

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.



Defence

No. VID 1606 of 2025

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

Caleb Cooper

Applicant

Woolworths (South Australia) Pty Ltd

Respondent

In response to the allegations within the Statement of Claim filed on 4 December 2025 (**SOC**), the respondent, Woolworths (South Australia) Pty Ltd, says as follows (capitalised terms below having the meaning in the SOC unless otherwise indicated):

A. THE PARTIES

1. In response to paragraph 1, the respondent:
 - (a) says that Mr Cooper commenced employment with Woolworths Group Limited on 16 July 2016;
 - (b) says that since around May 2019 Mr Cooper has been employed by the respondent as a Store Team member;
 - (c) admits that Mr Cooper, at all material times and since 1 July 2019, has been employed on a part-time basis;
 - (d) admits subparagraph (b);
 - (e) otherwise denies the paragraph.
2. The respondent admits paragraph 2.

Filed on behalf of (name & role of party) Woolworths (South Australia) Pty Ltd, the Respondent
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3. In answer to paragraph 3, the respondent:
- (a) admits that Mr Cooper brings the proceeding purportedly as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on his own behalf and on behalf of persons described in paragraph 3;
 - (b) notes the apparent error at the end of subparagraph 3(c)(i) whereby it appears the word 'and' has been omitted at the end of subparagraph (c)(i) and in this Defence proceeds on the basis that that word has been omitted in error;
 - (c) says that, in this Defence, it uses the term Group Member as it is defined in paragraph 3, with the assumption in subparagraph (b) above, without any admission as to the accuracy of that definition;
 - (d) relies on the pleadings below in relation to the allegations referred to in paragraph 3 but reserves the right to make further pleas by way of defence to allegations concerning Group Members other than Mr Cooper if and when those allegations are properly pleaded and particularised by Mr Cooper in due course;
 - (e) denies paragraph 3 to the extent that that paragraph alleges that Mr Cooper or Group Members have a proper claim;
 - (f) otherwise does not know and therefore cannot admit paragraph 3.
4. In respect of paragraph 4, the respondent denies that any such person has a proper claim and otherwise does not know and therefore cannot admit paragraph 4.

B. WOOLWORTHS

5. The respondent admits paragraph 5.
6. In response to paragraph 6, the respondent:
- (a) admits subparagraphs (a) and (b);
 - (b) says that the classifications under the Retail Award are set out in Schedule B to the Retail Award (up to 30 September 2020) and Schedule A to the Retail Award (on and from 1 October 2020);
 - (c) admits that the respondent engaged employees to work in salaried positions to perform some of the functions and duties set out in 6(b) above;
 - (d) otherwise denies paragraph 6.
7. The respondent admits paragraph 7.

C. INDUSTRIAL LAWS AND INSTRUMENTS

C.1 Public holidays – *Fair Work Act*

8. The respondent admits paragraph 8 save that, during the Claim Period, s 115(1)(a)(vi) of the FW Act referred to “the Queen’s birthday holiday” rather than “the holiday for the birthday of the Sovereign”.
9. The respondent admits paragraph 9.
10. In response to paragraph 10, the respondent:
 - (a) says that, during the Claim Period up to 31 January 2023, the provision referred to in paragraph 10 was numbered s 98, rather than s 98(1), the heading read “Employee taken not to be on paid personal/carer’s leave on public holiday”, and there was no sub-heading “Public holidays”;
 - (b) says that, from 1 February 2023, s 98(1) of the FW Act was in the terms pleaded in paragraph 10, save that the text appearing after the sub-heading “Public holidays” was numbered “(1)”;
 - (c) otherwise admits paragraph 10.

