

ANNUAL REPORT 3 NOVEMBER 2015

PURSUANT TO THE ENFORCEABLE UNDERTAKING BETWEEN THE COMMONWEALTH OF AUSTRALIA AS REPRESENTED BY THE OFFICE OF THE FAIR WORK OMBUDSMAN AND COLES SUPERMARKETS AUSTRALIA PTY LTD

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 have 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 days¹.

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 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

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.

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 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 subcontractors 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 Fair Work Instruments under the FW Act, a summary of Coles contractors obligations under the FW Act and FW Instruments including their obligations under section 550 of the FW Act; and
- the options available to trolley collectors to make wage underpayment complaints through 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	[REDACTED]	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	[REDACTED]	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	[REDACTED]	Allegation of underpayment (flat rate \$120 per day)	Settlement agreement for \$8,000
4	3/11/2014	Hotline	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Allegation of underpayment (\$8/\$10 per hour cash)	Settlement agreement for \$22,504
5	25/11/2014	Hotline	[REDACTED] [REDACTED] [REDACTED]	Allegation of underpayment and mistreatment	No supporting information to validate allegation
6	4/12/2014	Conversation	[REDACTED]	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	[REDACTED]	Concerns regarding working hours/days (10 hour days, 7 days per week)	No supporting information to validate concerns
8	02/01/2015	Hotline	[REDACTED]	Allegation collector not paid in full	Collector withdrew complaint after indicating it had been resolved
9	20/01/2015	Email	[REDACTED]	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	[REDACTED]	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	[REDACTED]	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	[REDACTED]	Concerns re collector working excessive days over previous 3 months	Investigation identified that payments/conditions are within award
13	17/02/2015	Hotline	[REDACTED]	Allegation collector not paid properly from 8 th to 21 st Dec	Payment was not made due to collector not completing employment paperwork. Matter resolved and payment made
14	28/03/2015	Hotline	[REDACTED]	Allegation collector not paid correctly and working excessive days/hours	Evidence did not support allegation
15	12/04/2015	Hotline	[REDACTED]	Allegation collector paid \$12 per hour over a period of 6 months	Available data did not support allegation
16	24/07/2015	Hotline	[REDACTED]	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

Store Messages



Coles 26/03/2013

Transforming our Trolley Collection

Priority

Operations Support

Complete ☐

Contact: Store Help Desk, [REDACTED]

In late 2011 the Fair Work Ombudsman (FWO) raised concerns with Coles about unfair practices involving third party team members responsible for our trolley collection service.

As a result of this, we have entered into an Enforceable Undertaking with the FWO demonstrating our commitment to working with them to ensure compliance with Commonwealth workplace laws and promote a harmonious, productive and cooperative workplace in all stores.

A copy of the Enforceable Undertaking is available on Connect > Stores > Expenses > Customer Trolleys. The Enforceable Undertaking requires we communicate its existence to all team members.

What do I need to do?

As your store is supported by third party street trolley collection, please display the attached communication in your team room by **Tuesday 14 October** and discuss the Enforceable Undertaking in your Team Huddles.

Complete the below signoff to confirm this has been completed in your store. Please complete the signoff by close of business **Wednesday 15 October**.



Trolley Collection Enforceable Undertaking

The Transforming our Trolley Collection communication only needs to be displayed for 30 days. Please remove on **Friday 14 November**.

trolley_collection.pdf

Transforming our Trolley Collection

Priority

Operations Support

Complete ☐

Contact: Store Help Desk, [REDACTED]

In late 2011 the Fair Work Ombudsman (FWO) raised concerns with Coles about unfair practices involving third party team members responsible for our trolley collection service.

As a result of this, we have entered into an Enforceable Undertaking with the FWO demonstrating our commitment to working with them to ensure compliance with Commonwealth workplace laws and promote a harmonious, productive and cooperative workplace in all stores.

A copy of the Enforceable Undertaking is available on Connect > Stores > Expenses > Customer Trolleys. The Enforceable Undertaking requires we communicate its existence to all team members.

