

FRANCHISE REDRESS SUBMISSION

Inquiry into wage theft in Queensland

August 2018

Investigating Corporate Misconduct

Franchise Redress was co-Founded by Michael Fraser and Maddison Johnstone in 2017 after observing systemic abuses in the franchising industry.

Prior to being formally recognised as Franchise Redress, we observed (and still observe) non-franchised, independent and chain business operations underpaying workers. Our observations of wage theft have shown that worker exploitation spans industries and areas, and does not discriminate in terms of age, gender, nationality, or race, although vulnerable workers appear to be more likely to accept unfair pay and work conditions than those who are not as vulnerable.

As Franchise Redress, we have helped to expose a number of high profile scandals in the franchise industry:

- Michael helped expose systemic wage fraud at 7-Eleven stores across Australia, leading to over \$150 million in backpay to over 3600 workers (as of February 2018),
- We travelled Australia investigating Domino's Pizza in early 2017 after a number of franchisees raised concerns about the profitability of their stores. We discovered that many staff members were being exploited and were expected to work outside of their rostered hours for free; and
- Investigating complaints and tip-offs that Retail Food Group were strategically milking franchisees of their last dollar, with many becoming financially destitute. Many workers also fell victim to Retail Food Group's aggressive strategies as franchisees could not afford to pay them the legal wage.

Wage Theft: Where and How

Wage theft can occur in a variety of ways and across industries. Some workers believe that if they are being paid according to the correct award, then they are not being underpaid. The award system can often be clunky and hard for employers to follow, so there are a number of innocent occasions where employees are not paid according to the correct award wage. Often under these circumstances, when the employee or employer becomes aware, they can seek advice and rectify the problem.

Our submission is less about employers who have the intention of doing the right thing.

There are instances we included in this submission where franchisees with brands involved in high profile scandals felt they had no choice but to underpay staff to keep their business running. There are also franchisees in these brands that make money but still choose to underpay staff.

The observations recorded here are mostly focused on employers that we believe are:

- neglecting their obligations under the Fair Work Act, despite having ample resources to fulfil their obligations,
- placing undue pressure on managers to underpay or exploit staff members,
- abusing the rights of, or turning a blind eye to, underpaid contractor employees,
- deliberately and knowingly underpaying employees to further improve the financial state of their personal/professional wealth, and/or
- deliberately and knowingly exploiting foreign workers to gain a financial advantage and increase their own wealth.

Retail Food Group

Retail Food Group has brands including Donut King, Brumby's Bakery, Michel's Patisserie, Gloria Jean's, Crust Pizza and Pizza Capers. A number of franchisees who underpaid their workers were often oblivious to it, or couldn't financially survive if they paid the correct wage. They said that Retail Food Group were aware that many franchisees were struggling financially, and they should be able to see that it would be impossible to pay the correct wage, however little to no support was ever afforded to the franchisees to enable them to operate their business legally and ethically.

Donut King: A number of Donut King workers told us that they didn't think they were being paid superannuation. They were afraid to raise this with their franchisee as they were worried they would lose their jobs.

Donut King workers were also concerned that they were being paid the incorrect wage, paid in cash, or would work overtime for free. Donut King also had a theme of family members working for little or no pay.

Brumby's Bakery: Workers told us that Brumby's Bakery operators can underpay staff in a variety of ways. Bakers are regularly underpaid by working unrecognised outside of their rostered hours, sometimes 3 or 4 hours each shift. They are often stressed and doing the work of two bakers meaning their workload is heavier than what most would find reasonable. Sometimes, bakers are paid in cash, and not paid according to the correct award.

Bakery retail staff are often expected to work beyond their roster if they do not finish within their rostered hours. It was also not uncommon for family members of franchisees to work for free or below the minimum wage.

Michel's Patisserie: Michel's Patisserie underpays workers by rostering on family members to work shifts for little or no pay. Of the franchisees that we spoke to, a number of them openly told us that their kids were working to help out their parents, as they couldn't afford to employ staff members. We asked them if they realised that wasn't allowed unless their children were directors of the company (they weren't), and they were often embarrassed as they didn't realise it wasn't allowed.

