

Retail Zoo Group Pty Ltd

Compliance Partnership report

Final report

November 2018

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Summary

Retail Zoo Pty Ltd (Retail Zoo Group) [ACN: 141 218 206] is a leading Australian retail food franchisor.

The company's service network includes the brands Boost Juice, Salsas Fresh Mex Grill (Salsa's) and Cibo Espresso, with the majority of stores franchised.

In March 2014, Retail Zoo Group expressed an interest in working collaboratively with the Fair Work Ombudsman (FWO) to promote compliance with Australian workplace laws throughout its network of fast-food outlets, and to improve its reputation as an employer of choice.

On 5 August 2014, the company entered into a three-year compliance partnership with the FWO underpinned by a Proactive Compliance Deed (PCD)¹ containing a number of commitments from both parties.

The compliance partnership resulted in the strengthening of the company's systems and processes including:

- greater human resources (HR) oversight in educating and communicating with franchisees on workplace entitlements
- improved HR monitoring of recruitment processes
- annual audits of its franchisees
- resolution of employee concerns
- the rectification of \$45 562.47 in underpayments, and
- the creation of an HR hotline for employees to raise employment issues directly with the franchisor.

In each succeeding year of the partnership, the FWO received progressively fewer requests for assistance from Retail Zoo Group employees, from 11 in the first year, 2 in the second year and one in the final year.

This report details the background to and outcomes of the partnership.

¹ A copy of the Proactive Compliance Deed can be accessed at: <https://www.fairwork.gov.au/ArticleDocuments/762/retail-zoo-pcd.pdf.aspx>

Background

Boost Juice (ACN: 092 165 681) was established in 2000 by Janine and Jeff Allis, and shortly after, Retail Zoo Group Pty Ltd (ACN: 141 218 206) was constituted as the parent company.

In 2010, Retail Zoo Group acquired Salsa's Fresh Mex Grill (ACN: 129 061 543), a chain founded in Sydney in 2007 that specialises in Mexican cuisine from the Baja California region.

Also in 2010, The Riverside Company, a US-based private equity firm, invested in Retail Zoo Group.

At the end of 2012, Retail Zoo Group acquired Adelaide-based coffee chain Cibo Espresso (ACN: 100 507 819), that had been established in 2000.

In May 2014, Bain Capital, a US-based global alternative investment company, acquired a 70% stake in the Retail Zoo Group for around \$185 million². Headquartered in Chadstone, Victoria, Retail Zoo Group Pty Ltd is wholly owned by parent company Roar Bidco Pty Ltd, which in turn is wholly owned by Bain Capital. Janine and Jeff Allis remain on the Board of Directors for Retail Zoo Pty Ltd. Jeff Allis is Chairman while Scott Meneilly is the Chief Executive Officer. Other Board members at the time of publication of this Report are Andrew Wilson, Craig Boyce, Warren Valdmanis, David Gross-Loh and Neil Kalvelage³.

Boost Juice rapidly grew within Australia and has now expanded to overseas markets. Retail Zoo Group currently has 260 Boost Juice stores operating in Australia and a further 215 stores internationally. The company also has 51 Salsa's outlets and 30 Cibo sites in Australia. The vast majority of these businesses are franchise owned stores (at the end of the partnership, 94% of businesses were franchised).

Boost Juice stores are the majority brand in the Retail Zoo Group network within Australia. Since the beginning of the partnership with FWO in 2014, 43 new Boost Juice stores have opened.

² IBISWorld Company Report – Retail Zoo Pty Ltd, June 2013 (2130293559), extracted 1/11/18)

³ S&P Global Market Intelligence via Bloomberg: <https://www.bloomberg.com/research/stocks/private/board.asp?privcapId=264119707>

Workplace relations settings

Across the Retail Zoo Group network, two awards cover the majority of employees depending on the primary nature of the business:

- Restaurant Industry Award 2010 (Restaurant Award)
- Fast Food Industry Award 2010 (Fast Food Award).

A low number of individual franchisees across the Retail Zoo Group network had enterprise agreements in place. If an enterprise agreement applies to a business, the minimum base rates of pay cannot fall below the relevant award rate and the National Employment Standards⁴ will apply. All other terms and conditions come from the enterprise agreement.

Restaurant Industry Award 2010

The Restaurant Award covers employees in the restaurant industry. This includes restaurants, reception centres, night clubs, cafes and roadhouses as well as any tea room, café, and catering by a restaurant business. Employees covered by the Award include those working as food and beverage attendants, kitchen and cooking staff, administrative and clerical staff, and store persons.

As of 1 July 2018, the rates of pay for a permanent part-time or full-time adult Level 1 employee are \$19.47 per hour and \$20.22 per hour for a Level 2 employee.

