

Proactive Compliance Deed

Between



The Commonwealth of Australia
(as represented by the Office of the Fair Work Ombudsman)

and



7-Eleven Stores Pty Ltd (ACN 005 299 427)

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Schedule 1

Details: Office of the Fair Work Ombudsman and 7-Eleven Stores Pty Ltd

FWO	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43884188232
	Address	The Fair Work Ombudsman GPO Box 9887 Melbourne VIC 3001
	Telephone	(03) 9954 2687
	Contact Person	Sally McLeod

7-Eleven Stores Pty Ltd	Name	7-Eleven Stores Pty Ltd
	ACN	ACN 005 299 427
	Address	357 Ferntree Gully Road MOUNT WAVERLEY VIC 3149
	Telephone	(03) 9541 0807
	Contact Person	Paul McCarthy

1. Definitions and Interpretation

In this Deed:

7-Eleven means 7-Eleven Stores Pty Ltd (ACN 005 299 427).

7-Eleven's Contact Person means the person nominated by 7-Eleven in Schedule 1 to this Deed, or any other person specified by 7-Eleven in writing and notified to the FWO.

7-Eleven Principles are the objectives and principles set out in Annexure A to this Deed.

7-Eleven WRP means the 7-Eleven Wage Repayment Program. The 7-Eleven WRP will adhere to the 7-Eleven Principles and its structure and processes are as set out in the Methodology.

Auditor means PwC Australia.

Claim means a claim made to the Panel or the 7-Eleven WRP by an Employee relating to Underpayments.

Claimant means an Employee who makes, or has made, a claim to the 7-Eleven WRP or the Panel for repayment of Underpayments.

Commonwealth means the Commonwealth of Australia, including, but not limited to where the context so admits, the Commonwealth as represented by the Office of the Fair Work Ombudsman or any successor, including, without limitation, the Fair Work Ombudsman.

Commonwealth Workplace Laws means:

- (a) the *Fair Work Act 2009* (Cth);
- (b) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth);
- (c) the *Fair Work Regulations 2009* (Cth); and
- (d) the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*.

Deed means this Proactive Compliance Deed, including any Schedules and Attachments.

Employee means a current or former employee employed by a Franchisee.

Employing Entity includes a corporation, a partnership or a sole trader.

External Accounting Professional means an external accounting professional who holds a current membership in a professional accounting body and is independent from 7-Eleven and any Related Company.

Fair Work Instruments means:

- (a) a modern award;

- (b) an enterprise agreement;
- (c) a workplace determination; and
- (d) a Fair Work Commission order.

Franchisee means a person or entity that has entered into a Franchise agreement with 7-Eleven.

Franchise means the stores that the Franchise agreement relates to.

FW Act means the *Fair Work Act 2009* (Cth).

FWO means the Fair Work Ombudsman.

FW Regulations means the *Fair Work Regulations 2009* (Cth).

HR Specialist means a person suitably trained and qualified in human resource management.

Internal Investigations Unit means a team, headed by the Senior Manager and reporting to the 7-Eleven Chief Executive Officer, 7-Eleven Audit Committee and 7-Eleven Risk Committee. The Internal Investigations Unit will be responsible for all investigations and reporting set out in clauses 8 and 9 of this Deed and any other enquiry or complaint received by 7-Eleven from Employees relating to Underpayments and or Serious Non-Compliance. The Internal Investigations Unit will also conduct investigations and site visits at stores as necessary to detect and investigate potential contraventions of Commonwealth Workplace Laws.

Methodology means the 7-Eleven WRP Project Methodology document dated 16 June 2016 and provided to FWO prior to the execution of this Deed, which FWO acknowledges is confidential and the contents of which must not be disclosed to third parties without 7-Eleven's consent; or as required by law or for the purposes of complying with or enforcing this Deed.

Panel means the Fels Wage Fairness Panel.

Related Company means a related body corporate as defined in the *Corporations Act 2001* (Cth).

Senior Manager means a person suitably qualified and experienced to conduct audits and investigations.

Serious Non-Compliance means:

- (a) a contravention of any of the general protection provisions contained in Part 3-1 of the FW Act;
- (b) multiple or deliberate contraventions of an employer's record keeping obligations in relation to employee records contained in Part 3-6 Division 3 of the FW Act and the FW Regulations;
- (c) one or more contraventions giving rise to significant Underpayments (upwards of \$5,000 in total (not per Employee));

- (d) any contravention of sections 323 or 325 of the FW Act relating to unreasonable deductions from wages or an unreasonable requirement to spend, or any other allegation that employees are required to repay a portion of their wages, however structured;
- (e) a failure to comply with a notice to produce or compliance notice issued by a Fair Work Inspector under sections 712 or 716 of the FW Act; or
- (f) a contravention of such other provision of the FW Act as enacted or amended from time to time and advised by the FWO to 7-Eleven in writing, during the period of this Deed.

Underpayments means any underpayment or non-payment of wages or entitlements owing to an Employee to the extent there is a shortfall of the minimum prescribed in accordance with Commonwealth Workplace Laws or Fair Work Instruments (including underpayment or non-payment of overtime and penalty rates) in relation to all periods worked prior to or during the period of this Deed which has been identified, substantiated and quantified to the reasonable satisfaction of 7-Eleven or the FWO by way of:

- (a) a claim submitted to the 7-Eleven WRP or the Panel;
- (b) information provided to the Internal Investigations Unit;
- (c) the self-auditing processes referred to in clause 6;
- (d) the reporting processes referred to in clause 6; or
- (e) any other means.

