



Australian Government

Fair Work

OMBUDSMAN

PROACTIVE COMPLIANCE DEED

Between

The Commonwealth of Australia

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

and

CW Retail Services Pty Ltd (ACN 606 509 791)

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Schedule 1

Details: Office of the Fair Work Ombudsman and CW Retail Services Pty Ltd (Chemist Warehouse)

FWO	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43884188232
	Address	The Fair Work Ombudsman GPO Box 9887 Melbourne VIC 3001
	Telephone	
	Fax	
	Contact	

CW Retail Services Pty Ltd	Name	CW Retail Services Pty Ltd
	ACN	ACN 606 509 791
	Address	44 Raglan St, Preston, VIC 3072
	Telephone	03 9462 9111
	Fax	
	Contact	

1. Background to this Deed

- A. CW Retail Services Pty Ltd is the franchisor to the franchise network of retail pharmacy businesses trading under the Chemist Warehouse name (**Chemist Warehouse**). There are over 350 individual stores and over 6,000 staff employed throughout the franchise network.
- B. Chemist Warehouse operates under a franchising arrangement with every individual business
- C. In 2015, the FWO commenced an audit into Chemist Warehouse as part of the FWO's National Compliance Monitoring Campaign.
- D. A random sample of 20 Chemist Warehouse stores was selected for audit and Chemist Warehouse supplied time and wage records. Prima facie audit sampling of the records showed all stores were found to be fully compliant with the provisions of the *Pharmacy Industry Award 2010*.
- E. As part of the audit process, a number of employees were contacted at random to seek confirmation of the evidence provided. Those employees provided corroboration of the integrity of the records provided however, they raised concerns over non-payment of wages for compulsory online training undertaken outside of work hours.
- F. The non-payment of wages for compulsory online training was raised with Chemist Warehouse who were requested to undertake a further review of the issue. Chemist Warehouse conceded that there was potential for non-payment of training time to have erroneously occurred within individual businesses across the group, despite instructions from Chemist Warehouse advising the online training should be paid for and conducted during work time.
- G. In response, Chemist Warehouse elected to do a full review of all online training log-in times for all employees across all stores so as to identify and quantify any actual or potentially unpaid training time. On completion of review, 294 stores operating under the Chemist Warehouse brand initiated back payment to 5,976 employees totalling \$3,569,212.10 gross.
- H. Chemist Warehouse and their franchisees rectified the full quantum of the underpayment and verified that all monies have been repaid to employees. Individual stores bore the cost of the repayments. Each affected employee received either a letter or email outlining their individual repayments and contact details for any queries relating to the payment.
- I. To show its commitment to compliance and to encourage fair, harmonious and productive workplaces, both the FWO and Chemist Warehouse have agreed to enter into a compliance partnership.
- J. The partnership formalised in this Deed will place obligations on both parties and is designed to bring benefits to the FWO, Chemist Warehouse and their employees. Both parties are committed to the success of this partnership and look forward to using it as an example of cooperative engagement to promote compliance.
- K. The FWO will provide assistance to Chemist Warehouse where appropriate and Chemist Warehouse will introduce or maintain, and enhance where appropriate, a number of

proactive measures to promote and ensure compliance and promote productive workplaces.

- L. Both parties have agreed to enter into this Deed as a proactive compliance partnership opportunity and to confirm Chemist Warehouse's commitment to implement sustainable compliance measures.

The parties agree as follows:

2. Compliance with Commonwealth Workplace Laws

- 2.1 Chemist Warehouse acknowledges that it has a moral and ethical responsibility to require and ensure standards of conduct from all Franchisees and individuals involved in the conduct of its enterprise, that they:
- (a) comply with the law in relation to all Employees, and
 - (b) meet Australian community and social expectations, to provide equal, fair and safe work opportunities for all Employees.
- 2.2 Chemist Warehouse acknowledges that its administrative processes have in some instances contributed to employees being vulnerable to underpayment of wages for training time.
- 2.3 Chemist Warehouse has taken and will continue to take steps to improve their systems and processes by implementing fundamental, permanent and sustainable changes to ensure that Commonwealth Workplace Laws are fully complied with for all Employees within the Chemist Warehouse brand.

