

**Senate Education and Employment References Committee  
Questions on Notice – Friday, 20 November 2015  
Melbourne, VIC**

**The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders**

Question number	Hansard page number	Witness	Question asked by	Answered
1	14	Independent Franchisee Review and Staff Claims Panel	Senator O'Neill	Yes
2	15	Independent Franchisee Review and Staff Claims Panel	Senator O'Neill	Yes
3	16	Independent Franchisee Review and Staff Claims Panel	Senator O'Neill	Yes
4	17	Independent Franchisee Review and Staff Claims Panel	Senator O'Neill	Yes
5	20	Independent Franchisee Review and Staff Claims Panel	Senator Rice	Yes
1	27	Franchise Council of Australia	Chair	Yes
2	29	Franchise Council of Australia	Senator Rice	Yes
3	29	Franchise Council of Australia	Senator McKenzie	Yes
4	Written QoN's	Franchise Council of Australia	Senator Lines	Yes
1	41	Baiada	Chair	Yes
2	42	Baiada	Senator McKenzie	Yes
3	43	Baiada	Senator Rice	Yes
4	43	Baiada	Senator Rice	Yes
5	44	Baiada	Senator Rice	Yes
6	45	Baiada	Chair	Yes

**Senate Education and Employment References Committee**  
**Questions on Notice to the Independent Franchisee Review and Staff Claims Panel**  
**Friday, 20 November 2015**  
**Melbourne, VIC**

**The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders**

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**1. HANSARD, PAGE 14**

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**Senator O'NEILL:** Could you provide copies of the documents that you referred to, which you are providing offers on to the participants in the scheme?

**Dr Cousins:** We can provide a pro forma of those relevant documents.

**Senator O'NEILL:** Have you had any input into the document that you said is being drawn up by 7-Eleven?

**Dr Cousins:** Yes, we have.

**Senator O'NEILL:** Could you provide a copy of that as well?

**Dr Cousins:** It is a 7-Eleven document, but I am sure that, with their agreement, we can provide it.

*Templates of the Fels Panel documentation sent to claimants is attached and includes:*

- *Fels Panel Letter to claimant;*
- *Fels Determination amount form;*
- *Fels Declaration; and*
- *Fels Frequently asked questions.*

*Templates of the 7-Eleven documentation sent to claimants is attached and includes:*

- *7-Eleven Deed Covering letter;*
- *7-Eleven Deed of acknowledgement and assignment; and*
- *7-Eleven Payment details form.*

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**2. HANSARD, PAGE 15**

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**Ms Hennessy:** We do have in the letter a reference to them being able to seek independent advice.

**Dr Cousins:** I do not have that letter with me.

**Senator O'NEILL:** But you will provide that for us on notice?

**Dr Cousins:** Sure.

*Referenced in the attached template letter to successful claimants by the Fels Panel explains that claimants are entitled and able to seek independent advice on the determination of the Fels Panel.*

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**3. HANSARD, PAGE 16**

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**Senator O'NEILL:** There are a lot of questions around that, that I am going to end up putting on notice to you, with regard to the process, because I have significant concerns about that. Given that you have—was it 60?—claims that look like they are ready to go, what is the process in terms of going to 7-Eleven? How many claims have been accepted?

*As of the 15<sup>th</sup> December the Fels Panel have received over 1,100 claims. We have determined 136 successful claims and referred 43 to 7-Eleven to be paid.*

*When the Fels Panel determines a claim successful, the claimant is sent a letter that explains how the Fels Panel determined the specific gross amount of underpayment by 7-Eleven. The successful claimant can either accept the determined figure by the Fels Panel or they can request for it to be reviewed again if they disagree with the amount. If they accept the determined amount they must sign and return a declaration that confirms that the information submitted by them was true and accurate. The Fels Panel then forwards the claimant's declaration and the determined gross amount to 7-Eleven.*

*Independent Claim Pty Ltd on behalf of 7-Eleven will then send a deed of release and assignment to the claimant to sign and return before payment as well as a request for the bank details for the payment to be made to. 7-Eleven have informed the Fels Panel that payments will be issued every Thursday for successful claimants that have returned their deed of release by COB the Tuesday before. They will calculate the tax amount to be deducted from the gross payment. Independent Claim Pty Ltd will forward the PAYG to the claimant and to the Fels Panel as confirmation of payment.*

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#### 4. HANSARD, PAGE 17

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**Senator O'NEILL:** Is there a chance that this might be a relative of Mrs Barlow?

**Ms Hennessy:** I do not know.

**Senator O'NEILL:** Can you take these on notice. I am sure that there will be a bit of interest.

*The Fels Panel is not involved in 7-Eleven's payment process or in their decision to establish a separate entity 'Independent Claims Pty Ltd' (ABN: 21 608 850 157) of which to process all claim payments. The Fels Panel believes that the Mrs Barlow, Senator O'Neill refers too, is Beverley Barlow who owns Australia's 7-Eleven business with her brother Russell Withers.*

*7-Eleven has made an unequivocal commitment to the Fels Panel to pay any employee, past or present, that we find has been underpaid and to pay, without question, the amount we determine they should be paid. 7-Eleven has also reaffirmed that there is neither a financial cap on our decisions, nor any time limit although it has been the Fels Panel's hope that the process for making claims could be wound up by the middle of the coming year*

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#### 5. HANSARD, PAGE 20

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**Senator RICE:** With the 600 claims that you have received so far, how many stores does that represent?

**Ms Hennessy:** I am not sure that we have that figure.

**Senator RICE:** Can you take that on notice.

**Ms Hennessy:** Yes.

*There are 652 physical stores currently not ceased across Australia. The Fels Panel has received over 1,100 claims submitted as of 15<sup>th</sup> December 2015, of those that we have processed the claims submitted represent 315 physical stores.*

**THE FELS PANEL'S RESPONSE TO SUGGESTIONS BY THE  
SENATE EDUCATION AND EMPLOYMENT REFERENCES COMMITTEE**

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**6. HANSARD, PAGE 23**

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**Senator McKENZIE:** I have to say that that beggars belief, given the amount of time that this scam has been going on for and the number of workers that have gone through the system—that writing 15,000 letters to people that are currently on payroll isn't going to cut it.

**Dr. Cousins:** No, these are people who have been on the payroll. They may not still be on the payroll; they may be former employees.

**Senator McKENZIE:** Have you done any checking with the department of education, cross-referencing the list of workers that you have with those who hold student visas?

**Dr. Cousins:** I do not think we have, but if you think that is a good idea, we should look at that.

*The Fels Panel, and Deloitte as the Secretariat who receives the claims, have undertaken from the start of this process to keep the personal details of claimants confidential; further we have maintained that we will not be collecting information on claimants' immigration or visa status. To conduct cross check of the nature would be in effect providing details all of the claimants to the Department of Education, who may in turn feel obliged to report to the Department of Immigration. Further, due to privacy law considerations, it is unlikely the Department of Education would grant such a request.*

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**7. HANSARD, PAGE 20**

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**Senator McKENZIE:** I think it might help to save on a few stamps. It may target your efforts in a more fruitful area.

**Senator O'NEILL:** And through international recruitment agencies overseas that might have contacts into that sector, plus government agencies in other countries from which the predominant population has been drawn—Pakistan, India, China.

*Very few claimants, if any that the Fels Panel is aware of, obtained their employment via a recruitment agency here or overseas. Most claimants that have interacted with the Fels Panel and Secretariat obtained employment through a friend or relative. It is for this reason that the social media campaign and community engagement program devised by engagement specialists consulting to the Fels Panel have devised a strategy in reaching what is a tight knit community.*

*An enquiry of government agencies in other countries is likely to yield the same result as outlined above. It may be tantamount to reporting claimants to government authorities (which the Fels Panel has undertaken not to do); and/or the Fels Panel is unlikely to be given information from these departments due to privacy.*



[LetterDate]

Dear [ClaimantName],

Claim number: [ClaimNumber]

Reference: [Reference1] [Reference2] [Reference3] [Reference4] [Reference5] [Reference6]  
[Reference7] [Reference8]

Thank you for submitting your Claim [ClaimNumber] ("**Claim**") to the Independent Franchisee Review and Staff Claims Panel (also called the Fels Wage Fairness Panel) – established by 7-Eleven ("**Panel**").