2. Recitals

- 2.1 7-Eleven is the largest petrol and convenience retailer in Australia, based on market share. It operates under licence from the US-based business 7-Eleven Inc., developing and franchising 7-Eleven stores in Australia. As at 31 December 2015, 7-Eleven had 626 stores throughout Victoria, New South Wales, Queensland and, since late 2014, Western Australia.
- 2.2 From 2008 onwards, the FWO received reports from Employees and other sources alleging significant underpayment of wages at 7-Eleven Franchises. Between 2011 and the date of signing this Deed there have been a number of civil penalty cases conducted by the FWO against Franchisees in relation to underpayments and record keeping contraventions.
- 2.3 In June 2014, the FWO commenced an inquiry into allegations that significant underpayment of wages, and the falsification of employment records to disguise those underpayments, were occurring across much of the 7-Eleven Franchise network (the Inquiry). The Inquiry also sought to identify the factors driving any non-compliant behaviour.
- 2.4 The Inquiry disclosed concerning patterns of non-compliance with the FW Act and FW Regulations by some Franchisees, including instances of deliberate manipulation of records to disguise underpayment of wages.
- 2.5 The Inquiry identified that 7-Eleven's approach to workplace matters, while directed towards promoting compliance, did not adequately detect or address instances of deliberate non-compliance within its network. In particular, instances were identified where Franchisees created false and misleading records in order to satisfy 7-Eleven's auditing and payroll regime while continuing to underpay Employees.
- 2.6 At the conclusion of the Inquiry, on 9 April 2016, the FWO published a report entitled: "A Report of the Fair Work Ombudsman's Inquiry into 7-Eleven" (7-Eleven Report), which can be found on the FWO's website <http://www.fairwork.gov.au>.
- 2.7 The 7-Eleven Report made recommendations that 7-Eleven:
- (a) enters into a compliance partnership with the FWO wherein 7-Eleven would publicly accept that it has a moral and ethical responsibility to require standards of conduct from all Franchisees and individuals involved in the conduct of its enterprise, that:
 - (i) comply with the law in relation to all workers at all of its stores;
 - (ii) meet Australian community and social expectations, to provide equal, fair and safe work opportunities for all workers at all of its stores;
 - (iii) establishes sustainable self-monitoring arrangements; and
 - (iv) facilitates cultural and behavioural change, throughout its company and broader network;

- (b) implements effective governance arrangements that ensure compliance with all relevant Commonwealth Workplace Laws, specifically addressing:
 - (i) line management accountabilities;
 - (ii) mechanisms for identifying, escalating and addressing potential non-compliance;
 - (iii) development of transparent and verifiable payroll systems;
 - (iv) business and financial training of Franchisees; and
 - (v) awareness and understanding by Franchisees, Employees and third party providers such as payroll and human resources providers of workplace and migration laws, specifically addressing issues of accessorial liability;
 - (c) reviews its operating model in order to ensure:
 - (i) compliance with all workplace laws is achievable, practicable and fair; and
 - (ii) regular review of the financial viability and legal exposure of Franchise agreements.
- 2.8 Prior to the release of the 7-Eleven Report, 7-Eleven had commenced instituting changes to address compliance issues with its Franchisees, including by commissioning its own report on payroll compliance risks in the 7-Eleven network. On 3 September 2015, 7-Eleven announced that Professor Allan Fels, had been appointed as the head of a two-person independent panel, known as the Fels Wage Fairness Panel which would consider underpayment claims from staff of Franchisees. Deloitte was engaged to act as an independent secretariat to the Panel.
- 2.9 On 11 May 2016 7-Eleven announced that it had decided to cease the Panel and replace it with an in-house program (known as the 7-Eleven Wage Repayment Program). In establishing the 7-Eleven WRP, 7-Eleven engaged Deloitte to implement a set of principles and processes for dealing with Claims as the independent secretariat.
- 2.10 Since establishing the 7-Eleven WRP, 7-Eleven has:
- (a) created a set of principles to guide the work of the 7-Eleven WRP;
 - (b) fully documented the Claims assessment methodology;
 - (c) provided the principles and methodology to the FWO for its input and comment; and
 - (d) continued to approve Claims and make payments to affected Franchisee Employees.
- 2.11 7-Eleven has committed to ensuring that the 7-Eleven WRP will process Claims in a manner which:
- (a) is timely;

- (b) is worker focussed;
 - (c) applies a consistent methodology for determining Claims in circumstances where there is often limited available evidence due to inaccurate payroll records, ensuring that 7-Eleven uses all available evidence sources to assist in verifying an Employee's Claim rather than relying solely on Employees proving their Claims;
 - (d) protects confidentiality of Claimants by limiting access to personal information during the assessment process, consistent with the 7-Eleven Principles and clause 7.3 of this Deed; and
 - (e) informs the Employee of the outcome of their Claim in writing and allows them to request reasons for the decision and seek a review.
- 2.12 7-Eleven is committed to workplace laws being complied with across its network. Therefore, 7-Eleven has and will continue to endeavour to implement fundamental and sustainable changes to its operations and its Franchisees' operations and will respond to any new or emerging challenges as they may arise.
- 2.13 Both parties have agreed to enter into this Deed as a proactive compliance partnership and to confirm 7-Eleven's commitment to implement sustainable compliance measures.

