

# Deacons

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Attention: Tess Macrae

Our Ref: 2655848

Dear Ms Macrae

### Third Line Forcing Notification N93718 lodged by PoolWerx Corporation Pty Ltd

We refer to Dr Richard Chadwick's letter dated 24 December 2008.

We have been instructed to respond to your questions as follows.

1. ***Please provide full details of the rebates received, or proposed to be received, by PoolWerx from each approved supplier.***

The amount of the rebates received by PoolWerx Corporation Pty Ltd (**PoolWerx**) will vary depending upon the commercial arrangements that have been agreed between PoolWerx and the relevant suppliers. However, generally rebates are in the range of 1% to 10% of the purchase price depending on the volume of products purchased. As disclosed in PoolWerx's Disclosure Document, the majority of rebates are remitted to the marketing fund.

2. ***Does PoolWerx provide information to franchisees about rebates received beyond the acknowledgement in clause 11 of its franchise agreement? Specifically, are franchisees informed of the level of rebates received by PoolWerx in relation to specific products franchisees are required to purchase from approved suppliers?***

Franchisees are not specifically informed of the level of rebates received by PoolWerx in relation to specific products franchisees are required to purchase from approved suppliers. This is common in franchise networks and disclosure of the amount of the rebate is not required under the *Franchising Code of Conduct*. The additional information disclosed to franchisees by PoolWerx in relation to rebates is the information required to be disclosed in its Disclosure Document pursuant to clause 9.1(j) of Annexure 1 of the *Franchising Code of Conduct*.

3. ***PoolWerx has provided details of the range of factors it has regard to in selecting approved suppliers. Please provide further details of the process***



***by which approved suppliers are selected. For example, does PoolWerx identify and approach suppliers it considers may be appropriate, and are opportunities to become an approved supplier made known to a range of potential suppliers such as through a tender process?***

PoolWerx operates nationally in every state in Australia. Invitations are made to suppliers each year (subject to contract availability – some contracts extend more than 1 year) to tender for the supply of products to PoolWerx franchise group. Opportunities are made known to a range of suppliers who meet PoolWerx's selection criteria, including in particular whether the suppliers have the capacity to supply a national distribution network like PoolWerx and at the same time provide the necessary customer support and training. PoolWerx will then conduct a detailed interview with the relevant supplier and assess whether the supplier satisfies PoolWerx's selection criteria.

4. ***Please advise how the level of rebates payable by suppliers is determined. For example, are higher levels of rebates paid where a supplier is appointed as the exclusive supplier of a good or service?***

The level of rebates payable by suppliers to PoolWerx are determined by a range of factors, including, whether the supply arrangements are exclusive or non-exclusive, the length of the term of the supply contract, the potential costs savings of the supply arrangements available to the supplier, the volume of products likely to be purchased from the supply and many other factors.

Typically, higher levels of rebates are paid for higher purchase volumes, exclusive supply arrangements and where the supply arrangements are likely to result in potential costs savings for the supplier.

5. ***I note that approved suppliers could potentially increase the price of relevant products to PoolWerx franchisees to recover, in part or full, the cost of the rebate. Does PoolWerx have a view on the effect of requiring approved suppliers to pay a rebate to PoolWerx on the cost at which relevant products are supplied to franchisees?***

Generally, the mechanism of pricing to franchisees is based on the supplier's recommended price list or trade list less an agreed discount structure.

The suppliers must give PoolWerx at least 1 month's written notice prior to any pricing changes becoming effective. PoolWerx also endeavours to agree with its approved suppliers that the pricing arrangements are to remain at "best buy" levels. Given that PoolWerx tries to secure a fixed price and a marketplace "best buy" price for franchisees, in PoolWerx's opinion this gives a consistent platform to keep pricing at a "best buy" level and limit any skimming from a supplier's point of view.

6. ***PoolWerx states that it reviews all approved supply arrangements on a national basis quarterly and on a state basis monthly. Please advise whether the price at which products are supplied to franchisees, compared, for example, to the prices available for equivalent products from alternative suppliers, is considered as part of these reviews.***

During the reviews of the approved supplier arrangements various aspects of those arrangements are reviewed, including the status of the business relationship between the parties, operational issues, purchasing volumes, recommendations as to how franchisee service levels can be approved and where there is a specific issue in relation to pricing, pricing issues.

A review of product pricing in the marketplace by alternative suppliers does not generally occur except if a specific issue has been raised by franchisees in relation to pricing.

7. ***Please confirm whether the vehicle requirement will apply to existing franchisees that must use a vehicle in connection with their franchise business, when they renew their agreement. If the vehicle requirement does apply to existing franchisees renewing their agreements, how and when are existing franchisees made aware of this requirement, and what considerations is given to franchisees' existing vehicle arrangements in enforcing this requirement? For example, would a franchisee that has recently purchased a new vehicle that is not of the make and model specified by PoolWerx, either because they were not aware of the requirement to purchase the specified vehicle on renewal of their agreement at the time of purchase, or because a different make and model of vehicle, or no make or model of vehicle, was specified at the time of purchase, still be required to purchase the specified vehicle?***

The age and condition of the vehicle are a key part of the review process when a franchise is being renewed. PoolWerx works with individual franchisees to make recommendations regarding the condition of their vehicle and recommendations as to a timetable for upgrading or switching to a new vehicle. To date, PoolWerx has not enforced these provisions as it is mindful of the fact that all franchisees may not be in a position to afford a new vehicle. Accordingly, concessions are often given that late model second hand vehicles may be used instead of new vehicles. PoolWerx takes the view of educating its franchisees of its requirements for the future rather than strictly enforcing the provisions of the franchise agreement after the event.

A franchisee that has recently purchased a new vehicle that is not of the make and model specified by PoolWerx, either because they were not aware of the requirement to purchase the specified vehicle on renewal of their agreement at the time of purchase, or because a different make and model of vehicle, or no make or model of vehicle, was specified at the time of purchase, would not be forced to purchase the specified vehicle immediately.

Yours faithfully



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