

‘Reasonable steps’ to promote compliance essential for franchisors to avoid liability and brand damage, says FWO

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With recent laws changes setting clear expectations that franchisors need to consider how to prevent exploitation of workers, the Fair Work Ombudsman has launched a new resource providing practical advice to assist franchisors to promote sustained workplace compliance in their networks.

In a [speech to the Franchise Advisory Centre’s Franchise Management Forum](#) yesterday, Fair Work Ombudsman Natalie James launched the [Guide to promoting workplace compliance in your franchise network](#) and emphasised the steps a franchisor can take to prevent workplace issues and avoid liability.

“A franchisor sets the tone for its network and needs to consider the capability and sophistication of its franchisees in managing its risks and deciding how to go about providing franchisee support,” Ms James said.

“The law states a franchise will not be liable for underpayments where it can show it has taken ‘reasonable steps’ to prevent this from occurring.

“The term ‘reasonable’ by its very nature requires that the particular business and its circumstances determine the expectations and the sorts of actions required, and this is where the guide is a great resource.”

The guide outlines useful strategies that head franchisors can implement to promote compliance with workplace laws in their networks.

“Workplace compliance is a compulsory requirement for any business,” Ms James said.

“The guide will be useful for franchisors of all shapes and sizes. It sets out four practical steps franchisors should be taking, and recommends a variety of strategies to help franchisors manage their workplace compliance risks now and into the future.”

The guide provides advice about how franchisors can work with their franchisees to:

- set expectations;
- educate and train;
- monitor compliance; and
- take further action.

Specifically, the guide includes:

- information about the new laws that apply to franchisors;
- practical steps franchisors can take to promote workplace compliance in their networks, including tips from leading businesses;

- real life case studies to illustrate best practice approaches to compliance with workplace laws;
- a checklist that businesses can use to assess and benchmark their current practices; and
- advice about where franchisors can access more information.

In her speech, Ms James emphasised how several key franchise brands had learned “after things went wrong for them” that ensuring compliance in a network is an investment, not a cost.

“Brands that have invested in compliance have found this to be a small price to pay in comparison with negative brand coverage, market cap deterioration and a whole host of legal and accounting problems with franchisees down the track,” Ms James said.

“I have said again and again that certain markets are higher risk than others and have identified the characteristics that feature repetitively in systemic non-compliance: low skill work, labour intensive sectors, high levels of vulnerable workers and tight profit margins.

“Franchisors can choose to work with us to be a part of the solution, or choose to roll the dice. We hope that together with knowledge of their network and the dynamics of the market, this new guidance will support franchisors to assess their risks and make choices in the interests of their business and brand going forward.”

“If they haven’t already, franchisors should also strongly consider demonstrating their public commitment to compliance by entering in to a compliance partnership with the Fair Work Ombudsman.”

Located at www.fairwork.gov.au/franchisors, the guide is part of a suite of resources to help franchisors understand and comply with the new laws designed to protect vulnerable workers.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on **13 13 94**. An interpreter service is available on **13 14 50**. Information on the website can be translated into 40 languages.

Resources available on the website include the [Pay and Conditions Tool](#) (PACT), which provides advice about pay, shift, leave and redundancy entitlements and there are templates for pay slips and time-and-wages records.

Employers and employees can also sign up to remain informed and receive tailored information by registering for a free Fair Work Ombudsman [My Account](#).

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO), the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au.

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Guide to promoting workplace compliance in your franchise network

The Fair Work Ombudsman is committed to providing you with advice that you can rely on.

The information contained in this guide is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

A guide for franchisors

On 15 September 2017, the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (the Protecting Vulnerable Workers Act) took effect. It introduced new provisions making certain franchisors and holding companies responsible in some circumstances if their franchisees or subsidiaries don't follow workplace laws (if they knew or should have known and could have prevented it). These changes took effect from 27 October 2017.

For more information on the new laws see the [Fair Work Ombudsman's website](https://www.fairwork.gov.au/about-us/legislation/the-fair-work-system/protecting-vulnerable-workers-reform) at <https://www.fairwork.gov.au/about-us/legislation/the-fair-work-system/protecting-vulnerable-workers-reform>.

Please note:

- There are a range of rules that apply to franchisors. For example, the Australian Competition and Consumer Commission also has extensive information and guidance for franchisors about their obligations under the [Franchising Code of Conduct](#). For more information, visit <http://www.accc.gov.au/business/industry-codes/franchising-code-of-conduct>.
- This Guide is for franchisors. For more information about how the Protecting Vulnerable Workers Act applies to subsidiaries of holding companies please seek independent legal advice.

Workplace relations compliance needs to be part of any company's long-term, sustainable business plan. Effective planning, and monitoring of compliance can help businesses meet their obligations, understand labour costs and retain employees. Conversely, failing to meet workplace obligations can have serious consequences for any business. As a franchisor, these consequences can be felt by the entire brand, as public perception is related to the brand itself rather than a specific franchised business.

Recent changes to workplace laws also mean some franchisors may be held legally responsible if their franchisees don't follow certain workplace laws. Therefore, it's more important than ever to make sure workplace laws are understood and applied throughout your franchise system.

This guide provides you with step-by-step information to help you promote compliance with workplace laws throughout your franchise network. It will help you minimise the legal and reputational risks to your business by taking you through four practical steps you can implement to make sure the franchisees in your network understand and meet their obligations under workplace laws:

1. set expectations
2. educate and train
3. monitor compliance
4. take further action

This guide also contains case studies to highlight the types of strategies leading franchisors are implementing to ensure compliance with workplace laws within their networks.

What the experts say – benefits of promoting compliance

A Managing Director of a leading franchise brand in Australia has found positive benefits to promoting compliance in their network including:

- More engaged employees who are advocates for the brand
- Increased customer satisfaction and exceeding community expectations
- Greater chance of success and increase in sales from working closely with your network and developing strong relationships with the franchisees.