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

11. The respondent denies paragraph 11.

Particulars

On the proper construction of the FW Act, at all material times, a day was not, only by reason of it being an ordinary Sunday occurring each calendar week (**Ordinary Sunday**):

- (a) a day declared or prescribed by or under a law of South Australia to be observed generally within South Australia as a public holiday, within the meaning of s 115(1)(b) of the FW Act; or
 - (b) a public holiday within the meaning of the FW Act.
12. The respondent denies paragraph 12 and says further that:
 - (a) it refers to and repeats paragraph 11 above;
 - (b) in respect of subparagraph (a), during the Claim Period:
 - (i) for the purposes of s 89(1) of the FW Act, an employee took paid annual leave only when the following preconditions were met:
 1. the employee was not a casual employee;

2. the employee had accrued entitlements to paid annual leave pursuant to s 87(1) of the FW Act; and
 3. pursuant to s 88(1) of the FW Act, the employee took some or all of their accrued entitlement to paid annual leave for a period agreed between the employee and their employer (**Paid Annual Leave Preconditions**);
- (ii) for a national system employee based in South Australia for work purposes to be taken not to be on paid annual leave pursuant to s 89(1) of the FW Act:
1. the employee must have satisfied the Paid Annual Leave Preconditions; and
 2. the period of paid annual leave taken must have included one of the public holidays within the meaning of s 115 of the FW Act (which, for the avoidance of doubt does not include Ordinary Sundays) (**NES Public Holidays**),
- (iii) section 89(1) of the FW Act does not apply where the periods of paid annual leave taken included only Ordinary Sundays;
- (c) in respect of subparagraph (b), during the Claim Period:
- (i) for the purposes of s 98(1) of the FW Act, an employee took paid personal/carer's leave only when the following preconditions were met:
 1. the employee was not a casual employee;
 2. the employee had an accrued and untaken entitlement to be paid personal/carer's leave pursuant to s 96(1) of the FW Act;
 3. pursuant to s 97 of the FW Act, the employee took a period of paid personal/carer's leave because the employee was not fit for work because of a personal illness, or personal injury, affecting the employee; or to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of a personal illness, or personal injury, affecting the member; or an unexpected emergency affecting the member; and
 4. the employee complied with notice and evidence requirements in accordance with s 107 of the FW Act (**Paid Personal/Carer's Leave Preconditions**);

- (ii) for a national system employee based in South Australia for work purposes to be taken not to be on paid personal/carer's leave pursuant to s 98(1) of the FW Act:
 - 1. the employee must have satisfied the Paid Personal/Carer's Leave Preconditions; and
 - 2. the period of paid personal/carer's leave taken must have included one of the NES Public Holidays,
- (iii) section 98(1) of the FW Act does not apply where the period of paid personal/carer's leave taken included only Ordinary Sundays.

C.3 2019 Woolworths Agreement

- 13. The respondent admits paragraph 13.
- 14. The respondent admits paragraph 14.
- 15. The respondent admits paragraph 15, save that the Woolworths Agreement was expressed to exclude from its coverage employees who work in salaried positions, including (but not limited to) salaried Team Managers, salaried Team Support, salaried Duty Managers, salaried Assistant Store Managers and salaried Store Managers.

Particulars

Clause 1.2(b) of the Woolworths Agreement.

- 16. The respondent admits paragraph 16 and says that:
 - (a) on the proper construction of clause 19.1(a) of the Woolworths Agreement, including in light of a common assumption or understanding by the parties to the Woolworths Agreement, public holidays did not include Ordinary Sundays; and

Particulars of common assumption or understanding

- (i) The parties to the Woolworths Agreement, including their bargaining representatives, conducted the negotiations for the Woolworths Agreement on the basis that different rates of pay would apply to work performed on an Ordinary Sunday and a public holiday.
- (ii) The parties to the Woolworths Agreement (and its predecessor), including their bargaining representatives, had not asserted any right to be paid public holiday rates for work performed on Ordinary Sundays at any time prior to the commencement of these proceedings.

