

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application Starting a Representative Proceeding under Part IVA
Federal Court of Australia Act 1976 - Form 19 - Rule 9.32

Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)

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File Number: VID15/2026

File Title: ALEXANDER WILDING v COLES SUPERMARKETS AUSTRALIA PTY
LTD

Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Reason for Listing: To Be Advised

Time and date for hearing: To Be Advised

Place: To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

**Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976**

No. VID of 2025

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

Alexander Wilding

Applicant

Coles Supermarkets Australia Pty Ltd

Respondent

To the Respondent -

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

The Court ordered that the time for serving this application be abridged to

Date:

.....
Signed by an officer acting with the authority of
the District Registrar

Filed on behalf of The applicant, Alexander Wilding
Prepared by [REDACTED]
Law firm Shine Lawyers
Tel Fax
Email [REDACTED]
Address for service Level 6, 299 Elizabeth Street, Sydney, NSW 2000



Details of claim

On the grounds stated in the accompanying statement of claim, the Applicant claims on his own behalf and on behalf of Group Members (together and severally **Claimants**):

1. Pursuant to s 545 of the *Fair Work Act 2009 (Cth)* (**FW Act**), further or alternatively s 21 of the *Federal Court of Australia Act 1976 (Cth)* (**FCA Act**):
 - (a) a declaration that the Respondent –
 - (i) contravened cl 8.6.1 of the *Coles Supermarkets Enterprise Agreement 2017* (**Coles Agreement**) by failing, in relation to employees based in South Australia, to pay –
 - A. full-time and part-time employees at the rate of 225%; and
 - B. casual employees at the rate of 250%,
for ordinary hours worked on a Sunday; and
 - (ii) in the premises in (i) – contravened s 50 of the FW Act;
 - (b) a declaration that the Respondent –
 - (i) contravened cl 8.6.2 of the *Coles Agreement* by failing, in relation to employees based in South Australia who had agreed to –
 - A. take time off in lieu instead of receiving penalty rates for working ordinary hours on a Sunday – to give those employees time off in lieu equivalent to the penalty rates, and to pay those employees the balance of the time off in lieu that had not been taken after 4 weeks; or
 - B. be compensated for working ordinary hours on a Sunday by an additional day or additional time being added to their annual leave balances instead of receiving penalty rates – to add that day or time to those employees' annual leave balances; and
 - (ii) in the premises in (i) – contravened s 50 of the FW Act;
 - (c) a declaration that the Respondent –
 - (i) contravened cll 8.5.2 or 8.5.3 (as the case may be) of the *Coles Agreement* by failing, in relation to employees based in South Australia, to pay full-time and part-time employees at the rate of 250%, and casual employees at the rate of 275%, for overtime hours worked on a Sunday; and
 - (ii) in the premises in (i) – contravened s 50 of the FW Act;
 - (d) a declaration that the Respondent –



- (i) contravened cl 8.5.4 of the Coles Agreement by failing, in relation to employees based in South Australia who had agreed to take time off in lieu instead of payment for overtime hours worked on a Sunday, to give those employees that time off in lieu at the overtime equivalent, or pay those employees any balance of that overtime that had not been taken as time off in lieu at the earliest of:
 - A. the employee requesting payment for the overtime instead of taking the time off in lieu;
 - B. 6 months after the overtime was worked; or
 - C. the end of the employee's employment; and
- (ii) in the premises in (i) – contravened s 50 of the FW Act;
- (e) a declaration that the Respondent, in relation to employees based in South Australia –
 - (i) up to 30 September 2020 contravened cl 29.4 of the *General Retail Industry Award 2020 (Retail Award)* by failing to pay –
 - A. full-time and part-time employees at the rate of 225%, and
 - B. casual employees at the rate of 250%;
 for ordinary hours worked on a Sunday;
 - (ii) on and from 1 October 2020 contravened cl 22.1 of the Retail Award by failing to pay –
 - A. full-time and part-time employees at the rate of 225%, and
 - B. casual employees at the rate of 250%;
 for ordinary hours worked on a Sunday; and
 - (iii) in the premises in (i) and (ii) (as the case may be) – contravened s 45 of the FW Act;
- (f) a declaration that the Respondent –
 - (i) up to 30 September 2020 contravened cl 29.4 of the Retail Award by failing, in relation to full-time and part-time employees based in South Australia who had agreed to:
 - A. take time off in lieu instead of receiving payment for ordinary hours worked on a Sunday – to give those employees time off in lieu equivalent to the payment or pay those employees the balance of the time off in lieu that had not been taken after 28 days;
 - B. be compensated by an additional day or additional time being added to their annual leave balance instead of receiving payment for ordinary hours