### **I. Panel Process**

The Panel's role is to investigate allegations of non-compliance by 7-Eleven franchisees in respect of employee wages and entitlements. The Panel has reviewed your claim and the evidence provided in support of it, and has also examined 7-Eleven payroll records.

Based on the available information, the Panel has made a determination of the amount you have been underpaid by your franchisee employer(s). This amount is considered to be fair in all circumstances.

The Panel has generally not been able to calculate precise amounts of underpayment because of the lack of complete records. To attempt to do so would mean significant delay in making a payment to you.

If you consider the Panel's determination does not fairly estimate the amount you are owed you should address the Panel as soon as possible and the matter will be reviewed. This does not mean a different determination will necessarily be made, but it will delay any payment to you.

### **II. Your Claim- Determination**

The Panel has determined the under-payment amount for you which is set out in the attached document ("**Determination Amount**").

### **III. Next Steps**

In order to receive the Determination Amount, you should:

1. Read and understand the contents of this Package:
  - a. Declaration
  - b. The Determination Amount
  - c. Frequently Asked Questions
2. Review the Determination Amount attached;
3. Decide whether you accept the Determination Amount as being in full and final satisfaction of any and all wages and entitlements relating to your employment with the named 7-Eleven store;

4. If so, complete the Declaration and **return them to the Panel** via email to [panelclaims@deloitte.com.au](mailto:panelclaims@deloitte.com.au) quoting your claim number so we may identify you.

The Frequently Asked Questions information sheet has been prepared by 7-Eleven to assist you.

The Declaration is required to be made to the Panel because you must confirm that:

- the information you have given to the Panel and your Claim is true; and
- you accept the process applied to make the Determination.

Once you return the completed Declaration, the Panel will formally advise 7-Eleven to arrange payment to you. This payment will equal the Determination Amount less an amount of tax as agreed by the Australian Taxation Office and an amount for superannuation contributions based on those payments.

7-Eleven will then send you a written confirmation, along with a Deed of Acknowledgement and Assignment ("**Deed**") and Information Sheet, so you can provide your current details, including your bank account details to receive payment.

These are required to be completed and signed in order to receive payment. The Deed acknowledges that you will be paid the amount owing to you and you cannot make a further claim for the same entitlements from the franchisee employer. You will also not be able to seek further repayment in relation to this claim via the Panel in respect of the named 7-Eleven store. However, if you believe you are still being underpaid for the period after you lodged your claim, you will be able to make a separate (and new) claim in relation to that period of time. This new claim will be dealt with via the Panel's usual claims process.

The Deed once signed should be sent back to **Independent Claims Pty Limited**, a company established by 7-Eleven to facilitate payments. The Deed will assign to 7-Eleven the right to (if required) ask the franchisee to pay back some or all money to 7-Eleven the amounts paid to you. If 7-Eleven do ask the franchisee to pay them back, 7-Eleven will ensure that your identity is kept confidential from the franchisee. More information about this will be set out in the confirmation you will receive from 7-Eleven. Any questions in relation to the Deed and the payments process following the Panel's Determination Amount should be directed to, 7-Eleven/Independent Claims Pty Limited at [EMPclaims@7eleven.com.au](mailto:EMPclaims@7eleven.com.au).

Your past and present immigration and visa status have not been considered by the Panel in calculating the Determination Amount, and will not be relevant to any payment made to you. If you have any concerns about these matters, you can contact the relevant authorities or seek independent advice.

Yours sincerely,

The Fels Wage Fairness Panel

Attached –

Declaration  
Determination Amount  
FAQs



## DETERMINATION AMOUNT

Claim number: [Claim number]

Reference: [Reference1] [Reference2] [Reference3] [Reference4] [Reference5] [Reference6] [Reference7]

Please find the summary of your determination amount below relating to the following Franchisees and stores your claim relates to.

Franchisee	Store Code	Store Address	Employee Code
[Franchisee1]	[StoreCode1]	[StoreAddress1]	[EmployeeCode1]
[Franchisee2]	[StoreCode2]	[StoreAddress2]	[EmployeeCode2]
[Franchisee3]	[StoreCode3]	[StoreAddress3]	[EmployeeCode3]
[Franchisee4]	[StoreCode4]	[StoreAddress4]	[EmployeeCode4]
[Franchisee5]	[StoreCode5]	[StoreAddress5]	[EmployeeCode5]
[Franchisee6]	[StoreCode6]	[StoreAddress6]	[EmployeeCode6]
[Franchisee7]	[StoreCode7]	[StoreAddress7]	[EmployeeCode7]
[Franchisee8]	[StoreCode8]	[StoreAddress8]	[EmployeeCode8]

The total summary payment is comprised of:

	Hours	Total Amount
Ordinary time	[OrdinaryHrsTotal]	[OrdinaryAmntTotal]
Overtime	[OvertimeHrsTotal]	[OvertimeAmntTotal]
Leave entitlements	[LeaveHrsTotal]	[LeaveAmntTotal]
Interest	N/A	[InterestAmntTotal]
<b>Total</b>		<b>[DeterminationAmount]</b>

Note: Income tax will be withheld and remitted to the Australian Taxation Office. Superannuation contributions will be made based on the Determination Amount.

The summary of payments above is comprised of individual determinations based on each store and franchisee your claim relates to. Please find a further breakdown of each individual determination below.

### **Determination for employee code: [EmployeeCode1]**

Store Code: [StoreCode1]

Franchisee: [Franchisee1]

Store address: [StoreAddress1]

	Hours	Total Amount
Ordinary time	[OrdinaryHours1]	[OrdinaryAmount1]
Overtime	[OvertimeHours1]	[OvertimeAmount1]
Leave entitlements	[LeaveHours1]	[LeaveAmount1]
Interest	N/A	[InterestAmount1]
<b>Total</b>		<b>[TotalAmount1]</b>

**Determination for employee code: [EmployeeCode2]**

Store Code: [StoreCode2]

Franchisee: [Franchisee2]

Store address: [StoreAddress2]

	<b>Hours</b>	<b>Total Amount</b>
Ordinary time	[OrdinaryHours2]	[OrdinaryAmount2]
Overtime	[OvertimeHours2]	[OvertimeAmount2]
Leave entitlements	[LeaveHours2]	[LeaveAmount2]
Interest	N/A	[InterestAmount2]
<b>Total</b>		<b>[TotalAmount2]</b>

**Determination for employee code: [EmployeeCode3]**

Store Code: [StoreCode3]

Franchisee: [Franchisee3]

Store address: [StoreAddress3]

	<b>Hours</b>	<b>Total Amount</b>
Ordinary time	[OrdinaryHours3]	[OrdinaryAmount3]
Overtime	[OvertimeHours3]	[OvertimeAmount3]
Leave entitlements	[LeaveHours3]	[LeaveAmount3]
Interest	N/A	[InterestAmount3]
<b>Total</b>		<b>[TotalAmount3]</b>

**Determination for employee code: [EmployeeCode4]**

Store Code: [StoreCode4]

Franchisee: [Franchisee4]

Store address: [StoreAddress4]

	<b>Hours</b>	<b>Total Amount</b>
Ordinary time	[OrdinaryHours4]	[OrdinaryAmount4]
Overtime	[OvertimeHours4]	[OvertimeAmount4]
Leave entitlements	[LeaveHours4]	[LeaveAmount4]
Interest	N/A	[InterestAmount4]
<b>Total</b>		<b>[TotalAmount4]</b>

**Determination for employee code: [EmployeeCode5]**

Store Code: [StoreCode5]

Franchisee: [Franchisee5]

Store address: [StoreAddress5]

	<b>Hours</b>	<b>Total Amount</b>
Ordinary time	[OrdinaryHours5]	[OrdinaryAmount5]
Overtime	[OvertimeHours5]	[OvertimeAmount5]
Leave entitlements	[LeaveHours5]	[LeaveAmount5]
Interest	N/A	[InterestAmount5]
<b>Total</b>		<b>[TotalAmount5]</b>

**Determination for employee code: [EmployeeCode6]**

Store Code: [StoreCode6]

Franchisee: [Franchisee6]

Store address: [StoreAddress6]

	<b>Hours</b>	<b>Total Amount</b>
Ordinary time	[OrdinaryHours6]	[OrdinaryAmount6]
Overtime	[OvertimeHours6]	[OvertimeAmount6]
Leave entitlements	[LeaveHours6]	[LeaveAmount6]
Interest	N/A	[InterestAmount6]
<b>Total</b>		<b>[TotalAmount6]</b>

