



**Griffith Journal**  
of Law & Human Dignity

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GRIFFITH JOURNAL OF  
LAW & HUMAN DIGNITY

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# INVESTIGATING 7-ELEVEN: WHO ARE THE REAL BAD GUYS?

MICHAEL FRASER\*

*The illegal wage scandal at 7-Eleven Australia made national headlines in 2015 when it was revealed that foreign workers were being underpaid and exploited. I spent three years investigating this misconduct and along the way accumulated a unique insight into those who carried out exploitative practices and those it affected. This personal narrative discusses the challenges faced by workers and how these challenges, fears, and barriers were overcome. While workers often speak of being subjected to threatening behaviour, I have also explored the experiences of current and former franchisees, including the bullying, intimidation and racial discrimination delivered at the hands of the Head Office. Why would otherwise good people go to great lengths to engage in exploitative practices and how did mass underpayment happen to tens of thousands of foreign workers for so long without it becoming public knowledge? These questions form the basis of this personal narrative.*

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\* Michael Fraser, also known as The Arbitrator, is a consumer and business relationship advocate who works closely with disaffected customers and workers to achieve fair outcomes.

## I NARRATIVE

Australia takes prides in being a multicultural nation that embraces all genders, races and creeds. I have always appreciated that.

Prior to discovering mass-underpayment and wage fraud in 7-Eleven stores, I had been assisting disaffected Telstra customers. I recall a Caucasian masonry worker complaining to me that I should investigate 7-Eleven for discriminating against the employment of “white” people, as he had applied for work on a number of occasions and was never considered. At the time, I didn’t give it much thought. Little did I know that six months later my investigation into 7-Eleven would begin.

My three-year investigation into 7-Eleven came about after I moved directly next door to a 7-Eleven in 2012, which I would frequent and, as a result, formed close connections with the staff. In particular, there was a remarkable man named Narasimha Rao Pendem (known as Sam) who was from India, had three degrees, and appeared to work a never-ending shift.

When Sam was on shift, the store was alive and he was so well loved by the local community that he would take photos with the customers and was treated like a local celebrity. I formed a special bond with Sam and was moved by his desire to do good things and his love for our country. He wanted to marry and bring his wife to Australia. He talked about his passion for photography and how he was saving up for an \$800 camera so that he could take photos of trees, flowers and spider webs, and things that he saw beauty in. After some time, I would joke with him and suggest that he must be very wealthy due to all the hours that he worked — morning, night, weekday, weekend, he was there.

I was surprised by Sam’s response when he told me that he was getting a flat rate of \$12 per hour. At the time, I didn’t know how much he should be getting and nor did Sam, however, he was pretty sure he was being paid about half of what he was entitled to.

Upon learning this information, I was particularly disturbed because I would often observe his employer, the franchisee, driving one of two new luxury cars and relaxing with his wife in a local cafe. I asked Sam if he had raised questions about his pay with his boss. Sam told me that he had asked for a \$1 per hour pay rise, but the franchisee told

him that money was very tight and that if he didn't like the pay he was getting, he could "go elsewhere". Around the same time, to add insult to injury, the franchisee felt the need to consult Sam on the purchase of a new Mercedes — which would be his third car — asking Sam if he had any suggestions.

After hearing all of this, and caring about Sam as much as I did, I felt compelled to help him lodge a complaint with the Fair Work Ombudsman ("FWO"). Sam leaned over the counter and told me that this was 7-Eleven practice and that underpayment of workers was happening in every 7-Eleven store.

As much as I trusted Sam, I thought he must be mistaken; this kind of widespread underpayment could not be the standard practice of 7-Eleven. I began visiting other stores between Brisbane and the Gold Coast. Although it took a while to build trust with the workers, one by one they told me that they were being underpaid and that it was well known by the workers, the franchisees, and 7-Eleven that this was the normal 7-Eleven stores within Australia.

Alarming, Sam had recently been robbed at knifepoint twice in one day, yet the franchisee became angry with him and suggested he should have thrown the cash register at the thief instead of handing over the \$200. The franchisee showed no regard for Sam's safety or wellbeing and offered no assistance of any kind to recover from the events.

