



7-Eleven Stores Pty. Ltd.
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28 September 2023

7-Eleven Submission to the Review of the Franchising Code of Conduct Consultation paper

Introduction

7-Eleven welcomes the opportunity to make a submission to the Review of the Franchising Code of Conduct (Franchising Code). 7-Eleven has been an active participant in previous reviews of the Franchising Code.

Previously, we have made submissions to and/or appeared before the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the *Operation and effectiveness of the Franchising Code of Conduct*, the Economics Reference Committee inquiry into the *Unlawful Underpayment of Employees' Remuneration*, and the Senate Select Committee on Temporary Migration.

We welcome this Review and see it as an opportunity for further improvements to be made to the operation of the Franchising Code.

Company profile

7-Eleven Stores Pty Ltd (7-Eleven) opened its first store in Oakleigh, Victoria in 1977. It holds a license to operate and franchise 7-Eleven stores in Australia from the US-based entity 7-Eleven International, LLC. 7-Eleven in Australia operates around 735 stores across our franchise and corporate network, covering Victoria, New South Wales, the Australian Capital Territory, Queensland, and Western Australia. Of these stores, some 501 are franchise stores with 234 operated by 7-Eleven or its associated entity Convenience Holdings Pty Ltd.

7-Eleven's franchise network incorporates both fuel and non-fuel stores which means that both the Oil Code and Franchising Code are relevant to our network.

Franchise model

No two franchise models are exactly the same, at 7-Eleven, we take a different approach to franchising than many others. We take care of many of the things that are a hassle about being a small business owner, and the aspects that sometimes cause financial distress, and endeavour to provide our franchisees with support every step of the way.

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

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



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

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

In relation to suppliers and goods, product selection and price recommendation are undertaken by 7-Eleven. We do however recognise that each store may have customers with different needs, and there is the opportunity, in consultation with a Field Manager, to bring in products to meet their customers' needs provided it is in accordance with the 7-Eleven Store Agreement.

The potential maximum term of the 7-Eleven Store Agreement is 10 years, which is subject to, amongst other things, the earlier expiry of the property lease for the store premises. The Store Agreement does not grant either an exclusive or non-exclusive territory within which a business may operate and is limited in its operation to a particular store.

Under the 7-Eleven Store Agreement, 7-Eleven provides franchisees with a minimum gross income. For the financial year ending 30 June 2024, the minimum gross income thresholds are \$460,000 for non-fuel stores, and \$421,000 for fuel stores. If a franchise is not making this amount, 7-Eleven will adjust the monthly charge to meet the minimum gross income threshold. We work closely with individual franchisees to improve their businesses to avoid them having to rely on minimum gross income.

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

General Questions

1. Are there any general observations you want to make about the regulatory framework?

The Franchising Code operates in isolation of all other laws. If a person (for example, a franchisee) is found guilty and convicted of a serious criminal offence (where the sentencing falls short of 5+ years), this does not impinge on the ability of that person to continue operating within a franchise network even if it harms the franchisees' employees, damages the franchisor's brand, and consequently impacts on the value of the investment and goodwill of every other franchisee within a network.

We contend that if a person (for example a franchisee) were convicted for an indictable offence (relevant to their jurisdiction) that a franchisor should be able to remove them from operating under



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their brand. This could include offences such as drug possession and/or trafficking, sexual assault, assault, theft, and other more serious charges.

As a comment, it's interesting to note that under Queensland's *Tobacco and Other Smoking Products Amendment Bill 2023* that to sell tobacco a retailer needs to pass a fit and proper person test. A retailer would fail this test if "the person has been convicted of an indictable offence relating to fraud, dishonesty, or tax or customs evasion" and "any other matter they consider relevant."

It is passing ironic that if a franchisee were deemed not fit and proper to sell tobacco in Queensland, they could still be considered fit and proper to operate a franchise business.

