

## NOTICE OF FILING

### Details of Filing

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File Title: CALEB COOPER v WOOLWORTHS (SOUTH AUSTRALIA) PTY LTD  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*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.

**STATEMENT OF CLAIM**

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

No. VID of 2025

**Caleb Cooper**

Applicant

**Woolworths (South Australia) Pty Ltd**

Respondent

**A. THE PARTIES**

1. The applicant (**Mr Cooper**) is, and since around May 2019 has been:
  - (a) employed by the respondent (**Woolworths**) as a grocery team member on a part-time basis; and
  - (b) in his employment with Woolworths – a national system employee within the meaning of s 13 of the *Fair Work Act 2009* (Cth) (the **FW Act**).
  
2. Woolworths:
  - (a) is a body corporate capable of suing and being sued; and
  - (b) is, and at all material times was, in respect of its employment of Mr Cooper and the Group Members (defined below), a national system employer within the meaning of s 14 of the FW Act.
  
3. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by Mr Cooper on his own behalf and on behalf of all persons:
  - (a) who in the period from 4 December 2019 to 31 December 2023 (the **Claim Period**) were employed by Woolworths;
  - (b) to whom, in their employment in (a), the:
    - (i) *Woolworths Supermarkets Agreement 2018* (**Woolworths Agreement**);

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Filed on behalf of	The applicant, Caleb Cooper		
Prepared by	[REDACTED]		
Law firm	Shine Lawyers		
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- (ii) the *BIG W Stores Agreement 2019* (**BIG W Agreement**); and/or
  - (iii) *General Retail Industry Award 2020* (**Retail Award**),  
applied; and
- (c) who during their employment in (a):
- (i) were based in South Australia for work purposes;
  - (ii) on one or more Sundays during the said employment performed work but were not paid at the public holiday rate(s) prescribed by the Woolworths Agreement, the Big W Agreement or the Retail Award (as applicable) for that work; or
  - (iii) 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 Woolworths to be on paid annual leave or paid personal/carer's leave on the Sunday(s) referred to in (iii)(1);  
and
    3. by reason of (iii)(2), had their paid annual or paid personal/carer's leave balance deducted in relation to that period of leave,
- (the said persons being **Group Members**).

4. Immediately prior to the commencement of this proceeding, there were more than seven persons who have claims against Woolworths as described in this pleading.

## **B. WOOLWORTHS**

5. At all material times, Woolworths operated a business in South Australia in the general retail industry, within the meaning of the Retail Award.

### ***Particulars***

*Retail Award cll 3.1 (up to 30 September 2020) and 4.2 (on and from 1 October 2020).*

6. At all material times, Woolworths employed in South Australia persons:
- (a) engaged to perform the functions and duties set out at Appendix A of the Woolworths Agreement for:
    - (i) Retail Employee Levels 1 to 6;
    - (ii) Clerical Assistant Level 1;
    - (iii) Clerical Officer Levels 2 to 3;
    - (iv) Tradesperson Levels 4 to 5;

- (b) engaged to perform the functions and duties set out at Appendix A of the Big W Agreement for Store Team Member, Levels 1 to 6; and
  - (c) engaged to work in salaried positions to perform the functions and duties set out at Schedule A to the Retail Award (up to 30 September 2020) and Schedule B to the Retail Award (on and from 1 October 2020),
- (together and severally, **Woolworths Employees**).

**Particulars**

*The salaried positions in (c) included but were not limited to –*

1. *salaried Team Managers,*
2. *salaried Team Support,*
3. *salaried Duty Managers,*
4. *salaried Assistant Store Managers; and*
5. *salaried Store Managers.*

7. At all material times, the Woolworths Employees were national system employees in their employment with Woolworths.

**C. INDUSTRIAL LAWS AND INSTRUMENTS**

**C.1 Public holidays – *Fair Work Act***

8. At all material times, s 115(1) of the FW Act provided that:

**The public holidays**

- (1) The following are public holidays:
  - (a) each of these days:
    - (i) 1 January (New Year's Day);
    - (ii) 26 January (Australia Day);
    - (iii) Good Friday;
    - (iv) Easter Monday;
    - (v) 25 April (Anzac Day);
    - (vi) the holiday for the birthday of the Sovereign (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
    - (vii) 25 December (Christmas Day);
    - (viii) 26 December (Boxing Day);
  - (b) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a

public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.

9. At all material times, s 89(1) of the FW Act was in the following terms:

**Employee not taken to be on paid annual leave at certain times**

Public holidays

If the period during which an employee takes paid annual leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid annual leave on that public holiday.

10. At all material times, s 98(1) of the FW Act was in the following terms:

**Employee not taken to be on paid personal/carer's leave at certain times**

Public holidays

If the period during which an employee takes paid personal/carer's leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer's leave on that public holiday.

**C.2 Sunday were public holidays in SA – Holidays Act 1910 (SA)**

11. At all material times up to 31 December 2023, Sunday was a public holiday in South Australia for the purposes of the FW Act.

***Particulars***

*The Holidays Act 1910 (SA) (Holidays Act 1910) regulated public holidays in South Australia from 1910 to 31 December 2023.*

*Schedule 2 of the Holidays Act 1910 prescribed the dates that were public holidays in South Australia. The list in Schedule 2 included Sunday.*

12. National system employees who were based in South Australia for work purposes in the Claim Period:
- (a) who took paid annual leave during a period that included a Sunday were, in the premises in paragraphs 8, 9 and 11 above, taken not to be on paid annual leave on that Sunday; and

- (b) who took paid personal/carer's leave during a period that included a Sunday, were, in the premises in paragraphs 8, 10 and 11 above, taken not to be on paid personal/carer's leave on that Sunday.