At this point, I would understand if the reader were to be quite angered by what they're reading and disgusted and shocked by the actions of the franchisee, especially given these stories have since been found out to be quite common in 7-Eleven stores across Australia. However, now knowing that underpayment and exploitation of foreign workers in 7-Eleven stores is a commonplace occurrence, who are the real bad guys? How do 400+ franchisees from China, India and Pakistan, owning 620+ stores in four states, all learn how to manipulate the books in the exact same fashion and (when a new scam is created to avoid detection) almost instantaneously learn and implement the new scam within 24 hours, regardless of what community they're from or the state they operate in?

It led me to think of what one's impression would be if they were to visit a large farm owned by a 'white' billionaire. There were 400 foreign workers who were sold a job as

managers and promised riches to oversee 6000 workers of foreign descent who were paid a pittance, if at all. Would you not cast your mind back to the days of slave ownership? And really, how different is that from what we have learned about 7-Eleven?

The question on everyone's lips is how did mass underpayment in 7-Eleven stores happen to tens of thousands of foreign workers over a period of decades without it becoming public knowledge and, according to the billionaire owner, without his knowledge?

Interestingly, Australia's legislation has failed to hold this man accountable. Why weren't his assets frozen, where was the police investigation, and has anyone been sacked from Head Office? Considering that the conditions 7-Eleven workers faced are frequently compared to slavery in media publications and public commentary, the person at the top should not be able to step down and effectively walk away. Section 180 of the *Corporations Act 2001* (Cth) makes the Board of Directors personally liable for breaching their duties. However, in this case, accountability appears to have solely fallen on franchisees. Throughout their investigation of 7-Eleven, Fair Work Australia said there was not enough evidence to hold the Board of Directors personally liable, citing section 550 of the *Fair Work Act 2009* (Cth).<sup>1</sup> They also said:

...7-Eleven's approach to workplace matters, while ostensibly promoting compliance, did not adequately detect or address deliberate non-compliance ... in particular, instances where franchisees created false and misleading records...<sup>2</sup>

However, this was not enough and franchisees that were forced to use an underpayment or non-payment wage model in order to survive were the only ones left to blame.

And while Fair Work Australia referred 7-Eleven to the Australian Tax Office to investigate these matters, they, along with other government departments, needed to make an example out of 7-Eleven to send a message to those who engage in similar practices. With instances of underpayment in other businesses and industries emerging regularly, it appears the opportunity to effect change in the way foreign workers are treated across Australia is slipping away.

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<sup>1</sup> Fair Work Ombudsman, Parliament of Australia, *A Report of the Fair Work Ombudsman's Inquiry into 7-Eleven* (2016), 71.

<sup>2</sup> Ibid 4.

It is also worthwhile exploring why workers have not previously spoken up. To answer this, we must first ask ourselves, who are these people working in 7-Eleven stores and what did they sacrifice to come to Australia? After having spoken with many of these workers in great detail and forming personal friendships with many of them, I quickly learned the extreme lengths people go to and personal sacrifice they make to come to Australia. In many cases, their family sold their land and took out multiple loans just to create a circumstance where they could come to study in Australia in search of a better life for them and their families.

They come to Australia speaking little to no English, with no knowledge of our workplace laws, minimum wage, or legal avenues available to them to seek redress if they discover they have been underpaid. What is abundantly clear in the many discussions I have had is that they come here with a misplaced fear of being deported at the drop of a hat if they question their employer. This fear is propagated among the workers, adding to the hysteria surrounding the issue.

Foreign workers who do come to Australia and speak little English appear to have limited job options and find they are not considered for employment in major retailers. This leads to many applying for work under a Western name in the hopes that this won't happen. Ultimately, they find the only job options available to them are working in corner stores, petrol stations, and cleaning companies who appear to have very relaxed policies around complying with workplace legislation.

So, back to the question of why they would not speak up against underpayment and exploitation. They sell, borrow and sacrifice everything to come here to educate themselves in the hopes for a better future. They have a limited understanding of English and know nothing about our workplace laws or the rights and remedies available to them. They are often discriminated against by major retailers and are only left options to work for companies who routinely underpay and exploit workers. They are conditioned by their employer not to ask questions, to be grateful for their job and if they do want more money, they are told if they don't like it, go elsewhere. Both the employee and the employer know that 'go elsewhere' means go work for another person who will also underpay them, which defeats the purpose. Furthermore, the employer will use fear and the threat of deportation to discourage any retribution. Many workers



are on student visas and in knowing this, the employer asks them to work many more hours per fortnight than the 40 hours permitted by their visa. Not to mention that all employees need to work additional hours just to break even due to the low hourly rate they are being paid.