- worked on a Sunday – to add that day or time to those employees' annual leave balances;
- (ii) on and from 1 October 2020 contravened cl 22.2 of the Retail Award by failing, in relation to full-time and part-time employees based in South Australia who had agreed to:
- A. take time off in lieu instead of receiving the additional 125% of the minimum rate for ordinary hours worked on a Sunday – to give those employees time off in lieu equivalent to the additional 125% of the minimum rate or pay those employees the balance of the time off in lieu that had not been taken after 28 days;
 - B. be compensated by an additional day or additional time being added to their annual leave balance instead of receiving the additional 125% of the minimum rate for ordinary hours worked on a Sunday – to add that day or time to those employees' annual leave balances; and
- (iii) in the premises in (i) and (ii) (as the case may be) – contravened s 45 of the FW Act;
- (g) a declaration that the Respondent, in relation to employees based in South Australia –
- (i) up to 30 September 2020 contravened cl 29.2 of the Retail Award by failing to pay –
 - A. full-time and part-time employees at the rate of 250%, and
 - B. casual employees at the rate of 275%,
 for overtime hours worked on a Sunday;
 - (ii) on and from 1 October 2020 contravened cl 21.2 of the Retail Award by failing to pay –
 - A. full-time and part-time employees at the rate of 250%, and
 - B. casual employees at the rate of 275%,
 for overtime hours worked on a Sunday; and
 - (iii) in the premises in (i) and (ii) (as the case may be) – contravened s 45 of the FW Act;
- (h) a declaration that the Respondent, in relation to employees based in South Australia who had agreed to take time off in lieu instead of payment for overtime hours worked on a Sunday –
- (i) up to 30 September 2020 contravened cl 29.3 of the Retail Award by failing to give such employees time off in lieu at the overtime equivalent, or pay those employees



any balance of that overtime that had not been taken as time off in lieu at the earliest of:

- A. the employee requesting to be paid for the overtime instead of taking the time off;
 - B. 6 months after the overtime was worked;
 - C. the end of the employee's employment;
- (ii) on and from 1 October 2020 contravened cl 21.3 of the Retail Award by failing to give such employees time off in lieu at the overtime equivalent, or pay those employees any balance of that overtime that had not been taken as time off in lieu at the earliest of:
- A. the employee requesting to be paid for the overtime instead of taking the time off;
 - B. 6 months after the overtime was worked;
 - C. the end of the employee's employment; and
- (iii) in the premises in (i) and (ii) (as the case may be) – contravened s 45 of the FW Act;
- (i) a declaration that the Respondent –
- (i) contravened s 89 of the FW Act by deducting the annual leave balances of full-time and part-time employees based in South Australia for work purposes, for paid annual leave taken on a Sunday; and
 - (ii) in the premises in (i) – contravened s 44 of the FW Act;
- (j) a declaration that the Respondent –
- (i) contravened s 98 of the FW Act by deducting the personal/carer's leave balances of full-time and part-time employees based in South Australia for work purposes, for paid personal/carer's leave taken on a Sunday; and
 - (ii) in the premises in (i) – contravened s 44 of the FW Act;
2. An order under s 545 of the FW Act that the Respondent pay compensation to the Applicant and Group Members in respect of the contraventions referred to in paragraph 1 hereof.
3. In the alternative to 2 above, an order under:
- (a) s 545 of the FW Act;
 - (b) s 33Z(1)(e) of the FCA Act; further or alternatively
 - (c) s 33Z(1)(f) of the FCA Act,



that the Respondent pay compensation to the Applicant and Group Members in amounts worked out in such manner as the Court specifies, alternatively in an aggregate amount.

4. An order under s 546 of the FW Act that the Respondent pay a pecuniary penalty for each contravention of the FW Act as may be found by the Court, with that penalty to be paid to the Applicant and Group Members in such sum or sums as may be determined by the Court.
5. Interest.
6. Such further or other orders as the Court considers appropriate.

