

## A compliant supply chain is everyone's business

10 March 2016

By Natalie James, Fair Work Ombudsman

There should never be a situation where a worker is owed more each week than they actually receive in their hand.

It is a slap in the face for that long-standing notion of a fair day's work for a fair day's pay.

Moreover, it is blatantly unlawful.

Unfortunately, though, it does happen, for reasons ranging from innocent mistakes to deliberate exploitation.

Disturbingly, it has happened when big business either turns a blind eye to, or is willing to hide behind, complex supply chains and sub-contracting arrangements which rely on exploitation of vulnerable workers to make a profit.

When we investigated significant underpayment of a group of Adelaide trolley collectors in 2010, it became clear new strategies were needed to ensure real change in the recidivist, non-compliant trolley collecting industry.

In just 18 months, 10 vulnerable employees collecting trolleys at Coles supermarket sites across Adelaide were short-changed \$220,000.

For years, the Fair Work Ombudsman has been chasing unscrupulous contractors in this industry.

It was time big business stopped wiping its hands of the problem with the excuse that it was not the employer.

We were not going to build a culture of compliance by merely picking off fly-by-night contractors who quickly liquidated – they are just replaced by new entities which behave in the same manner and are often run by the same people.

It was time to tie all the players in the supply chain to the problem to find a sustainable solution.

The industry employed young, often migrant workers, in the low-skilled but physically demanding and often dangerous role.

Most trolley collectors were employed by sub-contractors.

They worked on the end of a long, usually complex, chain of deals where responsibility for compliance with workplace rules increasingly evaporated the further up the chain you look.

In the Adelaide case, Coles Supermarkets Australia had typically used the supply chain arrangements as an "out" clause for its requirement to comply with the Fair Work Act – often stating it wasn't the direct employer, so the collectors were not its responsibility.

It was that kind of attitude that created the shocking circumstances where a young Adelaide western suburbs trolley collector could be short-changed almost \$90,000 in 18 months for his work in this back-breaking job.

The Indian migrant did not receive 65 per cent of his total wages, while one of his offsiders did not receive almost 79 per cent of his wages' entitlement.

Six years on and the Fair Work Ombudsman has now completed its strongest play in the fight for fairness in the sector.

Our first breakthrough came in October 2014 when, as a result of proceedings against bottom- of-the-chain trolley collector employers Ahmad Al Hilfi and Ayam Al Basry over the \$220,000 underpayment, Coles stepped up to publicly admit that it had an "ethical and moral responsibility" for the conduct of all persons in its business.

When the Federal Court made declarations against the third-tier trolley collection service providers, we successfully obtained enforcement outcomes against the top and bottom links in a supply chain where exploitation of vulnerable workers was rampant.

Last week, we got the trifecta.

Strike three was delivered in the Federal Court against the troublesome supply chain with the middlemen – the operators of Sydney-based and now in liquidation Starlink and Starlink Operations Nidal Albarouki and Clency Ferriere - ordered to pay \$94,050 each for allowing the gross non-compliance in their Adelaide operations to continue unabated.

All levels in the supply chain have now been penalised or had an enforcement outcome applied against it and a first-year report by

Coles on how it is meeting its Enforceable Undertaking with us shows strong improvement in compliance.

Coles is now in-sourcing its trolley collectors and deserves credit for cleaning up its act and working with the Fair Work Ombudsman to put a stop to the non-compliance in the industry.

However, last week's penalty sends a clear message to other sectors operating with supply chain and sub-contractor arrangements that they can expect to be held accountable if any part of their labour networks contravene workplace laws.

We have, and will always, vigorously pursue the direct employer when we find cases of non-compliance. It is the employer first and foremost who is responsible for paying the correct entitlements.

But the community expects more from established and profitable brands. And the law can extend legal responsibility up the supply chain.

Operations which use supply chain and sub-contractor arrangements are on notice, especially in the area of trolley collection and industries where employees are traditionally low paid.

We are not finished with the trolley collection sector, and if major supermarkets are not already having a boardroom discussion about the governance of their trolley collection services, then someone is asleep at the wheel.

We will also examine the extent to which other businesses are involved and should also be held responsible.

If we find a business underpaying workers and that business is part of a franchise or supply chain, we will look up to the business at the top, the franchisor, principal or purchaser; because they are the price-makers and they control the settings.

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Media inquiries:

Bryan Littlely, Media Adviser

Mobile: 0447 692 007

[bryan.littlely@fwo.gov.au](mailto:bryan.littlely@fwo.gov.au) (mailto:bryan.littlely@fwo.gov.au)

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