



Australian Government

Fair Work

OMBUDSMAN

PRO-ACTIVE COMPLIANCE DEED

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

La Porchetta Franchising Pty Ltd (ABN 48 146 228 471)

Schedule 1

Details:

Parties	Office of the Fair Work Ombudsman and La Porchetta Franchising Pty Ltd	
FWO	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43 884 188 232
	Address	The Fair Work Ombudsman GPO Box 9887 Brisbane QLD 4001
	Telephone	(07) 3404 7486
	Fax	(07) 6276 7173
	Attention	Russell Jacob Director – Misclassification and Governance
	La Porchetta	Name
	ABN	48 146 228 471
	Address	192 Mahoneys Road Thomastown VIC 3074
	Telephone	03 9460 6700
	Fax	03 9460 3099
	Attention	Sara Pantaleo Chief Executive Officer

Date of the Deed	The date the parties execute the Deed or, if it is executed on different dates, the date of last execution.
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Definitions In this document:

Commonwealth Workplace Laws means:

Fair Work Act 2009

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009

Fair Work Regulations 2009

*Fair Work (Transitional Provisions and Consequential Amendments)
Regulations 2009*

Deed means this Proactive Compliance Deed, including any Schedules and Attachments.

Related Company means a related body corporate as defined in the *Corporations Act 2001 (Cth)*.

Franchisee means an entity or person that has entered into a franchise agreement with La Porchetta Franchising Pty Ltd for the right to operate a La Porchetta restaurant.

OPERATIVE PROVISIONS:

1. Background

- 1.1 La Porchetta is an Australian-based restaurant franchise business. There are approximately 55 franchisees across Australia operating 65 restaurants.
- 1.2 La Porchetta has agreed to assist the FWO to ensure ongoing compliance by franchisees with all relevant Commonwealth Workplace Laws and the parties have entered into this Deed to record the terms of their agreement.
- 1.3 The parties agree as follows.

2. Acknowledgments

2.1 La Porchetta acknowledges that:

- (a) there are opportunities for continuous improvement in relation to the workplace practices of its franchisees to ensure ongoing compliance with Commonwealth workplace laws;
- (b) the promises it has given in this Deed are reasonable in the circumstances;
- (c) the FWO may:
 - a. make this Deed available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - b. release a copy of this Deed pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - c. issue a media release in relation to this Deed; and
 - d. from time to time, publicly refer to this Deed;
- (d) if La Porchetta contravenes any of the terms of this Deed the FWO may take any enforcement action the FWO considers appropriate.

3. Promise to take proactive compliance activity

- 3.1 La Porchetta must do or cause to be done all those activities and things set out in Attachment A to this Deed.

4. Publicity

- 4.1 The FWO agrees to provide La Porchetta with 24 hours to view all FWO media releases (**Releases**) arising from this Deed prior to publication by the FWO.
- 4.2 Notwithstanding 4.1, La Porchetta agrees and acknowledges that, if La Porchetta makes any suggested edits or amendments to the Releases, the FWO is under no obligation to accept any of them.
- 4.3 The Releases will reflect the positive cooperation of La Porchetta.

5. Commencement and expiration

- 5.1 This Deed comes into effect when both La Porchetta and the FWO have executed this Deed.
- 5.2 Subject to clause 7.1, this Deed will expire at the end of three (3) years after the

commencement of this Deed, unless terminated earlier in accordance with its terms.

6. No Inconsistent Statements

6.1 La Porchetta:

- (a) must ensure that each of its officers, employees or agents do not; and
- (b) must use its reasonable endeavours to ensure that each of its franchisees do not;
make any statement, orally, in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the content of this Deed.

7. Termination by the FWO

7.1 Without prejudice to any right or remedy the FWO may have, at any time, the FWO may, by notice in writing, terminate this Deed (that is, immediately and without notice) if La Porchetta commits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.

8. Independent Legal Advice

8.1 La Porchetta acknowledges that:

- (a) before executing this Deed, La Porchetta was given the opportunity to seek independent legal and other advice of its choice;
- (b) in light of any advice provided, La Porchetta considered its position; and
- (c) La Porchetta fully understands the effect of this Deed.

