

Proactive Compliance Deed

Between



Fair Work
OMBUDSMAN

The Commonwealth of Australia
(as represented by the Office of the Fair Work Ombudsman)

and

Woolworths Limited (ACN 000 014 675)

WOOLWORTHS GROUP



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Details: Office of the Fair Work Ombudsman and Woolworths Limited

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	Telephone	
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	Attention	The Company Secretary

1. Definitions and interpretation

In this Deed:

Additional Sites has the meaning given in clause 7.8.

Audit means an audit of a Contractor by an Auditor to ascertain whether the Contractor has complied (during the Sample Periods considered by the Auditor) with the National Employment Standards (NES), Minimum Wages, Payment of Wages, and Employee Records provisions of Commonwealth Workplace Laws, and with relevant Fair Work Instruments, with particular regard to classification and status of employees, accuracy and consistency of employee records, payment of wages and leave and termination payments.

Auditor means one of a panel of independent expert auditors (being external accounting professionals, audit specialists or employment law specialists, or a combination of same) approved by Woolworths to conduct Audits.

Business Day means a day other than a Saturday, Sunday or official public holiday in New South Wales, Australia or any other relevant state or territory in Australia.

Commonwealth means the Commonwealth of Australia, including, but not limited to where the context so admits, the Commonwealth as represented by the Office of the Fair Work Ombudsman or any successor, including, without limitation, the Fair Work Ombudsman.

Commonwealth Workplace Laws means:

- (a) the *Fair Work Act 2009* (Cth);
- (b) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth);
- (c) the *Fair Work Regulations 2009* (Cth); and
- (d) the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*.

Contracted Sites has the meaning given in clause 7.2(a).

Contractor means a Primary Contractor or a Subcontractor.

Deed means this Proactive Compliance Deed.

Desktop Audit means an Audit which does not involve a Field Audit but involves the examination by the Auditor of relevant documentation.

Employee means an employee employed by a Contractor to perform Trolley Collection Services at a Woolworths Site.

Fair Work Instrument means:

- (a) a modern award;
- (b) an enterprise agreement;
- (c) a workplace determination; or
- (d) a Fair Work Commission order.

Field Audit means an Audit where the Auditor attends at a Woolworths Site.

Full Audit means an Audit which meets the requirements for a Full Audit set out in clause 7.2.

FW Act means the *Fair Work Act 2009* (Cth).

FWO means the Fair Work Ombudsman.

FW Regulations means the *Fair Work Regulations 2009* (Cth).

Hotline has the meaning given in clause 8.1(a).

HR Specialist means a suitably qualified human resources specialist who has expertise in the areas of employment and workplace relations.

Inquiry means the inquiry into the workplace practices of Contractors at Woolworths Sites conducted by the FWO.

Internal Compliance Team means Woolworths' internal compliance team tasked with monitoring and improving compliance in Woolworths' practices for the procurement of Trolley Collection Services.

Non-Conformance means a contravention of Commonwealth Workplace Laws or an applicable Fair Work Instrument.

Pegasus means the contractor safety management system which as at the date of this Deed is utilised by Woolworths for its contractors and others who work on Woolworths sites (including the Contractors working on the Woolworths Sites), or such replacement system as Woolworths may utilise in future.

Pegasus Card has the meaning given in clause 6.1(a).

Personal Information has the meaning given in clause 6.4.

Prequalification Audit means an Audit of a prospective provider of Trolley Collection Services to Woolworths, and includes in the Audit an assessment of whether, in the

Auditor's reasonable belief, the prospective provider has been and / or is capable of complying with all the National Employment Standards (NES), Minimum Wages, Payment of Wages, and Employee Records provisions of Commonwealth Workplace Laws, and with relevant Fair Work Instruments, and has implemented, or has indicated it will implement, suitable systems to ensure such compliance.

Primary Contractor means a person or entity engaged directly by Woolworths or a Related Body Corporate of Woolworths to provide Trolley Collection Services at a Woolworths Site.

Privacy Act means the *Privacy Act 1988* (Cth).

Related Body Corporate means a related body corporate as defined in the *Corporations Act 2001* (Cth).

Sample Period has the meaning given in clause 7.2(f).

Sample Sites has the meaning given in clause 7.2(a).

Speak Up Service has the meaning given in clause 8.1.

Subcontractor means a person or entity to whom a Primary Contractor has subcontracted the provision of Trolley Collection Services at a Woolworths Site.

Time Keeping System has the meaning given in clause 6.1(d).

Underpayments means any underpayment or non-payment of wages or applicable entitlements owing to an Employee in respect of the provision of Trolley Collection Services at a Woolworths Site on or after 1 July 2014, to the extent that there is a shortfall to the minimum wages prescribed in accordance with Commonwealth Workplace Laws or Fair Work Instruments (including underpayment or non-payment of overtime and penalty rates) which has been identified, substantiated and quantified to the reasonable satisfaction of Woolworths and the FWO by way of:

- (a) the Woolworths auditing processes referred to in clause 7;
- (b) the reporting processes referred to in clauses 8 or 9; or
- (c) any other means.

Tender means a tender for the provision of Trolley Collection Services at one or more Woolworths Sites.

Trolley Collection Agreement means an agreement entered into by Woolworths or a Related Body Corporate of Woolworths with a Primary Contractor under which the Primary Contractor is to provide, either itself or through a Subcontractor, Trolley Collection Services at one or more Woolworths Sites.

