

Senate Education and Employment References Committee
Questions on Notice – Friday, 5 February 2016
Canberra, ACT

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	7	7-Eleven Stores Pty. Ltd.	Information provided	Yes
2	10	7-Eleven Stores Pty. Ltd.	Chair	Yes
3	12	7-Eleven Stores Pty. Ltd.	Senator McKenzie	Yes
4	13	7-Eleven Stores Pty. Ltd.	Senator McKenzie	Yes
5	13	7-Eleven Stores Pty. Ltd.	Senator McKenzie	Yes
6	14	7-Eleven Stores Pty. Ltd.	Senator O'Neill	Yes
7	18	7-Eleven Stores Pty. Ltd.	Senator O'Neill	Yes
8	20	7-Eleven Stores Pty. Ltd.	Information provided	Yes
9	21	7-Eleven Stores Pty. Ltd.	Chair	Yes
10	21-22	7-Eleven Stores Pty. Ltd.	Chair	Yes
1	34	Fels Wage Fairness Panel	Senator O'Neill	Yes
2	39	Fels Wage Fairness Panel	Senator O'Neill	Yes
1	42	Fair Work Ombudsman	Senator O'Neill	Yes
2	44	Fair Work Ombudsman	Chair	Yes
3	46	Fair Work Ombudsman	Senator McKenzie	Yes
1	1	National Farmers' Federation	Chair	Yes
2	2	National Farmers' Federation	Chair	Yes
3	3	National Farmers' Federation	Senator Rice	Yes
4	4	National Farmers' Federation	Senator McKenzie	Yes
5	4	National Farmers' Federation	Chair	Yes

7-Eleven Stores Pty. Ltd.

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16 February 2016

Dr. Patrick Hodder
Principal Research Officer
Education and Employment Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email:

Dear Dr. Hodder

Re: Senate Temporary visa program hearing on 5th February , 2016

With reference to your letter by email of Tuesday the 9th inst. I provide the following responses and information in relation to the questions taken on notice at the above hearing by the Committee. These are dealt with in the same number order as they appear in the summary which you provided:

1. Hansard Page 7

Attachment 1 to this letter provides an outline of the measures and initiatives implemented by 7-Eleven to address the problem of underpayment of franchisees employees.

2. Hansard Page 10

The precise content of the Variation to the 7-Eleven Store Agreement differs slightly in the case of some franchises in order to properly effect the required amendments to the particular form of Store Agreement which had been entered into. Attachments 2(a) and 2(b) however are copies of the base form of the document which is generally applicable to fuel and non-fuel stores respectively.

3. Hansard Page 12

Of the franchises to whom the invitation to enter into the Variation Agreement was extended only 11 have thus far not signed. The stores involved are

2099 – Sutherland)
2249 – Menai) (These stores are operated by one Franchisee)
2305 – Prairiewood)

New South Wales

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1185 – Richmond) (In these cases an extension letter is in place - Franchisee
 1002 – Dandenong) has been overseas)

4104 – Durack (This Franchisee is overseas)

2175 – Greenpoint

1131 – Fitzroy Street
 1145 – Collins Street
 1157 – St Kilda
 2070 – Bankstown

Of the total number of franchised outlets those that have not signed account for around 1.78%. The aggregate in the financial year 2015 referable to those who have not signed equates to 1.8% of the total franchisee income (before operating expenses) for the 7-Eleven network.

4. Hansard Page 13

In the period July to December 2015 (inclusive) there were 831 visits to stores by 7-Eleven's Retail Review team. The frequency of visits to stores is set out in the table below.

<u>Number of stores visited</u>	<u>Number of visits</u>
<u>471</u>	<u>1</u>
<u>122</u>	<u>2</u>
<u>36</u>	<u>3</u>
<u>2</u>	<u>4</u>

There are criteria which are referenced in order to determine the need or desirability for a follow up review and the approach can be summarized as follows:

<u>Store rating on review</u>	<u>Review timeframe</u>
<u><85%</u>	<u>Segment review within 4-6 weeks</u>
<u>85% to 89.9%</u>	<u>Segment review within 6-12 weeks</u>
<u>90% to 100%</u>	<u>Normal bi-annual review</u>

In December of 2015 and January of 2016 the number of reviews completed focusing on payroll was 687. In those months 545 stores were called on once and 71 stores had two visits.

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5. Hansard Page 13

Attachment 3 provides an outline of the time-line for finalising the implementation of the payroll initiatives and systems which are presently in train.

6. Hansard Page 14

As at 31 December 2015, 7-Eleven had 626 stores. 8 of these stores were operated by 7-Eleven Stores Pty Ltd, with the remainder operated by a total of 442 Franchisees.

During the months of September, October and November 2015, multiple meetings were held with Franchisees regarding the proposed variation to the franchise agreement. The dates, times, locations and attendees have not been documented for all of those meetings. Particulars of the key meetings held with the largest groups of franchisees however are set out below.

Specific meetings attended by Bob Baily with other representatives of 7-Eleven Stores Pty Ltd:

Date	Venue	Stores / Franchisees
7 th October 2015	7-Eleven Mt Waverley Head Office	6 Franchisees
8 th October 2015	Rosehill Gardens Racecourse	213 stores
9 th October 2015	Brisbane Convention and Exhibition Centre	128 stores
12 th October 2015	Melbourne Convention and Exhibition centre	223 stores
12 th October 2015	Perth Convention and Exhibition Centre	4 stores
16 th October 2015	7-Eleven Mt Waverley Head Office	7 Franchisees
4 th November 2015	7-Eleven Tullamarine store	3 Franchisees
24 th November 2015	7-Eleven Mt Waverley Head Office	7 Franchisees

Specific meetings attended by other representatives of 7-Eleven Stores Pty Ltd:

Date	Venue	Stores / Franchisees
9 th September 2015	Radisson Hotel Sydney	3 Franchisees
15 th October 2015	7-Eleven Mt Waverley Head Office	3 Franchisees
26 th October 2015 – 6 th November 2015	Individual Visits to all stores	All stores (where Franchisee available)
30 th October 2015	7-Eleven QLD State office	c.40 Franchisees (smaller sub-meeting with 6 Franchisees)

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30 th October 2015	7-Eleven VIC State office	10 Franchisees
30 th October 2015	7-Eleven NSW State office	c.60 Franchisees (smaller sub-meeting with 4 Franchisees)

At the meetings the key concerns raised by franchisees regarding the new arrangements concerned:

- the new payroll record keeping and compliances requirements;
- consequences for breaching the new payroll requirements and specifically how 7-Eleven would deal with honest mistakes by Franchisees;
- exposure to liability resulting from past proven instances of underpayment;
- ensuring equity of the new financial arrangements across all store types (fuel vs non-fuel), and
- the opportunity for further gains through negotiation with 7-Eleven, including increasing 7-Eleven's share of store supply item expenditure, bad merchandise expenditure and janitorial expenditure.

7. Hansard Page 18

Attachment 4 is a copy of the document which sets out the terms of 7-Eleven's buy back offer to its franchisees.

8. Hansard Page 20

The modelling of labour costs was performed as follows:

7-Eleven were advised by employment consultants, ER Strategies, that the average cost per hour (before associated on-costs) of operating an optimised roster in a non-fuel store would be \$25.04. 7-Eleven were advised by the same source that the comparable figure in a fuel stores is \$21.97 per hour.

After discussion with franchisees 7-Eleven determined that the minimum number of staff that would be required to operate a store would average at 1.1 Full Time Equivalent (FTE) for each shift per week over the course of a year. This staff number includes appropriate allowances for administration & management time, ordering and receiving stock, shift overlaps & promotional changeovers.

The average minimum weekly cost of operating a non-fuel store as follows;

168 hrs per week * \$25.04 per hour x 1.1 FTE = \$4,645.87 per week (before associated on-costs)
and for a fuel store

168 hrs per week * \$21.97 per hour x 1.1 FTE = \$4,060.06 per week (before associated on-costs)

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Similarly it was determined that a store would require an average maximum of 1.4 FTE staff per week over the course of a year. This staff number is driven primarily by transaction volumes during peak operating periods for the relevant stores.

The average maximum weekly cost of operating a non-fuel store as follows;

168 hrs per week * \$25.04 per hour x 1.4 FTE = \$5,889.41 per week (before associated on-costs)
and for a fuel store

168 hrs per week * \$21.97 per hour x 1.4 FTE = \$5,167.34 per week (before associated on-costs)

For stores requiring more than the minimum number of hours, labour costs were increased at the rate of \$0.86 per transaction in a non-fuel store and in the case of a fuel store \$0.75 per transaction.

Associated on-costs for leave accruals, superannuation and workers compensation were then added to all of these figures to determine the labour operating cost of each store.

9. Hansard Page 21

There are two franchisees who have not signed the new Agreement with 7-Eleven, whose employees' wages (11 employees in total) are being paid into the franchisees' bank accounts.

Yours faithfully

Bob Baily
Chief Executive Officer

7-Eleven Stores Pty. Ltd.

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“ATTACHMENT 1”

7-Eleven - Action taken in relation to franchisee underpayment of employees

Overview

7-Eleven has of its own volition initiated a range of measures to address the broad spectrum of issues that have arisen as a result of the underpayment by franchisees of their employees. These initiatives not only focus on remedying any underpayments but as importantly reviewing the company's systems, processes, people and culture to ensure we are an organisation that operates at the cutting edge of best business practice.

Over the past four months 7-Eleven has:

- initiated Senior Executive renewal by appointing a new Chief Executive Officer and National Operations Manager;
- appointed a new Board Chairman and commenced a process to appoint new directors with appropriate experience and skills to enhance governance, compliance and oversight;
- commissioned external experts to lead a review of our people, systems and process
- established the independent panel headed by Professor Allan Fels to determine the number of people and the quantum of monies involved in rectifying underpayment of wages;
- put in place a mechanism to fund claims approved by the Independent panel;
- proactively engaged with regulators and legislators in an effort to identify any policy and policy compliance improvements that could be beneficial across all industries;
- designed a new agreement that shifts significant value from the franchisor to franchisees and improves compliance, oversight and accountability
- implemented new payroll systems for improved monitoring, reporting and compliance across all stores
- directly engaged with franchisee staff to ensure proper record keeping and that they are fully informed of their rights

The actions that have been taken and those that are being planned, demonstrate 7-Eleven's absolute commitment to the highest possible standards of corporate governance, oversight and compliance; operational integrity and brand credibility.

The New Agreement

7-Eleven has implemented a new agreement with Franchisees that is designed to ensure stores have a sustainable and efficient base upon which to operate and grow.

The key elements of the agreement are:

- A Guaranteed Gross Profit share of \$340,000 for non-fuel stores and \$310,000 for fuel stores.
- Gross Profit Share will be on a sliding scale. Gross profit up to \$500,000 will be evenly split 50% to 7-Eleven and 50% to franchisees. From \$500,001 to \$1 million 53% to 7-Eleven and 47% to Franchisees and over \$1 million the split will be 56% to 7-Eleven and 44% to franchisees.
- Increasing commission on petrol from 1 to 1.5cents per litre.
- 7-Eleven will also fully fund all in-store credit and debit card costs and the operation of the Smartsafe programme.
- 7-Eleven will fund and support Franchisees should they choose to introduce Enterprise Bargaining Agreements with their staff.
- A guaranteed initial payment structure to give clarity on responsibilities for monies recovered from franchisees for underpayment by the Fels panel.

Regulatory co-operation

7-Eleven has always and will continue to work co-operatively with regulators and engage with them proactively.

The business is in dialogue with the Fair Work Ombudsman (FWO) and the Australian Competition and Consumer Commission (ACCC) as part of our strategy developing and implementing solutions to existing challenges and introducing preventative measures to ensure the integrity of our business operations and those of our franchisees.

Formalised partnership: While 7-Eleven and the FWO are currently exploring the possibility of entering into a more formal partnership to promote and ensure compliance the business is introducing a raft of measures it itself is insisting upon. 7-Eleven has now formally sought FWO's advice on its current program and as to whether or not there are any additional measures they would want to further strengthen the reforms being voluntarily introduced.