**Determination for employee code: [EmployeeCode7]**

Store Code: [StoreCode7]

Franchisee: [Franchisee7]

Store address: [StoreAddress7]

	<b>Hours</b>	<b>Total Amount</b>
Ordinary time	[OrdinaryHours7]	[OrdinaryAmount7]
Overtime	[OvertimeHours7]	[OvertimeAmount7]
Leave entitlements	[LeaveHours7]	[LeaveAmount7]
Interest	N/A	[InterestAmount7]
<b>Total</b>		<b>[TotalAmount7]</b>

**Determination for employee code: [EmployeeCode8]**

Store Code: [StoreCode8]

Franchisee: [Franchisee8]

Store address: [StoreAddress8]

	<b>Hours</b>	<b>Total Amount</b>
Ordinary time	[OrdinaryHours8]	[OrdinaryAmount8]
Overtime	[OvertimeHours8]	[OvertimeAmount8]
Leave entitlements	[LeaveHours8]	[LeaveAmount8]
Interest	N/A	[InterestAmount8]
<b>Total</b>		<b>[TotalAmount8]</b>



**DECLARATION BY CLAIMANT TO INDEPENDENT FRANCHISEE REVIEW AND STAFF CLAIMS**

**PANEL – ESTABLISHED BY 7-ELEVEN.**

Claim number: [ClaimNumber]

Reference: [Reference1] [Reference2] [Reference3] [Reference4] [Reference5] [Reference6] [Reference7] [Reference8]

I, .....[name], of .....

.....[Address] declare that the

information provided by me to the Independent Franchisee Review and Staff Claims Panel – established by 7-Eleven (“Panel”) is true and accurate and to the best of my knowledge accurately represents my work history at 7-Eleven.

I agree and acknowledge that the Panel has made a Determination that a gross amount of [DeterminationAmount] (“Determination Amount”) should be paid to me subject to me completing and returning the Deed of Acknowledgement & Assignment.

I agree and acknowledge that the Determination Amount represents an estimate considered fair in all the circumstances which the Panel has determined is in full and final satisfaction of any wages and entitlements owing to me in relation to my employment with the following 7-

Eleven store/s:

Employee Code	Store Code	Franchisee	Determination Amount
[EmployeeCode1]	[StoreCode1]	[Franchisee1]	[TotalAmount1]
[EmployeeCode2]	[StoreCode2]	[Franchisee2]	[TotalAmount2]
[EmployeeCode3]	[StoreCode3]	[Franchisee3]	[TotalAmount3]
[EmployeeCode4]	[StoreCode4]	[Franchisee4]	[TotalAmount4]
[EmployeeCode5]	[StoreCode5]	[Franchisee5]	[TotalAmount5]
[EmployeeCode6]	[StoreCode6]	[Franchisee6]	[TotalAmount6]
[EmployeeCode7]	[StoreCode7]	[Franchisee7]	[TotalAmount7]
[EmployeeCode8]	[StoreCode8]	[Franchisee8]	[TotalAmount8]

I acknowledge I am wholly responsible for my own personal taxation or immigration arrangements.

.....  
Signature of Claimant

.....  
Signature of Witness

Date: .....

Date: .....

.....  
Name of Claimant(please print)

.....  
Name of Witness (please print)



## Frequently asked questions

### ***How much will I be paid?***

You will be paid the amount which has been recommended by the Panel as owing (**Determination Amount**). This is the amount that has been determined by the Panel as an estimate considered fair in all the circumstances of all money owed to you as a result of any underpayments of wages and employee entitlements by the 7-Eleven store/s you worked at. We note that given the difficulty in determining this precisely and the desire to deliver timely payments to individuals without the need for them to go to court to recover the money personally from their employers the amount determined by the Panel as payable (while a fair estimate) may not be the exact amount you would have received.

### ***How will I be paid?***

7-Eleven has set up a separate company called Independent Claims Pty Ltd (**Independent Claims**) which will pay the Determination Amount recommended by the Panel to you. In order to do this 7-Eleven will need you to confirm your details by filling out a Payment Details Form. This will be provided to you before you are paid.

By signing the acknowledgement on the payment details form you will consent to 7-Eleven providing these details to Independent Claims so it can pay the Determination Amount to you.

### ***Why do I need to sign the Declaration?***

The Panel requires you to sign the Declaration before it makes a final recommendation to 7-Eleven because you must confirm that your Claim is truthful, and that you understand and accept the Panel process.

### ***Why do I need to sign the Deed?***

You need to sign the Deed to acknowledge that you will be paid the amount owing to you and so that 7-Eleven may then (if required) ask the franchisee/s to pay to it the money 7-Eleven paid you. This is because the franchisee/s who employed you owes you the money but Independent Claims has paid it to you so that you don't have to get it from the franchisee yourself.

### ***What does the Deed mean for me?***

The Deed says that once you are paid the amount by Independent Claims, you will have been paid all the monies owing to you. This means that you cannot make more claims for payment from your employer/s at these stores.

The Deed also says that you have not already been paid by your employer/s for the wages and entitlements you have claimed via the Panel.

### ***What does “Assignment” mean?***

The Assignment Deed means that you hand over your rights to pursue your employer/s to Independent Claims in exchange for a payment by Independent Claims directly to you for the underpayments identified by the Panel. This will give 7-Eleven the option to (if required) pursue the franchisees for the money that Independent Claims has paid to you. You will not be able to pursue your employer/s for more back-pay. The amount paid to you by 7-Eleven will mean that you have received all the money owing to you.

### ***Will I have to pay tax on the Determination Amount?***

The amounts paid to you by Independent Claims may include amounts in respect of:

- Wages
- Annual leave / long service leave entitlements; and
- Interest.

These amounts would be expected to be included as assessable income when lodging your income tax return. In consultation with the Australian Tax Office (**ATO**) it has been agreed that the Determination Amount paid to you will be assessable in the year in which it is paid to you – even though it may relate to earlier years.

The ATO has also advised that Independent Claims is required to withhold tax at the rate of 34.5% from the wages and leave entitlements components of the Determination Amount (no tax will be withheld from the interest component of the Determination Amount). The amount withheld by Independent Claims (as required by the ATO) will be paid to the ATO as PAYG Withholding.

Independent Claims will issue a PAYG Payment Summary to you in respect of the wages and leave entitlements paid to you.

The PAYG Payment Summary will include:

- Gross Payments – this will include amounts of wages that relate to work performed in the current financial year as well as payments of annual leave / long service leave entitlements
- Lump Sum E – this will include amounts of wages that relate to work performed in previous financial years
- Total Tax Withheld – this will include the amount of PAYG tax withheld and paid to the ATO.

Depending on your personal financial situation you may be required to pay more or less tax on the Determination Amount and any interest paid following lodgement of your 2015/2016 tax return.

By signing the attached Deed you acknowledge that you will be responsible for any tax liability that flows from this and will not be able to recover any additional amounts from 7-

Eleven, the 7-Eleven Store or Independent Claims. Similarly, any tax refund that may result following lodgement of your 2015/2016 income tax return is not required to be returned to 7-Eleven.

The ATO has advised that 7-Eleven store employers are not required to amend prior year PAYG Payment Summaries and employees are not required to amend prior year income tax returns as a result of receiving payments from Independent Claims.

***Will the payment of the Determination Amount affect my current working Visa?***

Your past or present visa status has not been considered by the Panel. We are not able to provide you with immigration advice. If you have any concerns regarding the affect of the payment of the Determination Amount on your current or past working Visa we recommend you seek separate legal advice or contact the relevant authority.

By signing the Deed you acknowledge that you are responsible for your own immigration matters.

***Will I receive Superannuation?***

Yes, superannuation will be paid to your superannuation fund based on the Determination Amount.

This means it will be paid in respect of all Ordinary Time Earnings paid to you. Ordinary Time Earnings includes payments of wages. It does not include payments of interest, overtime or annual /long service leave on termination of employment. Payments will be calculated in accordance with the Superannuation legislation.

***Where will my Superannuation be paid?***

If you are a current employee of a 7-Eleven store it will be paid to the current superannuation fund that your existing employer is making superannuation contributions to.