Trolley Collection Services means the collection and distribution of shopping trolleys, including street runs.

Woolworths means Woolworths Limited (ACN 000 014 675).

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

Woolworths Site means a site in Australia at which Woolworths operates a store at which it utilises Trolley Collection Services.

Written Complaint has the meaning given in clause 8.1(b).

2. Background to this Deed

- A. Woolworths is one of Australia's largest and most well-known companies and manages some of Australia's most recognised brands.
- B. During the 2015 financial year, Woolworths operated 3,729 stores across Australia and New Zealand and employed approximately 197,000 employees across a variety of different brands. During the 2015 financial year, Woolworths' operations included 961 Woolworths supermarkets present in every Australian state and territory as well as 1,445 liquor outlets, 516 petrol stations, 330 hotels, 184 Big W stores, 9 Thomas Dux stores, 44 Home Timber and Hardware stores and large scale wholesaling operations.
- C. A large number of Woolworths' stores, including most supermarkets, offer customers the use of shopping trolleys which necessitates the need for Trolley Collection Services. At most stores Woolworths does not currently directly employ workers to collect trolleys, but instead outsources Trolley Collection Services to various Contractors.
- D. Woolworths currently has contracts with approximately [30] Contractors. Many of these Contractors further subcontract the Trolley Collection Services to Subcontractors. Woolworths' contracts with its Contractors prohibit more than one level of subcontracting.
- E. From 2007 onwards, the FWO and its predecessor agencies have received regular reports from employees and other sources alleging underpayment of wages and other serious non-compliance with Commonwealth Workplace Laws in relation to Contractors and other trolley collection suppliers servicing major supermarket retailers in Australia.
- F. Woolworths has been taking proactive steps, even before June 2014, to implement a range of revised governance systems to seek to improve compliance outcomes in its trolley collection supply chain. These measures included:
 - (a) acting in 2010 to build benchmarking tools to assess tendered rates against hourly rates under the relevant award (including by making various workforce composition assumptions);
 - (b) acting in 2012 to require Contractors directly engaged by Woolworths to provide statutory declarations that award rates and award increases were being paid to their own Employees as well as to Employees of their Subcontractors; and
 - (c) acting in 2012 to extend access to the Speak Up Service to cover employees and staff of trade partners (including Employees of Contractors).
- G. In June 2014, the FWO commenced an Inquiry into allegations of non-compliance with Commonwealth Workplace Laws by Contractors and Subcontractors performing Trolley Collection Services at Woolworths Sites. The Inquiry sought to identify the factors driving non-compliant behaviour.
- H. The Inquiry focussed on 130 Woolworths Sites across Australia. Fair Work Inspectors visited Woolworths Sites between September and December 2014, and February to June 2015. This initial examination raised serious concerns about compliance by Contractors with Commonwealth Workplace Laws.

- I. The Inquiry disclosed indicators suggesting patterns of serious non-compliance with the FW Act and FW Regulations, including instances of apparently deliberate manipulation of records by Subcontractors to disguise underpayment of wages by Subcontractors.
- J. The Inquiry acknowledged that, both before and after the commencement of the Inquiry, Woolworths has put in place governance systems to monitor Contractors and detect non-compliance with Commonwealth Workplace Laws, including:
 - (a) a tendering process that has recently introduced a requirement to demonstrate audits have found compliance with Commonwealth Workplace Laws;
 - (b) the following contractual obligations imposed on Contractors:
 - (i) service agreement terms requiring Employees are paid on time and no less than award rates;
 - (ii) statutory declarations confirming award rates are paid;
 - (iii) prohibition of subcontracting beyond one level and a contractual requirement that Contractors assess and monitor the suitability of Subcontractors;
 - (c) random field audits by Woolworths and a requirement for Contractors to participate in annual independent third party compliance audits;
 - (d) termination of contracts for serious breach of contract and / or Commonwealth Workplace Laws, as well as rectification of underpayments caused by the breach;
 - (e) communication to Contractors about compliance obligations including a conference held every two years;
 - (f) a Speak Up hotline which allows Employees to report unethical or illegal activities; and
 - (g) messaging that non-compliance with Commonwealth Workplace Laws will not be tolerated and may result in contracts being terminated.
- K. Nevertheless, the Inquiry identified that Woolworths' management of workplace matters in relation to the procurement of Trolley Collection Services had not adequately detected or addressed instances of non-compliance within its network of Contractors.
- L. As a consequence of the Inquiry findings, it was the FWO's recommendation that Woolworths enter into a compliance partnership with FWO wherein Woolworths publicly accepts responsibility for monitoring and ensuring compliance with Commonwealth Workplace Laws within its labour supply chain for Trolley Collection Services.
- M. Woolworths is committed to conducting its business in accordance with its Ethical Sourcing Policy, which emphasises that compliance with Commonwealth Workplace Laws by Contractors is a fundamental and non-negotiable matter for Woolworths.