7-Eleven is demonstrating its commitment to promote and ensure compliance by:

- Establishing a compliance team to assist Franchisees in meeting compliance obligations but also to detect and report non-compliance. The business will ensure the work of the compliance team is auditable and available to the FWO.
- Updating policies and modules so that from the point of enquiry, to on-boarding and through to operating, franchisees have clear, multiple and persistent reminders of their obligations to their employees, including the payment of legal wages.
- Mandating the use of an enhanced central payroll system by all franchisees that maximizes our ability to ensure legal wages are being paid, in part through real time exception reporting, that will be auditable and actionable by 7-Eleven. FWO will have access to the audit.
- Introducing an education campaign to ensure franchisees and the staff of franchisees are aware of their obligations and entitlements respectively.
- Establishing and promoting a visible whistleblower hotline, which along with actions taken by the company and reported through to the board will be auditable and available to the FWO
- Increasing payroll audits from May 2015;
- Directly providing payslips to staff; and
- Engaging with the Fair Work Ombudsman in relation to claims of "cash back" schemes involving franchisees.

The business will continue to work with the FWO on current and future matters as it has in the past. 7-Eleven worked cooperatively with the FWO as it audited 20 stores in 2014 (of which two have been the subject of legal action)

Staff remediation

- 7-Eleven is committed to ensuring affected staff are fully repaid.
- In mid-September 2015, 7-Eleven established a confidential independent panel chaired by Professor Allan Fels to identify and repay any employees who may have been underpaid by franchisees.
- This panel is supported by the establishment of a dedicated hotline and website. Direct contact has been made with approximately 20,000 employees who may have been affected.

In the first tranche of review since the commencement, the panel has approved 100 claims for payment. We understand approximately 2000 franchisee staff have lodged claims with the panel.

Claims Funding

- 7-Eleven has put into place a process for the funding of claims, through the establishment of Independent Claims Pty Ltd, which has a contract with 7-Eleven to administer claims. It has not taken over 7-Eleven's liability to pay them. The process of funding approved claims is:
 - 7-Eleven will continue to fund all approved claims made via the Independent Fels Panel in the first instance. This makes sure any claims are paid quickly and Franchisees do not have any immediate financial obligation;
 - Once the total amount of approved claims is determined by the Panel, 7-Eleven will fund up to \$25 million of those claims;
 - If the claims received are more than \$25m, Franchisees will assume responsibility for the next \$5 million of claims; and
 - 7-Eleven and Franchisees will each contribute 50% to any remaining claims.
- These arrangements apply to approved claims of underpayment during the period up to and including 1 September 2015 and only those made via the Independent Fels Panel. Any claims of underpayment after that date will be the sole responsibility of the franchisee.

Revised franchisee conditions

7-Eleven and its franchisees have recently transferred to revised agreements, which recognise and cater for the current financial expectations of franchisees, as well as giving greater accountability and visibility around compliance with employment law.

Although staff employment and remuneration remains a franchisee responsibility, 7-Eleven will be taking a more active approach in monitoring and ensuring compliance with those responsibilities.

- Under the new arrangements between 7-Eleven and franchisees:
 - All franchisees must now use 7-Eleven's payroll services;
 - Franchisees must record their understanding of the need for strict compliance with the Fair Work Act and any applicable Award or Enterprise Bargaining Agreement;
 - Full rostering and visa records must be maintained at the store at all times for immediate inspection at any time;
 - Franchisees are banned from paying staff wages into the franchisee's own account (unless they are also working in their store) and from paying employees cash;
 - Franchisees must fully cooperate with 7-Eleven and any other party appointed to investigate and report in relation to payroll compliance, which would include the Fels panel;
 - Franchisees must promptly and fully repay its employees (either directly or through 7-Eleven) where underpayment has been determined, unless they can prove otherwise;
 - New payroll systems, processes and procedures must be observed; and
 - Any breach of the provisions of the agreement in relation to 7-Eleven's payroll reporting and compliance requirements will be subject to a graduated process which is fair but also holds people accountable.

Improved payroll systems

- 7-Eleven has commissioned Ernst & Young to design an improved payroll system to safeguard against potential future payment misconduct by franchisees. Implementation of these processes commenced in December 2015 and will be rolled out across the next 12 months.
- Payroll non-compliance is now treated as a material breach in the recently-signed new agreement. Any payroll non-compliance detected in stores is logged and breach notices are issued to franchisees. These notices require franchisees to rectify the breach in a reasonable time or face termination of the agreement.
- Franchisees are now required to pay their staff through the centralized 7-Eleven Stores payroll service, directly into the franchisee staff's bank account. Cash payment of wages is prohibited.
- All hours worked by franchisee staff must be recorded in electronic time and attendance system, and must be declared to be true and correct by franchisees and their staff.
- Franchisees are required to obtain and retain proof of age, identity and visa and work eligibility documents for all their staff upon commencement of their employment.
- Franchisee staff must be paid all entitlements automatically upon termination. Pay slips will contain all employment entitlements and be available for franchisees to view electronically.
- 7-Eleven is undertaking targeted retail and operating compliance and audit inspections by a designated working group to help monitor store operation more closely
- 7-Eleven will continue to facilitate a whistle blower hotline for reporting of payroll misconduct by franchisees

“ATTACHMENT 2(a)”

VARIATION OF FRANCHISE AGREEMENT

THIS VARIATION OF FRANCHISE AGREEMENT is made on the date set out at Item 1 in the Schedule annexed to this Agreement (“**the Schedule**”)

BETWEEN:

7-ELEVEN STORES PTY LTD (ACN 005 299 427) of 357 Ferntree Gully Road, Mount Waverley, Victoria (“**SEA**”)

and

The Company identified at Item 2 of the Schedule (“**the Franchisee**”)

and

The Person(s) identified at Item 3 of the Schedule (“**the Nominated Director(s)**”)

BACKGROUND:

- A. The Franchisee and the Nominated Director(s) are parties to the store agreement, including any variation or variations to it, the Fuel Addendum and the Card Payment Facility Addendum (“**Store Agreement**”) entered into with SEA on the date set out at Item 4 and may also be a party to a MoneyGram Addendum.
- B. Under the Store Agreement the Franchisee presently conducts the business of a 7-Eleven store and retail fuel outlet from the location (and having the store identification number) shown at Item 6.
- C. The parties have agreed on certain variations which are to apply to the Store Agreement and in particular with regard to:
 - (a) the utilisation by the Franchisee of the Payroll Services;
 - (b) the acceptance by the Franchisee of requirements for the observance of particular procedures, establishment and maintenance of records, controls in relation to the manner of payment and other requirements relating to the payment of wages and entitlements by the Franchisee to its Employees;

- (c) the apportionment between SEA and the Franchisee of the Gross Profit;
- (d) the utilisation by the Franchisee of a Smartsafe;
- (e) the assumption by SEA of responsibility for the burden of particular operating expenses;
- (f) the removal of fees payable under the Card Payment Facility Addendum in respect of card transactions at the Store; and
- (g) an increase in the amount of commission payable under the Fuel Addendum in respect of fuel sales effected by the Franchisee.

NOW IT IS AGREED AS FOLLOWS:

1.1. Definitions

"Agreement" means this Variation of Franchise Agreement;

"Agreement Date" means the date set out at Item 1, being the date on which this Agreement is signed by the Franchisee and the Nominated Director(s) and delivered to SEA;

"Article" means an article in the Store Agreement;

"Card Payment Facility Addendum" means the card payment facility addendum forming part of the Store Agreement;

"Clause" means a clause in this Agreement;

"Employees" means all or each employee or staff member retained by the Franchisee in connection with the operation of the business from the Store;

"Fuel Addendum" means the fuel addendum, bearing the date set out at Item 4, relating to the Store and forming part of the Store Agreement;

"Item" means an item in the Schedule;

"MoneyGram Addendum" means, if applicable, the MoneyGram Sub-Representative Addendum entered into between the parties and lodged with MoneyGram on the date set out in Item 5;

"Payroll Services" has the meaning ascribed to that term in Article 19A sub article (a) as inserted by Clause 3(a);

"Schedule" means the schedule attached to and forming part of this Agreement;

"Smartsafe" means a security safe installed or to be installed in the Store by SEA or by a third party supplier on behalf of SEA;

"Store" means the 7-Eleven Store and retail fuel outlet located at and having the Store identification number shown at Item 6;

"Store Agreement" has the meaning ascribed to that term in paragraph A of the Background.

1.2. Interpretation

- (a) Unless inconsistent with context all words, phrases and terms used in this Agreement shall have the meaning ascribed to them in the Store Agreement.
- (b) A reference to an "Article" is a reference to an Article in the Store Agreement.
- (c) In the event of any inconsistency between the Store Agreement and this Agreement, the provisions of this Agreement shall prevail.

2. Effective date of changes

- (a) Except as expressly provided otherwise in clauses 2(b) and 2(c) below, the provisions of this Agreement and the variations effected thereby to the Store Agreement shall take effect in all respects from the Agreement Date.
- (b) Irrespective of the Agreement Date, the variation to paragraph (j) of Exhibit D (being the increase in Minimum Gross Income (Merchandise) to \$310,000 per annum) shall be effective from 1 July 2015.
- (c) Where the Agreement Date is on or before 30 November 2015, the following provisions of the Agreement shall take effect from 1 September 2015:
 - a. the variation to paragraph (i) of Exhibit D (being the decrease in and restructure of the 7-Eleven Charge);

- b. the variation to Article 22B (being the apportionment of Gross Commissions);
- c. if applicable, the variation to Item 7 of the MoneyGram Addendum (being the replacement Sub-Representatives Remuneration under MoneyGram Addendum);
- d. the obligations assumed by SEA pursuant to new sub-Article 20(j)(iv) (being the assumption of responsibility for the fees payable in connection with Smartsafes);
- e. the variation to Article (n) of the Fuel Addendum (being the increase in commissions payable in respect of fuel); and
- f. the variation to Article (d) of the Card Payment Facility Addendum (being SEA's assumption of responsibility for the fees payable to merchant card service providers).

3. Insertion of new provisions

The following provisions shall be inserted into the Store Agreement:

(a) New Article 19A as follows:

"Article 19A: Payroll Services:

- "(a) In this Article "Payroll Services" means the services provided or to be provided by SEA by which:*
- (i) wages and entitlements due to Employees are processed and paid to those Employees;*
 - (ii) pay advices and other records in compliance with the Fair Work Act 2009 (Cth) ("Act") are compiled, distributed to the FRANCHISEE and retained in relation to such payments and which, during the term, may extend to distribution of pay advices electronically directly to Employees;*
 - (iii) superannuation payments in respect of each Employee of the FRANCHISEE are administered and paid to nominated funds;*
 - (iv) workcover premiums in respect of the FRANCHISEE and each Employee of the FRANCHISEE are administered and paid to the relevant authority; and*

- (v) *end of year Pay As You Go summaries for each Employee of the FRANCHISEE are generated and distributed.*
- (b) *The FRANCHISEE acknowledges that compliance with the Act and any applicable modern award or enterprise agreement is of fundamental importance.*
- (c) *the FRANCHISEE must use the Payroll Services and must provide SEA with all information as and when required by SEA to enable SEA to provide or facilitate the provision of such services. All such information must be correct and accurate as at the date it is submitted. If the FRANCHISEE identifies any inaccuracy in information previously submitted to SEA the FRANCHISEE must immediately notify SEA and work co-operatively with SEA to rectify any issues arising from the inaccurate information provided. For the avoidance of doubt:*
 - (i) *SEA may engage, and the FRANCHISEE consents to the engagement of, a third party to provide the Payroll Services for the purposes of this Article. In such instances the FRANCHISEE must provide SEA, or the nominated third party supplier with all information as may be required to provide the Payroll Services; and*
 - (ii) *if SEA engages a third party to provide services under this clause, SEA will pay all costs incurred in relation to the engagement of that third party.*
- (d) *SEA will pay, on behalf of the FRANCHISEE, the wages and all mandatory superannuation contributions of all Employees including all accrued but unpaid recreation, long service and other leave or entitlements on termination of an Employee of the FRANCHISEE. All wages paid to the Employees will be debited to the Open Account. Nothing in this Agreement however obliges SEA to make any payment on behalf of the FRANCHISEE the effect of which would be to reduce the FRANCHISEE's Net Worth below the Minimum Net Worth.*
- (e) *Where SEA retains a third party supplier for the purpose of providing the Payroll Services, the FRANCHISEE consents to the disclosure to that supplier of all such information, data and records as is reasonably required to enable the proper performance by that external supplier of the payroll service.*

