

**Master Grocers  
Australia Ltd**

Trading as:  
**MGA Independent Retailers**

---

Submission to:  
**The Senate Education and Employment  
References Committee**

---

July 2018

## **An Inquiry into the Procurement of Cleaners in Tasmanian Supermarkets Report by the Fair Work Ombudsman under the *Fair Work Act 2009* (Cth)**

The Fair Work Ombudsman (FWO) commenced an inquiry into cleaning arrangements in Tasmanian supermarkets.

The FWO received intelligence, observations of consistent trends and regular reports that:

- Cleaners were being significantly underpaid – totalling \$64,162.54;
- Multiple levels of subcontracting and workplace breaches took place;
- Difficulty in identifying the true employers of labour within a supply chain;
- Alarming levels of exploitation was taking place through lack of monitoring of vulnerable workers (migrants, non-English speaking and low skilled) and who is cleaning each site;
- A culture of non-compliance;
- Oversight of cleaning contracts; and
- Inaccurate and false records.

The inquiry focused on 55 supermarket sites (43% of Tasmania’s supermarket sites):

- 31 Woolworths (100% of Tasmania’s Woolworths);
- 7 Coles (44% of Tasmania’s Coles); and
- 17 IGA (21% of Tasmania’s IGAs).

Following the inquiry, the following outcomes took place, with further action to be undertaken:

- Contractor referrals to the ATO;
- Individual/entities in Woolworths’ supply chain subject to ongoing legal proceedings; and
- Repayment of \$21,332.37 identified as underpayment.

Master Grocers Australia (MGA Independent Retailers) thanks The Senate Education and Employment References Committee for inviting it to appear at the public hearing to be held in Devonport, Tasmania on 25 July 2018 via teleconference.

All subsequently quoted parts refer to the inquiry document prepared by the FWO, unless otherwise specified.

## About Master Grocers Australia (MGA Independent Retailers)

MGA is a National Employer Industry Association that is registered with the Fair Work Commission, representing family enterprises and independent supermarkets, packaged liquor businesses owners, and service providers in all States and Territories. MGA's 2,700 members trade under brand names such as: FoodWorks, Friendly Grocers, IGA, SPAR, Supa IGA, Bottlemart, Cellarbrations, Ritchies Liquor, The Bottle O and other independents. These businesses make a significant contribution to the retail industry, employing 115,000 people and accounting for approximately \$15 billion in retail sales.

In Tasmania alone, MGA represents 90 independently owned retailers most of whom trade under the IGA brand with some trading under the FoodWorks brand. They range in size from small to medium.

## Introduction

MGA does not support the inquiry conducted by the FWO. Even though MGA understands the FWO's intention and motive behind the inquiry, this inquiry will have a strong impact on the retail industry, businesses and contractors, resulting in stringent regulation.

MGA acknowledges the results and outcomes of the inquiry due to the significant part cleaning contracts play in the supermarket and retail industry. This is apparent from ABS' 2016 Census that was referenced by the FWO on page 5, stating that 'the cleaning sector in Australia was estimated to be comprised of 26,904 enterprises employing 131,908 workers.

However, MGA's members that have been investigated by the FWO as part of the inquiry, form a minor percentage of the Tasmanian market. It was stated on page 6 that 'Metcash Ltd ... held 7.9% and 7.2%' of the market share of the Australian supermarket and grocery store industry. To clarify, Metcash is not a retailer, it is an independent supermarket wholesaler that has no operational business in Tasmania. Tasmanian Independent Retailers service and support IGA branded supermarkets in Tasmania. Family enterprise and privately owned supermarkets in Tasmania represent approx. 10% market share.

Despite our members' small involvement in the industry, they were subjected to an unessential investigation, we therefore request great consideration to what will be subsequently addressed.

MGA requires further information about certain aspects of the inquiry as indicated below.

## Cleaning undertaken by direct employees v. contract cleaners

The inquiry on page 2 stated that 'At IGA supermarket site[s], cleaning was primarily undertaken by direct employees.' The inquiry then redirects its focus towards Woolworths, stating on page 12 that 'Woolworth sites were the chief focus of the inquiry' since it was 'the only supermarket retailer outsourcing its day-to-day cleaning services.' Contrasting to this was the fact that the inquiry noted on page 11 that IGAs utilise 'local contractors on an ad-hoc but infrequent basis.'