- N. Woolworths has initiated and continues to implement fundamental, permanent and sustainable changes to its trolley collection services model, to meet its own Ethical Sourcing Policy and the expectations of the FWO.
- O. Woolworths:
- (a) acknowledges that it is responsible for compliance with all aspects of the law across its business operations and welcomes the opportunity to work closely with the FWO to ensure ongoing compliance with Commonwealth Workplace Laws in respect of Contractors of Trolley Collection Services and their Employees who conduct such services for and on behalf of Woolworths; and
 - (b) acknowledges that it has an ethical and moral responsibility to require and ensure standards of conduct from all entities and individuals directly involved in the conduct of its enterprise that comply with the law and meet Australian community and social expectations to provide equal, fair and safe work opportunities for persons employed at its sites.
- P. Woolworths acknowledges that, in the past, the governance arrangements in relation to the contracting model that it has used to engage Trolley Collection Services have not fully prevented an environment where Employees have been vulnerable to exploitation in the workplace, including by way of underpayment of wages.
- Q. Woolworths acknowledges that, in the past, it did not have adequate governance systems in place to monitor Contractor behaviour, and that this affected its ability to drive compliance through the Contractor chain and provided greater scope to Primary Contractors and Subcontractors to exploit and underpay vulnerable workers.
- R. Woolworths is committed to continue taking steps to help ensure the employment practices of Contractors comply with Commonwealth Workplace Laws by implementing changes to its management and operational model, including the introduction of additional governance measures such as the establishment of an Internal Compliance Team tasked with monitoring and driving compliance in Woolworths' trolley collection procurement practices, including by conducting on-site compliance audits, managing Woolworths' external audit program and investigating and managing complaints.
- S. Both parties have agreed to enter into this Deed as a proactive compliance partnership as a means to eradicate exploitation and underpayment in the trolley collection industry, and to further develop and implement sustainable self-monitoring and compliance arrangements.

The parties agree as follows:

3. Scope of application

Despite anything to the contrary in this Deed, the parties agree that all provisions of this Deed apply solely to Trolley Collection Services provided by Contractors (including through their respective Employees) at Woolworths Sites.

4. Commitment to compliance with Commonwealth Workplace Laws

4.1 Woolworths will :

- (a) require Contractors to make and keep accurate employment records required under the FW Act and FW Regulations so that Employees, Woolworths and the FWO are able to verify whether Employees are receiving their full employee entitlements;
- (b) ensure Woolworths has proper governance structures in place to monitor and regulate the employment practices and arrangements of its Contractors;
- (c) ensure, to the extent possible, that Employees who have been underpaid since 1 July 2014 are paid their full employee entitlements due to them under Commonwealth Workplace Laws; and
- (d) require Contractors to ensure that their current and future Employees at each Woolworths Site receive the full entitlements due to them under Commonwealth Workplace Laws.

4.2 Within 20 Business Days of this Deed being executed by both parties, Woolworths will publish its acknowledgments and commitments specified in Recitals O, P, Q and R above and the commitment to further action in clause 4.1 by the following means:

- (a) posting the statements in a prominent position on Woolworths' website at woolworths.com.au; and
- (b) publishing public notices in print and electronic media as agreed between Woolworths and the FWO.

5. Engagement of Contractors

- 5.1 Woolworths will take all reasonable steps to ensure that each Primary Contractor engaged by Woolworths or a Related Body Corporate of Woolworths under a Trolley Collection Agreement after the date of this Deed:
- (a) signs a compliance commitment document in which the Primary Contractor certifies that its directors, officers and managers understand their obligations to comply with Commonwealth Workplace Laws;
 - (b) registers with the FWO 'My Account' Portal; and
 - (c) enters into a written contract with Woolworths regarding the provision of Trolley Collection Services which includes the terms set out in clause 5.3 below.
- 5.2 In reviewing the contract price proposed by a Primary Contractor for the provision of Trolley Collection Services, Woolworths will take into account:
- (a) the number of hours and days on which Woolworths requires Trolley Collection Services to be provided at each Woolworths Site or Sites covered by the Trolley Collection Agreement;
 - (b) the average age profile of Employees across Woolworths Sites;
 - (c) the duties to be performed by Employees;
 - (d) the number of labour hours that the Primary Contractor has specified will be required to be performed to meet the site coverage requirements;
 - (e) the Fair Work Instrument that will apply to workers that perform the Trolley Collection Services; and
 - (f) whether the Primary Contractor intends to further subcontract the Trolley Collection Services,
- in order to assess whether, based on the factors listed in clauses 5.2(a) to 5.2(f) above, the amount proposed to be paid to the Primary Contractor as the contract price is reasonably likely to be sufficient to enable each Employee who is engaged to perform the Trolley Collection Services to be paid at least their minimum employee entitlements under any applicable Fair Work Instrument and Commonwealth Workplace Laws.
- 5.3 Woolworths will ensure that each Trolley Collection Agreement with a Primary Contractor entered into after the date of this Deed includes express terms to the effect that:
- (a) the Primary Contractor is responsible for ensuring compliance with Commonwealth Workplace Laws and Fair Work Instruments in respect of all Employees engaged by or through that Primary Contractor on Woolworths Sites, including Employees engaged through Subcontractors;
 - (b) Woolworths or a Related Body Corporate of Woolworths has the right to terminate the Trolley Collection Agreement if the Primary Contractor or a Subcontractor of the Primary Contractor has failed or is failing to comply with its obligations under Commonwealth Workplace Laws;