- (f) SEA may require records (in such form and containing such detail as SEA may direct from time to time) to be maintained in relation to the attendance on each day of all Employees and other persons performing duties within the Store for the FRANCHISEE (including Directors and officers of the FRANCHISEE) and those records are to be maintained at the Licensed Premises and available for inspection by SEA at any time, without notice.
- (g) Without limiting sub-Article 19A(f), SEA may direct the preparation and filing by the FRANCHISEE of weekly time sheets and such other reports as it reasonably determines to be necessary and in such form or forms as it reasonably prescribes to ensure accurate recording and reporting of the hours worked by all staff (including those of Directors and officers of the FRANCHISEE).
- (h) The FRANCHISEE is prohibited from requiring, directing or permitting wages due to any Employee (the "**Relevant Employee**") to be paid:
- (i) to the account of the FRANCHISEE or of any associate or relative of the FRANCHISEE (where they are not also the Relevant Employee) or any body corporate or entity of which the FRANCHISEE or associate or relative is a member or Director or shareholder (even if such payment is for the purpose of the FRANCHISEE then effecting the payment of wages to the Relevant Employee);
 - (ii) outside of the Payroll Services; or
 - (iii) to a Relevant Employee in the form of cash.
- (i) SEA may either by its own personnel or by externally appointed auditors undertake at any time during the term of the Agreement a review or audit of all of the records of the FRANCHISEE with a view to confirming:
- (i) adherence by the FRANCHISEE to the requirements of the Agreement;
 - (ii) compliance with relevant workplace laws, including the Act and any applicable modern award or enterprise agreement; and

- (iii) *that all Employees have been paid at appropriate or prescribed rates for all periods worked.*
- (j) *The FRANCHISEE shall not, without reasonable cause, refuse or neglect to produce any records or document or to provide such assistance as is reasonably required in the undertaking of a review or audit in accordance with sub-Article 19A(i).*
- (k) *SEA may develop and require adherence to a time and attendance system that may entail the use of biometrics and/or other methods or systems to record the ingress, egress and attendance at the Store of Employees and the FRANCHISEE must adhere in all respects to any such system if and when introduced.*
- (l) *The FRANCHISEE must obtain from all new Employees certified proof of identity confirming the personal details of that Employee together with evidence (as applicable) of the visa status of the Employee and the restrictions (if any) applicable to the hours of work or other conditions which that Employee may be required to observe. All such documentation (or copies) must be kept by the FRANCHISEE at the Licensed Premises and the originals (as required) and copies (where originals are not required) must be forwarded to SEA within three (3) business days following the engagement of any new Employee.*
- (m) *Acting reasonably, SEA shall be entitled, in its discretion and from time to time to make changes, improvements and enhancements to its payroll systems and to the processes and procedures which the FRANCHISEE must observe in connection with the enforcement and/or maintenance of records and ensuring the correct payment of wages to Employees.*
- (n) (i) *The FRANCHISEE acknowledges that SEA has either entered into, or may during the Term enter into, a deed or arrangement ("**Undertaking**") with the Fair Work Ombudsman ("**FWO**") under which SEA is or may be required to:*
- (1) *provide to the FWO data, copy documents or other information extracted from the payroll records pertaining to the FRANCHISEE and its Employees ("**Information**"); and/or;*

(2) *notify the FWO in the event that SEA detects or becomes aware of the occurrence of any underpayment of an Employee or Employees or apparent non compliance with the Act.*

(ii) *To enable SEA to fulfil its commitments under the Undertaking and/or for the purpose generally of ensuring compliance by the FRANCHISEE with the Act the FRANCHISEE authorises and consents to the disclosure by SEA of the Information."*

(b) New sub-Article 20(j)(iv) as follows:

"(iv) where SEA:

(1) *has installed or arranged for the installation within the Store of a Smartsafe which is accessible only by an approved security organisation ("**Security Service**";) and*

(2) *so directs the FRANCHISEE in writing:*

the FRANCHISEE must deposit or place into the Smartsafe the Sales Receipts, discounts and all other income received in the form of cash (except where expended by the FRANCHISEE for properly reported and substantiated Purchases and Operating Expenses) as soon as practicable following receipt and facilitate entry into the Store and access to the Smartsafe by authorised representatives of the Security Service for the purpose of clearing the contents of the Smartsafe. The costs in relation to the management, reconciliation and collection of monies deposited into the Smartsafe shall be borne in all respects by SEA."

(c) New Article 22A as follows:

"Article 22A: Expenses:

(a) *The FRANCHISEE shall pay to SEA, and SEA shall debit the Financial Records with, an amount equal to the Expense Amount (as defined in Exhibit E to this Agreement) which amount shall be excluded from and not be included in the Cost*

of Goods Sold and shall not be included in the amounts used for the purposes of calculating Gross Income (Merchandise) in accordance with Article 23(b)."

(d) New Article 22B as follows:

"Article 22B: Gross Commissions:

- (a) *At the end of each Accounting Period, SEA shall credit the FRANCHISEE's Open Account with an amount equal to 43 percent of the Gross Commissions (as defined in Exhibit E). For the avoidance of doubt, these amounts shall be excluded from and not be included in the Gross Income (Merchandise) for the purposes of Article 23(b)."*

(e) New defined terms in Exhibit E as follows:

"Expense Amount means the total of the following:

- (i) *an amount equal to 43 percent of the amount incurred by SEA in connection with the Special Items: Supplies; plus*
- (ii) *the amount in full of the Operating Expenses."*

"GI Effective Date" means the date on which (under this Agreement) the variation to paragraph (j) of Exhibit D takes effect;"

"GP Effective Date" means the date on which (under this Agreement) the variation to paragraph (i) of Exhibit D takes effect."

"Gross Commissions means total amount of commissions received in respect of the sale of products (other than fuel), e-services, other retail income and miscellaneous non-retail income through the FRANCHISEE's Operation, less the charges paid to the third parties which facilitate the provision of those products and services and the taxes and other expenses incurred by SEA in connection with the sale of those products and/or e-services and receipt of that income."

"Minimum Gross Income (Merchandise)" means the amount specified in paragraph (j) of Exhibit D."

"Payroll Services has the meaning ascribed to that term in Article 19A."

“Special Items: Supplies” means the cost of the ingredients and supplies procured by SEA during the Accounting Period that are required to complete an item of Inventory.”

4. Amendment of provisions

The following Articles shall be amended as set out below:

(a) Article 12(c) shall be deleted in its entirety and replaced with the following:

“(c) The FRANCHISEE shall indemnify and hold SEA and SEI harmless from liability for any representations by, and for any loss or damage caused by any act or omission of the FRANCHISEE or the FRANCHISEE’s agents, representatives, servants, Employees or invitees, including but not limited to any liability for payment of Employee wages and other entitlements which accrues or accrued at any time during the term of this Agreement in connection with the FRANCHISEE’s operation of the Store, including where SEA effects payment of wages or other entitlements to an Employee in order to rectify an underpayment and irrespective of whether the Agreement has been terminated.”

(b) Article 20(j)(i)(1) shall be deleted in its entirety and replaced with the following:

“(1) sales receipts, whether cash, cheque, vendor draft, credit instrument or otherwise (“Sales Receipts”);”

(c) Article 23(a) shall be deleted in its entirety and replaced with the following:

“(a) In consideration of this Agreement, at the end of each Accounting Period until the FRANCHISEE’s permanent departure from the Licensed Property, the FRANCHISEE shall pay to SEA, and SEA shall debit the Financial Records with an amount, on a pro-rata basis, equal to the progressive percentage rates of the Gross Profit (as defined in Exhibit E) as set out in paragraph (i) of Exhibit D to this Agreement (“7-ELEVEN Charge”).”

(d) Article 23(b) shall be deleted in its entirety and replaced with the following:

“(b) If the Gross Income (Merchandise) (as defined in Exhibit E to this Agreement) to be received by the FRANCHISEE for any Accounting Period (or part thereof) would be less than the amount specified in paragraph (j) of Exhibit D to this

Agreement, SEA shall contribute an additional amount to the Financial Records so that the Gross Income (Merchandise) received by the FRANCHISEE for that Accounting Period shall be at least equal to the amount specified in paragraph (j) of Exhibit D to this Agreement, adjusted on a pro-rata basis to reflect the number of days during the Accounting Period on which the Store was trading.

- (c) *If at the end of any ensuing Accounting Period the Gross Income (Merchandise) of the FRANCHISEE over the preceding 12 months (or any lesser period commencing from the GI Effective Date) is in excess of the Minimum Gross Income (Merchandise) (or pro-rata of that amount where the period is lesser than 12 months), the FRANCHISEE shall pay to SEA and SEA shall be entitled to debit the Financial Records with such amount as is equal to the aggregate of the contributions made by SEA under Article 23(b) in the previous twelve (12) months (or lesser period as the case may be) up to the end of the relevant Accounting Period (and not previously recovered) but only to the extent of that excess and provided that the Gross Income (Merchandise) shall not in any Accounting Period be reduced to an amount which is (on a pro-rata basis) less than the Minimum Gross Income (Merchandise)."*

The remaining sub-Article 23(c) is then renumbered accordingly to 23(d).

- (e) **Articles (h), (i) and (j) in Exhibit D to the Store Agreement shall be deleted and replaced with the following:**

- "(h) *The FRANCHISEE's draw on anticipated profits for an Accounting Period shall be \$[INSERT AMOUNT] each week. The amount remitted to the FRANCHISEE shall be reduced by an amount equal to the amount by which the FRANCHISEE's draw plus the amount of the FRANCHISEE's payroll for the Store for the previous draw period exceeds 15% of the Net Sales (as defined in Exhibit E and excluding fuel sales, if any) for the previous draw period.*
- (i) *For the purposes of Article 23, the 7-ELEVEN Charge shall be as calculated at the end of each Accounting Period by applying the applicable 7-ELEVEN Charge*

(percentage), as set out in the table below, to the Gross Profit for that Accounting Period on a pro-rata basis.

<i>Annual Gross Profit:</i>	<i>Applicable 7-ELEVEN Charge (percentage):</i>	<i>7-Eleven Charge on Gross Profit:</i>
<i>0 - 500,000</i>	<i>50%</i>	<i>\$0.50 for each \$1 of Gross Profit</i>
<i>500,001 - 1,000,000</i>	<i>53%</i>	<i>\$250,000 plus \$0.53 for each \$1 of Gross Profit over \$500,000</i>
<i>> 1,000,000</i>	<i>56%</i>	<i>\$515,000 plus \$0.56 for each \$1 of Gross Profit over \$1,000,000</i>

For the avoidance of doubt the 7-Eleven Charge shall be calculated and applied progressively at the end of each Accounting Period from the GP Effective Date on the following basis:

- (A) where less than twelve months have elapsed since the GP Effective Date, by determining an annualised Gross Profit figure calculated by reference to the actual Gross Profit derived in the period between the GP Effective Date and the end of the relevant Accounting Period and progressively adjusting the 7-ELEVEN Charge at the end of each relevant Accounting Period to reflect the total amount of the 7-ELEVEN Charge applicable to the end of that Accounting Period; and*
- (B) where twelve months or more have elapsed since the GP Effective Date, by aggregating the actual Gross Profit derived in each Accounting Period (including the relevant Accounting Period) over the previous twelve month period to determine a current annualised Gross Profit figure.*

(j) *The Gross Income (Merchandise) (as defined in Exhibit E) for an Accounting Period shall be at least equal to \$849.31 per day (the equivalent of \$310,000 per calendar year) multiplied by the number of days in such Accounting Period.*

- (f) **The following shall be inserted in the definition of “Material Breach” in Exhibit E to the Store Agreement:**

“(xxi) FRANCHISEE breaches Article 19A”.