What do I need to do?

Display the attached communication in your team room by **Tuesday 14 October** and discuss the Enforceable Undertaking in your Team Huddles.

Print **2 copies** of the Trolley Collection Wage Underpayment Hotline notice. Display 1 in your team room and place 1 in your visitor sign in book.

Complete the below signoff to confirm these actions have been completed in your store. Please complete the signoff by close of business **Wednesday 15 October**.



Trolley Collection Enforceable Undertaking

The Hotline notice needs to be displayed in your team room and visitor sign in book until **31 December 2018**. Please check regularly to confirm they are still in place.
The Transforming our Trolley Collection communication only needs to be displayed for 30 days. Please remove on **Friday 14 November**.

trolley_collection.pdf
hotline_notice.pdf

Transforming our Trolley Collection

Doing the right thing for our customers and teams

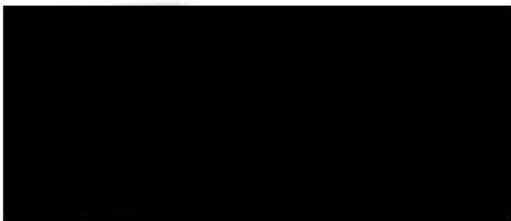
Enforceable Undertaking with the Fair Work Ombudsman

In late 2011 the Fair Work Ombudsman raised concerns with Coles about unfair practices involving third party team members responsible for our trolley collection service.

Since then, we have made a number of changes including launching Coles Services to bring cleaning and trolley collection services in-house. Today we have 400 stores with in-house trolley collection and we work with one national trolley collection contractor at our remaining stores. We have also implemented a hotline for the escalation of concerns to protect third party team members and work closely with our sole contractor to ensure their fair treatment.

To demonstrate our commitment to complying with Commonwealth workplace law and protecting our third party team members, Coles has entered into an Enforceable Undertaking with the Fair Work Ombudsman. Below is a copy of our commitment - please share this with your teams.

Transforming our trolley collection arrangements is a great example of our team working hard to be *a little better every day*.



Our Commitment to our trolley contractors

"Coles fully supported and endorsed the actions of UTC in entering into a Deed of Proactive Compliance with the Fair Work Ombudsman (FWO). Coles has now entered into an Enforceable Undertaking (The Enforceable Undertaking) with the Office of the FWO.

By entering The Enforceable Undertaking, Coles demonstrates that it is committed to working with the FWO to ensure compliance with Commonwealth workplace laws and promote a harmonious, productive and cooperative workplace at all its sites. Coles accordingly requires all independent contractors engaged in its enterprise to commit to ensuring compliance with workplace laws and engage with the FWO on matters arising as a result of workplace complaints.

Coles has made the Enforceable Undertaking available to all independent contractors through direct communication. You are also able to access information about entitlements and rights at work by contacting [REDACTED] Head of Central Operations & Deployment (Coles Services) or [REDACTED] at 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."

A copy of the full Enforceable Undertaking is available on Connect > Stores > Expenses > Customer Trolleys. Please display this notice in your team room and remove on **Friday 14 November**.

From: [REDACTED]
To: [REDACTED]
Subject: FW: Coles and The Commonwealth of Australia as represented by the Office of the Fair Work Ombudsman - Enforceable Undertaking - Required Communication to UTC [IWOV-WSLEGAL.FID80864]
Date: Monday, 26 October 2015 10:06:29 AM
Attachments: [image001.png](#)
[FINAL Enforceable Undertaking 6 Oct 2014 fully signed.PDF](#)

[REDACTED]
Sent: Friday, 10 October 2014 1:54 PM

Subject: Coles and The Commonwealth of Australia as represented by the Office of the Fair Work Ombudsman - Enforceable Undertaking - Required Communication to UTC [IWOV-WSLEGAL.FID80864]

[REDACTED]

Coles fully supported and endorsed the actions of United Trolleys Collection (**UTC**) in entering into a Deed of Proactive Compliance with the Fair Work Ombudsman.

