



Australian Government

Fair Work

OMBUDSMAN

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Committee Secretary
Senate Education and Employment Committees
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

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Dear Secretary

I write to you in relation to the inquiry into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies (**Inquiry**).

The Fair Work Ombudsman (**FWO**) was established by the *Fair Work Act* on 1 July 2009. Our role is to provide education, assistance and advice about the Commonwealth workplace relations system and impartially enforce compliance with workplace laws.

I advise that having considered the terms of reference of the Inquiry, the FWO's submission is set out in this correspondence. We thank the Committee for providing an extension to file this submission by 20 July 2018.

The cleaning industry

According to 2016 Census data collected by the Australian Bureau of Statistics (ABS), the cleaning industry in Australia was estimated to be comprised of 26,904 enterprises employing 131,908 workers (10,033 of these enterprises are registered as employing businesses).

Census data relating to workers in the cleaning industry further revealed:

- 50% of workers were born overseas (compared to 31% of all employed persons in Australia);
- 40% spoke a language other than English at home (compared to 21% of all employed persons in Australia);
- of those who spoke a language other than English at home, 19% either did not speak English at all, or did not speak English very well (compared to 8% of all employed persons in Australia);
- 28% did not have Australian citizenship (compared to 12% of all employed persons in Australia);

- 12% were current students; and
- 68% of workers were employees, as opposed to contractors or owner/managers, (compared to 86% of all employed persons in Australia).

This is based on ABS data relating to 'Building and Other Industrial Cleaning Services'. Data specific to cleaners working in retail chains is not available.

FWO's activities in the cleaning industry

The FWO recognises that these characteristics may increase the vulnerability of employees in the cleaning industry to exploitation. The FWO has already undertaken significant work in this industry, including completing an Inquiry into the procurement of cleaners in Tasmanian Supermarkets (**Tasmanian Inquiry**) and actively participating in the development and piloting of the Cleaning Accountability Framework (**CAF**).

From July 2013 to June 2018, the FWO has assisted workers in the cleaning industry by:

- Resolving 3,357 disputes (including 514 from visa holders)¹;
- Recovering \$2,120,473 for 782 employees;
- Issuing 61 infringement notices;
- Serving 42 compliance notices;
- Executing 12 enforceable undertakings; and
- Issuing 144 formal cautions.

Further, from July 2013 to June 2018 the FWO filed 15 litigations in the cleaning industry. To date \$1,637,360.50 in penalties has been ordered as a result of these litigations.

Inquiry into the procurement of cleaners in Tasmanian Supermarkets

In February 2018, the FWO released its Tasmanian Inquiry report. An inquiry, such as this, is an in-depth compliance activity that focuses on particular industry sectors or workplace trends and practices to better enable the FWO to understand the environmental settings and market structure.

The FWO maps business relationships, reaches out to those at the top of supply chains and coordinates audit and investigation procedures to identify and address the drivers of non-compliance. Through evidence based research and investigation, the primary aim of an inquiry is to assess the extent of, and form recommendations to address, non-compliance within a particular business, network or sector using legal levers and social frameworks.

The Tasmanian Inquiry report can be found on the FWO website at:

<https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports>.

¹ The most common allegations included in cleaning industry disputes related to not being paid for time worked and underpayment of hourly rates.

The Tasmanian Inquiry report identified total underpayments of \$64,162.54. The FWO has to date recovered \$21,332.37 in underpayments for employees. For reasons including employees who are unwilling to provide evidence and an employer who has left the jurisdiction, the remaining \$42,830.17 identified by the FWO has not yet been recovered.

In accordance with the recommendations contained in the Tasmanian Inquiry report, the FWO is currently working with Woolworths in relation to an appropriate regulatory response to the findings of widespread non-compliance.

Cleaning Accountability Framework

In addition to the Tasmanian Inquiry report, the FWO has been active in the cleaning industry more widely. The FWO is working with key cleaning industry stakeholders through the CAF to develop and test a national labour supply chain certification scheme. The certification scheme promotes compliance and rewards best practice throughout the cleaning services supply chain and acknowledges that all participants (contract cleaners, tenants, facility managers, property managers and owners) in a cleaning services supply chain have a role to play in lifting cleaning industry standards.

The FWO has played a key role in the development of the CAF by bringing key stakeholders together including, owner/investors such as AMP Capital and Charter Hall, property managers such as Jones Lang LaSalle, cleaning companies such as BIC and Consolidated, the Building Services Contractors Association of Australia, and United Voice.

More information about the CAF can be found here: <https://www.cleaningaccountability.org.au/>

Regulating industries with similar characteristics

The FWO has experience regulating industries with characteristics similar to the cleaning industry. For example the trolley collection industry is similarly characterised by low-skilled, labour-intensive work; vulnerable workers; labour sourced via procurement or outsourcing arrangements; high levels of competition; and low profit margins with respect to labour. We are at a point now where, supported by FWO's compliance and enforcement efforts over a number of years, three of the largest influencers in the trolley collection industry have stepped up to take responsibility for compliance in their supply chains.

The FWO has commenced numerous litigations in this Industry, securing over \$800,000 for approximately 300 employees since 2006 (with an additional \$800,000 ordered in pecuniary penalties). One of the key steps toward achieving change in the industry came when the FWO signed a Proactive Compliance Deed (**PCD**) with United Trolley Collectors in 2014. That same year the FWO signed an Enforceable Undertaking with Coles where the company acknowledged its moral and ethical responsibility for its trolley collection services. Then in 2016, the FWO released an inquiry report into Woolworths' trolley collection services, which was followed by a PCD with the company in 2017.

The execution of these agreements means these companies are now taking an active role in ensuring compliance in the trolley collection industry. Under their PCD, for example, Woolworths is undertaking annual audits of all its contractors providing trolley collection services. It has also re-

tendered all its trolley collection contracts nationally to ensure compliance with the detailed requirements of the PCD, including requiring contractors to implement an electronic time keeping system to its trolley contractors that includes geofencing capability and uses either a biometric identifier or unique code for each employee.

It will take time and resources to achieve similar outcomes in the cleaning industry but the FWO is being proactive in this space. The Tasmanian Inquiry report highlighted the drivers of non-compliance, particularly in the Woolworths supply chain, and we are now working with Woolworths and other stakeholders to address those drivers and promote ongoing compliance, as we did successfully in the trolley industry.

Yours sincerely

Sandra Parker
FAIR WORK OMBUDSMAN