



Chemist Warehouse (CW Retail Services Pty Ltd) Compliance Partnership: Interim Report

November 2018

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Summary

CW Retail Services Pty Ltd [ACN 606 509 791] (Chemist Warehouse) is a retail pharmacy franchise business with a significant presence in the pharmacy sector. The Chemist Warehouse network includes 356 stores and employs over 12 000 staff across Australia.¹

The FWO audited a selection of Chemist Warehouse stores as part of the ongoing National Compliance Monitoring Program.²

During the course of the audits, the FWO requested Chemist Warehouse check that it had paid staff correctly for compulsory online training. The company conducted a review and identified that 5976 employees had been underpaid \$3 569 212. This led Chemist Warehouse to enter into a compliance partnership with the FWO.

The terms of the compliance partnership are contained in a Proactive Compliance Deed (PCD)³, which commenced in November 2016 and finishes in November 2019.

The partnership promotes and ensures long-term compliance across the company's franchise network, and contains a number of commitments from both parties, including:

- the company's provision of workplace relations information, training and support to its franchisees
- the creation of a company-administered hotline and email account service for employees to make enquiries about their entitlements
- an undertaking from the company to engage an external audit specialist to audit its franchise network, and to rectify any identified non-compliance
- FWO's referral of requests for assistance, received from franchise employees, to the company for resolution.

Since commencement of the partnership, Chemist Warehouse has run franchisee conferences and has produced all-staff bulletins containing workplace relations information. It has also been developing a workplace relations training package to ensure franchise owners and managers understand and can comply with their workplace relations obligations.

The company has reported a decline in the number of employee enquiries it has received since the commencement of the partnership. This suggests its hotline and email enquiry services have been effective in helping the company respond to, investigate and resolve employee enquiries regarding payment for training, and other workplace entitlements.

¹ www.chemistwarehouse.com.au

² <https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/compliance-monitoring-campaign>

³ FWO media release: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/december-2016/20161201-chemist-warehouse-mr>

Under the terms of the PCD, the company has also engaged an independent external firm (FCB Group) to audit its franchise network. FCB Group identified underpayments in its initial audit, which it has attributed to payroll deficiencies. Chemist Warehouse has resolved all underpayments. With input from FWO and FCB Group, Chemist Warehouse has also been upgrading its systems and processes to ensure full compliance with workplace laws.

The FWO has referred six requests for assistance to Chemist Warehouse since the commencement of the partnership. The company investigated these referrals and confirmed breaches in three matters. It has notified all affected employees of the results of its investigations and where required ensured franchisees back-paid their staff.

This report discusses the background to the compliance partnership and provides an interim assessment of progress towards satisfying the commitments set out in the PCD.

Background

Fair Work Inspectors undertook an audit of 24 Chemist Warehouse outlets across Victoria, Queensland, Tasmania and the ACT as part of the National Compliance Monitoring Program. The outlets operated under individual Intellectual Property (IP) licensing agreements, entitling them to use the Chemist Warehouse brand.⁴

While the Inspectors' initial assessment was that the outlets complied with the requirements of the *Pharmacy Industry Award 2010*, they contacted employees to verify time and wages records. Some employees expressed concern about non-payment of training undertaken outside of work hours, so the FWO requested Chemist Warehouse review its online training arrangements.

The company confirmed that all staff were required to complete online training through registered training organisation Healthcare Training Australia Pty Ltd.⁵ In newsletters circulated in 2015 and 2016, it advised all outlets that staff were to undertake training within rostered hours wherever possible, and were to be paid for time spent completing the online training modules. However, the company conceded that contrary to its advice, outlet staff may have completed training outside of rostered work hours, and may not have been paid for training time.

Chemist Warehouse reviewed the training log-on times for all employees engaged by all outlets in its network. It found significant evidence of after-hours log-on times and determined that 5 976 employees had been underpaid a total of \$3 569 212. Chemist Warehouse wrote to all affected employees to explain

⁴ This arrangement, in which individual corporate entities owned and operated their own pharmacies, applied to all outlets in the Chemist Warehouse network. From 1 July 2016, the organizational model changed, with CW Retail Services Pty Ltd entering into franchising agreements with each individual business in its network.