- (g) **The definition of “Accounting Period” in Exhibit E to the Store Agreement shall be deleted and replaced with the following:**

“Accounting Period means a calendar month, or such other retail period as determined and published by SEA (such as a retail period of 4-4-5, each of these representing weeks periods). If the Effective Date or expiration or termination occurs during any retail period, that portion of the period which follows the Effective Date or precedes expiration or termination shall be an Accounting Period.”

- (h) **The definition of “Cost of Goods Sold” in Exhibit E to the Store Agreement shall be deleted and replaced with the following:**

“Cost of Goods Sold means the value at cost of the Inventory sold for the Accounting Period, including the cost of the ingredients and materials comprised within that Inventory, unless otherwise expensed by SEA as a Special Items: Supplies.”

- (i) **The definition of “Gross Income” in Exhibit E to the Store Agreement shall be deleted and replaced with the following:**

“Gross Income (Merchandise) means Gross Profit less the 7-ELEVEN Charge.”

- (j) **The definition of “Net Sales” in Exhibit E to the Store Agreement shall be deleted and replaced with the following:**

“Net Sales means the total amount reflected on the applicable point of sale register electronic journals for the FRANCHISEE’s sales, rentals and fees (excluding the Gross Commissions) relating to the FRANCHISEE’s Operation, less over-rings, refunds to

customers, taxes collected incidental to sales and GST liabilities in respect of taxable supplies made in the course of the FRANCHISEE's Operation."

(k) The definition of "Total Gross Income" in Exhibit E to the Store Agreement shall be deleted in its entirety.

(l) Article (n) of the Fuel Addendum to the Store Agreement shall be deleted and replaced with the following:

"(n) The FRANCHISEE shall receive as remuneration for the services performed in the promotion and sale of the Consigned Fuel and for the FRANCHISEE's responsibilities relating to the Fuel Area and the Fuel Equipment a commission (the "Fuel Commission") in an amount equal to 1.5 cents for each Litre of Consigned Fuel sold by the FRANCHISEE during each Accounting Period as reflected by the pump meter reading. The Fuel Commission shall be excluded from and shall not be included in Gross Income (Merchandise) for the purposes of Article 23(b)."

(m) Article (d) of the Card Payment Facility Addendum to the Store Agreement shall be deleted and replaced with the following:

"(d) All periodic charges, processing charges, fees, expenses or discounts attributable to the use of such programs or facilities shall be borne by SEA."

(n) If the Franchisee is a party to a MoneyGram Addendum, the text appearing under item 7 of the MoneyGram Addendum shall be deleted and replaced with the following:

"ITEM 7

(Sub-Representative's Remuneration)

The share or portion of the Net Commission which is equivalent to the percentage of Gross Commissions which the Sub-Representative is entitled to receive under the Store Agreement."

Save for the variations to the Store Agreement effected by this Agreement SEA and the Franchisee otherwise confirm the terms of the Store Agreement.

For the avoidance of doubt, the provisions in this Agreement and in the Store Agreement are, in all respects, subject to the Oilcode.

EXECUTED AS A DEED

EXECUTED of by **7-ELEVEN STORES**)
PTY LTD. by being signed by a duly)
Authorised person in the presence of:)
)

.....
Signature of Authorised Person

.....
Signature of witness

.....
Name of Authorised Person

.....
Full Name

.....
Usual Address

EXECUTED by
PTY LTD in accordance with
Section 127 of the *Corporations Act*
2001

.....
Director

.....
Secretary

.....
Full Name

.....
Full Name

.....
Usual Address

.....
Usual Address

SIGNED by the Nominated Director(s))
in the presence of:)
)

.....
Signature of Nominated Director

.....
Signature of witness

.....
Name of Nominated Director

.....
Full Name

.....
Usual Address

SIGNED by the Nominated Director(s))
in the presence of:)
)

.....
Signature of Nominated Director

.....
Signature of witness

.....
Name of Nominated Director

.....
Full Name

.....
Usual Address

SCHEDULE

Item 1

(Agreement Date)

Item 2

(The Franchisee)

Item 3

(Nominated Director(s))

Item 4

(Date of Store Agreement)

Item 5

(MoneyGram Addendum Lodgement Date)

Item 6

(Store Number and Location)

“ATTACHMENT 2(b)”

VARIATION OF FRANCHISE AGREEMENT

THIS VARIATION OF FRANCHISE AGREEMENT is made on the date set out at Item 1 in the Schedule annexed to this Agreement (“**the Schedule**”)

BETWEEN:

7-ELEVEN STORES PTY LTD (ACN 005 299 427) of 357 Ferntree Gully Road, Mount Waverley, Victoria (“**SEA**”)

and

The Company identified at Item 2 of the Schedule (“**the Franchisee**”)

and

The Person(s) identified at Item 3 of the Schedule (“**the Nominated Director(s)**”)

BACKGROUND:

- A. The Franchisee and the Nominated Director(s) are parties to the store agreement, including any variation or variations to it, and the Card Payment Facility Addendum (“**Store Agreement**”) entered into with SEA on the date set out at Item 4 and may also be a party to a MoneyGram Addendum.
- B. Under the Store Agreement the Franchisee presently conducts the business of a 7-Eleven store from the location (and having the store identification number) shown at Item 6.
- C. The parties have agreed on certain variations which are to apply to the Store Agreement and in particular with regard to:
 - (a) the utilisation by the Franchisee of the Payroll Services;
 - (b) the acceptance by the Franchisee of requirements for the observance of particular procedures, establishment and maintenance of records, controls in relation to the manner of payment and other requirements relating to the payment of wages and entitlements by the Franchisee to its Employees;

- (c) the apportionment between SEA and the Franchisee of the Gross Profit;
- (d) the utilisation by the Franchisee of a Smartsafe;
- (e) the assumption by SEA of responsibility for the burden of particular operating expenses;
and
- (f) the removal of fees payable under the Card Payment Facility Addendum in respect of card transactions at the Store.

NOW IT IS AGREED AS FOLLOWS:

1.1. Definitions

"Agreement" means this Variation of Franchise Agreement;

"Agreement Date" means the date set out at Item 1, being the date on which this Agreement is signed by the Franchisee and the Nominated Director(s) and delivered to SEA;

"Article" means an article in the Store Agreement;

"Card Payment Facility Addendum" means the card payment facility addendum forming part of the Store Agreement;

"Clause" means a clause in this Agreement;

"Code" means the Franchising Code of Conduct 2014;

"Employees" means all or each employee or staff member retained by the Franchisee in connection with the operation of the business from the Store;

"Item" means an item in the Schedule;

"MoneyGram Addendum" means, if applicable, the MoneyGram Sub-Representative Addendum entered into between the parties and lodged with MoneyGram on the date set out in Item 5;

"Old Code" means the Franchising Code of Conduct 1998;

"Payroll Services" has the meaning ascribed to that term in Article 19A sub article (a) as inserted by Clause 3(a);

"Schedule" means the schedule attached to and forming part of this Agreement;

"Smartsafe" means a security safe installed or to be installed in the Store by SEA or by a third party supplier on behalf of SEA;

"Store" means the 7-Eleven Store located at and having the Store identification number shown at Item 6;

"Store Agreement" has the meaning ascribed to that term in paragraph A of the Background.

1.2. Interpretation

- (a) Unless inconsistent with context all words, phrases and terms used in this Agreement shall have the meaning ascribed to them in the Store Agreement.
- (b) A reference to an "Article" is a reference to an Article in the Store Agreement.
- (c) In the event of any inconsistency between the Store Agreement and this Agreement, the provisions of this Agreement shall prevail.

2. Effective date of changes

- (a) Except as expressly provided otherwise in clauses 2(b), 2(c) and 2(d) below, the provisions of this Agreement and the variations effected thereby to the Store Agreement shall take effect in all respects from the Agreement Date.
- (b) Subject to clause 2(c), irrespective of the Agreement Date, "Option A" as detailed in the variation to paragraph (j) of Exhibit D (being the increase in Minimum Gross Income (Merchandise) to \$310,000 per annum) shall apply and be effective from 1 July 2015.
- (c) Where the Agreement Date is on or before 30 November 2015, "Option B" as detailed in the variation to paragraph (j) of Exhibit D (being the increase in Minimum Gross Income (Merchandise) to \$340,000 per annum) shall apply in lieu of "Option A" and be effective from 1 July 2015.
- (d) Where the Agreement Date is on or before 30 November 2015, the following provisions of the Agreement shall take effect from 1 September 2015:

- a. the variation to paragraph (i) of Exhibit D (being the decrease in and restructure of the 7-Eleven Charge);
- b. the variation to Article 22B (being the apportionment of Gross Commissions);
- c. if applicable, the variation to Item 7 of the MoneyGram Addendum (being the replacement Sub-Representatives Remuneration under MoneyGram Addendum);
- d. the obligations assumed by SEA pursuant to new sub-Article 20(j)(iv) (being the assumption of responsibility for the fees payable in connection with Smartsafes); and
- e. the variation to Article (d) of the Card Payment Facility Addendum (being SEA's assumption of responsibility for the fees payable to merchant card service providers).

3. Insertion of new provisions

The following provisions shall be inserted into the Store Agreement:

(a) New Article 19A as follows:

"Article 19A: Payroll Services:

- "(a) In this Article "Payroll Services" means the services provided or to be provided by SEA by which:*
- (i) wages and entitlements due to Employees are processed and paid to those Employees;*
 - (ii) pay advices and other records in compliance with the Fair Work Act 2009 (Cth) ("Act") are compiled, distributed to the FRANCHISEE and retained in relation to such payments and which, during the term, may extend to distribution of pay advices electronically directly to Employees;*
 - (iii) superannuation payments in respect of each Employee of the FRANCHISEE are administered and paid to nominated funds;*
 - (iv) workcover premiums in respect of the FRANCHISEE and each Employee of the FRANCHISEE are administered and paid to the relevant authority; and*

- (v) *end of year Pay As You Go summaries for each Employee of the FRANCHISEE are generated and distributed.*
- (b) *The FRANCHISEE acknowledges that compliance with the Act and any applicable modern award or enterprise agreement is of fundamental importance.*
- (c) *the FRANCHISEE must use the Payroll Services and must provide SEA with all information as and when required by SEA to enable SEA to provide or facilitate the provision of such services. All such information must be correct and accurate as at the date it is submitted. If the FRANCHISEE identifies any inaccuracy in information previously submitted to SEA the FRANCHISEE must immediately notify SEA and work co-operatively with SEA to rectify any issues arising from the inaccurate information provided. For the avoidance of doubt:*
 - (i) *SEA may engage, and the FRANCHISEE consents to the engagement of, a third party to provide the Payroll Services for the purposes of this Article. In such instances the FRANCHISEE must provide SEA, or the nominated third party supplier with all information as may be required to provide the Payroll Services; and*
 - (ii) *if SEA engages a third party to provide services under this clause, SEA will pay all costs incurred in relation to the engagement of that third party.*
- (d) *SEA will pay, on behalf of the FRANCHISEE, the wages and all mandatory superannuation contributions of all Employees including all accrued but unpaid recreation, long service and other leave or entitlements on termination of an Employee of the FRANCHISEE. All wages paid to the Employees will be debited to the Open Account. Nothing in this Agreement however obliges SEA to make any payment on behalf of the FRANCHISEE the effect of which would be to reduce the FRANCHISEE's Net Worth below the Minimum Net Worth.*
- (e) *Where SEA retains a third party supplier for the purpose of providing the Payroll Services, the FRANCHISEE consents to the disclosure to that supplier of all such information, data and records as is reasonably required to enable the proper performance by that external supplier of the payroll service.*