Coles has now entered into the **attached** enforceable undertaking (the **Enforceable Undertaking**) with the Commonwealth of Australia as represented by the Office of the Fair Work Ombudsman (**FWO**).

By entering the Enforceable Undertaking, Coles demonstrates that it is committed to working with the FWO to ensure compliance with Commonwealth workplace laws and promote a harmonious, productive and cooperative workplace at all its sites.

Coles accordingly requires all independent contractors engaged in its enterprise to commit to ensuring compliance with workplace laws and engage with the FWO on matters arising as a result of workplace complaints.

Coles has made the Enforceable Undertaking available to all independent contractors through <http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/october-2014/20141007-coles-eu-presser>. You are also able to access information about entitlements and rights at work by contacting [REDACTED] (Head of Coles Central Operations and Deployment) or [REDACTED], at 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.

In accordance with the terms of the Enforceable Undertaking, Coles now directs UTC to make a copy of the Enforceable Undertaking available to all employees and independent contractors of UTC. This may be done by referring all employees and independent contractors of UTC to <http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/october-2014/20141007-coles-eu-presser>, where a copy of the Enforceable Undertaking may viewed and downloaded. If any UTC employees or independent contractors request a copy of the Enforceable Undertaking from UTC then Coles expectation is that UTC will provide the relevant UTC employees or independent contractors with a physical copy or a scanned digital copy of the Enforceable Undertaking.

Please confirm by return email:



- (a) your understanding of the existence of the Enforceable Undertaking; and
- (b) that UTC have made a copy of the Enforceable Undertaking available to all of its employees and independent contractors.

Thank you for your continued assistance and cooperation.

Yours sincerely

Regards,

[Redacted]

	Wesfarmers Limited Level 6, 800 Toorak Road Hawthorn East Victoria 3123 www.wesfarmers.com.au	 
---	--	--



Please consider the environment before printing this email

This email is confidential and may contain legally privileged information. If you are not the intended recipient, you must not disclose or use the information contained in it. If you have received this email in error, please notify us immediately by return email and delete the document.

Attention UTC Team Members

Trolley Collection Wage Underpayment Hotline

Coles wants your employer to pay you correctly.

Coles has set up a Hotline so you can contact Coles if you believe you are not receiving the correct wage payment.

Coles will investigate any wage underpayment query.

The Hotline number is:

1800 507 877 (Select option 1 and then select option 1 again)

Coles and UTC are working together to ensure that all team members are treated fairly.





Westpac Banking Corporation ABN 33 007 457 141.

Duplicate Statement

Copy of statement No 1

Page 1 of 2

Corporate Cheque Account - Regulated Interest

WESFARMERS LIMITED
LEVEL 7
40 THE ESPLANADE
PERTH WA 6000



*

PERTH WA

ACCOUNT NAME
WESFARMERS LIMITED
COLES GUARANTEE RESERVE FUND



ACCOUNT ENQUIRIES
IN AUSTRALIA 1800 150 140
Call 8:00AM to 8:00PM EST, Monday to Friday

* ACCOUNT SUMMARY *

OPENING BALANCE	TOTAL CREDITS	TOTAL DEBITS	CLOSING BALANCE
\$0.00	\$500000.00	\$0.00	+ \$500000.00

DETAILS OF YOUR ACCOUNT
FOR THE PERIOD FROM 24 OCT 2014 TO 24 APR 2015

DATE	DESCRIPTION OF TRANSACTION	DEBIT	CREDIT	BALANCE
2014	STATEMENT OPENING BALANCE			0.00
29OCT	DEPOSIT COLES GROUP LTD FWO GUARANTEE	500000.00		500000.00
24APR	CLOSING BALANCE			500000.00

STATEMENT NO. 1 PAGE 1 OF 2

Corporate Cheque Account - Regulated Interest

Further information in relation to your account, including details of product benefits and applicable fees and charges, is available on request. That information is also contained in the Terms and Conditions booklet (T&C) for your account. For a copy of that document, or if you have any other enquiries, you can call your dedicated Client Enquiry Manager or the Transactional Solutions Team on 1800 150 140.

