

\$90,000 penalties for contractors who paid their trolley collectors as little as \$8 an hour

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Trolley collection contractors who were once part of supply chains for Woolworths, Coles and Foodland have been penalised more than \$90,000 after overseas workers at Adelaide shopping centres were paid as little as \$8 an hour.

Adelaide man Ki Bok Jin, who deliberately underpaid the workers through his now defunct trolley collecting company South Jin Pty Ltd, has been penalised \$44,350.

In addition, Coastal Trolley Services Pty Ltd, which sub-contracted Jin's company to provide trolley collection services, has also been penalised \$38,000 and its major shareholder and director Edward Stroop a further \$8500.

The penalties, imposed in the Federal Court, are the result of an investigation and legal action by the Fair Work Ombudsman.

The Court ordered that most of the penalties be paid to the workers.

Thirty eight trolley collectors were collectively underpaid a total of \$85,367 when they worked at shopping centres in Marion, West Lakes, Elizabeth, Kurralta Park and Fairview Park between February, 2009 and November, 2010.

Woolworths, Coles, Foodland, Big W, Kmart, Target and Dan Murphy's operated at these sites at the time.

Most of the underpaid trolley collectors were male overseas workers in their 20s from Korea, Nepal, Burma and India.

The majority were in Australia on student and tourist visas.

Fair Work inspectors investigated after receiving underpayment allegations and found workers were paid as little as \$8 an hour.

Under the Cleaning Services Award, permanent full time employees were entitled to receive at the time more than \$14 and casual employees more than \$17 for ordinary hours and more than \$30 for some weekend and overtime work.

Superannuation entitlements were also underpaid.

Justice Richard White found that Jin, through his company, had "adopted, deliberately, a system which would result in underpayments and sought to disguise that by producing wage records which were not just inaccurate, but false".

Justice White described the underpaid workers as young men with limited English and limited knowledge of their entitlements.

"This meant that they were less likely to complain about their treatment. In this sense, they were a group of vulnerable employees," he said.

After a contested hearing, Justice White found that Coastal Trolley Services was an accessory for about half the underpayments.

The Court determined that Coastal Trolley Services knew that the sub-contract price it paid South Jin for part of the underpayment period was not sufficient to allow the company to pay minimum lawful entitlements.

Coastal Trolley Services had been contracted by a company called Integrated Trolley Management Pty Ltd, which held head trolley collection services contracts with Coles, Woolworths and Foodland.

Justice White described the conduct of Coastal Trolley Services and Stroop as "serious".

He found that at all times they had the means to pay South Jin enough to it to pay minimum wages, but chose to place their own financial interests above the interests of the trolley collectors.

Justice White found there was a need to impose penalties to deter others from similar conduct, noting that "this is an industry in which vigilance is necessary to ensure compliance by employers with their obligations".

The Court also found there was a need to impose a penalty to specifically deter Jin from future contraventions, saying he lacked any genuine contrition for his conduct and continued to be involved in the trolley collection industry and the employment of workers.

Coastal Trolley Services, which ceased trading in 2012, and South Jin, which was deregistered in 2014, are no longer involved in any supply chains.

Fair Work Ombudsman Natalie James says that outsourcing work to the lowest-cost contractor and turning a blind eye to whether the contractor pays workers' correctly is not acceptable conduct.

"The law can extend legal liability to individuals involved in procurement and to companies further up the supply chain," she said.

"Increasingly, if we find a business underpaying workers and that business is part of a supply chain, we are looking up the supply chain to the companies that are the price-makers and controls the settings."

Ms James says the Fair Work Ombudsman is committed to building a culture of compliance in the trolley collection industry.

"The Fair Work Ombudsman will not sit passively while operators seek to exploit the corporate veil to avoid their obligations to pay workers what they are entitled to," she said.

"We will continue to adventurously test the boundaries of accessorial liability provisions to ensure individuals and entities involved in breaches of the Fair Work Act are held to account."

The Fair Work Ombudsman last month released the findings of an Inquiry into the procurement of trolley collection services by Woolworths Ltd – see [Woolworths trolley collection services \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160625-woolworths-trolley-mr\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160625-woolworths-trolley-mr) .

In a statement issued at the time, Ms James said the report set out a clear pathway for Woolworths to establish robust, transparent and accountable management of its trolley collection services.

"We stand ready to work with Woolworths in a compliance partnership that will support Woolworths to implement the Inquiry recommendations and build a culture of compliance in its business," she said.

"We also call on members of the community with any information about the involvement of any person or company in the underpayment of trolley collectors working for Woolworths to come forward and tell us what you know.

"Recognising that some people may wish to provide information confidentially, they can report their concerns anonymously via a new facility on our website at www.fairwork.gov.au/tipoff (<http://www.fairwork.gov.au/tipoff>) ."

Coles became the first major supermarket chain to publicly declare it has an "ethical and moral responsibility" to stamp out exploitation of vulnerable trolley collectors when it signed an Enforceable Undertaking with the Fair Work Ombudsman in October, 2014 – see [Coles accepts "ethical and moral responsibility" to help end exploitation of vulnerable trolley collectors \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/october-2014/20141007-coles-eu-presser\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/october-2014/20141007-coles-eu-presser) .

Earlier this year, Coles provided a first-year report to the Fair Work Ombudsman on steps it has been taking to stamp out exploitation of trolley collectors across hundreds of its sites, including bringing trolley collection services progressively in-house.

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

An interpreter service is available on 13 14 50 and information on the website is translated into 27 different languages.

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