Junior rates of pay vary depending on the age of the individual, for example:

- \$9.74 per hour (Level 1) and a rate of \$10.11 (Level 2) for a 16-year-old
- \$16.55 per hour (Level 1) and a rate of \$17.19 per hour (Level 20 for a 19-year-old).

Casual employees are entitled to a 25% casual loading on top of these base rates of pay.

A range of penalty rates apply:

- casual employees are entitled to a 25% casual loading on top of these base rates of pay
- Saturday rates of pay incur a 25% penalty loading
- Sunday rates incur a 50% loading.
- public holidays incur a 125% loading.

Overtime rates can apply at various times during the course of the week depending on the time and number of hours an employee works, and can be up to double time.

⁴ <http://www.fairwork.gov.au/employee-entitlements/national-employment-standards>

Fast Food Award 2010

The Fast Food Award covers employees in the fast food industry. This includes businesses that sell meals, snacks and/or beverages primarily consumed away from the point-of-sale. Businesses in food courts, shopping centres and retail complexes (that sell food primarily for consumption away from the point-of-sale) are also covered.

As of 1 July 2018, under the fast food award, the rates of pay for a permanent part-time or full-time adult Level 1 employee are \$20.79 per hour and \$22.04 per hour for a Level 2 employee.

Junior rates of pay vary depending on the age of the individual, for example:

- \$10.40 per hour (Level 1) and \$11.02 (Level 2) for a 16 year old.
- \$16.63 per hour (Level 1) and \$17.62 (Level 2) for a 19-year-old.

A range of penalty rates and loadings apply:

- casual employees are entitled to a 25% casual loading on top of these base rates of pay.
- Saturday rates of pay incur a 25% penalty loading for permanent full-time and part time employees, while a 50% loading will apply to casuals.
- Sunday rates from 1 July 2018 until 30 June 2019 incur a 35% loading for permanent full-time and part-time employees (60% for casuals)⁵
- public holidays incur a 225% loading for permanent full-time and part-time employees (250% for casuals).

Overtime rates can apply at various times during the course of the week depending on the time and number of hours an employee works, and can be up to double time.

⁵ Penalty rates for Sunday work under the Award will decrease on 1 July each year, following the penalty rates decision by the Fair Work Commission in 2017.

Communication

Retail Zoo Group informed staff in its network that it had entered into a compliance partnership in accordance with clauses 1-7 of the PCD.

The company communicated the existence of the compliance partnership to its franchisees, company stores and their employees, through:

- emails
- online notices
- face-to-face meetings.

The information conveyed to its network included:

- the implementation of the PCD
- the process for employee enquiries
- the self-audit process
- contact details for the nominated employee liaison officers.

The FWO posted a notice on its intranet, informing staff of the compliance partnership. It advised staff to refer all enquiries related to Retail Zoo Group to the team managing the partnership. It also issued a media release⁶ on 8 September 2014, publicly announcing the compliance partnership.

⁶ FWO media release: <http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/september-2014/retail-zoo-presser>

Systems and processes

Retail Zoo Group developed and implemented effective systems and processes to provide assistance to its network in ensuring ongoing workplace relations compliance in accordance with clause 8 of the PCD.

The company outlined to the FWO the various systems and processes it implemented and had in place early in the partnership. The FWO was satisfied that these processes met the objectives and requirements of the PCD.

As a result of internal audit findings and requests for assistance referred by FWO, the company made further improvements, including:

- improved education of new franchise partners
- increased communication and education of franchisees through HR newsletters, covering topics such as foreign workers, breaks, minimum engagement, leave and casual employment
- recruitment processes to be monitored by HR
- periodic communication to franchisees with Award updates
- increasing the number of self-audits from during the PCD
- onsite 'payroll blitz' across all brands
- employee hotline and direct online access to a HR Hotline email.

Self-resolution of requests for assistance

Retail Zoo Group resolved requests for assistance referred by the FWO regarding employees in the company's franchise network (clauses 12-22 of the PCD). In accord with the terms of the PCD, none of these requests for assistance involved allegations of serious non-compliance

During the three-year partnership, the FWO referred 14 requests for assistance to Retail Zoo Group. Eleven were referred in the first year, two in the second and one in the final year of the PCD. The FWO attributes the reduction in numbers to the company educating franchisees to help them achieve sustained compliance after investigating and resolving each request for assistance.

The issues identified in requests for assistance referred to Retail Zoo Group included:

- underpayment of wages
- unpaid team meetings
- incorrect penalty rates applied.

In the 2014-15 period, the company resolved 11 disputes within an average period of 36 days. In the 2015-16 period, the company resolved two disputes within an average period of 18 days. Boost Juice stores accounted for 11 disputes and Salsa's Fresh Mex Grill two disputes.