⁵ Chemist Warehouse have advised the FWO they have changed the training provided. Healthcare Training Australia Pty Ltd has since been deregistered as an RTO.

the issue and to provide contact details for further enquiries. AM Solutions⁶ back paid the employees on behalf of the stores as part of normal payroll practices, and invoiced network outlets.

As the Chemist Warehouse network was comprised of individually owned and licensed stores, the FWO found no evidence of deliberate non-compliance on the part of CW Retail Services Pty Ltd.⁷ However, the widespread nature of the non-compliance demonstrated the need to improve compliance monitoring systems and processes.

The company was willing to work with the FWO to achieve sustained compliance with Australian workplace laws. The FWO offered the opportunity to do so by entering into a compliance partnership. The three-year partnership commenced with the execution of a Proactive Compliance Deed on 24 November 2016.

Workplace relations settings

The *Pharmacy Industry Award 2010* (the Award) applies to employees within the Chemist Warehouse network.

The Award covers employers in the pharmacy industry. The types of employees covered includes pharmacists, pharmacy students and pharmacy assistants.

The Award provides for the engagement of full-time, part-time and casual employees. As of 1 July 2018, under the Award, the rates of pay for a permanent part-time or full-time adult employee are \$20.79 per hour (Level 1) and \$21.28 per hour (Level 2).

Juniors (20 years of age or under) are able to work as pharmacy assistants under the Award. They receive a percentage of the applicable adult rate, depending on their age, for example:

- \$10.40 per hour (Level 1) and \$10.64 (Level 2) for a 16-year-old (50% of adult rate)
- \$16.63 (Level 1) and \$17.02 (Level 2) for a 19-year-old (80% of adult rate).

A range of penalties and loadings apply:

- a 25% loading for casual employees on top of the full-time base rate of pay
- a penalty loading of between 25% and 100% on Saturdays, depending on the hours worked
- a penalty loading of 95% to 100% on Sundays, depending on the hours worked⁸
- overtime rates of between 150% and 250%, depending on the time and hours worked.

⁶ The review was undertaken by AM Solutions, a company in the Chemist Warehouse group that provides paid human resources and marketing support to individual stores.

⁸ Penalty rates for Sunday work under the Award will decrease on 1 July each year, following the Fair Work Commission's penalty rates decision (effective 1 July 2017): <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/2017fwcfb3001.pdf>

Payment for compulsory training

The Award does not contain specific provisions in relation to payment for training. There is a requirement under the Fair Work Act 2009 (the Act) to be paid for all time worked. The requirement to attend compulsory training is considered to be time worked⁹.

Progress report

Communication of the deed

Chemist Warehouse and the FWO informed their staff about the compliance partnership and made a copy of the PCD available (as per clause 3 of the PCD).

The FWO issued a media release on 1 December 2016, publicly announcing the partnership.¹⁰

Chemist Warehouse sent a bulletin to all franchise stores announcing the partnership and the newly established employee hotline. It also published details of the PCD on the Chemist Warehouse intranet homepage for all employees to access.

The company continues to promote the hotline and the partnership with the FWO through its monthly staff and HR news bulletins.

Workplace relations training

Chemist Warehouse appointed its National HR Manager to the role of 'HR Specialist' (as per Clause 11), and required the officer to:

- review workplace relations training arrangements
- design and implement a new:
- workplace relations training program for employees
- workplace relations and HR training program for supervisors and managers.

The company has also been developing a training package for franchisee owners and managers to better understand and apply:

- the Act
- Award entitlements including leave, hours of work and breaks

⁹ <https://www.fairwork.gov.au/pay/unpaid-work>

¹⁰ FWO media release: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/december-2016/20161201-chemist-warehouse-mr>

- the National Employment Standards (NES).

Chemist Warehouse held one-day conferences in Victoria, Queensland and New South Wales that included training on the Australian workplace relations system, managing difficult conversations and managing performance.

The company has also produced a number of all-staff bulletins to raise employee awareness about:

- differences between part-time and casual employment
- personal and carer's leave entitlements
- national minimum wage increases
- information on public holidays and rosters.

Systems and processes

Chemist Warehouse agreed to implement changes to its systems and processes. Through these changes, it aims to:

- address systemic time-recording deficiencies, including in relation to training attendance
- improve governance of employee training requirements
- resolve issues that led to widespread unpaid training prior to the commencement of the compliance partnership.

