

## NOTICE OF FILING

### Details of Filing

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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



*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

**Alexander Wilding**  
Applicant

**Coles Supermarkets Australia Pty Ltd**  
Respondent

### A. THE PARTIES

1. The applicant (**Mr Wilding**) was, from around 12 September 2017 to 22 December 2020:

- (a) employed by the respondent (**Coles**):
  - (i) up to about July 2018 – as a team member on a casual basis;
  - (ii) between about October 2018 and September 2020 – as a team member on a part-time basis;
  - (iii) from about September 2020 – as a nightfill manager on a part-time basis; and
- (b) had, from about September 2019, the duties of the “third in charge - nightfill” and, from a date not presently known to him, “second in charge - nightfill”; and
- (c) in his employment with Coles – a national system employee within the meaning of s 13 of the *Fair Work Act 2009* (Cth) (the FW Act).

2. Coles:

- (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 Wilding 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 Wilding his own behalf and on behalf of all persons:

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Filed on behalf of	The applicant, Alexander Wilding		
Prepared by	[REDACTED]		
Law firm	Shine Lawyers		
Tel	[REDACTED]	Fax	[REDACTED]
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- (a) who in the period from 23 December 2019 to 31 December 2023 (the **Claim Period**) were employed by Coles; or
- (b) to whom, in their employment in (a) the:
  - (i) *Coles Supermarkets Enterprise Agreement 2017* (the **Coles Agreement**); or
  - (ii) *General Retail Industry Award 2020* (**Retail Award**);
 applied; and
- (c) who during their employment in (a) were based in South Australia for work purposes and;
  - (i) were employed on a full-time, part time or casual basis and performed work on one or more Sundays 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 Sundays;
    - 2. were taken by Coles 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;

(the said persons being **Group Members**, and the Applicant and Group Members being together and severally **Claimants**).

- 4. Immediately prior to the commencement of this proceeding, there were seven or more persons who had the claims set out below against Coles.

## **B. COLES**

- 5. At all material times, Coles operated in South Australia a business 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, Coles employed in South Australia persons:
- (a) engaged to perform the functions and duties set out at Appendix A of the Coles Agreement for Team Member, Levels 1 to 6; or

**Particulars**

*The Agreement applied to employees who were 'wages-paid' employees. The Retail Award (described next) covered wages-paid or salaried employees, subject to the operation of the FW Act and the interaction from time to time between the Coles Agreement and the Retail Award.*

- (b) engaged to perform the functions and duties set out at –
- (i) up to 30 September 2020 – Schedule A to the Retail Award; and
- (ii) on and from 1 October 2020 – Schedule B to the Retail Award;
- (the employees in (a) and (b) being together and severally, **Coles Employees**).
7. At all material times, the Coles Employees were, in their employment with Coles, national system employees.

**C. INDUSTRIAL LAWS AND INSTRUMENTS**

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

8. At all material times during the Claim Period, 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 during the Claim Period, 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 during the Claim Period, 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 during the Claim Period 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. During the Claim Period, national system employees who were based in South Australia for work purposes:
  - (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 Coles Agreement (wages-paid employees)**

13. On 23 April 2018, the Fair Work Commission approved the Coles Agreement.

#### ***Particulars***

*Coles Supermarket Enterprise Agreement 2017 [2018]  
FWCA 2283.*

14. The Coles Agreement operated from 30 April 2018.
15. At all times during the Claim Period, the Coles Agreement covered and applied to:
  - (a) wages-paid Coles Employees who –
    - (i) were employed in the classifications described in cl 5.1.3 and Appendix A to the Coles Agreement and
    - (ii) would have been covered by the Retail Award at the time of the approval of the Coles Agreement;
  - (b) Coles in relation to the Coles Agreement Employees; and
  - (c) in the premises in (a) and (b) –
    - (i) Mr Wilding; and
    - (ii) some or all of the Group Members;  
**(Coles Agreement Employees).**

