

La Porchetta Franchising Pty Ltd

Compliance Partnership report

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Table of contents

Summary.....	3
Background.....	4
Workplace relations settings.....	5
Communication.....	6
Workplace relations training.....	6
Systems and processes.....	7
Self-resolution of workplace disputes.....	7
Self-Audits.....	8
Reporting to the FWO.....	9
Conclusion.....	10
About the Fair Work Ombudsman.....	11

Summary

In response to significant non-compliance identified by the Fair Work Ombudsman [FWO] in some La Porchetta franchisees, La Porchetta and the FWO entered into a Compliance Partnership on 1 April 2014.

Underpinning the Compliance Partnership was a Proactive Compliance Deed (PCD)¹, which outlined mechanisms to improve levels of compliance within the La Porchetta service network. The PCD contained a number of commitments for both parties, designed to promote and ensure compliance with Australian workplace laws.

Key features of the partnership included La Porchetta providing workplace relations information, training and support for its franchisees, referral of 'routine-low' requests for assistance from employees for resolution and the conduct of regular audits of its network.

During the operation of the Compliance Partnership:

- the FWO received and referred six 'routine-low' requests for assistance from employees to the head franchisor for resolution resulting in the recovery of \$5483 for three workers
- La Porchetta undertook a series of audits, as required, and found that four sites were not fully compliant.

As the level of identified non-compliance during, and at the expiration of, the Compliance Partnership was low, the FWO is satisfied the support and systems put in place by the head franchisor has resulted in franchisees being more aware of their workplace obligations and understanding the importance of complying with them.

La Porchetta entered into a second PCD with the Fair Work Ombudsman on 6 July 2018 for a period of three years, expiring on 6 July 2021.

¹ Executed by both parties - See – [La Porchetta PCD](#)

Background

La Porchetta Franchising Pty Ltd [ACN 146 228 471] (La Porchetta) is a restaurant franchise business.

Since its establishment in Victoria in 1985, La Porchetta has grown to become one of the largest *'Italian restaurant'* chains across Australia and New Zealand, with 49 restaurants. At the time of this Report's publication, in Australia, La Porchetta operates 41 restaurants in Victoria, three in New South Wales and two in Queensland. La Porchetta employs approximately 700 employees in Australia.

La Porchetta is a family-operated private company with Ms Sara Pantaleo in the role of Chief Executive Officer and Director. Ms Pantaleo has been the Director of the La Porchetta franchise network since 2010. The business has grown significantly since this time, including expanding into New Zealand. Ms Pantaleo is also a former Telstra Business Woman of the year, Franchise Woman of the year and is on the National Board of Directors of the Franchise Council of Australia.

La Porchetta's head office took a proactive approach to implement initiatives previously lacking in the franchise network, including obtaining support from the legal firm, HR Legal, on workplace relations obligations and responsibilities. Ms. Palanteo was also eager to enter into a Compliance Partnership with the FWO to ensure compliance with workplace laws and protect the business' brand.

In 2013, the FWO publicly disclosed significant non-compliance at two franchise stores (Berwick and Pakenham, both in Melbourne) following requests for assistance from employees concerned they were not being paid correctly for shift and weekend work. A relatively small number of requests for assistance had also been received by the FWO in relation to other stores across the network prior to this investigation.

FWO's investigation into these two stores found 111 (mostly teenage employees) had been underpaid a total of \$258 019 between 2009 and 2012. In some cases, young workers received pizza and drinks as compensation for wages².

The investigation findings resulted in the FWO seeking financial penalties and commenced legal proceedings against two La Porchetta franchisees; Bound for Glory Pty Ltd [ACN 100 518 438] (the Berwick store) and Zillion Zenith Pty Ltd [ACN 109 501 868], as well as the Director of both companies, Mr. Ruby Chand³.

² FWO media release, 3 July 2013 <https://www.fairwork.gov.au/about-us/news-and-media-releases/2013-media-releases/july-2013/20130703-la-porchetta-berwick-pakenham>

³ See [FWO v Bound for Glory Enterprises & Anor \[2014\] FCCA 432](#).

