

7-Eleven compliance partnership

7-Eleven Stores Pty Ltd [ACN 005 299 427] (7-Eleven) is one of Australia's largest private companies and the franchisor of the 7-Eleven network of convenience and fuel stores in Australia. It has more than 700 stores across Victoria, New South Wales, the ACT, Queensland and Western Australia, including those operated by over 530 franchisees.¹

The Fair Work Ombudsman (FWO) published its inquiry report, *Identifying and addressing the drivers of non-compliance in the 7-Eleven network* in April 2016.² The Inquiry found that that a number of 7-Eleven franchisees deliberately falsified records to disguise the underpayment of wages and that 7-Eleven's approach to workplace matters, while seemingly promoting compliance, didn't adequately detect or address deliberate non-compliance.

A key recommendation following from the Inquiry was that 7-Eleven enter into a 3-year compliance partnership with the FWO to rectify widespread non-compliance and significant underpayments of wages and entitlements.

On 6 December 2016, 7-Eleven signed a Proactive Compliance Deed (PCD), publicly acknowledging its responsibility for addressing past non-compliance by its franchisees, and its commitment to future compliance with workplace laws across its franchise network.³ This compliance partnership has led to improvements in 7-Eleven's wage compliance management and governance arrangements.

To date, more than \$170 million has been repaid to current and former employees of 7-Eleven franchisees.

At the time of this report, the FWO has brought 11 litigations against 7-Eleven franchisees, resulting in courts awarding more than \$1.8 million in penalties for various contraventions of the *Fair Work Act 2009*, including operating unlawful cashback schemes, paying unlawful flat rates to workers, and falsifying records.

For details of these litigations, see Appendix A.

¹ 7-Eleven website: <https://www.7eleven.com.au/get-to-know-us/about-us.html>

² <https://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/april-2016/20160409-7-eleven-presser>

A Report of the Fair Work Ombudsman's Inquiry into 7-Eleven: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports#7-11>

³ Proactive Compliance Deed: <https://www.fairwork.gov.au/ArticleDocuments/762/7-eleven-pcd.pdf.aspx>

Through this PCD, the FWO has worked constructively with 7-Eleven to improve the workplace culture and compliance with workplace laws in its franchise network. It is vital that 7-Eleven continues to invest in ensuring compliance with workplace laws across its Australian network.

Key outcomes against commitments under the PCD are detailed in this report.

Communication

We issued a media release announcing the compliance partnership between the FWO and 7-Eleven on 7 December 2016 and published the PCD on fairwork.gov.au⁴.

7-Eleven met requirements to communicate about the compliance partnership to franchisees, staff and the public (as per Clause 3 of the PCD), including:

- releasing a series of media statements announcing the PCD and its compliance commitments
- publishing the PCD on the 7-Eleven website and the wage repayment program website
- emailing all franchisees and employees
- publishing details on the 7-Eleven intranet
- social media content on 7-Eleven's Facebook, LinkedIn and Twitter accounts.

Workplace relations training

7-Eleven engaged human resources (HR) specialist, Hera Consulting Group (Hera) to review its workplace relations and HR training and provide recommendations for new or improved training (Clause 12 of the PCD).

The FWO received a copy of Hera's recommendations in October 2017. 7-Eleven reported implementing the following:

- compulsory online training on basic employment conditions for all new employees, to be completed prior to issuing staff with an online point-of-sale ID or login
- a Team Member Handbook for all new employees upon commencement (and accessible to all other employees)
- an 'employment conditions' chapter added to 7-Eleven's Franchisee Systems Manual, including updated 7-Eleven policies and procedures

⁴ FWO media release: <https://www.fairwork.gov.au/abto-out-us/news-and-media-releases/archived-media-releases/2016-media-releases/december-2016/20161207-7-11-pcdmediarelease>

- posters displayed in stores telling employees about the 7-Eleven Employee Helpline (see below) and how to contact the FWO
- introduction of cloud-based people management systems that facilitate people processes, new starter on-boarding and the management of employee details
- a fortnightly e-newsletter sent to all team members, including compliance stories and links to the 7-Eleven Employee Helpline.

Systems and processes

7-Eleven implemented system and process changes during the term of the PCD to address governance issues and safeguard against franchisees fabricating or manipulating employee time records.

Biometric time recording

The FWO required 7-Eleven to:

- implement a biometric time recording system for all employees, franchisees and their family members performing work in the stores
- require franchisees to forward store rosters to 7-Eleven on a weekly basis and/or capture this information in the biometric system
- regularly cross-check records against the various systems
- ensure the biometric system was maintained and upgraded as necessary for a minimum period of 6 years.