3. Communication to Chemist Warehouse employees

Communication to Chemist Warehouse Franchisor Employees or Agents

- 3.1 Within 14 days of the execution of the Deed, Chemist Warehouse will communicate the existence of the Deed to all current employees at Chemist Warehouse sites via an internal communication method such as email, internal memo or intranet and make a copy of the Deed available to all staff.
- 3.2 Chemist Warehouse will communicate the existence of the Deed to all future employees at Chemist Warehouse sites within 14 days of engagement.
- 3.3 That communication is to be in the following form:

"Chemist Warehouse has entered into a compliance partnership with the Office of the Fair Work Ombudsman (FWO).

We have entered into this compliance partnership because we are committed to ongoing compliance with Commonwealth workplace laws throughout our network. This partnership is to demonstrate to our staff and the broader community that we are committed to working with the FWO to promote harmonious, productive and cooperative

workplaces. We believe this partnership will have a positive impact on our employees and our business.

To formalise this partnership, we have signed a Proactive Compliance Deed (Deed) with the FWO. This Deed places obligations on both parties and demonstrates our commitment to compliance with workplace laws.

We are pleased to make this Deed available to you through ◀insert hyperlink or place▶.

You can also access information about entitlements and rights at work by contacting ◀insert name and contact details of the Liaison Officer appointed by entity as required by resources clause set out below▶, who has been appointed by Chemist Warehouse as an Employee Liaison Officer, or by visiting www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94."

Communication by Chemist Warehouse to franchisees

- 3.4 Within 14 days of the execution of the Deed, Chemist Warehouse will communicate the existence of the compliance partnership to all current franchisees via an internal communication method such as email, internal memo or intranet and make a copy of the Deed available to all franchisees.
- 3.5 Chemist Warehouse will communicate the existence of the Deed to all future franchisees within 14 days of engagement.
- 3.6 That communication is to be in the following form:

Chemist Warehouse has entered into a compliance partnership with the Office of the Fair Work Ombudsman (FWO).

We have entered into this compliance partnership because we are committed to ongoing compliance with Commonwealth workplace laws throughout our network. This partnership is to demonstrate to our staff and the broader community that we are committed to working with the FWO to promote harmonious, productive and cooperative workplaces. We believe this partnership will have a positive impact on our employees and our business.

To formalise this partnership, Chemist Warehouse have signed a Proactive Compliance Deed (Deed) with the FWO. This Deed places obligations on both parties and demonstrates our commitment to compliance with workplace laws.

We intend the partnership with the FWO to have a positive impact on the Chemist Warehouse brands. To support this, it is important that all franchisees commit to complying with all their workplace obligations and thus enhance the image of our brands. Franchise outlets play an important part in the success of the Chemist Warehouse brand and compliance with workplace laws across all outlets is vital to the ongoing success of our business.

We are pleased to make this Deed available to you through ◀insert hyperlink or place▶.

You can also access information about entitlements and rights at work by contacting ◀insert name and contact details of the Liaison Officer appointed by entity as required by resources clause set out below▶, who has been appointed by Chemist Warehouse as an Employee Liaison Officer

Communication to franchisee employees

- 3.7 Chemist Warehouse 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:

“Chemist Warehouse has entered into a compliance partnership with the Office of the Fair Work Ombudsman (FWO).

Chemist Warehouse has entered into this compliance partnership because it is committed to ongoing compliance with Commonwealth workplace laws throughout our network. This partnership is to demonstrate to all our employees and the broader community that we are committed to working with the FWO to promote harmonious, productive and cooperative workplaces. This partnership will have a positive impact on our employees and our business.