16. At all times during the Claim Period, cl 9.1.1 of the Coles Agreement provided that:
- 9.1.1 Other than as noted in this clause, public holidays are as provided for in the NES.
17. At all times during the Claim Period, cll 8.5.2 to 8.5.4 of the Coles Agreement provided that:
- 8.5.2 Payment for overtime for full-time and part-time team members**
- (a) Hours worked in excess of the ordinary hours of work, outside the spread of hours (except for shiftwork) as defined in subclause 8.1.3(a), or roster conditions prescribed in clauses 8.1, 8.2 and 8.3 are to be paid at time and a half for the first three hours and double time thereafter.
- (b) Hours worked by part-time team members in excess of the agreed hours in subclause 4.1.4(c) or as varied under subclause 4.1.4(d) will be paid at time and a half for the first three hours and double time thereafter.
- (c) The rate of overtime on a Sunday is double time, and on a public holiday is double time and a half.
- (d) Overtime is calculated on a daily basis.
- 8.5.3 Overtime for casual team members**
- (a) A casual team member may be offered work which qualifies as overtime. They shall be entitled to be paid at the overtime rates set out in subclause 8.5.3(b) in the following circumstances:
- (i) Where they work in excess of 38 hours per week; or
- (ii) They work outside of the spread of hours (except for shiftwork) as defined in subclause 8.1.3(a); or
- (iii) Where they work in excess of 9 hours per day, provided that one day per week a casual team member may work 11 hours without attracting overtime rates.
- (b) Hours paid at overtime rates are to be paid at 175% of the Base Rate of Pay (including casual loading) for the first three hours and 225% of the Base Rate of Pay (including casual loading) thereafter, except the rate of overtime on a Sunday is 225% of the Base Rate of Pay (including casual loading), and

on a public holiday it is 275% of the Base Rate of Pay (including casual loading).

#### **8.5.4 Time off instead of payment for overtime**

- (a) A team member, other than a casual, and Coles may agree to the team member taking time off instead of being paid for a particular amount of overtime that has been worked by the team member.
- (b) The period of time off that a team member is entitled to take is equivalent to the overtime payment that would have been made.

*EXAMPLE: By making an agreement under subclause 8.5.4(a) a team member who worked 2 overtime hours at the rate of time and a half is entitled to 3 hours' time off.*

- (c) Time off must be taken:
  - (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the team member and Coles.
- (d) If the team member requests at any time, to be paid for overtime covered by an agreement under subclause 8.5.4 but not taken as time off, Coles must pay the team member for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in subclause 8.5.4(c), Coles must pay the team member for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (f) Coles must not exert undue influence or undue pressure on a team member in relation to a decision by the team member to make, or not make, an agreement to take time off instead of payment for overtime.
- (g) A team member may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to

be subsequently agreed by Coles and the team member, instead of being paid for overtime worked by the team member. If Coles agrees to the request then subclause 8.5.4 will apply for overtime that has been worked.

- (h) If, on the termination of the team member's employment, time off for overtime worked by the team member to which subclause 8.5.4 applies has not been taken, Coles must pay the team member for the overtime at the overtime rate applicable to the overtime when worked.

18. At all times during the Claim Period, cl 8.6.1 of the Coles Agreement provided that the following penalties were to apply in addition to the base rate of pay in cl 5.2 of the Coles Agreement for ordinary hours worked:

Day of week	Time of day	Full and part-time team members	Casual team members (including casual loading)
Public holidays	7am-11pm, unless on a Sunday in which case 9am-11pm applies.	125%	150%

19. At all times during the Claim Period, cl 8.6.2 of the Coles Agreement provided that, by mutual agreement of a Coles Agreement Employee and Coles, the Coles Agreement Employee (other than a casual employee) could be compensated for a particular public holiday by either:
- (a) an equivalent day or equivalent time off without loss of pay that was, within four weeks of the public holiday occurring –
- (i) taken as time off in lieu (**TOIL**); or
- (ii) if not taken in that period – paid out; or
- (b) an additional day or equivalent time as annual leave.
20. By reason of the matters in paragraphs 11 and 16 above, at all times during the Claim Period, Sunday was a public holiday for the purposes of the Coles Agreement.

21. By reason of the matters alleged at paragraphs 13 to 20 above, at all times during the Claim Period the Coles Agreement required that Coles:

(a) in respect of hours, other than overtime hours, worked on a Sunday by

–

(i) full-time and part-time Coles Agreement Employees:

1. pay the employee 225% of their base rate (cl 8.6.1); or
2. if the employee agreed to take TOIL instead of receiving penalty rates:
  - a. give the employee TOIL at a penalty rate equivalent; or
  - b. pay the employee the balance of the TOIL that had not been taken after 4 weeks (cl 8.6.2); 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 penalty rates – to add that day or time to the employee’s annual leave balance (cl 8.6.2);

(ii) casual employees – pay the employee 250% of their base rate (cl 8.6.1);

(b) in respect of overtime hours worked on a Sunday by –

(i) full-time and part-time Coles Agreement Employees:

1. pay the employee 250% of their base rate (cl 8.5.2); or
  2. in the alternative to (i) above, if the employee had agreed to take TOIL instead of payment for overtime – give the employee TOIL at the overtime equivalent, or pay any balance of the overtime that had not been taken as TOIL at the earliest of:
    - a. the next pay period after a request from the employee for payment of the overtime instead of taking the TOIL;
    - b. the next pay period after 6 months after the overtime was worked; or
    - c. the end of the employee’s employment (cl 8.5.4);
- and

(ii) casual Coles Agreement Employees – pay the employee 275% of their base rate (cl 8.5.3).