When we asked Michel's Patisserie franchisees if underpayment was systemic in their brand, they would often respond with "of course" or "how else could we operate, it is impossible to break-even with RFG imposing their high fees and expectations on us without underpaying".

Gloria Jean's: Gloria Jean's workers told us that they were paid the incorrect award. One worker told us that when she became aware that she was conducting managerial duties but was not being paid accordingly, she asked her franchisee to pay her the correct wage. She said the franchisee told her that money was too tight and she couldn't afford it. This resulted in the worker resigning.

One franchisee also told us that they often put on workers as "trainees" and would only pay them \$15 an hour until they became competent workers. This franchisee told us that these workers were often desperate. The franchisee wasn't looking for staff but felt like it was a win-win situation.

This appears to be a common problem in the Gloria Jean's network.

Crust Pizza: Crust Pizza engages contractors to fulfil pizza delivery. This is often abused, as the franchisee will often put a foreign or young worker who is on an ABN to deliver orders, and pay them well below what the award wage is for a pizza delivery job. These workers do not usually fulfil the criterion of a contractor, but rather appear to operate as an employee. Franchisees engaging in sham contracting mean that workers miss out on weekend or holiday loading, overtime, and entitlements.

There was also a Crust Pizza franchisee who was paying their workers below the award wage but gave them a small share of their company.

Domino's Pizza

Underpayment is a common problem throughout the Domino's Pizza network. Franchisees and workers have told us that staff members are underpaid using shift-trimming, or when a staff member is required to clock out of the system hours before their shift is expected to end.

Shift trimming is when a worker clocks in to start their shift, and then clocks out at the end of their shift. The manager or franchisee then enters the system that records worker hours and adjusts or edits the system to show the staff member worked fewer hours/minutes than what they actually did.

We have also received numerous complaints that Domino's franchisees have been selling visa sponsorships and expecting these employees to work many hours per week unpaid.

Claim of underpayment by a senior person at Domino's Head Office

In the last eight months, we have received complaints from no less than six ex-employees of someone who is one of the most senior people in Domino's Pizza Enterprises head office. The ex-employees have complained that they were grossly underpaid by this person when he was a franchisee.

The ex-employees, who are from the Indian sub-continent and live in various parts of Australia, claim they were often asked to clock out of the system and work a few extra hours per shift for free, sometimes working tens of hours per week for free. Some were sponsored on a visa and none of them had a good understanding of their workplace rights in Australia.

Interestingly, what gave rise to these complaints was that the senior person has recently been a party to using wage audits to allegedly punish franchisees who question the declining profits of the store network. Some of these franchisees claiming to be punished with wage audits are the ex-employees - now franchisees - claiming they were underpaid. The other ex-employees claim to know franchisees suffering the same treatment.

They have told us that they find it unfair and hypocritical that the same person who they say routinely underpaid many workers for years, is now using his high position to punish them for operating their business the way he taught them, or just outright using audits to accuse them of underpayment that never occurred.

This senior person will likely continue to enjoy anonymity and impunity in relation to these complaints, because those who have complained to us are extremely fearful of what will happen to them, and for the ones who are franchisees, they are fearful of having their store taken from them in an act of retaliation.

7-Eleven

Although the working conditions have improved dramatically, we still hear of various kinds of underpayments happening in the system. There are a number of ways that 7-Eleven workers have been exploited in Australia. When conducting the 7-Eleven investigation, a number of widespread scams became apparent.

Half Pay Scam

The half pay scam occurs where a worker is only paid for half of the time they worked. This is most commonly done when a worker is on a visa and is restricted to working a certain amount of hours per fortnight.

To use an example, an employee works 40 hours in a week but is only paid for 20 hours. The franchisee would record this employee as working 20 hours and record a “ghost employee” as working the remaining 20 hours. This ghost employee might be the franchisee, relative, or a non-existent person. The ghost employee’s pay will go into the franchisee’s or a family member’s account.