- (f) SEA may require records (in such form and containing such detail as SEA may direct from time to time) to be maintained in relation to the attendance on each day of all Employees and other persons performing duties within the Store for the FRANCHISEE (including Directors and officers of the FRANCHISEE) and those records are to be maintained at the Licensed Premises and available for inspection by SEA at any time, without notice.
- (g) Without limiting sub-Article 19A(f), SEA may direct the preparation and filing by the FRANCHISEE of weekly time sheets and such other reports as it reasonably determines to be necessary and in such form or forms as it reasonably prescribes to ensure accurate recording and reporting of the hours worked by all staff (including those of Directors and officers of the FRANCHISEE).
- (h) The FRANCHISEE is prohibited from requiring, directing or permitting wages due to any Employee (the "**Relevant Employee**") to be paid:
- (i) to the account of the FRANCHISEE or of any associate or relative of the FRANCHISEE (where they are not also the Relevant Employee) or any body corporate or entity of which the FRANCHISEE or associate or relative is a member or Director or shareholder (even if such payment is for the purpose of the FRANCHISEE then effecting the payment of wages to the Relevant Employee);
 - (ii) outside of the Payroll Services; or
 - (iii) to a Relevant Employee in the form of cash.
- (i) SEA may either by its own personnel or by externally appointed auditors undertake at any time during the term of the Agreement a review or audit of all of the records of the FRANCHISEE with a view to confirming:
- (i) adherence by the FRANCHISEE to the requirements of the Agreement;
 - (ii) compliance with relevant workplace laws, including the Act and any applicable modern award or enterprise agreement; and

- (iii) *that all Employees have been paid at appropriate or prescribed rates for all periods worked.*
- (j) *The FRANCHISEE shall not, without reasonable cause, refuse or neglect to produce any records or document or to provide such assistance as is reasonably required in the undertaking of a review or audit in accordance with sub-Article 19A(i).*
- (k) *SEA may develop and require adherence to a time and attendance system that may entail the use of biometrics and/or other methods or systems to record the ingress, egress and attendance at the Store of Employees and the FRANCHISEE must adhere in all respects to any such system if and when introduced.*
- (l) *The FRANCHISEE must obtain from all new Employees certified proof of identity confirming the personal details of that Employee together with evidence (as applicable) of the visa status of the Employee and the restrictions (if any) applicable to the hours of work or other conditions which that Employee may be required to observe. All such documentation (or copies) must be kept by the FRANCHISEE at the Licensed Premises and the originals (as required) and copies (where originals are not required) must be forwarded to SEA within three (3) business days following the engagement of any new Employee.*
- (m) *Acting reasonably, SEA shall be entitled, in its discretion and from time to time to make changes, improvements and enhancements to its payroll systems and to the processes and procedures which the FRANCHISEE must observe in connection with the enforcement and/or maintenance of records and ensuring the correct payment of wages to Employees.*
- (n) (i) *The FRANCHISEE acknowledges that SEA has either entered into, or may during the Term enter into, a deed or arrangement ("**Undertaking**") with the Fair Work Ombudsman ("**FWO**") under which SEA is or may be required to:*

 - (1) *provide to the FWO data, copy documents or other information extracted from the payroll records pertaining to the FRANCHISEE and its Employees ("**Information**"); and/or;*

(2) *notify the FWO in the event that SEA detects or becomes aware of the occurrence of any underpayment of an Employee or Employees or apparent non compliance with the Act.*

(ii) *To enable SEA to fulfil its commitments under the Undertaking and/or for the purpose generally of ensuring compliance by the FRANCHISEE with the Act the FRANCHISEE authorises and consents to the disclosure by SEA of the Information."*

(b) New sub-Article 20(j)(iv) as follows:

"(iv) where SEA:

*(1) has installed or arranged for the installation within the Store of a Smartsafe which is accessible only by an approved security organisation ("**Security Service**";) and*

(2) so directs the FRANCHISEE in writing:

the FRANCHISEE must deposit or place into the Smartsafe the Sales Receipts, discounts and all other income received in the form of cash (except where expended by the FRANCHISEE for properly reported and substantiated Purchases and Operating Expenses) as soon as practicable following receipt and facilitate entry into the Store and access to the Smartsafe by authorised representatives of the Security Service for the purpose of clearing the contents of the Smartsafe. The costs in relation to the management, reconciliation and collection of monies deposited into the Smartsafe shall be borne in all respects by SEA."

(c) New Article 22A as follows:

"Article 22A: Expenses:

(a) The FRANCHISEE shall pay to SEA, and SEA shall debit the Financial Records with, an amount equal to the Expense Amount (as defined in Exhibit E to this Agreement) which amount shall be excluded from and not be included in the Cost

of Goods Sold and shall not be included in the amounts used for the purposes of calculating Gross Income (Merchandise) in accordance with Article 23(b)."

(d) New Article 22B as follows:

"Article 22B: Gross Commissions:

(a) At the end of each Accounting Period, SEA shall credit the FRANCHISEE's Open Account with an amount equal to 43 percent of the Gross Commissions (as defined in Exhibit E). For the avoidance of doubt, these amounts shall be excluded from and not be included in the Gross Income (Merchandise) for the purposes of Article 23(b)."

(e) New defined terms in Exhibit E as follows:

"Expense Amount means the total of the following:

- (i) an amount equal to 43 percent of the amount incurred by SEA in connection with the Special Items: Supplies; plus*
- (ii) the amount in full of the Operating Expenses."*

"GI Effective Date" means the date on which (under this Agreement) the variation to paragraph (j) of Exhibit D takes effect;"

"GP Effective Date" means the date on which (under this Agreement) the variation to paragraph (i) of Exhibit D takes effect."

"Gross Commissions means total amount of commissions received in respect of the sale of products (other than fuel), e-services, other retail income and miscellaneous non-retail income through the FRANCHISEE's Operation, less the charges paid to the third parties which facilitate the provision of those products and services and the taxes and other expenses incurred by SEA in connection with the sale of those products and/or e-services and receipt of that income."

"Minimum Gross Income (Merchandise)" means the amount specified in paragraph (j) of Exhibit D."

"Payroll Services has the meaning ascribed to that term in Article 19A."

“Special Items: Supplies” means the cost of the ingredients and supplies procured by SEA during the Accounting Period that are required to complete an item of Inventory.”

4. Amendment of provisions

The following Articles shall be amended as set out below:

(a) Article 12(c) shall be deleted in its entirety and replaced with the following:

“(c) The FRANCHISEE shall indemnify and hold SEA and SEI harmless from liability for any representations by, and for any loss or damage caused by any act or omission of the FRANCHISEE or the FRANCHISEE’s agents, representatives, servants, Employees or invitees, including but not limited to any liability for payment of Employee wages and other entitlements which accrues or accrued at any time during the term of this Agreement in connection with the FRANCHISEE’s operation of the Store, including where SEA effects payment of wages or other entitlements to an Employee in order to rectify an underpayment and irrespective of whether the Agreement has been terminated.”

(b) Article 20(j)(i)(1) shall be deleted in its entirety and replaced with the following:

“(1) sales receipts, whether cash, cheque, vendor draft, credit instrument or otherwise (“Sales Receipts”);”

(c) Article 23(a) shall be deleted in its entirety and replaced with the following:

“(a) In consideration of this Agreement, at the end of each Accounting Period until the FRANCHISEE’s permanent departure from the Licensed Property, the FRANCHISEE shall pay to SEA, and SEA shall debit the Financial Records with an amount, on a pro-rata basis, equal to the progressive percentage rates of the Gross Profit (as defined in Exhibit E) as set out in paragraph (i) of Exhibit D to this Agreement (“7-ELEVEN Charge”).”

(d) Article 23(b) shall be deleted in its entirety and replaced with the following:

“(b) If the Gross Income (Merchandise) (as defined in Exhibit E to this Agreement) to be received by the FRANCHISEE for any Accounting Period (or part thereof) would be less than the amount specified in paragraph (j) of Exhibit D to this

Agreement, SEA shall contribute an additional amount to the Financial Records so that the Gross Income (Merchandise) received by the FRANCHISEE for that Accounting Period shall be at least equal to the amount specified in paragraph (j) of Exhibit D to this Agreement, adjusted on a pro-rata basis to reflect the number of days during the Accounting Period on which the Store was trading.

- (c) *If at the end of any ensuing Accounting Period the Gross Income (Merchandise) of the FRANCHISEE over the preceding 12 months (or any lesser period commencing from the GI Effective Date) is in excess of the Minimum Gross Income (Merchandise) (or pro-rata of that amount where the period is lesser than 12 months), the FRANCHISEE shall pay to SEA and SEA shall be entitled to debit the Financial Records with such amount as is equal to the aggregate of the contributions made by SEA under Article 23(b) in the previous twelve (12) months (or lesser period as the case may be) up to the end of the relevant Accounting Period (and not previously recovered) but only to the extent of that excess and provided that the Gross Income (Merchandise) shall not in any Accounting Period be reduced to an amount which is (on a pro-rata basis) less than the Minimum Gross Income (Merchandise)."*

The remaining sub-Article 23(c) is then renumbered accordingly to 23(d).

- (e) **Articles (h), (i) and (j) in Exhibit D to the Store Agreement shall be deleted and replaced with the following:**

- "(h) *The FRANCHISEE's draw on anticipated profits for an Accounting Period shall be \$[INSERT AMOUNT] each week. The amount remitted to the FRANCHISEE shall be reduced by an amount equal to the amount by which the FRANCHISEE's draw plus the amount of the FRANCHISEE's payroll for the Store for the previous draw period exceeds 15% of the Net Sales (as defined in Exhibit E and excluding fuel sales, if any) for the previous draw period.*
- (i) *For the purposes of Article 23, the 7-ELEVEN Charge shall be as calculated at the end of each Accounting Period by applying the applicable 7-ELEVEN Charge*

(percentage), as set out in the table below, to the Gross Profit for that Accounting Period on a pro-rata basis.

<i>Annual Gross Profit:</i>	<i>Applicable 7-ELEVEN Charge (percentage):</i>	<i>7-Eleven Charge on Gross Profit:</i>
<i>0 - 500,000</i>	<i>50%</i>	<i>\$0.50 for each \$1 of Gross Profit</i>
<i>500,001 - 1,000,000</i>	<i>53%</i>	<i>\$250,000 plus \$0.53 for each \$1 of Gross Profit over \$500,000</i>
<i>> 1,000,000</i>	<i>56%</i>	<i>\$515,000 plus \$0.56 for each \$1 of Gross Profit over \$1,000,000</i>

For the avoidance of doubt the 7-Eleven Charge shall be calculated and applied progressively at the end of each Accounting Period from the GP Effective Date on the following basis:

- (A) where less than twelve months have elapsed since the GP Effective Date, by determining an annualised Gross Profit figure calculated by reference to the actual Gross Profit derived in the period between the GP Effective Date and the end of the relevant Accounting Period and progressively adjusting the 7-ELEVEN Charge at the end of each relevant Accounting Period to reflect the total amount of the 7-ELEVEN Charge applicable to the end of that Accounting Period; and*
- (B) where twelve months or more have elapsed since the GP Effective Date, by aggregating the actual Gross Profit derived in each Accounting Period (including the relevant Accounting Period) over the previous twelve month period to determine a current annualised Gross Profit figure.*

Option A:

- (j) *The Gross Income (Merchandise) (as defined in Exhibit E) for an Accounting Period shall be at least equal to \$849.31 per day (the equivalent of \$310,000 per calendar year) multiplied by the number of days in such Accounting Period."*

OR, where applicable,

Option B:

- (j) *The Gross Income (Merchandise) (as defined in Exhibit E) for an Accounting Period shall be at least equal to \$931.50 per day (the equivalent of \$340,000 per calendar year) multiplied by the number of days in such Accounting Period."*

- (f) **The following shall be inserted in the definition of "Material Breach" in Exhibit E to the Store Agreement:**

"(xxi) FRANCHISEE breaches Article 19A".

