

7-Eleven franchisee admits doctoring records and underpaying workers to cut operating costs

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A 7-Eleven store in Melbourne has admitted deliberately short-changing its staff by tens of thousands of dollars and doctoring its employment records to cut costs.

The store owner has also revealed that he learned how to manipulate the payroll system from another franchisee at a 7-Eleven conference.

The admissions come after the Fair Work Ombudsman made an unannounced site visit to the convenience store on the evening of Saturday, September 13 last year.

A team of Fair Work inspectors made spot checks of 20 7-Eleven stores across Melbourne, Sydney and Brisbane during the course of the night.

7-Eleven stores were targeted for attention because of concerns about systemic underpayment of wages and entitlements and false-record keeping practices.

Fair Work inspectors interviewed staff, took photographs where appropriate, collected records and served a number of Notices to Produce (NTPs) on employers requiring them to produce records and documents for analysis.

An operational decision was taken to make the visits at night and on a weekend to allow inspectors to make observations and collect evidence which may not have been available during normal daytime business hours.

Fair Work Ombudsman Natalie James says the Agency is mindful 7-Eleven stores employ many young, potentially vulnerable employees, including international students from non-English-speaking backgrounds.

Ms James says the Fair Work Ombudsman has expressed concern to 7-Eleven's head office about the behavior of some employers, saying the Agency expects franchisors to take more responsibility and pay greater attention to workplace compliance by its franchisees.

One 7-Eleven operator, Kumar Sandarakumar, who runs the shop at 237 Exhibition Street in the Melbourne CBD, has confirmed he deliberately breached federal workplace laws in the face of increasing financial pressure.

Mr Sandarakumar knowingly short-changed most of his employees by paying them for fewer hours than they actually worked.

For example, an employee who worked 20 hours in one pay period was only paid for seven hours work. Another who worked 14 hours was only paid for eight.

Calculations by the Fair Work Ombudsman have revealed that 12 of the store's 15 employees were underpaid more than \$30,000 in the 12 months to October last year.

The largest individual underpayment was \$7981.

Additionally, Mr Sandarakumar admitted to producing false and misleading records by manipulating the data he entered into the 7-Eleven head office payroll system – something he says he learned from another store owner at a 7-Eleven conference.

Mr Sandarakumar and his company PSP International Trading Pty Ltd have signed an Enforceable Undertaking (EU) with the Fair Work Ombudsman as an alternative to litigation. The EU has seen Mr Sandarakumar reimburse all employees and requires him to put processes and systems in place to ensure compliance with workplace laws in future.

Ms James says this latest finding is a timely reminder to 7-Eleven business operators of the need to ensure they take the time to understand and comply with the laws applicable to their workplace.

Yesterday, the Fair Work Ombudsman announced that it had commenced [legal proceedings against a 7-Eleven store in Sydney](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150831-amrit-saria-litigation) (www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150831-amrit-saria-litigation) which allegedly underpaid two migrant employees almost \$50,000 and created erroneous records for the workers.

In July, the former operator of a [7-Eleven store in Brisbane](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/july-2015/20150728-brisbane-7-eleven) was fined \$6970 (www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/july-2015/20150728-brisbane-7-eleven)

[leases/archived-media-releases/2015-media-releases/august-2015/20150804-haider-penalty](#)) by the Federal Circuit Court after underpaying an overseas worker and refusing to co-operate with the Fair Work Ombudsman.

Ms James says 7-Eleven stores have been on the Fair Work Ombudsman's radar for some years.

In July, 2009, the Fair Work Ombudsman requested five 7-Eleven stores in Melbourne reimburse 88 of their employees a total of \$112,000 after the underpayments were uncovered following a series of random, unannounced visits to stores across the CBD. A sixth store was instructed to credit almost 1000 hours of annual leave back to 12 staff who were not accruing the entitlement, when they should have been.

In October, 2009, the Fair Work Ombudsman announced a joint campaign with the 7-Eleven franchisor to audit dozens of franchisees throughout Victoria following ongoing concerns about stores not paying employees for some hours worked, non-payment of weekend and night penalty rates and non-compliance with record-keeping and pay-slip obligations. The results were announced on September 17, 2010, with 30 per cent of 56 stores audited found to be non-compliant. This campaign identified underpayments totalling \$32,300 for 62 employees.

On January 20, 2010, the Fair Work Ombudsman announced legal proceedings against a company called Bosen Pty Ltd, which previously owned 7-Eleven stores in Geelong and South Yarra (Victoria), alleging that four workers had been underpaid almost \$90,000 over four years between 2005 and 2009. In April, 2011, the Melbourne Magistrate's Court issued a penalty totalling \$150,000 against Bosen and its directors Hao Chen and Zue Jing.

Ms James says she is very concerned about the contraventions being identified at the majority of 7-Eleven stores being investigated as part of the Agency's latest pro-active compliance activity.

So far, nine 7-Eleven franchisees have received a Letter of Caution, one has been issued a Compliance Notice and seven have received on-the-spot fines.

"While we are not expert in the field of franchise models and financial viability, our Inquiry has raised concerns about the 7-Eleven model," Ms James says.

"We are exploring whether the model places significant pressure on a franchisee's ability to meet statutory obligations, predominantly through a lack of cash flow. In some cases, we suspect it is the reason franchisees have underpaid staff.

"In our experience, there are many different models of franchising. Many of the effective models, from our perspective, involve the franchisor providing significant infrastructure and robust processes for franchisees to assist with meeting their regulatory responsibilities and resolving issues when they arise.