The parties agree as follows:

3. Compliance with Commonwealth Workplace Laws

- 3.1 7-Eleven acknowledges that it has a moral and ethical responsibility to require and ensure standards of conduct from all Franchisees and individuals involved in the conduct of its enterprise, that:
- (a) comply with the law in relation to all Employees, and
 - (b) meet Australian community and social expectations, to provide equal, fair and safe work opportunities for all Employees.
- 3.2 7-Eleven acknowledges that a range of factors have led to a situation where Employees have been highly vulnerable to exploitation, including:
- (a) development of a culture within the 7-Eleven Franchise network where instances of underpayment and unlawful remuneration practices have become normalised;
 - (b) widespread record keeping deficiencies, including the creation of knowingly false records by Franchisees within the 7-Eleven payroll system, which concealed unlawful payment practices;
 - (c) 7-Eleven not taking a more active role to ensure employees of individual Franchisee employers were paid in compliance with the law, including to test whether records were accurate; and

- (d) an unrecognised need for additional financial support in the case of certain stores with lower turnover and profit.
- 3.3 7-Eleven has taken and will continue to take steps to improve the employment practices of its Franchisees by implementing fundamental, permanent and sustainable changes to its Franchise model designed to ensure that Commonwealth Workplace Laws are fully complied with for all Employees in each of its Franchises.
- 3.4 Within 14 days of this Deed being executed by both parties, 7-Eleven will publish a media statement announcing the execution of the Deed, including the statement at clause 3.1 and a commitment to further action at clause 3.3, by the following means and to remain for a period of at least 12 months:
 - (a) posting the media statement and web-link to this Deed prominently on 7-Eleven's public website within the 'media centre';
 - (b) posting the media statement and web-link to this Deed prominently on the public website for the 7-Eleven WRP; and
 - (c) sending an electronic copy of the media statement and web-link to this deed directly to, where practicable, all Franchisees and Employees.

4. Identifying Employees and Maintaining Employee records

- 4.1 Within 6 months of this Deed being executed by both parties, 7-Eleven will fully implement systems designed to ensure that the hours worked by all people, including at its Franchises, can be readily ascertained, including by:
 - (a) implementing a biometric time recording system, applying to all Employees, Franchisees and family members of Franchisees performing work in a Franchise, which enables 7-Eleven to maintain and monitor accurate records of Employees' and Franchisees working hours, including start and finish times;
 - (b) requiring weekly store rosters to be provided to 7-Eleven on a weekly basis and/or captured in the biometric system; and
 - (c) ensuring the biometric system is maintained and upgraded as necessary for a minimum period of 6 years.
- 4.2 Within 12 months of this Deed being executed by both parties, 7-Eleven will implement 7-Eleven owned and operated systems that ensure periodical verification of the Employee (via the CCTV system or other means) at regular intervals throughout an Employee's shift, including by:
 - (a) ensuring that 7-Eleven maintains photographic identification for all Employees captured in the store;
 - (b) capturing images and other related data pertaining to an Employee's time and attendance at regular intervals through an Employee's shift;

- (c) storing the system generated images and data for a period of at least 6 months; and
 - (d) using reasonable endeavours, preventing Franchisees from having access to the system, generated images and data in a manner which may allow altered recording or storage of the system images and data.
- 4.3 7-Eleven will implement systems and practices to periodically cross reference the data collected through the systems referred to in clauses 4.1 and 4.2 to identify any inconsistencies, utilising available technology to require that no person works in the store without being logged into the biometric time recording system at all times.
- 4.4 Within 24 months of this Deed being executed by both parties, 7-Eleven will implement a 7-Eleven owned and operated CCTV system operating in all 7-Eleven Franchises. Such CCTV systems (or associated back-up systems) will store CCTV footage at the point of sale area and entrance to each store for a period of at least 90 days.
- 4.5 7-Eleven will inform Franchisees that they are not permitted to alter any CCTV systems operating in a 7-Eleven Franchise where the equipment is owned and operated by 7-Eleven.

5. Payment and Payroll Records

- 5.1 7-Eleven will ensure that the payroll system specifies minimum rates of pay for all Employees which are at least consistent with applicable Commonwealth Workplace Laws and Fair Work Instruments, and cannot be manually altered by Franchisees. Any payment of alternative rates (such as above award amounts) is to be approved by 7-Eleven.
- 5.2 7-Eleven will require that all payments to all Employees are made by electronic funds transfer, rather than by cash.
- 5.3 7-Eleven will proactively identify and investigate any instances of payments for more than one Employee being paid to the same bank account to ensure that the Employees are receiving their correct entitlements.
- 5.4 7-Eleven will not allow payments for any Employees to be paid to an account related to a Franchisee, except in circumstances where the payment is owed to the Franchisee personally or a family member for work performed.
- 5.5 7-Eleven will use best endeavours to ensure that all Employees are able to access electronic copies of their pay slips, within one working day of payment. This requirement is additional to the provision of payslips to an Employee by any other means requested by the Employee, for instance, by post.

6. Auditing and Reporting to the FWO

External Auditing

- 6.1 7-Eleven will, at its own expense, engage the Auditor to conduct three audits (occurring annually throughout the duration of this Deed) assessing compliance with Commonwealth Workplace Laws and applicable Fair Work Instruments within its Franchises for a 3 month period.
- 6.2 Each audit will assess, at a minimum, compliance with applicable Commonwealth Workplace Laws and Fair Work Instruments, with particular regard to classification and status of employees, accuracy and consistency of employee records, leave and termination payments and any allegation of payments made by Employees to Franchisees or their agents.
- 6.3 The audit scope will be in accordance with *Standard on Assurance Engagements ASAE 3100 Compliance Engagements* and is to be pre-approved by the FWO. The audit scope will consider 7-Eleven's compliance environment, compliance framework, internal controls in place and the effectiveness of these controls, and a level of manual comparison of time and wage records as deemed required by the Auditor to issue their conclusion.
- 6.4 The manual comparison of time and wage records will consider a statistically relevant sample of Employees. The sample will include a representative mix of fuel and retail stores over all locations, be informed by results of Internal Auditing and Risk Analysis undertaken in accordance with clause 6.8 and 6.9 and is to be pre-approved by the FWO. Each audit will be completed by the Auditor within a reasonable period of no more than 3 months.
- 6.5 Within 2 months after the completion of each audit, 7-Eleven will provide a report to the FWO from the Auditor summarising the audit findings, and the steps taken to rectify any identified contraventions.
- 6.6 7-Eleven will retain all materials relied on for the purposes of auditing for a period of 6 years (or in the case of periodic verification systems and CCTV, 6 months after reporting to FWO in accordance with clause 6.5 above), and on request, produce these materials to the FWO.