- (g) **The definition of "Accounting Period" in Exhibit E to the Store Agreement shall be deleted and replaced with the following:**

"Accounting Period means a calendar month, or such other retail period as determined and published by SEA (such as a retail period of 4-4-5, each of these representing weeks periods). If the Effective Date or expiration or termination occurs during any retail period, that portion of the period which follows the Effective Date or precedes expiration or termination shall be an Accounting Period."

- (h) **The definition of "Cost of Goods Sold" in Exhibit E to the Store Agreement shall be deleted and replaced with the following:**

"Cost of Goods Sold means the value at cost of the Inventory sold for the Accounting Period, including the cost of the ingredients and materials comprised within that Inventory, unless otherwise expensed by SEA as a Special Items: Supplies."

- (i) **The definition of "Gross Income" in Exhibit E to the Store Agreement shall be deleted and replaced with the following:**

"Gross Income (Merchandise) means Gross Profit less the 7-ELEVEN Charge."

- (j) **The definition of “Net Sales” in Exhibit E to the Store Agreement shall be deleted and replaced with the following:**

“Net Sales means the total amount reflected on the applicable point of sale register electronic journals for the FRANCHISEE’s sales, rentals and fees (excluding the Gross Commissions) relating to the FRANCHISEE’s Operation, less over-rings, refunds to customers, taxes collected incidental to sales and GST liabilities in respect of taxable supplies made in the course of the FRANCHISEE’s Operation.”

- (k) **The definition of “Total Gross Income” in Exhibit E to the Store Agreement shall be deleted in its entirety.**

- (l) **Article (d) of the Card Payment Facility Addendum to the Store Agreement shall be deleted and replaced with the following:**

“(d) All periodic charges, processing charges, fees, expenses or discounts attributable to the use of such programs or facilities shall be borne by SEA.”

- (m) **If the Franchisee is a party to a MoneyGram Addendum, the text appearing under item 7 of the MoneyGram Addendum shall be deleted and replaced with the following:**

“ITEM 7

(Sub-Representative’s Remuneration)

The share or portion of the Net Commission which is equivalent to the percentage of Gross Commissions which the Sub-Representative is entitled to receive under the Store Agreement.”

5. Franchising Code updates

The parties acknowledge that in consequence of the entering into of this Agreement, the Store Agreement shall, from the Agreement Date, be subject to the Code, and in the event of any inconsistency of the provisions of the Store Agreement, the relevant provision shall be read down or removed according to what is necessary to achieve compliance with the Code.

Save for the variations to the Store Agreement effected by this Agreement SEA and the Franchisee otherwise confirm the terms of the Store Agreement.

For the avoidance of doubt, the provisions in this Agreement and in the Store Agreement are, in all respects, subject to the Code.

EXECUTED AS A DEED

EXECUTED of by **7-ELEVEN STORES**)
PTY LTD. by being signed by a duly)
Authorised person in the presence of:)
)

.....
Signature of Authorised Person

.....
Signature of witness

.....
Name of Authorised Person

.....
Full Name

.....
Usual Address

EXECUTED by
PTY LTD in accordance with
Section 127 of the *Corporations Act*
2001

.....
Director

.....
Secretary

.....
Full Name

.....
Full Name

.....
Usual Address

.....
Usual Address

SIGNED by the Nominated Director(s))
in the presence of:)
)

.....
Signature of Nominated Director

.....
Signature of witness

.....
Name of Nominated Director

.....
Full Name

.....
Usual Address

SIGNED by the Nominated Director(s))
in the presence of:)
)

.....
Signature of Nominated Director

.....
Signature of witness

.....
Name of Nominated Director

.....
Full Name

.....
Usual Address

SCHEDULE

Item 1

(Agreement Date)

Item 2

(The Franchisee)

Item 3

(Nominated Director(s))

Item 4

(Date of Store Agreement)

Item 5

(MoneyGram Addendum Lodgement Date)

Item 6

(Store Number and Location)

“ATTACHMENT 4”



Buy Back offer and Franchise Fee Refund Details

Buy Back Offer (A stores only)

The offer to buy back stores is being made to assist franchisees, who no longer wish to participate in the 7-Eleven system, to affect an orderly exit. This offer is only available to stores purchased directly from 7-Eleven, that is 'A' coded stores. If a multi-site franchisee wishes to participate in the buy back, all stores operated by the Franchisee would need to be included, those coded A would be covered by the buy back, with stores coded B and beyond covered by the Franchise Fee refund.

- Any franchisee who purchased a store directly from 7-Eleven Stores Pty Ltd, will be able to elect to return (sell back) that store to 7-Eleven
- 7-Eleven will refund the original Franchise Fee paid in full (excluding any application or training fees)
- The date of transfer shall be mutually agreed but will not be, in any event, later than 2 months after signing the agreement to hand back the Store
- For franchisees of multi sites, the offer must extend to all stores, as a dissatisfaction with the system cannot occur in one location only, but rather in all
- This offer will remain open until 31 January 2016.



Franchise Fee Refund (B and onwards stores only)

7-Eleven has committed that for any existing franchisee, who no longer wants to participate in the system, 7-Eleven Stores Pty Ltd will refund the Franchise Fee paid, and will help to sell any store where a goodwill payment has been made. This offer is only available to stores purchased from outgoing franchisees, ie, is stores with a letter code 'B' and beyond.

- Any franchisee who believes its operation of a store is not viable, where full and proper wages are paid, can immediately enlist 7-Eleven's assistance to procure a sale of the goodwill of that franchise
- 7-Eleven Stores Pty Ltd will refund to the outgoing franchisee, an amount that equates to no more than the original franchisee fee paid (excluding any application or trading fees). This refund amount will be capped at the difference between the goodwill being received upon sale and the sum of the original goodwill and franchise fee paid (excluding any application or training fees).
- For the avoidance of any doubt, 7-Eleven retains the right to charge the incoming Franchisee the currently applicable Franchise Fee
- 7-Eleven, at its discretion, may reduce the fee charged to the incoming franchisee, with regard to the stores gross income or the overall circumstances where doing so would assist the franchisee to achieve a comparable return of goodwill
- The offer will remain open until 30 June 2016



Inquiry into the impact of Australia's temporary work visa program on the Australian labour market and on the temporary work visa holders

Canberra 5 February 2016

Questions taken on notice – Fels Wage Fairness Panel

1. Hansard Page 34

Ms Hennessy: With cashback, the pay might actually go into their bank account. The evidence that we are getting from the claimants is their bank statement that they will highlight, and you can see the name of the franchisee. Then the individual will get a text message, or they will be told when they go in for their shift, that they have to give back X amount. We have screen shots of text messages where they have said, 'This is what he sent to me.'

Senator O'NEILL: Can you provide those, de-identified, to the committee?

Ms Hennessy: I am sure we could

Response

Potential and current claimants corresponding privately with the Fels Wage Fairness Panel (**the Panel**) via our Facebook page, call centre and via email have claimed that the 'cash back' scheme is still in operation.

The Panel is in possession of messages that have been sent to us via private message feature on the Panel Facebook site. These can be provided on a confidential basis to the Committee upon request. The Panel requests that they are provided to the Committee in this manner so that a claimant is not at risk of being identified, as even if names are redacted it is possible that an individual could be identified by a member of the public through circumstances disclosed in the message.

2. Hansard Page 39

Senator O'NEILL: Have you paid any claims to people who are now overseas?

Ms Hennessy: I am not sure, but I can find that out. I do not know whether they were in the 117.

Response

The Panel will become aware that an individual currently resides overseas if the claimant makes it known during their correspondence with the Panel, or if the Panel is advised by 7 Eleven that the claimant has directed payment of their Determination Amount to an overseas bank account.

7 Eleven have confirmed to the Panel that they are able to make payments to overseas bank accounts and have made one payment into an overseas (US) bank account; this determination was



in the process of being accepted by the claimant as at the date of the Senate Hearing, however payment has now been made.

It should be noted that overseas bank accounts paid may not be an accurate reflection of claimants who are overseas, as it is possible for a claimant to correspond with the Panel and direct payment to an Australian bank account. The Panel is currently corresponding with claimants who have advised the Panel they are overseas, some of whom have a friend or family member in Australia assisting them with their claim. Therefore it would be reasonable to expect that overseas payments will increase in the future.

In order to demonstrate the current reach of the Panel's Facebook page, we set out at **Appendix 1** statistics regarding interaction with visitors to the page and country of origin.

Clarification of evidence of Ms Siobhan Hennessy (page 32 of the Hansard transcript)

- Regarding data provided on claims against regional managers - We have sent data to 7 Eleven in relation to certain regional managers and all stores with a claim against them, and also any information obtained from claimants regarding involvement of regional managers and district managers in the alleged underpayment of wages generally.
- Example of intimidation of employees - These comments were made in the context of the statement by Professor Cousins and were reflective of what the Panel were advised by a particular claimant at the meeting on 4 February 2016. The Panel has not investigated these allegations as it is not in the Secretariat's remit to investigate claims of physical harm.



Appendix 1

The Fels Panel interacts with potential and current claimants who are based overseas permanently and temporarily via email and Facebook. The Panel has reached an international audience as demonstrated by current insights below taken from our Facebook page as well as having a number of applications made by claimants based outside of Australia.

FACEBOOK INTERACTION	KEY INTERNATIONAL AUDIENCE	FACEBOOK INSIGHT																					
<p>REACH *The audience that the page/posts have been exposed too. *Last 28 days *As of 12/02/16</p>	<ul style="list-style-type: none"> ○ INDIA = 6, 198 ○ PAKISTAN = 1,138 	<table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="text-align: left;">Australia</td> <td style="text-align: right;">24,701</td> </tr> <tr> <td style="text-align: left;">India</td> <td style="text-align: right;">6,198</td> </tr> <tr> <td style="text-align: left;">Pakistan</td> <td style="text-align: right;">1,138</td> </tr> <tr> <td style="text-align: left;">United States of America</td> <td style="text-align: right;">677</td> </tr> <tr> <td style="text-align: left;">United Arab Emirates</td> <td style="text-align: right;">243</td> </tr> <tr> <td style="text-align: left;">Saudi Arabia</td> <td style="text-align: right;">240</td> </tr> <tr> <td style="text-align: left;">Bangladesh</td> <td style="text-align: right;">217</td> </tr> <tr> <td style="text-align: left;">United Kingdom</td> <td style="text-align: right;">211</td> </tr> <tr> <td style="text-align: left;">Canada</td> <td style="text-align: right;">202</td> </tr> <tr> <td style="text-align: left;">Nepal</td> <td style="text-align: right;">134</td> </tr> </tbody> </table>		Australia	24,701	India	6,198	Pakistan	1,138	United States of America	677	United Arab Emirates	243	Saudi Arabia	240	Bangladesh	217	United Kingdom	211	Canada	202	Nepal	134
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<p>ENGAGED <i>*Post Clicks, Likes, Comments, Shares</i> <i>*Last 28 days</i> <i>*As of 12/02/16</i></p>	<ul style="list-style-type: none"> ○ INDIA = 1,007 ○ PAKISTAN = 20 	<table border="1"> <thead> <tr> <th>Country</th> <th>People Engag...</th> </tr> </thead> <tbody> <tr><td>India</td><td>1,007</td></tr> <tr><td>Australia</td><td>510</td></tr> <tr><td>Pakistan</td><td>20</td></tr> <tr><td>United States of America</td><td>2</td></tr> <tr><td>Nepal</td><td>2</td></tr> <tr><td>Bangladesh</td><td>1</td></tr> <tr><td>Turkey</td><td>1</td></tr> <tr><td>Ireland</td><td>1</td></tr> <tr><td>Indonesia</td><td>1</td></tr> </tbody> </table>	Country	People Engag...	India	1,007	Australia	510	Pakistan	20	United States of America	2	Nepal	2	Bangladesh	1	Turkey	1	Ireland	1	Indonesia	1
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<p>FANS <i>*Page Likes</i> <i>*As of 12/02/16</i></p>	<ul style="list-style-type: none"> ○ INDIA = 237 ○ PAKISTAN = 21 	<table border="1"> <tbody> <tr><td>Australia</td><td>717</td></tr> <tr><td>India</td><td>237</td></tr> <tr><td>Pakistan</td><td>21</td></tr> <tr><td>New Zealand</td><td>2</td></tr> <tr><td>Nepal</td><td>2</td></tr> <tr><td>United States of America</td><td>2</td></tr> <tr><td>United Kingdom</td><td>2</td></tr> <tr><td>Bangladesh</td><td>2</td></tr> <tr><td>Ireland</td><td>1</td></tr> <tr><td>Romania</td><td>1</td></tr> </tbody> </table>	Australia	717	India	237	Pakistan	21	New Zealand	2	Nepal	2	United States of America	2	United Kingdom	2	Bangladesh	2	Ireland	1	Romania	1
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Senate Education and Employment Committee

