

Woolworths compliance partnership: interim report

In 2014, the Fair Work Ombudsman (FWO) commenced an inquiry into Woolworths' procurement of trolley collection services. This followed our investigations into a number of non-compliant businesses providing Woolworths with contract trolley collection services.

Our findings were detailed in an inquiry report.¹ The report noted that Woolworths' procurement and governance processes contributed to a culture of non-compliance in its supply chain network.

To address these findings, Woolworths Group Ltd entered into a three-year compliance partnership with the FWO on 22 September 2017. The terms of our partnership are contained in a Proactive Compliance Deed (PCD).²

This interim report summarises progress made towards satisfying the commitments in the PCD.

It is important to note that outcomes from a range of new governance arrangements are yet to be realised. For example, all trolley collection labour hire contracts have recently been renegotiated, and new biometric systems are being put in place to more accurately track hours worked (details of these changes will be reported at the conclusion of the compliance partnership). This interim report captures compliance issues under previous settings and it is anticipated the second half of the compliance partnership period will see a reduction in the instances of non-compliance.

Interim outcomes

Public notice

Woolworths published information about the partnership on woolworths.com.au and in national newspapers, *The Australian* and *The Australian Financial Review* (as per clause 4.2 of the PCD).

Workplace relations training

Woolworths engaged a human resources (HR) specialist to design workplace relations training for trolley collectors, contractors and Woolworths staff (clause 11), covering:

¹ FWO inquiry report: <https://www.fairwork.gov.au/ArticleDocuments/763/inquiry-into-trolley-collection-services-procurement-by-woolworths-limited.docx.aspx>

² <https://www.fairwork.gov.au/ArticleDocuments/762/woolworths-proactive-compliance-deed.docx.aspx>

- Woolworths' 'Speak-Up' hotline and email service
- FWO assistance and information
- minimum entitlements and employer obligations under the *Fair Work Act 2009*, *Fair Work Regulations 2009* and awards
- general protections³
- contractor obligations under the *Migration Act 1958* to check collectors' right to work in Australia.

This training is delivered via:

- an e-learning module for trolley collectors to complete annually (with text and voiceover in English, Hindi, Arabic or Korean, and additional languages to be added)
- annual workplace relations and HR programs for contractors and relevant Woolworths staff (internal compliance, procurement and facilities management teams).

Hotline and reporting non-compliance

Woolworths established its 'Speak-Up' service before our partnership commenced. Woolworths continues to fund and enhance the service (clause 8).

Contractors, employees and members of the public can raise concerns or inquire about workplace issues via a hotline or web portal. The hotline covers 150 languages and the web portal is in English, Hindi, Arabic, Korean, Mandarin or Thai.

Just over half of workplace complaints in 2018 were received via Speak Up (51%).

Self-resolution of workplace disputes

Woolworths established a new internal compliance team to monitor, audit and investigate compliance with Australian workplace laws within its trolley collection service network.

In 2018, Woolworths received 57 workplace complaints through various channels, including: FWO referrals (12), the Speak-Up service (29), other direct contact, internal and external sources, and internal Woolworths' audits and investigations. Two-thirds of complaints came from sites in Queensland and New South Wales.

At the time of publishing this report, 38 complaints are finalised, with 19 currently under investigation by Woolworths.

Woolworths' investigations have uncovered a range of monetary and non-monetary breaches of workplace relations laws by contractors, including:

³ <https://www.fairwork.gov.au/employee-entitlements/protections-at-work>

- underpayment of wages and superannuation
- cash back schemes⁴
- failure to pay penalty rates
- unlawful deductions
- inadequate record-keeping
- falsification of records
- incorrect pay slips
- failure to provide pay slips
- bullying and intimidation.

To date, the Woolworths internal compliance team has recovered \$166,803 in outstanding entitlements for 29 employees. This includes \$78,684.46 for 15 employees resulting from requests for assistance to the FWO that were referred to Woolworths (clause 9).

Woolworths has acted to ensure workers were reimbursed (within 3-6 months), including by providing education and training to contractors. In some cases, contractors have been suspended (2 primary contractors) or terminated (1 primary and 3 secondary contractors) for serious non-compliance.

FWO referrals

We referred 12 requests for assistance from current or former trolley collectors to Woolworths' new internal compliance team for investigation.

Six of these matters are now resolved. Three did not involve outstanding monetary entitlements. The other three involved 15 workers at three stores who were underpaid a total of \$78,684.46. To uncover the full extent of the underpayments, Woolworths expanded investigations to all trolley collectors at the sites involved. A primary and secondary contractor were terminated as a result of these investigations. Other non-compliant contractors are to be included in future audits and are being closely monitored.

The internal compliance team is still investigating five referrals, and one matter is currently in mediation between the contractors and worker.

Self-audits

Woolworths implemented a comprehensive external and internal annual audit program (clause 7).

External audits

Contractors were audited by BSI Group Australia,⁵ Intertek⁶ or SAI Global.⁷

⁴ <https://www.fairwork.gov.au/pay/deducting-pay-and-overpayments#cash-back>

⁵ <https://www.bsigroup.com/en-AU/>

⁶ <https://www.intertek.com/>

⁷ <https://www.saiglobal.com/>

Woolworths selected a sample of sites including urban and regional locations in each state and territory, and a mix of company brands (i.e. Woolworths, Big W and Dan Murphy's).

To ensure each contractor in the supply chain was audited properly, the sample included at least 10% of sites that each contractor provided trolley collections services to (this was beyond the 5% requirement set out in the PCD).

Auditors did site visits to interview contractor administrative staff and trolley collectors, and reviewed records covering a six-week period, to check employees were receiving their minimum entitlements.

They identified:

- pay slip errors
- underpayment of wages
- incorrect rosters and timesheets.

One employee was found to have been underpaid \$752.19 and was reimbursed.

In addition to specific breaches of workplace relations laws, auditors found:

- insufficient processes in place to identify underpayments
- contracts not being issued
- an absence of policies (e.g. ethical and sustainability policies)
- an absence of / failure to deliver employee training programs.

Contractors were directed to implement corrective measures and provide evidence that this had been done before audits were closed for each site.

Internal audits

Woolworths' internal compliance team audited an additional 59 sites using a mixed methodology of site visits and desk-based audits.

Two investigations have arisen from these audits. One is ongoing. The closed matter resulted in a \$43,500 back payment to one employee (part of the \$166,803 in total recoveries) and termination of a sub-contractor for multiple breaches, including payment of a daily flat rate and falsification of records.

Reporting to the FWO

As part of the partnership Woolworths reports to us on:

- complaints received through the 'Speak up' service
- results of its internal and external audits
- investigations of FWO referrals.

Conclusion

This compliance partnership has led to the discovery of instances of significant non-compliance with workplace laws, including underpayments of \$167,555 to 30 employees. Woolworths' internal compliance team have acted to see employees reimbursed, and a number of primary and secondary labour hire contractors have been suspended or terminated.

Woolworths has fulfilled its commitment to the compliance partnership thus far, and has made substantial investments in governance and monitoring of its trolley collection services supply chain. Positive outcomes are expected as a result of improved contracts with trolley collection services providers and new management systems being implemented.

We maintain regular contact with Woolworths, including through monthly meetings and workshops with the internal compliance team.

The FWO will continue to work with Woolworths to improve compliance in its supply chains and provide a final report at the end of our three-year partnership in 2020.