What the experts say – the importance of compliance

"If you want to be in business for the next 20 or 30 years, focus on making sure you get these things right, because it's the right thing to do for your business. The secret to being successful is having really good staff... and if you're not paying them correctly and you don't keep them there, you're not going to be successful!"

CEO of a leading franchise brand in Australia

IMPORTANT

This guide helps franchisors meet their obligations under workplace laws. There are other rules that could apply to franchisors, including the [Franchising Code of Conduct](#) and the [Oil Code of Conduct](#), which covers issues like:

- disclosure requirements
- [good faith obligations](#)
- dispute resolution mechanisms
- cooling-off periods
- procedures for ending a franchise agreement.

You can find more information about the [Franchising Code of Conduct](#) or the [Oil Code of Conduct](#) at www.accc.gov.au/industrycodes.

When will a franchisor be held responsible for the action of their franchisees?

A franchisor can be held legally responsible for contraventions of workplace laws by its franchisees when all of the following conditions are met:

- There is a franchise. This requires an arrangement where the owner of a brand or trademark (franchisor) allows a person to earn money by using the brand or trademark, or the reputation of the brand, in running a business (franchisee).
- The franchisee's business is substantially or materially associated with the intellectual property (for example, the trademark) relating to the franchise. This means that the use of the franchise branding, such as a trademark, logo or marketing, must be a major feature of the business operated by the franchisee.
- The franchisor has a significant degree of influence or control over the franchise's affairs. This can include instances where the franchisor's influence or control does not extend to the employment practices of a franchisee.

If these conditions are met the franchisor is called a **responsible franchisor entity**.

Example – A franchisor with significant influence and control

Big Burgers Pty Ltd is a fast food franchisor selling high-quality fast food. Big Burgers have a number of stores around Australia. They own and operate some of the stores, but most are owned and operated by their franchisees.

Hamburger & Sons Pty Ltd is a franchisee of Big Burgers. They pay an annual fee to Big Burgers and in return, they get to operate their store under the Big Burgers brand. They receive promotional material, point of sale and payroll system software, the recipes for all Big Burgers meals, instruction manuals and access to required suppliers for ingredients, uniforms, equipment, furniture and facilities and are required to use them. Big Burgers operates a national marketing fund to which all franchisees are required to contribute. The national marketing fund is used to undertake national marketing and is controlled by Big Burgers.

Hamburger & Sons is required to use everything Big Burgers provides to ensure consistency across all stores, both for customers and employees. Hamburger & Sons has some discretion over opening hours, what promotions they want to join and how they hire and train their staff. Big Burgers does however require staff to undergo a mandatory training course about the core values of the franchise. Big Burgers also sets the prices of menu items and implements sales targets and quotas for Hamburger & Sons to achieve.

Big Burgers could be held liable for breaches of workplace laws by Hamburger & Sons or other franchisees in their network if they become aware of (or could reasonably be expected to have known about) those breaches and fail to take reasonable steps to rectify and prevent further issues. This is because Big Burgers exercises a significant level of influence or control over aspects of Hamburger & Sons' affairs (including its operational affairs and aspects of its financial and corporate affairs) and their other franchisees.

Example – Limited influence and control

Supreme Tyres is a wholesale manufacturer of car tyres in Australia. Supreme doesn't have any stores of its own but instead sells its tyres to retailers who then on sell them to the public customers from stores that use Supreme's branding under a licensing agreement.

AutoYard Pty Ltd is a vehicle repair shop that has a licensing agreement with Supreme. AutoYard pays an annual fee to Supreme and in return it is allowed to stock Supreme's product and use their brand to market their business. AutoYard also receives promotional material and discounts on certain product ranges as part of this agreement. AutoYard is not obliged to use any of the promotional material provided by Supreme, does not have any obligations to Supreme in relation to minimum product levels or matters such as the way it displays or promotes Supreme's tyres and has the freedom to run their business any other way they see fit.

Supreme does not provide AutoYard with payroll assistance or have any requirements around their hours of operation or general pricing strategy within the AutoYard operations.

As Supreme does not exercise a significant level of influence or control over AutoYard it would not be responsible for any breaches of workplace laws by AutoYard if they were to occur.

IMPORTANT

If a breach of workplace laws happens in a franchise network controlled by a **responsible franchisor entity**, courts can order the responsible franchisor entity to pay any underpayments owed to employees of the franchisee and penalties for each contravention of up to **\$12 600** for individuals and **\$63 000** for corporations.

Serious contraventions and increased penalties

There are increased penalties for 'serious contraventions' of workplace laws. A serious contravention happens when:

- the person or business knew they were contravening an obligation under a workplace law; and
- the contravention was part of a systematic pattern of conduct affecting one or more people.

Find out what breaches the higher penalties apply to on our [Litigations page](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation) at www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation.

For more information about which franchisors are affected by the new laws, see our [Franchisor liability fact sheet](http://www.fairwork.gov.au/factsheets) at www.fairwork.gov.au/factsheets.

Knowledge of contraventions within the network

A **responsible franchisor entity** (responsible franchisor) can be held legally responsible for contraventions of certain workplace laws by franchisees in their network when they:

- knew, or could reasonably be expected to have known, that a relevant contravention would happen, or
- at the time the contravention happened, knew, or could reasonably be expected to have known, that a contravention of the same or similar kind was likely to happen, and
- haven't taken reasonable steps to prevent the contravention or a contravention of the same or similar character.

This could include a franchisor knowing (or reasonably have been expected to have known) about a series of complaints about underpayments and doing nothing to rectify and prevent the same or similar issues from occurring. It could also include a franchisor knowing (or expected to have known) about a pattern of non-compliance within their network that is likely to result in employees being underpaid or otherwise deprived of their entitlements.