The Federal Circuit Court issued a penalty against each business (Bound for Glory Pty Ltd and Zillion Zenith Pty Ltd) of \$139 507.50 each, while the Director of the businesses, Mr. Ruby Chand, was also fined a total of \$55 803⁴.

Following the Court's judgement, the FWO approached La Porchetta (as the franchisor) to discuss entering into a formal Compliance Partnership where the FWO could assist La Porchetta in establishing sustainable self-monitoring arrangements in order to ensure compliance within its service network.

La Porchetta recognised compliance was a key issue of concern in a network where 20% of its employees in Australia were young workers aged 18 – 24; often working casual shifts while they are studying, some engaged as trainees and apprentices.

Workplace relations settings

The *Restaurant Industry Award 2010* (the award) applies to hospitality employees within the La Porchetta network unless an enterprise agreement is in place. If an enterprise agreement applies to a franchise, it is underpinned by the minimum base rates in the award and the National Employment Standards. All other terms and conditions come from the applicable agreement.

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

Currently, under the award, the rates of pay for a permanent part-time or full-time adult Level 1 employee is \$18.81 per hour and \$19.53 per hour for a Level 2 employee.

Junior rates of pay vary depending on the age of the individual, but range from a 16-year-old and under Level 1 rate of \$9.41 per hour and a Level 2 rate of \$9.77 per hour, to a 19-year-old receiving \$15.99 as a Level 1 employee and a Level 2 employee receiving \$16.61 per hour.

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, while Sunday rates incur a 50% loading. Public holidays incur a 125% loading.

See [FWO v Zillion Zenith Pty Ltd & Anor \[2014\] FCC 433](#)

⁴ FWO media release following court decision, 10 June 2014, <https://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/june-2014/pizza-and-soft-drink>

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.

Communication

As specified under clause 1 of the PCD, La Porchetta and the FWO both informed their respective staff that they had entered into a Compliance Partnership and made a copy of the document available to them.

The FWO also issued a [media release](#) on 25 June 2014, publicly announcing the Compliance Partnership.

La Porchetta engaged an employment and safety law firm, HR Legal, to assist them in implementing their commitments under the PCD, including communication.

In April 2014, representatives of both La Porchetta and HR Legal held regional meetings with franchisees in Victoria to explain the reasons for entering into the PCD with the FWO and to provide them with a copy of the partnership document.

This information was also communicated in a webinar held in June 2015 for franchisees in other states and those who had been unable to attend the regional meetings in person. A webinar recording was posted to La Porchetta's intranet for viewing by franchisees who missed the original webinar or meeting. A further webinar was also provided in June 2016 and posted to La Porchetta's intranet.

Workplace relations training

Under clause 8 of the PCD, La Porchetta provided new franchisees induction training on their obligations under Australian workplace laws. Training was conducted by HR Legal on behalf of La Porchetta and focused on employer obligations under the award.

At the induction training, new franchisees were provided with an employment pack containing information on employer obligations, fact sheets, the latest annual update, a copy of the PCD and where to obtain further information; as required by clause 10 of the PCD. The content of the employment packs was also uploaded to the La Porchetta intranet for access by franchisees at any time.

Throughout the partnership, La Porchetta head office provided existing and new franchisees with annual updates in June each year about any increases to the minimum rates of pay via La Porchetta's intranet.

La Porchetta also ensured all franchisees received regular updates on employment-related matters about ensuring compliance with the FW Act.

Systems and processes

As part of entering into a PCD with the FWO, La Porchetta agreed to improve its ongoing compliance with workplace laws by implementing better governance, systems and processes throughout the franchise network.

La Porchetta provides human resources information via a central online hub, which includes the detailed Policies and Procedures People Manual and the HR Legal Help Desk.

The Policies and Procedures People Manual contains a significant amount of information about workplace laws and operational standards and processes. The information deals with a range of topics including the National Employment Standards, modern awards and agreements, minimum wage entitlements, leave entitlements and termination entitlements. It also provides advice on employee engagement, recruitment, induction and training and performance management.

The HR Legal Help Desk receives approximately five calls per month from La Porchetta and its franchisees. The nature of the calls varies from advice about performance management and termination of employment, to information about wages and entitlements under legislation and the award.