Cash Back Scam

The cash back scam involved a worker being paid the correct wage according to the award, but was then expected to withdraw half of their pay from their bank account and subsequently hand it over to the franchisee. This would occur away from the store, off camera.

When this underpayment method was exposed, some franchisees altered the way they conducted the cash back scheme to avoid detection. They would employ a worker off the books and pay another worker in full (according to the award). The worker that was paid in full would then be instructed to send half of his pay via a bank transaction to the worker who was off the books, and record it as being a loan repayment or a gift.

Free Trial and Free Shift Scams

Some franchisees would require new workers to prove their abilities by working for free during a trial period. This training period would seemingly never end and sometimes go on for a month or more, until the franchisee would tell them that they weren’t successful. The franchisee would then put another worker on this free trial and the cycle would continue.

In the Free Shift scheme, a franchisee would also own other businesses such as IGA stores. Workers would work their normal shifts at 7-Eleven and be paid in full according to the award. However, the franchisee would require the worker to work for free in their IGA or similar business. This would no doubt be difficult for 7-Eleven corporate to detect.

Chain Businesses

- **Marriott**

In late 2014, a number of housekeeping staff who were working for Surfers Paradise Marriott Resort expressed concern about changes at their work. They complained that the Marriott were bringing in a contractor to fulfil housekeeping duties and they would be required to work for the contractor or take a redundancy. The contractor was AHS.

Michael Fraser met with [REDACTED], who was at the time, [REDACTED] [REDACTED], Marriott International Inc and [REDACTED], Surfers Paradise Marriott Resort. His current role is [REDACTED] [REDACTED]. The focus of this meeting was on how the decision to bring in a contractor appeared to have been made before consulting the staff - who were entitled to consultation - and that staff had not been given a reasonable amount of time to seek professional advice.

In this meeting, the [REDACTED] said that an itemised list of staff concerns should be provided to him in writing in a timely fashion. However, the very next day, a letter to staff said, *"I would like to confirm that after carefully considering all of the feedback from associates and the Union a decision has been made"*.

When this letter was raised with the [REDACTED], he bizarrely responded (in writing) by claiming that the staff's concerns were never discussed in the meeting, rather that air conditioning and salad issues were discussed: *"Rather in that meeting you foreshadowed raising a number of matters affecting the Hotel which are irrelevant to the Hotel's decision to engage a third party provider to undertake housekeeping activities at the Hotel. Those matters included the use of air conditioning at the Hotel and the supplier from which the Hotel sources salads. As always, I welcome any feedback from members of the public about the Hotel's operations so that the Hotel can continue to strive to exceed its customers' expectations."*

In addition, there was a campaign of subtle intimidation which caused considerable fear amongst the workers, to the point that many who were asking for help, later asked to disassociate for fear of losing their job or other repercussions. When the media covered the issue, affected staff were all meant to meet on the side lawn, but some were too fearful because the [REDACTED] stood in the main doorway which some felt was an attempt to intimidate them into not walking past.

It was rumoured that by using AHS the Marriott could save up to \$1 million per year in housekeeping costs. When the [REDACTED] was asked about this, he repeatedly said that apart from a different company paying the wages, every aspect of the housekeeping work would be identical.

The [REDACTED] was asked how it was possible to save up to \$1 million per year when staff were working the same hours, cleaning the same amount of rooms and that everything would be identical. He replied with words to the effect of, "it makes sense for them to do the job because they are professionals".

It was later discovered that AHS brought in people from Nepal who had to be trained by the existing staff. According to the workers, they were not professionals and were very new to the country and not aware of their workplace rights.

Concerns were also raised in writing (below) with the [REDACTED] about AHS and a history of underpaying staff, but he was not interested in seeing the evidence: *"Like the staff, I expressed the same concern the staff had about the alleged rumours that AHS hire foreign workers and don't pay them legally whilst cooking the books. I offered to provide further information and you did not take me up on the offer."*

Since AHS took over, many of the original workers felt bullied and despite the [REDACTED] assuring Michael that the work would remain identical, staff have complained that their work loads were increased to unreasonable levels.