"We are concerned to see repeated cases of underpayments being facilitated through the falsification of pay information to head office occurring in the 7-Eleven network. Patterns of behaviour such as this do make us curious as to the role of Head Office.

"When franchisee businesses are not succeeding and that is impacting on the way they are treating their staff, it makes good business sense that 7-Eleven would try to understand why.

"Successful franchisees must mean successful franchisors. At this stage, we're not convinced that the processes in place for the franchisees of 7-Eleven is facilitating compliance with workplace laws."

Senior Fair Work Ombudsman officials met with 7-Eleven head office in October last year and again in May this year to present the Agency's preliminary findings.

Ms James says that when a final report is completed it will be provided to the franchisor with recommendations on how it can improve compliance levels in its stores and take more responsibility for ensuring employees are not being exploited.

7-Eleven will be asked to report back to the Agency on its actions within 12 months.

The report will be made public.

Ms James says many of the requests for assistance from 7-Eleven employees come from international students from non-English speaking backgrounds.

But she says the Agency has also encountered situations where students are reluctant to come forward because they are breaching their visa conditions by working more than 40 hours a fortnight.

"Some have told us they are scared that if they complain about being underpaid, their employer will report them to the Department of Immigration and Border Protection (DIBP)," she said.

"There is no question that an employee in breach of visa conditions is putting themselves into a more vulnerable situation.

"We work very hard to uphold the workplace rights of overseas workers, and as recently as May ran a national social media campaign to alert international students to their workplace rights if they take a job whilst studying here."

Ms James says every employee in Australia is entitled to receive their minimum terms and conditions under the Fair Work Act.

"It is therefore disappointing when we come across instances of international students themselves offering to work for lower wages for more hours," she said.

"Employers cannot undercut minimum wages, even if their employees do offer to accept lower rates, and when we find that this has occurred, we will require any outstanding wages to be back-paid."

While the Fair Work Ombudsman is not concerned with an employee's visa status, DIBP has power under the Migration Act to cancel a visa in certain circumstances.

"In our experience, international students who are primarily concerned about their visa status are reluctant to seek assistance or co-operate with us," Ms James says.

"This significantly hampers our investigations.

"When faced with allegedly falsified records, the lack of a witness or co-operation, we need to undertake a far more difficult and forensic investigation.

"That often involves accessing and reviewing CCTV footage, assessing fuel dip records, cash register log-on details and text messages to try to test the accuracy of records.

"This can take experienced inspectors many months to investigate, without any guarantees of success."

The Fair Work Ombudsman understands that a visa-holder who is under consideration for visa cancellation is given the opportunity to provide reasons as to why their visa should not be cancelled and that a non-citizen whose visa is cancelled may apply for a review of that decision.

Ms James acknowledges that there are a number of employee groups who can be vulnerable to exploitation from unscrupulous business operators, including young workers and visa-holders.

"International students generally fall into both categories," she says.

"Last financial year, 4700 young workers – that is employees under 25 – contacted the Fair Work Ombudsman for assistance.

"The number of young people looking for help last year was up almost 50 per cent on the previous 12 months.

"We recovered more than \$2.8 million in outstanding wages and entitlements for young workers, up 21 per cent on the previous year."

Visa-holders now represent about 11 per cent of the total number of employees seeking assistance from the Fair Work Ombudsman.

"We recouped \$1.6 million for visa-holders in 2014-15, up from \$1.1 million the previous year," Ms James says.

"Twenty-one of the matters we put into Court last financial year involve visa-holders, up almost 50 per cent on the matters filed the year before.

"The Fair Work Ombudsman recognises that both young workers and overseas workers can require special assistance, and that is why we have dedicated teams – a Young Workers Team and an Overseas Workers Team – to give them priority attention.

"Young workers and overseas workers can be at risk because they often are unaware of their rights and entitlements, and language and cultural barriers are often an issue for visa-holders as well.

"We have innovative, inter-active educational tools and resources on our website aimed specifically at these two cohorts. Materials are translated into 27 different languages.

"But we don't just aim to educate employees about their rights – just as much effort goes into raising awareness among employers about their workplace obligations.

"Increasingly we are working with employer organisations and major employers of young workers to build a culture of compliance with workplace laws to minimise the risk of underpayment."

Recently, the Fair Work Ombudsman announced a new national campaign focusing on apprentices.

About 700 employers engaging apprentices across a range of industries, including automotive, electrical trades, manufacturing trades, meat industry and retail trades, will be audited to check their compliance.

Last month, the Fair Work Ombudsman announced that in addition to its Overseas Workers Team, it had appointed community engagement officers (www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150813-community-engagement-officers-presser) to work with multi-cultural communities to assist improve understanding of workplace rights and obligations.

Ms James encouraged employers who had any uncertainty about whether their workplace practices were appropriate or not to visit the website www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for advice.

An interpreter service is available on 13 14 50.

The Fair Work Ombudsman has fact sheets tailored to overseas workers and international students on its website and has produced videos in 14 different languages that are available on YouTube.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (<http://www.facebook.com/fairwork.gov.au>).

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- [PSP International Trading Pty Ltd Enforceable Undertaking \(DOCX 320.4KB\)](http://www.fairwork.gov.au/ArticleDocuments/837/psp-international-trading-pty-eu-redacted.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/837/psp-international-trading-pty-eu-redacted.docx.aspx) ([PDF 2.3MB](http://www.fairwork.gov.au/ArticleDocuments/837/psps-international-redacted.pdf.aspx)) (www.fairwork.gov.au/ArticleDocuments/837/psps-international-redacted.pdf.aspx)

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