The types of contraventions a **responsible franchisor** could be held legally responsible for include breaches of:

- entitlements under the:
 - National Employment Standards
 - awards, agreements and workplace determinations
 - national minimum wage orders, equal remuneration orders and guarantees of annual earnings
- rules about methods and frequency of payment, including deductions from wages or spending/paying money
- pay slips and record-keeping obligations
- sham contracting rules.

The Protecting Vulnerable Workers Act does not have the effect of making a franchisor responsible for other breaches of the Fair Work Act, such as unfair dismissal, or for breaches of other laws.

Promoting compliance within your franchise network

Complying with workplace laws should be part of any long-term, sustainable business plan. Taking the time to establish good workplace practices and promoting compliance with workplace laws within your franchise network will help you build a network that performs well and supports your business goals. It could also save you time, money and potential brand and reputational damage down the track.

To avoid being held legally responsible for contraventions and underpayments, a **responsible franchisor**:

- must take **reasonable steps** to prevent contraventions from occurring within their franchise networks
- should take reasonable steps to require a franchisee to rectify underpayments or other contraventions if they are identified.

IMPORTANT - taking 'reasonable steps'

Working out whether any steps a responsible franchisor did take were reasonable depends on a number of factors, including:

- the size and resources of the responsible franchisor
- the ability of the responsible franchisor to influence or control the actions of the franchisee in relation to the obligation it didn't meet
- the procedures for handling complaints about possible underpayments or breaches of workplace laws in the franchise
- what steps the responsible franchisor took to encourage, support or train franchisees regarding complying with workplace laws
- whether the responsible franchisor had any arrangements in place to monitor or assess the franchisee's compliance with wage, payment and record-keeping obligations in relation to employees.

What is reasonable depends on the circumstances. As a business evolves, what is considered 'reasonable' may change. Franchises should therefore consider the question of what is reasonable for their business now and into the future.

The Fair Work Ombudsman has noted that certain sectors of the labour market are 'higher risk' when it comes to compliance with work laws, and that certain cohorts of workers, for example young workers and visa holders, are more vulnerable to exploitation. The presence of these factors, along with the capabilities of franchisees, impact on the risk that non-compliance with work laws may emerge in your business.

We have provided the following four step process to assist you in taking practical steps to support your franchise network.

Step 1 – Set expectations



Setting the right example and recruiting the right franchisees is critical to creating sustainable businesses and for maintaining long-term business relationships. Selecting business owners for your network who have similar brand values and beliefs to yours is one of the most important aspects of franchisee success. In addition, it's also important to consider your organisation's culture and whether prospective franchisees will be a good fit.

Things you can do to attract the right business owners to your network include:

- ✓ **Encouraging prospective franchisees to spend time with existing and exemplary franchisees (who act in accordance with the values and business model) or company-owned businesses prior to joining.** This will provide a good understanding of the financial commitment involved to operate the franchise and meet workplace relations obligations. This may not be practicable for franchise systems in some industries, such as professional services.
- ✓ **Strongly encouraging prospective franchisees to undertake proper and extensive due diligence of the likely costs of running the franchise, including compliant labour costs, before engaging them.** For example, you can encourage prospective franchisees to complete a [pre-entry online learning course](https://www.franchise-ed.org.au/online-courses/pre-entry-franchise-education/): <https://www.franchise-ed.org.au/online-courses/pre-entry-franchise-education/>.

- ✓ **Making sure workplace relations compliance is a term of your franchise agreement. Detail possible monitoring activities (for example audits), your expectations and the consequences if the franchisee fails to provide the correct entitlements or keep employment records.** Possible ramifications could include issuing a warning letter, increased reporting or monitoring obligations on the franchisee, additional or further training, or initiating steps to terminate the franchise agreement (subject to the Franchising Code of Conduct).
- ✓ **Getting business owners in your network to acknowledge in writing that they will comply with workplace laws.** This should include getting them to make this commitment again each year.
- ✓ **Ensuring your business modelling is realistic and disclosure documents accurately take into account the cost of lawfully employing adequate numbers of staff.** Business modelling shouldn't rely on individual owners or directors of the franchisee entity themselves needing to work an unrealistic or unsustainable number of hours in the business.

Practical tip – calculating rosters and pay

As part of the franchisee's due diligence around business costs, get prospective franchisees to work out what they think their roster will look like each week and then get them to calculate their prospective labour costs including wages, superannuation and taxation. Information you provide could include modelling based on franchisees that operate on similar bases of opening hours and size. Consider asking prospective franchisees to speak to existing and former franchisees in the network to calculate an accurate estimate. Ask them to calculate how many staff they think they'll need, what mix of casual and permanent staff they'll need and how many hours a day they think non-employed directors or owners are personally going to work in the business. Also get them to work out that roster without them in it. There's always a temptation that they'll just work excessive hours which may not be practical. By doing this they can get a sense of whether or not the business is profitable in their eyes and it will allow you to get a good sense of their current business skills and suitability for your network.

Practical tip – Enterprise agreements

Negotiating an enterprise agreement (a type of registered employment agreement under the Fair Work Act) for your franchise can provide clarity and tailored conditions of employment across the business. For information about how to make an enterprise agreement, see the [Fair Work Commission website](http://www.fwc.gov.au) at www.fwc.gov.au or our [Improving workplace productivity through bargaining](http://www.fairwork.gov.au/bestpracticeguides) Best practice guide at www.fairwork.gov.au/bestpracticeguides. You may also wish to seek specialist workplace relations advice to determine whether an enterprise agreement is suitable for your business.

Step 2 – Educate and train



It's important to make your franchisees aware of their obligations to their employees. Many business owners join a franchise network with limited or no prior experience running a business, so their knowledge level in this area is low.

The nature of the help you provide will vary depending on factors like the size of your business and available resources, and the level of influence or control you have over the franchisees in your network. It would be reasonable to expect that larger networks with more resources provide more help than those that are smaller and less sophisticated systems.