Chemist Warehouse and its franchisees are committed to working with the FWO to ensure compliance with Commonwealth workplace laws and promote harmonious, productive and cooperative workplaces. Franchise outlets play an important part in the Chemist Warehouse brand and compliance with workplace laws across all outlets is vital to the ongoing success of our business.

As a Chemist Warehouse franchise operator we too are committed to compliance with workplace relations laws.

We have made the Deed available to all staff through ◀insert hyperlink or place▶. You are also able to access information about entitlements and rights at work by contacting ◀insert name and contact details of Employee Liaison Officer appointed by entity as required by resources clause set out below▶, who has been appointed by Chemist Warehouse 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.”

- 3.8 The FWO will publish an article on its intranet alerting its staff to the commencement of the compliance partnership. This article will include reference to the nominated FWO Contact Person and instruct all contact with Chemist Warehouse to be directed to them. FWO will make information about the partnership and its commitments available to its staff throughout the life of the Deed.

4. Systems and processes to ensure compliance

- 4.1 Every 6 months from the execution of this Deed, Chemist Warehouse will provide details of the changes to their processes that they intend to implement or have implemented to

ensure that the hours worked by all people at Chemist Warehouse sites, can be readily ascertained, including by:

- (a) maintain and monitor accurate records of each Employee's working hours, including, date of work, start and finish times.
 - (b) Providing details of Chemist Warehouse's internal training processes, the recording of completed training programs or modules and how log in and log out times and dates are recorded for employees using any form of training, including online training
- 4.2 The FWO will provide feedback on the system and processes as provided by Chemist Warehouse to facilitate compliance.
- 4.3 Upon request, the FWO will discuss and provide the FWO view on workplace relations queries that may arise from time to time throughout Chemist Warehouse operations.

5. Payment and payroll records

- 5.1 Chemist Warehouse will continue to ensure that the payroll system specifies minimum rates of pay for all Employees which, at a minimum, are consistent with applicable Commonwealth Workplace Laws and Fair Work Instruments.
- 5.2 Chemist Warehouse will continue to require that all payments to all Employees are made by electronic funds transfer, rather than by cash.
- 5.3 Chemist Warehouse will continue to use best endeavours to ensure that all Employees are able to access electronic copies of their pay slips, where one is provided, within one working day of payment. This requirement is additional to the provision of payslips to an Employee by any other means requested by the Employee, for instance, by post.

6. Auditing and reporting to the FWO

External Auditing

- 6.1 Chemist Warehouse will, at its own expense, and as agreed to by the FWO, engage an independent external accounting professional, audit specialist or employment law specialist or combination of same, to conduct three audits (at 6 months, 18 months and 30 months following entry into this Deed) assessing compliance with Commonwealth Workplace Laws and applicable Fair Work Instruments within its operation. Each audit will cover a 4 week period chosen from the 3 months prior to the audit falling due. The 4 week period for each audit will be agreed between the FWO and Chemist Warehouse.
- 6.2 The first audit will consider a 10% sample of employee at all retail locations. The sample will primarily include pharmacy assistants but will also contain some different classifications and employment types.
- 6.3 The second audit will also consider a 10% sample of employees at all retail locations. It will include 50% of the original 10% sample (5%) from the first audit.
- 6.4 The third audit will revisit the other 50% of the original 10% sample (5%) from the first two audits to ensure ongoing compliance with Commonwealth Workplace Laws and

applicable Fair Work Instruments. The total number of employees in the audit will be 5% of employees at all retail locations.

- 6.5 Each audit will assess, at a minimum, compliance with Commonwealth Workplace Laws and Fair Work Instruments, with particular regard to classification and status of employees, accuracy and consistency of employee records and payment of correct minimum ordinary hourly rates, loadings, allowances and penalty rates, leave and termination payments. Each audit will also review attendance at training and/or log in and log out times for online training, determine the time spent in training by each employee and determine if the employee was paid at the correct rate for their classification for all time spent in training during the period.
- 6.6 Each audit will be completed by Chemist Warehouse within a reasonable period of no more than 3 months after the audit falls due.
- 6.7 Within 1 month after the completion of each audit, Chemist Warehouse will provide a report to the FWO detailing the scope and methodology of the audit, summarising the audit findings, and the steps taken to rectify any identified contraventions.
- 6.8 Chemist Warehouse will retain all materials relied on for the purposes of auditing for a period of 6 years and on the request, produce these materials to the FWO.

