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# Operation and effectiveness of the Franchising Code of Conduct

Submission to the Parliamentary Joint Committee  
on Corporations and Financial Services





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## Introduction

7-Eleven shares the community's concerns at recent developments within the broader franchising sector, acknowledging the systemic underpayment first identified within our franchised network.

The issues we confronted almost three years ago have necessitated a new way of doing business. With new leadership, new operating processes and standards, increased understanding of our franchised network and continuous learning, a new culture is evolving. Ours is a journey of continuous improvement and constant vigilance.

While the fundamental structure of the franchise model both in Australia and overseas is built on the separation and independence of franchisor and franchisee businesses, and the franchisee is the legal employer of their staff, community expectations and standards are such that all businesses (franchisor and franchisee) must meet appropriate workplace standards.

Franchisors cannot afford to ignore the fact that it is their brand at risk. 7-Eleven accepts that franchisors must do more to ensure that all of our standards – including Australian workplace laws - are fully upheld across the franchised network. The blurring of the lines between a third party or separate legal entity and the brand owner is now the norm.

7-Eleven welcomed the introduction and passage of the Government's Protecting Vulnerable Workers Bill, but believes further reforms are needed to the relevant industry codes to protect the rights of franchisee employees, the franchisors' brand, and thereby the investment and goodwill of other franchisees.

We welcome this inquiry, and look forward to contributing to the work of the Joint Parliamentary Committee in developing recommendations to raise the standard across the sector and ensure a transparent, balanced and hopefully prosperous partnership between franchisor and franchisee.

## Company profile

7-Eleven Stores Pty Ltd (7-Eleven) is Australia's first choice in convenience, and the largest convenience and independent petrol retailer in Australia. The company holds a license to operate and franchise 7-Eleven stores in Australia from the US based 7-Eleven Inc. 7-Eleven in Australia operates around 685 stores across our franchise and corporate network, covering Victoria, New South Wales, the Australian Capital Territory, Queensland, and Western Australia. Our stores conduct more than 228 million transactions a year, serving an average seven customers per second.

7-Eleven's franchise network incorporates both fuel and non-fuel businesses which means that both the Oil Code and Franchising Code apply to our business.



## The 7-Eleven franchise model

While there has been considerable commentary in the media about franchising in recent times, no two franchise models are exactly the same.

At 7-Eleven, we take a different approach to franchising than many others. We take care of many of the things that are a hassle about being a small business owner, and the items that sometimes cause financial distress, and provide our franchisees with support every step of the way.

Most franchise systems take a percentage of sales as a royalty. The 7-Eleven franchised business model is different because we tie our financial success to the success of our franchisees through sharing in gross profit, ensuring our focus is firmly on the profitability of our franchisees.

Under the 7-Eleven model, 7-Eleven covers many of the largest expenses borne by franchisees in other systems, including:

- fit out costs;
- building rent and outgoings;
- equipment purchase and maintenance;
- utilities (heating / cooling / lights and water);
- advertising and in store promotion;
- payroll services;
- recording and reporting of transactional and financial data;
- insurance for certain losses;
- bank and credit card fees; and
- a number of other business expenses.

In fact the only large costs that remain with the franchisee are the costs of labour and the cost of stock purchased for their store.

In addition, the 7-Eleven Store Agreement provides franchisees with guaranteed yearly gross income of \$374,000 for non-fuel stores, and \$342,000 for fuel stores. If a franchise is not making this amount, 7-Eleven will adjust the monthly charge to cover this minimum gross income. We work closely with individual franchisees to improve their businesses to avoid them having to rely on this guaranteed income.

7-Eleven works hard with franchisees to grow gross profit – not just sales - for the mutual benefit of both our business and our franchisees' businesses.

## Franchisee selection

The current 7-Eleven franchisee selection process is rigorous and multi-faceted, incorporating 15 stages taking at least six months and which incorporates eight weeks of classroom and in-store training. It is designed to integrate all participants involved in the selection of a new franchisee to ensure a consistent approach to each applicant.

The process begins with a focus on the individual. Each applicant must undertake a structured interview followed by an online self-assessment to ensure the results can be scaled and that they align with 7-Eleven



requirements. This is followed by a personal style survey which provides guidance as to whether the applicant's personality is suited to convenience retailing and customer service. At this stage an assessment of basic literacy and comprehension is also undertaken.