In the 2016-17 period, the FWO referred one request for assistance. The matter was in relation to incorrect application of penalty rates for an employee of a Salsas Fresh Mex Grill franchisee.

The combined quantum of underpayments identified and rectified for nine employees was \$16 337.59.

Retail Zoo Group reported that the self-resolution process created an opportunity to educate franchisees and ensure all were aware of their obligations to employees.

Self-audit

Retail Zoo Group was required to self-audit a sample of 10% of its company and franchisee stores during the first year (clauses 23-24 of the PCD). The self-audit sought to identify any breaches of Australian workplace laws (wages, loadings, allowances and penalties). The company opted to double the sample in the first year to 20% and carried out two extra self-audits in the second and third year of the partnership. This exceeded the requirements of the PCD.

The audit involved 60 stores, with Boost Juice stores accounting for 39 of these. A total of 196 employees were part of the self-audit. The company found 19 breaches, with 15 of these occurring at Boost Juice stores, two at Salsa's and two at Cibo Espresso. The company identified total underpayments of \$29 224.88.

The matters were related to:

- incorrect weekend loadings
- incorrect casual loadings
- no laundry allowance paid.

As the compliance partnership progressed, Retail Zoo Group took the initiative to conduct further audits of its network, which was not a requirement under the PCD. The company increased the size of these audits as the partnership progressed.

The voluntary self-audits found further instances of non-compliance with:

- incorrect weekend loadings
- no laundry allowance paid
- penalty rates being incorrectly applied
- casual loadings being incorrectly applied
- incorrect employee classification under the Awards
- evening rates not being applied
- pay slips not conforming to legislative requirements.

Reporting to the FWO

Retail Zoo Group provided an annual report to the FWO at the end of each year (clauses 30-37 of the PCD). The reports advised the FWO on:

- actions taken to address the requirements of the PCD
- reporting on the self-audit results
- numbers of requests for assistance referred
- number of requests for assistance resolved
- average time taken to resolve
- average amount of the underpayments.

Conclusion

In 2014, Retail Zoo Group initiated contact with the FWO to discuss the prospect of working collaboratively in a compliance partnership. The Group was keen to improve its network's compliance with Australian workplace laws and enhance its brands as employers of choice.

Over the course of the partnership, the number of requests for assistance the FWO referred to Retail Zoo Group declined dramatically, from 11 to one.

The company conducted more self-audits than required under the terms of the PCD, demonstrating a commitment to the wellbeing of employees and workplace compliance. In each year of the partnership, the company reported that the percentage of breaches found in each self-audit decreased.

Retail Zoo Group reported to the FWO that the self-audit findings enabled further improvements to its systems and processes in order to increase workplace relations compliance. Improvements included greater HR involvement and communication with franchisees, the rollout of an employee hotline and larger audit sample sizes in each year of the PCD.

The breaches uncovered by Retail Zoo were not serious in nature (resulting from error rather than deliberate non-compliance), and were rectified quickly. At the expiration of the partnership, the FWO assessed the company's systems and processes had enhanced compliance.

Throughout the life of the partnership, Retail Zoo Group demonstrated a willingness to work with the FWO to foster compliance throughout its network. By conducting additional audits outside of the requirements of the PCD, the company demonstrated a proactive stance on monitoring compliance.

About the Fair Work Ombudsman

The FWO is an independent agency created by the *Fair Work Act 2009* on 1 July 2009. Its main role is to promote harmonious, productive and cooperative workplaces and ensure compliance with Australian workplace laws.

The FWO employs a number of strategies to achieve compliance with national workplace laws. This includes entering into proactive compliance deeds with employers in the form of a compliance partnership. A compliance partnership is an opportunity for businesses to work with the FWO in a positive and constructive manner and achieve sustainable self-monitoring arrangements in order to demonstrate commitment to 'fair Australian workplaces'.

Employers may seek to enter into a compliance partnership with the FWO for a variety of reasons. Some of these reasons include:

- ensuring its obligations under the Act are being met
- a method of identifying and minimising business risks with respect to its employees
- to demonstrate that it is a fair Australian workplace and potentially an employer of choice
- to address potential areas of non-compliance with the Act.

A range of activities can be utilised to assist the business meet the intended outcomes of the compliance partnership, for example, self-auditing of wages and record keeping, initiatives to engage with employees to improve compliance, and mutually beneficial improvements to employment and business outcomes by focussing on supply chain, brand and franchise relationships.

The FWO assigns a dedicated Fair Work Officer to any business that enters into a partnership. The officer provides support and assistance to the business to ensure they are able to meet the terms of the proactive compliance deed. The FWO publishes a report about the results of the partnership following its conclusion.

For further information and media enquiries please contact FWO media (media@fwo.gov.au).

If you would like further information about compliance partnerships please contact Steven Ronson, Executive Director – Communications (steven.ronson@fwo.gov.au).