Things you can do to help your franchisees get workplace relations right include:

- ✓ **Offering franchisees induction training that covers workplace issues.** This could range from requiring franchisees to register for an online account on the Fair Work Ombudsman's website, providing businesses in your network with our Fair Work Handbook, encouraging them to complete our Online Learning Courses on Hiring and Managing Employees, and doing our Workplace Basics Quiz, through to running one day on-site inductions and regular refreshers.
- ✓ **Helping franchisees access reliable and cost-effective advice.** This may mean engaging qualified head office staff, facilitating corporate memberships with an employer association or engaging a professional adviser. At the very least, it is advisable to require access to information about applicable wages and conditions, including via the Fair Work Ombudsman's website.
- ✓ **Communicating frequently and clearly with your franchisees about workplace issues and your expectations.** This could include discussing compliance with workplace laws at any annual or other regular network conferences, regular field visits to discuss issues, or emailing businesses in your network about workplace matters like changes to pay rates and conditions when they occur.
- ✓ **Letting employees know you care about their rights, and are committed to compliance.** Establish channels (e.g. in-person, email or phone line) for franchise employees to raise enquiries and complaints, and encourage open and honest communication about issues or disputes.
- ✓ **Providing franchisees access to systems and resources to improve their workplace practices.** This could range from providing access to, or recommending the use of, payroll software and time recording systems, through to providing employment templates and policies, and accurate pay rate information. You can also provide franchisees with templates that show them what to do. We provide a number of free online templates and tools available at www.fairwork.gov.au/templates.

What the experts say – education focus

Advice from a large franchisor is to make sure any education provided focuses on the importance of good business ethics, leading and managing people well, and doing the right thing and the positive impact that this can have on reputation, sales, profits and business value.

It's important you build a culture in your network that highlights the seriousness of proper compliance with workplace laws.



Case study - the importance of a good culture in your franchise network

A key message from the CEO of a small franchise system in the service sector is that creating a positive compliance culture is essential. This is particularly the case for small networks which may not be able to afford sophisticated monitoring. Emphasising 'this is the way we do things around here' in terms of workplace compliance creates a culture which most franchisees will take on board. If a franchisee doesn't buy into this culture, this CEO makes it very clear that their values are not aligned with the broader network. This approach has seen some potential franchisees decide not to join the network and others choose to exit.

Franchisors should regularly review the arrangements they have in place that support compliance with workplace laws by their franchisees.



Practical tip - free workplace training and education resources

The Fair Work Ombudsman provides a range of free resources and tools that can help your franchisees comply with their obligations, including our:

- [Pay and Conditions Tool](http://www.fairwork.gov.au/pact) at www.fairwork.gov.au/pact, which can help you find the correct award and calculate pay, penalties, allowances and leave entitlements.
- [Workplace Basics quiz](http://www.fairwork.gov.au/basicquiz) at www.fairwork.gov.au/basicquiz, an online, interactive quiz with multiple-choice questions on topics including pay and awards, leave, and record-keeping and termination.
- [The Online Learning Centre](http://www.fairwork.gov.au/learning) at www.fairwork.gov.au/learning has eight free online courses available on topics like hiring employees, managing staff and having difficult conversations in the workplace to teach you new skills and strategies.
- [Fair Work Handbook](http://www.fairwork.gov.au/smallbusiness) available at www.fairwork.gov.au/smallbusiness which is a useful reference guide that summarises a business's responsibilities under the Fair Work Act, the National Employment Standards, awards, enterprise agreements and other registered agreements.
- [Record My Hours app](http://www.fairwork.gov.au/app) at www.fairwork.gov.au/app which helps small business owners who don't have the resources to install expensive automated time-recording systems help their employees record and store the hours they work, plus other information about their employment.

In addition, by registering for an [online account](http://www.fairwork.gov.au/login) at www.fairwork.gov.au/login, franchisees are able to get information sent to them that is tailored to their needs, make online enquiries for priority support and save results from our website and the Pay and

Step 3: Monitor compliance



We know that even with the best franchisee recruitment and training practices in place, non-compliance with workplace laws can still occur within a franchise network. Doing regular audits of businesses in your network will help you identify an underpayment or other possible breaches of workplace laws and reduce the likelihood of disputes or costly mistakes.

The nature of the audit, which you may conduct, may vary depending on your particular circumstances, including factors like the size of your business and available resources, and the level of influence or control you have over franchisees in your network, but might include:

- ✓ Requiring your franchisees to conduct self-audits against key criteria such as minimum wage, leave and record-keeping requirements, and report the results to you annually with a declaration from a director or officer of the franchisee entity that the information is accurate and complete.
- ✓ Annual audits of a sample of the network randomly selected for record-keeping and other employment law compliance.

The number of audits you conduct and how you go about doing them will depend on your circumstances and the size of your network. If you have a suspicion or you've received a tip-off that there might be an issue with a particular business in your network, it's a good idea to start your audit there. Ensure your audit covers a mix of full-time, part-time and casual employees as well as apprentice or junior employees, if your franchisee has any. It's also a good idea to speak to some employees directly as another source of information. This increases the chance you'll pick up any issues.



Practical tip – self auditing in a small franchise network

You can use our [Guide to self-auditing your business](http://www.fairwork.gov.au/smallbusiness) at www.fairwork.gov.au/smallbusiness for information about how to conduct a self-audit and fix any problems you may find. Selecting the businesses in your network to audit might be done at random or by targeting high-risk franchisees.

Franchisees regarded as 'high risk' may be identified through indicators such as the number of employee and customer complaints received by head office, observed behaviour not in line with the values or business model, feedback from those in head office who interact with the franchisee on a regular basis, and labour costs relative to turnover outside the range of other outlets in your network.

Continued low profitability can also be an indicator of a store that may be at higher risk of developing non-compliant practices. It's important that your support team work with these franchisees to look at positive ways to increase the store profitability, rather than resorting to bad practices.