9. Withdrawal or Variation

9.1 La Porchetta may withdraw from or vary this Deed at any time, but only with the written consent of the FWO.

10. Costs in respect of this Deed

10.1 The parties must pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Deed and other related documentation.

11. Continuing obligations

11.1 General Survival

Any provision of this Deed remaining to be performed or observed by La Porchetta or having effect after the cessation of this Deed for whatever reason (including termination by the FWO or withdrawal from by La Porchetta) remains in full force and effect and is binding on La Porchetta after this Deed ends.

11.2 Survival

Without limiting the generality of clause 11.1 (General survival), clause 2 (Acknowledgements) and clause 6 (No inconsistent statements) survives termination of this Deed for whatever reason (including termination by the FWO or withdrawal from it by La Porchetta).

12. Legally binding agreement

12.1 The terms of this document are intended to have immediate effect on all parties upon

commencement of this Deed.

13. Entire agreement

13.1 This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. No oral explanation or information provided by either party to the other:

- (a) affects the meaning or interpretation of this Deed; or
- (b) constitutes any collateral agreement, warranty or understanding between the FWO and La Porchetta.

14. Construction

14.1 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

14.2 Unless expressed to the contrary in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

15. Severance

15.1 If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

16. Governing law

16.1 This Deed is governed by the law in force in Victoria. Each party submits to the non-exclusive jurisdiction of the courts of that place.

17. Counterparts

17.1 This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

18. Costs in respect of this Deed

18.1 The parties must pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Deed and other related documentation.

19. Notices

19.1 Any notice, request or other communication to be given or served pursuant to this Deed must be in writing and dealt with as follows:

(a) if given by La Porchetta to the FWO at the address indicated in Schedule 1 or as otherwise notified by the FWO; or

(b) if given by the FWO to La Porchetta, marked for the attention of the La Porchetta Contact Person at the address indicated in Schedule 1 or as otherwise notified by La Porchetta.

19.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.

19.3 Any notice, request or other communication will be deemed to be received:

(a) if delivered by hand, upon delivery;

(b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 Business Days after the date on which it was sent; and

(c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

Signing page

EXECUTED BY La Porchetta Franchising Pty
Ltd ABN 48 146 228 471 in accordance with
section 127(1) of the Corporations Act 2001
(Cth)



(Signature of Director/Secretary)

(Signature of Director)

ROSARIA PANTALEO

(Name of Director/Secretary in Full)


(Name of Director in Full)

Date:

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA as
represented by the Office of the Fair Work
Ombudsman:

Michael Campbell

(Printed Name)



(Signature)

Deputy Fair Work Ombudsman

(Title)

1/4/2014

(Date)

In the presence of:

STEVEN RONSON

(Name of Witness in Full)



(Signature)

Attachment A- Proactive Compliance Activities

Obligations as an employer

1. Within 14 days of the execution of the Deed, La Porchetta will communicate the existence of the Deed to all current employees via an internal communication method such as email, internal memo or intranet, and make a copy of the Deed available to all staff.
2. That communication is to be in the following form:

"La Porchetta has taken the proactive step of entering into a Proactive Compliance Deed (Deed) with the Office of the Fair Work Ombudsman.

By entering into the Deed, La Porchetta demonstrates that it is committed to working with the FWO to ensure compliance with Australian workplace laws and promote a harmonious, productive and cooperative workplace.

La Porchetta has made the Deed available to all staff through email and placing it on employee notice boards. You are also able to access information about entitlements and rights at work by contacting Dan Feldman of HR Legal on 03 99482450 or by email at dfeldman@hrlegal.com.au, who has been appointed by La Porchetta as an Employee Liaison Officer, or by visiting the Fair Work Ombudsman website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94."

Obligations as a Franchisor

3. Within 14 days of the execution of the Deed, La Porchetta will communicate the existence of the Deed to all franchisees via an internal communication method such as email, internal memo or intranet, and make a copy of the Deed available to all franchisees.
4. That communication is to be in the following form:

"La Porchetta has taken the proactive step of entering into a Proactive Compliance Deed (Deed) with the Office of the Fair Work Ombudsman.