Clause 4 of the PCD requires Chemist Warehouse to provide the FWO with six-monthly reports detailing any changes to systems that record hours of work and training attendance times. The company reported that it:

- records face-to-face training on hard copy log sheets and retains a master copy at head office
- emails training attendance records to store managers on a fortnightly basis
- restricts access to the company's online training portal to employees using the in-store online network
- is converting in-house training into online modules.
- has reduced the number of mandatory online modules that non-pharmacist staff are required to complete.

Collectively, these measures provide Chemist Warehouse with the ability to monitor mandatory training arrangements more closely and ensure that franchisees pay their employees correctly.

Review and upgrade of administration and payroll systems

All Chemist Warehouse franchisees are required to use online systems:

- 'My Team' – for employee on-boarding and the variation and termination of employment contracts
- 'PayGlobal' – for payroll.

In the first year of the partnership, Chemist Warehouse reviewed these systems to identify potential improvements and ensure alignment with a series of Fair Work Commission (FWC) decisions:

- annual wage review (effective 1 July 2017)¹¹
- penalty rates decision (effective 1 July 2017)¹²
- transition of junior workers classified at level three and four in the Award to the full adult rate (effective 11 September 2017).¹³

The company has noted that limitations in the time recording functionality of Pay Global were central to widespread underpayments found during FWO's initial audit. To address these issues, it has been developing an improved time recording and rostering system to integrate with existing services. The company consulted with the FWO and the FCB Group on system specifications to ensure full compliance with the Act, the NES and Award requirements.

Chemist Warehouse hotline

Chemist Warehouse established a hotline for employees to raise enquiries or lodge complaints about their employment (as per clause 7 of the PCD). It designed stickers with the hotline number for franchisees to display in prominent positions, such as on staff noticeboards and telephone handsets.

The hotline service converts voice-mail messages into email, ensuring Chemist Warehouse is able to record the details of all enquires. The company has also established an enquiry register to log all email and hotline enquiries, and track the enquiry resolution process.

¹¹ <https://www.fwc.gov.au/awards-agreements/minimum-wages-conditions/annual-wage-reviews/annual-wage-review-2016-17>

¹² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/2017fwcfb3001.pdf> (Chemist Warehouse and its franchisees decided not to reduce penalty rates for network staff employed as at 30 June 2017)

¹³ <https://www.fwc.gov.au/documents/awardsandorders/html/pr594779.htm>

Chemist Warehouse reported it received 347 enquires in the first year of the PCD. The majority (313) related to the issue of payment for training. The remaining 34 enquires concerned:

- leave entitlements
- employee classification under the Award
- breaks, hours of work, rosters and termination
- pay slips and payment summaries.

Chemist Warehouse determined that in most cases there were no entitlements owing. Where it identified outstanding entitlements, it worked with the franchisee and employee to rectify the issue.

The number of employee enquiries has been declining. For example, in the three-month period from 24th November 2016 to 24th February 2017, the company reported it received 157 enquiries from former and current employees. More recently, the company has reported that during the three-month period of July to September 2018 it received only five PCD-related hotline enquiries, all of which it resolved within 21 days.

Self-resolution of workplace disputes

The FWO refers requests for assistance from current or former employees to Chemist Warehouse to resolve (as per clause 9 of the PCD).

To date, the FWO has referred six requests for assistance relating to payment for online training. In three of the six matters, Chemist Warehouse identified monetary breaches.

Chemist Warehouse investigated and rectified these issues, and reported the outcomes to the FWO. The relevant franchisees have back-paid \$1 500.21 to three former employees for non-payment of training time.

Self-audits

Chemist Warehouse is required to engage an independent accounting professional, auditor or employment law specialist to conduct three external audits of its franchise network (As per clause 6 of the PCD).

The PCD requires the external specialist to conduct audits at the 6, 18 and 30-month mark. The audits must include a 10% sample of employees from across all retail outlets, and assess a four-week period.

Chemist Warehouse engaged FCB Group, a workplace relations specialist, to conduct the audits. The company has now provided a report on the results of the first audit to FWO.