Often several months into their employment and through discussion with other friends that are employed under similar practices, foreign workers slowly become aware that they have employment rights. They will often subsequently raise their discovery with their employer and quite disturbingly, many are often sacked on the spot for having asked such questions.

At this point, many will conduct online research and discover there is such a thing as unfair dismissal and in consultation with their Australian university peers, they will be incorrectly advised to lodge a complaint with the FWO. There are a number of barriers that will arise and hurdles that will need to be overcome before they can seek a resolution. Firstly, in almost every case, 7-Eleven franchisees have fewer than 15 employees and as such are classified as a small business. This means that to be eligible for unfair dismissal, the worker would need to have been employed for a minimum of 12 months.

They will also be discouraged by fellow workers and other foreign students about taking any action and demonstrate an even greater fear of deportation that will often result in them not taking any action at all. If they do go to the FWO to raise a complaint about unfair dismissal, the Ombudsman will inform them that they are not the correct government body to address such complaints, and they are told they will need to raise the complaint with the Fair Work Commission ("FWC").

Unfortunately, potential complainants only have 21 days to make a complaint to the FWC. Many of the foreign workers can take several months to build up the courage and better inform themselves of their rights before they would take such action. Sadly, very few continue the process. If a foreign worker does find the courage to make an unfair dismissal complaint within 21 days (from my experience, this is very rare), they are subjected to a \$69.60 'application' fee, which as you can imagine is a struggle when they are already financially destitute.

If the workers ask the right questions, the FWC will tell them that they can apply to have the fee waived due to financial circumstances, however, this information is rarely volunteered. Having in-depth discussion with the FWC and professionals who have been involved in these disputes, it seems to be the case that an unfair dismissal complaint is unlikely to be successful, whilst in the meantime, the worker is out of a job. I should also note that as the franchisee will be informed of a complaint, it is quite common for the franchisee to intimidate, bully and harass the former employee in the hopes that they will be too fearful to continue with their complaint.

A worker who has found the courage to make an unfair dismissal complaint may also find the courage to make a complaint with the FWO about being underpaid. There are many challenges they will face going ahead with this process. Firstly, they will be discouraged from making a claim by their friends and any co-worker they share this information with, and they will propagate the hysteria around deportation. Then, the steps associated with making a complaint can be challenging, especially when English is not their first language. In the case of 7-Eleven workers, most of them have next to no documentation to substantiate the hours they worked and how much they have actually been paid. Furthermore, the records within the store are likely to be fraudulent and the records supplied to Head Office might be different, but also fraudulent. It is often much easier for the franchisee to substantiate the fake hours worked based on fraudulent records, as opposed to the employee substantiating the true hours worked. There are many scams and variations of the scams that are used widely within 7-Eleven stores to this day, ranging from the well-known and most used half pay scam, to the cash back scam, the free shift scam, and the free trial scam, along with variations of each (see appendix).

If the complaint is accepted by the FWO and the employee still wishes to go ahead, the franchisee will be informed, leading again to a bullying and harassment campaign in an attempt to intimidate them into retracting their complaint. It is quite common for the franchisee to refuse to comply with FWO requests and/or to provide false documentation to the FWO. If penalties are imposed against a franchisee, and/or the franchisee is ordered to pay back the wages, it has been common practice for the franchisee to transfer all assets into a relative's name and fold the business up, which up

until recently engineered a situation where they didn't have to pay any money.<sup>3</sup> It must feel disempowering for the FWO and highly disheartening for the worker.

Now to the franchisees: what would make them engage with these practices?

Behavioural Scientist Dan Ariely and his team conducted the Matrix Experiments, which tested how honest people would be when left to mark their exam and remunerate themselves based on how well they did.<sup>4</sup> There were 40,000 participants and the team found that 70% of people cheated, with about 20 big cheaters and 28,000 little cheaters.<sup>5</sup> What they observed through their studies was that good people often do dishonest things when there is a belief or an understanding that everybody is doing it.<sup>6</sup>

I do not condone, encourage or make excuses for franchisees' bad behaviour, but it helps to understand what would make 400+ franchisees, who are mostly otherwise good people, behave in such a way. In the many discussions I have had with franchisees in various states, I was amazed how many of them told me they purchased a 7-Eleven knowing that underpayment was common practice and that was just how 7-Eleven stores were run if the store was to make a profit. I was even more surprised to hear from various franchisees around the country that said prior to taking ownership of their store, they expressed concern to Head Office during their training about having to underpay staff to make a profit. On all accounts, they were asked to change the topic or all of their questions were dismissed.