Internal Auditing and Risk Analysis

- 6.9 In addition to the external auditing, Chemist Warehouse will continue to establish processes for identifying and investigating stores for Serious Non-Compliance. Where potential Serious Non-Compliance is identified in stores, Chemist Warehouse will undertake additional investigation into these stores.
- 6.10 Chemist Warehouse will appoint a Senior Manager to have responsibility for internal auditing of time and payroll data, to oversee the identification and investigation of irregularities which may indicate compliance risks.
- 6.11 The Senior Manager will table a report to the Chemist Warehouse board and senior management at least every 6 months outlining their findings on these issues.
- 6.12 Chemist Warehouse will maintain the Senior Manager reports and will record steps taken by Chemist Warehouse to respond to any issues identified therein, including investigation of possible or actual Serious Non-Compliance and stores where compliance risks have been identified.
- 6.13 Chemist Warehouse will, on a six monthly basis, report to the FWO the names and titles of the Senior Manager and other Chemist Warehouse employees who are responsible for undertaking any auditing functions, including checking and analysing time and payroll data and conducting in-store audits.
- 6.14 In addition to the audit findings reports referred to in clause 6.7 above, Chemist Warehouse will advise the FWO those stores where Serious Non-Compliance has been identified, state the nature of the Serious Non-Compliance, and the steps taken by Chemist Warehouse to address the non-compliance.
- 6.15 The FWO reserves the right to investigate any allegations of Serious Non-compliance received by the FWO or referred to the FWO by Chemist Warehouse.

7. Reporting of non-compliance with workplace legislation

- 7.1 Chemist Warehouse will, at its own expense, establish and maintain a dedicated telephone hotline and email account service to ensure that all Employees, or any person acting on behalf of Employees, may make enquiries, lodge complaints or report potential non-compliance with workplace laws, including underpayment of wages, at Chemist Warehouse Franchises. The hotline must have the capacity to receive, respond to and manage complaints made anonymously.
- 7.2 At a minimum the hotline must be available between the hours of 8:00 am to 5:00 pm, from Monday to Friday. Chemist Warehouse will provide all Employees with details of the hotline upon commencing work at a Franchise, and details of the hotline will be published on Chemist Warehouse's public website.
- 7.3 Chemist Warehouse will engage an HR Specialist with responsibility for overseeing the hotline and managing responses to all enquiries received through the hotline. The HR Specialist must provide a written quarterly report to Chemist Warehouse's board informing them of any enquiries, complaints and grievances as referred to above (but subject to the constraints of any confidentiality which the HR Specialist may have been required to observe at the request of the person enquiring).
- 7.4 Chemist Warehouse undertakes to:
- (a) investigate and resolve any complaint received through the hotline, directly from or on behalf of an Employee, or from the HR Specialist, within 21 days of receipt of each complaint;
 - (b) where complaints are received on an anonymous basis, investigate the payroll and record keeping practices of the Franchise identified and require the Franchisee to rectify any non-compliance identified; and
 - (c) on a quarterly basis, notify the FWO of all enquiries, complaints and grievances received within that quarter, and provide information describing the complaints made, the investigations undertaken, the information relied on to conduct the investigation and the steps taken to rectify the conduct if appropriate, noting that the FWO reserves its rights to separately investigate any such complaint.

8. Workplace enquiries made to the Fair Work Ombudsman

- 8.1 If the FWO receives a workplace enquiry regarding Chemist Warehouse or one of its franchisees, and the person making the enquiry has not previously raised the issue directly with Chemist Warehouse, the FWO will refer the person to the Chemist Warehouse Employee Liaison Officer or Contact Person.
- 8.2 If the person making the enquiry has previously contacted Chemist Warehouse with the same enquiry and believes the issue was not resolved, the FWO will aim to assist.