You might also wish to:

- Create terms in your franchise agreements that make it compulsory for your franchisees to self-audit their business, supported by periodic checks from your head-office staff or an external professional body that you engage to do this on your behalf. Where you don't currently have such a term in your franchise agreements, you should seek legal advice as to your options to conduct monitoring activities within an existing agreement framework. For example, you may wish to seek advice about whether you can vary your agreements or whether you can seek voluntary participation from any franchisees with older agreements, until a requirement can be included in any renewal or further agreements.
- Develop a policy which sets out your approach to conducting periodic checks, including how and when they might be conducted. It's good practice to review any such policies regularly to ensure they are fit for purpose.

We also recommend that franchisors document their decisions around the design and conduct of their audits. We encourage you to document:

- the stores that were included in the sample
- how stores were selected
- the process undertaken
- the records or information assessed
- the outcome of the audit
- any necessary steps or consequences arising from the process.



Case study - A two-phased approach to auditing in a larger franchise network

A large retail franchise has developed a two-phase approach to compliance checking:

- Fortnightly store visits by field support staff, who check a number of operational processes such as food safety, store layout and cleanliness, as well as payroll records. Feedback is given directly to the franchisee.
- Six-monthly audits of selected stores by an independent internal audit team using a comprehensive checklist covering payslips, CCTV, visa status of employees and temperature checks etc. within the store. This process takes from half a day to a full day in store.

IMPORTANT: It's important to ensure that any audits are fair and transparent. Audits are subject to the terms of the franchise agreement, the Franchising Code and Competition and Consumer Act. For more information see www.accc.gov.au



Practical tip – Identifying the warning signs

When monitoring compliance, it helps to understand what you should be looking for – the things that might indicate a franchisee needs further checks or support. Some indicators of non-compliance identified by franchisors include when franchisees:

- do not submit required reporting information when required, such as Profit & Loss statements
- stop paying royalties or other franchise fees
- suffer a decline in revenue
- make late rental or utilities payments
- fail to turn up to network events
- stop communicating with the franchisor
- receive a large number of complaints from employees or former employees
- have high employee turnover and low staff engagement
- refuse to cooperate with network compliance checks
- rarely, if ever, log in to online knowledge management systems provided by the franchisor.

Step 4: Take further action



If you identify an underpayment or other possible breaches of workplace laws in your franchise network, or you suspect non-compliance may be occurring, it's important you take action quickly before the issue escalates, and you work with the affected franchisee(s) to rectify and prevent further instances from occurring.

What the experts say – getting the support you need before taking action

“Developing positive relationships with regulators such as the Fair Work Ombudsman can help with taking required action in relation to non-compliant franchisees.”

It can also be beneficial to work with trained legal advisors when issuing breach notices or terminating franchisees.”

CEO of a leading franchise brand in Australia

If your monitoring identifies underpayments, the first thing you need to do is establish the scale of the issue. For example, if it's isolated to one franchisee or happening more broadly. This may be informed by understanding the underlying cause(s) of the issue and whether they are specific to the one business or an issue that could be due to financial, system, operational, education and training or business factors potentially affecting more of the network.

When responding to franchisee non-compliance, many franchisors adapt their approaches to the severity of the issue. This may include bringing it to the attention of the franchisee and working with them to find a resolution, issuing a breach notice, or terminating the franchise agreement.

Type of issue identified	Possible response
Errors and omissions	Mistakes happen. If your monitoring uncovers minor issues with record-keeping or miscalculated wages, the franchisee may require further training or advice to improve their workplace practices. It's important to take all issues seriously and address them promptly to prevent issues that are more serious in the future.
Systems based issues	If you identify an issue with payroll systems or other software, a more comprehensive and widespread approach may be required. For example, the issue could be caused by a payroll rule misapplying an award entitlement or erroneously calculating payments. If this happens you should communicate the issue to all of your potentially affected franchisees and ensure that the issue is rectified.
Deliberate or reckless non-compliance	<p>If your audit uncovers widespread or serious non-compliance, it may be a sign that the conduct is deliberate, or the franchisee has been reckless with respect to their obligations. In such cases stronger action may be required. Try not to jump to conclusions, put your concerns in writing and organise a time to speak with the franchisee to discuss your findings.</p> <p>Not paying or underpaying employees and falsifying or not-keeping records is against the law and must be taken seriously. It is particularly serious where a person knows they have obligations and chooses not to comply. You might need to consider legal advice before taking further action against the franchisee or other parties involved in the contravention.</p> <p>You may also consider contacting the Fair Work Ombudsman to report your concerns and seek assistance in addressing non-compliance.</p>

If you are proposing to terminate a franchise agreement before it expires, you must follow the processes set out in the Franchising Code of Conduct (e.g. provide reasonable notice), except where special circumstances apply. For more information on the end of franchise agreements, visit the [Australian Competition & Consumer Commission's website](http://www.accc.gov.au/business/industry-codes/franchising-code-of-conduct/end-of-franchise-agreements) at www.accc.gov.au/business/industry-codes/franchising-code-of-conduct/end-of-franchise-agreements.

What the experts say – tailoring your response to the issue

"... if it's just a less serious issue, like they're not paying for breaks or they haven't given them breaks, or they haven't done the laundry allowance ... we will talk to them and say 'You need to do this'. If it's something more serious or if it's a second time, then a breach notice is potentially issued and obviously in the most serious of circumstances, we terminate."

CEO of a leading franchise brand in Australia

Identifying underpayments

If you identify underpayment of wages in your network, you should work with the affected franchisee(s) to determine what the correct entitlements are, how long the issue has been occurring and ensure underpayments are calculated for both current and previous employees of the business.

Affected employees should be made aware of the underpayment, and how it will be rectified. You should ensure this information is in writing, and that the following is included:

- **The details of the underpayment**, including the amount of the underpayment and which minimum rates and entitlements have been calculated incorrectly.
- **When back-payments will be made** and the process for repayment. Ideally, underpayments identified should be rectified as soon as possible, e.g. in the next available pay cycle.
- **Who to contact** – a contact person should be listed for employees to discuss the underpayment with and report any further concerns. We encourage franchisors to provide an alternative contact person to the franchisee owner or a direct manager, as employees can often feel uncomfortable raising issues with their employer, or fear they could be reprimanded for speaking out.