- (c) the Primary Contractor agrees that it will:
- (i) give pay slips to all Employees within one Business Day of the payment of wages in accordance with the FW Act and FW Regulations;
 - (ii) keep and maintain accurate records of the payment of wages and hours worked by Employees as required under the FW Act and FW Regulations, including by means of the Time Keeping System; and
 - (iii) make payment to Employees by electronic funds transfer, except in exceptional cases where the Primary Contractor has obtained Woolworths' prior written consent to the Primary Contractor paying a particular Employee in cash (and Woolworths agrees with the FWO that Woolworths will not grant its consent to cash payment of Employees unless exceptional circumstances exist, for example if an Employee temporarily does not have a bank account for the transfer of payment by electronic funds transfer);
- (d) if the Primary Contractor subcontracts the Trolley Collection Services to a Subcontractor after the date of this Deed, the Primary Contractor and Subcontractor will enter into a written contract that requires the Subcontractor to:
- (i) sign a compliance commitment document that certifies the Subcontractor's directors, officers and managers understand their obligations to comply with Commonwealth Workplace Laws;
 - (ii) register with the FWO 'My Account' Portal;
 - (iii) give pay slips to all Employees within one Business Day of the payment of wages in accordance with the FW Act and FW Regulations;
 - (iv) keep and maintain accurate records of the payments of wages and hours worked as required under the FW Act and FW Regulations, including by means of the Time Keeping System; and
 - (v) make payment to its Employees by electronic funds transfer, except in exceptional cases where the Primary Contractor has obtained Woolworths' prior written consent to the Primary Contractor's Subcontractor paying a particular Employee of the Subcontractor in cash (and Woolworths agrees with the FWO that Woolworths will not grant its consent to cash payment of Employees unless exceptional circumstances exist, for example if an Employee temporarily does not have a bank account for the transfer of payment by electronic funds transfer);
- (e) the Primary Contractor agrees that it will notify Woolworths within five Business Days of entering into each subcontracting arrangement referred to in 5.3(d) and will provide Woolworths with copies of the written contract and evidence of compliance with the matters referred to in 5.3(d) within a further 30 days; and
- (f) the Primary Contractor agrees that, if it engages a Subcontractor or Subcontractors to perform the Trolley Collection Services, in reviewing the contract price proposed by a Subcontractor it will not accept a contract price

if the Primary Contractor has reasonable grounds to believe that the amount of the contract price is insufficient to enable each Employee who is likely to be engaged by the Subcontractor to perform the Trolley Collection Services to be paid at least their minimum employee entitlements under any applicable Fair Work Instrument and Commonwealth Workplace Laws.

- 5.4 Woolworths will review, as soon as reasonably practicable after 1 July each year, its current contracting arrangements to:
- (a) ascertain whether, in the case of each Trolley Collection Agreement entered into after the date of this Deed, the contract price paid to the relevant Primary Contractor is likely (based on the factors listed in clauses 5.2(a) to 5.2(f)) to be sufficient to enable employee entitlements under Commonwealth Workplace Laws and Fair Work Instruments to be met; and
 - (b) ensure that tender processes give preference to contractors who demonstrate that Employees are paid via electronic funds transfer, and who can demonstrate their compliance with obligations to pay PAYG tax on behalf of Employees to the Australian Tax Office and superannuation payments as required by law.
- 5.5 Where a Primary Contractor is engaged by Woolworths or a Related Body Corporate of Woolworths after the date of this Deed, Woolworths will provide the FWO with the following information in respect of that Primary Contractor by way of a report provided to the FWO each six months:
- (a) the full name and contact details of the Primary Contractor;
 - (b) the full name, contact details and a copy of the passport of each director of the Primary Contractor;
 - (c) copies of the compliance commitment documents referred to in clauses 5.1(a) and 5.3(d)(i); and
 - (d) a copy of the Trolley Collection Agreement entered into between Woolworths or a Related Body Corporate of Woolworths and the Primary Contractor.

6. Identifying employees and maintaining employee records

- 6.1 Under each Trolley Collection Agreement entered into after the date of this Deed, Woolworths will require the Primary Contractor to implement, within 12 months of entry into the relevant Trolley Collection Agreement, systems to ensure that the hours worked by all Employees (including Employees of Subcontractors), as well as the employing entity of each Employee, can be readily ascertained, including by:
- (a) requiring the Primary Contractor to use all reasonable endeavours to ensure that all Employees are issued with a photo identification card through Pegasus which identifies their full name (**Pegasus Card**);

- (b) requiring the Primary Contractor to use all reasonable endeavours to ensure that Employees carry the Pegasus Card at all times while on a Woolworths Site;
- (c) requiring the Primary Contractor to ensure that Pegasus's records are updated and maintained so as to reflect the correct employing entity (and the ABN of the employing entity) of each Employee employed by that Primary Contractor or a Subcontractor of that Primary Contractor;
- (d) requiring the Primary Contractor to implement a time keeping system which ensures the maintenance of accurate records of each Employee's working hours, including date of work and start and finish times (**Time Keeping System**) and which meets the further requirements set out in clause 6.2; and
- (e) requiring the Primary Contractor to use all reasonable endeavours to ensure that Employees log the start and finish times of his or her working hours on a particular day using the Time Keeping System.

6.2 The Time Keeping System must:

- (a) require an Employee to log the start and finish times of his or her working hours on a particular day using either a biometric identifier or a unique code which is assigned to and kept secret by the Employee; and
- (b) include geofencing capability, to allow the Time Keeping System to be set to record whether an Employee has logged the start or finish times of his or her working hours within a set radius of the Woolworths Site at which that Employee provided the Trolley Collection Services on the relevant date. The radius must be set to include no more than the area (if any) for which street runs are provided as part of the Trolley Collection Services for the relevant Woolworths Site. If no street runs are provided as part of the Trolley Collection Services for the relevant Woolworths Site, the radius must be set to include no more than the area over which trolleys are collected as part of the Trolley Collection Services for the relevant Woolworths Site (for example, a shopping centre).