Building on the interview and personality assessment, each applicant is also required to undertake an in-store assessment under the observation of a 7-Eleven Regional Manager. This phase allows 7-Eleven to observe how the applicant operates in a real life retail situation and interacts with customers, deals with issues and challenges and their overall demonstration of business acumen.

Applicants are required to undertake eight weeks of unpaid training which consists of four weeks in a classroom with the balance in a store situation. The classroom training is wide-ranging but with particular focus on obligations under the Fair Work Act, human resources issues such as how to manage staff, rostering, OH&S, along with financial record keeping and reporting, tax obligations and in-store matters such as stock control.

Throughout all fifteen phases of the process, either the applicant/purchaser or 7-Eleven can choose to terminate the process without penalty or obligation unless within that period a franchise agreement has been entered into (in which event the provisions of the agreement will then govern the ability to terminate).

## Information and disclosure

### Terms of reference (a) (i-iv)

Buying any business entails some risk, and is not a guarantee of income at a particular level. Accordingly, 7-Eleven strongly supports full disclosure of all necessary information to ensure fully-informed decision-making and robust business planning by prospective franchisees.

At the outset (following expression of interest) 7-Eleven, gives to all enquiring parties a Franchising Code Information Statement (required for Non fuel stores).

When entering into a proposed agreement 7-Eleven additionally provides to a prospective franchisee:

- a copy of the Franchising Code of Conduct or Oil Code depending whether it is a fuel or non-fuel site;
- two copies of the Franchising Code disclosure document or the Oil Code disclosure (as applicable) to which is attached three discrete audit certificates signed by PricewaterhouseCoopers);
- two copies of the Franchise Agreement (called "Store Agreement") in the form in which it is to be executed (with all details completed and all exhibits and annexures attached);
- a statement of average earnings for the State in which the store is located and for the type of store;
- two copies of statements containing the information prescribed under the Codes as to current/previous operation of the store;
- copies of the income and expense statements and balance sheets for the past three full financial years and the current year to date for that store (accompanied by disclaimers and cautions as to reliance without due diligence);
- Wage Determinations/Current Wages Rates Summary;
- Acknowledgement Form;
- a further copy of the Franchising Code Information Statement;



- a copy of acknowledgement signed by franchisee;
- a copy of the store lease and (in Victoria only) copy of the Lessor's Disclosure Statement;
- a pro forma Certificate of Independent Legal Advice to be provided by the franchisee;
- a pro forma Statement as to Advice obtained to be provided by the franchisee;
- an Acknowledgement Form for receipt of prescribed disclosure documents; and
- a form of statutory declaration attesting to the accuracy of information provided.

It is important to note that currently 7-Eleven generally does not permit a new franchisee to start in a 'green field' store. They may either purchase an existing franchise business, or a 7-Eleven managed corporate store which has been operational for at least 18 months. In the case of the latter, this would be the exception to the provision of three years' of financials for a store.

In addition to the disclosure and related material referenced above, prospective franchisees are provided with templates for their business plan, financial model and employee roster - which includes costings - in addition to a statement of average earnings (national and state) for both fuel and non-fuel sites.

7-Eleven requires prospective franchisees to develop their own business and financial plans as this gives them a greater appreciation and understanding of the particular franchise they will be entering into. The National Franchise Manager provides final review of these plans and conditional approval of the applicant in conjunction with the General Manager Retail Operations and a 7-Eleven finance representative.

7-Eleven covers the insurance for certain losses and public liability (up to \$50 million) however we encourage franchisees to take out their own insurance for stock and income protection and advise them to seek advice from their accountant.

The typical term of the 7-Eleven Store Agreement is 10 years, unless limited by an earlier expiry of the property lease. 7-Eleven does not provide franchisees with any undertakings regarding geographic exclusivity, or impose any restraint of trade on former franchisees. The term of the franchise is not a guarantee to operate in perpetuity but for a fixed term.

In regard to suppliers and goods, product selection and price recommendation is undertaken by 7-Eleven. We do however recognise that each store may have customers with different needs, and there is the opportunity, in consultation with a Retail Business Manager, to bring in products to meet their customers' needs.