#### **C.4 Retail Award (wages-paid or salaried employees)**

22. 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*.
23. At all material times, the Retail Award covered and applied to Coles Employees:
- (a) to whom the Coles 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),
- (Award Employees).**
24. 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.
25. 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.
26. At all times during the Claim Period, the Retail Award provided that or to the effect that an employer was required:
- (a) for ordinary hours worked on a public holiday by full-time and part-time employees:
    - (i) to 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 – to give the employee TOIL equivalent to the payment, 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 – to add that day or time to the employee’s annual leave balance; and
- (iii) on and from 1 October 2020:
1. to 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 – to 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 – to add that day or time to the employee’s annual leave balance;
- (b) for ordinary hours worked on a public holiday by casual employees – to pay the employee 250% of the employee’s minimum hourly rate of pay;

***Particulars***

*As to (a) and (b) –*

1. *cl 29.4(f) of the Retail Award up to 30 September 2020; and*
  2. *cl 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 –
 to pay the employee 250% of the employee's minimum hourly rate of pay for the said hours (**full-time Award overtime hours**);

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

**Particulars**

- 1. *Cll 29.2(b) and (d) (read with cll 12.2 and 12.3) up to 30 September 2020.*
- 2. *Cll 21.2(b) and (e) (read with cll 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 worked 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 –

to pay the employee 275% of the employee's minimum hourly rate of pay for the said hours (**casual Award overtime hours**); and

**Particulars**

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

- (f) in the alternative to (c) to (d), 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 – to give the employee that TOIL at the overtime equivalent, or pay the employee any balance of 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 end of the employee's employment.

**Particulars**

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

27. By reason of the matters in paragraphs 22 to 26 above, at all times during the Claim Period Coles was required by the Award:

*(as to ordinary hours)*

- (a) in respect of ordinary hours worked on a Sunday by full-time or part-time Award Employees:
- (i) to 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 – to 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 –

to add that day or time to the employee's annual leave balance; and

- (iii) on and from 1 October 2020:
1. to 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 – to 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 – to add that day or time to the employee's annual leave balance;
- (b) in respect of ordinary hours worked on a Sunday by casual Award employees – to pay 250% of the employee's minimum rate of pay;

**Particulars**

*As to 27(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) in respect of full-time Award overtime hours worked on a Sunday by full-time Award Employees – to 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) in respect of part-time Award overtime hours worked on a Sunday by part-time Award Employees – to pay 250% of the employee's minimum rate of pay;

**Particulars**

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

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

**Particulars**

1. *CI 29.2 (e) (read with cll 27.2 and 29.2(c)) 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 (d), if the 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 end of the employee's employment;

**Particulars**

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

**D. CONTRAVENTIONS – MR WILDING**

28. During his Coles Employment Mr Wilding was classified under the Coles Agreement:
- (a) up to about July 2018 – as a Retail Employee Level 1 (casual);
  - (b) from about October 2018 – as a Retail Employee Level 2 (part-time);
  - (c) between about September 2019 and about September 2020 – as a Retail Employee Level 3 (part-time);
  - (d) from about September 2020 and when supervising less than 15 team members – as a Retail Employee Level 4 (part-time); and

- (e) from about September 2020 and when supervising 15 or more team members – as a Retail Employee Level 5 (part-time).

*Underpaid Sunday ordinary hours – part-time*

29. During the Claim Period, until around 22 December 2020:
- (a) Mr Wilding performed ordinary hours of work on Sundays;
  - (b) Coles failed to pay Mr Wilding 225% of his base rate for the hours in (a);  
and
  - (c) by reason of the matters in (b), Coles:
    - (i) contravened cl 8.6.1 of the Coles Agreement; and
    - (ii) thereby contravened s 50 of the FW Act.

