

Statement on 7-Eleven

9 April 2016

The Fair Work Ombudsman today released a Report on the findings of its Inquiry into the 7-Eleven franchise network.

The Inquiry was prompted by allegations of systemic non-compliance with federal workplace laws.

It found that a number of franchisees have been deliberately falsifying records to disguise the underpayment of wages.

Notwithstanding its formal protocols, 7-Eleven's approach to workplace matters did not adequately detect or address non-compliance.

As this report is released, the Fair Work Ombudsman has ongoing investigations into a number of 7-Eleven franchisees.

Background

The Fair Work Ombudsman and its predecessor agencies have expressed concern about 7-Eleven's compliance posture since 2008.

For more than seven years, there have been persistent reports from 7-Eleven employees alleging significant underpayment of wages.

There was also increasing evidence that the underpayments were linked to false employment records created by franchisees.

Since the Fair Work Ombudsman was created in July, 2009, the Agency has placed eight matters involving 7-Eleven franchisees before the courts and recovered \$625,000 for underpaid 7-Eleven employees.

Other outcomes include an Enforceable Undertaking, issuing 20 Letters of Caution, 14 Infringement Notices (on-the-spot fines) and three Compliance Notices.

In February, 2012, 7-Eleven was invited to participate in a pilot program to help franchisors and franchisees address compliance.

7-Eleven was the Franchise Council of Australia's "Franchise of the Year" in 2012.

Initially, 7-Eleven registered its interest, noting that many franchisees were new or recent migrants who maybe unfamiliar with their workplace obligations.

However, despite assurances that it was committed to ensuring franchisees received clear guidance on their obligations, 7-Eleven subsequently declined to participate.

The Fair Work Ombudsman had significant engagement with the 7-Eleven head office between 2009 and 2014 and expected to see improvements in compliance.

We did not.

On the basis of continuing concerns and intelligence, we began a strategic Inquiry into a sample of 7-Eleven stores across Victoria, NSW and Queensland in June, 2014.

An assessment of 20 stores provided us with further opportunity to identify the root causes of non-compliance so we could approach 7-Eleven to make changes to address them.

We are here to support franchisors by providing advice, but it is not our role to establish a compliance and monitoring framework for them.

We expect that franchisors are sophisticated business operators who have the capacity to work with their franchisees to ensure a high level of compliance.

The conduct of franchisees and franchisors is regulated by the Franchising Code of Conduct, administered by the Australian Competition and Consumer Commission.

We have been in discussion with the ACCC regarding our experience of the Code in-so-far as it impacts on workplace entitlements.

We have also offered to work with the Australian Institute of Company Directors to promote best practice supply chain management and strengthen the integrity of supply chains across Australia.

In June, 2015, we were approached by journalist Adele Ferguson on behalf of the ABC 4-Corners program and Fairfax newspapers, who was working independently on a story about alleged exploitation of 7-Eleven employees.

We informed Ms Ferguson of our own Inquiry and contributed to the program "7-Eleven: The Price of Convenience", which aired on August 31 last year.

We issued two media statements at that time to detail publicly the status of our work at that point, including a matter placed before Court and details of an Enforceable Undertaking:

- [7-Eleven operator faces Court over underpayments \(http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150831-amritsaria-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150831-amritsaria-litigation)
- [7-Eleven franchisee admits doctoring records and underpaying workers to cut operating costs \(http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/september-2015/20150901-pp-7-eleven-eu-presser\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/september-2015/20150901-pp-7-eleven-eu-presser)

On September 3, 7-Eleven announced it was establishing its own Independent Franchisee Review and Staff Claims Panel, to be headed by former ACCC chairman Professor Allan Fels.

On September 30, 7-Eleven further announced the appointment of a new interim chief executive and a new chairman of its board of directors.

We have continued to engage with 7-Eleven head office and the Fels Panel as we have progressed our own Inquiry and formulated our own recommendations for action.

Last October, we announced another legal action against the operator of a 7-Eleven outlet in Melbourne for allegedly underpaying employees. See: [7-Eleven store operators to face Court for allegedly paying employees as little as \\$11 an hour \(http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/october-2015/20151012-hiyi-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/october-2015/20151012-hiyi-litigation)

In January this year, we announced legal action against the operators of three more 7-Eleven outlets in Brisbane over alleged underpayment of employees.