7-Eleven invested in Kronos, a biometric time recording system, to be used by all franchisees and employees in the 7-Eleven network. 7-Eleven employees now clock into the Kronos system with a biometric thumbprint, which is cross-checked against employee facial recognition images and store rosters. The Assurance Team then inputs biometric and Kronos data from all stores into a Continuous Controls Monitoring (CCM) platform that is used to identify rostering and payroll anomalies. This enables more accurate recording and monitoring of employees' and franchisees' working hours, including start and finish times.

7-Eleven reported that its Assurance Team inputs biometric data from all stores into a Continuous Controls Monitoring (CCM) platform to identify rostering and payroll anomalies that might indicate irregular use of the Kronos system, for example:

- gaps in Kronos timecards
- an outlier number of actual attendance hours as compared to rosters
- biometric usage statistics versus timecards submitted.

The 7-Eleven Assurance Team also reportedly follows up and rectifies anomalies as part of its operational teams' weekly reviews and fortnightly in-store follow-ups.

Kronos is also used for rostering. 7-Eleven reports that fortnightly rosters are:

- accessible to employees via their mobile phone and a biometric clock
- posted on the noticeboards in stores
- accessible by 7-Eleven head office.

7-Eleven implemented the *HROnboard* and *Workday* cloud-based people management systems to manage leave requests, pay slips and other employment-related tasks online or through an app. The Workday system interfaces with Kronos and the ADP payroll system, enabling 7-Eleven to capture all people data in a single database.

Facial recognition technology

The FWO required 7-Eleven to implement additional measures to verify the identities of employees working shifts, including (Clause 4 of the PCD):

- photo identification for all employees captured in the store
- capturing images and other data showing an employee's attendance at regular intervals throughout their shifts
- storing the system generated images and data for a period of at least six months
- preventing franchisees from having access to, altering or manipulating system data.

7-Eleven reported that despite initial technical issues, it completed the full rollout of 7-Eleven owned and operated facial recognition cameras at stores across its network in 2019. Features of the system include the following:

- motion-activated facial recognition cameras at point-of-sale computer terminals, which take periodic photographs of employees in the store
- data uploaded to a central, cloud-based server and stored for 6 months
- weekly dashboard reports highlighting exceptions with Kronos rosters for 7-Eleven operations staff to follow up with franchisees.

Case study: Facial recognition red flags underpayment⁵

The CCM system identified an anomaly at a store where 3 employees had discrepancies greater than 30 minutes between their Kronos timecards and facial recognition camera images.

A 7-Eleven head office representative found one employee's facial recognition images exceeded the Kronos paid shift by 66 minutes, meaning a potential underpayment.

7-Eleven head office representatives then visited the store and reviewed CCTV footage.

The employee had been paid for a shift from 07:00 to 14:00 but actually worked from 06:55 to 15:06.

A timesheet review showed the team member didn't clock off after his shift and so the franchisee entered a manual punch for his rostered finish time.

The franchisee agreed to rectify the underpayment via a payroll adjustment and the action was documented in 7-Eleven's Franchisee Relationship Management (FRM) system.

Payroll and payments

7-Eleven was required to implement measures to enhance the integrity of payment systems and payroll records used by franchisees (Clause 5 of the PCD). Payroll systems were enhanced to:

- specify minimum rates of pay, with such rates unable to be manually altered by franchisees
- ensure central approval by 7-Eleven head office of the payment of alternative rates (such as above-award amounts)
- make payments to staff by electronic funds transfer only (no cash)
- ensure payments were not paid into the bank account of a franchisee, and that 7-Eleven could proactively identify and investigate any instances where payments for more than one employee are paid into the same bank account
- give employees access to electronic pay slips.

7-Eleven reported that:

- using its ADP payroll system, wage interpretations and pay rates for all industrial instruments in the network are now controlled centrally by head office
- rates of pay interface with the Kronos biometric time clock system to allow stores to model weekly labour costs when developing their rosters
- only 7-Eleven head office payroll personnel are able to update pay rates in the system
- all employees are paid by electronic funds transfer and are able to access their pay slips electronically via the cloud-based *Workday* system
- protocols and controls are in place with respect to bank accounts authorised to receive pays

⁵ Case study provided by 7-Eleven

- the CCM data analysis platform incorporates payroll information and reports on a number of existing rules e.g. low work hours versus operating hours and revenue/transaction volumes, excessive hours reported by a single employee, shared bank account numbers within a particular franchise
- the Assurance Team follows up payroll anomalies as part of its regular weekly reviews.

Employee helpline and email service

7-Eleven established a dedicated, anonymous helpline and email service with access to an interpreter facility, for employees and the public to enquire, complain or report non-compliance, including wages underpayments (Clause 8 of the PCD). Claims could also be submitted via the 7-Eleven website.