Self-resolution of workplace disputes

The FWO received six requests for assistance (RFAs) during the life of the PCD, and La Porchetta rectified all promptly with the outcomes reported to the FWO. The RFAs were largely resolved between six and 32 days, with the exception of one matter in relation to an employee being underpaid their minimum wage and entitlements, which was resolved over a longer period. This resulted in the recovery of \$3946 for the employee.

The five other RFAs made by employees covered the following issues:

- Underpayment of hourly rate due to incorrect classification of an employee amounting to \$931 in underpayments. La Porchetta resolved the matter.

- Underpayment of annual leave upon termination of \$606. La Porchetta resolved the matter.
- Underpayment of weekend penalties. In one instance, the company examined records and did not find any evidence of underpayment. The FWO agreed no further action was required in this matter. In the second instance, the employee alleged that underpayment on weekends occurred as they were not correctly classified. The franchisee disputed the claim as the employee was not required to serve alcohol, which would place them at the next level classification. The FWO agreed no further action was required in this matter.
- Dispute over entitlements carrying forward due to a transmission of business. In this instance, La Porchetta advised that the previous owner had paid out accumulated leave to all employees upon the sale of business and this was confirmed with the lawyer of the previous owner. The FWO considered no further action was required in this matter.
- Underpayment allegation regarding a business no longer operating as a La Porchetta franchise. A former owner of a La Porchetta franchise provided records to the FWO. No evidence of underpayments were found. The FWO took no further action in this matter.

Self-audits

Clause 12 of the PCD states that ‘La Porchetta will conduct random audits of its franchisees to identify whether there is compliance with workplace laws.’

La Porchetta, in conjunction with HR Legal, conducted a series of audits of their franchisee sites, where rosters, payslips, payroll advice and other records were examined. The stores were randomly selected by HR Legal and no businesses were selected more than once during this process.

The self-audits examined selected franchisee’s compliance with:

- payment of wages
- hours worked
- payment of weekend rates and penalties
- leave entitlements
- correct record-keeping
- correct pay slips.

Issues at businesses that were not found to be fully compliant included incomplete records with regard to statutory superannuation, non-compliance with record-keeping obligations for leave entitlements, employees incorrectly classified and two employees paid below the minimum wage

under the award. These matters of non-compliance were rectified by the businesses without further action required by the FWO.

Reporting to the FWO

La Porchetta submitted reports on time as per clause 22 of the PCD, outlining the following matters:

- confirmation of provision of annual updates to franchisees
- induction sessions were conducted for new franchisees throughout the life of the PCD
- employment packs were up-to-date and provided to franchisees
- summaries of the outcomes of RFAs referred to La Porchetta for self-resolution
- confirmation of the self-audit process implemented by La Porchetta and the outcome of that process.

Conclusion

While La Porchetta had some issues of non-compliance within its network prior to entering into the PCD, most noticeably identified at the stores of Pakenham and Berwick, following the execution of the PCD, La Porchetta improved its systems and processes to increase compliance across the network.

By conducting formal training for new franchisees and providing ongoing and up-to-date information (in digital and hard copy) to ensure that their franchisees are aware of the information La Porechetta adopted a strong leadership role in ensuring its franchisees were compliant with their workplace relations obligations.

Initial audits of the service network showed that while generally compliant, some areas of non-compliance did exist. These issues were comprehensively addressed by La Porchetta with the particular franchisees.

La Porchetta has worked closely with external law firm, HR Legal, and the FWO to assist the brand ensure ongoing and sustainable compliance throughout its service network.

The relatively low number of RfAs from La Porchetta employees along with the results of self-audits conducted under the PCD showed an improvement in general compliance across the La Porchetta network.

About the Fair Work Ombudsman

The FWO is an independent agency created by the *Fair Work Act 2009* on 1 July 2009. Our main role is to promote harmonious, productive and cooperative workplace relations.

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.

A business that enters into a partnership with the FWO is assigned a dedicated Fair Work Officer who provides support and assistance to the business to ensure they are able to meet the terms of the proactive compliance deed. A publicly available report is published at the conclusion of each Compliance Partnership.

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).