## Recommendation

The Australian Franchise Registry enables franchisors to have their franchise agreements and franchise disclosure documents independently vetted or verified against a published standard for compliance with the Franchising Code of Conduct. 7-Eleven, along with some 200 other franchisors are registered with the Australian Franchise Registry, giving their prospective franchisees, lenders, investors and other stakeholders' confidence in the full disclosure of information. The sector would likely benefit from broader participation in such a registry.

With regard to disclosure, 7-Eleven recommends that the relevant industry Codes be amended to require that all franchisors (as 7-Eleven currently does):



- are required to provide to prospective franchisees in addition to (but separately from) the presently prescribed disclosure documents information on likely wage costs and detailed wage modelling;
- provide all new franchisee staff, as soon as practicable after the commencement of their employment, with clear and up to date information about their workplace rights and responsibilities; and
- have in place a mechanism - for example, a whistle-blower hotline - that is widely communicated, available free of charge and on a confidential basis for franchisee employees to raise any questions or complaints or for franchisee staff to report suspected breaches of workplace rights to the franchisor.

## Dispute resolution

### Terms of reference (b)

7-Eleven believes the dispute resolution processes under the Franchising and Oil Codes are effective, timely and at minimal cost, easily accessible no matter the size of the franchisee or franchisor. We recognise the important role both the Office of the Franchising Mediation Adviser (OFMA) and the Dispute Resolution Adviser (DRA) play in the application of the relevant Codes.

## Unfair contract provisions

### Terms of reference (c)

7-Eleven fully endorses the philosophy which underpins the unfair contracts provisions as now embedded in the Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010) (**the ACL**).

The purpose of those provisions is to ensure that a contracting party with superior bargaining strength does not unfairly or unreasonably capitalise on that position.

Whilst helpfully outlining a series of examples of terms which may be unfair, the final determination under the ACL of whether such a characterisation can be properly applied requires that three elements be satisfied – that the term:

- (a) would cause a significant imbalance in the parties' rights and obligations;
- (b) is not reasonably necessary to protect the legitimate interests of the advantaged party; and
- (c) would cause a detriment (financial or otherwise) if relied upon.

It is considered that, as currently drafted, the overarching criteria strikes an appropriate balance between ensuring on the one hand that the requisite level of protection against oppressive or unreasonable terms is afforded to small business proprietors and on the other that the architects of those documents are not precluded from including terms which are reasonably necessary to protect their legitimate interests.

Only minimal adjustment to 7-Eleven's standard franchise agreement was required to ensure compatibility at the time of the introduction of the unfair contract provisions.

There have been instances of proceedings by the Australian Competition and Consumer Commission arising out of breaches or alleged breaches of the unfair contracts provisions but there is no evidence arising from those cases or otherwise to suggest that this particular part of the ACL is operating other than in the way it was intended.



It is 7-Eleven's submission that there is no need for any amendment of or expansion to the unfair contracts provisions has arisen.

## Harmonising and strengthening termination provisions

### Terms of reference (d)(e)

In 7-Eleven's experience, there are two important areas for reform when considering termination provisions across the Franchising Code of Conduct and the Oil Code:

- the termination provisions are inconsistent, tacitly establishing different standards in terms of acceptable behaviour across the franchisee base of a business where both Codes apply, and further complicates and frustrates the ability of franchisors to take effective action where required; and
- neither Code provides the franchisor with an express right to immediately terminate a franchise agreement in circumstances where the franchisee has failed to comply with workplace laws.

### Inconsistent provisions

Terminating a franchise agreement is a profound decision that can have serious financial and other ramifications for the parties. We see termination as a last resort, reserved for serious cases of non-compliance, and ideally, exercised rarely. Further, as a business built on partnerships, 7-Eleven believes that strong termination provisions must co-exist with robust compliance and education measures that minimise the need for franchisors to invoke termination powers.

There is no practical or public policy reason why franchisees who sell fuel and those who don't should be subject to different termination standards. Further, it is 7-Eleven's experience that the existence of varying provisions muddies the waters in terms of the rights of the parties in any individual case, tacitly establishes different standards in terms of acceptable behaviour across the franchisee base and further complicates and frustrates the ability of franchisors to take effective action where required.

