



Australian Government

Fair Work

OMBUDSMAN

PROACTIVE COMPLIANCE DEED

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

United Trolley Collections Pty Ltd (ABN 69 115 542 946)

Schedule 1

Details:

Parties	Office of the Fair Work Ombudsman and United Trolley Collections Pty Ltd	
FWO	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43884188232
	Address	The Fair Work Ombudsman GPO Box 9887 Brisbane QLD 4001
	Telephone	(07) 3404 4786
	Fax	(02) 62767173
	Attention	Russell Jacob Director – Misclassification and Governance
Contractor	Name	United Trolley Collections Pty Ltd
	ABN	69 115 542 946
	Address	62 Queen Street Warragul VIC 3820
	Telephone	03 5624 0900
	Email	www.unitedtrolleys.com.au
	Attention	Jason Woodbridge (Director)
	United Trolley Collections Pty Ltd Contact Person	Sam Woodbridge samwoodbridge@unitedtrolleys.com.au 0403 663 610

OPERATIVE PROVISIONS:

1. Background

- 1.1 Since 2006, the Fair Work Ombudsman (**FWO**) and its predecessors have investigated many complaints from trolley collectors working at sites operated by different supermarkets and shopping centres including Coles Supermarkets Australia Pty Ltd (**Coles**), Woolworths Limited (**Woolworths**) and other supermarket operators around Australia.
- 1.2 United Trolley Collections Pty Ltd (**UTC**) is a national trolley collection contractor that engages contractors throughout Australia to provide trolley collection services at various sites.
- 1.3 In late 2012, Coles initiated a change in its trolley collection operations, and entered into a contract with UTC to service all of its sites (over 700) Australia wide. Previously Coles had contracts with multiple contractors across Australia.
- 1.4 The FWO commenced an investigation into the procurement chain arrangements from Coles to UTC, and from UTC to its' independent contractors (over 60). Since late 2012, a small number of individual complaints from trolley collectors have been received by the FWO involving independent contractors engaged by UTC.
- 1.5 UTC takes its obligations seriously to be fully compliant with workplace laws and to ensure that its contractors are fully compliant with workplace laws.
- 1.6 UTC has been proactive and expressed a desire to ensure compliance with workplace laws in the trolley collection industry and, by doing so, set an industry standard. UTC also currently sub-contracts trolley collection services to a small number of Woolworths sites. To this end, UTC has agreed to assist the FWO with its investigations into current, and any future, alleged underpayments involving independent contractors engaged by UTC.
- 1.7 On 28 April 2014, the FWO and UTC agreed to enter into a Deed as a proactive workplace engagement opportunity.
- 1.8 The parties agree as follows.

2. Acknowledgments

- 2.1 UTC acknowledges that:
 - (a) there are opportunities for continuous improvement in relation to its workplace practices to ensure ongoing compliance with Commonwealth workplace laws;
 - (b) the promises it has given in this Deed are reasonable in the circumstances;
 - (c) the FWO may:
 - i. make this Deed available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - ii. release a copy of this Deed pursuant to any relevant request under the *Freedom of Information Act* 1982 (Cth);
 - iii. issue a media release in relation to this Deed; and
 - iv. from time to time, publicly refer to this Deed;

- (d) if UTC contravenes any of the terms of this Deed the FWO may take any enforcement action which the FWO considers appropriate.

3. Promise to take proactive compliance activity

- 3.1 UTC must do or cause to be done all those activities and things set out in Attachments A and B to this Deed.

4. Commencement of Proactive Compliance Deed

- 4.1 This Deed comes into effect when both UTC and the FWO have executed this Deed.
- 4.2 This Deed will expire at the end of three (3) years after the commencement of this Deed, unless terminated earlier in accordance with its terms.

5. Publicity

- 5.1 The FWO agrees to provide UTC with 24 hours to view all FWO media releases (**Releases**) arising from this Deed prior to publication by the FWO.
- 5.2 Notwithstanding 5.1, UTC agrees and acknowledges that, if UTC makes any suggested edits or amendments to the Releases, the FWO is under no obligation to accept any of them.
- 5.3 The Releases will reflect the positive cooperation of UTC.

6. No Inconsistent Statements

- 6.1 UTC:
 - (a) must not; and
 - (b) must ensure that each of its officers, employees and/or agents do not; and
 - (c) must use its reasonable endeavours to ensure that each of its sub-contractors do not; make any statement, orally, in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the Acknowledgements made in this Deed.

7. Termination by the FWO

- 7.1 Without prejudice to any right or remedy the FWO may have, at any time, the FWO may, by notice in writing, terminate this Deed (that is, immediately and without notice) if UTC commits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.