Questions common to claims of group members

The questions of law or fact common to the claims of the Claimants are:

*(All defined terms have the same meaning as in the statement of claim (**Claim**))*

1. Whether the Coles Agreement applied to any and if so which of the Claimants.
2. Whether the Retail Award applied to any and if so which of the Claimants.
3. Whether, in the State of South Australia during the Claim Period, Sunday was a public holiday for the purposes of the FW Act.
4. Whether any and if so which of the Claimants were entitled, under the Coles Agreement, to be paid at the public holiday rates prescribed by that Agreement for work performed on Sundays.
5. Whether by the conduct pleaded in the Claim the Respondent contravened cll 8.6.1 or 8.6.2 of the Coles Agreement, and thereby s 50 of the FW Act.
6. Whether by the conduct pleaded in the Claim the Respondent contravened cll 8.5.2, 8.5.3 or 8.5.4 of the Coles Agreement, and thereby s 50 of the FW Act.
7. The appropriate means of measuring compensation in respect of any loss and damage suffered by Claimants or any of them resulting from the contraventions of the Coles Agreement.
8. Whether during the Claim Period Claimants were entitled, under the Retail Award, to be paid the public holiday rates prescribed by the Award for work performed on a Sunday.
9. Whether by the conduct pleaded in the Claim the Respondent contravened cl 29.4 (up to 30 September 2020) and cll 22.1 or 22.2 (on and from 1 October 2020) of the Retail Award, and thereby s 45 of the FW Act.
10. Whether by the conduct pleaded in the Claim the Respondent contravened cll 29.2 or 29.3 (up to 30 September 2020) and cll 21.2 or 21.3 (on and from 1 October 2020) of the Retail Award, and thereby s 45 of the FW Act.



11. The appropriate means of measuring compensation in respect of any loss and damage suffered by Claimants as a result of the contraventions of the Retail Award.
12. Whether the Claimants were entitled, under s 89 of the FW Act, to be taken to not be on paid annual leave on a Sunday, if the Claimants took paid annual leave on that Sunday.
13. Whether by the conduct pleaded in the Claim the Respondent contravened s 89 of the FW Act, and thereby s 44 of the FW Act.
14. Whether the Claimants were entitled, under 98 of the FW Act, to be taken to not be on paid personal/carer's leave on a Sunday, if the Claimants took paid personal/carer's leave on that Sunday.
15. Whether by the conduct pleaded in the Claim the Respondent contravened s 98 of the FW Act, and thereby s 44 of the FW Act.
16. The appropriate means of measuring compensation in respect of any loss and damage suffered by Claimants as a result of the contraventions of ss 89 and 98 of the FW Act.

Representative action

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976 (FCA Act)*.

The group members to whom this proceeding relates comprise all persons:

- (a) who in the period from 23 December 2019 to 31 December 2023 were employed by the Respondent;
- (b) to whom, in their employment in (a), the:
 - (i) *Coles Supermarkets Enterprise Agreement 2017*; and/or
 - (ii) *General Retail Industry Award 2020*, applied; and
- (c) who during their employment in (a) were based in South Australia for work purposes and:
 - (i) on one or more Sundays during the said employment performed work but were not paid at the public holiday rate(s) prescribed by the Coles Agreement or the Retail Award (as applicable) for that work; or
 - (ii) were employed on a full-time or part time basis and –
 1. took paid annual leave or paid personal/carer's leave on one or more such Sundays;
 2. were taken by the Respondent to be on paid annual leave or paid personal/carer's leave on the Sunday(s) referred to in (ii)(1); and
 3. by reason of (ii)(2), had their paid annual or paid personal/carer's leave balance deducted in relation to that period of leave.

Applicant's address

The Applicant's address for service is:

Place: Level 6, 299 Elizabeth Street, Sydney, NSW 2000

Email: [REDACTED]

The Applicant's address is Level 6, 299 Elizabeth Street, Sydney 2000.

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 23 December 2025

A handwritten signature in black ink, appearing to be 'V. [unclear]', written over a horizontal dotted line.

Signed by [REDACTED]
Lawyer for the Applicant