Currently, each of the industry codes prescribe the circumstances when a franchise agreement may be terminated immediately by the franchisor. Currently, a franchisor must not terminate a franchise agreement for breach (without first giving the franchisee an opportunity to rectify the breach) unless the breach is specified as a special circumstance in either of the Codes. A comparison of the immediate termination provisions of the two codes is set out below.





Oil Code (clause 36)	Franchising Code of Conduct (clause 29)
Retailer no longer holds a licence that it is required to hold to carry on the business	Franchisee no longer holds a licence that the Franchisee must hold to carry on the business
Retailer becomes bankrupt, insolvent under administration or a Chapter 5 body corporate (within the meaning of the Corporations Act)	Franchisee becomes bankrupt, insolvent under administration or a Chapter 5 body corporate
	Incorporated franchisee is deregistered by the Australian Securities and Investments Commission
Retailer voluntarily abandons the fuel re-selling business	Franchisee voluntarily abandons the franchised business or the franchise relationship
Retailer is convicted of a serious offence	Franchisee is convicted of a serious offence
Retailer operates the fuel re-selling business (or an associated business conducted on the retail site) in a way that is fraudulent or that endangers public health, safety or the environment	Franchisee operates the franchised business in a way that endangers public health or safety
	Franchisee acts fraudulently in connection with operating the franchised business
Parties agree to termination	Parties agree to termination
Retailer breaches the agreement (other than as noted above) at least 3 times	
Retailer is likely, by continued occupation of the site, to cause substantial damage to the business, property or reputation of the Supplier.	
If the fuel re-selling agreement is a commission agency, the Retailer fails to bank the Supplier's money under the commission agency agreement	
The premises are either subject to compulsory acquisition by the Commonwealth or subject to a law that prohibits the sale of fuel	
The sale of motor fuel at the site is prohibited by or under a law relating to the use of the land	

## Recommendation

7-Eleven recommends the Committee consider harmonising the relevant provisions of the two key industry Codes (being the Oil Code and the Franchising Code of Conduct) that govern franchised retailers in Australia, with the goal of ensuring that all franchised businesses are subject to either a single Code, or consistent provisions across the Codes (particularly with respect to termination).

### Enabling termination for serious breaches of workplace laws

Wilful and serious breaches of workplace laws, such as underpaying employees, not only seriously harms vulnerable workers but also damages the goodwill and investment of every other franchisee in the network as the franchisor's ultimately brand suffers.



However, contrary to commonly held views, neither Code provides the franchisor with an express right to immediately terminate a franchise agreement in circumstances where the franchisee has failed to comply with workplace laws.

Instead, in order to immediately terminate on the basis of such a failure, the franchisor needs to either establish another basis for termination (such as fraudulent conduct, or, in the case of the Oil Code, reputational damage) or provide the franchisee with an opportunity to remedy the breach.

It can be difficult to gather the type of evidence required to confidently establish that the conduct falls within one of these remaining provisions – even in egregious cases. For example, underpayment of wages is unlikely, of itself, to constitute fraud (the fraud in fact arises from the lodgement of incorrect payroll records). It is therefore necessary to gather sufficient evidence to prove that there was some fraudulent conduct associated with or facilitating the underpayment practices.

If there is insufficient evidence to establish one of the special circumstances, the franchisor must necessarily fall back to issuing a breach notice and affording the franchisee a reasonable opportunity to remedy the breach. The franchisor will only be permitted to terminate if the actual breach identified in the notice is not rectified within the time frame specified by the notice (which has to be a reasonable time but does not need to be more than 30 days).

Under the Oil Code, franchisors do have a right to terminate immediately if three breach notices have been issued and have not been remedied (i.e. to prevent re-occurrence of breaches). The Franchising Code however provides no such avenue for addressing the problem and under its provisions underpayment could occur repeatedly throughout the term with no consequence to the franchisee (so long as it rectifies any instances of non- payment for which a breach notice issues).

The current Codes establish a bar that is simply too high, takes too long to meet, and does not strike the right balance between protecting the legitimate rights of franchisees and upholding the rights of workers and the broader integrity of the sector. Existing provisions significantly crimp the ability of franchisors to act against illegal activity, and in fact create disincentives to do so.

Aside from the challenges which are confronted in relation to termination, the need to conform to two separate Codes across one franchising network results in unnecessarily burdensome operational and reporting obligations, and imposes similar but discrete and additional disclosure requirements.