8. Independent Legal Advice

- 8.1 UTC acknowledges that:
 - (a) before executing this Deed, UTC was given the opportunity to seek independent legal and other advice of its choice;
 - (b) in light of any advice provided, UTC considered its position; and
 - (c) UTC fully understands the effect of this Deed.

9. Continuing obligations

The following clauses survive termination of this Deed for whatever reason (including

termination by the FWO):

- (a) clause 2 (Acknowledgements); and
- (b) clause 6 (No inconsistent statements).

10. Legally binding

- 10.1 The terms of this document are intended to have immediate effect on all parties upon commencement of this Deed.

11. Entire agreement

- 11.1 This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. No oral explanation or information provided by either party to the other:

- (a) affects the meaning or interpretation of this Deed; or
- (b) constitutes any collateral agreement, warranty or understanding between the FWO and UTC.

12. Construction

- 12.1 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.
- 12.2 Unless expressed to the contrary in this document:
- (a) words in the singular include the plural and vice versa; and
 - (b) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

13. Severance

- 13.1 If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

14. Governing law

- 14.1 This Deed shall be construed in accordance with the laws for the time being of the State of Queensland and the parties hereby submit to the jurisdiction of the Courts of that State and the Courts empowered to hear appeals from the Courts of that State.

15. Counterparts

- 15.1 This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

16. Costs in respect of this Deed

- 16.1 The parties must pay their own legal and other costs and expenses in connection with the

preparation, execution and completion of this Deed and other related documentation.

17. Notices

17.1 Any notice, request or other communication to be given or served pursuant to this Deed must be in writing and dealt with as follows:

- (a) if given by the UTC to the FWO at the address indicated in Schedule 1 or as otherwise notified by the FWO; or
- (b) if given by the FWO to the UTC, marked for the attention of the UTC Contact Person with the address indicated in Schedule 1 or as otherwise notified by UTC.

17.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.

17.3 Any notice, request or other communication will be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 Business Days after the date on which it was sent; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

18. Date of this Deed

18.1 The date the parties execute the Deed or, if it is executed on different dates, the date of last execution.

19. Definitions

In this Deed (including the Attachments to this Deed):

Deed means this Proactive Compliance Deed, including any Schedules and Attachments;

Commonwealth workplace laws means:

- the *Fair Work Act 2009*;
- the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*;
- the *Fair Work Regulations 2009*; and
- the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*.

UTC Contact Person means the person nominated by the UTC in Schedule 1 to this Deed, or any other person specified by UTC in writing and notified to the FWO.

Independent Contractor means an entity or person that has entered into a contracting agreement with UTC to provide trolley collection services.

EXECUTED BY United Trolley Collections Pty
Ltd ABN 69 115 542 946 in accordance with
section 127(1) of the Corporations Act 2001
(Cth)



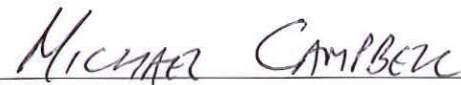
(Signature of Director)

Jason Woodbridge

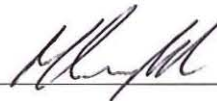
(Name of Director in Full)

Date: 5th May 2014

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA as
represented by the Office of the Fair Work
Ombudsman:



(Printed Name)



(Signature)

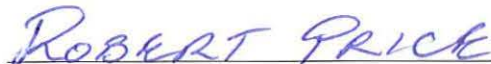
DEPUTY FAIRWORK OMBUDSMAN

(Title)

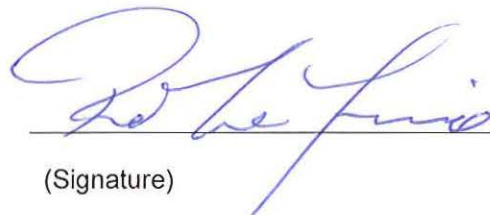
13 MAY 2014

(Date)

In the presence of:



(Name of Witness in Full)



(Signature)

Attachment A (Proactive Compliance Activities)

A.1 Internal Communication

1. Within 21 days of the execution of the Deed, UTC will communicate the existence of the Deed to all current Independent Contractors engaged by UTC via an internal communication method such as email, internal memo or intranet, and make a copy of the Deed available to all independent contractors.
2. That communication is to be in the following form:

"United Trolley Collections Pty Ltd has taken the proactive step of entering into a Proactive Compliance Deed (the Deed) with the Office of the Fair Work Ombudsman.

By entering into the Deed, United Trolley Collections Pty Ltd demonstrates that it is committed to working with the FWO to ensure compliance with Australian workplace laws and promote a harmonious, productive and cooperative workplace.

United Trolley Collections Pty Ltd requires all independent contractors to commit to ensuring compliance with workplace laws and engage with the FWO on matters arising as a result of workplace complaints.