The above Closing Balance amount may not be the same as the balance payable to you on closure of your account (the 'termination value'). Details of the termination value can be obtained by calling your dedicated Client Enquiry Manager or the Transactional Solutions Team on the number quoted above. Further information on how to close accounts, including calculation of the termination value, is contained in the T&C for your account.

For a copy of the T&C you can call the Transactional Solutions Team on 1800 150 140.

We have an internal process for handling and resolving any problems you may have with, or complaints relating to, your account. You can access this dispute resolution process by contacting your Transactional or Relationship Manager. Further information about this process can be found in the T&C or if you have any other enquiries, you can contact us on 1300 130 467.

OTHER INFORMATION ABOUT YOUR ACCOUNT

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

GENERAL INFORMATION ABOUT YOUR STATEMENT ENTRIES

* PROCEEDS OF CHEQUES WILL NOT BE AVAILABLE UNTIL CLEARED.
PLEASE CHECK ALL ENTRIES ON THIS STATEMENT AND PROMPTLY
INFORM THE BANK OF ANY POSSIBLE ERROR OR UNAUTHORISED
TRANSACTION.

THANK YOU FOR BANKING WITH WESTPAC

STATEMENT NO. 1 PAGE 2 OF 2



**Trolley Collection Payroll
Audit**

23 October 2015

Contents

Executive Summary1 -

Summary of testing.....3 -

Executive Summary -

Context

As a part of Coles Supermarkets Australia Pty Ltd (**Coles**) commitment to the Commonwealth of Australia as represented by the Office of the Fair Work Ombudsman (FWO), pursuant to an Enforceable Undertaking (EU) with the FWO dated 6 October 2014 Coles has among other things undertaken to conduct annual audits of a minimum of 20% of direct sub-contractors of UTC for each year of the EU.

Approach

This Audit was comprised of two distinct phases, including the *Review of UTC's Payroll Audits (Phase 1)* and *Review of Subcontractor Employee Payments (Phase 2)*.

Review of UTC's Payroll Audits (Phase 1)

As part of the Deed of Proactive Compliance signed by UTC, UTC implemented four payroll audits to help - identify compliance of its third party contractors with the payment of its employees. The payroll audits implemented by UTC were: -

General – Verbal information from employees is audited against the visitor book during site visits by - regional and state managers (ad hoc) -

Talent2 – Site hours are compared with employee payment (weekly) -

Planned – Performed if allegation or complaint is advised or suspected (as needed) -

Complete – 20% of total workforce audited annually (annually). -

These audits are performed by the UTC staff. To test that the audit methodology for the four payroll - audits performed by UTC were adequate to assess the key risks associated with the payroll process, Coles re-performed a sample of the audits conducted by UTC. The re-performance included site visits, - walkthroughs and retesting of previously conducted audits. -

Review of Subcontractor Employee Payments (Phase 2)

The phase was conducted by requiring UTC to require 15 (20%) of its 75 trolley collection sub-contractors to provide written evidence in respect of their employees the subject of the audit, being (and in line with Clause 20 of the EU):

- a) *wages paid for each employee in a nominated one month period;*
- b) *the hourly rate paid to each employee for each hour worked by that employee in the nominated one month period;*
- c) *the roster of days and hours worked by each employee during the nominated one month period; and*
- d) *each employee's age.*

Analysis was completed in relation to Coles sites during a nominated period being 16 March to 26 April (three periods of two weeks each). The cohort of sub-contractors was randomly selected. To complete the audit, and in line with the EU requirement for subcontractors to provide written evidence in respect of their employees, documentation – rosters; timesheets; photo identification (with date of birth

information); employment contracts; payslips; and evidence of cash transfer to employees (wage declaration or electronic funds transfer bank statement evidence) – was requested by audit from each subcontractor pertaining to the testing period in regards to each of the employees employed by the subcontractors.

