

## Woolworths trolley collection services

25 June 2016

The Fair Work Ombudsman today released the findings of its Inquiry into the procurement of trolley collection services by Woolworths Ltd.

When visiting 130 Woolworths' sites across Australia, Fair Work inspectors found some trolley collectors being paid rates as low as \$10 an hour.

When the Inquiry commenced, the minimum adult hourly rate was between \$18.01 and \$22.51, depending on whether the workers were full-time, part-time or casual employees.

More than three in every four (79 per cent) of sites visited had indications of some form of non-compliance with workplace laws.

Almost one in every two (49 per cent) presented serious issues; that is, multiple indicators of non-compliance such as reports of underpayments, no time records or payslips.

Many of the trolley collectors were overseas workers from India, Sudan, Korea, Lebanon, Syria, Iraq and Iran and vulnerable to coercion and exploitation.

The Inquiry found that while Woolworths' does have some governance systems in place, these have not been effective - and this has contributed to a culture of non-compliance by its contractors.

It concluded that Woolworths had adopted a business strategy which sought to transfer capital risk to labour through its procurement practices.

The Inquiry also expressed concern about statements made by Woolworths which indicate that it sought to transfer its supply chain obligations to comply with workplace law to the Fair Work Ombudsman.

Legal proceedings have recently commenced against two Woolworths' trolley collection contractors and consideration is being given to litigation against other contractors.

We reserve our right to take legal action against Woolworths for any current or previous involvement in contraventions that become evident from our further inquiries.

We want anyone who has information about trolley collectors at Woolworths supermarkets being underpaid to come forward and tell us what they know.

In particular, we are interested in any information about the involvement of individuals or companies, even if not the direct employer, in the underpayment of workers.

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) ([www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/report-an-issue-anonymously/default](http://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/report-an-issue-anonymously/default)) .

Notwithstanding the introduction of some new systems and processes during the course of our Inquiry, the Fair Work Ombudsman is yet to be convinced that Woolworths has established a sustainable self-monitoring and performance framework that will ensure compliance within its labour supply chain.

We are recommending Woolworths enter into a compliance partnership with us to publicly demonstrate its commitment to stamping out the exploitation of vulnerable trolley collectors.

### Background

For almost a decade, the Fair Work Ombudsman and its predecessor agencies have investigated allegations against businesses providing trolley collection services to Woolworths.

The Inquiry was initiated because of an overall lack of improvement in compliance, as well as disturbing allegations of violence towards trolley collectors at some Woolworths sites.

We were particularly concerned by allegations of threatening and intimidating behaviour towards trolley collectors at Woolworths'

sites in Queensland and South Australia.

Four trolley collectors complained that their employment had been terminated after they turned to the Agency for help, with one saying the employer visited him at home to "pressure him to withdraw" his request for assistance.

Given the serious nature of the conduct and ongoing requests for assistance from trolley collectors at Woolworths' sites, we formed the view that a broad examination of compliance with workplace laws by those providing trolley collection services to Woolworths was warranted.

When the Inquiry commenced, Woolworths engaged directly with 33 contractors to provide trolley collection services at its supermarkets and Big W, Dan Murphy's and Thomas Dux stores.

Over the past nine years, the Fair Work Ombudsman and its predecessor agencies have put 13 matters before the Courts alleging the underpayment of trolley collectors at Woolworths, Coles and Costco sites.

Since 1 January 2007, the Fair Work Ombudsman and its predecessor agencies have recovered more than \$700,000 in unpaid wages and entitlements for more than 544 trolley collectors nationally.

We have long been concerned about the exploitation of employees engaged in low-skilled work at the bottom of labour supply chains and in August 2014 publicly challenged the nation's supermarket giants, in particular, to help stamp out exploitation of trolley collectors.

Coles was first to admit it had an ethical and moral responsibility for ensuring minimum wages and entitlements for workers in its supply chain when it signed an Enforceable Undertaking with us in October, 2014.