- [More 7-Eleven store operators face Court for allegedly short-changing employees \(http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/january-2016/20160114-vipper-viplus-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/january-2016/20160114-vipper-viplus-litigation)
- [Another 7-Eleven store faces Court for allegedly short changing workers over \\$82,000 \(http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/january-2016/20160125-mai-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/january-2016/20160125-mai-litigation)

And earlier this month, we commenced legal proceedings against another 7-Eleven franchisee in Brisbane for allegedly underpaying eight employees almost \$20,000 and creating false employment records. See: [Another 7-Eleven store faces Court action \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/april-2016/20160407-js-top-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/april-2016/20160407-js-top-litigation)

Uncovering the truth

Our investigations into 7-Eleven stores posed significant challenges.

Fair Work inspectors investigating alleged breaches of workplace law do not have the capacity to require a person to attend interviews and answer questions on the record as other regulators do.

This Inquiry encountered a widespread lack of co-operation from the range of parties involved.

Not only did some franchisees fail to keep proper records of what had been worked and paid, a number produced and relied on false records.

Where franchisees failed to co-operate with us or give us accurate records, co-operation from employees was vital for us to understand what was occurring in any given store.

However, lack of employee participation impeded our efforts to investigate a number of matters.

In one store, for example, where we had significant concerns about wage rates and the accuracy of records, only one of 12 employees was willing to be interviewed.

Some employees gave information anonymously, requiring us to try to find alternative evidence to substantiate their claims.

To that end, the Inquiry found multiple instances where information given by employees was inconsistent with what appeared to be occurring in the store and what was being reported by other staff.

Employees often changed their responses to questions when contacted a second time.

The Fair Work Ombudsman has identified a wholesale disregard for minimum wages in some stores.

7-Eleven Head Office

A number of employees reported having approached 7-Eleven with concerns before our Inquiry, but felt head office was disinterested in their grievances.

Worse, some felt 7-Eleven was aware of high non-compliance throughout its network, but was either disinterested or ignored their concerns.

7-Eleven gets a percentage of each store's gross profit and so there is a direct financial benefit to the franchisor when stores are successful.

Wages impact on store net profits, so systemic and substantial non-compliance with minimum wages has created a false account of store viability. This has allowed some stores to continue to trade and earn profits for 7-Eleven and the stores.

While 7-Eleven has insisted its operating system never has been and never will be dependent on franchisees underpaying their staff, it is likely that the significant underpayment of wages would have increased the perception of 7-Eleven stores as successful businesses.

A number of franchisees we encountered were relatively unsophisticated as business owners and employers, despite paying between \$500,000 and \$1.5 million for their store. Others had multiple business interests.

The level of control exerted over franchisees by 7-Eleven gives them little scope to impact their profitability within the franchise model.

There appears to be a general acceptance of a "going rate" for working at 7-Eleven – a rate well below the lawful minimum wage.

Breaking that cycle of acceptance that "this is the way things are" is a key challenge for 7-Eleven.

There is a culture of acceptance that working at 7-Eleven means a lower rate of pay and conditions than is lawful.

It also appears to be considered standard practice that long hours are worked, training is unpaid and leave is not taken.

Employees are resigned to this being "the way it is" if they want to work at 7-Eleven.

There is also an understanding that visa-holders can work hours in excess of what is allowable, and this will not be reported – in fact, it will be disguised by the franchisee.

Visa-holders

7-Eleven told us that its franchisees are predominantly from non-English speaking backgrounds, particularly China, Pakistan and India.

We were also told that employees in 7-Eleven stores are typically male international student visa-holders.

Last financial year, visa-holders accounted for almost 12 per cent of all requests for assistance received by our office from employees.

Frankly, I'm sick and tired of seeing matters come before us where people are being paid \$10 and \$12 an hour, well below the minimum wage.

We have minimum pay rates in Australia, they apply to everyone, and they are not negotiable.

Employers cannot undercut minimum wages, even if their employees offer to accept lower rates – and they must keep accurate time-and-wages records at all times.