Across the 15 subcontractors, the wages of 400 employees were tested to satisfy the audit requirements of Clause 20 of the EU for each employee via three tests below as agreed with Coles management. These are further represented in Figure 1:

- (A) **Recalculation vs. Payslip** – Total *dollar* variance between the recalculation of the hours worked by the employee per the timesheet vs. the payslip amount (gross) paid to the employee;
- (B) **Bank Statement vs. Payslip** – Total dollar variance between the amounts paid per the bank statement for the employee vs. the amount that should be paid to the employee per the payslip. This test is independent of test (A) above as it considers the actual payment of wages paid to the net amount on the payslip calculated by subcontractors; and
- (C) **Timesheet vs. Roster** – Hour variances between the hours worked per the timesheet vs. the rostered hours for the employee.

Employee document	Unit	
Roster	Hours	} Test C #
Timesheet	Hours	
Payslip		} Test A *
Gross	\$	
Tax / Deductions	(\$)	} Test B #
Net	\$	
Bank statement	\$	

* variance analysis

* recalculated dollar variance on hours worked

Figure 1 – Testing approach

Outcomes

Both overpayments and underpayments of wages occurred in recalculating hours worked to what should have been paid gross of tax (i.e. Test (A)). Similar results were also identified in determining what should have been paid net of tax (i.e. Test (B)) to what was actually paid to the employee.

One of the causes identified as to the occurrence of overpayments and underpayments was the interpretation and understanding of specific Award clauses and how to apply the clauses to employee wage rates. The following table outlines the dollar and hour variances identified through the three tests performed over the six week testing period (16 March to 26 April 2015) across the 15 subcontractors.

Test		Total overstated	Total (understated)	Net over / (under)
(A) Recalculation vs. payslip	vs.	\$46,311.30	(\$97,603.42)	(\$51,292.12)
		3.7%	(7.9%)	(3.7%)
(B) Bank Statement vs. Payslip		\$6,087.34	(\$5,352.06)	\$735.28
		0.6%	(0.5%)	0.1%
(C) Timesheet vs. Roster (hours)		1,539.58	(15,777.94)	(14,238.36)
		3.1%	(32.1%)	(29.0%)

Wage recalculation results for the three tests have been aggregated for all 400 employees across all 15 sub-contractors where recalculations are higher, lower (and the net) of the expectation. These have been expressed as a percentage of:

- For Test A, the total gross (i.e. before tax) payslip amounts reported by sub-contractors was \$1,241,303.47;
- For Test B, the total net (ie. after tax) payslip amounts reported by sub-contractors was \$1,095,509.80; and
- For Test C, the total hours worked by all 400 employees across all 15 sub-contractors was 49,143.17 hours.

The key non-compliances noted are listed below:

- After 6pm shift work penalty rate is not being applied to hours worked throughout the entire shift;
- Overtime rate (i.e. first 2 hours, after 2 hours, Sunday, public holiday) is not applied consistently;
- Public Holiday penalty rates were not applied appropriately;
- Paying for less hours than hours worked;
- Paying at a classification lower than entitled (e.g. getting paid at the Full Time Level 1 rate (\$18.01) when employee is Full Time Level 2 (\$18.64)); and
- Differences between payslip and bank statements/wage declarations.

Specific interpretations of the Award clauses included in testing have been confirmed with the FWO.

Summary of testing

Based on the three tests performed, the table below outlines the *net dollar underpayment* between the recalculation of hours to be paid (as per timesheets) and dollar amounts actually transferred / paid to employees by aggregating tests (A) and (B) to determine the difference between wages earned and wages paid per subcontractor during the testing period (16 March to 26 April 2015). The *net hour difference* between timesheet vs rostered hours is also outlined.