Internal Auditing and Risk Analysis

- 6.7 In addition to the external auditing, 7-Eleven will continue to establish processes for identifying and investigating stores for Serious Non-Compliance. Where potential Serious Non-Compliance is identified in stores, 7-Eleven will undertake additional investigation into these stores.
- 6.8 7-Eleven will appoint a Senior Manager to have responsibility for internal auditing of time and payroll data, to oversee the identification and investigation of irregularities which may indicate compliance risks, such as: payment of high or flat rates of pay, inconsistent or unexpected wage costs when compared with wage modelling, low turnover, unusual patterns of hours or discrepancies in records.
- 6.9 The Senior Manager will table a report to the 7-Eleven Audit and Risk Committees and senior management at least every 6 months outlining their findings on these issues.

- 6.10 7-Eleven will maintain the Senior Manager reports and will record steps taken by 7-Eleven to respond to any issues identified therein, including investigation of possible or actual Serious Non-Compliance and stores where compliance risks have been identified.
- 6.11 7-Eleven will, on a six monthly basis, report to the FWO the names and titles of the Senior Manager and other 7-Eleven employees who are responsible for undertaking any auditing functions, including checking and analysing time and payroll data and conducting in-store audits.
- 6.12 In addition to the audit findings reports referred to in clause 6.5 above, 7-Eleven will on at least a six monthly basis advise the FWO those stores where Serious Non-Compliance has been identified, state the nature of the Serious Non-Compliance, and the steps taken by 7-Eleven to address the non-compliance.
- 6.13 The FWO reserves the right to investigate any allegations of Serious Non-Compliance received by the FWO or referred to the FWO by 7-Eleven. The FWO will advise 7-Eleven of any active investigations the FWO is undertaking into allegations of Serious Non-Compliance referred under clause 6.12.

7. 7-Eleven Wage Repayment Program

- 7.1 The 7-Eleven WRP will receive and process all Claims submitted on or before 31 January 2017, as well as all Claims previously made to and received by the Panel.
- 7.2 7-Eleven will continue to operate the 7-Eleven WRP with the assistance of Deloitte as the Independent Secretariat until such time as all Claims referred to in clause 7.1 (and any reviews of such Claims sought by Claimants) are processed and finalised by the 7-Eleven WRP.
- 7.3 The 7-Eleven WRP will implement and adhere to a confidential information management plan. 7-Eleven will ensure that the personal information of Claimants is not disclosed to Franchisees or 7-Eleven (outside of 7-Eleven nominated personnel whom effect payment to the Claimant, each of whom are subject to a formal confidentiality agreement), except in the following circumstances:
- (a) the Claimant agrees in writing to the disclosure of their personal information; or
 - (b) disclosure of a Claimant's personal information is required by law.
- 7.4 The 7-Eleven WRP will advise each Claimant in writing of the outcome of their Claim, and will inform the Claimant that they are entitled to request reasons for the outcome and/or to seek a review of the outcome by the 7-Eleven WRP.
- 7.5 If a Claimant disagrees with the outcome of a Claim they may contact the FWO regarding their concerns.
- 7.6 The structure and processes of the 7-Eleven WRP will be as set out in the Methodology. 7-Eleven will advise the FWO in writing with 30 days' prior notice of any proposed alteration to the Methodology or any other change to the structure or processes of the 7-Eleven WRP.
- 7.7 In the event that, during the period of this Deed, 7-Eleven notifies the FWO of a proposed

alteration under clause 7.6 which, in the FWO's reasonable view, substantially or materially alters the 7-Eleven WRP in a manner which either reduces its efficacy in resolving Claims or is not consistent with the 7-Eleven Principles, the FWO:

- (a) will notify 7-Eleven in writing within 14 days of its response to the proposed alteration, giving 7-Eleven 14 days to advise whether it will proceed with implementing it; and
 - (b) in the event that 7-Eleven implements the alteration, may invoke clause 19 to terminate this Deed.
- 7.8 7-Eleven will pay the aggregate Claim amounts approved through the 7-Eleven WRP on an uncapped basis.
- 7.9 7-Eleven will report to the FWO at least quarterly regarding the outcome of Claims to the 7-Eleven WRP. The Report to FWO will not disclose the personal information of any Claimant but will provide brief details of each Claim, the quantum of payments and the relevant Franchise (to the extent consistent with clause 7.3).
- 7.10 7-Eleven will ensure that the 7-Eleven WRP refers any Serious Non-Compliance identified in the course of a Claim assessment to the FWO, notwithstanding that such information may be de-identified in respect of the Claimant details.
- 7.11 7-Eleven will ensure that the 7-Eleven WRP will regularly and pro-actively contact Claimants where necessary to ensure that Claimant submissions to the 7-Eleven WRP are complete, thereby facilitating effective processing of a Claim.
- 7.12 7-Eleven will continue to regularly publicise the operation of the 7-Eleven WRP to potential Claimants via direct emails, SMS and public notices to:
 - (a) encourage potential Claimants to make a Claim by 31 January 2017;
 - (b) advise that the 7-Eleven WRP will cease to accept new Claims from 1 February 2017 but will complete processing of any Claims made prior to that date; and
 - (c) refer them to the website referred to in clause 7.13.
- 7.13 Within 14 days of executing this Deed, 7-Eleven will:
 - (a) establish and maintain for the duration of the Deed a publicly accessible website which provides information to Employees about all options available for reporting allegations of non-compliance with Commonwealth Workplace Laws, particularly to the Internal Investigations Unit or the hotline and email address referred to in clause 8;
 - (b) ensure that the website has functionality to receive reports of such non-compliance via an online form on the website; and
 - (c) take reasonable steps to ensure that from 1 February 2017, web traffic to any current or former 7-Eleven WRP website is redirected to this website.