Remember, it's your responsibility to work with your franchisee(s) to resolve the issue. Act on non-compliance promptly. Make sure franchisees know the consequences if they fail to meet their obligations and act swiftly if breaches occur.

Responsible franchisors can be subject to enforcement action for breaches of their extended liability provisions in the Fair Work Act and may be subject to court proceedings. Refer to the "Knowledge of contraventions" within the network section in this guide for further information on when a responsible franchisor can be held liable for a contravention by a franchisee in relation to its employees.

The Fair Work Act enables responsible franchisors to apply to a court to recover from the franchisee (if it hasn't already) amounts it was ordered to pay to the franchisee's employees because of the franchisee's contravention. Interest may also apply.

Any penalties the responsible franchisor was required to pay are not recoverable under the Fair Work Act.

Need further help?

Help from your industry association

Your industry or business association can provide you with tailored advice and assistance to help you understand your rights and your obligations to your employees. A [list of organisations](#) that are formally registered under the national workplace relations system can be found at www.fairwork.gov.au/registeredorgs.

There may also be other industry and business bodies in your area that can help. For example, The Franchise Council of Australia (FCA) is the peak body for the franchise sector in Australia, representing franchisees, franchisors and service providers to the sector. For more information, visit the [FCA website](#) at www.franchise.org.au.

Contact the Fair Work Ombudsman

For more information about the [rights and obligations of franchisees](#), visit www.fairwork.gov.au/franchisees or call our Small Business Helpline on **13 13 94**.

You can also submit an [online enquiry](#) at www.fairwork.gov.au/login.

Contact the Australian Competition & Consumer Commission (ACCC)

For more information about the Franchising Code of Conduct, visit the [ACCC's website](#) at www.accc.gov.au/business/industry-codes/franchising-code-of-conduct.

Case Study A – taking reasonable steps to promote compliance in a franchise network

Franchisor A is a small franchise system in the service sector. At less than four years old, it's also a relatively young franchise. The CEO is still very hands-on in the business and has only four head office staff. The business has grown at a rate of about one new franchise every month, for the past 18 months.

The franchise has learned about the new franchisor provisions mostly through updates from the Franchise Council of Australia (FCA). The CEO doesn't belong to any other association. He feels that the information provided by FCA has been adequate.

Deciding on the way staff are engaged throughout the network

Franchisor A received advice to engage its workers as independent contractors to avoid having to pay entitlements like penalty rates or overtime or to deduct Pay As You Go (PAYG). In the first half of 2017, and with the new Protecting Vulnerable Workers reforms on the horizon, the CEO looked critically at the issue. They decided the way workers were performing work in the network was more consistent with employment arrangements and it may be more appropriate to engage the workers as employees than to classify them as contractors.

While accepting and implementing the advice might have led to short-term cost savings throughout the network, the CEO's decision to promote a course of action that is compliant with workplace laws demonstrated leadership on the issue, because being compliant with workplace laws protects the brand and ensures the business is sustainable.

The crucial role of culture in the network

Creating a positive business culture is essential, especially for small networks that can't afford sophisticated monitoring systems. Emphasising that 'this is the way we do things around here' in terms of workplace compliance has created a corporate culture that most franchisees have taken on board. It's made very clear to franchisees that if they don't adopt this approach then they're no longer welcome in the network. As a result, some potential franchisees decided not to join the network and others have decided to exit.

Education of franchisees is key

The CEO takes workplace compliance education of franchisees seriously - many franchisees enter the system as great technicians, but have limited business experience. The CEO feels it's his role to make sure his franchisees have a strong knowledge of workplace compliance.

Prioritising what's important

Over the last five years the number of franchisees in the network has grown quickly which has stretched resources. Because Franchisor A is small but rapidly growing, the CEO has had to prioritise the activities to support franchisees on workplace compliance. They rely heavily on a third party human resource consultancy service, offered through their FCA membership. The business is also in the process of reviewing and improving their induction processes. They're reviewing their current operations manuals and will include an area on workplace law, with links to regulatory bodies like the Fair Work Ombudsman. One of the key things they'll emphasise is helping franchisees understand why compliance is so important to their business, and to the brand overall.

Compliance across the network is assisted by corporate culture

Leveraging the power of the network is particularly important in this small system. If people aren't doing the right thing, it's other franchisees in this system that voluntarily choose to alert the CEO. This is because franchise owners are aware that anyone not doing the right thing can potentially bring the whole network into disrepute.

Act swiftly if problems are identified

Franchisor A doesn't tolerate any non-compliance with workplace laws. If Franchisor A discovers non-compliance, they will serve the offending franchisee a breach notice, which gives them a set timeframe to rectify the situation. This non-tolerance of rogue behaviour sets the tone within the network of always 'doing the right thing'.

In summary:

- In networks with limited resources, culture is critical in keeping the group aligned to the values of the network. The personal connection the CEO, leadership team and owners have to every franchise partner also assists in keeping people in line.
- The right business culture means other franchise partners and employees can become the eyes and ears in terms of making sure people are compliant. The strong feeling of 'being in it together' is a major driving force.
- Utilising the services of an industry association, and in particular, free HR advice resources, is crucial for those smaller organisations who might not have the resources to access tailored, specific advice.

Case Study B – protecting the brand and culture

Franchisor B is a small franchise system with 32 outlets. It's only been established for five years.

Franchisor B has limited available resources, no manager with HR or workplace relations expertise and only two field staff.

The CEO is closely involved in the business on a day-to-day basis. The franchise has limited involvement when it comes to managing employment and staff-related activities in franchise units.