If you are not a current employee, Independent Claims will arrange for a superannuation account to be established at the default superannuation fund under the applicable industrial agreement. Contact details for the relevant superannuation fund(s) are provided below:

Name of superannuation fund: REST Industry Super

Phone number: 1300 300 778

Email address: [contact@rest.com.au](mailto:contact@rest.com.au)

***Will my employer or former employer know I have made a claim?***

No, this process is entirely confidential and your identity will not be disclosed to your former employer/s at any time by the Panel, 7-Eleven or Independent Claims Pty Ltd. In recovering amounts from 7-Eleven stores, 7-Eleven (and Independent Claims) will not disclose to your 7-Eleven store employer/s or prior employer/s details of individual identities or amounts paid to individuals.

***Should I seek legal advice?***

To receive the Determination Amount you will need to sign the Deed. One of the terms of the Deed is an acknowledgement that you have had the chance to seek independent legal advice before signing the Deed. It is matter for each individual whether they choose to seek advice before signing the Deed, however please be aware that this option is open to you and you are encouraged to exercise it if you have any concerns or require clarification beyond which the Panel can provide.

***Will I have to go to court?***

No, this process is designed to bring a quick resolution to any underpayment claims you may have had against any 7-Eleven store you may have worked for without the need for legal fees and having to go to court.

***What happens if I make a false claim?***

Making a false claim is a very serious matter. By signing the Deed and the Declaration form you are attesting to the truthfulness of your claim for underpayment of wages and employee entitlements by a 7-Eleven store. A false claim is a serious matter so you should ensure you have been honest before finalising your claim and accepting payment.

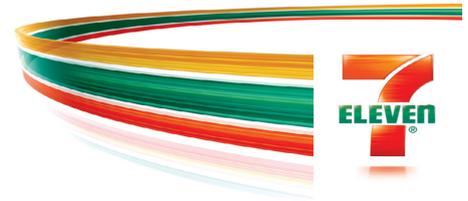
***What happens if I choose not to take the Determination Payment?***

Should you decide against accepting the Determination Amount, you will need to pursue your own claim if you wish to pursue any underpayments issues further.

**7-Eleven Stores Pty. Ltd.**  
ABN 48 005 299 427

**Head Office**  
357 Ferntree Gully Road  
Mount Waverley, Victoria 3149 Australia  
Telephone (03) 9541 0711  
Fax (03) 9541 0890  
Marketing Fax (03) 9541 0825

**Head Office Postal Address**  
Private Bag 43  
Mount Waverley, Victoria 3149 Australia



## DEED COVERING LETTER

To **Xxxx Xxxx**

Claim Number: **XXXXXXXX**

Reference : **XXXXXXXX\_X**

7-Eleven has appointed an Independent Franchisee Review and Staff Claims Panel, also referred to as the Fels Wage Fairness Panel (“Panel”) headed by former ACCC Chairmen, Professor Allan Fels AO to examine claims involving underpayment of staff by 7-Eleven franchisees.

The Panel’s role is to investigate allegations of non-compliance by 7-Eleven franchisees with their payroll obligations. In assessing your claim, and the information provided to it in relation to your claim, The Panel has made a determination of an amount payable to you it considers fair considering the circumstances. The Panel is also keen to ensure Claims could be processed as quickly as possible and where Claims were determined to be payable, ensure that such payments could be made as soon as practicable.

This appointment is part of a commitment by 7-Eleven to make good on any verified underpayments of past or present 7-Eleven franchisee employees.

In order to deal with payment issues quickly for employees, 7-Eleven has agreed to pay any underpayments owed by franchisees directly to those employees. 7-Eleven may then if required pursue the franchisees separately to recover those debts.

This means that you will be paid by 7-Eleven without the need to go to the time, stress and cost of pursuing your employers personally via the Courts or otherwise.

By now you would have signed at a form titled “DECLARATION BY CLAIMANT TO INDEPENDENT FRANCHISEE REVIEW AND STAFF CLAIMS PANEL-ESTABLISHED BY 7-ELEVEN.” By signing this form you have acknowledged that the Determination Amount is in full and final settlement of any amount of wages or entitlements owing to you in relation to your employment with the named 7-Eleven store/s. To receive the amount determined by the Panel and enable 7-Eleven to (if required) seek that money from the franchisee who employed you, you will need to sign the enclosed Deed/s of Acknowledgement and Assignment (“**Deed**”) and fill out the payment details form enclosed. If your Determination Amount is made up of multiple franchises, you will need to sign a Deed for each franchisee. The payment will be made to you by Independent Claims Pty Ltd a special entity set up by 7-Eleven to deal with these claims.

You will also have received an FAQ document which fully explains the process and what it means for you. You should read the Deed carefully and if you wish to receive the payment you should sign the Deed with a witness and email it to [EMPclaims@7eleven.com.au](mailto:EMPclaims@7eleven.com.au) together with the payment details form. You will then receive payment within 10 days. The full details of the payment, including tax to be deducted and superannuation payable, are in the schedule at the back of the Deed.

After payment is made you will be sent your group certificate and a payslip. This will be sent via email. Thank you for your participation in this process. If you have any queries about the payment process please email them to [EMPclaims@7eleven.com.au](mailto:EMPclaims@7eleven.com.au)

Attached - Deed  
Payment Details Form

**7-Eleven Stores Pty. Ltd.**

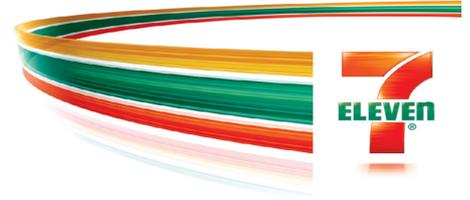
ABN 48 005 299 427

**Head Office**

357 Ferntree Gully Road  
Mount Waverley, Victoria 3149 Australia  
Telephone (03) 9541 0711  
Fax (03) 9541 0890  
Marketing Fax (03) 9541 0825

**Head Office Postal Address**

Private Bag 43  
Mount Waverley, Victoria 3149 Australia



**DEED OF ACKNOWLEDGEMENT AND ASSIGNMENT**

REFERENCE: **XXXXXXXX\_X**

**Parties**

**XXXX XXXX** of (your address) ..... (“**You**”).

**Independent Claims Pty Ltd [ACN 608 850 157] of 357 Ferntree Gully Road, Mt Waverley, Vic., 3149** (“**Company**”).

**Background**

1. The Company has agreed to pay to You the amount set out in Schedule 1 (“**the Debt**”).
2. The Debt has been determined in resolution of your Claim 2429116\_1 (“**Claim**”) to the Independent Franchisee Review and Staff Claims Panel.
3. The Debt will be paid by the Company via electronic funds transfer to your nominated account within 10 days of receiving a copy of this Deed signed by You.
4. The Debt relates to monies owed to You arising from your employment by the following 7-Eleven franchisee as a result of underpayments of wages and employee entitlements set out in your Claim.

**XXXXX XXXXX** (“**7-Eleven Franchisee**”)

ACN **XXXXXXXXXX**

**XXXXX XXXXX, XXXXX, XXX, XXXX**

**Assignment and Acknowledgement**

5. You acknowledge that the Debt is in full satisfaction of any unpaid wages or employee entitlements that you may have been entitled to arising from your employment by the 7-Eleven Franchisee up until the date of your Claim.
6. You acknowledge that the Debt has not been repaid or otherwise compromised, settled or abandoned prior to you executing this Deed.
7. You acknowledge that on signing this Deed and receiving payment for the Debt from the Company all rights for recovery of the Debt will vest in the Company and will no longer be exercisable by You.
8. In consideration for the payment of the Debt by the Company, You absolutely and unconditionally assign and transfer to the Company any rights, title and interest in the Debt, including such right or rights of action necessary to recover the Debt from the 7-Eleven Franchisee you were employed by until the date of this Deed (which

may include amongst other things instituting legal or other proceedings for recovery of the Debt from that 7-Eleven Franchisee).

9. The Company may at its sole discretion assign this Deed or otherwise transfer the benefit of this Deed or any right or remedy under it, without prior written consent from You.
10. You acknowledge that you have had an opportunity to seek independent legal advice regarding the contents of this Deed.
11. You acknowledge that you are wholly responsible for your own personal taxation or immigration arrangements.
12. You acknowledge that this Deed has not been executed under duress, that You are not relying on any representations or matters not contained in this Deed and that the Company is relying on this acknowledgment.