- 7.14 The Internal Investigations Unit will be responsible for receiving and investigating any instances or allegations of Underpayment and/or Serious Non-Compliance which are:
- (a) identified by 7-Eleven by any means;
 - (b) referred by the FWO; or
 - (c) received from Employees, except for Claims made by a Claimant to the 7-Eleven WRP by 31 January 2017.
- 7.15 All Employees will be informed of the existence of the Internal Investigations Unit and the means by which to raise allegations of Underpayment or Serious Non-Compliance to it.
- 7.16 The Internal Investigations Unit will at all times adhere to the 7-Eleven Principles. However, the Internal Investigations Unit may disclose information relating to instances or allegations of Underpayment or Serious Non-Compliance (including the identity of the relevant Employees), including to Franchisees or third parties including FWO, in order to investigate the allegations or to otherwise satisfy its obligations set out in this Deed.
- 7.17 In accordance with the 7-Eleven Principles, when raising an allegation with the Internal Investigations Unit, Employees:
- (a) will be advised how their information may be used and will have the opportunity to consent or not consent to disclosure of their identifying information for particular purposes; and
 - (b) if the Employee's withholding of consent impacts the ability of 7-Eleven to investigate or substantiate their allegation, 7-Eleven will advise the Employee of the effect of that impact, including any impact under clause 10.
- 7.18 7-Eleven will report to the FWO at least quarterly regarding the outcome of all investigations by the Internal Investigations Unit. The Report to FWO will identify the Franchise and provide brief details of each allegation, the determinations made and the steps taken to address any issues identified.

8. Reporting of Non-Compliance with Commonwealth Workplace Laws

- 8.1 Within 14 days of the execution of this Deed, 7-Eleven will, at its own expense, establish and maintain a dedicated telephone hotline and email account service (and facilitate the use of an interpreter when required) to ensure that any person, including Employees and members of the public, may make enquiries, lodge complaints or report potential non-compliance with workplace laws, including underpayment of wages, at 7-Eleven Franchises. The hotline must have the capacity to receive, respond to and manage complaints made anonymously.

- 8.2 At a minimum the hotline must be available between the hours of 8:00 am to 8:00 pm (local time in Melbourne), from Monday to Friday. 7-Eleven will provide all Employees with details of the hotline upon commencing work at a Franchise, and details of the hotline will be published on 7-Eleven's public website, and in public notices.
- 8.3 The hotline must refer the following enquiries or complaints from Employees to:
- (a) the 7-Eleven WRP (or the 7-Eleven Internal Investigations Unit from 1 February 2017) for enquiries or complaints relating to Underpayments;
 - (b) the Internal Investigations Unit for all other enquiries or complaints.
- 8.4 7-Eleven will engage an external HR Specialist with responsibility for overseeing the hotline and managing responses to all enquiries received through the hotline. The HR Specialist must provide a written quarterly report to 7-Eleven's board informing them of any enquiries, complaints and grievances as referred to above (but subject to the constraints of any confidentiality which the HR Specialist may have been required to observe at the request of the person enquiring).
- 8.5 Subject to clause 8.3, the HR Specialist will refer complaints or enquiries relating to Underpayments which require investigation to the Internal Investigations Unit to be dealt with in accordance with clause 8.6.
- 8.6 7-Eleven undertakes to:
- (a) investigate and determine the appropriate outcome for any complaint received through the hotline, directly from or on behalf of an Employee, or from the HR Specialist, within 45 days of receipt of each complaint and, where the matter involves an Underpayment, 7-Eleven will take the steps and effect rectification of any identified Underpayments in accordance with the procedure prescribed by clause 10.1;
 - (b) where complaints are received on an anonymous basis (for instance, tip offs), investigate the payroll and record keeping practices of the Franchise identified and require the Franchisee to rectify any non-compliance identified; and
 - (c) on a quarterly basis, notify the FWO of all enquiries, complaints and grievances received within that quarter, and provide, subject to clause 7.9, information describing the complaints made, the investigations undertaken, the information relied on to conduct the investigation and the steps taken to rectify the conduct if appropriate, noting that the FWO reserves its rights to separately investigate any such complaint.

9. Matters Notified to the Fair Work Ombudsman

- 9.1 Where the FWO receives a request for assistance involving an allegation of non-compliance by a Franchisee, the FWO will, at its discretion and subject to clause 6.13, notify 7-Eleven and (if required) the Franchisee of the allegations and provide details supplied by the Employee. The FWO retains full discretion as to what steps it takes in relation to requests for assistance and may determine not to refer under this clause.
- 9.2 Where a matter is notified to 7-Eleven under clause 9.1, 7-Eleven will determine the appropriate outcome for the matter within 45 days of the notification and comply with clause 10 in relation to any Underpayments.
- 9.3 If 7-Eleven identifies that more than 45 days is necessary to comply with clause 9.2 due to a requirement for further investigation, 7-Eleven may agree a reasonable additional period with the FWO.
- 9.4 Within 45 days of making a determination as to the appropriate outcome for a matter notified under clause 9.1, 7-Eleven will provide a written report to the FWO addressing:
- (a) reasons for the determination and any compliance issues identified;
 - (b) the details of any Underpayments, whether these have been paid, and by whom;
 - (c) steps taken to address compliance issues identified, including for any similarly affected Employees; and
 - (d) if any matter remains unresolved, the steps taken by 7-Eleven to facilitate the resolution of any such matter.

