meet all their obligations.

While the FWO is reasonably confident that Compass Group now has systems in place to handle allegations from employees of non-compliance, it notes Compass Group recently moved to have the bulk of its payroll function performed off-shore. Given this, it will be vital that all managers across the operation understand the importance of getting processes right so that non-compliance does not become an issue.

The improved performance in the second year of the partnership provides the FWO with greater confidence that Compass Group is better placed to improve its compliance framework in the future.

While the foundations laid during the life of the compliance partnership provide a solid base for the future compliance success of all Compass Group operations, the FWO will continue to review any future requests for assistance from employees and seek to ensure Compass Group is continuing to invest in compliance. At this stage, there is no intention to enter into a second compliance partnership.

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.

The Fair Work Ombudsman is an independent statutory agency, created by the FW Act on 1 July 2009.

The Fair Work Ombudsman employs a number of strategies to achieve compliance with national workplace laws. This includes entering into Proactive Compliance Deeds with employers. A Proactive Compliance Deed is an opportunity for businesses to work with the Fair Work Ombudsman in a positive and constructive manner and achieve sustainable monitoring arrangements so as to demonstrate commitment to 'fair Australian workplaces'.

Employers may seek to enter into a Deed with the Fair Work Ombudsman 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 deed, for example, self-auditing of wages and record keeping, initiatives to engage with employees to improve compliance, and mutually beneficial improvements to employment and business outcomes by focussing on supply chain, brand and franchise relationships.

A business that enters into a deed with the Fair Work Ombudsman is assigned a dedicated Fair Work Officer who provides support and assistance to the business to ensure they are able to meet the outcomes of the deed.

A publicly available report is published at the conclusion of each deed.

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).