### **C.3 2019 Woolworths Agreement**

13. On 7 January 2019, the Fair Work Commission approved the Woolworths Agreement.

#### **Particulars**

*Woolworths Supermarket Agreement 2018 [2019] FWCA 7.*

14. The Woolworths Agreement operated from 14 January 2019.
15. At all times during the Claim Period, the Woolworths Agreement covered and applied to:
- (a) Woolworths Employees employed in the Woolworths retail supermarket operations in the classifications described in cl 3.3 and Appendix A to the Woolworths Agreement (**Woolworths Agreement Employees**); and
  - (b) Woolworths in relation to the Woolworths Agreement Employees; and
  - (c) in the premises in (a) and (b) –
    - (i) Mr Cooper; and
    - (ii) some or all of the Group Members.
16. At all times during the Claim Period, cl 19.1(a) of the Woolworths Agreement provided that:
- a. In this Agreement, **public holiday** has the same meaning as in the NES.
17. At all times during the Claim Period, cll 10.2 to 10.5 and 10.7 of the Woolworths Agreement provided that:
- 10.2 Overtime for full-time team members**
- a. Full-time team members will be paid overtime rates for all hours worked outside of the rostering principles in clause 8.2, including for all hours worked:
    - i. in excess of 152 hours per 4-week roster cycle in accordance with the roster provisions of this Agreement;
    - ii. in excess of 19 days per 4-week cycle (for team members on a 19-start roster) or 20 days per 4-week cycle (for team members on a 20-start roster);
    - iii. in excess of 9 hours in one day unless the day is their permitted 11-hour day for the week;

- iv. outside the span of hours in clause 6.1.a, unless worked in accordance with clause 6.1.b.
- b. Clause 7.3 applies to hours worked without a 12-hour break between completion of work on one day and commencement of work on the next day.

### **10.3 Overtime for part-time team members**

- a. Part-time team members will be paid overtime rates for all hours worked outside of the rostering principles in clause 8.3, including for all hours worked:
  - i. In excess of 144 hours per 4-week roster cycle in accordance with the roster provisions of this Agreement;
  - ii. In excess of 9 hours in one day unless the day is their permitted 11-hour day for the week;
  - iii. In excess of 38 hours in any one week;
  - iv. Outside the span of hours in clause 6.1.a, unless worked in accordance with clause 6.1.b;
  - v. In excess of a team member's contract hours except as provided for in clause 8.4 (flex-up).
- b. Clause 7.3 applies to hours worked without a 12-hour break between completion of work on one day and commencement of work on the next day.

### **10.4 Overtime for casual team members**

- a. Casual team members will be paid overtime rates for all hours worked:
  - i. in excess of 38 ordinary hours per week or, where the casual team member works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle;
  - ii. in excess of 9 hours in one day unless the day is their permitted 11-hour day for the week;
  - iii. outside the span of hours in clause 6.1.a, unless worked in accordance with clause 6.1.b.
- b. Clause 7.3 applies to hours worked without a 12-hour break between completion of work on one day and commencement of work on the next day.

### 10.5 Overtime rates of pay

- a. Overtime is calculated on a daily basis. Overtime rates are as follows:

<b>Full-time and part-time team members</b>		
<b>Day</b>	<b>First 3 hours of overtime % of ordinary rate</b>	<b>Subsequent hours of overtime % of ordinary rate</b>
Monday to Saturday inclusive	150%	200%
Sunday	200%	200%
Public Holidays	250%	250%

<b>Casual team members (includes Casual Loading)</b>		
<b>Day</b>	<b>First 3 hours of overtime % of ordinary rate</b>	<b>Subsequent hours of overtime % of ordinary rate</b>
Monday to Saturday inclusive	175%	225%
Sunday	225%	225%
Public Holidays	275%	275%

### 10.7 Time off in lieu of overtime (TOIL)

- a. A team member can elect, with the agreement of Woolworths, to take time off in lieu (**TOIL**) of payment for overtime.
- b. The period of TOIL the team member can take will be taken at the overtime equivalent. For example, if a team member worked 1 hour of overtime on a weekday, the overtime payment would have been 150% of the ordinary rate – equivalent to 1.5 hours of ordinary work. Therefore, the team member gets 1.5 hours of TOIL for 1 hour of overtime worked.
- c. The TOIL must be taken within 6 months after the overtime is worked at a time or times agreed by the team member and Woolworths. If the TOIL has not been taken within 6 months of the overtime being worked, Woolworths will pay the TOIL to the team member.
- d. The team member can request, at any time after reaching an agreement to take TOIL, to be paid the TOIL instead.
- e. If a team member has a TOIL balance at the time of the end of their employment with Woolworths, the TOIL must be paid to the team member as part of their termination payments.

- f. Each period of overtime worked will “stand alone” and the team member can opt to take the overtime payment or TOIL on each separate occasion as they so choose, provided the choice is promptly communicated to Woolworths in writing.

18. At all times during the Claim Period, cl 19.1(f) of the Woolworths Agreement provided that:

**19.1 Working or not working on public holidays**

...

- f. Depending on whether a team member works on a public holiday or not, the following entitlements will apply:

	<b>If the team member WORKS on the public holiday</b>	<b>If the team member is ABSENT on the public holiday:</b>
<b>Full-time or part-time team member whose standard roster WOULD include the public holiday as a working day:</b>	Hours worked are paid at public holiday penalty rates  OR team member can request TOIL or an equivalent day of annual leave instead	Day off is paid at ordinary base rate of pay for the rostered working day as per the team member's standard roster (without penalty rates or loadings)
<b>Full-time or part-time team member whose standard roster would NOT include the public holiday as a working day:</b>	Hours worked are paid at public holiday penalty rates  OR team member can request TOIL or an equivalent day of annual leave instead	Unpaid
<b>Casual team member (does not have a standard roster)</b>	Hours worked are paid at public holiday penalty rates	Unpaid

19. At all times during the Claim Period, cl 19.2(a) of the Woolworths Agreement provided that:

**19.2 Public holiday penalty rates**

- a. The following penalty rates apply for hours worked on public holidays:

<b>Team member</b>	<b>Public Holiday Pay Rate</b>
Full-time and part-time team members	Base rate + 125%
Casual team members	Base rate + 150% (inclusive of casual loading)

20. At all times during the Claim Period, cl 19.3 of the Woolworths Agreement provided that:

**19.3 Time off in lieu (TOIL)**

- a. By mutual agreement between Woolworths and a part-time or full-time team member, instead of receiving penalty rates for working on a public holiday, the team member can be compensated for working a particular public holiday by either:
  - i. An equivalent day or equivalent time off in lieu without loss of pay. The time off must be taken within 28 days of the public holiday occurring or it will be paid out; or
  - ii. An additional day or equivalent time added to their annual leave balance.
- b. The team member and Woolworths are entitled to agree a new choice of payment or time off by agreement on each occasion work is performed on a public holiday. If no agreement can be reached on the method of compensation, the default arrangement shall be the payment of penalty rates.