Coles acknowledged that its former model of contracting out trolley collection services was open to exploitation and since then has been progressively moving its trolley collection services in-house.

#### History with Woolworths

The Fair Work Ombudsman has been alerting senior Woolworths' staff to reports of non-compliance in the company's supply chain for almost seven years.

In the five years leading up to our Inquiry, we investigated 12 of Woolworths' principal contractors and 20 of its sub-contractors.

A number of Woolworths' sub-contractors are currently under active investigation as part of the Inquiry.

At a meeting with senior Woolworths' officials in June last year, we expressed our view that the company needs to assume a greater leadership role in the management of its labour supply chain.

Again, at a follow-up meeting last September, we repeated our view that Woolworths needed to assume legal, moral and ethical responsibility for the integrity and lawfulness of its trolley collection and labour supply chain arrangements.

In January last year, Woolworths produced to the FWO an internal report which found "no evidence of systemic underpayment, exploitation or mistreatment of trolley collection employees in the sample of sites reviewed."

It concluded that "controls put in place by the business to address previously identified concerns over Trolley Collection Employee's welfare and pay have been generally adequate in reducing the risk of underpayment and mistreatment of these employees to an acceptable level."

The Fair Work Ombudsman respectfully challenges the basis for this conclusion.

Woolworths' own audit found almost half (44 per cent) of the sites did not maintain timesheets "to a standard that allowed accurate calculation of paid hours".

It also found that at 21 per cent of sites, employees had not been paid in accordance with the Award, including incorrect base rates, overtime penalties and shift-loading penalties.

In circumstances where it was not possible to calculate paid hours at such a large number of sites, the Fair Work Ombudsman cannot see how this conclusion could be reached.

The Inquiry formed the view that a number of employers created and provided false or misleading records to Fair Work inspectors, and possibly Woolworths' auditors as well.

#### Findings

Of the 130 Woolworths sites assessed, the Inquiry found:

- Indications of some form of non-compliance at 79 per cent of sites,
- Indications of serious non-compliance at 49 per cent,
- Workers being paid rates as low as \$10 an hour at some sites,

- Cash payments used to conceal the true identity of employees and the amounts actually paid to them,
- Manipulation of Woolworths' identity card system,
- Inaccurate, false or misleading records and failure to issue pay-slips,
- Workers vulnerable to exploitation and often complicit in acts of non-compliance,
- Recruitment of vulnerable workers, and
- Deficient governance arrangements contributing to non-compliance.

Further, as it narrowed its focus to 43 sites involving 11 principal contractors and 35 sub-contractors, the Inquiry determined that Woolworths procurement processes had contributed to a culture of non-compliance by:

- Failing to monitor and enforce its own contractual terms which prohibit sub-contracting beyond one-level,
- Relying on sub-optimum governance systems which, in part, allowed the practices of poor or false record keeping to flourish and resulted in underpayment of workers, and
- Failing to adequately monitor who is performing work at which site and when, and that each worker is appropriately identified and inducted.

The Fair Work Ombudsman has recently commenced legal proceedings against two of Woolworths' trolley collection providers:

- Media release: [Trolley collector allegedly underpaid \\$26,000 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160523-green-world-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160523-green-world-litigation)
- Media release: [Trolley-collection company faces Court \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160517-civic-national-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160517-civic-national-litigation)

There is potential for litigation against further businesses involving alleged underpayment of trolley collectors by more than \$100,000.

Nine trolley collection providers have already received formal Letters of Caution placing them on notice that future contraventions will result in enforcement action.

#### Features of non-compliance

Oversight by principal contractors of their labour supply chains was haphazard.

It was focussed primarily on compliance with workplace health and safety laws and reducing risk of injury to the public and damage to vehicles.

Furthermore, Fair Work inspectors encountered trolley collectors who refused to speak to them about their employment arrangements.