9. Requests for Assistance made to the Fair Work Ombudsman

FWO Referrals

- 9.1 The FWO will notify Chemist Warehouse within 7 days of each request for assistance received by an employee or former employee and provide details of the alleged non-compliance.
- 9.2 The FWO will provide a nominated contact person for dealing with these matters.
- 9.3 The FWO will provide a template to Chemist Warehouse to be used in reporting back to the FWO on the outcome of each request for assistance.

Self-Resolution by Chemist Warehouse

- 9.4 Chemist Warehouse will attempt to resolve any matters raised in the request for assistance, including for any similarly affected employees, and rectify any identified underpayments, as well as any other issues identified by the FWO or Chemist Warehouse, within 28 days of notification by the FWO.
- 9.5 Within 7 days of resolving the matter, Chemist Warehouse will provide the FWO with evidence that the matter has been resolved and any identified underpayments and any other issues identified by the FWO or Chemist Warehouse, including to any similarly affected employees, have been rectified.
- 9.6 Where the matter cannot be resolved by agreement between Chemist Warehouse and the employee or former employee within 28 days of notification by the FWO, Chemist Warehouse will provide the FWO with a written report addressing the reasons why the matter could not be resolved between the parties and the steps taken to resolve the matter. The report is to be provided to the FWO within 7 days after the expiry of the 28 days from notification by the FWO.

Self-resolution as a Franchisor

- 9.7 Chemist Warehouse will help the franchisee to resolve the request for assistance, including for any similarly affected employees, and rectify any identified underpayments and any other issues identified by the FWO or Chemist Warehouse, within 28 days of notification by the FWO.
- 9.8 Within 7 days of resolving the matter, Chemist Warehouse will provide the FWO with evidence that the matter has been resolved and any identified underpayments and other issues identified by the FWO or Chemist Warehouse, including to any similarly affected employees, have been rectified.

- 9.9 Where the matter cannot be resolved by agreement between the franchisee and the employee or former employee within 28 days of notification by the FWO, Chemist Warehouse will provide the FWO with a written report addressing the reasons why the matter could not be resolved between the parties and the steps taken to resolve the matter. The completed report is to be provided to the FWO no later than 7 days after the expiry of the 28 days from notification by the FWO.

10. Rectification of Underpayments

- 10.1 Where an Underpayment in respect of work performed by an Employee of a franchisee has been substantiated to the reasonable satisfaction of Chemist Warehouse or the FWO, Chemist Warehouse must:
- (a) require the Franchisee who employs the Employee to rectify any Underpayment to that Employee within 30 days.

11. Workplace relations training

- 11.1 Chemist Warehouse will, at its own expense, engage a HR Specialist (in consultation and approved by the FWO) to design and implement or review, within 3 months of entry into this Deed:
- (a) an ongoing workplace relations training program for Employees, to ensure that all current and new Employees engaged in the stores are made aware of their rights and entitlements; and
 - (b) an ongoing workplace relations and human resources training program to ensure that all of its directors, officers, managers, and all persons who have a supervising role or management responsibility in its stores, are aware of their obligations and the rights and entitlements owed to all Employees engaged in Chemist Warehouse stores.
- 11.2 The training program to be delivered to Employees and reviewed by the HR Specialist will include, at a minimum, information in respect of:
- (a) Rights and obligations under the FW Act, the FW Regulations and applicable industrial instruments including the *Pharmacy Industry Award 2010*;
 - (b) the existence of the Employee hotline service;
 - (c) how to provide information to Chemist Warehouse and the FWO anonymously;
 - (d) in-store training and entitlements to be paid during training;
 - (e) deductions from or repayment of wages and prohibitions on requirements to spend wages in the FW Act;
 - (f) Employee options for recording their hours of work; and

(g) employer obligations in respect of compliance with visa requirements and workplace laws.

