

## Record penalty against 7-Eleven operator who systematically exploited staff

21 June 2016

A record penalty of more than \$400,000 has been imposed against the operators of a 7-Eleven store which systematically exploited its workers.

It is the largest-ever Court-imposed penalty achieved by the Fair Work Ombudsman.

The penalty follows an investigation and litigation by the Fair Work Ombudsman which found 12 7-Eleven employees in Brisbane had been short-changed over \$82,000.

While some of the money was paid-back, the store owner requested his staff to secretly pay back thousands of dollars to him and his wife.

Federal Circuit Court judge Michael Jarrett found the 7-Eleven franchisee had shown “contemptuous disregard” for Australian workplace laws and had sought to deceive the Fair Work Ombudsman.

Handing down his decision yesterday, Judge Jarrett imposed record penalties totalling \$408,348 – eclipsing by \$65,000 the Fair Work Ombudsman’s previous highest penalties of \$343,860 in Perth in 2013.

Brisbane businessman Sheng-Chieh Lo was penalised \$68,058 and his company, Mai Pty Ltd, a further \$340,290.

Lo owns and operates the 7-Eleven outlet at 94 Boundary Street, West End.

Since July, 2009, the Fair Work Ombudsman has placed eight matters involving 7-Eleven franchisees before the courts – four of them still to be finalised.

Yesterday’s penalty decision is the latest outcome of a string of compliance actions by the Fair Work Ombudsman aimed at addressing systemic non-compliance within the 7-Eleven network.

It also follows the public release of the Agency’s findings from a national Inquiry into 7-Eleven. A copy of the Report is available on the [Inquiry Reports page \(www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports\)](http://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports).

Fair Work Ombudsman Natalie James says her office is currently in discussions with 7-Eleven about a robust and transparent arrangement that will satisfy the Agency that Head Office is taking the necessary steps to build a franchise operating model that ensures workers employed in its network are correctly paid into the future.

Lo underpaid 12 employees, including a number of international students, a total of \$82,661 between September, 2013 and September, 2014.

More than \$35,000 of the underpayment remains outstanding.

Judge Jarrett has issued an Order that Mai Pty Ltd fully rectify the underpayment.

Lo’s Brisbane store was one of 20 7-Eleven outlets targeted by Fair Work inspectors for surprise night-time visits as part of a tri-State operation in September, 2014.

Judge Jarrett found that Lo and his company had “systematically exploited” employees by implementing “a business model that relied upon a deliberate disregard of the employees’ workplace entitlements”.

Lo paid employees flat rates as low as \$13 an hour and had tried to conceal the underpayments by creating false records and making entries into the 7-Eleven head office payroll system.

Judge Jarrett described it as “a sophisticated system of data manipulation and false record keeping” and the extent of the deception only came to light because of the persistence of Fair Work inspectors.

After initially providing inspectors with false records to try to cover-up the underpayments, Lo showed inspectors selective bank records as evidence that his employees had been back-paid.

However, when he provided the records to inspectors, Lo knew that he had already arranged for the employees to pay thousands of

dollars back to him and his wife.

After inspectors learnt of the conduct, Lo again tried to deceive inspectors by denying he had required employees to back-pay wages, saying it “would be wrong” to do so. He later admitted what he had done.

Judge Jarrett said the “facts reveal a contemptuous disregard of Australian workplace laws”.

“Mr Lo’s contempt is demonstrated by his persistent attempts to deceive the Fair Work inspectors investigating the relevant complaints and his insistence, undertaken in a secretive way, that any amounts he paid to the relevant employees to make good (Mai Pty Ltd’s) defaults should be immediately paid back to him,” he said.

Judge Jarrett said the contraventions were “particularly serious” and described the underpayments as “substantial amounts for low income earners who were reliant on the minimum Award wage”.

Most of the employees received just over half what they were entitled to, with individual underpayments ranging from \$1673 to \$21,966.

Judge Jarrett found there had “been no suitable credible expression of regret”.

“... Lo continues to justify his actions without accepting responsibility for them,” he said.

Judge Jarrett said the penalties “will assist in ensuring other employers in the retail sector, and particularly within 7-Eleven, are compliant with their obligations”.

“Employers should be in no doubt that they have a positive duty to ensure that they comply with the obligations which they owe to their employees under the law,” he said.

