

12 December 2023

Hon. Ben Carroll
Deputy Premier
Minister for Education
473 Keilor Rd
Niddrie, VIC 3042

By email: ben.carroll@parliament.vic.gov.au

Dear Minister,

UWU Concerns in relation to ISS' Exit of Contract at DET Regions 5 and 7

We write in relation to the current contract change occurring due to the exit of ISS Facility Services Australia and NZ ('ISS') from DET Regions 5 and 7 of the Victorian School Cleaning Services Contract.

UWU is concerned that the transition between ISS' exit and the commencement of Serco and Tradeflex has chaotic and has likely resulted in numerous contraventions of the relevant Award and National Employment Standards ('NES').

We therefore write to set out our concerns that ISS and incoming contractors Serco and Tradeflex may be contravening the NES, the terms of the relevant Award, and OHS legislation, and as a consequence, that the State Government of Victoria and the Victorian Department of Education may also be accessorially liable for these contraventions under the *Fair Work Act 2009* (Cth) ('the FW Act').

Background

As you are aware, ISS is currently exiting its school cleaning services contract with the State Government of Victoria, with its last day of service being 21 December 2023.

Serco and Tradeflex will then be commencing the provision of cleaning services in DET Regions 5 and 7, respectively, from 15 January 2023.

We understand that despite ISS' employees' employment ending on 21 December 2023, to date, only a very small number of employees in DET Region 7 have so far received firm offers of employment with Tradeflex.

It also appears Tradeflex has not made informal offers of employment to a significant number of employees and those employees who appear to have been offered work (either informal or formally) have been advised by Tradeflex that they will now be working their existing hours across multiple schools (thereby reducing the cleaning time at each school).

Similarly, we understand Serco has only begun to issue formal offers of employment to employees in DET Region 5 as of 11 December 2023, and that these offers contain significant less hours per day.

We also understand that both Serco and Tradeflex appear to be generally reducing the number of cleaners previously employed across the contract and generally reducing the number of leading hands across the DET Regions (leading to less supervision and further losses of pay).

The obvious result of all of the above is that the majority of Victoria's dedicated school cleaners are now likely to experience either unemployment and uncertainty over their future hours and pay over the Christmas and New Year period.

The Award

The *Cleaning Services Award 2020* (**'the Award'**) covers and applies to the various cleaning contractors and cleaning services employees employed pursuant to the services contract at Victorian schools.

Relevantly, the Award sets out various minimum legal standards with respect to pay and conditions, including in relation to redundancy pay and minimum engagements.

Redundancy Pay

Clause 33 of the Award deals with redundancy, providing as follows:

Redundancy pay is provided for in the NES. See sections 119 to 123 of the Act. Clause 33.4 supplements the NES where there is a change of cleaning contract from one cleaning contractor to another cleaning contractor.

Clause 33.4 of the Award relevantly provides:

33.4 Change of contract

a) Clause 33.4 applies in addition to clause 29—Consultation about change of contract and section 120(1)(b)(i) of the Act and applies on the change of a cleaning contract from one cleaning contractor (the outgoing contractor) to another (the incoming contractor).

(b) Section 119 of the Act does not apply to an employee of the outgoing contractor where:

(i) the employee of the outgoing contractor agrees to other acceptable employment with the incoming contractor, and

(ii) the outgoing contractor has paid to the employee all of the employee's accrued statutory and award entitlements on termination of the employee's employment.

(c) To avoid doubt, section 119 of the Act does apply to an employee of an outgoing contractor where the employee is not offered acceptable employment with either the outgoing contractor or the incoming contractor.

Minimum Engagements

As you are likely aware, the majority of school cleaners are employed on a part-time basis.

Clause 13.5 of the Award relevantly provides:

13.5 Ordinary hours of work and roster cycles—part-time and casual employees

(a) A part-time or casual employee may work their ordinary hours by working periods of duty of up to 7.6 ordinary hours per day on up to 5 days per week.

(b) Ordinary hours may be worked on any day of the week.