21. By reason of the matters alleged at paragraphs 16 to 20 above, at all times during the Claim Period the Woolworths Agreement provided that Woolworths was required to:

- (a) for hours, other than overtime hours, worked on a Sunday by full-time and part-time employees:
  - (i) pay the employee 225% of their base rate (cll 19.1(f) and 19.2); or
  - (ii) if the employee had agreed to take TOIL instead of receiving penalty rates –
    1. give the employee TOIL at the penalty rate equivalent; or
    2. pay the employee the balance of the TOIL that had not been taken after 28 days (cl 19.3); or
  - (iii) if the employee had agreed to be compensated by an additional day or additional time being added to their annual leave balance, instead of receiving penalty rates – add that day or time to the employee’s annual leave balance (cl 19.3);

- (b) for hours, other than overtime hours, worked on a Sunday by casual employees, pay the employee 250% of their base rate (cll 19.1(f) and 19.2); and
- (c) for overtime hours worked on a Sunday:
  - (i) by full-time and part-time employees, pay the employee 250% of their base rate (cll 10.2 and 10.3 (as the case may be) and 10.5);
  - (ii) by casual employees, pay the employee 275% of their base rate (cll 10.4 and 10.5); or
  - (iii) in the alternative to (i) and (ii) above, if the employee had agreed to take TOIL instead of payment for overtime, then give the employee that TOIL at the overtime equivalent, or pay the employee the balance of that overtime that had not been taken as TOIL at the earliest of:
    - 1. the employee requesting payment for the overtime instead of taking the TOIL;
    - 2. 6 months after the overtime was worked; or
    - 3. the end of the employee's employment with Woolworths (cl 10.7).

#### **C.4 BIG W Agreement**

22. On 17 September 2019, the Fair Work Commission approved the BIG W Agreement.

##### ***Particulars***

*BIGW Stores Agreement 2019 [2019] FWCA 6474.*

23. The Big W Agreement operated from 24 September 2019.
24. At all times during the Claim Period, the Big W Agreement covered and applied to:
- (a) Woolworths Employees employed in the retail operations of Woolworths trading as BIG W in the classifications described in cl 3.3 and Appendix A to the BIG W Agreement (**BIG W Agreement Employees**);
  - (b) Woolworths in relation to the BIG W Agreement Employees; and
  - (c) in the premises in (a)-(b), some or all of the Group Members.

25. At all times during the Claim Period, cll 9.2 to 9.4 of the Big W Agreement provided that:

**9.2 Overtime for full-time team members**

9.2.1 Full-time team members will be paid overtime rates for all hours worked outside of the rostering principles in clause 8.2, including for all hours worked:

- (a) in excess of 152 hours per 4-week roster cycle in accordance with the roster provisions of this Agreement;
- (b) in excess of 19 days per 4-week cycle (for team members on a 19-start roster) or 20 days per 4-week cycle (for team members on a 20-start roster);
- (c) in excess of 9 hours in one day, unless the day is their permitted 11-hour day for the week;
- (d) in excess of 38 hours in any one week;
- (e) outside the span of hours in clause 6.1.1, unless worked in accordance with clause 6.1.2.

9.2.2 Clause 7.3 applies to hours worked without a 12-hour break between completion of work on one day and commencement of work on the next day.

**9.3 Overtime for part-time team members**

9.3.1. Part-time team members will be paid overtime rates for all hours worked outside of the rostering principles in clause 8.3, including for all hours worked:

- (a) in excess of 144 hours per 4-week roster cycle in accordance with the roster provisions of this Agreement;
- (b) in excess of 9 hours in one day unless the day is their permitted 11-hour day for the week;
- (c) in excess of 38 hours in any one week;
- (d) outside the span of hours in clause 6.1.1, unless worked in accordance with clause 6.1.2;
- (e) in excess of a team member's contract hours except as provided for in clause 8.4.

9.3.2 Clause 7.3 applies to hours worked without a 12-hour break between completion of work on one day and commencement of work on the next day.

#### 9.4 Overtime for casual team members

9.4.1 Casual team members will be paid overtime rates for all hours worked outside of the rostering principles in clause 8.6, including for all hours worked:

- (a) in excess of 38 ordinary hours per week or, where the casual team member works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle;
- (b) in excess of 9 hours in one day unless the day is their permitted 11-hour day for the week;
- (c) outside the span of hours in clause 6.1.1, unless worked in accordance with clause 6.1.2.

9.4.2. Clause 7.3 applies to hours worked without a 12-hour break between completion of work on one day and commencement of work on the next day.

26. At all material times during the Claim Period, cl 9.5.1 of the BIG W Agreement provided that the rates of pay for working overtime on public holidays were:

First three hours of overtime		Subsequent hours of overtime	
Full time and part time team members	Casual team members (includes Casual Loading)	Full time and part time team members	Casual team members (includes Casual Loading)
250%	275%	250%	275%

27. At all times during the claim period, cl 9.7 of the BIG W Agreement provided that:

#### 9.7 Time Off In Lieu of overtime (TOIL)

9.7.1 A team member can elect, with the agreement of BIG W, to take time off in lieu (TOIL) of payment for overtime.

9.7.2 The period of TOIL the team member can take will be taken at the overtime equivalent. For example, if a team member worked 1 hour of overtime on a weekday, the overtime payment would have been 150% of the ordinary rate, equivalent to 1.5 hours of ordinary work. Therefore, the team member gets 1.5 hours of TOIL for 1 hour of overtime worked.

9.7.3 The TOIL must be taken within 6 months after the overtime is worked, at a time or times agreed by the team member and BIG W. If the TOIL has not

been taken within 6 months of the overtime being worked, BIG W will pay the TOIL to the team member.

9.7.4 The team member can request, at any time after reaching an agreement to take TOIL, to be paid the TOIL instead.

9.7.5 If a team member has a TOIL balance at the time of the end of their employment with BIG W, the TOIL must be paid to the team member as part of their termination payments.

9.7.6 Each period of overtime worked will “stand alone” and the team member can opt to take the overtime payment or TOIL on each separate occasion as they so choose, provided the choice is promptly communicated to BIG W in writing.

28. At all times during the Claim Period, cl 17.1.1 of the BIG W Agreement provided that:  
In this Agreement, public holiday has the same meaning as in the NES.