- (iii) Publicly available information, published by the regulator, supported the view that Ordinary Sundays were not public holidays, including the Fair Work Ombudsman obtaining relief under the FW Act for contraventions relating to the failure to pay Sunday penalty rates to employees in South Australia, in circumstances where separate public holiday penalty rates existed in the relevant award: *Fair Work Ombudsman v Devine Marine Group Pty Ltd* [2015] FCA 370, *Fair Work Ombudsman v South Jin Pty Ltd (No 2)* [2016] FCA 832.
- (iv) Further particulars will be provided following discovery.
- (b) alternatively if, which is denied, public holidays within the meaning of the Woolworths Agreement included Ordinary Sundays, then, on the proper construction of the Woolworths Agreement the rates, terms and entitlements applicable to Sundays applied to Ordinary Sundays, in precedence to those applicable to public holidays.
17. The respondent admits paragraph 17.
18. The respondent admits paragraph 18.
19. In respect of paragraph 19, the respondent admits the paragraph and says further that:
- (a) in respect of full-time and part-time team members, clause 6.2 of the Woolworths Agreement provides for the following penalty rates to be paid for hours worked on a Sunday:

Days of the week	Hours	Full time and part time rates of pay
Sunday	Midnight to 9.00am	Base rate + 100%
	9:00am to 11:00pm	From 1 January 2019 to 30 June 2019: Base rate + 80%
		From 1 July 2019 to 30 June 2020: Base rate + 65%
		From 1 July 2020: Base rate + 50%
11:00pm to midnight	Base rate + 100%	

- (b) in respect of casual team members, clause 6.3 of the Woolworths Agreement provides for the following penalty rates to be paid for hours worked on a Sunday:

Days of the week	Hours	Casual rates of pay (penalty rates are inclusive of 25% casual loading)
Sunday	Midnight to 9.00am	Base rate + 125%
	9:00am to 11:00pm	From 7 January 2019 to 30 June 2019: Base rate + 85%

		From 1 July 2019: Base rate +75%
	11:00pm to midnight	Base rate + 125%

- (c) clause 6.4 of the Woolworths Agreement provides that '*Sunday penalty rates in this Agreement will move in line with the General Retail Industry Award. If the same Sunday penalty rates in the General Retail Industry Award are increased or decreased, the corresponding increase or decrease will apply to the Sunday penalty rates in this Agreement, from the first full pay period after that Award is amended by the FWC.*'

20. The respondent admits paragraph 20.

21. In response to paragraph 21, the respondent:

- (a) denies the paragraph, in so far as it relates to hours worked on an Ordinary Sunday;
- (b) repeats the matters pleaded at paragraphs 11 and 16 above;
- (c) admits the paragraph in so far as it relates to hours worked on a day or part-day that was a NES Public Holiday that fell on a Sunday.

C.4 Big W Agreement

22. The respondent admits paragraph 22.

23. The respondent admits paragraph 23.

24. The respondent admits paragraph 24, save that the Big W Agreement was expressed to exclude from its coverage team members who work in salaried positions, including (but not limited to) salaried Assistant Department Manager, salaried Department Manager, salaried Assistant Night Fill Manager, salaried Night Fill Managers, salaried Assistant Store Managers and salaried Store Managers.

Particulars

Clause 1.2.2 of the Big W Agreement.

25. The respondent admits paragraph 25.

26. In respect of paragraph 26, the respondent admits the paragraph, save that:

- (a) the overtime rates of pay in clause 9.5.1 of the Big W Agreement are expressed as a "% of base rate";
- (b) the entirety of clause 9.5.1 of the Big W Agreement has not been pleaded;
- (c) clause 9.5.1 of the Big W Agreement also provides for rates of pay for working overtime on a Sunday which are:

First three hours of overtime % of base rate		Subsequent hours of overtime % of base rate	
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)
200%	225%	200%	225%

(d) it otherwise relies on the entirety of clause 9.5 of the Big W Agreement for its full force, meaning and effect.