Inquiry into the impact of Australia's temporary work visa program on the Australian labour market
and on the temporary work visa holders

Canberra 5 February 2016

Questions taken on notice – Fair Work Ombudsman

1. Hansard Page 42

Ms Webster: There are some others, if you would like me to take you through those. There are two that are related in Brisbane: Viplus Pty Ltd and Yuan, and Vipper Pty Ltd and Yuan—so they have a common second respondent. This relates to 7-Elevens which are operating on Brisbane. One is on George Street, and the other is located on Brisbane Street as I understand it. They have one common employee who is a complainant. I will just take you to the Viplus matter to begin with. That has 10 employees who are subject to the claim, and approximately \$19,000 is claimed as having been underpaid in that matter. I am very pleased to indicate that the moneys have been rectified, but we are still proceeding in respect of that matter in order to seek from the court not only the imposition of penalties which serve as a specific and general deterrent but also some other types of orders as well, which will assist us in achieving compliance in respect of this particular individual and beyond. Similarly, in the matter of Vipper—

Senator O'NEILL: What are the other orders you are seeking?

Ms Webster: I have some of those. May I take that on notice.

CHAIR: Sure.

ANSWER:

The orders sought in both *FWO v Viplus Pty Ltd and Anor* and *FWO v Vipper Pty Ltd and Anor* are similar in form and are, in summary:

- 1) Declarations that the First Respondent has contravened the sections of the *Fair Work Act 2009 (FW Act)* and the *General Retail Industry Award 2010 (Award)* alleged in the statement of claim;
- 2) Declarations that the Second Respondent was involved in each of the contraventions committed by the First Respondent;
- 3) An order that the First Respondent rectify any amounts outstanding as a result of the contraventions to the employees;
- 4) An order that the First and Second Respondents each pay pecuniary penalties in respect of the contraventions;
- 5) An order pursuant to s545(1) of the FW Act that the First Respondent is to display a workplace notice visible to all employees in its business premises for a period of one year which contains information on minimum rates of pay and penalty rates under the Award and information on how to contact the Fair Work Ombudsman;

- 6) An order that the First Respondent will, at its own expense, engage a lawyer with expertise in workplace relations to undertake an audit of the First Respondent's future compliance with the FW Act and the Award on the following terms:
 - a. such audit to be for a three month period;
 - b. such audit to be completed within 60 days of the end of the audit period; and
 - c. such audit to cover all employee employed by the First Respondent during the audit period.

The order sought further requires that the results of this audit, including any identified contraventions, are to be provided to the Fair Work Ombudsman within 30 days of the audit being completed.

- 7) An order requiring the First Respondent, if notified of any further complaints by former or current employees by the Fair Work Ombudsman, to attempt to resolve such matters within 28 days of notification and to provide the Fair Work Ombudsman of the outcome of its investigation into these matters including evidence of rectification of any identified underpayments.

CHAIR: I think we will leave it there, Ms James, because these matters can be pursued through Senate estimates. I just want to look at the Fels wage panel. They told us they are in communication with you. They are looking at amounts of \$3½ million or \$4 million in the matters that they are currently looking at, and they gave us those detailed figures. Ms Webster, you just detailed hourly rates of \$10, \$14, \$17, so one would imagine there is a significant debt to the ATO. What, if any, relationship do you have with the ATO about unpaid tax liability?

Ms James: We regularly work with the ATO, ASIC and DIBP in relation to these sorts of matters. We would regularly refer matters of concern to them. We have a memorandum—

CHAIR: Have you referred 7-Eleven to the ATO?

Ms James: I would need to take that on notice.

ANSWER:

The FWO has a strong working relationship with the ATO, centred upon the mutual interest of regulating our respective frameworks. The FWO has a current MOU with the ATO.

The FWO has not formally referred the 7-Eleven matter to the ATO.

To date, the FWO has shared general information with the ATO regarding the issues that we are seeing at 7-Eleven, including as part of our work on the Inter Agency Phoenix Forum.

Once the FWO's Inquiry into 7-Eleven is completed, the final report may make specific recommendations about further actions that Government might take. The FWO will consider the final report in determining whether a formal referral to the ATO is appropriate.

Senator McKENZIE: The ombudsman has previously expressed a desire for supermarkets to look further down the supply chain and ensure the integrity of that supply chain. I would be really interested if, on notice, you could inform us of your expectations of what that might look like.

Ms James: Certainly.

ANSWER:

The FWO is committed to building a culture of compliance across Australian workplaces by setting priorities and using the tools available to us to hold people to account, influence or change behaviour and reduce the negative impacts of non-compliant conduct.

We recognise that working with companies and individuals who are the final beneficiaries of labour, such as supermarkets, franchisors and industry organisations, is a critical part of achieving real change. They are in a powerful position to influence behaviour and drive change through their choices.

We also recognise that not all non-compliance is equal. Most workplace participants that come to us actually want to do the right thing. There is a difference between well-intentioned businesses that make mistakes which result in inadvertent non-compliance with workplace laws, and unscrupulous businesses that have put in place deliberate structures designed to gain a competitive advantage through calculated exploitation of vulnerable workers.

We work co-operatively with the former to educate and empower them to address the factors which have led to non-compliance in their workplaces, and to achieve voluntary rectification of underpayments.

For the latter, in order to achieve sustainable outcomes and change behaviour over time, it takes focus, effort and investment across a number of regulators and interest groups working together to stamp out the deliberate and structural exploitation of workers. We are invested in this work and are taking active steps to deliver better outcomes.

For example, we are encouraging franchisors and businesses at the top of the supply chain to take an interest in the wages and entitlements in their networks. If we find a business that is underpaying its workers, and that business is part of a franchise or supply chain, we look to the business at the top – the franchisor, principal or purchaser – because they are the ‘price-maker’ and they control the settings.

We look to that business to accept, as have Coles and Baiada, “ethical and moral responsibility” to stamp out exploitation and implement sustainable changes to its business practices to ensure future compliance. Real and effective measures taken by businesses in a supply chain can include:

- robust, transparent and verifiable electronic time-keeping, payroll and worker identification systems;
- regular independent audits and assessments of compliance, both of the business and of the contractors within the network;

- implementation of workplace relations training, including training ‘in-language’ for employees from non-English speaking backgrounds;
- providing greater access, information and co-operation to FWO inspectors and advisors;
- establishing clear procurement policies and conducting regular reviews of procurement and outsourcing arrangements to ensure ongoing ethical practice;
- properly formalised written contracts with supplies and contractors, with clear requirements for compliance with workplace laws.

We are working to influence supply chains across Australia in a number of ways.

- We seek compliance partnerships, which are becoming increasingly popular with businesses who wish to make a strong and public commitment to their employees, franchisees, contractors, customers and the broader community about compliance with workplace laws. 13 businesses are currently in partnerships with us, including Baiada and McDonalds.
- We enter enforceable undertakings. When the FWO entered into an enforceable undertaking with Coles in 2014, Coles became the first major supermarket chain to publicly declare that it has an “ethical and moral responsibility” to join with the FWO to stamp out exploitation.
- We litigate using the accessorial liability provisions within the *Fair Work Act* to hold those involved in contraventions to account.

The FWO’s “new and innovative ways” of using the strategies outlined above were considered by Dr Tess Hardy and Dr John Howe of the University of Melbourne, in their 2015 research article *Chain reaction: A strategic approach to addressing employment noncompliance in complex supply chains* (Journal of Industrial Relations 2015, Vol. 57(4), pages 563 to 584).

There are other levers available to us to drive supply chain compliance.

- We have commenced strategic inquiries which are longer term pieces of work, designed to understand the systemic issues behind non-compliance and liability. These inquiries include the Harvest Trail Campaign, the 7-Eleven Inquiry, the Baiada Inquiry and the 417 Working Holiday Visa Inquiry.
- We work collaboratively across government with other agencies and departments such as the ACCC, ASIC, ATO and DIBP, through initiatives including Taskforce Cadena and the Inter Agency Phoenix Forum.
- We are proactive in using the media to let the public know about the nature and extent of the problems we find and expand our impact.
- We engage with stakeholders, including through presenting speeches at seminars and conferences convened by key industry participants and advisors.
- We provide a range of free tools and resources on our website: www.fairwork.gov.au, to help business strengthen the workplace practices within its networks, including the Pay and Conditions Tool (PACT), downloadable templates, an online learning centre and other tailored information for franchisors and small businesses.

Senate Education and Employment Committee

Inquiry into the impact of Australia's temporary work visa program on the Australian labour market
and on the temporary work visa holders

Canberra 5 February 2016

Questions taken on notice – National Farmers' Federation

1. Hansard Page 1

CHAIR: Thanks, Mr Mahar. Did the government consult you before it announced this decision?

Mr Mahar: We are of the view that we needed to have a little bit more consultation as part of this. We think that, because of the impacts of this policy decision, there needs to be some more consultation, and the impacts of such a decision considered in a little bit more detail.

CHAIR: Did they consult you before they made this announcement?

Mr Mahar: Not as far as I am aware, but I am happy to take that on notice.

Answer:

The National Farmers' Federation (NFF) was not consulted before the decision was announced.

2. Hansard Page 2

CHAIR: Have you ever had a conversation or written to the government about a visa which would give you exclusive use of backpackers or other sorts of seasonal workers, rather than having to compete with hospitality?

Mr Mahar: I think what we have done is to make it very clear that the issue of seasonal workers, backpackers, temporary workers, is very critical, and we understand the complexities around balancing up whether it is specific to the agriculture sector. Ideally, I suppose, we would like to have agriculture-specific measures, but we know how difficult that is. If it ended up that we had a specific agriculture sector arrangement, I think that would be beneficial. But I do not think we are there yet.

CHAIR: Have you advocated for that position?

Mr Mahar: Not specifically, I do not think—but, again, I am happy to take that on notice.

Answer:

The NFF has not had a conversation with or written to the government about a visa which would provide exclusive use of backpackers or other sorts of seasonal workers for agriculture, rather than having to compete with hospitality.

3. Hansard Page 3

Senator RICE: Just following up on Senator Peris's questions, can you tell us specifically how the tax arrangements compare from Australia with the other countries that backpackers, potentially, could be visiting, like New Zealand and Canada.

Mr Mahar: Yes, I think I have that information here. Give me just one moment. I do not actually have the rates, I am sorry to tell you that, but I can certainly provide them later today, if that is okay. I know that New Zealand and Canada are certainly alternatives to the Australian tax rate, but I can certainly provide them. I do not seem to have them.

Senator RICE: And specifically, also, average wage rates that people are being paid in Australia compared with agricultural work in New Zealand and Canada.

Mr Mahar: Sure. I am happy to provide those.