***Particulars***

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

*Underpaid Sunday overtime hours*

30. During the Claim Period, until around 22 December 2020:
- (a) Mr Wilding worked overtime hours in accordance with cl 8.5.2 of the Coles Agreement on one or more Sundays;
  - (b) Coles failed to:
    - (i) pay Mr Wilding 250% of his base rate for the overtime hours he worked in (a); or
    - (ii) by agreement with Mr Wilding, provide Mr Wilding with:
      1. an equivalent day or equivalent time off without loss of pay, taken within 6 months of the Sunday occurring or paid out; or
      2. an additional day or equivalent time added to their annual leave balance; and
  - (c) by reason of the matters in (b), Coles:
    - (i) contravened cll 8.5.2 or 8.5.4 of the Coles Agreement (as the case may be); and
    - (ii) thereby contravened s 50 of the FW Act.

**Particulars**

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

*Deducted Sunday leave*

31. During the Claim Period:
- (a) from time to time, Mr Wilding took paid annual leave on Sundays;
  - (b) by reason of the matter alleged at paragraph 9 above, on each occasion that Mr Wilding took paid annual leave on a Sunday:
    - (i) he was taken not to be on paid annual leave on that Sunday; and
    - (ii) Coles was not authorised or permitted to deduct his annual leave balance in respect of that Sunday;
  - (c) Coles deducted Mr Wilding's annual leave balance when he took paid annual leave on Sundays;
  - (d) by reason of the matters in the preceding sub-paragraph, Coles:
    - (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 Wilding took paid annual leave on Sundays will be provided after discovery.*

32. During the Claim Period:
- (a) from time to time, Mr Wilding took paid personal/carer's leave on Sundays;
  - (b) by reason of the matter alleged at paragraph 10 above, on each occasion that Mr Wilding took paid personal/carer's leave on a Sunday:
    - (i) he was taken not to be on paid personal/carer's leave on that Sunday; and
    - (ii) Coles was not authorised or permitted to deduct his annual personal/carer's leave balance in respect of that Sunday;
  - (c) Coles deducted Mr Wilding's personal/carer's leave balance when he took paid personal/carer's leave on Sundays;
  - (d) by reason of the matters in the preceding sub-paragraph, Coles:
    - (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 Wilding took paid personal/carer's leave on Sundays will be provided after discovery.*

**Loss and damage – Mr Wilding**

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

**Particulars**

*Mr Wilding 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 Coles 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 Coles from his annual leave balance;*
3. *loss of his personal/carer's leave entitlement consisting of the amount of personal/carer's leave that he took on Sundays during the Claim Period and that was deducted by Coles from his personal/carer's leave balance; and*
4. *superannuation on those amounts, to the extent that superannuation was payable.*

*Further particulars may be provided after discovery.*

**E. CONTRAVENTIONS – GROUP MEMBERS****E.1 Coles Agreement Employees – Sunday penalty rates***Underpaid Sunday ordinary hours*

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

**Particulars**

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

35. During the Claim Period, Coles did not, in respect of ordinary hours worked on a Sunday by Coles 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; or
      - 2. pay the employee any balance of the TOIL that had not been taken after 4 weeks; or
    - (iii) if the employee had agreed to be compensated by an additional day or additional time being added to their annual leave balance – add that day or time to the employee’s annual leave balance; or
  - (b) casual employees – pay those employees 250% of their base rate.
36. By reason of the matters in the preceding paragraph, Coles:
- (a) contravened cl 8.6.1 or 8.6.2 (as the case may be) of the Coles Agreement; and
  - (b) thereby contravened s 50 of the FW Act.

*Underpaid Sunday overtime*

37. During the Claim Period, some or all Coles Agreement Employees who were employed as:
- (a) full-time employees and part-time employees worked overtime hours in accordance with cl 8.5.2 of the Coles Agreement; and
  - (b) casual employees worked overtime hours in accordance with cl 8.5.3 of the Coles Agreement,
- on one or more Sundays.

**Particulars**

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

38. During the Claim Period, Coles did not, in respect of overtime hours performed on a Sunday by Coles Agreement Employees who were employed as:
- (a) full-time employees and part-time employees:
    - (i) pay those employees at 250% of their base rate; or
    - (ii) 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:
      - 1. in the next pay period after a request from the employee requesting payment for the overtime instead of taking the TOIL;
      - 2. 6 months after the overtime was worked;
      - 3. the end of the employee's employment with Coles; or
  - (b) casual employees – pay those employees at 275% of their base rate.
39. By reason of the matters in the preceding paragraph, Coles:
- (a) contravened cll 8.5.2, 8.5.3 or 8.5.4 of the Coles Agreement (as the case may be);
  - (b) thereby contravened s 50 of the FW Act.