27. The respondent admits paragraph 27.

28. The respondent admits paragraph 28 and says that:

(a) on the proper construction of clause 17.1.1 of the Big W Agreement, including in light of a common assumption or understanding by the parties to the Big W Agreement, public holidays did not include Ordinary Sundays;

Particulars of common assumption or understanding

- (i) The parties to the Big W Agreement, including their bargaining representatives, conducted the negotiations for the Big W Agreement on the basis that different rates of pay would apply to work performed on an Ordinary Sunday and a public holiday.
- (ii) The parties to the Big W Agreement (and its predecessor), including their bargaining representatives, had not asserted any right to be paid public holiday rates for work performed on Ordinary Sundays at any time prior to the commencement of these proceedings.
- (iii) Publicly available information, published by the regulator, supported the view that Ordinary Sundays were not public holidays, including the Fair Work Ombudsman obtaining relief under the FW Act for contraventions relating to the failure to pay Sunday penalty rates to employees in South Australia, in circumstances where separate public holiday penalty rates existed in the relevant award: *Fair Work Ombudsman v Devine Marine Group Pty Ltd* [2015] FCA 370, *Fair Work Ombudsman v South Jin Pty Ltd (No 2)* [2016] FCA 832.

(iv) Further particulars will be provided following discovery.

(b) alternatively if, which is denied, public holidays within the meaning of the Big W Agreement included Ordinary Sundays, then on the proper construction of the

Big W Agreement the rates, terms and entitlements applicable to Sundays applied to Ordinary Sundays, in precedence to those applicable to public holidays.

29. The respondent admits paragraph 29.

30. In respect of paragraph 30, the respondent admits the paragraph and says that:

- (a) clause 6.2 of the Big W Agreement provides for the following penalty rates to be paid for hours worked on a Sunday:

Days of the week	Hours	Full time and part time rates of pay	Casual rates of pay (penalty rates are inclusive of 25% casual loading)
Sunday	Midnight to 9.00am	Base rate + 100%	Base rate + 125%
	9:00am to 11:00pm	From 1 July 2018 to 30 June 2019: Base rate + 80% From 1 July 2019 to 30 June 2020: Base rate + 65% From 1 July 2020: Base rate + 50%	From 7 January 2019 to 30 June 2019: Base rate + 85% From 1 July 2019: Base rate + 75%
	11:00pm to midnight	Base rate + 100%	Base rate + 125%

- (b) clause 6.3.1 of the Big W Agreement provides that '*Sunday penalty rates in this Agreement will move in line with the General Retail Industry Award. If the same Sunday penalty rates in the General Retail Industry Award are increased or decreased, the corresponding increase or decrease will apply to the Sunday penalty rates in this Agreement, from the first full pay period after that Award is amended by the FWC.*'

31. The respondent admits paragraph 31.

32. In response to paragraph 32, the respondent:

- (a) denies the paragraph, in so far as it relates to hours worked on an Ordinary Sunday;
- (b) repeats the matters pleaded at paragraphs 11 and 28 above;
- (c) admits the paragraph in so far as it relates to hours worked on a day or part-day that was a NES Public Holiday that fell on a Sunday.

C.5 Retail Award

33. The respondent admits paragraph 33.
34. The respondent admits paragraph 34.
35. The respondent admits paragraph 35 and says that:
- (a) on the proper construction of clause 34.1 of the Retail Award (up to 30 September 2020), public holidays did not include Ordinary Sundays;
 - (b) alternatively if, which is denied, public holidays within the meaning of the Retail Award included Ordinary Sundays, then on the proper construction of the Retail Award the rates, terms and entitlements applicable to Sundays applied to Ordinary Sundays, in precedence to those applicable to public holidays.
36. The respondent admits paragraph 36 and says that:
- (a) on the proper construction of clause 33.1 of the Retail Award (on and from 1 October 2020), public holidays did not include Ordinary Sundays;
 - (b) repeats paragraph 35(b) above.
37. In response to paragraph 37, the respondent:
- (a) says that the entirety of the relevant clauses has not been pleaded;
 - (b) admits subparagraph (a)(i) and says that the employee's minimum rate referred to therein, and elsewhere in paragraph 37 of the SOC, was the minimum rate under the Retail Award;
 - (c) denies subparagraph (a)(ii) and says that, under the Retail Award up to 30 September 2020, by mutual agreement between an employer and an employee, an employee (other than a casual) could, instead of receiving payment in accordance with paragraph 37(b) above, agree to:
 - (i) have a day off or equivalent time off without loss of pay, so long as the time off was taken within four weeks of the public holiday occurring (or the time off would be paid out); or
 - (ii) an additional day or equivalent time as annual leave;

Particulars

Clause 29.4(f) of the Retail Award up to 30 September 2020.

