**BACKGROUND TO REPORT**

This annual report (**Report**) is made pursuant to the Enforceable Undertaking (**EU**) commencing on 6 October 2014 (**EU Start Date**) between the Commonwealth of Australia as represented by the Office of the Fair Work Ombudsman (**FWO**) and Coles Supermarkets Australia Pty Ltd (**Coles**).

**DEFINITIONS AND INTERPRETATIONS**

Words that are defined in the EU and which are used in this Annual Report have the same meaning as in the EU, unless otherwise specified.

**SUMMARY OF ANNUAL REPORT**

In accordance with clause 12 of the EU, this Report includes:

* the number of trolley collection contractor wage underpayment complaints referred to Coles on the Hotline;
* the actions taken to investigate the above complaints;
* the average time taken to conclude the investigations of such complaints;
* the findings with respect to each complaint received on the Hotline; and
* each instance where Coles has determined there was an underpayment and the amount of each underpayment.

The Report also includes a summary of the additional activities undertaken in accordance with the EU, including in relation to:

* Commitment of resources;
* Trolley collection wage underpayment complaints and investigations generally;
* Communications to team members and trolley collectors;
* Hotline maintenance and advertising;
* Ex gratia payments;
* Establishment and maintenance of the Guarantee Reserve Fund;
* Monitoring and support of United Trolley Collections Pty Ltd (**UTC**) and its EU;
* Annual audits of UTC and its subcontractors; and
* Workplace relations training program.

**COMMITMENT OF RESOURCES**

Coles has committed resources to ensure ongoing compliance with the EU. Coles established a Working Group to provide governance over complaint investigation, monitoring of UTC and all other EU activities. The EU Working Group meets each fortnight and comprises the representatives shown below.

|  |  |  |
| --- | --- | --- |
| **ENFORCEABLE UNDERTAKING – WORKING GROUP** | | |
| **TEAM MEMBER** | **POSITION** | |
|  | GM Coles Services | |
|  | Program Manager Coles Services (FWO Liaison) | |
|  | Head of Central Operations Coles Services | |
|  | Operations Compliance Manager (Complaints Investigation) | |
|  | State Manager Coles Services | |
|  | Finance Manager | |
|  | Change and Documentation Specialist | |
|  | Legal Counsel | |

**WAGE UNDERPAYMENT COMPLAINTS AND INVESTIGATIONS**

Coles has established and continues to use the Hotline in accordance with the EU, requiring store managers to escalate wage underpayment complaints by trolley collectors directly to head office.

In accordance with clauses 7 to 10 (inclusive) of the EU, Coles investigated each wage underpayment complaint received from the EU Start Date.

Complaints received via the Hotline were investigated by the Operations Compliance Manager with oversight and governance by the EU Working Group.

Since the EU Start Date, Coles has investigated 21 complaints. Twelve of those complaints were received through the Hotline, including one which was referred by the FWO to the Hotline. The remaining nine complaints were received via other means, or were the result of internal escalation by Coles. The average time to investigate the 21 complaints (excluding one complaint which remains open) was 19 days[[1]](#footnote-1).

The investigations and evidence gathering process has to date been challenging, and Coles was sometimes required to make a determination based upon little or circumstantial evidence.

Of the 20 concluded investigations, Coles determined that a wage underpayment or payment error may have occurred in relation to six of the complaints received. If Coles determined there had been a wage underpayment or payment error, UTC or the relevant UTC subcontractor was required to rectify the matter within 28 days of Coles’ determination. Alternatively, Coles directly rectified the wage underpayment within that time period.

Please refer to Appendix 1 (Complaints and Investigation Statistics) to view the findings and outcomes of each complaint that was received, and the amount of each underpayment or payment error (if any).

The actions taken to investigate each complaint included discussion with the trolley collector who had lodged the complaint, review of payroll and timesheet information (with assistance and support from UTC), review of store visitor sign-in books, review of Coles Online Contractor Induction database and discussion with relevant store team members as required.

**COMMUNICATIONS TO COLES TEAM MEMBERS, CONTRACTORS AND UTC**

In accordance with clause 1 of Attachment A of the EU, within 7 days of signing the EU (on 14 October 2014) Coles communicated the existence of the EU to its team members and to UTC. The communication was effected to all team members via an internal bulletin and the Coles intranet. The communication to UTC was effected via email.