It is not acceptable for an employer to take advantage of any worker, especially overseas workers who speak limited English and have limited understanding of their workplace rights.

So far this financial year, more than 70 per cent of the matters we have placed before the courts involve alleged underpayment of visa-holders.

Nevertheless, it is our firm view that the vast majority of visa-holders are reluctant to come to the Commonwealth regulator for help.

Notwithstanding a declaration that international students make when entering Australia, our evidence suggests many do need to work to pay for food and accommodation.

While international students can legally work 40 hours a fortnight while they are studying here, we found many working up to 50 hours a week.

Visa-holders confirmed their reluctance to report underpayment of wages or co-operate with us for fear they themselves maybe targeted for investigation by another government regulator.

The Inquiry noted a perceived sense of loyalty, or friendship, with employers that was sometimes cited by employees for not

complaining about low wages.

Some employers who found out their staff were co-operating with us, or thought their staff might seek assistance from us, threatened to contact the Department of Immigration and Border Protection (DIBP) about the employee breaching their visa conditions.

During the course of this Inquiry, we encountered a common misconception among franchisees and their employees that the obligation to comply with the terms of a visa falls solely to the employee.

It does not.

DIBP makes it clear that employers are obliged to check and confirm that any foreign national working for them has a valid visa with work conditions that provide permission to work.

Employers found to have allowed a foreign national to work in breach of their visa can face financial penalties of up to \$81,000. In some circumstances, this may even amount to a criminal offence, punishable by up to five years jail or a penalty of \$270,000.

To aid our investigations, it was agreed between the two agencies that international students who assisted the Fair Work Ombudsman would have no action taken against them by DIBP for breaches of their visa conditions.

Cash-back scam

During the course of the Inquiry, public awareness of our concerns about the 7-Eleven network increased significantly as a result of widespread media coverage.

Within days of 4-Corners/Fairfax coverage at the end of August, fresh reports emerged of a new “scam” allegedly appearing in the 7-Eleven network.

This involved franchisees paying staff correctly, but requiring employees to withdraw a portion of their wages at an ATM and pay it back in cash.

The Inquiry subsequently received intelligence that this practice was not isolated and was prevalent in a number of 7-Eleven stores.

Regrettably, this highlights the lengths some franchisees are willing to go to continue to underpay their workers, and the extent to which employees are complicit.

Conclusions and next steps

Since 2008, the Fair Work Ombudsman has received regular reports alleging widespread compliance issues across the 7-Eleven network.

Requests for assistance received from employees over a number of years have suggested a troubling pattern of allegations around falsification of records used to disguise the underpayment of wages.

The full extent of information that 7-Eleven received about problems within its network is unknown.

What is clear is that since our auditing in 2009, 7-Eleven had information that some stores within its network had engaged in deliberate attempts to underpay workers, including relying on inaccurate records and/or inputting false information about working hours into the head office payroll system.

Despite these signs, 7-Eleven did not appear to have made major changes to either its payroll system or store review process to target the risk of false record-keeping.

Our Inquiry suggests that the payroll section of the store review process did not sufficiently interrogate store practices, or records, to uncover signs of non-compliance where a franchisee sought to hide it.

7-Eleven had a reasonable basis on which to inquire and to act.

Head office controlled the settings of the system in which the franchisee employers operated.

Moreover, it had the resources and tools to inquire into and attempt to direct the behaviour of franchisees – but did not do so in any significant way until exposed to public scrutiny.

Recent changes to the 7-Eleven model and planned changes to the payroll system are welcome, however it is the view of the Inquiry that 7-Eleven could have acted earlier and done more.

The Fair Work Ombudsman acknowledges real and significant steps taken by 7-Eleven to begin to rectify the situation.

There is much to do.

But it will require a sustained effort throughout the organisation and a commitment to allocate resources over a long period of time.

A sustained change in behaviour is most likely to be achieved if it is driven by 7-Eleven from the top down.

The task of rebuilding a culture of compliance will require strong leadership and a maintained focus by 7-Eleven.

False record-keeping appears to be ingrained within aspects of the network.

And if some 7-Eleven franchisees have built the underpayment of employees, particularly vulnerable workers, into their business model, this culture will be difficult to address.