The Franchising Code also does not directly address other legislative frameworks which are relevant to franchisees' conduct or the franchise business

For example, this year alone has seen the introduction of the Migration Amendment (Strengthening Employer Compliance) Bill 2023 which, in part, seeks to legislate two further recommendations from the Report of the Migrant Workers' Taskforce, those being;

- **Recommendation 19:** *It is recommended that the Government consider developing legislation so that a person who knowingly unduly influences, pressures or coerces a temporary migrant worker to breach a condition of their visa is guilty of an offence.*
- **Recommendation 20:** *It is recommended that the Government explore mechanisms to exclude employers who have been convicted by a court of underpaying temporary migrant workers from employing new temporary visa holders for a specific period.*

Yet, a person (for example, a franchisee), who was found guilty and convicted of coercing a temporary migrant to breach a condition of their visa would not be found to be in breach of the Franchising Code.

Similarly, a person (for example, a franchisee) who was found to be guilty and convicted of breaching the wage theft provisions in the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 would also not be found to be in breach of the Franchising Code.

If, as a stand-alone business, an employer was found to be guilty of breaching the provisions of these Bills, they would be rightly sanctioned but only their business would be impacted. However, if this was a franchisee, the franchisor and every other franchisee would suffer reputational damage.

Much has been stated in earlier reviews of the Franchising Code of a power imbalance between franchisors and franchisees, but little has been said of the power imbalance between franchisees and their employees.

Unfortunately, the Franchising Code does not provide a franchisor with an express right to terminate with 7 days' notice a franchise agreement in circumstances where the franchisee has been found guilty and convicted of breaching workplace laws or other laws such as migration laws.

Under the Franchising Code, a franchisee could continuously breach, remedy that breach within a 'reasonable' period and continue to do so on a significant number of occasions and the franchisor is unable to terminate a franchisee for continuous breaches. However, under the Oil Code, franchisors have a right to terminate immediately if three breach notices have been issued (i.e. to prevent re-occurrence of breaches). This Review provides an opportunity to create harmonisation between the



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Codes by inserting the 'three strike' provision into the Franchising Code thereby creating consistency between them.

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

2. Is the Franchising Code fit for purpose? Should it be retained? If so, should it be remade prior to sunseting?

The Franchising Code is somewhat fit for purpose but could be improved with the recommendations in response to Question 1. 7-Eleven believes the Franchising Code should be remade prior to sunseting.

3. Are there any emerging trends, such as technology or cultural innovations, which would affect the operation of the Franchising Code?

No comment. **Questions – The scope of regulation**

4. Does the general scope of coverage of the Franchising Code remain appropriate? Is the scope of coverage flexible enough having regard to the diversity of the franchising industry?

The Franchising Code does have a 'one size fits all' approach with little room for tailoring to either simplicity or complexity of a franchise arrangement.

As a business that operated under both the Franchising Code and the Oil Code, we welcome any possible harmonisation between them. While it has been speculated that the movement could be for the Oil Code to more closely resemble the Franchising Code, we would caution against this as the Oil Code works very effectively and as stated previously, has more pragmatic provisions, especially around terminations.

As an observation, some have argued that if a franchise agreement is based on a sole trader and a relatively small investment, disclosure should be less complex and burdensome. However, an alternative case could be made that someone buying into a franchise network for several hundred thousand dollars is more likely to have sophisticated legal and financial advisors and hence a need for comprehensive disclosure documents.

5. Have the amendments regarding the exclusion of cooperatives from the provisions of the Franchising Code effectively clarified that they fall outside the scope of the Code?

Not relevant.

6. What evidence is available to suggest additional protections in the Franchising Code for new car dealerships should be extended beyond new car dealerships (for example to truck, motorcycle and farm machinery dealerships)?

Not relevant.

7. Should agreements between automotive manufacturers and dealerships that relate only to service and repair work (which do not cover matters relating to vehicle sales) be considered as franchise agreements and covered by the Franchising Code protections? Why or why not?

Not relevant.

8. Has the amended definition of *motor vehicle dealership* effectively clarified that agency sales models remain within the scope of regulation under the Franchising Code?

Not relevant.

Questions – Before entering into a franchise agreement

9. How effective are the requirements of the Franchising Code that ensure franchisors make information available to franchisees prior to entry into a franchise agreement? If possible,



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please comment on the effectiveness and content required for inclusion in each of the Franchise Disclosure Register, Information Statement, Key Facts Sheet and Disclosure Document.

7-Eleven doesn't believe the Franchise Disclosure Register has been the panacea it was thought it could be when first designed. However, now it is in place we would support its retention.

The ACCC Information Statement is a useful guide for prospective franchisees and should be retained. The Key Facts Sheet is essentially a short form version of the Disclosure Document and should also be retained.