We have received complaints about staff being underpaid by AHS at the Marriott, but due to the visa status of some and fear of deportation, they did not continue with a complaint to Fair Work.

It is our belief that the [REDACTED] at the Marriott would reasonably ought to have known that the only way to considerably reduce wage costs would have been to overwork and underpay vulnerable workers. The fact that the [REDACTED] was not interested in any evidence of AHS underpaying workers and denied ever discussing the issues further strengthens our views that they engaged contractors in an attempt to circumvent their obligations under the law and increase profits.

- **Chain Shoe Store**

A shoe store owned by an ASX-listed company located at Harbour Town on the Gold Coast frequently underpays workers by expecting them to work beyond their rostered hours. Staff members have told us that when doing the close shift, they are expected to conduct cleaning and reconciliation duties for free. They are also expected to start work 15 minutes before they are rostered on, meaning they can work up to 1 hour for free every shift.

Staff members are also expected to attend team meetings that can go for up to 90 minutes without pay. Being a shoe store, they are expected to wear the brand's shoes as part of their uniform and are expected to buy these shoes at their own cost. Despite wearing a branded uniform, they are not paid a uniform allowance.

Staff members have also said there were occasions where the till came up short and they were expected to make up the difference using their own money.

- **Grill'd**

We have recently spoken with staff members from various Grill'd corporate store locations who have told us that they are expected to work a certain number of free hours in exchange for free food and soft drink during those hours. The most common example of this was being asked to stay back and work for a few hours and clean unpaid.

- **Guzman Y Gomez**

This franchise is growing at a fast rate and is now seeking investment from private equity, perhaps then they will list as a public company. We observed an interesting pattern of stores with seemingly too many workers on shift, who all happened to be foreign students from the same part of the world. When we asked about their wages, just as with 7-Eleven, it appeared they were instructed to say they are not allowed to discuss their wages. When speaking to people who have friends working in those stores we were told "they are being paid properly on TFN", but when we asked if they received overtime, penalty rates etc, we were told "no no no, but they don't mind so it's ok".

Recently a young woman who lives near our office told us how she applied for work in two Guzman Y Gomez stores on the Gold Coast. In the interview at the [REDACTED] store she said she was told that they only hire Portuguese or Spanish speaking people. She then applied at the [REDACTED] store and was told they don't hire Europeans. She is from Lithuania, speaks great English, but got the distinct impression that because she had fair skin and did not look Mexican that they discriminated against her.

She also told us that a Brazilian friend of hers gets some of her wage in cash as a flat rate for any time worked beyond 40 hours per fortnight.

Interestingly, [REDACTED]¹ published an article about the franchisee who apparently owns six Guzman Y Gomez stores on the Gold Coast, including the two above in question. Like the founder, he is also a former investment banker.

Independent and Franchisee Businesses

- [REDACTED] - [REDACTED] is operated by the same company that operates [REDACTED] and [REDACTED] in Surfers Paradise.

We have been observing [REDACTED] for a number of years. They used to have three restaurant sections at Harbour Town. They now operate one section.

One foreign worker told us that they were a casual and were being paid \$17 an hour. They said that Australians get paid a higher wage if they have a Tax File Number (TFN), and explained it to us as if was the law.

We heard that at least one [REDACTED] employee was expected to do heavy lifting and manual labour when the restaurant closed for renovations.

A number of people told us that the foreign worker chefs were paid circa \$20 an hour, and a number of workers were paid in cash.

From time to time there will be an article in the paper about how successful the owners are, or how nice their home is, but wealth should not come at the expense of underpaying workers.

- **Labrador Cafe**

A foreign worker from a cafe in Labrador contacted us, asking us for assistance as they were underpaid and treated poorly. She had been asking her former boss for the money she was owed but the boss continued to make excuses, saying that the worker wasn't underpaid, and that it was withheld for tax reasons.

The worker was unpaid for training (a full day) and paid just \$15 an hour. When we got involved, the worker ended up receiving backpay for the \$200 in underpayment. The cafe is known to locals as a good, cheap place to eat, and the former worker said every person, from the waitresses to the cooks were being exploited.