“Compliance activities by the Fair Work Ombudsman suggest a particularly high need for general deterrence in the retail industry and, specifically, in relation to 7-Eleven franchises, given the number of complaints received against 7-Eleven franchisees since 2010.”

Judge Jarrett said it was “also vital to recognise the importance of maintaining a level playing field for all employers in an industry, with respect to wage costs”.

In addition to the penalties and back-pay Order, Judge Jarrett imposed an injunction restraining Lo and his company from underpaying workers and from seeking or accepting any back-payment of wages from current or future employees.

Lo’s company was also Ordered to display an in-store notice informing employees of entitlements and to undertake an audit of its compliance with workplace laws and report the results to the Fair Work Ombudsman.

Ms James says the Court has marked its strong disapproval of the exploitation of vulnerable workers and deceitful behaviour with record financial penalties.

“This record penalty reinforces the message that this type of conduct has no place in Australian workplaces and will not be tolerated,” she said.

Ms James noted the Court’s finding that the extent of the deception on the part of Lo and his company only came to light because of the “persistence” of the Fair Work Ombudsman and its inspectors.

“Let me be very clear that we will continue to be persistent with our compliance activities, even when confronted by employers who deliberately seek to mislead us with false records and where vulnerable employees are involved, even if they themselves are too afraid to talk to us,” she said.

Ms James says the Courts are taking a dim view of employers who flout the law and give the Fair Work Ombudsman a two-finger salute when it tries to engage with the business.

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

Ms James noted that the Court found that Lo appeared to have sought to absolve himself and his company of any responsibility for the outstanding underpayments, given that he had purportedly referred employees to 7-Eleven’s unpaid wages panel for recovery of their wages.

She said the Court clearly found the primary responsibility for back-paying the employees in this case rested with Mai Pty Ltd.

Ms James agreed with the Court’s judgment that a significant penalty in this case will assist in ensuring other employers in the retail sector, particularly within the 7-Eleven network, comply with their obligations.

The Fair Work Ombudsman’s previous highest penalties were achieved against the operators of a Perth cleaning company for deliberately underpaying six employees - see the media release: [Record penalties for deliberate underpayment of foreign cleaners in Perth](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2013-media-releases/september-Perth) ([www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2013-media-releases/september-](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2013-media-releases/september-Perth)

[2013/20130907-housekeeping-penalty](#) .

Last week, Judge Jarrett imposed record Queensland penalties of more than \$308,000 against a Gold Coast security company and its director for underpaying security guard - see the media release: [Record penalties and landmark Order making businessman personally liable for back-payments.](#) ([www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160620-step-ahead-penalty](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/june-2016/20160620-step-ahead-penalty))

Yesterday's penalty against Lo and Mai Pty Ltd is now the highest Australian and Queensland penalty achieved by the Fair Work Ombudsman for any of its legal work.

Businesses can contact the Fair Work Ombudsman for advice and assistance if they are unsure of their obligations.

Employees and employers can also use the Fair Work Ombudsman's free online tools and resources to check entitlements specific to their workplace.

The Agency's Pay and Conditions Tool (PACT) provides advice about pay, shift, leave and redundancy entitlements. Visit [www.calculate.fairwork.gov.au](http://www.calculate.fairwork.gov.au) (<http://www.calculate.fairwork.gov.au/>) to learn more.

Employers and employees seeking assistance can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50 and the website also has materials translated into 27 different languages.

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](http://twitter.com/fairwork_gov_au)) or find us on Facebook [www.facebook.com/fairwork.gov.au](http://www.facebook.com/fairwork.gov.au) (<http://www.facebook.com/fairwork.gov.au>) .

Sign up to receive the Fair Work Ombudsman's media releases direct to your email inbox at [www.fairwork.gov.au/mediareleases](http://www.fairwork.gov.au/mediareleases) ([www.fairwork.gov.au/mediareleases](http://www.fairwork.gov.au/mediareleases)) .

Media inquiries:

Ryan Pedler, Assistant Media Director

Mobile: 0411 430 902

[ryan.pedler@fwo.gov.au](mailto:ryan.pedler@fwo.gov.au) (<mailto:ryan.pedler@fwo.gov.au>)

**Page reference No: 6151**

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.