7-Eleven reported that all employees were advised about the helpline and email service and details were published on 7-Eleven’s public website. Details of the helpline were included in new employee training.

Wage costing disclosure

7-Eleven reported that prospective franchisees are now issued a wage costing disclosure prior to the sale of any new or existing franchise (Clause 13 of the PCD), outlining:

- wages and entitlements under the applicable Fair Work instrument
- detailed wage modelling, verified by 7-Eleven senior management, outlining cost expectations for a 7-Eleven store
- the minimum working hours required to operate a store
- details of the income and expenditure for the specific store for the previous two years.

In addition, a ‘Statement as to labour costs’ is provided to franchisees with guidelines on anticipated total labour costs based on several scenarios.

Self-resolution of workplace disputes

Wage repayment programs

7-Eleven initially worked with an independent panel headed by Professor Allan Fels to establish a wage repayment program. From May 2016, 7-Eleven brought management of the program in-house. The programs approved claims, made back-payments and was guided by a set of principles and claims assessment methodology that the FWO had input into (Clause 2 of the PCD).

An initial communications program contacted former and existing employees and invited claimants to submit an expression of interest (EOI) with proof of identity and address, hours worked and evidence supporting their claim (if available).

The FWO was concerned about the number of unsuccessful EOIs due to inadequate information provided by employee claimants. We requested that Deloitte (who was retained as an independent secretariat of the panel) enhance communications with claimants about required documentation, including giving examples of information that could assist in determining their claim.

Between September 2015 and February 2020, 7-Eleven paid back over \$173, 610,752 to current and former employees under its wage repayment programs, comprising:

- \$144,484,521 in wages
- \$19,497,405 in interest
- \$9,628,826 in superannuation.

There was a total of 7,926 paid claims by 4,043 individual claimants. The average payout was \$21,903.96 per claim.

Internal audits

7-Eleven appointed the General Manager of its Assurance Team as the senior manager responsible for internal auditing time and payroll data to identify and investigate irregularities indicating compliance risks (Clause 6.8 of the PCD). An Internal Investigations Unit was created within the Assurance Team. It was tasked with internal audits, risk analysis and investigation functions (Clauses 6.6 – 6.13 of the PCD).

The General Manager of the Assurance Team also tabled reports with 7-Eleven’s Audit and Risk Committee and 7-Eleven senior management on a quarterly basis.

In September 2018, a new Employee Relations Governance Committee was introduced and began discussions regarding employee relations matters and the impact on the 7-Eleven network.

7-Eleven committed to self-resolving employee queries about pay and conditions, including requests for assistance from current and former employees referred by the FWO (Clause 9 of the PCD). They were required to investigate and report to us within 45 days.

During the course of the compliance partnership, the FWO referred 1 matter to 7-Eleven, with the resulting investigation identifying no underpayments.

Most other enquiries we received from 7-Eleven employees during the compliance partnership were referred to the 7-Eleven wage repayment programs.

7-Eleven engaged an external HR specialist, ER Strategies⁶, to manage responses to enquiries through the helpline and email service. ER Strategies reported to 7-Eleven’s Board on a quarterly basis about

enquiries, complaints and grievances (Clause 8.4 of the PCD). In turn, 7-Eleven provided quarterly updates to the FWO (Clause 8.6(c) of the PCD).

The FWO was satisfied with the information provided in the quarterly updates. They demonstrated that 7-Eleven was acting on intelligence received via their employee helpline and email service.

Independent audits

7-Eleven engaged PwC Australia (PwC) to conduct three annual audits (Clause 6 of the PCD):

- in accordance with the *Standard on Assurance Engagements ASAE 3100 Compliance Engagements* issued by the Australian Government Auditing and Assurance Standards Board⁷
- covering 3-month assessment periods and statistically relevant samples of employees, including a representative mix of fuel and retail stores over all locations
- informed by results of Internal Auditing and Risk Analysis.

PwC independently recalculated the wages and benefits (including annual leave accruals) for a sample of:

- 200 employees during the period 1 June to 31 August 2017 (Audit 1)
- 183 employees during the period 1 June to 31 August 2018 (Audit 2)
- 182 employees during the period 1 July to 30 September 2019 (Audit 3).

One issue was noted in Audit 1. PwC identified that while an award change from a Fair Work Commission determination on 21 June 2017 was taken into account, a further adjustment created by a 30 June 2017 determination had been missed. This resulted in underpayments of \$102,167 to 1,896 employees during the period 1 July 2017 – 14 September 2017, which 7-Eleven reported were fully rectified.

Across the three audits PwC identified and reported to 7-Eleven some anomalies and system issues that represented a potential compliance risk, concerning:

- payment for induction training time
- managing ordinary hours and overtime payments
- incomplete termination and new employee records
- missing employment contracts

⁷ https://www.auasb.gov.au/admin/file/content102/c3/ASAE_3100_Compliance_Engagements.pdf

- roster system functionality to ensure student visa restrictions were met
- payroll system functionality to prevent manual edits by store managers / franchisee owners.

