

NOTICE OF FILING

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Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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REPLY AND DEFENCE TO CROSS-CLAIM

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

No. VID15 of 2026

Alexander Wilding
Applicant

Coles Supermarkets Australia Pty Ltd
Respondent

Coles Supermarkets Australia Pty Ltd
Cross-claimant

Alexander Wilding
Cross-respondent

REPLY

To the defence (**defence**) of the respondent (**Coles**) dated 10 April 2026 the applicant says as follows (using terms as defined in the statement of claim dated 23 December 2025 (**SOC**) and the defence unless otherwise indicated):

A. THE PARTIES

1. As to paragraph 1, the applicant:

(a) as to subparagraph (a):

- (i) admits that he was employed as a Level 1 store team member for the duration of his employment and that his employment commenced on 12 September 2017;
- (ii) otherwise denies the allegations and says further that he gave notice of his resignation to Coles on 22 December 2020 and that his resignation was effective immediately;

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- (b) as to subparagraph (a)(i), denies the allegation and says that he was a casual team member until 29 April 2018;
- (c) as to subparagraph (a)(ii), denies the allegations and says that he was employed as a part-time team member from 30 April 2018 to 22 December 2020;
- (d) as to subparagraph (a)(iii), denies the allegation and says that he remained a part-time team member during the said period;
- (e) as to subparagraph (a)(iv), denies the allegation and says he remained a part-time member until his resignation on 22 December 2020; and
- (f) as to subparagraph (a)(v), admits the allegation and says further that when he performed nightfill management duties, he was paid at the Level 4 Team Member rate.

2. As to paragraph 3(a), the applicant says that the word “or” at the end of paragraph 3(a) of the SOC was intended to read “and”.

B. COLES

3. As to paragraph 6, the applicant admits the correction.

C. INDUSTRIAL LAWS AND INSTRUMENTS

4. As to paragraph 8, the applicant admits the correction.

5. As to paragraph 10, the applicant admits the correction.

6. As to paragraph 18, the applicant admits the allegations.

7. As to paragraph 21, the applicant denies the allegations on the basis that there were no Sundays in South Australia that were not public holidays and under cover of that denial:

- (a) as to subparagraphs (a) and (b), admits that the Coles Agreement contained the terms alleged;
- (b) as to subparagraph (c), says that the reference at paragraph 21(b)(i)(2) of the SOC to “(i) above” was intended to read “(1) above”; and
- (c) as to subparagraph (d), admits the allegations.

8. As to paragraph 26, the applicant:
- (a) as to subparagraphs (a) and (f), admits the allegations; and
 - (b) as to subparagraphs (d) and (e), admits that the span of hours outside of which overtime was payable depended on a retailer's trading hours, and otherwise denies the allegations.

D. ALLEGED CONTRAVENTIONS – APPLICANT

9. As to paragraph 28(c), the applicant admits the allegation.
10. As to paragraph 31(a), the applicant:
- (a) as to subparagraphs (i)-(vi), admits the allegations; and
 - (b) as to subparagraph (vii), denies the allegation and refers to paragraph 1(a)(ii) above.

F. FURTHER DEFENCES IN RESPECT OF THE APPLICANT

11. As to paragraph 57, the applicant does not know and therefore cannot admit the allegations.
12. As to paragraph 58, the applicant:
- (a) as to subparagraph (a), admits the allegations;
 - (b) as to subparagraph (b), does not know, and therefore cannot admit the allegations;
 - (c) as to subparagraph (c), does not know, and therefore cannot admit the allegations;
 - (d) as to subparagraph (d), denies the allegation and says further that -
 - (i) on each occasion on which the applicant was paid annual leave loading Coles deducted a commensurate number of hours from the applicant's annual leave balance, such that the applicant suffered a commensurate depletion in his annual leave entitlement;

(ii) the consequence of (i) was that the alleged enrichment was not, and could not have been, unjust;

(iii) says further that –

1. Coles was required, when the applicant's employment ended, to pay to the applicant the amount that would have been payable to the applicant had the applicant taken that period of leave;
2. where (1) occurred, the amount that would have been payable to the applicant was to be calculated as at the date the employment ended;
3. as a result of (1) and (2), the applicant, when his employment ended, was entitled to be paid for his accrued but untaken annual leave, including annual leave loading, calculated at the date his employment ended; and

Particulars to (1) to (3)

Fair Work Act s 90(2).

Coles Agreement cl 9.2.11.

4. by reason of wage increases that occurred between the dates on which the applicant was wrongly taken to be on annual leave and the date on which his employment ended, the amount payable at the end of the applicant's employment was higher than the amount paid to him during the pay periods in which he was wrongly taken to have been on annual leave on Sundays; and

(e) denies the allegation in subparagraph (e) and refers to subparagraph (d) above.