Many of those who did speak appeared to have been "coached" beforehand on what to say.

Trolley collectors at more than a third of sites (34 per cent) told Fair Work inspectors they were being paid less than the minimum rate.

Workers at more than half the sites (56 per cent) were not clear if tax and superannuation were taken from their wages, and at 36 per cent of sites, they did not receive pay-slips.

Trolley collectors at a third of the supermarket sites (33 per cent) could not name their employer, or named an employer which was different to that provided by Woolworths.

Workers at almost one-third of the supermarket sites assessed (32 per cent) revealed they were not Australian citizens.

The majority of principal contractors told us that communication from Woolworths on tenders was non-existent, or poor, and therefore assumed "price" was the primary factor in whether or not a tender was successful.

Most reported being very reluctant to raise issues of price or coverage with Woolworths and that fear of losing their contract was a significant motivator for them to submit competitive tenders.

#### Vulnerable employees

Due to the vulnerability of employees, few were willing to provide their name or to speak to us on-the-record.

In some circumstances, employees appeared to accept lower rates of pay if they were made in cash and "off the books".

We can only speculate that they did this deliberately to avoid their obligations arising from visa conditions, tax law and/or welfare benefits.

We know that many workers are vulnerable to coercion, loyal to their cultural community and simply grateful to have a job in Australia, no matter what it pays.

When asked to provide information about being underpaid, one overseas worker declined, saying that his employer was the only one

who was willing to give him a job.

#### Contract prices

We reviewed a range of contracts in various labour supply chains to assess the contract price and the number of labour hours required to service the contract.

In most cases, the contract price between Woolworths and a principal contractor should have been sufficient to meet the minimum entitlements of employees - but only where just two levels of contracting were in place.

The Inquiry identified that in many cases, there were multiple layers of contracting between Woolworths and trolley collecting employees - despite the stipulation in service agreements that this not occur.

With multiple levels of sub-contracting, there is risk that neither the lead business nor employees know the identity of the on-site trolley collection employer, and the Inquiry found unusual arrangements involving intermediaries operating outside corporate structures.

We did find instances where the contract price appeared too low to enable the relevant sub-contractor to make a profit and/or pay employees correctly.

Given that low contract prices are not uncommon across Woolworths sites, the Fair Work Ombudsman is concerned that parties are knowingly working within an unsustainable system reliant on underpayment of workers - and we are continuing to investigate instances where the contract price paid may have contributed to non-compliance.

A key issue found to be affecting compliance is the flow of money through the supply chain to employees, with significant differences across sites in the "cut" contractors take from the contract price set by Woolworths.

Some contractors took a cut as little as three per cent, while we found one who took as much as 47 per cent.

#### Cash payments

The Inquiry observed that a significant number of cash payments are made to employees in this industry.

When we looked at the bank accounts of sub-contractors, we found the majority withdrew in cash more than 50 per cent of the money they were paid by the principal contractor.

One sub-contractor withdrew cash amounts of up to \$100,000 a week.

It is not unlawful to pay employee wages in cash, but cash payments combined with false or inadequate record-keeping pose a number of compliance concerns for us.

A cash economy may also indicate tax and superannuation avoidance, visa fraud and facilitate fraudulent receipt of Commonwealth benefits.

Indeed, when taken together, we are of the view that there is an entrenched culture of non-compliance in the Woolworths trolley collecting supply chain.

Such a culture is typically characterised by a network of inter-relationships and systems maintained to avoid, or work around, amongst other things, workplace laws.

This culture is further entrenched by some employers using their knowledge of the Fair Work Act and its regulatory framework to design false records which purport to show compliance.

We found some workers prepared to support this deception, for a variety of reasons, including wanting to keep a job, or because of concerns about visa status or social security obligations.

We also found many contractors working diligently to comply and promote compliance, but who believe that they are being undercut by competitors who allegedly seek to circumvent the law.