6.3 Woolworths agrees to ensure that the Pegasus system will allow the FWO to access, through an electronic application by scanning the barcode on an Employee's Pegasus Card, the company name and ABN of the Primary Contractor or Subcontractor which employs the Employee, as well as the name, a photograph of, the date of birth and contact details of the Employee. The FWO acknowledges and agrees that the accuracy of the details available to the FWO through Pegasus as described in this clause 6.3 depends on the accuracy of the data provided by the relevant Employees and / or Contractors, and that Woolworths bears no responsibility for the accuracy of such details.

6.4 The FWO acknowledges that it will obtain personal information (as defined in the Privacy Act) (**Personal Information**) in relation to the Employees under clause 6.3.

6.5 The FWO warrants that:

- (a) it has statutory authority to collect Personal Information in relation to Employees under clause 6.3; and
- (b) its collection and use of Personal Information in relation to Employees will not cause Woolworths to breach the Privacy Act.

- 6.6 The FWO undertakes that it will collect and use the Personal Information it obtains under clause 6.3 strictly in accordance with, and for the purposes of performing, its statutory functions, or exercising its statutory powers, and otherwise in accordance with all applicable law.

7. Regular Woolworths auditing and reporting to the FWO

External Auditing – Annual Full Audits

- 7.1 Under each Trolley Collection Agreement entered into after the date of this Deed, Woolworths must require each Primary Contractor to undertake an annual Full Audit.
- 7.2 A Full Audit must comply with the following requirements:
- (a) the sample size of each annual Full Audit of a Primary Contractor must be a minimum of 5% of the Sites (**Sample Sites**) in respect of which that Primary Contractor provides Trolley Collection Services, whether directly or through a Subcontractor (**Contracted Sites**);
 - (b) the Sample Sites for the Full Audit must be selected by Woolworths taking into account the need to ensure that Audits are conducted in respect of a mix of Woolworths Sites in each Australian state and territory across both urban and more remote locations and in respect of a mix of Woolworths brands (i.e. Woolworths supermarkets, Big W and Dan Murphy's). A Sample Site will not include a site which has been previously Audited (where at the time of the previous Audit that site was a Contracted Site to the relevant Primary Contractor), unless all Contracted Sites of the relevant Primary Contractor have already been Audited;
 - (c) the Full Audit must include a Field Audit during which the Auditor interviews all Employees rostered to work and in attendance at the relevant Woolworths Site on the day of the Field Audit;
 - (d) the Auditors must attend at the Primary Contractor's offices to interview its office staff, and where applicable any service providers such as external accountants or payroll providers;
 - (e) the Full Audit must include a Desktop Audit in order to assess the documentation provided by the Primary Contractor, its Subcontractor and / or Woolworths; and
 - (f) as part of the Desktop Audit, the Auditor must examine records of the payment of wages and entitlements (**Pay Records**) owing to Employees in respect of the provision of Trolley Collection Services at or in respect of a Woolworths Site to assess whether or not there is a shortfall to the minimum entitlements prescribed in accordance with Commonwealth Workplace Laws or Fair Work Instruments (including underpayment or non-payment of overtime and penalty rates or any other entitlement). The Pay Records must cover the following periods:
 - (i) the current pay period as at the time of the Audit;

- (ii) the pay period involving the highest volume of collections during the 12 months prior to the Audit; and
- (iii) a pay period during the 12 months prior to the Audit selected by the Auditor,

(each, a **Sample Period**). The Auditor must examine the Pay Records of all Employees who worked on the relevant Woolworths Site during each Sample Period. If appropriate, the Auditor may request from the Contractor and examine Pay Records for additional periods.

- 7.3 Woolworths must provide to the Auditor copies of any documents or records in Woolworths' possession reasonably required by the Auditor to complete the Full Audit.
- 7.4 Under each Trolley Collection Agreement entered into after the date of this Deed, Woolworths must require each Primary Contractor to provide to the Auditor all documents in the possession of the Primary Contractor which the Auditor reasonably requires to complete the Full Audit (or any other Audit of the Primary Contractor or a Subcontractor of the Primary Contractor), including time sheets, invoices, pay slips and bank records.
- 7.5 Woolworths must require the Auditor to provide a written report of the outcome of each Audit to Woolworths within 30 days of completing the Audit. Woolworths must require the Auditor to retain all materials relied on for the purposes of each Audit for a period of six years following the Audit.
- 7.6 Every six months for the duration of this Deed, Woolworths will provide a consolidated report to the FWO in respect of each Audit concluded during that period, summarising the audit scope, methodology and findings, and the steps taken to rectify any identified Non-Conformances.
- 7.7 At the FWO's request, Woolworths will use reasonable endeavours to obtain and provide to the FWO any materials Woolworths has access to in relation to an Audit.

