

## Push to end exploitation of trolley collectors

29 August 2014

The Fair Work Ombudsman is urging the nation's major supermarket chains and shopping centres to help stamp out exploitation of vulnerable trolley collectors.

Trolley collectors are arguably among Australia's most vulnerable and potentially exploited workers.

According to the 2011 Census, over a third of the 1500-strong national trolley-collecting workforce is under 20 years old and 40 per cent did not have an education beyond Year 10.

Twenty-nine per cent of trolley collectors were born outside of Australia (most in a non-English speaking country) and anecdotal evidence suggests many have physical or other disabilities.

In some cases, the Fair Work Ombudsman has discovered trolley collectors working for as little as \$5 an hour for their physically demanding and often dangerous work.

In the past six years, the Fair Work Ombudsman and its predecessor have recouped more than \$433,241 for 528 underpaid trolley collectors at supermarket sites across Australia.

For example, a trolley collector in the Melbourne CBD reimbursed \$7200 had only recently arrived from the Middle East and spoke limited English, but had the courage to come forward and complain after not being paid for six weeks' work.

Since January 1, 2007, 11 matters have been placed before the courts alleging underpayment of trolley collectors – and the industry remains a persistent source of complaints.

Of those litigations which have been finalised, the Fair Work Ombudsman has achieved penalties totalling \$288,000 in cases alleging the underpayment of dozens of trolley collectors by more than \$426,000.

Currently, the Fair Work Ombudsman has four separate matters before the Courts alleging that collectively, 71 trolley collectors have been underpaid almost \$485,000.

"All Australian workplaces – big and small – need to understand and apply Australia's workplace laws to their business practices," says Fair Work Ombudsman Natalie James.

"Big companies sub-contracting out services on their sites have a responsibility to ensure those contracts do not undercut minimum employee entitlements.

"This responsibility extends to supply-chain contractors. Just because a company doesn't 'own' the contract doesn't mean it can wash its hands of it."

Ms James says the Fair Work Ombudsman is determined to hold major employers to account for their procurement decisions, suggesting that they cannot turn a "blind eye" to minimum employee entitlements during the tendering process.

"Undercutting competitors' costs is often the easiest way to win work and labour is the most significant cost," she said. "Costs can, however, only be legitimately reduced so far before the statutory safety net is threatened, usually by below-award wages or employees being 'misclassified' as independent contractors."

Ms James says three types of work that fall into this category that have come to the Agency's attention are trolley collecting, cleaning and security.

"These industries have a number of features in common. This work is relatively low skill and highly labour intensive. It's work that less educated, vulnerable workers can do, and so they feature predominately in these sorts of industries," she said.

"And these are highly competitive industries in which businesses compete for contracts and where the profit margins, particularly on the labour component, are often low."

Observing that the Fair Work Ombudsman deals with the contract trolley services industry more than it would like, Ms James welcomed a commitment from one major service provider, United Trolley Collections Pty Ltd (UTC), to partner with the Agency to ensure its sub-contractors are fully compliant with workplace laws.

UTC, which has more than 60 independent contractors and provides services throughout Australia, including at more than 700 Coles sites, has entered into a Proactive Compliance Deed (PCD) with the Fair Work Ombudsman.

Under the terms of the Deed, UTC will:

- Take all “reasonable steps” to ensure its contractors are compliant with workplace laws, including designing and implementing a training program to ensure they understand their obligations,
- Work directly with its contractors to resolve future workplace complaints and rectify any underpayment of wages which are identified, and
- Arrange to independently audit the pay-packets of 10 per cent of trolley collectors employed at sites operated by its contractors in every state and territory and rectify any issues identified.

Ms James welcomed the UTC’s pro-active approach to workplace compliance, saying it showed corporate responsibility to a large number of employees.

“It is heartening for us to work with companies which recognise the importance of workers in the supply chain receiving their lawful entitlements,” she said.