Subcontractor	Net over / (under)	
	Recalculation vs. payslip (A) + Bank Statement vs. Payslip (B) (A) + (B)	Timesheet vs. Roster (C)
1. [REDACTED]	(\$3,424.88)	(5,292.00)
2. [REDACTED]	(\$9,979.13)	(364.50)
3. [REDACTED]	(\$11,409.10)	(1.00)
4. [REDACTED]	(\$27,725.03)	(769.50)
5. [REDACTED]	(\$608.67)	(694.50)
6. [REDACTED]	(\$1,441.68)	(2,785.50)
7. [REDACTED]	(\$11,840.03)	(4,228.67)
8. [REDACTED]	(\$416.90)	(438.08)

9. [REDACTED]	\$2,296.16	61.25
10. [REDACTED]	(\$2,546.62)	368.25
11. [REDACTED]	\$3,406.28	(107.00)
12. [REDACTED]	\$144.76	574.33
13. [REDACTED]	\$2,022.88	34.56
14. [REDACTED]	(\$2,014.53)	54.00
15. [REDACTED]	\$12,979.65	(650.00)
TOTAL	(\$50,556.84)	(14,238.36)

Documentation requested

For each of the 400 employees across the 15 subcontractors, and in line with the EU requirement for subcontractors to provide written evidence in respect of their employees, the following documentation was requested from each subcontractor in relation to the employees working at the Coles sites under subcontractor operation throughout the six week testing period (16 March to 26 April 2015).

- **Employment contract** – To specify employee's level employee classification (i.e. level 1, 2 or 3) and employment term (i.e. PT, FT or Casual). If such information was not available or not present in the employment contract, Talent 2 screenshots to confirm these details for each employee were requested;
- **Employee rosters** – To outline the expected hours to be worked;
- **Employee timesheets** – To outline times worked (start and finish times) to be paid, and confirm unpaid breaks taken where defined;
- **Employee payslips** – To confirm (from Talent2, or internal systems) the breakdown of the total payment per component (i.e. hours paid at the base/normal rate, hours at Penalty – Saturday, hours after 6pm etc.);
- **Employer bank statements / employee wage declarations** – To verify that payments owed to employees (from payslips generated) were paid. Where cash-in-hand is paid, wage declarations outlining employee receipt of moneys owed were requested; and
- **Employee identifications (IDs)** – To confirm date of birth (D.O.B) for age rates to be applied for recalculations during the testing period.

As stated above, sub-contractors were required to provide written documentation for the audit. Testing was performed on all documentation provided by sub-contractors for the time periods tested. Any support not provided in written form was not considered.



cutting through complexity™

Coles Trolley Payroll Audit Report of Factual Findings

October 2015

Introduction

At the direction of Coles Supermarkets Australia Pty Ltd (Coles) management, we have performed procedures to assist Coles in meeting requirements outlined in the Enforceable Undertaking (EU) of the Office of the Fair Work Ombudsman (FWO) dated 6 October 2014.

Based on the audit requirement in the EU, specifically clauses 19, 20 and 21, the approach that we agreed with Coles was to perform wage recalculation testing for trolley collection subcontractor employees.

Agreed upon procedures

The agreed upon procedures took the form of three tests performed over a sample selection of 15 (20%) of the 75 subcontractor employees.

These tests were conducted using written evidence provided to us from UTC subcontractors with respect to employees working at Coles sites during the six week testing period, 6 March 2015 to 26 April 2015 (a total of 400 employees).

We performed the following tests for each of the employees as detailed in the terms of the scope agreed in May 2015 (with subsequent addendum in September 2015):

- (A) **Recalculation vs. Payslip** – A comparison between the amount to be paid (recalculated based on hours worked by each employee) versus the amount included in the employee payslip (*before* tax, deductions and allowances).
- (B) **Bank Statement vs. Payslip** – A comparison between amounts paid to the employee versus the amount included in the employee payslip (*after* tax, deductions and allowances).
- (C) **Timesheet vs. Roster** – A comparison between the hours worked per the timesheet versus rostered hours for the employee.

The following information was requested for each employee included in the sample:

- Employment contract (for employee pay level / employment status)
- Identification (for employee's age and existence)
- Shift roster
- Timesheet
- Payslip
- Bank statement or equivalent, i.e. wage declaration where cash payments were made.