External Auditing – additional Audits

- 7.8 In addition to the annual Full Audit of the Sample Sites, where Non-Conformances by a Contractor have been identified during an Audit, Woolworths may require the relevant Primary Contractor to commission Audits of additional Contracted Sites of the Primary Contractor (**Additional Sites**). Where the Contracted Sites in respect of which the Non-Conformances have been identified are Contracted Sites at which a Subcontractor of the Primary Contractor provides the Trolley Collection Services, the Additional Sites will be focused on Contracted Sites at which the relevant Subcontractor provides the Trolley Collection Services.
- 7.9 If necessary in order for Woolworths to verify that Non-Conformances identified during an Audit have been rectified, Woolworths may require the relevant Primary Contractor to commission the Auditor to conduct a follow-up Audit of the relevant Contracted Sites in order to confirm that the Non-Conformances have been rectified. If appropriate, Woolworths may allow this Audit to take the form of a Desktop Audit.
- 7.10 Woolworths may also commission the Auditor to conduct a Desktop Audit following receipt by Woolworths of a complaint through its Speak Up Service, via the FWO or another channel. The Desktop Audit would include an investigation of the claims made in the complaint. If the claims are not resolved to Woolworths' satisfaction, Woolworths may commission, or require the Primary Contractor to commission, a Full Audit.

- 7.11 Where the Internal Compliance Team has identified possible Non-Conformances, Woolworths may commission the Auditor to conduct a Desktop Audit, to be followed up by a Full Audit if appropriate, or, if appropriate, commission a Full Audit without a prior Desktop Audit.

External Auditing – Prequalification Audits

- 7.12 Woolworths must require all tenderers for the provision of Trolley Collection Services at Woolworths Sites who have not undergone a Full Audit within the previous 12 months (including because they have not previously provided Trolley Collection Services to Woolworths) to undergo a Prequalification Audit.
- 7.13 Subject to clause 7.14, Woolworths will only award a tender for the provision of Trolley Collection Services at one or more Woolworths Sites to a tenderer who has passed the Prequalification Audit or who has undergone a Full Audit within the previous 12 months.
- 7.14 If, due to confidentiality obligations owed by a tenderer to a third party, it is not reasonably practicable for Woolworths to conduct the Prequalification Audit prior to the award of the Tender, Woolworths may award the Tender to the tenderer, however the award of the Tender will be subject to the tenderer completing and passing a Prequalification Audit within three months of entering into the Trolley Collection Agreement.
- 7.15 Woolworths will keep all records relating to Prequalification Audits for a minimum period of six years.

Internal Auditing

- 7.16 Within three months after the date of this Deed, Woolworths will report to the FWO on progress in establishing the Internal Compliance Team. The Internal Compliance Team will be established within six months of the date of this Deed.
- 7.17 The Internal Compliance Team will make visits to selected Woolworths Sites (which will not be announced or otherwise notified in advance to the relevant Contractors) to conduct compliance checks to monitor Contractors' compliance with Commonwealth Workplace Laws.
- 7.18 Woolworths will establish processes for regular auditing by the Internal Compliance Team of Contractors in relation to compliance with the requirements to be imposed under each Trolley Collection Agreement entered into after the date of this Deed:
- (a) that all Employees carry a Pegasus Card at all times;
 - (b) that all Employees log their start and finish times via the Time Keeping System;
 - (c) for Contractors to comply with the National Employment Standards (NES), Minimum Wages, Payment of Wages, and Employee Records provisions of Commonwealth Workplace Laws, and with relevant Fair Work Instruments;
 - (d) for Contractors to provide pay slips to Employees; and
 - (e) for Contractors to keep records of hours worked by Employees generated through the Time Keeping System.

- 7.19 In respect of any Woolworths Sites where any non-compliance with the matters contemplated in clauses 7.16 and 7.17 has been identified, the Internal Compliance Team will continue to manage the matter until such non-compliance has been satisfactorily addressed or the relevant Contractor has been terminated from the relevant Woolworths Site.
- 7.20 The Internal Compliance Team will table a report to the Head of Woolworths Facilities Management (or person in an equivalent position) at least quarterly outlining its activities and findings.
- 7.21 Woolworths will record the actions it takes in response to any issues identified in the reports from the Internal Compliance Team referred to in clause 7.19 and will provide consolidated written reports to the FWO in relation to each such matter each six months for the duration of this Deed.

8. Hotline and reporting of non-compliance

- 8.1 Woolworths will, at its own expense, continue to fund and maintain a service (**Speak Up Service**) to allow Contractors, Employees and members of the public to lodge complaints or report potential non-compliance with Commonwealth Workplace Laws in relation to Trolley Collection Services, including Underpayments , at Woolworths Sites by the following means:
- (a) via a telephone hotline service (**Hotline**);
 - (b) via email, online or via post (**Written Complaints**).
- 8.2 Within 20 Business Days of the commencement of this Deed, Woolworths will take steps to ensure that:
- (a) the Hotline is available, as a minimum, between the hours of 8.00 am to 10.00 pm (Sydney time) Monday to Friday;
 - (b) the Hotline has the functionality to receive, respond to and manage complaints made anonymously; and
 - (c) the Hotline has an interpreter service available as described in clause 8.3.
- 8.3 Woolworths must ensure that the Hotline has the following interpreter service available:
- (a) a caller may choose to make his or her report in English, Hindi, Arabic or Korean; and
 - (b) where the caller has chosen to make his or her report in Hindi, Arabic or Korean, the caller will be put through to a three way call with a Hotline call taker and a translator.
- 8.4 Within 20 Business Days of the commencement of this Deed, Woolworths will take steps to ensure that Written Complaints can be made in any relatively widely spoken language.
- 8.5 Within 20 Business Days of the commencement of this Deed, Woolworths will:

- (a) publicly advertise the Speak Up Service and the purpose of the Speak Up Service on its websites at woolworthslimited.com.au and woolworths.com.au;
- (b) put up a notice at the Woolworths Sites inviting Employees to contact the Speak Up Service to make enquiries, lodge complaints or report potential non-compliance with Commonwealth Workplace Laws in relation to Trolley Collection Services, including underpayment of wages, at Woolworths Sites. If a Woolworths Site has a noticeboard which is likely to be seen by Employees, the notice must be affixed to that noticeboard; and
- (c) ensure one or more members of the Internal Compliance Team are engaged to respond to enquiries, complaints and reports of potential non-compliance with Commonwealth Workplace Laws at Woolworths Sites in relation to Trolley Collection Services and report those matters to Woolworths.