If it is clear to the FWO that the IGAs (Independent Supermarket Owners) are conducting the cleaning of their stores through employees directly, it appears unwarranted to have them included as a range of stores that has breached or potentially breached the *Fair Work Act 2009* (Cth) (the Act). This is evident in the fact that the inquiry merely progressed to concentrate on Woolworths' cleaning labour supply chain. Even if the FWO believes that in the 'ad-hoc but infrequent basis' where Independent Supermarket Store Owners use local contractors, they have breached the Act, why has the inquiry failed to expressly include examples and case studies in the same manner as Woolworths and Coles?

In further support of this is the duopoly and market concentration held by Woolworths and Coles, being a collective 90% in Tasmania, as per the *Masters Grocers Australia Competition Policy Review 2014*.

MGA appreciates the regulatory work conducted by the FWO, however, there must be due diligence used when alleging breaches or possible breaches of the Act. The conduct undertaken by the larger supermarkets should not be reflected on to independent supermarkets (IGA), particularly since, the inquiry fails to stipulate any examples of breaches by the IGAs. There is lack of substantiation of claims against independent supermarket owners (IGA) and the mere reason they are included in this inquiry is due to being in the same industry. Independents should not be held accountable for the conduct of the supermarkets chains.

## **Liability beyond Principal Contractor**

To what extent should independents, such as IGA branded stores, ranging from small to medium sized businesses be liable for the different aspects of the relationship between the principal contractor, its contractors and subcontractor?

The inquiry appears to indicate that Woolworths' liability extends to not just cover principal contractors but also contractors and any subcontractors. That is based on a service agreement in place with its principal contractors in light of the accessory liability provision under the Act. However, to what extent will that provision continue to apply down the supply chain?

MGA believes that liability for independent supermarket owners (IGA) should be limited to its principal contractors since any agreement entered to engage a principal contractor relates to only the parties whom are contractually bound by the agreement. Even then, agreements with principal contractors are essentially categorised as single and one-off transactions for services. The relationship between independent supermarkets does not extend or continue beyond the transaction. Nonetheless, the boundaries of contractual privity may extend subject to further circumstances.

Even if independent supermarkets (IGA) are required to ensure compliance with the Act for the contractors of its principal contractor, there must be a "cut-off" that ensures liability does not extend down the supply chain. Unlike the larger supermarkets, generally independent supermarket owners are wary of cost reduction through contracting, whilst ensuring compliance. Unfortunately, the accessory provision in the Act leaves small to medium sized businesses open to significant liability, particularly since the FWO is always willing to go after the top of the supply chain (employer or business), instead of the contractors who subcontract.

## The Phases of the Inquiry

The inquiry formally commenced in late November 2014 (3 years and 8 months) and occurred in two phases. The first phase did not involve inspectors visiting any independent supermarkets (IGA/FoodWorks) in Tasmania to speak to cleaners and examine records. Instead they concentrated on Woolworths and Coles businesses.

The second phase was the actual investigation of the stores, which was subject to the initial site visits and surveys conducted by the inspectors. The second phase focused on the 55 supermarkets stipulated above, including 17 IGA branded independent supermarkets. What presents to be arbitrary here, is the fact that these IGA's were never a part of the first phase. They were merely included in the second phase without any justification or explanation of the basis for the inclusion. The FWO's inspectors technically had no site visits or surveys conducted with any independent supermarkets (IGA) in Tasmania at that stage.

## Recommendation

The FWO inquiry has recommended that along with the larger supermarkets, independent supermarket owners are to become members of the Cleaning Accountability Framework (CAF) and seek to progressively certify their retail sites.

As previously indicated, the inquiry does not substantiate breaches or possible breaches of the Act by independently owned IGA branded stores. As such, MGA does not support the CAF or its objectives as they place further onerous obligations on the owners of independent supermarkets regulating them in the same manner as Coles and Woolworths.

## Conclusion

When considered holistically, the FWO appears to raise great insights into the current working conditions of contractors and the ways to combat these issues, which is acknowledged and appreciated by MGA.

MGA opposes the FWO recommendation that directly impacts independent supermarket owners, owing to the caveats previously discussed. MGA will commit to further educating its members (independent supermarket owners) of their obligations to ensure compliance with engaging with contractors (cleaning).

MGA once again thanks The Senate Education and Employment References Committee for the opportunity to make this submission and looks forward appearing at the public hearing to be held in Devonport, Tasmania on 25 July 2018 via teleconference.

**Jos de Bruin**



CEO MGA - 24 July 2018