It may be that chronic underpayments and associated behaviour will not be entirely eradicated as long as these operators continue to be part of the network.

While not legally responsible for the entitlements payable to employees of its franchisees, it is our view that 7-Eleven has a moral and ethical responsibility for what has occurred within its network and is capable of taking steps to prevent this occurring again.

However, this conduct is not likely to be rectified quickly and comprehensively overnight.

It can only be stamped out through persistent, resourced and ongoing accountability measures.

7-Eleven must work with us to root out and deal with non-compliance.

We have, and always will, vigorously pursue the direct employer when we find cases of non-compliance. It is the employer first and foremost who is responsible for paying the correct entitlements.

However, society rightly expects more from established and profitable brands. And the law can extend legal responsibility up the franchise chain.

Recommendations

Throughout its Inquiry, the Fair Work Ombudsman observed various “drivers”, or contributing factors, to non-compliance.

The manner in which various “models” of non-compliance have evolved illustrate that a range of factors have combined to enable serious non-compliance to occur in a way which makes it difficult for the Fair Work Ombudsman to detect and remedy.

Some of these factors are features of the Fair Work framework.

The level of penalties and our limited investigative powers have contributed to this environment.

However, significant drivers exist outside the workplace relations framework.

Characteristics of other regulatory frameworks, such as corporations law, immigration settings, competition and tax laws have all played a role.

The exploitation of visa-holders working in Australia has long been a priority for the Fair Work Ombudsman.

However, under current settings, the Fair Work Ombudsman alone is unlikely to be able to eliminate serious and deliberate manipulation of visa-holders across multiple regulatory frameworks.

The Inquiry believes that other frameworks offer up potential opportunities and remedies that, if harnessed by government and other stakeholders, could more effectively inhibit the capacity of rogue players to wilfully exploit vulnerable visa-holders.

By way of example, remedies that address the employment of visa-holders in breach of their visa conditions, phoenixing by corporate entities and breaches of tax laws.

The recommendations of this Inquiry, therefore, focus on both the broader settings across these frameworks, as well as 7-Eleven specifically.

If implemented, these recommendations would assist the Fair Work Ombudsman to address the non-compliance within the 7-Eleven network, as well as enhance the Agency’s capacity to address conduct of this nature in the future.

In making recommendations that go to the broader impact of these frameworks, the Fair Work Ombudsman recognises the need to balance the range of policy and regulatory settings each of the frameworks is seeking to address.

With this in mind, the Inquiry recommends that 7-Eleven:

- Enters into a compliance partnership with the Fair Work Ombudsman, accepting that it has moral and ethical responsibility to ensure its stores meet community and social expectations for equal, safe and fair work opportunities for all employees,
- Implements effective governance arrangements that ensure compliance with all federal workplace laws,
- Review its operating model to ensure regular review of the financial viability and legal exposure of franchise agreements and engage an external, independent party to self-audit its compliance, and
- Set up a staff consultative forum with employee representatives from across the network that is separate from franchisees.

For its part, the Fair Work Ombudsman will continue to promote a culture of compliance within the 7-Eleven network.

This includes working with relevant agencies such as the Department of Immigration and Border Protection, Australian Tax Office and the Australian Competition and Consumer Commission.

Additionally, we will continue to engage with the Commonwealth Government to ensure that the Agency's operational experiences and findings best inform government policy-making.

We now are receiving more requests for assistance from visa-holders than ever before, and we will continue to actively encourage overseas workers who have concerns that their workplace rights are being compromised to contact us.

We have an interpreter service on 13 14 50. Our website at www.fairwork.gov.au also has materials translated into 27 different languages and we distribute information on YouTube, Facebook and Twitter.

A copy of the Report is available at www.fairwork.gov.au/inquiryreport (<http://www.fairwork.gov.au/inquiryreport>)

Natalie James, Fair Work Ombudsman.

Media inquiries:

Bryan Littlely, Assistant Director, Media

Mobile: 0447 692 007

bryan.littlely@fwo.gov.au (<mailto:bryan.littlely@fwo.gov.au>)

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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Call through the National Relay Service (NRS):

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