8.6 Woolworths agrees to:

- (a) investigate and, to the extent reasonably practicable, resolve any complaint (excluding any trivial, vexatious or frivolous complaint) relating to Trolley Collection Services received through the Hotline or otherwise, as soon as reasonably practicable after the date of receipt of each complaint;
- (b) where complaints are received on an anonymous basis, investigate the payroll and record-keeping practices of the Contractor identified and require the Contractor to rectify any non-compliance identified; and
- (c) on a quarterly basis, notify the FWO of all complaints (excluding any trivial, vexatious or frivolous complaints) received within that quarter, and provide information describing those complaints, the investigations undertaken, the information relied on to conduct the investigation and any steps taken to rectify the conduct.

8.7 The FWO reserves its right as the Commonwealth regulator to investigate any complaint, grievance or report in relation to a Contractor, whether raised via the Hotline, an audit or any other means.

9. Matters notified to the FWO

- 9.1 Where the FWO receives a request for assistance involving an allegation of non-compliance regarding a Contractor, the FWO will notify Woolworths of the allegations and provide to them details supplied by the Employee or former Employee. Woolworths will abide by any confidentiality restrictions imposed by the FWO in relation to any information supplied under this clause, including any restriction which might be imposed by the FWO on notifying any Contractor of the request for assistance (or the details of that request). The FWO retains full discretion as to what steps it takes in relation to requests for assistance and may determine to also independently investigate any request for assistance as contemplated under clause 8.7 (including if, for instance, the allegations indicate serious non-compliance).
- 9.2 Following this notification, Woolworths will assist the Contractor to test the allegation (subject to any confidentiality restriction limiting the ability of Woolworths to inform the Contractor of the allegation) and, if appropriate, attempt to resolve the matter as soon

as reasonably practicable after the date of notification by the FWO.

- 9.3 Within five Business Days of finalising the matter as contemplated in clause 9.2, Woolworths will provide the FWO with a report setting out the details and nature of its findings, including information regarding any identified Underpayments and rectification of the same, as well as any other issues identified by the FWO.
- 9.4 Where the matter cannot be finalised by agreement between the Contractor and the complainant within 20 Business Days of notification by the FWO, Woolworths will provide the FWO with a written report addressing the reasons why the matter could not be finalised. The report is to be provided to the FWO no later than five Business Days after the expiry of the period of 20 Business Days from notification by the FWO.

10. Rectification of payments

- 10.1 Where an Underpayment has been substantiated to the reasonable satisfaction of Woolworths, Woolworths will:
- (a) require the Primary Contractor who engages or engaged the Employee (including through a Subcontractor) to rectify the Underpayment; and
 - (b) if the Contractor fails to rectify the Underpayment within 20 Business Days of Woolworths having substantiated the Underpayment, Woolworths will make an ex gratia payment to the Employee to rectify the Underpayment. Such payment will occur promptly after Woolworths being provided with the bank account details or alternative means of payment (such as address for delivery of a cheque) for the relevant Employee.
- 10.2 Woolworths will, on a quarterly basis, provide the FWO with details of any amounts paid by Woolworths to rectify Underpayments under clause 10.1(b) during the preceding quarter.

11. Training

- 11.1 Within three months of the commencement of this Deed, Woolworths will, at its own expense, engage a HR Specialist to design, in consultation with the Internal Compliance Team:
- (a) an ongoing workplace relations training program for Employees, for example in the form of an e-learning module, to be completed annually by each Employee via Pegasus, with text and a voiceover in English, Hindi, Arabic or Korean (as selected by the Employee) with the aim of helping to ensure that all current and new Employees engaged on Woolworths Sites are made aware of their rights and entitlements under Commonwealth Workplace Laws and Fair Work Instruments, including the provision of industry-specific information; and
 - (b) an annual workplace relations and human resources training program, for example one delivered at an annual conference, for:

- (i) all directors of Primary Contractors and employees of Primary Contractors who have senior management or human resources management responsibility; and
- (ii) all persons responsible for the procurement of Trolley Collection Services on behalf of Woolworths, being relevant members of the Internal Compliance Team, Woolworths' procurement team and the Woolworths Facilities Management team,

with the aim of ensuring that they are aware of their obligations under Commonwealth Workplace Laws and applicable Fair Work Instruments and the rights and entitlements owed to Employees under Commonwealth Workplace Laws and applicable Fair Work Instruments.

11.2 The workplace relations training program referred to in clause 11.1(a) above will include, at a minimum, training and information in respect of:

- (a) the Speak Up Service;
- (b) assistance and information available for Employees through the FWO;
- (c) the minimum entitlements of Employees under applicable Fair Work Instruments and the FW Act;
- (d) the general protections provisions under the FW Act;
- (e) employer obligations with respect to pay slips and record-keeping; and
- (f) obligations of Contractors in relation to working rights checks (such as the Visa Entitlement Verification Online (**VEVO**) system) under the *Migration Act 1958* (Cth) and any associated regulations.