United Trolley Collections Pty Ltd has made the Deed available to all independent contractors through <http://www.unitedtrolleys.com.au/>. You are also able to access information about entitlements and rights at work by contacting Sam Woodbridge, who has been appointed by United Trolley Collections Pty Ltd as an Employee Liaison Officer, or by visiting the Fair Work Ombudsman website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94."
3. UTC will take all reasonable steps to ensure that each Independent Contractor communicates via an internal communication method such as email, internal memo or intranet to all its employees the following:

"United Trolley Collections Pty Ltd has taken the proactive step of entering into a Proactive Compliance Deed (Deed) with the Office of the Fair Work Ombudsman.

United Trolley Collections Pty Ltd and <Insert Contractors name> is committed to working with the FWO to ensure compliance with Australian workplace laws and promote a harmonious, productive and cooperative workplace.

The Deed is available to all our staff through <http://www.unitedtrolleys.com.au/>. You are also able to access information about entitlements and rights at work by contacting Sam Woodbridge, who has been appointed by United Trolley Collections Pty Ltd as an Employee Liaison Officer, or by visiting the Fair Work Ombudsman website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94."
4. UTC will take all reasonable steps to ensure each identified contractor makes a copy of the Deed available to its employees.

A.2 Implement Systems and Processes

5. UTC must facilitate compliance with relevant Commonwealth workplace laws by its Independent Contractors by developing and implementing systems and processes to assist the Independent Contractors to comply with relevant Commonwealth workplace laws. An example of UTC assisting its contractors with compliance has already commenced through the implementation of a third party payroll system.
6. UTC will provide the FWO, within 28 days of the date of the execution of this Deed, details of other systems and processes already in place or to be implemented to ensure ongoing compliance with relevant Commonwealth workplace laws by Independent Contractors.

A.3 Self-Resolution of Complaints

7. Within seven days of receiving a workplace complaint regarding an Independent Contractor engaged by UTC, the FWO will notify UTC and the Independent Contractor of the complaint and provide details supplied by the complainant.
8. UTC will assist the Independent Contractor to resolve the workplace complaint and to make rectification of identified underpayments, and/or other identified issues identified by the FWO, within 35 days of notification by the FWO.
9. Within 14 days of resolving the complaint, UTC or the Independent Contractor will provide the FWO with evidence that the workplace complaint has been resolved and identified underpayments, and other issues identified by the FWO, rectified.
10. Where the complaint cannot be resolved by agreement between UTC or the Independent Contractor and the complainant within 35 days of notification by the FWO, UTC must provide the FWO with a written report addressing the reasons why the matter could not be resolved between the parties and the steps taken to resolve the complaint. The report is to be provided to the FWO no later than seven days after the expiry of the 35 days from notification by the FWO.
11. The FWO reserves its rights to investigate any complaint that it considers serious or in the public interest to investigate or unable to be resolved within 35 days.
12. Further details regarding public interest considerations may be found on the FWO website.

A.4 Resources

13. UTC must make available a specified person or persons to act as Employee Liaison Officers for all queries from employees of Independent Contractors which concern the Self-Audit Process or any complaints referred by the FWO.
14. UTC must notify the FWO in writing of the name or names of UTC's Employee Liaison Officer/s within 7 days of the commencement of this Deed, and must notify the FWO in writing within 7 days of any change to UTC's Employee Liaison Officer/s.
15. UTC has identified in Schedule 1 to the Deed the UTC Contact Person to whom all queries from the FWO which concern the implementation of the program, or any complaints referred by the FWO, can be directed. UTC must notify the FWO in writing within 7 days of any change to the UTC Contact Person.
16. The FWO will identify a single national contact person (the FWO Liaison Officer) whom all queries from the UTC can be directed. This officer may change from time to time.

A.5 Reporting

17. At the end of the first year, at the end of the second year and at the expiry of the Deed, UTC will provide the FWO with a report addressing the following matters:
 - (a) the actions taken by UTC to address the requirements of the Deed;
 - (b) the number of complaints referred to UTC;
 - (c) the number of complaints resolved by UTC;
 - (d) the average time taken to resolve; and
 - (e) the average amount of underpayments.
18. The yearly reports required by paragraph 17 above are to be provided to the FWO no later than 60 days after the end of the first year, no later than 28 days after the end of the second year and at the expiry of the deed.

19. The FWO may publish any report provided by UTC, and will reflect the positive cooperation of the UTC during the life of the Deed. The FWO will not publish any part of the report that contains confidential information or commercially sensitive information of UTC or its contractors.
20. The FWO may publish its own report regarding the Deed and will provide UTC with an opportunity to comment on the report.
21. Any report published by the FWO will reflect the positive cooperation of UTC.