Franchisor B has demonstrated many examples of what could be considered 'best practice'. The CEO is highly protective of the brand. She's closely observed PR disasters in a couple of other franchise systems, caused by non-compliance in the workplace, and has decided that in no way would her brand ever be 'front page' news for doing the wrong thing.

Maintaining employment compliance in a rapidly-growing young franchise

Franchisor B is investing a lot of money in growing its franchise network. The CEO sat down and worked through a plan of what to do in order to be compliant with the new Protecting Vulnerable Workers laws within its current budget resources.

She accessed expertise through the membership sessions the FCA conducted before and after the reforms were passed. Franchisor B's CEO also accessed many of the free communications from reputable franchise lawyers. However, she didn't pay for specific advice. Her thought process was: 'How do I ensure compliance, given my restricted budget and limited workplace relations expertise?'

Franchisor B came up with several strategies.

Encourage a culture of compliance

Strong leadership is needed to encourage a culture of compliance. Franchisor B's CEO emphasised to her franchisees that one of the brand pillars is 'the customer leaves happier than they arrived'. As she explained, it's the employees who provide the service and atmosphere that delivers on that brand promise - but it won't happen if franchises have underpaid and staff are unhappy.

Franchisor B raises this emphasis on the culture of compliance when recruiting franchisees, during induction, and when conducting field visits. It's a constant reiteration that 'this is the way we do things around here', which the CEO believes is an important message in promoting compliance in the network.

Update the franchise agreement to make workplace compliance explicit

Franchisor B has changed the franchise agreement to include a clause that makes it more explicit that the franchisee must:

- comply with workplace laws (e.g. paying at least minimum wages)
- complete certain training and notify the franchisor of certain matters and steps taken to address workplace issues if they arise
- pay employees by bank transfer so there are independent records of the payment
- provide access to relevant information from franchises as part of any workplace compliance audits or if they are responding to a complaint about underpayment of wages from an employee of the business. This part of the agreement is also highlighted when recruiting franchisees.

Hotline to the CEO

The CEO has shown her personal commitment to workplace compliance by providing a direct email address which any employee can use if they have complaints about workplace issues. Managers provide every new employee with this email address during their induction.

Utilising the Fair Work Ombudsman's free resources

Franchisor B has utilised a number of free resources from the Fair Work Ombudsman's website, in particular the [Fair Work Handbook](#) and record keeping and pay slips templates from www.fairwork.gov.au/smallbusiness. This booklet is printed and supplied to franchisees during induction, and Field Management staff also provide it at least two more times during a 12-month period.

Franchisor B also requires businesses in the network to sign up for an [online account](#) on the Fair Work Ombudsman's website to receive timely and tailored workplace information, such as when wage rates change. They also refer franchisees to the Fair Work Ombudsman's [Online Learning Centre](#) at

www.fairwork.gov.au/learning and encourages new franchisees to take the free online courses during their three-week new franchisee training.

Never stop communicating about workplace compliance

Franchisor B has a fortnightly communication newsletter that highlights network issues and opportunities. In each edition there's a section on 'HR in the spotlight'. The business dedicates each month to a different topic for the newsletter. August is HR month, during which more detailed articles are available. Issues are fleshed out in Franchise B's quarterly Franchise Advisory Council (FAC) meetings, and in the regular franchisee conference, where expert speakers are invited to talk about specific workplace law topics.

Self-audits on 10% of franchisees each year

Franchisor B uses the '[Guide to Self-auditing your business](http://www.fairwork.gov.au/smallbusiness)' provided by the Fair Work Ombudsman at www.fairwork.gov.au/smallbusiness as the template for auditing franchisees. Each year, Franchisor B asks three or four franchisees to do the audit checklist, which is Appendix A in the guide. Franchisor B chooses these franchisees based on any evidence of financial distress, including not providing their monthly reporting statements, declines in revenue, or not paying royalties, anomalies in financial and operating reports indicating that labour costs may not be adequate, and any complaint data indicating issues.

Franchisor B then asks for each franchisee to present audit information over a two-week period. Each audited franchisee must provide the documents requested. If Franchisor B discovers any discrepancies, they ask the franchisee to explain. If there are major problems, these are addressed quickly, and back pay is provided to employees if required. The franchisee may be subject to follow up monitoring. If there are cover-ups or deliberate premeditated attempts to hide underpayments, the franchisee is issued a breach notice, and may (potentially) be terminated from the franchise.

IMPORTANT: Whether you or your franchisee have the right to terminate, and in which circumstances, will normally be determined by the terms of the franchise agreement. If a franchisor proposes to terminate an agreement before it expires, they must follow the processes set out in the Code (e.g. provide reasonable notice), except where special circumstances apply.

Case Study C – promoting compliance with workplace laws in a larger franchise network

Franchise C is a mature franchise system with just under 300 franchise outlets. It was established in the 1980s.

Franchise C has nine staff members within their HR Department and they initiated a Proactive Compliance Deed (PCD) with the Fair Work Ombudsman which expired in 2017. Franchise C has shown commitment to workplace compliance through the PCD and through the strategies they have implemented over the past couple of years. This has meant that they reflect the systems for employment compliance in corporate stores to franchisee stores. The process includes fair and equitable selection, comprehensive on-boarding, and ensuring correct rates of pay and working conditions that are reflected in a template employment contract provided to franchisees to use in their business.

Franchise C considers that they have a moderate to heavy involvement in their franchise network. Although they have systems in place to respond to complaints from within the network, they do not directly control activities of franchise partners such as payroll or rosters.

In response to the Protecting Vulnerable Workers reforms, Franchise C reviewed all internal processes to ensure that they were robust. The review included processes and procedures for handling complaints, and also the processes for escalating matters if required. They also established a hotline direct to Franchise C's HR department. Franchisees and employees can use the hotline if they have any questions or concerns on workplace matters.