10. Rectification of Underpayments

- 10.1 Where an Underpayment has been substantiated to the reasonable satisfaction of 7-Eleven (in accordance with the 7-Eleven Principles) or the FWO, 7-Eleven must require the relevant Franchisee to rectify any Underpayment to that Employee within 30 days of service on the Franchisee of notice of that requirement.
- 10.2 If the Franchisee fails to rectify the Underpayment within 30 days of 7-Eleven having notified the Franchisee of the substantiated Underpayment claim, 7-Eleven will make an ex gratia payment to the Employee to rectify the Underpayment within the a further 15 days.
- 10.3 Where an Underpayment arose from conduct by or on behalf of a Franchisee involving:
- (a) request(s) to an Employee to pay amounts to a Franchisee or its representative (sometimes referred to as 'cash back' arrangements);
 - (b) any requirement to perform work at places other than the 7-Eleven store at which the Employee is employed; or

- (c) deliberate misuse of 7-Eleven systems, such as failing to record hours worked through the system;

7-Eleven is not obliged to make an ex gratia payment referred to in clause 10.2 unless 7-Eleven is advised of the conduct within 90 days of the Employee becoming aware of, or being asked to participate in, the listed conduct, whichever is later.

- 10.4 Clause 10.3 does not apply to an Underpayment which is notified by the FWO under clause 9.1, or which is substantiated to the reasonable satisfaction of FWO, pursuant to clause 10.1, provided that in either case the FWO provides to 7-Eleven all evidence in the FWO's possession which the FWO can lawfully disclose to 7-Eleven regarding the relevant Underpayment.
- 10.5 7-Eleven will communicate the arrangements outlined in clause 10 to all Employees.
- 10.6 Clause 10 does not apply to Claims dealt with by the 7-Eleven WRP.

11. Ex gratia Payments by 7-Eleven

- 11.1 7-Eleven will ensure that it has funds available for the purpose of attending to the prompt rectification of Underpayments as contemplated by clause 10 on an uncapped basis; noting that payments made to Employees through the 7-Eleven WRP are separate and will be paid according to the process set out in the Methodology.
- 11.2 7-Eleven will provide the FWO with relevant supporting material identifying all amounts paid by 7-Eleven for the rectification of Underpayments as contemplated by clause 10. Such reporting will be on a quarterly basis for the first year and 6 monthly thereafter for the period of this Deed.

12. Training and Employee Consultative Forum

- 12.1 Within 3 months of entry into this Deed, 7-Eleven will, at its own expense, engage a HR Specialist to review its workplace relations and human resources training and provide recommendations for improvement or new training. Specifically, the HR Specialist will review:
 - (a) workplace relations training programs for Employees, that are designed to ensure that all current and new Employees engaged in the Franchises are made aware of their rights and entitlements, including all entitlements arising under this Deed; and
 - (b) workplace relations and human resources training programs that are designed to ensure that all of its directors, officers, managers, and all persons who have a supervising role or management responsibility in its Franchisees' stores, are aware of their obligations and the rights and entitlements owed to all Employees engaged in 7-Eleven stores, including in respect to employment of visa holders.
- 12.2 The training program to be delivered to Employees and reviewed by the HR Specialist will include, at a minimum, information in respect of:
 - (a) the existence of the Employee hotline service;

- (b) how to provide information to 7-Eleven and the FWO anonymously;
- (c) in-store training and entitlements to be paid during training;
- (d) deductions from or repayment of wages and prohibitions on requests for Employees to pay amounts to a Franchisees;
- (e) Employee options for recording their hours of work; and
- (f) employer obligations in respect of compliance with visa requirements and workplace laws.

12.3 Within 6 months of receiving the HR Specialist's recommendations, 7-Eleven will implement all relevant recommendations, to the extent practicable, to its existing training programs or such other recommendations which the HR Specialist may make in the course of the review. 7-Eleven will also ensure ongoing periodic updates to its programs to ensure alignment with relevant Commonwealth workplace laws.

12.4 7-Eleven will create a staff consultative forum with Employees from across the Franchise network. The Employee forum will be operated directly by 7-Eleven and will not include any Franchisees.

13. Wage Costs of Franchises

13.1 Prior to the sale of any new or existing Franchise, 7-Eleven will provide the following information to each prospective Franchisee:

- (a) information outlining the applicable minimum wages, loadings, penalty rates and overtime rates of pay for full-time, part-time and casual Employees of each classification under the relevant Fair Work Instrument;
- (b) detailed wage modelling, verified by 7-Eleven senior management, outlining the range of expected minimum wage costs required to operate the type of 7-Eleven store, including options by reference to the level of work performed by the Franchisee to reduce external wage costs (wage modelling);
- (c) details of the range of expected minimum working hours required to operate the type of 7-Eleven store; and
- (d) details of the specific store's income and expenditure data for a period of the previous two years (where available), to enable assessment of profitability by reference to lawful wage costs.