11.3 Within 6 months of receiving the HR Specialist's recommendations, Chemist Warehouse will implement all recommendations to its existing training programs or such other recommendations which the HR Specialist may make in the course of the review. Chemist Warehouse will also ensure ongoing periodic updates to its programs to ensure alignment with relevant Commonwealth workplace laws.

FWO Support

11.4 The FWO will make available to Chemist Warehouse appropriate workplace relations training materials that Chemist Warehouse can use as a resource. The FWO will not be responsible for any errors that occur as a result of Chemist Warehouse altering the materials.

11.5 The FWO will, upon request, provide assistance to Chemist Warehouse staff accessing the FWO on-line learning modules.

12. Engagement of Franchisees

12.1 Chemist Warehouse will take reasonable steps to ensure that each Franchisee:

(a) signs a compliance commitment document in which the Franchisee:

(i) certifies that its directors, officers and managers understand their obligations to comply with Commonwealth Workplace Laws; and

(ii) requires the Franchisee to rectify any substantiated underpayment within 30 days of being notified of the underpayment by Chemist Warehouse.

12.2 Chemist Warehouse will ensure that its Franchise Agreements with each Franchisee include express terms to the effect that Chemist Warehouse and the Franchisee are both responsible for ensuring compliance with Commonwealth Workplace Laws and Fair Work Instruments in respect of all workers engaged by or through the Franchisee in a Chemist Warehouse store.

13. Reporting

13.1 After each year from the commencement of the Deed (**the reporting period**), Chemist Warehouse will prepare an annual report that will be provided to the FWO addressing the following matters:

(a) the actions taken by Chemist Warehouse to address the requirements of the Deed;

(b) a summary of the outcomes of any requests for assistance referred;

(c) a review of the systems and processes in place with an evaluation on their effectiveness of promoting compliance of workplace laws;

- (d) an analysis of the various workplace relations issues that presented during the first year of the life of the Deed, including the responses to the same undertaken by Chemist Warehouse;
 - (e) the workplace relations training conducted for appropriate personnel including any proposed changes;
 - (f) a summary of the self-audit outcomes;
 - (g) any identified benefits from being involved in the compliance partnership; and
 - (h) any learnings from the compliance partnership.
- 13.2 Each report will provide to the FWO no later than 28 days after the completion of the reporting period.
- 13.3 The FWO may publish its own report regarding the Deed and will provide Chemist Warehouse with an opportunity to comment on the report. The FWO's report will reflect the positive engagement of Chemist Warehouse.

14. Meetings

- 14.1 To ensure a collaborative and meaningful ongoing compliance partnership, both the FWO and Chemist Warehouse agree to meet formally at least twice per annum. These meetings will be in person.
- 14.2 Meetings will include, but not be limited to, the following issues:
- (a) Progress and feedback on the requirements of and activities associated with implementing the terms of the Deed;
 - (b) Ongoing compliance relationship between the FWO and Chemist Warehouse;
 - (c) Number, nature and outcomes related to workplace enquiries and requests for assistance;
 - (d) Workplace compliance issues and steps taken by Chemist Warehouse to maintain and improve systems and processes to ensure compliance within its network;
 - (e) Self-audit process and outcomes.

15. Resources

- 15.1 Chemist Warehouse will commit all necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of the Deed.
- 15.2 Chemist Warehouse has identified in Schedule 1 to the Deed a single national contact person (Chemist Warehouse **Contact Person**) to whom all queries from the FWO which concern the implementation of the Deed, or any requests for assistance referred by the FWO, can be directed. Chemist Warehouse will notify the FWO in writing within 7 days of any change to Chemist Warehouse national contact person.
- 15.3 Chemist Warehouse will make available a specified person or persons to act as Chemist Warehouse Employee Liaison Officers for all queries from Chemist Warehouse employees, or employees of franchisees which concern the Self-Audit Process or any requests for assistance referred by the FWO.
- 15.4 The FWO will identify a single national contact person (the **FWO Contact Person**) whom all queries from Chemist Warehouse can be directed. The FWO will notify Chemist Warehouse in writing within 7 days of any change to the FWO national contact person.