**EXECUTED AS A DEED**

**SIGNED SEALED AND DELIVERED** by )  
Xxxx Xxxx in the presence of: ) .....  
)

.....  
Signature  
.....  
Name of witness  
.....  
Address

**SIGNED FOR AN ON BEHALF OF**  
**Independent Claims Pty Ltd [ACN 608 850 157]** )  
In accordance with section 127 of the )  
Corporations Act in the presence of: )  
)

.....	.....
Director	Secretary
.....	.....
Full Name	Full Name
.....	.....
Usual Address	Usual Address

REFERENCE: XXXXXX\_X

**SCHEDULE 1 - Debt**

<b>Gross Amount</b>	<b>\$X,XXX.XX</b>
<b>Less Tax</b>	<b>\$X,XXX.XX</b>
<b>Net Amount</b>	<b>\$X,XXX.XX</b>
<b>Superannuation</b>	<b>\$X,XXX.XX</b>



**7-Eleven Stores Pty. Ltd.**

ABN 48 005 299 427

**Head Office**

357 Ferntree Gully Road  
Mount Waverley, Victoria 3149 Australia  
Telephone (03) 9541 0711  
Fax (03) 9541 0890  
Marketing Fax (03) 9541 0825

**Head Office Postal Address**

Private Bag 43  
Mount Waverley, Victoria 3149 Australia



**Payment details form**

**Claim Number:** XXXXXXXX

**Reference:** XXXXXXXX\_X

In order to process the Determination Payment we will need you to confirm your payroll details. If you are a current employee please tick the box below where indicated. Alternatively if you are a former employee please fill in your account details where indicated below.

**Name:** XXXX XXXX

**Address:**

Australian Resident (please circle):      **Yes/No**

**Email:** XXX@XXX.XXX.XX

**Phone:**

**Current employees**

- Please process the Determination Payment (including the remittance of taxation and superannuation) using the payroll and employee records currently held by 7-Eleven payroll.

**Former employees**

I confirm my nominated account details:

<b>Bank account name</b>	[insert]
<b>BSB</b>	[insert]
<b>Account number</b>	[insert]

For former employees superannuation will be paid into a Retail Employees Superannuation Trust account set up in your name. If you would like this paid to another superannuation account please provide these details to 7-Eleven when you return this form.

I acknowledge and consent to 7-Eleven Stores Pty Ltd providing my payroll and employee records to Independent Claims Pty Ltd in order make payment of the Determination Amount (including the remittance of superannuation and taxation).

Signed by

..... [name]

.....[date]

**7-Eleven Stores Pty. Ltd.**

ABN 48 005 299 427

**Head Office**

357 Ferntree Gully Road  
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Telephone (03) 9541 0711  
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**Head Office Postal Address**

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**Senate Education and Employment Reference Committee Inquiry into the Impact of Australia's temporary work visa program on the Australian labour market and on the temporary work visa holders.**

**QUESTIONS ON NOTICE RESPONSES BY MR GRANT ONLEY: NATIONAL HR MANAGER  
BAIADA POULTRY**

**20<sup>th</sup> November 2015**

(1) *CHAIR: How many contractors did you find did not employ anyone?*

*Mr Onley: We asked for information from contractors. We asked for information from the directors of those contractors we engaged prior to May this year, to ensure that they were fulfilling their obligations. We received those assurances from those directors. We also received information from their accountants in some cases.*

*CHAIR: Can you provide that information to the committee?*

*Mr Onley: I will take that on notice. I am happy to provide any information—*

**Mr Onley Response:**

Please find attached a selection of the directors' notices and accountant statements from contractors provided to us prior to May this year.

(2) *Senator McKENZIE: Where do you think the current legislation needs to change?*

*Mr Onley: Again, I would need to probably sit down—*

*Senator McKENZIE: Could you take that on notice? I would like your advice to our committee on some of the things that we can recommend to government that do need to change, so that everyone who is using this type of labour can be assured, without having to go through the hoops that you are now currently having to go through to assure yourself, of the integrity of the system.*

**Mr Onley Response:**

While amending legislation could certainly be considered, it is important to ensure that the organisations charged with implementing and enforcing the existing legislation are adequately resourced and supported.

(3) *Senator RICE: What is it costing you to provide the payroll services?*

*Mr Onley: I cannot give an exact figure. I am happy to take that on notice, but, roughly, we have employed four or five more individuals to help us run the payroll systems. We have invested heavily in biometrics. Rather than an ID card that has a photo on it, we are using fingerprint biometric technology in some of our processing plants. We have certainly engaged consultants to do the review of the audits. The management time that we have thrown into this is quite considerable. We have some training requirements with regard to management and supervisor training going forward that we have committed to. I cannot give you an exact dollar figure, but I am happy to take that on notice.*

**Mr Onley Response:**

Baiada Estimates that the new payroll services arrangements cost the business in the vicinity of \$500,000 per annum. This does not include the other non-payroll oversight measures we have introduced at our sites.

(4) *Senator RICE: How many entities are we talking about?*

*Mr Onley: Eight, I think. I should know the number off the top of my head.*

*Senator RICE: Could you take that on notice?*

*Mr Onley: There are eight entities. I am happy to give the names and contact details to the committee of all the entities being engaged. That is not a problem.*

**Mr Onley Response:**

There are 7 entities for our 8 processing plants covered by 10 separate agreements. The list is below:

Adelaide  
J & T Trade Pty Ltd  
ABN 54 607 200 233

Beresfield  
J & T Trade Pty Ltd  
ABN 55 607 200 233

Ipswich  
PHV Poultry Pty Limited  
ABN 47 169 817 378

Laverton  
GGPB POWER PTY LTD  
ABN 99 607 221 554

Hanwood  
GGPB POWER PTY LTD  
ABN 99 607 221 554

Tamworth  
GGPB POWER PTY LTD  
ABN 99 607 221 554

Osborne Park  
Calacash Inwa Enterprises Pty Limited  
ABN 37 167 533 495

Tamworth  
HP Food Pty Limited  
ABN 45 168 229 758

Beresfield  
VNJ Holdings Pty Limited  
ABN 69 168 588 707

Mareeba  
Springtime Poultry Pty Limited  
ABN 72 601 820 731

(5) *Senator RICE: How many calls or emails have you received so far to that hotline?*

*Mr Onley: I cannot give you an exact number. I am happy to take that on notice. I think we have had around 10 claims that fall under the deed. That is a rough figure. I say that without referring to the actual information on each of the calls.*

**Mr Onley Response:**

On 20<sup>th</sup> November 2015 we had been advised and were investigating 16 claims that met r the criteria under the Proactive Compliance Deed.

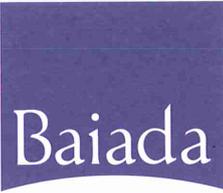
(6) *CHAIR: Can you give us a copy of the ad that you put in the Weekend Australian?*

*Mr Onley: I am happy to take that on notice and provide it to the committee, yes. I am also prepared to provide you with a copy of information on the hotline, if that would help the committee.*

*CHAIR: I am just interested in the ad.*

**Mr Onley Response:**

Please find a copy of the ad attached.



Baiada

*select poultry*

19 April 2013

PHAM POULTRY (AUS) PTY LTD

Binh Nguyen

Marickville NSW 1475

Dear Mr. Nguyen,

Further to our previous correspondence to PHAM POULTRY (AUS) PTY LTD, we advise that you are required to be compliant with all legislative and contractual obligations as outlined in our current agreement for the Poultry Processing Services supplied to Bartter Enterprises Pty Limited at our Beresfield site. **These obligations include, but are not limited to, your superannuation, taxation and workers compensation obligations under the Commonwealth and state legislations.**

Furthermore, it is understanding that as our agreement, being based on piece rates, enables you to ensure that all relevant workers, engaged by you to perform the functions under our agreement, shall, at minimum, be paid of the rate applicable to those functions as determined by legislative requirements (e.g. the Poultry Processing Award 2010.)

Kind regards,

.....  
**Grant Onley**  
**National Manager HR and Compliance**  
**Bartter Enterprises Pty Limited**

 Baiada

*select poultry*

19 April 2013

B & E Poultry Holdings Pty Ltd  
Xu Chun Dong

Smithfield NSW 2164

Dear Mr. Dong,

Further to our previous correspondence to B & E Poultry Holdings Pty Ltd, we advise that you are required to be compliant with all legislative and contractual obligations as outlined in our current agreement for the Poultry Processing Services supplied to Bartter Enterprises Pty Limited at our Beresfield site. **These obligations include, but are not limited to, your superannuation, taxation and workers compensation obligations under the Commonwealth and state legislations.**

Furthermore, it is understanding that as our agreement, being based on piece rates, enables you to ensure that relevant workers, engaged by you to perform the functions under our agreement, shall, at minimum, be paid of the rate applicable to those functions as determined by legislative requirements (e.g. the Poultry Processing Award 2010.)