Since the scandal broke, franchisees and ex-franchisees have come forward claiming they have evidence that the financials relied upon to purchase the store were fabricated and grossly misrepresented the true labour cost for that store. A lot of these franchisees come from the Indian subcontinent and other places around the world and have also sold everything and committed to huge loans in the hopes that they will make a good life for them and their family in Australia. They told me they thought they were buying a future with 7-Eleven but in reality, they purchased a job that requires huge time

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<sup>3</sup> Natalie James, 'Directors exposed as we lift the corporate veil' (Media Release, 23 June 2016) <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/june-2016/20160623-op-ed-lifting-the-corporate-veil>>.

<sup>4</sup> Dan Ariely and Yael Melamede, 'A fascinating experiment into measuring dishonesty' *Elsevier* (online), 22 September 2016 <<https://www.elsevier.com/editors-update/story/publishing-ethics/a-fascinating-experiment-into-measuring-dishonesty>>.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

commitments and has high-stress levels. They talk of the heavy hand applied by Head Office and bullying, intimidation and racial discrimination delivered at the hands of Head Office.

Many describe how there is an understanding among the franchisees that if you are not underpaying, then you are the only one not doing it, so they feel pressured and foolish if they're the only franchisee paying full wages. I recall an example of one franchisee coming to me after the scandal broke. He told me he had been underpaying for years in order to survive financially, and 7-Eleven never seemed to care until there was national media attention on the issue and he was subsequently breached. He explained to management the store was not profitable (and never would have been) and was unable to pay staff the legal wage. He was told that these were meant to be family-run businesses: that his wife could work a 12-hour shift every day, and then he could work a 12-hour shift every night, resulting in "no real need" for other staff. He told Head Office that they had young children and would never see them as a family but management expressed no concern. He was quite upset by their comments around this and, sadly, this was not the first time I had heard this.

There were so many franchisees that would tell me they were losing money every week on their stores paying the legal wage. Surprisingly, after the scandal broke and the new franchise agreement was subsequently formulated, quite a few franchisees still claim they can't break even paying the legal wage. Of course, there are a number of franchisees, predominantly multi-store owners, who were well known within the franchisee and worker community for underpayment and exploitation of workers that are quite wealthy and have made a lot of money out of 7-Eleven. If the regular complaints and phone calls that I receive are to be believed, they still routinely underpay and exploit workers in their stores, yet receive strong support from Head Office which goes right to the top. Workers who have complained to Head Office after the scandal about underpayment in those stores have called me out of frustration, complaining that they have informed Head Office, yet the franchisee receives no breaches or warnings about payroll, despite the evidence provided to them.

For the many franchisees out there that do want to do the right thing, they often feel that they have a choice to make. Lose everything they ever worked for and not be able to

provide for their family, or underpay workers to survive. Behind the tough exterior that many project, there is often a person who is under considerable stress and hates what they are doing, but doesn't know how to find a way out. How could all this happen? Who could have such a far-reaching agenda? Perhaps the answer lies with the billionaire owner, who nearly doubled his profit last year.<sup>7</sup>

What needs to be done? Thousands of people were underpaid at the hands of his company. He claims he did not know of widespread wage underpayment and has only taken some responsibility as a result of media pressure. As of 29 July 2016, 7-Eleven has paid back 599 workers almost \$23 million.<sup>8</sup> During the investigation, we estimated the true amount of underpayment to average \$80 million per year and both franchisees and workers claim this has been standard practice for over 20 years. Quite interestingly, if you add up the estimated underpayment over time and compare it with the owner's wealth, they almost cancel each other out.

Something needs to drastically change or mass exploitation of franchisees and workers will continue in Australia. In the lead up to the 2016 Federal Election, the two major parties made election promises to deal with accountability in franchise systems where there are instances of exploitation and underpayment. The policy put forward by the Coalition is an encouraging start: increasing penalties that apply to employers who underpay workers or fail to keep proper employment records, new offence provisions that capture Franchisors who fail to deal with exploitation, and delivering a funding increase to the Fair Work Ombudsman, among others.<sup>9</sup> The policy engineered by Labor appears to mirror that of the Coalition.<sup>10</sup>

If the key investigator of worker exploitation is the FWO, it is imperative that they are assigned with extra powers. As it currently stands, the FWO does not have the capacity to compel any person to answer questions on the record in relation to workplace law contravention, unlike other regulators.<sup>11</sup> With immunity provided to the witness, the

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<sup>7</sup> John Stensholt, 'BRW Rich 200 List 2016' *Australian Financial Review* (Australia), 26 May 2016.