Disclosure Documents are voluminous – in our experience often comprising more than 200 pages – and highly detailed. It is assumed that prospective franchisees and their advisors read the Disclosure Document in full, but the franchisor can only take their word by the appearance of a signature. In addition, the quality of advice provided by legal and financial advisors is unknown to the franchisor.

Consideration should be given to the establishment of an inter-agency research project to hear the views of franchisees on the usefulness and purpose of these documents.

It is important to note that investing in any business carries some risk and is no guarantee of income or performance.

However, to mitigate these risks, 7-Eleven strongly advocates full disclosure of all necessary information to ensure fully informed decision-making and robust business and financial planning for all franchising candidates.

For background purposes, it is worth detailing the disclosure process 7-Eleven undertakes with prospective franchisees.

At the outset (following an expression of interest) 7-Eleven, gives to all enquiring parties a copy of the ACCC Franchising Code Information Statement (noting this is required under the Franchising Code for non-fuel stores).

Prior to entering into an agreement 7-Eleven additionally provides to a prospective franchisee:

- A further copy of the ACCC Franchising Code Information Statement;
- The Franchising Code if it is a non-fuel store or the Oil Code if it is a fuel store;
- Documentation regarding the potential impact of lease tenure on the franchise agreement;
- Fair Work Handbook;
- 7-Eleven GRIA Wage Schedule for non-fuel sites or the VRSRA Wage Schedule for fuel sites;
- Key Fact Sheet (non-fuel stores only);
- Income & Expense Statement for 3 previous financial years and the current year;
- Percentage of sales category mix, last financial year and current financial year;
- Hourly Productivity Report;
- Franchisee Profitability Disclosure Statements – State and type specific;
- GRA Shift Worker versus non-shift worker (non-fuel sites only);
- Product movement analysis reports;
- Franchising Code Disclosure Document (for non-fuel sites) or Oil Code Disclosure Document (for fuel sites);
- Copy of the lease or the agreement to lease;
- Copy of the applicable Store (franchise) Agreement.



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The prospective franchisee is required to provide completed copies of the following:

- Certificate of independent advice;
- Statement of advice;
- Form of Acknowledgement;
- Business and Financial Plan Statutory Declaration;
- Confirmation of Payments to Vendor Declaration.

It is important to note that currently 7-Eleven generally does not permit a new franchisee to start in a 'green field' store. They may only purchase an existing franchise business.

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

7-Eleven requires prospective franchisees to develop their own business and financial plans as this gives them a greater appreciation and understanding of the particular franchise they will be entering. The 7-Eleven Area Manager undertakes a final review of these plans with conditional approval of the applicant by the General Manager, Operations.

10. How have changes to unfair contract terms laws impacted franchise agreements? Is the approach in the Franchising Code to regulating certain types of contract terms still appropriate?

7-Eleven fully endorses the philosophy which underpins the unfair contracts provisions as now embedded in the Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010). The purpose of those provisions is to ensure that a contracting party with superior bargaining strength does not unfairly or unreasonably capitalise on that position.

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

11. Do you have any other comments on how the Franchise Code regulates the relationship between franchisors and franchisees at the point of entry into a franchise agreement?

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

The process begins with a focus on the individual. Each applicant must undertake a structured interview followed by an online self-assessment to ensure the results can be scaled and the applicant satisfies 7-Eleven's requirements. This is followed by a personal style survey which provides guidance as to whether the applicant's personality is suited to convenience retailing and customer service. At this stage an assessment of basic literacy and comprehension is also undertaken.

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



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Applicants are required to undertake eight weeks of unpaid training which consists of six days in a classroom with the balance in a store setting, with a mentor Store Leader. The classroom training is wide-ranging but with particular focus on employer responsibilities, such as obligations under the Fair Work Act, rostering and OH&S along with financial record keeping and reporting and in-store matters such as stock control.

Throughout all phases of the process, either the prospective or 7-Eleven can choose to end the process without penalty or obligation unless within that period a franchise agreement has been entered into (in which event the provisions of the agreement will then govern termination rights).

This is an extensive process for both 7-Eleven and a prospective franchisee and that from initial enquiry to starting in their own store only a small proportion of candidates complete the process.