29. At all times during the Claim Period, cl 17.1.6 of the BIG W Agreement provided that, or to the effect that, depending on whether a team member works on a public holiday or not, the following entitlements will apply:

<b>Description</b>	<b>If the team member WORKS on the public holiday</b>	<b>If the team member is ABSENT on the public holiday:</b>
Full-time or part-time team member whose standard roster would include the public holiday as a working day:	Hours worked are paid at public holiday penalty rates  OR team member can request TOIL or an equivalent day of annual leave instead	Day off is paid at ordinary base rate of pay for the rostered working day as per the team member’s standard roster (without penalty rates or loadings)
Full-time or part-time team member whose standard roster would NOT include the public holiday as a working day:	Hours worked are paid at public holiday penalty rates  OR team member can request TOIL or an equivalent day of annual leave instead	Unpaid
Casual team member (does not have a standard roster)	Hours worked are paid at public holiday penalty rates	Unpaid

30. At all times during the Claim Period, cl 17.2 of the BIG W Agreement provided that:

**17.2 Public holiday penalty rates**

17.2.1 The following penalty rates apply for hours worked on public holidays:

<b>Team member</b>	<b>Public Holiday pay rate</b>
Full-time and part-time team members	Base rate + 125%
Casual team members	Base rate + 150% (inclusive of casual loading)

31. At all times during the Claim Period, cl 17.3 of the BIG W Agreement provided that:

**17.3 Time off in lieu (TOIL)**

17.3.1 By mutual agreement between BIG W and a part-time or full-time team member, instead of receiving penalty rates for working on a public holiday, the team member can be compensated for working a particular public holiday by either:

- (a) an equivalent day or equivalent time off in lieu without loss of pay. The time off must be taken within 4 weeks of the public holiday occurring or it will be paid out; or
- (b) an additional day or equivalent time added to their annual leave balance.

17.3.2 The team member and BIG W are entitled to agree a new choice of payment or time off by agreement on each occasion work is performed on a public holiday. If no agreement can be reached on the method of compensation, the default arrangement shall be the payment of public holiday penalty rates.

32. By reason of the matters alleged at paragraphs 22 to 31 above, at all times during the Claim Period the BIG W Agreement provided to the effect that Woolworths was required to:

- (a) for hours, other than overtime hours, worked on a Sunday by full-time and part-time employees:
  - (i) pay the employee 225% of their base rate (cl 17.2); or
  - (ii) if the employee had agreed to take TOIL instead of receiving penalty rates:
    - 1. give the employee TOIL at the penalty rate equivalent; or
    - 2. pay the employee the balance of the TOIL that had not been taken after 28 days (cl 17.3); or
  - (iii) if the employee had agreed to be compensated by an additional day or additional time being added to their annual leave balance, instead of receiving penalty rates – add that day or time to the employee’s annual leave balance (cl 17.3);

- (b) for hours, other than overtime hours, worked on a Sunday by casual employees, pay the employee 250% of their base rate (cl 17.2); and
- (c) for overtime hours worked on a Sunday:
  - (i) by full-time and part-time employees, pay the employee 250% of their base rate (cII 9.2 and 9.3 (as the case may be) and 9.5.1);
  - (ii) by casual employees, pay the employee 275% of their base rate (cII 9.4 and 9.5.1); or
  - (iii) in the alternative to (i) and (ii), if the employee had agreed to take TOIL instead of payment for overtime, then give the employee that TOIL at the overtime equivalent, or pay the employee the balance of that overtime that had not been taken as TOIL at the earliest of:
    1. the employee requesting to be paid for the overtime instead of taking the TOIL;
    2. 6 months after the overtime was worked; or
    3. the end of the employee's employment with Woolworths (cl 9.7).

## **C.5 Retail Award**

33. The Retail Award:
- (a) commenced operation on 1 January 2010;
  - (b) is, and at all material times was, a modern award within the meaning of s 45 of the FW Act; and
  - (c) was, until 30 September 2020, known as the *General Retail Industry Award 2010*.
34. At all material times, the Retail Award covered and applied to Woolworths Employees:
- (a) to whom the Woolworths Agreement and the Big W Agreement did not apply; and
  - (b) who were employed in the classifications listed in:
    - (i) up to 30 September 2020 – Schedule B to the Retail Award (in accordance with cl 16.1); and
    - (ii) on and from 1 October 2020 – Schedule A to the Retail Award (in accordance with cl 14.1),
- (Woolworths Award Employees)**
35. At all times during the Claim Period up to 30 September 2020, cl 34.1 of the Retail Award provided that:
- 34.1** Public holidays are provided for in the NES.

36. At all times during the Claim Period on and from 1 October 2020, cl 33.1 of the Retail Award provided that:

**33.1** Public holidays entitlements are provided for in the NES.

37. At all times during the Claim Period, the Retail Award provided that or to the effect that an employer was required to:

(a) for ordinary hours worked on a public holiday by full-time and part-time employees:

(i) pay the employee 225% of the employee's minimum rate of pay; or

(ii) up to 30 September 2020:

1. if the employee had agreed to take TOIL instead of receiving payment for the hours – give the employee TOIL equivalent to the payment or pay the employee the balance of the TOIL that had not been taken within 28 days of the hours having been worked; or

2. if the employee had agreed to be compensated by an additional day or additional time being added to their annual leave balance instead of receiving payment for the hours – add that day or time to the employee's annual leave balance; or

(iii) on and from 1 October 2020:

1. pay the employee the employee's minimum rate for the hours; and

2. if the employee had agreed to take TOIL instead of receiving the additional 125% of the minimum rate – give the employee TOIL equivalent to that 125% or pay the employee any balance of the TOIL that had not been taken within 28 days of the hours having been worked; or

3. if the employee had agreed to 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 – add that day or time to the employee's annual leave balance;

(b) for ordinary hours worked on a public holiday by casual employees – pay the employee 250% of the employee's minimum hourly rate of pay;

**Particulars**

As to (a) to (b) –

1. *cl 29.4(f) of the Retail Award up to 30 September 2020; and*
2. *cil 22.1 and 22.2 of the Retail Award on and from 1 October 2020.*

(c) for hours worked by a full-time employee on a public holiday:

(i) in excess of:

1. 9 hours on any one day (or 11 ordinary hours on 1 day per week if rostered by an employer);
2. an average of:
  - a. 38 hours per week;
  - b. 76 hours over 2 consecutive weeks;
  - c. 114 hours over 3 consecutive weeks; or
  - d. 152 hours over 4 consecutive weeks; and/or
3. 19 days per 4 week roster cycle; or

(ii) outside of the following spans of hours:

1. for establishments whose trading hours did not extend beyond 6:00pm on a Sunday, 9:00am to 6:00pm on Sunday;
2. for establishments whose trading hours did extend beyond 6:00pm on a Sunday, 9:00am to 11:00pm on Sunday,

((i) and (ii) being **full-time Award overtime hours**) –

pay the employee 250% of the employee's minimum hourly rate of pay;

**Particulars**

1. *Cil 29.2(a) and (d) (read with cil 27 and 28) up to 30 September 2020.*
2. *Cil 21.2(a) and (e) (read with cl 15) on and from 1 October 2020.*

(d) for hours worked by part-time employees on a public holiday, in excess of the hours agreed between the employer and the employee (**part-time Award overtime hours**) – pay the employee 250% of the employee's minimum hourly rate;

**Particulars**

1. *Cil 29.2(b) and (d) (read with cl 12.2 and 12.3) up to 30 September 2020.*
2. *Cil 21.2(b) and (e) (read with cil 10.5 and 10.6) on and from 1 October 2020.*

- (e) for hours worked by a casual employee on a public holiday:
- (i) in excess of 38 ordinary hours per week or, if the casual employee works in accordance with a roster, 38 hours averaged over the course of the roster cycle;
  - (ii) outside of the following spans of hours:
    - 1. for establishments whose trading hours did not extend beyond 6:00pm – 9:00am to 6:00pm on Sunday;
    - 2. for establishments whose trading hours did extend beyond 9:00pm on Monday to Friday or 6:00pm on Saturday or Sunday – 9:00am to 11:00pm on Sunday;
  - (iii) in excess of 11 hours on one day of the week and in excess of 9 hours on any other day of the week,
- ((i)-(iii) being **casual Award overtime hours**) – pay the employee 275% of the employee’s minimum hourly rate of pay.

**Particulars**

1. *CI 29.2(c) and (e) (read with cl 27.2) up to 30 September 2020.*
2. *CI 21.2(c) and (e) (read with cl 15) on and from 1 October 2020.*

- (f) in the alternative to (c) to (e), if the employee had agreed to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime – give the employee that TOIL at the overtime equivalent or pay the employee the balance of any such overtime not taken as TOIL, at the earliest of:
- (i) the employee requesting to be paid for the overtime instead of taking the TOIL;
  - (ii) 6 months after the overtime was worked; or
  - (iii) the termination of the employee’s employment; and

**Particulars**

1. *CI 29.3 up to 30 September 2020.*
2. *CI 21.3 on and from 1 October 2020.*

38. By reason of the matters in paragraphs 33 to 37 above, at all times during the Claim Period the Award provided that Woolworths was required to:

*(as to ordinary hours)*

(a) for ordinary hours worked on a Sunday by full-time or part-time Woolworths Award Employees:

- (i) pay 225% of their minimum hourly rate of pay; or
  - (ii) up to 30 September 2020:
    - 1. if the employee had agreed to take TOIL instead of receiving payment for the hours – give the employee TOIL equivalent to the payment that would have been made or pay the employee any balance of the TOIL that had not been taken within 28 days of the hours having been worked; or
    - 2. if the employee had agreed to be compensated by an additional day or additional time being added to their annual leave balance instead of receiving payment for the hours – add that day or time to the employee’s annual leave balance; and
  - (iii) on and from 1 October 2020:
    - 1. pay the employee the employee’s minimum rate for the hours; and
    - 2. if the employee had agreed to take TOIL instead of receiving the additional 125% of the minimum rate – give the employee TOIL equivalent to that 125% or pay the employee any balance of the TOIL that had not been taken within 28 days of the hours having been worked; or
    - 3. if the employee had agreed to 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 – add that day or time to the employee’s annual leave balance;
- (b) for ordinary hours worked on a Sunday by casual Woolworths Award Employees – pay 250% of the employee’s minimum rate of pay;

***Particulars***

*As to (a) and (b) -*

- i. cl 29.4(f) up to 30 September 2020; and*
- ii. cll 22.1 and 22.2 on and from 1 October 2020.*

*(as to overtime)*

- (c) for full-time Award overtime hours worked on a Sunday by full-time Woolworths Award Employees – pay 250% of the employee's minimum rate of pay;

**Particulars**

1. *Cll 29.2(a) and (d) (read with cll 27 and 28) up to 30 September 2020.*
2. *Cll 21.2(a) and (e) (read with cl 15) on and from 1 October 2020.*

- (d) for part-time Award overtime hours worked on a Sunday by part-time Woolworths Award Employees – pay 250% of the employee's minimum rate of pay;

**Particulars**

1. *Cl 29.2(b) and (d) (read with cll 12.2 and 12.3) up to 30 September 2020.*
2. *Cl 21.2(b) and (e) (read with cl 10.5, 10.6 and 10.11) on and from 1 October 2020.*

- (e) for casual Award overtime hours worked on a Sunday by casual Woolworths Award Employees – pay 275% of the employee's minimum rate of pay.

**Particulars**

1. *Cl 29.2(e) (read with cll 27.2 and 29.2(c)) up to 30 September 2020.*
2. *Cll 21.2(c) and (e) (read with cl 15) on and from 1 October 2020.*

- (f) in the alternative to (c) to (e), if the Woolworths Award Employee had agreed to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime – give the employee that TOIL at the overtime equivalent or pay the employee any balance of that overtime not taken as TOIL, at the earliest of:

- (i) the employee requesting to be paid for the overtime instead of taking the TOIL;
- (ii) 6 months after the overtime was worked; or
- (iii) the termination of the employee's employment;

**Particulars**

- Cl 29.3 up to 30 September 2020.*  
*Cl 21.3 on and from 1 October 2020.*

**D. CONTRAVENTIONS OF THE FW ACT – MR COOPER**

39. During his Woolworths Employment Mr Cooper was classified as a Retail Employee Level 1 under the Woolworths Agreement.

*Underpaid Sunday ordinary hours*

40. During the Claim Period:
- (a) Mr Cooper performed ordinary hours of work on Sundays;
  - (b) Woolworths failed to pay Mr Cooper 225% of his base rate for the hours in (a); and
  - (c) by reason of the matters in (b), Woolworths:
    - (i) contravened cl 19.1(f) of the Woolworths Agreement; and
    - (ii) thereby contravened s 50 of the FW Act.