## Case Study

The difficulty in terminating a franchise agreement is no better illustrated than by a recent case dealt with by the NSW Court of Appeal where 7-Eleven was called upon to defend its actions in terminating an agreement due to the franchisee breaking workplace laws and affecting the reputation of 7-Eleven.

In 2011, 7-Eleven entered into a franchise agreement with [REDACTED] (the franchisee) to operate a convenience store and service station business under the 7-Eleven brand.

On 6 October 2016, 7-Eleven served a notice of termination of the franchise agreement on [REDACTED]. The notice was issued on the basis that [REDACTED] had acted fraudulently by operating a 'cash back' arrangement and that this was likely to cause substantial reputational damage to 7-Eleven.



The 'cash back' arrangement involved two employees being paid the award wage by 7-Eleven via 7-Eleven's central payroll system and then being required to pay to ██████████ a proportion of the award wage in cash with the result that the employees were paid an amount less than that due to them. ██████████ denied the "cash back" allegations and issued proceedings challenging the validity of the termination notice issued by 7-Eleven.

The case was initially heard in the NSW Supreme Court from 10 – 12 April 2017. In the proceeding, ██████████ sought, amongst other things, a declaration that 7-Eleven's termination of the franchise agreement was unlawful.

During the proceeding, the former employees were required to appear before the Court and be subject to cross-examination which was distressing for both. As the judge at first instance stated:

*Neither (former employees) was entirely comfortable with the English language and both were considerably nervous when they gave their evidence. I am also satisfied both were genuinely intimidated by, if not fearful of, ██████████. If I accept ██████████, for example, this is particularly the case where ██████████ made threats against him and his family.*

Ultimately, the judge in the first hearing found for 7-Eleven upholding the validity of the termination notice, stating:

*In accepting ██████████ did engage in fraudulent conduct by underpaying at least ██████████ ██████████ through the Cash Back Arrangements, I am satisfied this conduct caused damage to 7-Eleven's reputation.*

██████████ appealed the judgment to the NSW Court of Appeal. They primarily argued that the trial judge erred in his assessment of the creditability of ██████████ on the one hand and in preferring the evidence of the former employees on the other. The appeal was heard on 26 February 2018. On 27 March 2018, the Court of Appeal handed down its decision dismissing the appeal with costs.

This one termination has taken 18 months through the NSW Supreme Court and NSW Court of Appeal, during which 7-Eleven incurred significant legal, investigative and other costs in excess of \$750,000. While orders for costs have been made in 7-Eleven's favour, it is unclear to what extent those costs will be recoverable (if at all).

In 7-Eleven's view, this case provides a useful insight into the difficulties, both from a legal and practical perspective, a franchisor is likely to experience in terminating a franchise agreement even where there have been clear and serious breaches of workplace laws. Practical difficulties arise where a franchisee's employees are reluctant to give evidence in court for fear of reprisal. The significant costs of defending proceedings where termination is resisted can also operate as a deterrent to action and for the two thirds are likely to be small or medium size franchisors (Franchise Council of Australia) are likely to be prohibitive.

Further, immediate termination rights under the Oil Code and the Franchising Code are only available to a franchisor in very limited circumstances. In this case, the Oil Code applied, and where breaches of workplace laws were in issue, it would be necessary for 7-Eleven to show that the franchisee operated in a way that was fraudulent, or would be likely to cause substantial damage to the reputation of 7-Eleven. However, if the agreement came under the Franchising Code of Conduct and the same facts applied, only the single ground of fraudulent conduct would have been available to 7-Eleven to rely on. Demonstrating that a franchisee is operating in a way that is fraudulent is overly onerous and difficult. 7-Eleven believes



the threshold test of proving fraud is too high, and operates as a significant barrier to ensuring the standards the community expects to be upheld across the sector.

7-Eleven's experience demonstrates that the impediments to terminating a franchise agreement in cases of underpayment are challenging enough for a company the size of 7-Eleven to pursue through the courts, let alone the two-thirds of Australian franchisors that are small or medium businesses.

## Recommendation

Serious breaches of workplace laws within a franchised network harm the franchisees' employees, damage the franchisor's brand and thereby impact the investment and goodwill value of every other franchisee within the network.

To protect everyone's interests, serious breaches of workplace laws should be made grounds for immediate termination of a franchise agreement.