New vehicle dealership agreements

12. What impact have the 2021 changes relating to compensation and return on investment had on franchisors and franchisees entering into new vehicle dealership agreements? Where possible, please provide detail on the costs and benefits the new car dealership sector has experienced because of these changes.

Not relevant.

Questions – Enduring obligations in franchise relationships

13. How well does the Franchising Code support franchisors and franchisees during the term of the franchise agreement? In particular, does the Franchising Code provide adequate minimum standards relating to structural and/or operational change management?

7-Eleven believes the Franchising Code provides adequate support to both franchisors and franchisees during the term of the agreement apart from those issues detailed in Question 1. In those circumstances, we consider the balance is tilted too far in favour of the franchisee.

Reporting of material changes to the franchise system are adequate but should be further simplified to reduce administrative burden.

14. How effective are the 2021 reforms which restricted the franchisors' capacity to require a franchisee to undertake significant capital expenditure?

As described in the introduction, 7-Eleven as the franchisor pays for all capital expenditure.

New vehicle dealership agreements

15. What impact have the 2021 amendments to the obligation to act in good faith in relation to new car dealerships had? Where possible, please provide detail on the costs and benefits the new car dealership sector has experienced because of these changes.

Not relevant.

Questions – Ending a franchise agreement

16. How effective are 2021 reforms to the Franchising Code which created a process for franchisees to formally request early exit from their franchise agreements?

This is a very rare occurrence. The more common method of exit is for the franchisee to sell the business to a third party. The commercial terms for such a sale, including good will, are determined between the parties to the negotiation.



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New vehicle dealership agreements

17. Where possible, please comment on the impact, or expected impact, of reforms to the Franchising Code which seek to ensure franchisees are paid compensation if the franchisor terminates a new vehicle dealership agreement early. Where possible, please provide detail on the costs and benefits (or expected costs and benefits) to the new car dealership sector resulting from these changes.

Not relevant.

Questions – Enforcement and dispute resolution

ACCC and enforcement

18. Is the current role of the ACCC in relation to enforcement of the Franchising Code appropriate?

7-Eleven believes the current role of the ACCC is appropriate and well understood.

19. How useful and effective are the educational resources provided by regulators (such as from the Australian Competition and Consumer Commission)? Do they ensure prospective entrants to the franchising sector are sufficiently aware of their rights and responsibilities? Is the level of industry engagement appropriate?

The ACCC's educational resources are user friendly and helpful with the Information Statement for prospective franchisees being a particularly useful guide.

20. What has been the impact of 2022 reforms which increased certain penalties available under the Franchising Code? Particular comment is sought on penalties which were increased to the greater of \$10 million, three times the benefit obtained, or 10 per cent of annual turnover?

7-Eleven considers the level of penalties to be high but acceptable, however 7-Eleven could not support any further rise in penalties.

Dispute resolution

21. Is the role and activity of the ASBFEO in relation to supporting dispute resolution under the Franchising Code appropriate?

A central objective for dispute resolution should be to keep costs to franchisees to a minimum. We have received feedback that the ASBFEO is considered expensive and the quality of mediators is variable with many not having experience in the franchising sector.

7-Eleven would support conciliation as an option but only where the conciliator is a person with expertise in the area of franchising. We would be agnostic as to where this conciliator would sit, whether with the ASBFEO or under the auspice of another agency/department.

Alternatively, consideration should be given to the establishment of a complaints and dispute resolution body external of government supported by industry financial support along the lines of the Telecommunications Industry Ombudsman.

22. Do the dispute resolution provisions in the Code provide an effective framework for the resolution of disputes? In particular, are you aware of whether 2021 reforms relating to multi-party dispute resolution and voluntary arbitration have been utilised by participants in the franchising sector? If not, why not?



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The dispute resolution processes under the Franchising Code are adequate but seldom used. As a principle, we would always support mediation as a first step to attempting to resolve a dispute prior to litigation. However, we would observe a trend to move straight to litigation or threats thereof. Both parties should have access to legal representation but perhaps the path to the court room can be underpinned by a more prescriptive process.

We are aware of one case where a franchisee lodged a complaint through the Victorian Small Business Commissioner and the cost of this was as little as \$300.

Closing

Thank you for the opportunity to make this submission. We would be pleased to answer questions or provide further information to assist the Review.