[REDACTED]

- [REDACTED]
The first thing you might note about this business is that it is open 24/7 and seems to have at least 5 to 10 foreign workers from the Indian subcontinent working at any time unpacking and packing fruit and vegetables. Sometimes there could be 20 or more on shift.

The staff serving customers are from countries such as Russia and Brazil. Over time, numerous members of the public, friends of workers and current workers have reported concerns of underpayments. Flat rates, cash payments and no penalty rates are the common complaints.

Having observed this business for many months, it begs belief that this business can survive having so many staff on each shift, let alone paying rent and other business costs. Yet we hear the owner has other fruit shops and visits the stores driving a late model luxury car, while staff barely making ends meet often use the shopping centre toilets to shower.

Contractors

- **Trolley Collectors**
We have had numerous conversations with predominantly Indian trolley collectors around Australia who claim they are being paid flat rates ranging from \$12 to \$20 per hour, with no overtime or penalty rates. Sadly they are often employed by large companies that contract directly to Coles and Woolworths, however this practice has been recently exposed. Things are improving, but the underpayment of foreign workers in this industry is still rampant.

Final Word

Wage theft is a common problem in Australia. Most workers will be too afraid to report underpayment or poor pay conditions to the regulators. They fear consequences such as a bad reputation, losing their jobs, or being deported for working outside of their visa restrictions. Workers also often don't believe that they have enough evidence to show that they were underpaid and feel that reporting wage theft would be a waste of their time.

While there are a slew of problems and there will be no easy fix for stopping or even reducing wage theft, there are some ways underpayment could be reduced:

- Wage rights should be taught in schools. A number of workers get their first job while they are in high school. They often are unaware of their rights as employees and are less likely to complain. This not only harms the worker's pay packet. It also perpetuates a cycle of underpayment, as not realising that they are being underpaid could result in them underpaying new staff if they are promoted to a position with more responsibility.
- As it stands, it can be extremely profitable to run a business by employing vulnerable workers who are not fully aware of their rights as a worker. Most foreign workers will work very hard every day for half the legal wage and never complain. If for some reason they learn how much they should be paid legally and question their employer, they are nearly always threatened with deportation or immediately sacked.

The chances that a worker will successfully make a complaint to Fair Work are slim to none. Employers who deliberately underpay and exploit workers know this and are happy to play the odds.

In one case an employer underpaid workers over \$500,000. A worker reported him to Fair Work. He moved all his assets into his wife's name and cried poor in court. The judge ordered him to pay \$7,000. He left the court in a new Porsche.

This employer effectively wilfully stole \$500,000 and then took steps to hide the money, yet there were next to no consequences. This enabled him to start other businesses and continue exploiting people.

Sadly, under the current legal system, if one of his underpaid workers stole \$50 because they didn't have enough money to feed themselves, they would be subject to criminal charges and possibly be imprisoned. Their life and job prospects would be impacted for years after as a result of having a criminal record.

It is our view that deliberate wage theft should be treated as a criminal offense and carry significant penalties, including limiting the offenders rights to be a director of a company for a reasonable period.

Making deliberate underpayments a criminal offense with significant penalties and possible jail time should act as a significant deterrent to any employer intending to do the wrong thing. We think this one change could dramatically reduce the amount of deliberate underpayments happening on every corner and in every shopping centre somewhere in Australia every day.

Disclosure: Exposing corporate misconduct comes with its challenges, with funding being one of the biggest, and ensuring there are no conflicts of interest. In the interest of full disclosure, the details of how we fund our operation are included below. Franchise Redress is a business name registered to our company Operation Redress Pty Ltd. We also look into systemic misconduct in the toll road industry, and as such have a business name Toll Redress. In the past we funded ourselves by mostly relying on donations. More recently, we have been funding ourselves by writing research reports using public, non-material information and making them available for purchase. On some occasions, we have assisted individual franchisees to address their concerns with their franchisor for a fee.