*Coles Agreement Employees' loss and damage*

40. By reason of the contraventions pleaded in this Section E.1, the Coles Agreement Employees suffered loss and damage.

**Particulars**

*The Coles 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 Coles Agreement;*

2. *to the extent that any Coles 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 Coles Agreement for that work on a Sunday;*
3. *to the extent that any Coles 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 Coles Agreement for that Sunday;*
4. *to the extent that any Coles 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 Coles Agreement for that work on a Sunday;*
5. *to the extent that any Coles 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 Coles Agreement for that overtime;*
6. *to the extent that any Coles Agreement Employee elected 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 Coles Agreement; and*
7. *superannuation on the amounts above, to the extent that superannuation was payable.*

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

## E.2 Coles Award Employees – Sunday penalty rates

### *Underpaid Sunday ordinary hours*

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

#### **Particulars**

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

42. During the Claim Period, Coles did not, in respect of ordinary hours worked on a Sunday by Coles 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; or
  - (b) casual employees – pay those employees 250% of their minimum hourly rate of pay.
43. By reason of the matters in the preceding paragraph, Coles:
- (a) contravened:
    - (i) up to 30 September 2020 – cl 29.4 of the Retail Award; and
    - (ii) on and from 1 October 2020 – cl 22.1 or 22.2 (as the case may be) of the Retail Award; and
  - (b) thereby contravened s 45 of the FW Act.

*Underpaid Sunday overtime*

44. During the Claim Period, some or all Coles 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 the Award Employees on Sundays will be provided following discovery and the trial of common questions or otherwise as the Court may direct.*

45. During the Claim Period, Coles did not, in respect of overtime hours worked on a Sunday by Coles Award Employees who were employed as:
- (a) full-time employees 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 end of the employee's employment.
46. By reason of the matters in the preceding paragraph, Coles:
- (a) contravened:
    - (i) up to 30 September 2020, cl 29.2 or 29.3 (as the case may be) of the Retail Award;
    - (ii) on and from 1 October 2020, cl 21.2 or cl 21.3 (as the case may be) of the Retail Award; and
  - (b) thereby contravened s 45 of the FW Act.

*Coles Award Employees' loss and damage*

47. By reason of the contraventions pleaded in this Section E.2, the Coles Award Employees suffered loss and damage.

**Particulars**

*The Coles 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 Coles Award Employees elected 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 Coles 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, 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 Coles 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 Coles 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 group member 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 the amounts particularised above, 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.3 Unpaid Sunday leave**

#### *Deducted Sunday leave*

48. From time to time during the Claim Period, some or all Coles 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.
49. By reason of the matters alleged at paragraph 12(a) above, on each occasion that a full-time or part-time Coles 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) Coles was not authorised or permitted to deduct that employee's annual leave balance in respect of that Sunday.
50. During the Claim Period Coles deducted the annual leave balances of full-time and part-time Coles Employees who took paid annual leave on a Sunday.
51. By reason of the matters in the preceding paragraph, Coles:
  - (a) contravened s 89 of the FW Act; and
  - (b) thereby contravened s 44 of the FW Act.

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

*Unpaid Sunday leave – loss and damage*

55. By reason of the contraventions pleaded in Section E.3 above, Coles Employees who were employed on a full-time or part-time basis suffered loss and damage.

**Particulars**

*The Coles 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 the amounts particularised above, 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.*

**F. COMMON QUESTIONS OF LAW OR FACT**

56. The questions of law or fact common to the claims of the Applicant and some or all of the Group Members are:

- (a) Whether the Coles Agreement applied to any and if so which of the Claimants.
- (b) Whether the Retail Award applied to any and if so which of the Claimants.
- (c) Whether, in the State of South Australia during the Claim Period, Sunday was a public holiday for the purposes of the FW Act.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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.

- (j) 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.
- (k) 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.
- (l) 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.
- (m) 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.
- (n) Whether the Claimants were entitled, under s 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.
- (o) 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.
- (p) 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.

**AND THE APPLICANT CLAIMS** the relief set out in the Originating Application

Date: 23 December 2025



Signed by [REDACTED]

Lawyer for the Applicant

This pleading was prepared by Siobhan Kelly SC and Katie Gardiner, 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: 23 December 2025



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Signed by [REDACTED]

Lawyer for the Applicant