These were reported to 7-Eleven and resolved, mostly through the implementation of new systems and system updates.

Reporting to the FWO

7-Eleven satisfied its obligation to share reports on helpline enquiries, independent audit results and to provide three annual progress reports to the FWO (Clause 13 of the PCD), describing:

- actions taken to address the requirements of the PCD and workplace issues encountered
- outcomes of requests for assistance referred by the FWO
- compliance systems and processes
- workplace relations training undertaken
- benefits or learnings from the compliance partnership.

Conclusion

The FWO recognises the improvements made by 7-Eleven in its compliance management and governance arrangements, including the repayment of over \$170 million in wages through its wage repayment programs.

It is vital that 7-Eleven continues to invest in ensuring compliance with workplace laws across its Australian network.

The FWO will continue to monitor compliance with workplace laws in 7-Eleven outlets.

The FWO encourages 7-Eleven to consider entering into a second compliance partnership to ensure a transparent and accountable framework is maintained for ongoing and sustainable compliance.

Appendix – litigations

Matter	Filed	Employees & underpayments	Status / Outcome
Amritsaria Four Pty Ltd and Harmandeep Singh Sarkaria ⁸	12 Jun 2015	2 Employees \$49,426	Penalty decision 29 April 2016 Penalties of \$214,200 (\$178,500 against Company and \$35,700 against the Director)
Balaji Australia Pty Ltd and Madhav Ponnada ⁹	26 Sep 2017	1 employee No underpayment assessed.	Penalty decision handed down 29 June 2018 Penalties of \$156,600 (\$153,000 against the Company and \$3,600 against a Manager)
Bosen Pty Ltd, Hao Chen & Xue Jing ¹⁰	22 Dec 2009	6 Employees \$100,068	Penalty decision handed down 21 April 2011 Penalties of \$150,000 (\$120,000 against the Company and combined total of \$30,000 against two Directors)
Haider Pty Ltd & Mubin Al Haider ¹¹	5 Dec 2014	1 Employee \$21,298	Penalty decision handed down 30 July 2015 \$6,790 penalty ordered against the Director No orders were made against the Company as it was placed into liquidation prior to the hearing
Hiyi Pty Ltd, Haiyao Xu and Yiran Gu ¹²	1 Oct 2015	12 Employees \$84,047	Penalty decision handed down 1 July 2016 Penalties of \$150,000 (\$110,000 ordered against the Company and a combined total of \$40,000 against two Directors)
JS Top Pty Ltd and Jim Chien Ching Chang ¹³	1 April 2016	8 Employees \$19,397.15	Penalty decision handed down 21 July 2017 Penalties of \$168,000 (\$140,000 against the Company and \$28,000 against the Director)
Mai Pty Ltd and Sheng-Chieh Lo ¹⁴	18 Dec 2015	12 Employees \$82,661	Penalty decision handed down 17 June 2016

⁸ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2016/968.html>

⁹ <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/october-2017/20171018-balaji-litigation-mr>

¹⁰ <http://www.austlii.edu.au/au/cases/vic/VMC/2011/81.pdf>

¹¹ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2015/2113.html>

¹² <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2016/1634.html>

¹³ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2017/1689.html>

¹⁴ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2016/1481.html>

			Penalties of \$408,348 (\$340,290 against the Company and \$68,058 against the Director)
S & A Enterprises (Qld) Pty Ltd and Mr Avinash Singh ¹⁵	7 Nov 2016	2 Employees \$5,593.15	Penalty decision handed down 11 December 2017 Penalties of \$192,783 (\$160,650 against Company and \$32,130 against a Director)
Viplus Pty Ltd and Jason Yuan ¹⁶	30 Nov 2015	10 Employees \$19,125	Penalty decision handed down 29 March 2018 Penalties of \$108,742 (\$88,140 against the Company and \$20,602 against a Director)
Vipper Pty Ltd and Jason Yuan ¹⁷	30 Nov 2015	11 Employees \$12,381	Penalty decision handed down 29 March 2018 Penalties of \$84,219 (\$68,262 against the Company and \$15,957 against a Director)
Xia Jing Qi Pty Ltd & Ai Ling Lin ¹⁸	8 Dec 2017	3 employees \$6,674	Penalty decision handed down 18 January 2019 Penalties of \$163,815 (\$154,225 against the Company and \$9,590 to a Manager)

¹⁵ <http://classic.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCCA/2017/3332.html>

¹⁶ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2018/741.html>

¹⁷ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2018/741.html>

¹⁸ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2019/83.html>