13. As to paragraph 59, the applicant denies the allegations and refers to paragraph 12(d) above.

G. FURTHER DEFENCES IN RESPECT OF THE GROUP MEMBERS

14. As to paragraph 60, the applicant does not know and therefore cannot admit the allegations.
15. As to paragraph 61, the applicant:
 - (a) as to subparagraph (a), admits the allegation;
 - (b) as to subparagraph (b), does not know, and therefore cannot admit, the allegations;
 - (c) as to subparagraph (c), does not know, and therefore cannot admit, the allegations;
 - (d) as to subparagraph (d), denies the allegations and says further that –
 - (i) on each occasion on which a group member was paid annual leave loading Coles deducted a commensurate number of hours from the group member's annual leave balance, such that the group member suffered a commensurate depletion in their accrued annual leave;
 - (ii) the consequence of (i) above was that the alleged enrichment was not, and could not have been, unjust; and
 - (iii) says further that –
 1. Coles was required, when a group member's employment ended, to pay to the group member the amount that would have been payable to the group member had the employee taken that period of leave;
 2. where (1) occurred, the amount that would have been payable to the group member was to be calculated as at the date the employment ended;
 3. as a result of (1) and (2), the group member, when their employment ended, was entitled to be paid for their accrued but untaken annual leave, including annual leave loading, calculated at that date; and

Particulars to (1) to (3)

Fair Work Act s 90(2).

Coles Agreement cl 9.2.11.

Retail Award cl 32.3 up to 30 September 2020.

Retail Award cl 28.3 on and from 1 October 2020.

4. by reason of wage increases that occurred from time to time the amount payable at the end of the group member's employment may have been higher than the amount paid to the group member during the pay periods in which the group member was wrongly taken to have been on annual leave on Sundays; and
- (e) as to subparagraph (e), denies the allegation and refers to subparagraph (d) above.
16. As to paragraph 62, the applicant says that the basis for the alleged right to set off the amounts is not pleaded, and the applicant therefore does not know and cannot admit the allegation.
 17. As to paragraph 63, the applicant denies the allegations and refers to paragraph 15(d) above.
 18. As to paragraph 64, the applicant refers to paragraph 16 above and, on that basis, does not know and therefore cannot admit the allegation.

Save as aforesaid, and save as to the admissions contained in the Coles defence, the applicant joins issue with Coles upon the whole of its defence.

DEFENCE TO CROSS-CLAIM

As to Coles' statement of cross-claim (**Coles XC**) dated 10 April 2026:

1. Treating each paragraph referred to in paragraph 1 of the Coles XC as a positive averment, the applicant says, with reference to the paragraph numbers in the Coles defence:
 - (a) As to paragraph 1, the applicant refers to and relies on paragraph 1 of his reply.
 - (b) As to paragraph 2, the applicant adopts the admission.
 - (c) As to paragraph 5, the applicant adopts the admission.
 - (d) As to paragraph 8, the applicant adopts the admission and otherwise admits the allegations.
 - (e) As to paragraph 9, the applicant adopts the admission.
 - (f) As to paragraph 11, the applicant says that 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.
 - (g) As to paragraph 13, the applicant adopts the admission.
 - (h) As to paragraph 14, the applicant adopts the admission.
 - (i) As to paragraph 15, the applicant adopts the admission and says further that the definition is intended to cover all Group Members who fall within subparagraph 15(a) of the SOC (whether they constitute some or all of the Group Members).
 - (j) As to paragraph 16, the applicant adopts the admission.
 - (k) As to paragraph 17, the applicant adopts the admission.
 - (l) As to paragraph 18, the applicant adopts the admissions and otherwise admits the allegations.

- (m) As to paragraph 20, the applicant says that at all times during the Claim Period, Sunday was a public holiday in South Australia for the purposes of the Coles Agreement.
- (n) As to paragraph 21 the applicant:
 - (i) admits that, if there was a Sunday that was not a public holiday, the rates pleaded would apply; but
 - (ii) says further that the circumstance in paragraph 21 did not arise, by reason of the matter pleaded in subparagraph (m).
- (o) As to paragraph 28:
 - (i) adopts the admission in paragraph 28(a); and
 - (ii) admits the allegation in paragraph 28(c).
- (p) As to paragraph 29, the applicant:
 - (i) adopts the admission in paragraph 29(a);
 - (ii) adopts the admission in paragraph 29(b)(i) and otherwise denies the allegations in paragraph 29(b) and refers to paragraph 29(b) of the SOC; and
 - (iii) denies the allegations in paragraph 29(c) and refers to paragraph 29(c) of the SOC.
- (q) As to paragraph 30, the applicant:
 - (i) adopts the admission in paragraph 30(a);
 - (ii) adopts the admission in paragraph 30(b)(i);
 - (iii) as to paragraph 30(b), refers to paragraph 30(b) of the SOC; and
 - (iv) rejects the denial in paragraph 30(c) and refers to and relies on paragraph 30(c) of the SOC.

- (r) As to paragraph 31, the applicant:
 - (i) adopts the admission in paragraph 31(a) other than as to (vii), which is denied because the applicant resigned effective immediately on 22 December 2020;
 - (ii) as to paragraph 31(b), refers to paragraph 31(b) of the SOC;
 - (iii) adopts the admission in paragraph 31(c); and
 - (iv) rejects the denial in paragraph 31(d) and refers to and relies on paragraph 31(d) of the SOC.
- (s) As to paragraph 33, the applicant refers to paragraph 33 of the SOC.
- (t) As to paragraph 57, the applicant refers to and relies on paragraph 11 of his reply.
- (u) As to paragraph 58, the applicant refers to and relies on paragraph 12 of his reply.

2. As to paragraph 2 of the SXC, the applicant denies he is liable to Coles for the amounts claimed, or at all.

Date: 12 May 2026



Signed by Craig Allsopp
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.