Kind regards,

.....  
**Grant Onley**  
**National Manager HR and Compliance**  
**Bartter Enterprises Pty Limited**

# TAFa PTY LTD

## Chartered Accountant

*Our Reference:*

30 October 2013

To whom it may concern:

**PHAM POULTRY (AUS) PTY LTD ACN: 158 702 295**  
**ABN: 93 158 702 295**

Dear Sir/Madam,

We act as tax accountants for the abovementioned company.

Based on records and information supplied, we confirm that this company is compliant with its obligation in relation to the direct employees' entitlements in accordance with Poultry Processing Award 2010 [MA000074].

In regards to the Superannuation Guarantee Contributions, the company has adequately paid its obligations towards the SGC for its direct employees on a quarterly basis. The payments were made on time as prescribed by the Superannuation Legislation.

The company has been correctly withholding taxes from the direct employees' wages and fulfilled its taxation obligation with the Australian Taxation Office.

Should you have any queries in this regard please contact the writer

Yours faithfully,

TAFa Pty Ltd

Don Nguyen CA



**Chartered  
Accountant**

Telephone:

• Facsimile:

• Email:

39 Hughes Street Cabramatta NSW 2166 • P.O. Box 6182 Canley Vale NSW 2166

Liability limited by a scheme approved under Professional Standards Legislation

**TAFa PTY LTD ABN: 26 136 344 315**

**PHAM POULTRY (AUS) PTY LTD**

**ABN: 93 158 702 295**

**205 Polding Street**

**Fairfield West NSW 2165**

**Mobile:**

**Fax:**

30/10/2013

**National Manager HR and Compliance**

**642 Great Western Highway**

**Pendle Hill NSW 2145**

**Tel: 02 9842 1109**

**Fax: 02 9896 5724**

**Email:**

This is to confirm that the company is paying its employees and other persons engaged in performing the work under our agreement as a minimum and amount equivalent to the appropriate and current rate as defined by namely MA000074 – Poultry Processing Award 2010.

Should you have any question regarding this please do not hesitate to contact us.

Yours truly,

**Pham Poultry (Aus) Pty Ltd**

Binh Hai Nguyen

Director

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 5 (Casual)

Payment Date: 18/10/2013

Annual Salary: \$32,978.40

Hourly Rate: \$22.65

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$634.20

Superannuation Fund:

NET PAY: \$571.20

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	28	\$22.65	\$634.20	\$10,147.20	Wages
PAYG Withholding			-\$63.00	-\$1,008.00	Tax
SGC Superannuation			\$58.67	\$938.62	Employer Expenses

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 5 (Casual)

Payment Date: 18/10/2013

Annual Salary: \$31,800.60

Hourly Rate: \$22.65

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$611.55

Superannuation Fund:

NET PAY: \$553.55

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	27	\$22.65	\$611.55	\$9,784.80	Wages
PAYG Withholding			-\$58.00	-\$928.00	Tax
SGC Superannuation			\$56.56	\$905.09	Employer Expenses

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 3 (Full Time)

Payment Date: 18/10/2013

Annual Salary: \$34,856.64

Hourly Rate: \$17.64

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$670.32

Superannuation Fund:

NET PAY: \$600.32

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	38	\$17.64	\$670.32	\$10,725.12	Wages
PAYG Withholding			-\$70.00	-\$1,120.00	Tax
Holiday Leave Accrual	2.92			46.77	Entitlements
Personal Leave Accrual	1.16			18.71	Entitlements
SGC Superannuation			\$62.00	\$992.07	Employer Expenses

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 5 (Casual)

Payment Date: 18/10/2013

Annual Salary: \$17,667.00

Hourly Rate: \$22.65

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$339.75

Superannuation Fund:

NET PAY: \$339.75

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	15	\$22.65	\$339.75	\$5,436.00	Wages
SGC Superannuation			\$31.43	\$502.83	Employer Expenses

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 5 (Casual)

Payment Date: 18/10/2013

Annual Salary: \$17,667.00

Hourly Rate: \$22.65

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$339.75

Superannuation Fund:

NET PAY: \$339.75

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	15	\$22.65	\$339.75	\$5,436.00	Wages
SGC Superannuation			\$31.43	\$502.83	Employer Expenses

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 5 (Full Time)

Payment Date: 18/10/2013

Annual Salary: \$31,200.39

Hourly Rate: \$18.12

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$600.00

Superannuation Fund:

NET PAY: \$544.00

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	33.11	\$18.12	\$600.00	\$1,200.00	Wages
Director fees				\$8,400.00	Wages
PAYG Withholding			-\$56.00	-\$896.00	Tax
Holiday Leave Accrual	2.54			40.76	Entitlements
Personal Leave Accrual	1.01			16.31	Entitlements
SGC Superannuation			\$55.50	\$888.00	Employer Expenses

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 5 (Casual)

Payment Date: 18/10/2013

Annual Salary: \$35,334.00

Hourly Rate: \$22.65

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$679.50

Superannuation Fund:

NET PAY: \$607.50

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	30	\$22.65	\$679.50	\$10,872.00	Wages
PAYG Withholding			-\$72.00	-\$1,152.00	Tax
SGC Superannuation			\$62.85	\$1,005.66	Employer Expenses

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 5 (Casual)

Payment Date: 18/10/2013

Annual Salary: \$35,334.00

Hourly Rate: \$22.65

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$679.50

Superannuation Fund:

NET PAY: \$607.50

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	30	\$22.65	\$679.50	\$10,872.00	Wages
PAYG Withholding			-\$72.00	-\$1,152.00	Tax
SGC Superannuation			\$62.85	\$1,005.66	Employer Expenses

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 5 (Casual)

Payment Date: 18/10/2013

Annual Salary: \$30,622.80

Hourly Rate: \$22.65

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$588.90

Superannuation Fund:

NET PAY: \$535.90

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	26	\$22.65	\$588.90	\$9,422.40	Wages
PAYG Withholding			-\$53.00	-\$848.00	Tax
SGC Superannuation			\$54.47	\$871.57	Employer Expenses

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 5 (Casual)

Payment Date: 18/10/2013

Annual Salary: \$34,156.20

Hourly Rate: \$22.65

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$656.85

Superannuation Fund:

NET PAY: \$589.85

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	29	\$22.65	\$656.85	\$10,509.60	Wages
PAYG Withholding			-\$67.00	-\$1,072.00	Tax
SGC Superannuation			\$60.76	\$972.14	Employer Expenses

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 5 (Full Time)

Payment Date: 18/10/2013

Annual Salary: \$35,805.12

Hourly Rate: \$18.12

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$688.56

Superannuation Fund:

NET PAY: \$614.56

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	38	\$18.12	\$688.56	\$11,016.96	Wages
PAYG Withholding			-\$74.00	-\$1,184.00	Tax
Holiday Leave Accrual	2.92			46.77	Entitlements
Personal Leave Accrual	1.16			18.71	Entitlements
SGC Superannuation			\$63.70	\$1,019.08	Employer Expenses

# Pham Poultry (Aus) Pty Ltd

Pay Slip For:

Cheque No:

Classification: PW - Level 5 (Casual)

Payment Date: 18/10/2013

Annual Salary: \$17,667.00

Hourly Rate: \$22.65

Pay Period From: 12/10/2013 To: 18/10/2013

GROSS PAY: \$339.75

Superannuation Fund:

NET PAY: \$339.75

DESCRIPTION	HOURS	CALC. RATE	AMOUNT	YTD	TYPE
Base Hourly	15	\$22.65	\$339.75	\$5,436.00	Wages
SGC Superannuation			\$31.43	\$502.83	Employer Expenses





Entity Name: B&E Poultry Trading Trust t/as B&E Poultry Pty Limited  
Australian Business Number: 20 195 957 269  
Services Provided: Filleting Services  
Site/Location: Hanwood

For each question, select the answer that best describes your current arrangement as the payer of your worker (that is, the person you have hired and engaged as either an employee or