The Fair Work Ombudsman has now signed a number of Proactive Compliance Deeds with major employers as they recognise the Deeds provide opportunities to facilitate better communication with their employees.

“Importantly, the Deeds also strengthen the co-operation and working arrangements between employers and ourselves,” Ms James said.

“The Deed provides a framework for us to work together. If the Fair Work Ombudsman just continues to react to complaints, it is not going to make significant inroads into the workplace relations compliance issues that exist in this industry.

“There will always be new operators moving into the industry and there will always be workers who will not complain about their entitlements for a variety of reasons, including their vulnerability and fear of reprisals.

“For that reason, it is important for us to look at different ways of addressing compliance issues in different industries, including the development of strategic relationships with those businesses at the top of the operating structure.

“Those who can influence employment outcomes, including through their procurement chains, should be doing so.”

Ms James says her Agency has been concerned about supermarket chains that focus solely on cost when contracting out trolley collection services.

“Simply choosing the provider who offers the lowest price, without looking closer or asking questions about how they can offer such low prices, can potentially expose supermarket chains to reputational damage in the event that the provider turns out to be underpaying their employees or engaging in sham contracting practices,” she said.

“It can also potentially expose individual managers and their company to financial penalties.

“Workplace relations legislation provides a mechanism through which someone other than the employer who is involved in a contravention of workplace laws may be held accountable for the contravention, and subject to penalties.

“Section 550 of the Fair Work Act provides for accessorial liability. It isn’t novel – the notion of accessorial liability has been around for a long time.

“There were equivalent provisions in the previous workplace relations legislation and it is common elsewhere too, including occupational health and safety as well as corporations, competition and consumer legislation.

“We are using accessorial liability more and more, so that we can hold individuals involved in contraventions to account. Involvement in a breach can result from being ‘knowingly concerned in’ or ‘party’ to the breach, including by doing or not doing something, directly or indirectly. Knowledge of a breach can arise from ‘wilful blindness’.

“In a nutshell, this means that turning a blind eye at the top of the procurement chain can be risky.”

The Fair Work Ombudsman is increasingly investigating top of the supply chain practices which result in employees being underpaid or sham contracting.

“We are doing this not only because such practices often result in vulnerable employees missing out on basic rights and protections like penalties, overtime, allowances or leave - but also because such practices mean that businesses which are doing the right thing by their employees find themselves on an uneven playing field and can’t compete,” Ms James said.

In May, the Fair Work Ombudsman revealed its concerns that Local Government may be inadvertently contributing to non-compliance when local councils signed low-cost security contracts (see ‘[Warning for Local Government on the dangers of lowest-cost security contracts](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/may-2014/20140530-)’ ([www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/may-2014/20140530-](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/may-2014/20140530-)

lg-cautioned-on-tenders’).

The security industry has raised concerns with the Fair Work Ombudsman that competition is driving down tender bids - and employees are likely to be paying the price.

“If a council is buying in security services at a price that does not allow the contractor to pay an average of \$24 an hour, then there is a real possibility the employee is being underpaid,” Ms James cautioned at the time.

The Australian Security Industry Association Ltd (ASIAL) and the union United Voice have agreed to help the Fair Work Ombudsman mount a pro-active education campaign.

In 2013, the Federal Circuit Court handed down a decision in an ongoing case of FWO v South Jin and Coastal Trolley Services, accepting that supply chain participants who are not direct employers can be liable under section 550 of the Fair Work Act if they have the requisite knowledge of and were associated with the contravention.

In this case, two Adelaide trolley collecting companies are alleged to have underpaid their trolley collectors, most of whom were overseas workers, more than \$165,000. The matter remains before the Court.

Ms James says supermarket and other procurement officers or managers need to think twice before simply choosing the trolley services provider who offers the lowest price, and the Fair Work Ombudsman can assist them to strengthen their procedures and minimise risks.

“We know that in any procurement exercise, supermarkets, like anyone else, need to get bang for their buck. It is important that genuine competition between businesses is not undermined,” she said.