Please refer to Appendix 2 (Team Member Communications) to view the communications to Coles’ team members.

Please refer to Appendix 3 (UTC Communications) to view the communications to UTC.

**MAINTENANCE AND PROMOTION OF THE HOTLINE**

In accordance with clause 5 of the EU, Coles has continued to operate the Hotline and required store managers to escalate wage underpayment complaints by trolley collectors directly to the head office to be investigated by a Coles team member tasked with investigation of such complaints.

In accordance with clause 6 of the EU, Coles has continued to advertise the Hotline in all sign-in books and team rooms at all Coles sites at which trolley collection is undertaken by a trolley collection contractor. Please refer to Appendix 4 (Hotline Notice) to view a copy of the Hotline notice.

**EX GRATIA PAYMENTS**

In accordance with clause 15 of the EU, Coles provided the FWO with cheques totalling $220,174.69, addressed to each of the trolley collectors listed in clause 15, within 28 days of signing the EU. Six of the ten cheques have been cashed by the the trolley collectors listed in clause 15.

In relation to the cheques that have not yet been cashed, the FWO has not requested that Coles pay to the FWO a sum equal to the relevant trolley collector’s underpayment, on behalf of the Commonwealth of Australia, and to be treated by the FWO as payments pursuant to s.559 of the FW Act.

**GUARANTEE RESERVE FUND**

In accordance with clause 17 of the EU, Coles established a "Guarantee" reserve fund (**Fund**) on 29 October 2014, within 28 days of signing the EU. Please refer to Appendix 5 (Fund Account Statement) to view a copy of the account statement, provided to the FWO in July 2016. The Fund has been maintained at $500,000 and is available to be distributed to trolley collectors employed by UTC or its subcontractors, in the event it is determined that a trolley collector has been underpaid.

**MONITORING AND SUPPORT OF UTC**

In accordance with clause 4 of the EU, Coles has continued to monitor and support UTC to ensure that UTC complies with its audit requirements as prescribed under its Deed of Proactive Compliance with the FWO. UTC provides Coles with a weekly report on complaints that it has received, and investigated. Moreover, multiple Coles team members (including the Head of Central Operations and Operations Compliance Manager) are frequently contacting UTC to discuss a broad range of issues including but not limited to operations, transition of the services, contractual matters and also ongoing compliance and wage payments issues.

**ANNUAL AUDIT OF UTC AND ITS SUBCONTRACTORS**

In accordance with clauses 19 to 22 of the EU (inclusive) Coles has completed its first annual audit of 20% of direct sub-contractors of UTC (**UTC Audit Report**). A total of 15 UTC subcontractors provided written evidence in respect of a total of 400 of their respective employees, including the:

* wages paid for each employee in a nominated 6 week period (**Audit Period**);
* hourly rate paid to each employee for each hour worked by that employee in the Audit Period;
* roster of days and hours worked by each employee during the Audit Period; and
* age of each employee.

As a result of the UTC Audit Report, Coles determined there have been some instances of wage underpayments of UTC’s subcontractors’ employees during the nominated audit period with total net underpayments across all of UTCs subcontractors being $50,556.84.

The UTC Audit Report has been independently reviewed and certified as accurate and is attached in Appendix 6 (UTC Audit Report).

**WORKPLACE RELATIONS TRAINING**

In accordance with clause 23 of the EU, within 60 days of the Start Date of the EU, Coles developed and delivered a workplace relations training program for all team member roles that are associated with or which have interaction with trolley collection services. All required participants attended the training.

The first workplace relations training session was delivered on 26 November 2014. The training included:

* compliance with the FW Act and FW Instruments under the FW Act, a summary of Coles contractors obligations under the FW Act and FW Instruments including theirobligations under section 550 of the FW Act; and
* the options available to trolley collectors to make wage underpayment complaintsthrough the Hotline and the FWO's procedures to lodge a complaint.

Subsequently, Workplace Relations training was incorporated into training for all of the State, Regional Operations and Area Managers in the Coles Services division.The Workplace Relations Training will be provided on a continuing basis.