By entering into the Deed, La Porchetta demonstrates that it is committed to working with the FWO to ensure compliance with Australian workplace laws and promote a harmonious, productive and cooperative workplace.

La Porchetta requires all franchisees to commit to ensuring compliance with workplace laws and engage with the FWO on matters arising as a result of workplace complaints.

La Porchetta has made the Deed available to all franchisees through email.. You are also able to access information about entitlements and rights at work by contacting Dan Feldman of HR Legal on 03 99482450 or by email at dfeldman@hrlegal.com.au who has been appointed by La Porchetta as an Employee Liaison Officer, or by visiting the Fair Work Ombudsman website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94."

5. La Porchetta will take reasonable steps to ensure that each franchisee communicates via an internal communication method such as email, internal memo or intranet to all its employees the following:

La Porchetta Franchising Pty Ltd has taken the proactive step of entering into a

Proactive Compliance Deed (Deed) with the Office of the Fair Work Ombudsman.

La Porchetta and <Insert Franchisee name> are committed to working with the FWO to ensure compliance with Australian workplace laws and promote a harmonious, productive and cooperative workplace.

We have made the Deed available to all our staff through placing copies in a prominent position in the staff room and on the staff roster board. You are also able to access information about entitlements and rights at work by contacting Dan Feldman of HR Legal on 03 99482450 or by email at dfeldman@hrlegal.com.au who has been appointed by La Porchetta as an Employee Liaison Officer, or by visiting the Fair Work Ombudsman website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94."

6. La Porchetta will take reasonable steps to ensure that each franchisee makes a copy of the Deed available to its employees and any individual independent contractors engaged directly by the franchisee.

Annual Update

7. La Porchetta shall provide its franchisees with an Annual Update by July each year, which includes:
 - (a) Summary of franchisee obligations under the Restaurant Industry Award 2010 and/or applicable Collective or Enterprise Agreements (Applicable Workplace Instrument);
 - (b) Updated wage rate tables summarising minimum wage rates under the Restaurant Industry Award 2010.

Training and Induction

8. La Porchetta shall provide new franchisees with employment training and induction at commencement of their engagement as franchisees, including outlining their obligations as employers to comply with the Applicable Workplace Instrument and Commonwealth Workplace Laws including the National Employment Standards (Induction Training).
9. La Porchetta shall invite and encourage existing franchisees to attend the Induction Training as held from time to time.

Employment Packs

10. La Porchetta shall provide its franchisees with access to employment packs from commencement of their engagement as La Porchetta franchisees, which will include:
 - (a) Template employment contracts that are compliant with the Applicable Workplace Instrument or the Restaurant Industry Award 2010 (whichever is applicable to the franchisee);
 - (b) Fair Work Information Statement; and

- (c) Information about applicable pay rates and conditions.
11. La Porchetta shall review the documents provided to franchisees in the employment packs at least once each year or as is necessary to give effect to any changes to relevant State or Commonwealth Workplace Laws and provide these to Franchisees.