- B 1. **Do you have the right to direct the way in which the worker's tasks are performed?**  
A I have the right to direct the way in which the worker performs their work.  
B the worker decides for themselves how they will perform their work.
- B 2. **Do you bear the commercial risk and responsibility for the work performed by the worker?**  
A I am responsible for the risk involved in the worker's work, such as rectifying poor workmanship. I stand to make a profit or loss from the worker's work.  
B the worker is exposed to commercial risks such as financial losses which may result from their work.
- A 3. **Do you have the right to control whether the worker performs the majority of their work at your premises or at locations required by you?**  
A most of the time the worker works at places directed by me.  
B the worker may do most or all of their work where they choose.
- B 4. **Do you set the worker's hours of work, or can the worker set their own hours of work?**  
A the worker is obliged to work the hours agreed with me.  
B the worker decides their own hours of work.
- B 5. **Are paid leave entitlements available to the worker under your arrangement with the worker?**  
A the worker receives leave payments from me.  
B the worker does not receive paid leave and is responsible for their own income if not at work.
- B 6. **Is the worker paid remuneration based on the period of timed worked or only when the worker completes tasks?**  
A I pay the worker a regular salary or wage.  
B I pay the worker only when the worker completes particular tasks or stages of work that they have contracted to undertake.
- B 7. **Do you pay for or reimburse the worker's expenses in conducting their work?**  
A I meet expenses incurred by the worker in conducting their work.  
B the worker manages and pays for their own expenses in conducting their work.
- B 8. **Did you find the worker by advertising a position?**  
A the worker applied for a position that I advertised.  
B I found the worker when they advertised or otherwise promoted their services.
- B 9. **Can you suspend or dismiss the worker?**  
A I can dismiss the worker, subject to state and federal industrial relations laws.  
B I can only terminate the arrangement with worker if they do not perform the work they have contracted to undertake.

- A** 10. **Can the worker delegate or subcontract their work to other persons if they wish?**  
**A** the worker cannot delegate their work without my approval.  
**B** the worker can delegate or subcontract some or all of their work to another party unless I have specifically agreed some other arrangement with them.
- B** 11. **Are you responsible for supplying the tools, equipment and assets the worker uses in performing their work?**  
**A** I provide the worker with the tools, equipment or other assets necessary to do their work.  
**B** the worker usually provides their own tools, equipment and other assets necessary to allow them to do the work they have contracted to undertake.
- B** 12. **Do you expect the worker's work with you to continue for an agreed period of time (either indefinitely (even if terminable on notice) or for an agreed term)?**  
**A** the worker works on a continuous or fixed term basis.  
**B** the worker is engaged for a specific task and is not guaranteed future work.
- B** 13. **Do you deduct income tax from the worker's remuneration?**  
**A** I withhold income tax from the worker's pay.  
**B** the worker is responsible for all their own tax affairs.
- B** 14. **Does the worker carry on business on their own account and independently of your business?**  
**A** the worker is an ongoing part of my business.  
**B** the worker operates their own business independently from my business.
- B** 15. **Do you have the right to the exclusive services of the worker?**  
**A** the worker is not free to work for others without my permission.  
**B** the worker is free to work for more than one payer.
- B** 16. **Can the worker refuse work from you?**  
**A** the worker is required to perform any tasks I reasonably ask of them within their job description.  
**B** the worker is only required to perform the tasks that they have contractually agreed to undertake
- B** 17. **Are the workers covered by a signed agreement?**  
**A** No agreement is in place or the workers employed by us under a contract of employment  
**B** The workers are covered by an agreement between us and an registered entity not being a "natural" person
- B** 18. **Is the Agreement current?**  
**A** No current agreement is in place covering the workers  
**B** An approved current agreement has been signed by both parties covering the workers. This agreement has been provided to Head Office
- A** 19. **Has Bsafe Contractor checklist been completed covering for the workers**  
**A** A completed Bsafe Contractor Checklist has been completed covering the workers  
**B** A completed Bsafe Contractor Checklist has NOT been completed covering the workers

Contractor Payment Schedule														
BE Poultry Osborne Park														
	Labour \$ per Hour	Kgs	Birds	Carton	WA Max	WA Min	Units/Hr Max/Group	Units/Hr Minimum/Group	Justification	Group size	Start Time	Finish Time	Overtime (Hrs/day)	W/end (Hrs/week)
WB Deboning			\$0.650		75	65	750	650	Advice	6/02/14	10	7:00	8:00	
FDB		\$0.500			60	50	600	500	Advice	6/02/14	10	7:00	8:00	
FDT		\$0.760			55	45	550	450	Advice	6/02/14	10	7:00	8:00	
FOM		\$0.690			60	50	600	500	Advice	6/02/14	10	7:00	8:00	

01-July-2013 \*\* Increase as per Fair Work Australia Determination

PPA2010 Level	Min/Hr	Max/Hr	** Award Rate	w/- Oncost	if Casual	15% loading	Min Margin/hr	Max Margin/hr	Ave Work Rate/person / hour	Ave Margin/hr	
\$0.65	5	\$42.25	\$48.75	\$18.12	\$21.93	\$27.41	\$31.52	\$10.73	\$26.82	70	\$18.78
\$0.50	5	\$25.00	\$30.00	\$18.12	\$21.93	\$27.41	\$31.52	-\$6.52	\$8.07	55	\$0.78
\$0.76	5	\$34.20	\$41.80	\$18.12	\$21.93	\$27.41	\$31.52	\$2.68	\$19.87	50	\$11.28
\$0.69	5	\$34.50	\$41.40	\$18.12	\$21.93	\$27.41	\$31.52	\$2.98	\$19.47	55	\$11.23

## Statement by Baiada Pty Limited on compliance with the Fair Work Act 2009



Baiada believes it has a moral and ethical responsibility to require standards of conduct from all entities and individuals involved in the conduct of its enterprise, that:

- a) Comply with the law in relation to all workers at all of its sites, and
- b) Meet Australian community and social expectations, to provide equal, fair and safe work opportunities for all workers at all of its sites.

Prior to the release of the Baiada Report, Baiada had commenced instituting changes to the contracting and subcontracting arrangements it had previously used to engage its contracted labour force (comprising less than 20% of its workers), due to its concerns that those arrangements were not stringent enough and that more needed to be done to ensure that the contract workers on its processing plant sites were not vulnerable to exploitation, including by way of underpayment.

Baiada has and will continue to implement fundamental, permanent and sustainable changes to its enterprise, because Baiada agrees that, for all workers, on all of its sites, Commonwealth Workplace Laws including the Fair Work Act 2009 (Cth) (FW Act), Fair Work Regulations, and Fair Work Instruments, should be fully complied with.

**Senate Education and Employment References Committee**  
**Questions on Notice to the Franchise Council of Australia – Friday, 20 November 2015**  
**Melbourne, VIC**

**The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders**

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**1. HANSARD, PAGE 27**

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**CHAIR:** Thanks very much, Mr Paul. I just have a couple of questions. I think you heard most of the evidence from the Fels panel. I am just wondering if you have any comments to make about the establishment of a separate entity, Independent Claims Pty Ltd, to pay out underpayment of wages.

**Mr Paul:** I do not think the FCA at this point has any comment to make. We have just heard about that. I think we would have to take that on notice in terms of our response.

**FCA Response:**

*Questions concerning the detail of Independent Claims Pty Ltd would need to be directed to the directors of that company. However we understand the company has been established purely for administrative reasons, and not for some ulterior purpose such as asset protection. This explanation is also consistent with the fact that it would appear from a legal point of view any potential liability would rest with the main 7-Eleven operating entities in any event.*

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**2. HANSARD, PAGE 29**

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**Senator RICE:** On notice, could you provide information from that Griffith University report as to whether there are any other companies that have a much greater amount of royalties being paid to the franchisor?