- 13.2 7-Eleven will provide to its existing Franchisees financial statements, verified by 7-Eleven senior management, outlining the Franchise's profit and loss over the previous two financial years (where available), including wage costs, within 60 days of the commencement of this Deed.
- 13.3 Where the results of the internal auditing and risk analysis, as undertaken in accordance with clause 6.8 and 6.9, indicate wage costs below award wage modelling, 7-Eleven must notify the Franchisee and refer the store to the Senior Manager for investigation.
- 13.4 7-Eleven will update its wage modelling information at least annually for accuracy and provide it to all Franchisees. Wage modelling is to be prepared in formats which reflect the various Franchises, including but not limited to: retail and fuel stores, single and multiple employee stores, and owner/operator stores.
- 13.5 7-Eleven will ensure that all information provided to Franchisees regarding wage modelling and financial statements is signed and verified by identifiable senior management personnel of 7-Eleven.

14. Engagement of Franchisees

- 14.1 7-Eleven will take reasonable steps to ensure that each Franchisee:
- (a) signs a compliance commitment document in which the Franchisee:
 - (i) certifies that its directors, officers and managers understand their obligations to comply with Commonwealth Workplace Laws;
 - (ii) agrees to report to 7-Eleven on the details of the terms and conditions upon which each Employee is engaged;
 - (iii) certifies that its director, officers and managers will not require or accept payments from Employees in respect of wages paid and acknowledge that such conduct is unlawful.
 - (b) registers for My Account Portal with the FWO; and
 - (c) at the time of entering into a Franchise agreement and thereafter, discloses to 7-Eleven other business interests that may be in conflict with or similar to the operation of a 7-Eleven convenience store or 7-Eleven convenience store and fuel outlet, including involvement in other franchise businesses, and commits to an ongoing obligation to update such information should this change whilst they remain a Franchisee. This disclosure obligation will also extend to disclosing business interests of family members of the Franchisee.
- 14.2 7-Eleven will include an express term in its Franchise agreements that are entered into during the term of this Deed to the effect that 7-Eleven and the Franchisee are both responsible for ensuring compliance with Commonwealth Workplace Laws and Fair Work Instruments in respect of all workers engaged by or through the Franchisee in a 7-Eleven store.

15. Public Inspection

- 15.1 This Deed is a public document.
- 15.2 The FWO may:
- (e) make this Deed available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (f) release a copy of this Deed pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (g) issue a media release in relation to this Deed; and
 - (h) from time to time, publicly refer to this Deed, including informing the public as to the status of this Deed.

16. Access to Stores

- 16.1 7-Eleven will allow and facilitate officers of the FWO access to its Franchises, stores or offices at any time for the purpose of the FWO verifying compliance with the Commonwealth Workplace Laws.
- 16.2 7-Eleven will provide the FWO with all documents requested by the FWO save that where 7-Eleven (acting reasonably) determines that it is appropriate or necessary, the FWO will, if required by 7-Eleven, issue a notice to produce for the documents requested.
- 16.3 Nothing in this clause prevents or restricts the FWO or any Fair Work Inspector from exercising a function or power which it holds under Commonwealth Workplace Laws or other legislation.
- 16.4 Nothing in this clause requires 7-Eleven to allow inspection of or provide copies of documents which are subject to legal professional privilege.

17. Commencement and Period of this Deed

- 17.1 This Deed comes into effect on the date that this Deed is executed by 7-Eleven and the FWO.
- 17.2 This Deed and its obligations will continue for a period of 3 years from the date of execution of this Deed by both parties, except where obligations provide for longer periods as stated in this Deed.

18. Continuing Obligations

- 18.1 The following clauses survive termination of this Deed for whatever reason (including termination by the FWO):
- (a) Clause 4.1(c) (Maintaining Employee Records);
 - (b) Clauses 6.1 to 6.6 (External Auditing), to the extent that it enables the annual external audit to be completed and records to be retained);
 - (c) any clause requiring reporting to FWO on a periodic basis regarding requirements during the period of this Deed, if that report falls due after the expiry of this Deed; and
 - (d) Clause 20 (No Inconsistent Statements).

19. Termination by the FWO

- 19.1 Without prejudice to any right or remedy the FWO may have, at any time, the FWO may, by notice in writing, terminate this Deed (that is, immediately and without notice) if 7-Eleven commits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.
- 19.2 The FWO will, in the case of any breach of this Deed by 7-Eleven, by notice in writing, require 7-Eleven to rectify the breach within a reasonable period of time.

20. No Inconsistent Statements

- 20.1 7-Eleven:
- (a) must not; and
 - (b) must ensure that each of its officers, employees or agents do not; and
 - (c) must use all reasonable endeavours to ensure that each of its Franchisees, contractors and sub-contractors do not,
- make any statement, orally, in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the acknowledgements made in this Deed.

21. Entire Agreement

21.1 This Deed, including the 7-Eleven Principles and the Methodology, constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. No oral explanation or information provided by either party to the other:

- (a) affects the meaning or interpretation of this Deed; or
- (b) constitutes any collateral agreement, warranty or understanding between the FWO and 7-Eleven.

22. Construction

22.1 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

22.2 Unless expressed to the contrary in this document:

- (a) words in the singular include the plural and vice versa; and
- (b) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

23. Severance

If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

24. Legally Binding

The terms of this document are intended to have immediate effect on all parties upon commencement of this Deed.

25. Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

26. Notices

26.1 Any notice, request or other communication to be given or served pursuant to this Deed must be in writing and dealt with as follows:

- (a) if given by 7-Eleven to the FWO at the address indicated in Schedule 1 or as otherwise notified by the FWO; or
 - (b) if given by the FWO to 7-Eleven, marked for the attention of 7-Eleven's Contact Person with the address indicated in Schedule 1 or as otherwise notified by 7-Eleven.
- 26.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.
- 26.3 Any notice, request or other communication will be deemed to be received:
 - (a) if delivered by hand, upon delivery;
 - (b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 business days after the date on which it was sent; and
 - (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

27. Costs

The parties must pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Deed and other related documentation.