Indeed, we noted the presence of individuals, or intermediaries, operating outside corporate structures who assisted sub-contractors by:

- Recruiting staff, mostly visa-holders and recent migrants,
- Distributing cash to employees,
- Supervising staff,
- Encouraging or persuading workers not to record their hours worked,
- Instructing employees to sign blank time sheets and pay-slip templates, which were later completed by a third person,
- Coaching employees on how to answer questions from Fair Work inspectors, and
- Instructing employees not to sign Woolworths' visitor books, or to sign in using a false name.

We also noted that many of the contractors used the same professional service providers to produce their employment records.

## Recommendations

The Inquiry recommends that Woolworths:

- Enter a compliance partnership with the Fair Work Ombudsman,
- Review its current contracting arrangements to ensure that:
  - the price permits employee entitlements to be met throughout the life of the contract, and
  - tender processes give preference to contractors who pay by EFT or personal cheque, that PAYG is remitted on behalf of workers to the Australian tax Office and that superannuation payments are made.
- Implement systems and processes to ensure local Woolworths management:
- Know and record the entities and individuals responsible for trolley collection on a daily basis,
- Have access to records which accurately record times worked and payments owed,
- Ensure its Speak Up helpline is reasonably accessible to people whose first language is not English,
- Take direct responsibility for investigating and resolving all grievances relating to employment of its trolley collectors,
- Conduct regular audits of its contractors and sub-contractors using third-party accounting, legal or workplace relations professionals, and
- Establish and maintain a \$1 million fund to cover payments to trolley collectors who have been underpaid and where the relevant employer has failed to back-pay the workers.

We believe that if Woolworths adopts our recommendations, it will promote and build a culture of compliance in its trolley collector sub-sector.

Outsourcing is a legitimate business arrangement – but in my experience, in highly competitive markets for low-skilled work, it also increases the risk that workers will be underpaid, sometimes quite deliberately.

Increasingly, if we find a business underpaying workers and that business is part of a supply chain, we are looking up to the top, because the business at the top of the supply chain is the price-maker and controls the settings.

This should come as no surprise to the boardrooms of big business around Australia – I have been flagging this approach since an address I gave in August, 2014, entitled "Reputation, Risk and Responsibility".

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

So if boardrooms are not considering these procurement and compliance risks involved, then someone is asleep at the wheel.

I have said previously that I am committed to building a culture of compliance across Australian workplaces by setting priorities and using the tools available to my Agency to hold people to account and influence, or change behaviour and reduce harm.

We will use a range of levers, reputational, structural, environmental and, where necessary, legal, to achieve behavioural change from the top down to ensure the lead businesses step up and take responsibility for what's happening in their business.

(The good, the bad and the ugly - navigating the road to compliance - a speech to the Australian Industry Group PIR Conference on May 2, Visit [Speeches \(www.fairwork.gov.au/about-us/news-and-media-releases/speeches/speeches\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/speeches/speeches) )

(A view from the top – building a culture of compliance in Australia's labour supply chains, a speech to ALERA, May 27, Visit [Speeches \(www.fairwork.gov.au/about-us/news-and-media-releases/speeches/speeches\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/speeches/speeches) )

It is a failure not only of legal responsibility, but moral and ethical leadership, for large corporates to seek to 'contract out' the wages and conditions of its workforce without ensuring good governance and compliance.

Employers and employees seeking information or advice are encouraged to visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or call the Fair Work Infoline on 13 13 94 for free advice.

A free interpreter service is also available on 13 14 50.

A copy of the Fair Work Ombudsman's Report: Inquiry into trolley collection services procurement by Woolworths Ltd can be accessed on our [Inquiry reports page \(www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports#trolley-collection-services-procurement-by-woolworths-limited\)](http://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports#trolley-collection-services-procurement-by-woolworths-limited) .

Natalie James, Fair Work Ombudsman

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Fair Work Infoline: 13 13 94

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Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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