“However, we are concerned that the strong focus that many place on getting services for the lowest price is resulting in a ‘race to the bottom’ among trolley collection providers - and it’s often their employees who are paying the ultimate price.

“We want those involved in procurement to ask themselves when quotes get so low that providers have to cut corners to meet them and keep competing for work, which corners get cut? Our experience tells us it’s often employee minimum entitlements.”

“All parties should undertake due diligence when outsourcing work to contracted workers, particularly to lowest-cost providers, to ensure lower costs are attributable to efficiencies in the business and not due to the potential exploitation of workers on below-award rates.

“The Fair Work Ombudsman will continue to strategically use compliance and education activities to create awareness among large organisations that it is not acceptable to be indifferent regarding the treatment of people that work for, and within, their organisations just because it does not directly employ them.”

Ms James says supermarket chains who want to put their hand up and publicly demonstrate their commitment to strong corporate leadership should “have a conversation” with the Fair Work Ombudsman.

“We want to see leadership from the top, a commitment to ethical and moral, as well as lawful practices, and let it become the standard. We need to change the culture – not just a few operators,” she said.

“The Fair Work Ombudsman will use the levers available to us to protect vulnerable workers at the bottom of the chain, through litigation and active use of accessorial liability.

“Or collaboration, such as via Proactive Compliance Deeds. And we will continue to actively use the media.

“If a business is interested in looking down the supply chain and taking responsibility for what is going on within it, then the Fair Work Ombudsman would love to have a conversation about how we can help.

“To those who choose not to look down the supply chain, to keep their eyes fixed narrowly, that may be a legitimate choice.

“But I can’t promise that we won’t be having a different sort of interaction at some point – perhaps one that takes place in a court. “

The Fair Work Ombudsman has recently signed Memorandums of Understand (MoUs) with a number of peak employer bodies, including the Australian Hotels Association, Restaurant and Catering, the Accommodation Association of Australia and the Australian Security Industry Association Ltd as part of its ongoing commitment to partnerships with key stakeholders.

The Fair Work Ombudsman’s new website – [www.fairwork.gov.au](http://www.fairwork.gov.au) – can assist large and small business operators with workplace relations issues.

Businesses can also sign up to a regular E-newsletter from the Fair Work Ombudsman with helpful workplace tips and information.

Similarly, employers can call the Fair Work Infoline on 13 13 94 to speak with an expert adviser.

Download:

- [United Trolley Collections Pty Ltd Proactive Compliance Deed \(DOCX 128.9KB\)](http://www.fairwork.gov.au/ArticleDocuments/762/utc-proactive-compliance-deed.docx.aspx) ([www.fairwork.gov.au/ArticleDocuments/762/utc-proactive-compliance-deed.pdf.aspx](http://www.fairwork.gov.au/ArticleDocuments/762/utc-proactive-compliance-deed.pdf.aspx)) (PDF 2.4MB) ([www.fairwork.gov.au/ArticleDocuments/762/utc-proactive-compliance-deed.pdf.aspx](http://www.fairwork.gov.au/ArticleDocuments/762/utc-proactive-compliance-deed.pdf.aspx))
- [Natalie James' speech to the Australian Labour and Employment Relations Association 2014 National Conference \(DOCX 51.6KB\)](http://www.fairwork.gov.au/ArticleDocuments/764/Natalie-James-speech-for-the-ALERA-national-conference.docx.aspx) ([www.fairwork.gov.au/ArticleDocuments/764/Natalie-James-speech-for-the-ALERA-national-conference.pdf.aspx](http://www.fairwork.gov.au/ArticleDocuments/764/Natalie-James-speech-for-the-ALERA-national-conference.pdf.aspx)) (PDF 217.1KB) ([www.fairwork.gov.au/ArticleDocuments/764/Natalie-James-speech-for-the-ALERA-national-conference.pdf.aspx](http://www.fairwork.gov.au/ArticleDocuments/764/Natalie-James-speech-for-the-ALERA-national-conference.pdf.aspx))

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