***Particulars***

*Particulars of the hours of work performed by Mr Cooper on Sundays will be provided after discovery.*

*Deducted Sunday leave*

41. During the Claim Period:
- (a) from time to time, Mr Cooper took paid annual leave on Sundays;
  - (b) by reason of the matter alleged at paragraph 12 above, on each occasion that Mr Cooper took paid annual leave on a Sunday:
    - (i) he was taken not to be on paid annual leave on that Sunday; and
    - (ii) Woolworths was not authorised or permitted to deduct his annual leave balance in respect of that Sunday;
  - (c) Woolworths deducted Mr Cooper's annual leave balance when he took paid annual leave on Sundays; and
  - (d) by reason of the matters in the preceding sub-paragraph, Woolworths:
    - (i) contravened s 89 of the FW Act; and
    - (ii) thereby contravened s 44 of the FW Act.

***Particulars***

*Particulars of the dates on which Mr Cooper took paid annual leave on Sundays will be provided after discovery.*

42. During the Claim Period:
- (a) from time to time, Mr Cooper took paid personal leave on Sundays;
  - (b) by reason of the matters alleged at paragraph 12 above, on each occasion that Mr Cooper took paid personal leave on a Sunday:
    - (i) he was taken not to be on paid personal leave on that Sunday; and
    - (ii) Woolworths was not authorised or permitted to deduct his personal leave balance in respect of that Sunday;
  - (c) Woolworths deducted Mr Cooper's paid personal leave balance when he took paid personal leave on Sundays; and
  - (d) by reason of the matters in the preceding sub-paragraph, Woolworths:
    - (i) contravened s 98 of the FW Act; and
    - (ii) thereby contravened s 44 of the FW Act.

**Particulars**

*Particulars of the dates on which Mr Cooper took paid personal leave on Sundays will be provided after discovery.*

*Loss and damage*

43. By reason of the contraventions of the FW Act pleaded in this Section D, Mr Cooper suffered loss and damage.

**Particulars**

*Mr Cooper suffered –*

1. *loss of earnings consisting of the difference between the amounts that he was paid for working on Sundays and the amount that he was entitled to be paid under the Woolworths Agreement;*
2. *loss of his annual leave entitlement consisting of the amount of annual leave that he took on Sundays during the Claim Period and that was deducted by Woolworths from his annual leave balance;*
3. *loss of personal leave entitlement consisting of the amount of personal leave that he took on Sundays during the Claim Period and that was deducted by Woolworths from his personal leave balance. Further, on later dates Mr Cooper took unpaid personal leave because his balance of paid personal leave had been exhausted, and he suffered a loss of earnings on those dates; and*

4. *superannuation on those amounts, to the extent that superannuation was payable.*

*Further particulars may be provided after discovery.*

## **E. CONTRAVENTIONS OF THE FW ACT – GROUP MEMBERS**

### **E.1 Woolworths Agreement Employees**

#### *Underpaid Sunday ordinary hours*

44. During the Claim Period, some or all Woolworths Agreement Employees worked ordinary hours on one or more Sundays.

#### ***Particulars***

*Particulars of the hours worked by Woolworths Agreement Employees on Sundays will be provided following the trial of common questions or otherwise as the Court may direct.*

45. During the Claim Period, Woolworths did not, in respect of ordinary hours worked on a Sunday by Woolworths Agreement Employees who were employed as:

- (a) full-time or part-time employees:
  - (i) pay those employees 225% of their base rate; or
  - (ii) if the employee had agreed to take TOIL instead of receiving penalty rates –
    - 1. give the employee TOIL equivalent to the penalty rates; and
    - 2. pay the employee any balance of the TOIL that had not been taken after 28 days; or
  - (iii) if the employee had agreed to be compensated by an additional day or additional time being added to their annual leave balance, instead of receiving penalty rates – add that day or time to the employee’s annual leave balance; and
- (b) casual employees – pay those employees 250% of their base rate.

46. By reason of the matters in the preceding paragraph, Woolworths:

- (a) contravened cll 19.1(f) and/or 19.3 of the Woolworths Agreement (as the case may be); and
- (b) thereby contravened s 50 of the FW Act.

*Underpaid Sunday overtime*

47. During the Claim Period, some or all Woolworths Agreement Employees who were employed as:
- (a) full-time employees worked overtime hours in accordance with cl 10.2 of the Woolworths Agreement;
  - (b) part-time employees worked overtime hours in accordance with cl 10.3 of the Woolworths Agreement; and
  - (c) casual employees worked overtime hours in accordance with cl 10.4 of the Woolworths Agreement,
- on one or more Sundays.

***Particulars***

*Particulars of the hours worked by Woolworths Agreement Employees on Sundays will be provided following the trial of common questions or otherwise as the Court may direct.*

48. During the Claim Period, Woolworths did not, in respect of overtime hours performed on a Sunday by Woolworths Agreement Employees who were employed as:
- (a) full-time employees and part-time employees – pay those employees at 250% of their base rate;
  - (b) casual employees – pay those employees at 275% of their base rate; and
  - (c) in the alternative to (a) and (b), if any of those employees agreed to take TOIL instead of payment for overtime – give that employee that TOIL at the overtime equivalent, or pay the employee any balance of that overtime not taken as TOIL at the earliest of:
    - (i) the employee requesting payment for the overtime instead of taking the TOIL;
    - (ii) 6 months after the overtime was worked; or
    - (iii) the end of the employee's employment with Woolworths.
49. By reason of the matters in the preceding paragraph, Woolworths:
- (a) contravened cll 10.2, 10.3, 10.4 or cl 10.7 of the Woolworths Agreement (as the case may be); and
  - (b) thereby contravened s 50 of the FW Act.

*Loss and damage*

50. By reason of the contraventions pleaded in Section E.1 above, the Woolworths Agreement Employees suffered loss and damage.