Self-Audit

12. La Porchetta will conduct random spot audits of its franchisees to identify whether there is compliance with the relevant Commonwealth Workplace Laws and Applicable Workplace Instruments, including relating to payment of wages, hours of work, payment of weekend and shift penalty rates, record keeping and leave entitlements of employees employed by its franchisees (**Spot Audit**).
13. Spot Audits shall be undertaken on an ongoing basis each year and not less than 8 stores will be subject to a Spot Audit each year.
14. Each Spot Audit will be undertaken as follows:
- (a) (**Stage 1**) La Porchetta shall select the Random Stores and Random Employees from that store;
 - (b) (**Stage 2**) La Porchetta shall review the Random Employees to ensure that they were paid at least the minimum wage and other appropriate entitlements at the appropriate rate under the Applicable Workplace Instrument or Commonwealth Workplace Laws during any particular pay period from January 2014 as selected by La Porchetta;
 - (c) (**Stage 3**) If La Porchetta identifies any Random Employee has been underpaid then La Porchetta may refer the underpayment to its legal advisers to assist with further investigation.
 - (d) (**Stage 4**) If, in undertaking the review referred to above, it is determined there has been an underpayment, the franchisee will be notified and requested to rectify any issues promptly (**Identified Underpayment**) by:
 - (i) Back-paying the affected individuals; and
 - (ii) If those underpaid employees cannot be located, paying any outstanding amounts into the consolidated revenue of the Commonwealth of Australia (through the FWO) to be held in trust for the relevant underpaid employee/employees.
 - (e) (**Stage 5**): La Porchetta will seek confirmation from such franchisee that the Identified Underpayment has been rectified and the franchisee will automatically be subject to a further Spot Audit within 6 months of the date confirmation was received that the Identified Underpayment was rectified.
 - (f) In this clause, "Random Employees" means not less than three employees, including at least one (1) permanent employee and one (1) casual employee of the current employees employed by franchisees in Random Stores as selected by La Porchetta;

- (g) In this clause, "Random Stores" means not less than 8 La Porchetta stores as selected by La Porchetta in conjunction with the Best Practice Franchisee Review process.
15. By 1 September of each year, La Porchetta will provide the FWO with a written report certified by its legal advisers or accountant containing details of:
- (a) the implementation and progress of the Spot Audit Process; and
 - (b) the results of the Spot Audit Process including, but not limited to, the nature and quantum of any Identified Underpayment, the franchisee to which each Identified Underpayment related and the action taken to rectify each of the Identified Underpayment.
16. If a franchisee identified by La Porchetta declines to participate in a Spot Audit, La Porchetta is to notify the FWO in writing within 28 days providing the details for the non-participation by the franchisee.

Self-Resolution of Complaints

17. The FWO acknowledges that La Porchetta is striving to ensure that franchisees comply with Commonwealth Workplace Laws as reflected in this Deed.
18. In the spirit of co-operation, where any alleged contraventions of workplace laws are brought to the attention of FWO, FWO will bring such matters to the attention to La Porchetta so that La Porchetta may seek to ensure that the franchisees rectify the matter.
19. La Porchetta and its franchisees will use their best endeavours to resolve all future workplace complaints about relevant Commonwealth workplace laws within 35 days of receipt of the complaint.
20. Within seven days of resolving the complaint, La Porchetta or the franchisee will provide the FWO with evidence that the workplace complaint has been resolved and identified underpayments and any other issues identified by the FWO have been rectified.
21. Where the complaint cannot be resolved by agreement between the franchisee and the complainant within 35 days of notification by the FWO, La Porchetta must provide the FWO with a written report addressing the reasons why the matter could not be resolved between the parties and the steps taken by La Porchetta to resolve the complaint. The report is to be provided to the FWO no later than seven days after the expiry of the 35 days from notification by the FWO.

Reporting

22. By 1 September each year after the commencement of the Deed, La Porchetta will provide the FWO with a report addressing the following matters:
- (a) the actions taken by La Porchetta to address the requirements of the Deed;
 - (b) the number of complaints referred to La Porchetta or a franchisee;
 - (c) the number of complaints resolved by La Porchetta or a franchisee;
 - (d) the average time taken to resolve; and
 - (e) the average amount of underpayments.

23. The report is to be provided to the FWO no later than 28 days after the completion of the reporting period.
24. The FWO may publish the report or its own report regarding the Deed and will provide La Porchetta an opportunity to comment on its report.
25. The FWO's report will reflect the positive cooperation of La Porchetta.

Resources

26. La Porchetta shall nominate in writing a single national contact person to whom all queries from employees of its franchisees about future workplace complaints can be directed. At commencement of this Deed the nominated person is: Dan Feldman, Partner HR Legal. La Porchetta must notify the FWO in writing within 7 days of any changes to La Porchetta's national contact person.
27. The FWO will identify a single national contact person whom all queries from La Porchetta can be directed. This officer may change from time to time.