28. Governing Law

This Deed shall be construed in accordance with the laws for the time being of the State of Victoria and the parties hereby submit to the jurisdiction of the Courts of that State and the Courts empowered to hear appeals from the Courts of that State.

29. Independent Legal Advice

7-Eleven acknowledges that:

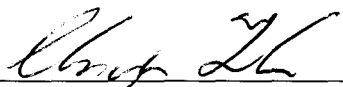
- (a) before executing this Deed, 7-Eleven was given the opportunity to seek independent legal and other advice of its choice;
- (b) in light of any advice provided, 7-Eleven considered its position; and
- (c) 7-Eleven fully understands the effect of this Deed.

30. Date of this Deed

The date the parties execute this Deed, or, if it is executed on different dates, the date of last execution.

EXECUTED AS A DEED

EXECUTED BY 7-ELEVEN STORES PTY LTD in accordance with section 127(1) of the *Corporations Act 2001* (Cth)



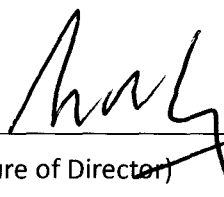
(Signature of Director/Secretary)

CLAYTON FORD

(Name of Director/Secretary)

6/12/2016

(Date)



(Signature of Director)

A.R. MCKAY

(Name of Director)

6.12.2016.

(Date)

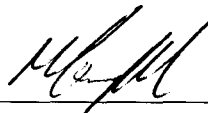
SIGNED FOR and on behalf of the **COMMONWEALTH OF AUSTRALIA** as represented by the Office of the Fair Work Ombudsman

MICHAEL CAMPBELL

(Printed Name)

Deputy Fair Work Ombudsman

(Title)



(Signature)

6 December 2016

(Date)

In the presence of:

LOUISE CATO

(Name of witness in full)



(Signature)

Annexure A

The 7-Eleven Wage Repayment Program (**7-Eleven WRP**) and the 7-Eleven Internal Investigation Unit have been established by 7-Eleven to investigate all claims of underpayment of wages by 7-Eleven franchisees and where relevant make appropriate payments to affected employees. The 7-Eleven WRP is supported by an independent Secretariat, managed by Deloitte.

Objectives

The 7-Eleven WRP & Internal Investigation Unit have been designed to meet the following objectives:

- Treat and redress the affected workers fairly, consistently, efficiently and in a timely manner. To do this, 7-Eleven will stand in the affected workers' shoes in processing their claims. Affected workers include current and past workers who were underpaid and those who were paid in full but were instructed to repay a portion of their wages to the franchisee.
- Ensure all affected workers will have an equal chance to participate.
- Adhere to the 7-Eleven Principles (set out below) at all times and embed the principles in the methodology and claims investigation and assessment process.
- Meet the expectations of the Fair Work Ombudsman (FWO).

Principles

The following principles underpin and inform the design and execution of the 7-Eleven WRP and the Internal Investigations Unit.

A "worker focused" approach is maintained at all times.

- All reasonable steps are taken to ensure that workers know about the existence of the 7-Eleven WRP & Internal Investigations Unit.
- Workers are encouraged to bring forward enquiries or complaints, and will be provided with information about how their personal information will be handled.
- All enquiries or complaints are investigated where workers provide proof of identity.
- Communication with workers is proactive, regular, timely, clear and transparent.
- Workers are provided with written reasons for the outcome of their enquiry or complaint.
- Workers are provided reasonable time to consider a determination and decide whether to accept a repayment offer.
- Workers can seek a review of decisions made by the 7-Eleven WRP and Internal Investigations Unit. They may also contact the FWO regarding any concerns.
- All reasonable steps are taken to substantiate enquiries or complaints, including gathering and considering documentary and non-documentary evidence.

Information gathered is maintained and used in an environment that facilitates the effective assessment of enquiries and complaints.

- Worker information is dealt with in a manner that complies with privacy laws and any confidentiality agreements.
- Workers are advised appropriately of the steps which may be undertaken to investigate, substantiate and rectify any enquiry or complaint, including how the worker's personal and identifiable information will be used.
- The 7-Eleven WRP will not disclose workers' identity or personal information to 7-Eleven, franchisees or other third parties without prior written consent being obtained (or as required by law).
- Once the 7-Eleven WRP is closed, any enquiries or complaints made to 7-Eleven's Internal Investigations Unit may necessitate disclosure of worker information to franchisees or other third parties in order to investigate and rectify underpayments or to address serious non-compliance.

Each enquiry or complaint is investigated fairly and as efficiently as possible and prioritised where relevant.

- Enquiries or complaints are prioritised where a worker identifies severe personal or financial hardship or other relevant individual circumstances.
- Workers receive payment of their claims within a reasonable amount of time after the worker agrees to the repayment offer.

A consistent methodology is applied to minimise the risk of rework.

- Workers have the opportunity to submit any documents or provide any information that they believe is relevant to their enquiry or complaint.
- 7-Eleven may seek information about a worker's enquiry or complaint from any other potential corroborating sources where required, provided the worker's confidential information is treated in a manner consistent with their consent.
- All relevant information is considered in assessing an enquiry or complaint. This includes, but is not limited to information provided by the worker, 7-Eleven, a franchisee and analytical models.
- All information considered in an investigation is recorded and stored securely.
- To the extent possible, all underpayments are calculated using the same methodology.

The investigation and assessment team are independent of the worker and there is no conflict of interest in assessing the claim.

- A governance forum exercises oversight of the 7-Eleven WRP and Internal Investigations Unit claims assessment process.

'Lessons learned' from the investigation process, including about non-compliance risks, are transferred into business as usual operations across the network.