(c) An employer must roster a part-time or casual employee on any shift:

(i) for a minimum of one hour if the employee is the only employee engaged at a small stand-alone location with a total cleaning area of not more than 300 square metres and it is not practicable for a longer shift to be worked across 2 or more locations; and

(ii) for a minimum of 2 consecutive hours at a location with a total cleaning area of up to 2000 square metres; and

(iii) for a minimum of 3 consecutive hours at a location with a total cleaning area of 2000 or more square metres up to 5000 square metres; and

(iv) for a minimum of 4 consecutive hours at a location with a total cleaning area of 5000 or more square metres.

(d) A part-time or casual employee must be paid for the minimum duration of shift applicable for the size of the cleaning area under clause 13.5(c) even if the employee works for a shorter time.

OHS Act

As you will be aware, the *Occupational Health and Safety Act 2004* (Vic) ('**OHS Act**') sets out various obligations in relation to the occupational health and safety of employers and employees in Victoria.

Clause 21 of the OHS Act in particular requires that an employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health, which can include a failure to provide or maintain plant or systems of work that are, so far as is reasonably practicable, safe and without risks to health.

UWU Concerns

Given Serco and Tradeflex are yet to provide any firm offers of employment to the majority of ISS' outgoing employees UWU does not believe ISS is able to rely on the exception to paying redundancy pay set out at clause 33.4 of the Award in relation to these employees.

Accordingly, UWU believes the majority of school cleaners will be entitled to redundancy pay, pursuant to s 119 of the FW Act, when their employment with ISS ends on 21 December 2023.

UWU has already written to ISS setting out the above concerns and a copy of the correspondence is **enclosed**.

As previously stated, UWU also understands Serco has indicated it will be cutting hours across the board and will be rostering its cleaners to work 3-hour shifts (down from ISS' 6 hours shifts), despite many of the schools having a total cleaning area of 5000 or more square metres.

Similarly, in having cleaners work across multiple schools, Tradeflex is also effectively cutting hours across the contract and increasing workloads for individual cleaners.

Accordingly, when work commences on 15 January 2023, UWU believes that at many schools, both Serco and Tradeflex will likely be acting in contravention of clause 13.5 of the Award with respect to cleaners' minimum engagements.

With respect to an employers obligations under s 21 of the OHS Act, it should not be controversial that unreasonable workloads does not constitute a safe system of work. UWU is therefore deeply concerned both Serco and Tradeflex will likely be commencing system work on 15 January 2021 which are not consistent with the OHS Act.

Contraventions and Penalties

The contravening of the NES and a term of the Modern Award constitute separate contraventions of sections 44 and 45 of the *Fair Work Act 2009* ('**the FW Act**'), which is a civil remedy provision.

Further, given ISS, Serco, and Tradeflex are all acting in accordance with contractual directions from the State Government of Victoria and the Victorian Department of Education, who were at all times aware of, directed, and participated in the contravention, in accordance with section 550 of the FW Act, to the extent ISS, Serco, and Tradeflex have committed the contraventions, UWU considers the State Government and Department to have also committed the contraventions.

The breaches of civil remedy provisions may expose the State Government of Victoria and/or the Department of Education to substantial pecuniary penalties, including a maximum of up to \$93,900 per individual contravention and a further \$187,800 for any serious contraventions.

A failure by an employer to fulfil its obligations under s 21(1) of the OHS carries a maximum 1800 penalty units for a natural person and 9000 penalty units for a body corporate.

An offence against subsection 20 (1) of the OHS Act is also an indictable offence.

Resolution

To avoid the aforementioned contraventions likely occurring in the coming weeks, UWW proposes that ISS' contract for cleaning services be extended to midnight, 14 January 2024 (being the date immediately prior to the Serco and Tradelex commencing on 15 January 2024).

UWW also proposes that the State Government insist that the incoming contractors provide formal letters of offer to **all 700 affected cleaners** in DET Regions 5 and 7 prior to 21 December 2023, and **on terms no less than their current hours and conditions.**

The correspondence is open correspondence and may be relied upon in any further legal proceedings.

Kind regards,



Lyndal Ryan

Director – Property Services
United Workers Union