Costing and resourcing

To help ensure compliance, head office increased resourcing. A full-time employee was added to the HR team to focus on compliance, extra due diligence work is now conducted by the legal team, and an employee hotline was established.

Communication is the key

Being upfront and direct as to what is expected by franchisees is important to Franchise C and expectations around workplace compliance are explicit. These expectations are outlined in the franchise agreement and emphasised during the franchisee induction process.

Induction includes human resources and industrial relations training, which is conducted for approximately six hours. Franchisees receive an 'obligations booklet' which includes information on employing visa holders, superannuation obligations, rostering and penalty rates. It also includes an overview of the Fair Work Act. Post induction, there are information sessions at franchisee meetings and a fortnightly e-newsletter.

Best practice means regularly communicating face-to-face with franchisees, as Franchise C believes that this gives the greatest impact. They are conducting road trips across the nation to inform, update and educate their franchise partners on workplace compliance. This approach consumes resources, but Franchise C is committed to making sure franchise partners understand their obligations.

Utilising outside expertise on workplace issues

Franchise C was approached by many consultancy firms, who offered to audit their franchise partners. However, Franchise C decided to undertake the work themselves. With the experience of implementing the PCD, they had developed considerable skills and understanding of workplace law requirements and felt they could handle it internally. They have, however, engaged a small workplace investigation company to be on stand-by, if ever they need to ramp up their auditing requirements, or if they need systems and processes reviews.

Membership of Associations and sources of information

Franchise C believes being a member of an association is important and finds great benefits in being a member of one of the Retail Associations in Australia. Professional services firm bulletins, information sessions and advice have also helped to educate and provide the necessary information needed.

Proactive Compliance Deed (PCD)

Franchise C initiated a PCD as they wanted to be recognised as an industry leader demonstrating best practice in terms of workplace compliance. They have found the PCD beneficial, particularly in preparing for the Protecting Vulnerable Workers reforms.

As part of the PCD, Franchise C was obliged to audit 10% (about 30) of their network. However, they conducted approximately 75 audits in the past 12 months. This has prepared and upskilled them to adapt to the Protecting Vulnerable Workers reforms, signalling to their network that Franchise C takes employment compliance very seriously.

Other benefits cited include that if the Fair Work Ombudsman receives a complaint within Franchise C's network, it must first bring this to the attention of Franchise C before it is handled formally within the Fair Work Ombudsman. This gives Franchise C time to address and resolve the issue. Also, the Fair Work Ombudsman provides access to anonymous complaint data so that Franchise C is fully educated and aware of any trends in the industry in relation to workplace compliance.

Innovations to adapt to the Protecting Vulnerable Workers reforms

Franchise C have implemented two systems for auditing their franchise partners: the *Express HR Audit* and the *Full Audit*. The priority target market for an Express HR Audit is any franchise partner who may be more at risk of compliance lapses. Indications may include: a drop in store revenue, not keeping up-to-date with utility payments, not keeping up-to-date with rent payments, or previous employee complaints.

Express HR Audits gather key pieces of information to identify how the franchise partner is tracking against the legislation. The information gathered includes two weeks of: payslips, rosters, superannuation receipts, contracts of employment and position descriptions. Their goal is to complete 40 (over 10% of the network) of these by the end of 2017 and 100% overall.

In an *Express HR Audit*, the franchise partner is given two weeks to provide the documentation required. If the franchise partner is not forthcoming, they have an escalating system of notices which begins with "notice of improvement", then onto a "breach" and then the last resort is "notice of intention to terminate". The franchise agreement is very clear that, if reasonably requested, franchisees must provide the documents.

A *Full HR Audit* can be triggered by an employee complaint or if there are shortcomings in an *Express HR Audit*.

Checklist – promoting compliance with workplace laws in your franchise network

- Encourage prospective franchisees to shadow an existing compliant franchisee prior to joining the network
- Encourage prospective franchisees to undertake extensive due diligence around business costs, including labour costs, before engaging them
- Include terms in your franchise agreements requiring franchisees to comply with workplace laws, for example:
 - paying legal minimum rates of pay, including overtime and penalty rates
 - providing employees with pay slips within one day of pay day
 - keeping accurate and complete employment records
 - requiring that employees are paid by bank transfer so there are independent records of the payment
 - participating in investigations of workplace complaints and audits undertaken by the Fair Work Ombudsman or other regulatory agencies
- Ensure your franchise business model and disclosure statements take into account the costs of lawfully employing enough staff to operate the business under the franchise agreement
- Consider negotiating an enterprise agreement for your franchise network (you may wish to seek specialist advice to determine if this is a suitable step for your business)
- Incorporate the Fair Work Ombudsman's [Fair Work Handbook](#) into your business' operations manual, or provide it as a standalone resource for franchisees
- Keep franchisees regularly updated about their obligations under workplace laws and where they can get help
- Implement, or recommend the use of record keeping and payroll software to help your franchisees with consistent and compliant workplace practices. Larger networks should consider technology that can provide opportunities to support with monitoring compliance, such as bio-metric time clocks, payroll systems, CCTV and facial recognition.
- Engage staff or consultants with workplace relations expertise or qualifications to train, update and assist franchisees
- Encourage businesses in your network to register for an [online account](#) on the Fair Work Ombudsman's website.
- Recommend our [Record My Hours app](#) as a secondary record-keeping measure available at www.fairwork.gov.au/app
- Direct franchisees to our [online pay tools](#) available at www.fairwork.gov.au/pact
- Direct franchisees to our [online learning centre](#), available at www.fairwork.gov.au/learning, to do courses to help them understand their obligations
- Encourage regular audits of pay slips and records to make sure franchisees are meeting their record-keeping obligations
- Encourage franchisees to conduct 'self-audits' and report the results
- Allow employees to contact you for help if their complaints are not dealt with by the franchisee
- Encourage franchisees to notify you if an employee has requested our assistance, or if we are auditing them
- Encourage franchisees to actively cooperate with our dispute resolution processes, investigations and audits