The audit covered the periods of 17 April to 14 May 2017 (for employees in Tasmania and Victoria) and 24 April to 21 May 2017 (all other states and territories). It included an assessment of the time and wages records of 998 staff working in 302 stores across Australia.

FCB Group examined the following:

- classification and status of employees
- accuracy and consistency of employee records
- correct rates of pay for ordinary hours, loadings, allowances, penalty rates, leave and termination payments
- payslip and employment records
- training log-in and log-out times, and payments for training undertaken.

FCB Group did not identify outstanding entitlements in relation to training, although it found that nine employees had undertaken online training outside of their rostered hours of work. However, these employees confirmed the company had instructed them to undertake training during rostered work hours. FCB noted that employees were paid for training undertaken outside of rostered hours of work.

FCB Group found that Chemist Warehouse was complying with its non-monetary obligations (time and wages records and pay slip regulations). In relation to monetary obligations, FCB Group reported that of the 998 employees assessed:

- twelve (12) were paid their exact Award entitlements
- 607 were paid above their Award entitlements
- 378 were paid less than their Award entitlements.

FCB Group advised that the combined total of above-Award payments was \$150 673.93.

Of the 378 instances of underpayment identified, 200 were for less than \$1. Outstanding entitlements owed to the remaining 178 employees ranged from \$1.06 to \$635.90.

Chemist Warehouse has rectified all outstanding entitlements, which totalled \$9 765.81.

FCB Group attributed the underpayments to payroll discrepancies, which Chemist Warehouse is addressing through its system upgrades (see Review and upgrade of administration and payroll systems).

Reporting to the FWO

In addition to reporting on hotline enquiries and independently conducted audits, Chemist Warehouse has satisfied its obligation to provide the first of three annual progress reports to the FWO. As per clause 13 of the PCD, the reports must describe:

- actions it has taken to address the requirements of the deed
- the outcomes of any requests for assistance referred by the FWO
- the review of systems and processes in place and their effectiveness in promoting compliance
- workplace relations issues encountered in the first year of the deed and the company's response to those issues
- any workplace relations training undertaken
- any identified benefits or learnings from the compliance partnership.

Conclusion

Chemist Warehouse identified widespread underpayments in relation to employee training. After ensuring that that over \$3.5 million was back paid to nearly six thousand network staff, it entered into a PCD with the FWO in November 2016 to improve compliance throughout its franchise network.

Following the commencement of the partnership, the company established a hotline service to help process and resolve employee enquiries. It has reported that the volume of all enquires has significantly declined over the interim reporting period. This suggests that the hotline and the steps taken by the company to investigate and resolve employee enquiries and complaints have been effective.

To date, under the terms of the partnership, Chemist Warehouse has investigated and resolved six requests for assistance referred by the FWO.

It has reported on the results of its first external audit, which include underpayments of award entitlements. The auditor (FCB Group) has attributed these issues to payroll system deficiencies. Chemist Warehouse has rectified all outstanding entitlements, and has been upgrading its HR administration and payroll systems to ensure they support compliance with workplace laws.

Chemist Warehouse notes the PCD has reinforced the need to regularly review and upgrade its systems and processes. It recognises that in doing so it benefits from the "early detection of issues and errors", as well as the ability to adapt to changing business needs and workplace relations obligations.

The FWO will continue to work with Chemist Warehouse to improve compliance throughout its franchise network, and will provide a further report on the conclusion of the three-year partnership.

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 compliance partnerships with employers in the form of Proactive Compliance Deeds (PCDs). A compliance partnership is an opportunity for businesses to work with the FWO in a positive and constructive manner. It sets out to achieve sustainable self-monitoring arrangements in order to demonstrate commitment to fair Australian workplaces.

Employers seek to enter into a compliance partnership with the FWO for a variety of reasons. These can include:

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

A range of activities are utilised to assist businesses meet intended outcomes of compliance partnerships, for example:

- self auditing of wages and record-keeping
- initiatives to engage with employees to improve compliance
- mutually beneficial improvements to employment and business outcomes by focussing on supply chain, brand and franchise relationships.

A dedicated Fair Work Officer provides support and assistance to a business partners to ensure they are able to meet the terms of the PCD. The FWO publishes a publically available report 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).