**Particulars**

*The Woolworths Agreement Employees suffered –*

1. *loss of earnings consisting of the difference between the amounts that they were paid for working on Sundays and the amount that they were entitled to be paid under the Woolworths Agreement;*
2. *to the extent that any Woolworths Agreement Employee agreed to take TOIL instead of receiving penalty rates for working ordinary hours on a Sunday, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the amount they were entitled to be paid under the Woolworths Agreement for that work on a Sunday;*
3. *to the extent that any Woolworths Agreement Employee agreed to take TOIL instead of receiving penalty rates for working ordinary hours on a Sunday, but did not in fact take that TOIL, the difference between the amount they were paid out for that TOIL and the value of the time worked under the Woolworths Agreement for that Sunday;*
4. *to the extent that any Woolworths Agreement Employee agreed to be compensated for working ordinary hours on a Sunday by having an additional day or equivalent time added to their annual leave balance, the difference between the value of the leave that was added and the amount they were entitled to receive under the Woolworths Agreement for that work on a Sunday;*
5. *to the extent that any Woolworths Agreement Employee agreed to take TOIL instead of payment for overtime worked on a Sunday, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the amount they were entitled to be paid under the Woolworths Agreement for that overtime;*
6. *to the extent that any Woolworths Agreement Employee agreed to take TOIL instead of payment for overtime*

*worked on a Sunday, but did not in fact take that TOIL, the difference between the amount they were paid for that TOIL and the value of the overtime worked under the Woolworths Agreement; and*

7. *superannuation on those amounts, to the extent that superannuation was payable.*

*Further particulars may be provided following the initial trial.*

## **E.2 Big W Agreement Employees**

### *Underpaid Sunday ordinary hours*

51. During the Claim Period, some or all Big W Agreement Employees worked ordinary hours on one or more Sundays.

#### **Particulars**

*Particulars of the hours worked by Big W Agreement Employees on Sundays will be provided following the trial of common questions or otherwise as the Court may direct.*

52. During the Claim Period, Woolworths did not, in respect of ordinary hours worked on a Sunday by Big W Agreement Employees who were employed as:

- (a) full-time or part-time employees:
- (i) pay those employees 225% of their base rate; or
  - (ii) if the employee had agreed to take TOIL instead of receiving penalty rates –
    - 1. give the employee TOIL equivalent to the penalty rates; and
    - 2. pay the employee any balance of the TOIL that had not been taken after 28 days; or
  - (iii) if the employee had agreed to be compensated by an additional day or additional time being added to their annual leave balance, instead of receiving penalty rates – add that day or time to the employee's annual leave balance; and
- (b) casual employees, pay those employees 250% of their base rate.

53. By reason of the matters in the preceding paragraph Woolworths:

- (a) contravened cll 17.1.6 or 17.3 the Big W Agreement (as the case may be); and
- (b) thereby contravened s 50 of the FW Act.

*Underpaid Sunday overtime*

54. During the Claim Period, some or all Big W Agreement Employees who were employed as:
- (a) full-time employees worked overtime hours in accordance with cl 9.2 of the Big W Agreement;
  - (b) part-time employees worked overtime hours in accordance with cl 9.3 of the Big W Agreement; and
  - (c) casual employees worked overtime hours in accordance with cl 9.4 of the Big W Agreement,
- on one or more Sundays.

**Particulars**

*Particulars of the hours worked by Big W Agreement Employees on Sundays will be provided following the trial of common questions or otherwise as the Court may direct.*

55. During the Claim Period, Woolworths did not, in respect of overtime hours performed on a Sunday by Big W Agreement Employees who were employed as:
- (a) full-time employees and part-time employees – pay those employees at 250% of their base rate;
  - (b) casual employees – pay those employees at 275% of their base rate; and
  - (c) in the alternative to (a) and (b), if any of those employees had agreed to take TOIL instead of payment for overtime – give that employee that TOIL at the overtime equivalent, or pay the employee any balance of that overtime that had not been taken as TOIL at the earliest of:
    - (i) the employee requesting payment for the overtime instead of taking the TOIL;
    - (ii) 6 months after the overtime was worked; or
    - (iii) the end of the employee's employment.
56. By reason of the matters in the preceding paragraph, Woolworths:
- (a) contravened cll 9.2, 9.3, 9.4 or 9.7 of the Big W Agreement (as the case may be); and
  - (b) thereby contravened s 50 of the FW Act;

*Loss and damage*

57. By reason of the contraventions pleaded in Section E.2 above, the BIG W Agreement Employees suffered loss and damage.

**Particulars**

*The BIG W Employees suffered –*

1. *loss of earnings consisting of the difference between the amounts that they were paid for working on Sundays and the amount that they were entitled to be paid under the BIG W Agreement;*
2. *to the extent that any Big W Employee agreed to take TOIL instead of receiving penalty rates for working ordinary hours on a Sunday, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the amount they were entitled to be paid under the Big W Agreement for that work on a Sunday;*
3. *to the extent that any Big W Employee agreed to take TOIL instead of receiving penalty rates for working ordinary hours on a Sunday, but did not in fact take that TOIL, the difference between the amount they were paid out for that TOIL and the value of the time worked under the Big W Agreement for that Sunday;*
4. *to the extent that any Big W Employee agreed to be compensated for working ordinary hours on a Sunday by having an additional day or equivalent time added to their annual leave balance, the difference between the value of the leave that was added and the amount they were entitled to receive under the Big W Agreement for that work on a Sunday;*
5. *to the extent that any Big W Employee agreed to take TOIL instead of payment for overtime worked on a Sunday, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the amount they were entitled to be paid under the Big W Agreement for that overtime;*
6. *to the extent that any Big W Employee agreed to take TOIL instead of payment for overtime worked on a Sunday, but did not in fact take that TOIL, the difference between the amount they were paid for that TOIL and the*

*value of the overtime worked under the Big W Agreement; and*

7. *superannuation on those amounts, to the extent that superannuation was payable.*

*Further particulars may be provided following the initial trial.*

### **E.3 Woolworths Award Employees**

#### *Underpaid Sunday ordinary hours*

58. During the Claim Period, some or all Woolworths Award Employees worked ordinary hours on one or more Sundays.

#### **Particulars**

*Particulars of the hours worked by the Award Employees on Sundays will be provided following the trial of common questions or otherwise as the Court may direct.*

59. During the Claim Period, Woolworths, did not in respect of ordinary hours worked on a Sunday by Woolworths Award Employees who were employed as:

- (a) full-time or part-time employees:
- (i) pay those employees 225% of their minimum hourly rate of pay; or
  - (ii) if the employee had agreed to take TOIL instead of receiving payment for the hours or the additional 125% of the minimum rate (as the case may be) – give the employee TOIL equivalent to the payment for the hours or the additional 125% of the minimum rate (as the case may be), or pay the employee any balance of the TOIL that had not been taken within 28 days of the hours having been worked; or
  - (iii) if the employee had agreed to be compensated by an additional day or additional time being added to their annual leave balance instead of receiving payment for the hours or the additional 125% of the minimum rate (as the case may be) – add that day or time to the employee's annual leave balance; and
- (b) casual employees– pay those employees 250% of their minimum hourly rate of pay.