**Mr Paul:** Yes.

**Senator RICE:** Thank you.

**FCA Response:**

*The Franchising Australia 2014 survey conducted by Griffith University does not contain specific information on franchise royalties. However the 2015 Frandata Report on the Australian franchise Sector notes in its survey of brands registered on the Australian Franchise Registry as follows:-*

*“On average, systems charge 5.4% in royalties, ranging from 0% - 11%. The concepts with a fixed dollar payment charge an average \$757, ranging from \$232 - \$2,800 a month.” (p36)*

*There are a wide variety of different fee arrangements, with fees reflecting the extent and commercial value of intellectual property, support, goods or services provided by the franchisor. The Franchising Code of Conduct contains extensive disclosure requirements in relation to franchise fees, and indeed all establishment and operating costs. So there is full transparency on fees in all cases.*

*If the Senator’s question is directed to the value provided by 7-Eleven as consideration for the fees we cannot comment except to say that 7-Eleven provides one of the most comprehensive franchise support systems of any franchise system operating in Australia. It would be inappropriate to simply compare fees charged against those charged by other franchise systems without also comparing support and services provided. Some franchise systems, such as cooperatives and some motor vehicle dealerships, simply provide a brand, group purchasing and cooperative marketing, whereas others provide a comprehensive business model which the franchisee must follow.*

We thought the following summary of the Franchising Australia 2014 Survey might be of interest to the Committee, and help illustrate that franchising is not an industry itself, but rather operates across industry sectors:-

- There are 1160 business format franchisors in Australia in 2014, compared with 1180 in 2012.
- There are an estimated 79 000 units operating in business format franchises, reflecting an increase of 8.2 percent since 2012.
- More than 460 000 people are employed directly in franchising.
- Sales turnover of the entire franchising sector was estimated at \$144 billion.
- 86 percent of franchise systems originated in Australia.
- 30 percent of franchisors have entered international markets.
- Only 1.5 percent of franchisees were involved in a substantial dispute with a franchisor over the past twelve months.
- 45 percent of franchise systems engage in online sales with customers.

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### 3. HANSARD, PAGE 29

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**Senator McKENZIE:** Can I ask a governance question. Was 7-Eleven on your board?

**Mr Paul:** Yes it was.

**Senator McKENZIE:** For how long?

**Mr De Britt:** Warren Wilmot was on the board for about 10 months, yes.

**Senator McKENZIE:** In what period of time? Can you, for the last 10 years, let the committee know how often and for how long 7-Eleven was represented on your board?

**Senator O'NEILL:** In any shape or form. Thank you, great question.

#### **FCA Response:**

*Any member of the FCA is free to nominate for election to the board of directors of the FCA. Elections typically draw many candidates from all parts of the sector. The FCA has a strong corporate governance process. In a recent example of good governance Warren Wilmot made disclosure to the FCA board of the impending 4 Corners program prior to it being aired, and resigned once it became clear that it would not be possible for him to continue in his FCA board role.*

*In relation to the Committee's specific questions, the information concerning Warren Wilmot set out above is correct. Russell Withers served as a director from 1983 – 1987. There is a slight gap in our records between 2003 and 2008, but we think that Paul Tebbutt also briefly served as a director at some stage during that period.*

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### 4. Written QoN's from Senator Lines

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1. The Franchise Council of Australia stated in its submission that it is not currently possible under the Franchising Code of Conduct to terminate a franchise agreement even in the event of serious breach of workplace obligations by a franchisee. You recommend that the Code of Conduct be amended to permit a franchisor to immediately terminate a franchise agreement if a franchisee commits a serious breach of its obligations under any workplace legislation.
  - a. When the Franchising Code of Conduct was being drafted, which stakeholders were keen to have the Code safeguard the franchisee and why?  
*We cannot provide a comprehensive answer to this question, but an analysis of submissions into the Wein Review (which are on the public record) will provide those*

*details. From the perspective of the FCA, we are always concerned to safeguard the franchisee, and indeed one of the primary purposes of the Code is to provide a framework where franchisees can safely and confidently invest after having made an informed business decision. We expect that most of those making submissions held a similar view on safeguarding the interests of the franchisee. The Wein report made a significant number of recommendations to further safeguard franchisee interests, all of which were supported by the FCA.*

- b. Can you expand on the reasoning behind your recommendation to amend the Code? *The Code lists several circumstances where immediate termination is justified, but the list does not include serious breach by a franchisee of any law. The serious consequences to a brand of egregious behaviour by a franchisee justify the inclusion of an additional ground for immediate termination. Providing a franchisee with a notice of breach and opportunity to remedy seems inadequate in the context of egregious breach of the law by a franchisee, as the brand damage is done. Rectification of the breach by the franchisee might be quite simple – a promise not to do it again and payment of the money to the relevant employee(s). Acting as custodian of the brand for the franchisor and other franchisees a franchisor should be entitled to terminate immediately. (From our participation in the deliberations of the Committee it seemed to us that most Senators assumed that 7-Eleven had the ability to terminate a franchise agreement in circumstances where franchisees had committed a serious breach of the law.)*
- c. What safeguards would need to be in place to protect franchisees from improper termination of their franchise agreement by the franchisor? *Possibly limiting the right to serious breach of the law that causes significant brand damage. In the case of 7-Eleven as an example, notwithstanding the massive brand damage 7-Eleven would be unable to terminate the franchise agreements of the offending franchisees.*
- d. What value do you think the insertion of additional disclosure obligations in franchise documentation in relation to Awards might have? *This would be a pointless exercise. Far from adding value, it would actually confuse the situation and impose inappropriate and unnecessary additional compliance burdens. The franchisee is the employer, and has the employment responsibilities. The regulator (and others) run extensive educational activities for employers, and the Awards are easily accessed by numerous means including a simple internet search. In the 7-Eleven instance there was no evidence that the offending franchisees did not know the Awards. Rather, the evidence showed the franchisees deliberately breached the law. Disclosure is relevant to the franchisor / franchisee relationship, but has no sensible application to this sort of issue. It is vital that the employment relationship not be blurred. 7-Eleven is a very unusual franchise model. In some franchise networks the franchisor simply provides the right to use a trade mark and a marketing plan, and would have no insight at all into the business of the franchisee at all.*

- 2. The Franchise Council of Australia submission states that actions such as the liquidation of the employer entity appear to too easily allow a party to avoid the intended consequences of the law and that the fines imposed upon employers, and particularly directors, appear inadequate. You recommend incapacitation and disqualification orders against directors of employers convicted of a serious breach, and an increase in the current level of fines. You also recommend additional provisions be inserted in the Fair Work Act to make directors of an employer entity personally liable in the event that an employer entity is

liquidated without fully satisfying all debts to employees and penalties to Fair Work Australia.

- a. Could you expand on these recommendations and also address concerns that the recommendations may impinge on the commercial notion of limited liability?  
*The recommendations are reasonably self-evident, and would replicate those (in the case of disqualification) contained in corporations legislation. The concept of limited liability is not intended to shelter individuals from their workplace law compliance obligations. There are numerous examples where directors are made personally liable at law, such as in relation to OH&S and other matters. The evidence appeared to show that the directors of the franchisees were personally involved in the breaches, but then hid behind the corporate structure by liquidating their companies. This amendment would address that problem.*
  - b. Could you explain why you prefer targeting directors in this fashion as opposed to, for example, modifying the accessory liability provisions?  
*This could indeed occur by a modification to the accessorial liability provisions if that option was preferred. The point is that the main culprits are the directors and officers of the employer, and they should not be permitted to avoid responsibility.*
3. The Franchise Council of Australia submission notes that there is evidence of employer entities being structured to avoid compliance obligations, and that the penalties against individuals also seem light.  
You recommend that penalties against individuals be increased to a level commensurate with those applying under the Competition and Consumer Act or immigration laws and that personal liability be extended without the need to prove knowledge where the individual is a director of the employer and the employer becomes insolvent or otherwise unable to pay fines and make restitution to employees.
- a. Could you expand on these recommendations and explain further how they might work?  
*The could work as part of an extension to the accessorial liability provisions, or separately. The comments concerning the quantum of fines are self-evident – millions of dollars of brand damage caused, yet penalties that would be a fraction of the franchisee’s annual turnover. Clearly the threat of fines did not act as a deterrent. The Competition and Consumer Act has a stronger enforcement and penalty regime that could serve as a guide, and the penalties are more appropriate in quantum.*
4. The Franchise Council of Australia submission notes the evidential challenges faced by regulators in gaining proof of a breach of employment law, particularly in circumstances where an employer denies breaching the law and there is no complainant willing to testify, and/or there is a lack of adequate records kept by the employer. Your submission recommends that if the records maintained by an employer are inadequate, then consideration be given to reversing the onus of proof such that the employer must establish its innocence rather than the regulator establish guilt.
- a. Could you expand on this proposal and why you consider it necessary?  
*As with many of our other comments, these were suggestions and ideas rather than concrete proposals. In our view it is sensible to focus on the actual problems identified. Record keeping, and particularly falsification of records, seems to have been a particular problem, and some sort of reverse onus system might work. Alternatively if the regulators had greater powers, and perhaps were a bit more vigilant, it may be that existing laws are adequate.*