7-Eleven therefore recommends the addition of the following further special circumstances for immediate termination under both of the Codes where there has been non-compliance with Commonwealth workplace laws and Fair Work instruments, namely:

- the committing of a serious contravention (as defined in the Fair Work Act 2009 [‘the FW Act’]) of a civil remedy provision in sections 44(1), 45, 50, 280, 293, 305, 323, 325, 328, 357, 358, 359, 535 or 536 of the FW Act;
- one or more contraventions of the FW Act giving rise to significant underpayments (upwards of \$5,000 in total and including underpayment or non-payment of overtime and penalty rates);
- any successful prosecution of the franchisee under the FW Act; or
- 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 F.W Act.

In addition to the inadequacy of the termination provisions in the Codes explained above, 7-Eleven submits that the following inadequacies in the Code provisions also merit consideration. They are:

- (1) Clause 29(1) (c) of the Franchising Code of Conduct confers an immediate right of termination where a franchisee (which is a company) is de-registered by the Australian Securities Commission. The Oil Code does not so provide. There is no logical justification for this divergence in approach. A de-registered company can no longer hold any requisite licences or permits which are required in relation to the business nor can it be accountable for health and safety obligations. There are provisions under the Corporations Law which can give rise to an opportunity for a company which is subsequently reinstated to contend that its franchise agreement is also thereby resurrected. For the avoidance of any uncertainty (which could also arise by virtue of what, on one view, appears to have been an intentional omission) the anomaly between the Codes should be rectified. The Oil Code should be amended so that an immediate termination right arises where the franchisee is deregistered;
- (2) A further inconsistency is the inability of a franchisor under the Franchising Code of Conduct to deal with repeat breaches of the franchise agreement (or of the law) by



terminating where there are three or more such breaches. It was clearly considered to be appropriate for a franchisor which is a supplier of fuel outlets to have resort to that course of action and there seems no basis on which franchisors in other types of industries or retail activities should not have the same measure of ultimate control;

- (3) Again as pointed out above, conduct by a franchisee of a fuel outlet which is damaging to the reputation of the franchisor gives rise to a right of termination. One may ask why the reputational interests of Franchisors other than those that supply fuel are not worthy of the same protection. The changes which are urged in relation to payroll non-compliance would cover part of the need (if that is how the reputational damage arose) but conduct by a franchisee which can be detrimental to reputation covers a much broader field. It is submitted accordingly that there is a case for inclusion of a corresponding right of termination to that which is found in the Oil Code.
- (4) Both of the Codes provide for termination where the “*franchisee*” (in the case of the Franchising Code of Conduct) or “*retailer*” (under the Oil Code) is “*convicted of a serious offence*”. A serious offence is defined similarly in both Codes and includes any breach of the Corporations Act or otherwise an offence which attracts on a first conviction a sentence of not less than 5 years. The concern here is that most commonly the franchisee (or retailer) will be a company and not an individual and (except for offences under the Corporations Act) less likely to be convicted of a serious offence. This gives rise to a situation in which a principal director and shareholder (i.e. the person or one of the persons who really operates the business) can be subject to a conviction of the type defined but without any effect on his or her ability to remain in the franchise network. What a serious conviction may manifestly demonstrate is the total unsuitability (from a fitness and character or customer welfare perspective) of the person actually in charge of the business to continue to be a representative within the particular franchise organisation. It is submitted that there is a compelling need for an extension of clause 29(1)(e) in the Franchising Code of Conduct and clause 36(1)(d) in the Oil Code to include the sustaining of a serious conviction by a director who is also a shareholder.

It is suggested that the threshold should be the same as it is at present for the corporate franchisee i.e. the actual sustaining of a serious conviction. The presumption of innocence would make it inappropriate for any other approach to be contemplated

7-Eleven believes that the amendments recommended above would provide measured and appropriate scope for franchisors to act decisively on the issues currently facing the sector, consistent with public expectations and the expectations of regulators and policy makers.

## 7-Eleven’s remediation and reform journey

The Terms of Reference for the Inquiry does not cover the underpayment issues experienced initially in 7-Eleven’s franchised network and subsequently by other franchisors. However recent scrutiny of the franchise sector, and the balance of rights and obligations between franchisor and franchisee, can partly be traced back to these underpayment revelations.