16. Public Inspection

- 16.1 This Deed is a public document.
- 16.2 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 media releases in relation to this Deed; and
 - (d) from time to time, publicly refer to this Deed, including informing the public as to the status of this Deed.
- 16.3 The FWO agrees to provide Chemist Warehouse with 24 hours to view FWO's initial media release (Initial Media Release) announcing this Deed. The Initial Media Release will include a statement from Chemist Warehouse in relation to this Deed.
- (a) Chemist Warehouse requests any edits or amendments to the media release, the FWO will, in good faith, consider those requests.
 - (b) Chemist Warehouse agrees and acknowledges that if Chemist Warehouse makes any suggested edits or amendments to a media release, the FWO is under no obligation to accept any of them.
 - (c) The FWO will reflect the co-operation of Chemist Warehouse in entering into this Deed in the Initial Media Release.
 - (d) Nothing in this clause prevents the FWO from publishing fair and factual information relating to Chemist Warehouse

17. Commencement and period of this Deed

- 17.1 This Deed comes into effect on the date that this Deed is executed by Chemist Warehouse and the FWO.
- 17.2 This Deed and its obligations will continue for a period of 3 years from the date of execution of this Deed by both parties, except where obligations provide for longer periods as stated in this Deed.

18. Continuing obligations

- 16.1 The following clauses survive termination of this Deed for whatever reason (including termination by the FWO):
- (a) Clause 6 (Auditing and reporting to the FWO), to the extent that it enables the audit commencing 30 months after the execution of this deed to be completed); and
 - (b) Clause 20 (No Inconsistent Statements).

19. Termination by the FWO

- 19.1 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 Chemist Warehouse commits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.
- 19.2 The FWO will, in the case of any breach of this Deed by Chemist Warehouse, by notice in writing, require Chemist Warehouse to rectify the breach within a reasonable period of time.

20. No Inconsistent Statements

- 20.1 Chemist Warehouse:
- (a) must not; and
 - (b) must ensure that each of its officers, employees or agents do not; and
 - (c) must use all reasonable endeavours to ensure that each of its Franchisees, contractors and sub-contractors do not,

make any statement, orally, in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the acknowledgements made in this Deed.

21. Entire Agreement

- 21.1 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 Chemist Warehouse.

22. Construction

- 22.1 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.
- 22.2 Unless expressed to the contrary in this document:
 - (a) words in the singular include the plural and vice versa; and
 - (b) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

23. Severance

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.

24. Legally Binding

The terms of this document are intended to have immediate effect on all parties upon commencement of this Deed.

25. Counterparts

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

26. Notices

- 26.1 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 Chemist Warehouse 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 Chemist Warehouse, marked for the attention of Chemist Warehouse's Contact Person with the address indicated in Schedule 1 or as otherwise notified by Chemist Warehouse.
- 26.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.
- 26.3 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.

27. Costs

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.

28. Governing law

This Deed shall be construed in accordance with the laws for the time being of the State of Victoria and the parties hereby submit to the jurisdiction of the Courts of that State and the Courts empowered to hear appeals from the Courts of that State.

29. Independent Legal Advice

Chemist Warehouse acknowledges that:

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

30. Date of this Deed

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

31. Definitions and interpretation

In this Deed:

Chemist Warehouse means CW Retail Services Pty Ltd (ACN 606 509 791);

Chemist Warehouse 's Contact Person means the person nominated by Chemist Warehouse in Schedule 1 to this Deed, or any other person specified by Chemist Warehouse in writing and notified to the FWO;

Commonwealth means the Commonwealth of Australia, including, but not limited to where the context so admits, the Commonwealth as represented by the Office of the Fair Work Ombudsman or any successor, including, without limitation, the Fair Work Ombudsman;

Commonwealth Workplace Laws means:

- (e) the *Fair Work Act 2009* (Cth);
- (f) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth);
- (g) the *Fair Work Regulations 2009* (Cth); and
- (h) the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*;

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

Employee means a current or former employee employed by Chemist Warehouse or a Franchisee;

Employee Liaison Officer/s means any person nominated by Chemist Warehouse to answer workplace relations and other enquiries from employees and from franchisees and their employees;

Employing Entity includes a corporation, a partnership or a sole trader;

External Accounting Professional means an external accounting professional who holds a current membership in a professional accounting body and is independent from Chemist Warehouse and any Related Company;

Fair Work Instruments means:

- (a) a modern award;
- (b) an enterprise agreement;
- (c) a workplace determination;
- (d) a Fair Work Commission order;

Franchisee means a person or entity that has entered into a Franchise agreement with Chemist Warehouse.

Franchise means the stores that the Franchise agreement relates to.

FW Act means the *Fair Work Act 2009* (Cth);

FWO means the Fair Work Ombudsman;

FW Regulations means the *Fair Work Regulations 2009* (Cth);

HR Specialist means a person suitably trained and qualified in human resource

management;

Request for Assistance means a request made to the Fair Work Ombudsman using a Request for Assistance – Workplace dispute form;

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

Serious Non-compliance means:

- (a) a contravention of any of the general protection provisions contained in Part 3-1 of the FW Act;
- (b) multiple or deliberate contraventions of an employer's record keeping obligations in relation to employee records contained in Part 3-6 Division 3 of the FW Act and the FW Regulations;
- (c) one or more contraventions giving rise to significant Underpayments (upwards of \$5,000 in total (not per Employee))
- (d) any contravention of sections 323 or 325 of the FW Act relating to unreasonable deductions from wages or an unreasonable requirement to spend, or any other allegation that employees are required to repay a portion of their wages, however structured;
- (e) a failure to comply with a notice to produce or compliance notice issued by a Fair Work Inspector under sections 712 or 716 of the FW Act; or
- (f) such other provision of the FW Act as enacted or amended from time to time and advised by the FWO to Chemist Warehouse in writing, during the period of this Deed;

Underpayments means any underpayment or non-payment of wages or entitlements owing to an Employee to the extent there is a shortfall to the minimum prescribed in accordance with Commonwealth Workplace Laws or Fair Work Instruments (including underpayment or non-payment of overtime and penalty rates) in relation to all periods worked prior to or during the period of this Deed which has been identified, substantiated and quantified.

EXECUTED AS A DEED

EXECUTED BY CW RETAIL SERVICES PTY LTD in accordance with section 127(1) of the *Corporations Act 2001* (Cth)



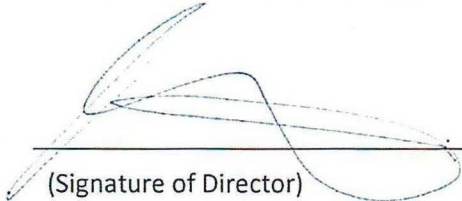
(Signature of Director/Secretary)

MARIELLO VERROCCHI

(Name of Director/Secretary)

15- NOV - 2016

(Date)



(Signature of Director)

Damien Gance
C/- Building F

(Name of Director)
14-34 Haglan Street
Preston VIC 3072

15 NOV 2016

(Date)

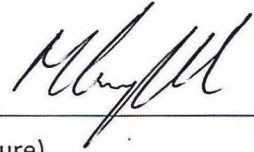
SIGNED FOR and on behalf of the COMMONWEALTH OF AUSTRALIA as represented by the Office of the Fair Work Ombudsman

MICHAEL CAMPBELL

(Printed Name)

DEPUTY FAIR WORK OMBUDSMAN

(Title)



(Signature)

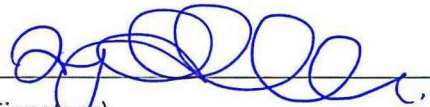
24/11/2016

(Date)

In the presence of:

Lynda McAlear-Smith

(Name of witness in full)



(Signature)