A.6 Workplace Relations Training

22. Each year, the FWO agrees to provide to UTC as soon as is practicable, relevant information summarising wage rates applicable to its sub-contractors effective from 1 July that year, incorporating the increase to the minimum wage rates.
23. Within 60 days of the commencement of this Deed, UTC will design and implement a training program so that all Independent Contractors are made aware of their obligations to employees pursuant to Commonwealth Workplace laws (Training).
24. The Training will include material on:
 - (a) compliance with the FW Act 2009 and Fair Work Instruments;
 - (b) the Independent Contractors obligations under the FW Act and the Fair Work Instruments, including their obligations under section 550 of the FW Act; and
 - (c) the options available to persons to make complaints, for example, references to the Hotline and the FWO's procedures to lodge a complaint.
25. UTC will provide the proposed materials (apart from the wage rates referred to in clause 22) to be used in the Training to the FWO no later than 60 days after the commencement of this Deed so that the FWO can make any amendments to the content of the training.

A.7 Supply Chains

26. UTC will take all reasonable steps to ensure that the Independent Contractors it procures, directly or indirectly, are compliant in all respects with Commonwealth workplace laws.
27. The FWO acknowledges that UTC accepts that UTC and its officers have an obligation to ensure that they are not directly concerned in or a party to any non-compliance with Commonwealth workplace laws, including in relation to any non-compliance by Independent Contractors.
28. UTC is committed to ensuring compliance with Australian workplace laws. In particular, UTC is dedicated to ensuring that any person who performs work for its Independent Contractors receives their lawful industrial entitlements from their employer.
29. UTC endeavours to proactively working with the FWO, Independent Contractors and employees of Independent Contractors in order to rectify complaints made by any person who performs trolley collection work for Independent Contractors in a UTC contracted workplace.

A.8 Engagement Protocols

30. UTC agrees that processes for the procurement of any **future** contract for the provision of trolley services by UTC from independent contractors will include, but not be limited to, the following:

- (a) obtaining the contact details of all Directors of companies or individuals who contract to UTC for trolley collection, including name, street address and telephone number. The details of the successful contractor will be provided to the FWO (such information is confidential information for the purpose of clause 19 above);
- (b) a requirement that all employees of UTC Contractors are provided with a Fair Work Information statement, current applicable minimum rates of pay, and are advised that the Cleaning Services Award 2010 applies to employees performing trolley collection work for Independent Contractors in the absence of any approved workplace agreement;
- (c) each contract between UTC and an Independent Contractor with 3 or more employees will include a requirement that the payment of wages or other monetary entitlements to its employees is made via a third party payroll provider, as already provided for by UTC.

A.9 Contraventions by Independent Contractors

- 31. UTC will require Independent Contractors to rectify identified contraventions of Commonwealth workplace laws within 28 days of identifying the contravention.
- 32. Where there is reasonable evidence that an Independent Contractor has underpaid minimum wages to their employees, UTC will withhold an amount equivalent to the underpayment from any monies owed to that Independent Contractor until the matter is appropriately resolved. In withholding monies UTC will act to the extent it is able to do so in accordance with its contractual obligations with Independent Contractors.
- 33. If the FWO has made a determination at the conclusion of an investigation that an Independent Contractor or any Officer of the Independent Contractor has contravened Commonwealth workplace laws, UTC will consider its ongoing relationship with the Independent Contractor. That consideration may include the termination of any contract between UTC and the Independent Contractor.

ATTACHMENT B (SCOPE AND METHODOLOGY OF SELF-AUDIT)

The FWO and UTC agree that the scope and methodology of the self - audit are as follows:

1. The Self – Audit Period will be for a four week period inclusive of a public holiday, and conducted annually for the duration of this Deed. The four week periods that will be the subject of the self-audits will be agreed between the FWO and UTC within 28 days of the signing of this deed.
2. The self – audit of Independent Contractors, will be conducted by UTC and will include 10% of trolley collectors employed across all current sites operated by Independent Contractors in all states and territories.
3. UTC will nominate a third party who will conduct the audits, and advise FWO of the third party chosen to conduct the audit.
4. UTC must identify each contravention of the relevant Commonwealth workplace laws including those relating to underpayments of:
 - (a) wages;
 - (b) loadings;
 - (c) allowances; and
 - (d) penalties.
5. UTC must also identify that employment records, such as time sheets, pay slips and annual leave records where appropriate, are being made and kept in accordance with Fair Work Regulations 2009.
6. UTC should ensure the relevant Independent Contractor rectifies each identified contravention, including identified underpayments, within 28 days of the audit period ending.
7. UTC must provide the FWO with an audit report relating to the audit period which includes the methodology applied, details of employees audited, contraventions identified, reason for the contraventions and evidence of rectification of contraventions and or underpayments.
8. The FWO reserves its rights to conduct its own audit or investigation if not satisfied with the conduct of the audit or with the accuracy of the audit report.