Coles' responsibility

Coles are responsible for the adequacy or otherwise of the procedures agreed to be performed by us, agreeing that the procedures meet their needs. Coles are responsible for determining whether the factual findings provided by us, in combination with any other information obtained, provide a reasonable basis for any conclusions which they wish to draw on the subject matter.

Our responsibility

Our responsibility is to report factual findings obtained from conducting the procedures agreed. We conducted the engagement in accordance with Standard on Related Services ASRS 4400 *Agreed-Upon Procedures Engagements to Report Factual Findings*. We have complied with ethical requirements equivalent to those applicable to Other Assurance Engagements, including independence.

Because the agreed upon procedures do not constitute either a reasonable or limited assurance engagement in accordance with Auditing and Assurance standards issued by the Australian Auditing and Assurance Standards Board (AUASB), we do not express any conclusion and provide no assurance on the audit results. Had we performed additional procedures or had we performed an audit or review in accordance with AUASB Standards, other matters might have come to our attention that would have been reported to you.

Limitations in Execution of Agreed Upon Procedures

The testing was conducted subject to the following limitations:

- For 269 employees, the documentation provided by UTC subcontractors did not stipulate the employment status and level agreed with the employee. As such, we relied on payroll system data and employee listings as provided by subcontractors outlining employment status and level to test the accuracy of payments.
- Clause 7.4 of the Cleaning Services Award (the Award) in relation to individual flexibility arrangements was not considered in the testing performed.
- Employee identification to validate employee age was not provided for 72 out of 400 employees tested. In these instances, the employee age provided by the subcontractor and used to calculate the pay rate was assumed to be correct.
- In instances where unpaid breaks were not clearly specified in timesheets, we assumed that a break of half an hour every 4.5 hours worked was taken per the Award (clause 26.2).
- Some rosters were prepared by subcontractors on a total site basis rather than at an employee level, as required by the Award. As a result we were unable to reconcile hours actually worked to rostered hours (Test C) for 59 out of 400 employees tested.

Summary of Factual findings

The results of the tests performed, aggregated for all subcontractor employees tested, are as follows:

Test performed	Factual findings	
(A) Recalculation vs. Payslip – A comparison between the amount to be paid (recalculated based on hours worked by each employee) versus the amount included in the employee payslip (<i>before</i> tax, deductions and allowances).	Total amount where the recalculation was <i>less than</i> the payslip	\$46,311.30
	Total amount where the recalculation was <i>greater than</i> the payslip	(\$97,603.42)
	<i>Net difference</i> between the recalculation and payslip amounts	(\$51,292.12)
(B) Bank Statement vs. Payslip – A comparison between amounts paid to the employee versus the amount included in the employee payslip (<i>after</i> tax, deductions and allowances).	Total amount where the payslip was <i>less than</i> the payment to the employee	\$6,087.34
	Total amount where the payslip was <i>greater than</i> the payment to the employee	(\$5,352.06)
	<i>Net difference</i> between the payslip and amount paid to the employee	\$735.28
(C) Timesheet vs. Roster – A comparison between the hours worked per the timesheet versus rostered hours for the employee.	Total where hours worked as per the timesheet were <i>greater than</i> the hours rostered	1,539.58
	Total where hours worked as per the timesheet were <i>less than</i> the hours rostered	(15,777.94)
	<i>Net difference</i> between the hours worked as per the timesheet and hours rostered	(14,238.36)

Distribution and use of report

This report is intended solely for the use of Coles and the FWO for the purpose set out above. As the intended user of our report, it is for you to assess both the procedures and our factual findings to determine whether they provide, in combination with any other information you have obtained, a reasonable basis for any conclusions which you wish to draw on the subject matter.

As required by ASRS 4400, use of this report is restricted to Coles and the FWO, the intended user, who has agreed the procedures to be performed with us, since others, unaware of the reasons for the procedures, may misinterpret the results. This report should not be distributed to parties other than the intended users. Accordingly, we expressly disclaim and do not accept any responsibility or liability to any party other than Coles and the FWO for any consequence of distribution of or reliance on our report for any purpose.



Partner
KPMG

23 October 2015