<sup>8</sup> 7-Eleven Australia, *7-Eleven Wage Repayment Program* (2016) 7-Eleven Wage Repayment Program <[www.wagerepaymentprogram.com.au](http://www.wagerepaymentprogram.com.au)>.

<sup>9</sup> Liberal Party of Australia, *The Coalition's Policy to Protect Vulnerable Workers* (2016), Liberal Party of Australia <<https://www.liberal.org.au/coalitions-policy-protect-vulnerable-workers>>.

<sup>10</sup> Australian Labor Party, *Positive Policy – Protecting Rights at Work Fact Sheet* (2016), Australian Labor Party <[http://www.100positivepolicies.org.au/protecting\\_rights\\_at\\_work\\_fact\\_sheet](http://www.100positivepolicies.org.au/protecting_rights_at_work_fact_sheet)>.

<sup>11</sup> Fair Work Ombudsman, above n 1, 28.

FWO would be far better equipped to deal with all instances of exploitation, but particularly systemic abuses, as without this power, it is difficult for accountability to be proven beyond the franchisee level.

When it is evident that executives of a franchise system know about systemic wage fraud and proceed to do nothing about it, criminal charges should not be out of the question. The threat of harsh penalties could result in Head Office level employees reacting efficiently and effectively when informed of exploitative practices within their business. Of course, pioneering, encouraging or partaking in these exploitative practices at a Head Office level should involve harsher penalties including imprisonment — especially in the case of 7-Eleven, where the owner should have known. It comes back to modern day slavery and slave “owners”. If to force someone into modern day slavery is a criminal offence, then those involved in implementing such a business model should be held criminally accountable.

If the owner and directors of 7-Eleven oversaw the largest wage fraud in Australian history, where considerable circumstantial and anecdotal evidence shows they were acutely aware of (and in fact the driver of) the exploitation model, but never even received a knock on the door from the police, then we have a serious problem that needed to be addressed yesterday. After all, it appears key executives at 7-Eleven resigned from the company and walked away with little legal consequence while taking no responsibility for the modern day slavery of workers. Unfortunately, the problems do not walk away with them. Instead, the top down toxic culture continues to exist and absent any serious structural and operational changes, the culture at 7-Eleven will never change.

## II APPENDICES

### *Half Pay Scam*

The half pay scam is where, for example, an employee works 40 hours in a week, but is only paid for 20 hours. The franchisee would then record this employee as working 20 hours and record a “ghost employee” as working the remaining 20 hours. The ghost employee’s pay will then go into the franchisee’s or a family member’s account.

*Cash Back Scam*

Created within days of the scandal breaking, the cash back scam came into full swing. The worker would be paid the correct wage according to the award, however, was required to withdraw half of their pay and deliver to the franchisee in cash, off camera. When this scam was exposed nationally, creating risk for the franchisee to get caught, quite a number of franchisees changed it to avoid detection whereby they would employ a worker off the books and pay another worker in full who was then instructed to pay half of his pay via a bank transaction to the worker off the books and record it as being a loan repayment or gift. This practice was recently caught on a secret camera by an employee.<sup>12</sup>

*Free Shift Scam*

After the cash back scam and its variations became well known, a number of franchisees that owned other businesses such as IGA stores, created the free shift scam to use in place of the cash back scam. Under the free shift scam, you would work your normal shifts at 7-Eleven and be paid in full under the award. Your franchisee would then require you to do a number of shifts in their other business (such as an IGA) for free. This avoided any detection of underpayment practices at 7-Eleven.

*Free Trial Scam*

Franchisees place a new worker on an unpaid trial for several days or in some cases up to one month. At the end of the trial, the franchisee tells the worker that they were unsuccessful during the trial and won't be hired, and therefore are not paid. The franchisee will repeat this process many times with many workers.

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<sup>12</sup> Mark Willacy, *7-Eleven Worker Forced To Pay Back Wage, Covert Video Shows* (2016) ABC News <<http://www.abc.net.au/news/2016-11-21/covert-video-captures-711-workers-being-forced-to-pay-back-wage/8033808>>.

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