Answer:

Comparable earnings – working holiday makers

Country	Australia (32.5%)	Australia (19%)	Canada	New Zealand
Min. hourly wage	\$17.29 ¹	\$17.29 ²	\$10.73 ³	\$14.75 ⁴
Tax rate	32.5% ⁵	19% ⁶	15% ⁷	10.5% ⁸
Net hourly wage	\$11.67	\$14.03	\$9.13	\$13.20

The NFF does not have specific data on average wage rates that people are being paid in Australia compared with agricultural work in New Zealand and Canada.

4. Hansard Page 4

Senator McKENZIE: When you look at, say, the 417s, 457s et cetera—the raft of different visa classes—how do your members, or the members of your members, the actual producers, manage

¹ Fair Work Commission, National Minimum Wage Order 2015, 29 June 2015

² As above

³ Canada Labour Program, Average minimum hourly rate across all Canadian Jurisdictions, <http://srv116.services.gc.ca/dimt-wid/sm-mw/rpt1.aspx?lang=eng>

⁴ NZ Ministry of Business, Innovation and Employment, The minimum wage <http://employment.govt.nz/er/pay/minimumwage/>

⁵ Assumes 2015 Budget measure implemented from 1 July 2016

⁶ Assumes 2015 Budget measure varied to tax working holiday maker income at 19% from 1 July 2016

⁷ Canada Revenue Agency, Federal tax rate, earnings under \$44,702, <http://www.cra-arc.gc.ca/tx/ndvdl/fq/txrts-eng.html>

⁸ For earnings up to \$14,000, increases to 17.5% for earnings between \$14,000 and \$48,000 <http://www.ird.govt.nz/how-to/taxrates-codes/itaxsalaryandwage-incometaxrates.html>

that? Is it a difficult system for them to negotiate to try and source the labour that they need at any given time?

Mr Mahar: It is difficult, as a rule. The complexities around working through the visa system are difficult and we do think that they can be simplified.

Senator McKENZIE: How?

Mr Mahar: I suppose it is the, can I say, red tape and arrangements that require farm businesses to sort out and verify and complete the administrative requirements to satisfy some of those visa arrangements that make it difficult and prevent people from even entertaining the idea of going down that path. So, as I have said a couple of times, it is complex, but I think we need to make it simpler for the farm business person to be able to employ labour at those peak times because they are busy, as all business people are, but we need arrangements where it is a little bit simpler to access the arrangements and to attract workers to some of these rural and regional centres. Does that make sense?

Senator McKENZIE: Yes, completely. But I probably wanted a more specific answer. On notice, could you give some thought to what would make it simpler without decreasing the integrity of the system?

Answer:

Regional agriculture is unique in its reliance on overseas workers and the agriculture sector needs migration programs which support this. While the agriculture sector invests heavily in programs to recruit, train and retain skilled workers within Australia, regional agricultural workforce demands are unlikely to ever be met from the local employment market. Australia will always need to draw on migration programs to supplement its agricultural workforce.

Current migration programs do not make it easy to fill workforce shortages, either skilled or unskilled. The 457 visa needs to be available to agricultural occupations where industry has demonstrated there is a labour need without having the Consolidated Sponsored Occupation List as the ultimate arbitrator of all skilled occupations in Australian agriculture.

Creating a new low skilled visa stream for regional agricultural work which permits economic migrants to benefit from work opportunities in Australia, either temporarily or on a permanent basis is a necessary step to securing our future as a high quality, high output producing nation. Such an approach could replace the 417/462 and student visa options insofar as they apply to Australian agriculture.

5. Hansard Page 4

CHAIR: What sort of verification is there? What we found, certainly with Coles and Woolworths, in relation to Baiada and D'VineRipe was that they had a good supply chain policy in place but it still fell away. That verification is really critical. What are you looking at there?

Mr Mahar: Making sure that there is not just one system that ends at a particular point in the chain and that everyone across the chain, including contractors and workplace providers, are abiding by those systems as best practice arrangements. It is about making sure it does not end just at the farm and does not end just at the processing sector or the retail sector but that it goes right through the supply chain. I am happy to provide you with the details of where we are up to. It has not been completed yet, as I said, but we are aware of the issue and we want to take a proactive stance.

CHAIR: I think we would be interested in that.

Answer:

In August 2015 the NFF, in partnership with the Produce Marketing Association Australia-New Zealand, hosted an 'Overseas Workers in Agriculture' Forum bringing together approximately 100 people from 70 different organisations across the agriculture sector. Participants ranged from growers, industry bodies, retailers and other interested organisations.

The NFF has continued to work closely with all of the major retailers and industry to develop guiding principles for sustainable employment and labour contracting in our industry. These guides are published on the NFF website and are provided as an attachment to these questions.

We are now working on the development of training, policy and contractual template documents for users of labour contractors in the agriculture industry to help farmers adapt best practice when overseas workers are engaged on their farm.

The NFF Budget Submission 2016-17 sought a commitment from Government to implement an approved contractor scheme for agricultural labour contractors where contractors can seek 'Approved Contractor' status from the Department of Employment by demonstrating sound business practices and a history of regulatory compliance. Such a scheme would operate in a similar manner to the Approved Employer Scheme under the Seasonal Workers Program.



Sustainable Agricultural Employment

August 2015

NATIONAL FARMERS' FEDERATION
PRODUCE MARKETING ASSOCIATION A-NZ

Guiding principles

Australian farmers are committed to sustainable agricultural employment, through adoption of practices aligned with existing legal obligations and measures to promote fairness at work.

Right to work

Confirmation of the legal right to work in Australia is sought before workers commence work on the property and at regular intervals. This can be done either through the Visa Entitlements Verification Online (VEVO) system or by requiring workers to furnish satisfactory evidence. Individuals who have no right to work in Australia are not permitted to commence work.

Informed employees

All workers receive an induction before starting work for the first time. Relevant documentation is provided to employees in their own language (when available), including contracts of employment, the Fair Work Information Statement, access to the relevant award and a contact person at work who can answer questions during working hours.

Wages and conditions

Wages and conditions are in accordance with the *Fair Work Act 2009* (Cth) or the relevant State law, relevant modern award or enterprise agreement. Wages paid weekly or fortnightly unless otherwise agreed in writing. Records are kept, and pay slips provided, outlining all entitlements and monies paid or deducted. Deductions from wages are agreed in writing between the employer and employee and are not unreasonable in the circumstances.

Work safety

There is a work, health and safety (WHS) policy for the workplace, detailing how to deal with safety risks, incidents and injuries. Safety inductions are carried out on commencement, and ongoing safety training is provided as required. Safety risks are assessed on an ongoing basis, and appropriate action taken. Safety equipment and personal protective equipment (PPE) appropriate to the level of risk is provided by the employer.

Fair treatment

The employer has a process to deal with complaints about workplace bullying, anti-discrimination and sexual harassment. Unlawful treatment at work is not tolerated, with processes in place to reasonably respond to any concerns.

Training

Employees are given adequate instruction on how to perform the work required on an ongoing basis. Opportunities to improve skills are made available as appropriate and the employer pays for training carried out by employees at the employer's request.

Amenities, board and lodging

Accommodation and workplace facilities are provided in a clean, safe and fit for purpose state. The cost of accommodation is levied in accordance with the relevant modern award or enterprise agreement, or otherwise at fair market rates.



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Employment Checklist

Right to work

- Worker has a legal right to work in Australia (check here: [VEVO](#))
- No start for individuals who have no right to work in Australia

Informed employees

- Induction on commencement or soon after for new workers
- Documents provided (in language of employee where available):
 - Contracts of employment
 - Fair Work Information Statement
 - Access to relevant award
 - Contact person at work

Wages and conditions

- Wages, conditions and superannuation in accordance with legislation, modern award and/or enterprise agreement
- Wages paid weekly or fortnightly unless otherwise agreed in writing.
- Records are kept, and pay slips provided
- Any deductions agreed in writing and not unreasonable in the circumstances

Work safety

- WHS policy in place
- Safety inductions on commencement or soon after
- Safety training provided as required

Workers compensation

- Insurance cover in place



- Safety risks assessed on an ongoing basis
- Appropriate action taken in response to identified risks
- Safety equipment and PPE provided

Fair treatment

- No tolerance for unlawful conduct
- Policies in place covering:
 - Workplace bullying
 - Anti-discrimination
 - Sexual harassment

Training

- Instruction provided as required
- Upskilling opportunities made available as appropriate
- Employer meets costs of training required by the employer

Amenities, travel and board

- Workplace facilities and lodgings are clean, safe and fit for purpose.
- Charges for travel and accommodation in accordance with modern award or enterprise agreement, or otherwise at fair market rate

Sustainable
Agricultural
Employment

August 2015



FOR MORE INFORMATION

National Farmers' Federation

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Photo: Working Holiday Makers in Australia

Source: AgriLabour Australia

Sustainable Agricultural Labour Contracting

August 2015

NATIONAL FARMERS' FEDERATION
PRODUCE MARKETING ASSOCIATION AN-Z

Guiding principles

Australian farmers are committed to sustainable labour contracting practices through adoption of measures to foster effective, low risk relationships with contractors and promote fairness at work.

Choosing a contractor

When choosing a contractor, it is important to ensure that they provide an Australian Business Number (ABN) together with evidence of dealings with the Australian Tax Office (for example, recent Company Tax Returns / PAYG withholding annual reports).

Contractors must have current insurance for their workers and their business activities and are expected to provide a Certificate of Currency for each relevant insurance each year. As a minimum, contractors must hold workers compensation insurance (including for 'deemed employees') and public liability insurance (minimum \$20 million).

Contractors must have up to date workplace and safety policies and provide personal protective equipment (PPE) for their workers unless there is written agreement for this to be provided on site. Farmers and contractors should adopt a joint approach to farm safety management.

Contract terms

A formal contract for services should be in place between the farmer and contractor. Contractors must not seek or receive payments from

individuals to secure work. Workers must be paid in accordance with the relevant modern award or enterprise agreement as a minimum.

Charges for travel, accommodation and/or any other benefits must be in accordance with the relevant award or agreement, or otherwise at fair market rates.

Contractors must clearly demonstrate how and when their workers are paid, and any transport or accommodation or incidental fees they will incur.

Employees must not be required to lodge deposits or identity papers with the contractor and must be free to leave employment in accordance with their visa and on reasonable notice.

Contracts should clearly identify who is responsible for checking that workers have valid work rights. Farm workplace policies and practices advised to the contractor must be provided to employees of the contractor.

Contract workers

Farmers also have a responsibility to make sure workers on their properties have the right to work in Australia and are treated well. This includes checking in with workers from time to time, asking how things are going, and making sure workers have a workplace contact for any concerns.

Contractors should provide details of languages spoken by contract workers, so that contact details for the Fair Work Ombudsman's worker helpline can be displayed in the relevant language at work.



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Contracting Checklist

Choosing a contractor

- ABN provided
- Evidence of recent ATO dealings (e.g. Company Search)
- Insurance certificates of currency provided including:
 - Workers compensation (also covering 'deemed employees')
 - Public liability – min. \$20m
- Workplace and safety policies
- PPE (personal protective equipment) provided

Contract terms

- Formal contract for services in place
- No payments from workers to contractors to secure work
- Contractor payments to employees in accordance with relevant modern award / enterprise agreement
- Travel, accommodation and/or other benefits charged to workers only in accordance with the relevant award, agreement or if none, at no more than fair market rates
- Contractor provides detail about how and when workers are paid, incl. any deductions for transport, accommodation, or similar

- Workers are not required to lodge deposits or identity papers with the contractor.
- Workers must be free to leave employment in accordance with their visa and on reasonable notice.
- Clear statement on who will check that workers have valid work rights.
- Any farm workplace policies and practices provided to the contractor must be passed on to contract workers

Contract workers

- Worker has a legal right to work in Australia (check here: [VEVO](#))
- Check in with contract workers from time to time to see how things are going
- Make sure workers know who to contact if they have any concerns
- Find out which languages are spoken by contract workers, and display the Fair Work Ombudsman's worker helpline in those languages where they can be easily seen on site



Sustainable
Agricultural
Labour
Contracting

August 2015



FOR MORE INFORMATION

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