**APPENDIX 1 – COMPLAINTS AND INVESTIGATIONS STATISTICS**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| # | Date Complaint or query raised | Channel of Initial contact | Store(s) / Location | Description of complaint/issue | Outcome (including underpayment amount |
| 1 | 8/10/2014 | Email |  | Complainant concerned regarding entitlements following Subcontractors business going into liquidation | Advice provided to complainant regarding the Federal Governments Fair Entitlements Guarantee |
| 2 | 8/10/2014 | Customer Care |  | Details of complaint not specified in original contact | Complainant did not respond to repeated contact attempts. Allegations not able to be substantiated |
| 3 | 20/10/2014 | Email |  | Allegation of underpayment (flat rate $120 per day) | Settlement agreement for $8,000 |
| 4 | 3/11/2014 | Hotline |  | Allegation of underpayment ($8/$10 per hour cash) | Settlement agreement for $22,504 |
| 5 | 25/11/2014 | Hotline |  | Allegation of underpayment and mistreatment | No supporting information to validate allegation |
| 6 | 4/12/2014 | Conversation |  | Allegation collectors paid $10 per hour cash in hand | Settlement agreement for $1,713.60 for worker 1  Settlement agreement for $3,753.00 for Worker 2  Termination of Subcontractor |
| 7 | 19/12/2014 | Conversation |  | Concerns regarding working hours/days (10 hour days, 7 days per week) | No supporting information to validate concerns |
| 8 | 02/01/2015 | Hotline |  | Allegation collector not paid in full | Collector withdrew complaint after indicating it had been resolved |
| 9 | 20/01/2015 | Email |  | Allegation collector paid $10 per hour cash in hand between Nov 2011 and Feb 2012 | No supporting information to validate allegation |
| 10 | 28/01/2015 | Conversation |  | Allegation collector underpaid and harassed and pay slips not provided | Allegations of underpayment not able to be substantiated however concerns re payslips not being provided were addressed. A payment deducted from the collectors wage for damage to a door was reversed by the Subcontractor |
| 11 | 09/02/2015 | Hotline |  | Allegation contractor paid $10 per hour over a period of 4 months | Allegations not able to be substantiated and subsequently withdrawn by collector |
| 12 | 15/02/2015 | Hotline |  | Concerns re collector working excessive days over previous 3 months | Investigation identified that payments/conditions are within award |
| 13 | 17/02/2015 | Hotline |  | Allegation collector not paid properly from 8th to 21st Dec | Payment was not made due to collector not completing employment paperwork. Matter resolved and payment made |
| 14 | 28/03/2015 | Hotline |  | Allegation collector not paid correctly and working excessive days/hours | Evidence did not support allegation |
| 15 | 12/04/2015 | Hotline |  | Allegation collector paid $12 per hour over a period of 6 months | Available data did not support allegation |
| 16 | 24/07/2015 | Hotline |  | Allegation collector not paid for prior month and only paid $15 per hour | Collector withdrew complaint after indicating it was a misunderstanding of a personal matter |
| 17 | 14/08/2015 | Hotline |  | Allegation collector paid $10 per hour cash in hand between May 2009 and June 2010 | Settlement agreement for $3,670 |
| 18 | 04/09/2015 | Hotline |  | Collector allegedly being paid $12 per hour | Unable to complete investigation due to lack of information. No evidence of worker at site |
| 19 | 14/09/2015 | Hotline |  | Allegation collector did not receive pay slips or annual leave entitlements | Back payment of approximately $800 |
| 20 | 23/09/2015 | Email |  | Concerns trolley collectors may not have been paid correct rate or received full entitlements | Investigation continuing |
| 21 | 09/10/2015 | Email |  | Allegation collector not paid for 32 extra hours Christmas 2014. Store Manager confirmed hours were worked. No ad hoc request was submitted. | Back payment of approximately $590 |

**APPENDIX 2 – TEAM MEMBER COMMUNICATIONS**

**APPENDIX 3 – UTC COMMUNICATIONS**

**APPENDIX 4 – HOTLINE NOTICE**

**APPENDIX 5 – FUND ACCOUNT STATEMENT**

**APPENDIX 6 – UTC AUDIT REPORT**

1. Average time was calculated by adding the number of days taken to investigate each complaint and dividing that total by the number of complaints. [↑](#footnote-ref-1)