In light of this, 7-Eleven was the first franchisor to overhaul its technology, systems and processes to ensure as far as is possible, that these practices will not occur again within its franchise network.

Additionally, the reform process has also seen 7-Eleven review how it introduces franchisees into the network, the training provided such as workplace laws and obligations, placing greater emphasis on the importance of seeking independent legal and financial advice along with providing employees with information regarding their workplace rights.

These matters go to the core of the Terms of Reference and we believe our experiences can greatly assist the deliberations of the Committee.

## Repaid wages

The plight of underpaid workers was the 7-Eleven's primary focus. Our owners promptly committed to repaying & restoring any underpaid individual, without any legal obligation to do so.

The Wages Panel, then the Wage Repayment Program, were communicated directly and regularly to more than 15,000 current and former employees, and via public calls in a range of national and international media over 18 months. Wage claims were handled confidentially by the Independent Secretariat – which grew to 50 people dedicated to the task.

Our Wages Repayment Program – with its focus on making it as simple as possible for the claimant, underpinned by a documented and robust methodology and supported by a professional independent secretariat - has become a subject of academic interest as a best-practice model of remediation.

Over 18 months, more than \$160 million in wages and superannuation has been repaid, in what is Australia's largest ever wage repayment program.

Following the closure of the Wage Repayment Program last year, we established an internal Wage Claims Program following a similar approach.

We said we would remediate underpaid workers as comprehensively and efficiently as possible, and that is exactly what we have done.

## New leadership

Providing restitution to affected employees was only one part of the journey. The business needed to change, and our reform appropriately started from the top.

A new Chairman of the Board was appointed, along with three new Non-Executive Directors. These new Directors brought diverse and highly relevant skillsets, across corporate governance, finance, strategy and cross cultural engagement.

The senior leadership team was also overhauled, including the departure of the former CEO and Operations Manager, and the appointment of a new CEO. More than two-thirds of the senior leadership team are new to roles or to the business since the underpayment issue was revealed.



## Business reform

7-Eleven has taken a number of substantial steps to tackle and stamp out wage fraud at the franchised store network level, including:

- a multi-million dollar investment in innovative store level technology to centrally record and capture time and attendance records for all franchisee employees through biometric (thumbprint) sign-on and sign-off;
- centralising payroll and implementing oversight and other monitoring measures to ensure payroll non-compliance is more easily identifiable;
- investing in a significant increase in field-level investigation and compliance activity;
- creating a sophisticated data analytics, monitoring and reporting platform to further help identify unusual instances or patterns of behaviour;
- establishing a hotline to ensure that any employee or person can make an enquiry or lodge a complaint about non-compliance with workplace laws;
- aggressively investigating and, where required, acting - as far as possible under the current Codes - upon any allegations of unlawful store activity; and
- increasing franchisees' profit share and minimum gross profit guarantees under our Franchise Agreement, positioning 7-Eleven's model as among the most competitive and attractive in the franchise industry.

7-Eleven also voluntarily entered into an industry-leading Proactive Compliance Deed with the Fair Work Ombudsman (FWO) in which we committed to a range of further reforms, including:

- enhancing in-store identification of staff and their hours worked;
- establishing consultative channels with employees from across the Franchise network;
- reviewing, developing and delivering workplace relations training for all team members;
- regular communication to all employees regarding their workplace rights, where to find further information, and how to make inquiries or lodge a complaint; and
- regular reporting to the FWO on progress in relation to commitments outlined in the Deed.

Much of this work is now implemented or well on its way to completion.

Natalie James of the FWO said *"The measures in this deed are the most robust and comprehensive that any franchise brand has in place in Australia."*

It is important to note that the cost of acquiring and applying the technological and human resources listed above would likely be beyond the reach of the vast majority of franchisors in Australia who are small to medium size (Franchise Council of Australia).



## Concluding statement

From the outset, 7-Eleven has sought to be an exemplar of a solution to a problem that was overwhelmingly associated with our business and has now regrettably proven to be significantly broader than our franchised network. It is in fact an economy wide issue.

We trust our experience, lessons learned and suggestions for further reform may assist the Committee in its important deliberations.

We would welcome the Committee publishing this submission, and the opportunity to elaborate further on these matters before the Committee.

The contact for this submission is:

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