11.3 The workplace relations training program referred to in clause 11.1(b) above will include, at a minimum, training and information in respect of:

- (a) the minimum entitlements of Employees under applicable Fair Work Instruments and the FW Act;
- (b) employer obligations with respect to pay slips and record-keeping;
- (c) assistance and information available for employers through the FWO;
- (d) the general protections provisions under the FW Act;
- (e) accessorial liability under the FW Act; and
- (f) obligations of Contractors in relation to working rights checks (such as the VEVO system) under the *Migration Act 1958* (Cth) and any associated regulations.

11.4 The workplace relations training programs referred to in clauses 11.1(a) and 11.1(b) must be implemented by Woolworths. Woolworths will keep records of the material presented and attendance records for each training presentation, for a period of six years.

11.5 In providing training to directors and senior managers of Primary Contractors, Woolworths also emphasise the need, in determining and proposing tender prices, for

Contractors to take into account the potential costs of compliance with the Primary Contractor's contractual obligations (including, for instance, implementation of audits or systems referred to in this deed).

12. Public Inspection

12.1 This Deed is a public document.

12.2 The FWO may:

- (a) make this Deed available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
- (b) release a copy of this Deed pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) issue a media release in relation to this Deed; and
- (d) from time to time, publicly refer to this Deed, including informing the public as to the terms and status of the Deed.

13. Access to Woolworths sites

- 13.1 Woolworths will act reasonably and cooperatively in considering whether it is in a position to provide documents requested by the FWO on a voluntary basis, or to allow and facilitate officers of the FWO access to Woolworths Sites on a voluntary basis, in each case where the purpose of the documents or access requested by the FWO is to verify compliance with the Commonwealth Workplace Laws.
- 13.2 Nothing in this clause 13 prevents or restricts the FWO or any Fair Work Inspector from exercising a function or power which it holds under Commonwealth Workplace Laws or other legislation.

14. Commencement and period of the Deed

- 14.1 This Deed comes into effect on the date that the Deed is executed by Woolworths and the FWO.
- 14.2 This Deed and the obligations agreed to by the parties will continue for a period of three years from the date of execution of this Deed by both parties, except where obligations provide for longer periods of time as stated in this Deed.

15. Continuing obligations

- 15.1 The following clauses survive termination of this Deed for whatever reason (including termination by the FWO): clause 17 (No Inconsistent Statements).

16. Termination by the FWO

- 16.1 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 Woolworths commits a serious or persistent breach or non-observance of a term or terms of this Deed.
- 16.2 The FWO will in the case of any breach of this Deed by Woolworths by notice in writing require Woolworths to rectify the breach within a reasonable period of time.

17. No inconsistent statements

- 17.1 Woolworths:
- (a) must not; and
 - (b) must use all reasonable endeavours to ensure that each of its officers, employees or agents do not; and
 - (c) must use all reasonable endeavours to ensure that each of its 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.

18. Entire agreement

- 18.1 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 Woolworths.

19. Construction

- 19.1 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.
- 19.2 Unless expressed to the contrary in this document:
- (a) words in the singular include the plural and vice versa;
 - (b) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (c) a reference to a clause is a reference to a clause in this Deed;
 - (d) a reference to a period of time that dates from a given day is to be calculated exclusive of that day; and
 - (e) the words “include”, “including”, “for example” or “such as” are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind.

20. Severance

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.

21. Legally binding

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

22. Counterparts

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

23. Notices

- 23.1 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 Woolworths to the FWO, sent to the address indicated on page 1 or as otherwise notified by the FWO to Woolworths from time to time in writing; or
 - (b) if given by the FWO to Woolworths, marked for the attention of the Woolworths Contact Person and sent to the address indicated on page 1 with a copy sent to the email address specified on page 1.
- 23.2 Any notice, request or other communication is to be delivered by hand or sent by pre-paid post and, in the case of a notice given by the FWO to Woolworths, transmitted electronically to the email address specified on page 1.
- 23.3 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 five 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.

24. Costs

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.

25. Governing law

This Deed shall be construed in accordance with the laws for the time being of the State of Victoria 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.

26. Independent legal advice

Woolworths acknowledges that:

- (a) before executing this Deed, Woolworths was given the opportunity to seek independent legal and other advice of its choice;

- (b) in light of any advice provided, Woolworths considered its position; and
- (c) Woolworths fully understands the effect of this Deed.

27. Date of this Deed

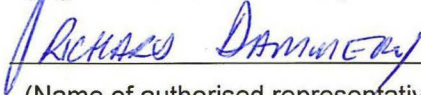
The date the parties execute the Deed, or, if it is executed on different dates, the date of last execution.

EXECUTED AS A DEED

EXECUTED BY WOOLWORTHS LIMITED by its authorised representative



(Signature of authorised representative)



(Name of authorised representative)

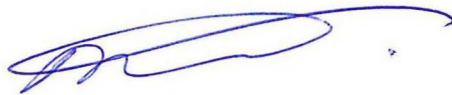
31/8/17

(Date)

In the presence of:

PETER ATKIN

(Name of witness in full)



(Signature)

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

Michael Campbell

(Printed Name)



(Signature)

Deputy Fair Work Ombudsman

(Title)

22 SEPTEMBER 2017

(Date)

In the presence of:

Louise CATO

(Name of witness in full)



(Signature)