60. By reason of the matters in the preceding paragraph, Woolworths:

- (a) contravened:

- (i) up to 30 September 2020 – cl 29.4 of the Retail Award;
  - (ii) on and from 1 October 2020 – cl 22.1 or 22.2 of the Retail Award (as the case may be); and
- (b) thereby contravened s 45 of the FW Act.

*Underpaid Sunday overtime*

61. During the Claim Period, some or all Woolworths Award Employees worked full-time Award overtime hours, part-time Award overtime hours and casual Award overtime hours (as the case may be) on one or more Sundays.

***Particulars***

*Particulars of the hours worked by Woolworths Award Employees on Sundays will be provided following the trial of common questions or otherwise as the Court may direct.*

62. During the Claim Period, Woolworths did not, in respect of overtime hours worked on a Sunday by its Woolworths Award Employees who were employed as:
- (a) full-time or part-time employees – pay those employees 250% of their minimum hourly rate of pay;
  - (b) casual employees – pay those employees 275% of their minimum hourly rate of pay; or
  - (c) in the alternative to (a) and (b), if the employee had agreed to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime – give the employee that TOIL at the overtime equivalent or pay the employee any balance of that overtime that had not been taken as TOIL at the earliest of:
    - (i) the employee requesting to be paid for the overtime instead of taking the TOIL;
    - (ii) 6 months after the overtime was worked; or
    - (iii) the termination of the employee's employment.
63. By reason of the matters in the preceding paragraph, Woolworths:
- (a) contravened:
    - (i) up to 30 September 2020, cl 29.2 or 29.3 of the Retail Award (as the case may be);

- (ii) on and from 1 October 2020, cl 21.2 or cl 21.3 of the Retail Award (as the case may be); and
- (b) thereby contravened s 45 of the FW Act.

*Loss and damage*

64. By reason of the contraventions pleaded in Section E.3 above, the Woolworths Award Employees suffered loss and damage.

**Particulars**

*The Woolworths Award Employees suffered -*

1. *loss of earnings consisting of the difference between the amounts that they were paid for working on Sundays and the amount that they were entitled to be paid under the Retail Award;*
2. *to the extent that any Woolworths Award Employee agreed to take TOIL instead of receiving payment for hours performed or the additional 125% of the minimum rate (as the case may be) for working ordinary hours on a Sunday, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the amount they were entitled to be paid under the Retail Award for that work on a Sunday;*
3. *to the extent that any Woolworths Award Employee agreed to take TOIL instead of receiving of receiving payment for hours performed or the additional 125% of the minimum rate (as the case may be) for working ordinary hours on a Sunday, but did not in fact take that TOIL, the difference between the amount they were paid out for that TOIL and the value of the time worked under the Retail Award for that Sunday;*
4. *to the extent that any Woolworths Award Employee agreed to be compensated for working ordinary hours on a Sunday by having an amount of paid time equivalent to the hours worked on the Sunday to be added to the employee's annual leave, the difference between the value of the leave that was added and the amount they*

*were entitled to receive under the Retail Award for that work on a Sunday;*

5. *to the extent that any Woolworths Award Employee agreed to take TOIL instead of payment for overtime worked on a Sunday, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the amount they were entitled to be paid under the Retail Award for that overtime;*
6. *to the extent that any Woolworths Award Employee agreed to take TOIL instead of payment for overtime worked on a Sunday, but did not in fact take that TOIL, the difference between the amount they were paid for that TOIL and the value of the overtime worked under the Retail Award; and*
7. *superannuation on those amounts, to the extent that superannuation was payable.*

*Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.*

#### **E.4 All full-time and part-time Woolworths Employees**

##### *Deducted Sunday leave*

65. From time to time during the Claim Period, some or all Woolworths Employees who were employed on a full-time or part-time basis took paid annual leave or paid personal carer's leave on a Sunday.
66. By reason of the matters alleged at paragraph 12 above, on each occasion that a full-time or part-time Woolworths Employee took paid annual leave on a Sunday:
  - (a) that employee was taken not to be on paid annual leave on that Sunday; and
  - (b) Woolworths was not authorised or permitted to deduct that employee's annual leave balance in respect of that Sunday.
67. Woolworths deducted the annual leave balances of full-time and part-time Woolworths Employees who took paid annual leave on a Sunday.
68. By reason of the matters in the preceding paragraph, Woolworths:
  - (a) contravened s 89 of the FW Act; and

- (b) thereby contravened s 44 of the FW Act.
69. By reason of the matters alleged at paragraph 12 above, on each occasion that a full-time or part-time Woolworths Employee took paid personal/carer's leave on a Sunday:
- (a) that employee was taken not to be on paid personal/carer's leave on that Sunday; and
- (b) Woolworths was not authorised or permitted to deduct that employee's personal/carer's leave balance in respect of that Sunday.
70. Woolworths deducted the personal/carer's leave balances of full-time and part-time Woolworths Employees who took paid personal/carer's leave on a Sunday.
71. By reason of the matters in the preceding paragraph, Woolworths:
- (a) contravened s 98 of the FW Act; and
- (b) thereby contravened s 44 of the FW Act.

*Unpaid Sunday leave – loss and damage*

72. By reason of the contraventions pleaded in this Section E.4, Woolworths Employees who were employed on a full-time or part-time basis suffered loss and damage.

**Particulars**

*The Woolworths Employees suffered loss consisting of –*

1. *annual leave that was deducted from their annual leave balances for Sundays when they took paid annual leave;*
2. *personal/carer's leave that was deducted from their personal/carer's leave balance for Sundays when they took paid personal/carer's leave;*
3. *lost income from days on which they were required to take unpaid personal/carer's leave because they had insufficient paid personal/carer's leave by reason of the unlawful deduction of their personal/carer's leave on Sundays when they took paid personal/carer's leave; and*
4. *superannuation on those amounts, to the extent that superannuation was payable.*

*Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.*

**AND THE APPLICANTS CLAIM** the relief set out in the Originating Application

Date: 4 December 2025

A handwritten signature in blue ink, appearing to be 'V. Murphy', written over a light blue rectangular background.

.....  
Signed by [REDACTED]  
Lawyer for the Applicants

This pleading was prepared by SM Kelly SC and DV Murphy, counsel for the applicant, and settled by LWL Armstrong KC.

**Certificate of lawyer**

I, [REDACTED] certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 4 December 2025

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

Signed by [REDACTED]  
Lawyer for the Applicants