- (d) denies subparagraph (a)(iii) and says that, under the Retail Award on and from 1 October 2020, by mutual agreement between an employer and a full-time or part-time employee, an employee could, instead of receiving payment in accordance with sub-paragraph 37(b) above, agree:

- (i) to be paid at the minimum hourly rate of pay for hours worked on the public holiday; and
- (ii) to have an amount of paid time equivalent to the hours worked on the public holiday added to the employee's annual leave balance; or
- (iii) to be allowed to take that time off within a period of 28 days after the public holiday (or, if not taken within that 28 days, the time off would be paid out);

Particulars

Clause 22.2 of the Retail Award on and from 1 October 2020.

- (e) denies that overtime is payable under the Retail Award in the circumstances set out in subparagraphs 37(c) and (e) of the SOC;
- (f) admits subparagraph (f), save that the agreement was to be mutual between employer and employee and, on and from 1 October 2020, was to be in writing;
- (g) says that in the Claim Period the Retail Award also provided for penalty rates which were to be paid in respect of hours worked on a Sunday;

Particulars

Clause 29.4(e) of the Retail Award up to 30 September 2020.

Clause 22.1 of the Retail Award on and from 1 October 2020.

- (h) will rely upon the entirety of clause 29 of the Retail Award up to 30 September 2020 and clause 22 of the Retail Award on and from 1 October 2020 for their full force, meaning and effect;
- (i) says further that there were no casual Woolworths Award Employees during the Claim Period;
- (j) otherwise admits paragraph 37.

38. In response to paragraph 38, the respondent:

- (a) denies the paragraph, in so far as it relates to hours worked on an Ordinary Sunday;
- (b) says that, subject to the full terms of the Retail Award, in the Claim Period, for hours worked by Woolworths Award Employees in South Australia on Ordinary Sundays, the applicable rate of pay for full-time and part-time employees was:
 - (i) for ordinary hours worked on a Sunday:
 - (A) between the start of the Claim Period and 30 June 2020 — 165% of the applicable minimum hourly rate of pay in the Retail Award; and

- (B) from 1 July 2020 — 150% of the applicable minimum hourly rate of pay in the Retail Award; and
- (ii) 200% of the applicable minimum hourly rate of pay in the Retail Award for overtime hours worked on a Sunday;

Particulars

1. The applicable rate of pay for ordinary and overtime hours worked on Ordinary Sundays is set out in Clauses 29.4(e) and 29.2(d) of the Retail Award up to 30 September 2020.
 2. The applicable rate of pay for ordinary and overtime hours worked on Ordinary Sundays is set out in Clauses 22.1(a) and 21.2(a), (b) and (c) of the Retail Award on and from 1 October 2020.
- (c) repeats the matters pleaded at paragraphs 11, 35 and 36 above;
 - (d) repeats subparagraphs 37(b)-(f) above and otherwise admits the paragraph in so far as it relates to hours worked on a day or part-day that was a NES Public Holiday that fell on a Sunday; and
 - (e) says further that there were no casual Woolworths Award Employees during the Claim Period.

D. ALLEGED CONTRAVENTIONS OF THE FW ACT – MR COOPER

39. The respondent admits paragraph 39.

"Underpaid Sunday ordinary hours"

40. In response to paragraph 40, the respondent:

- (a) admits subparagraph (a)
- (b) in response to subparagraph (b):
 - (i) admits that the respondent did not pay Mr Cooper 225% of his base rate of pay for ordinary hours worked on Ordinary Sundays;
 - (ii) says that Mr Cooper was not entitled to be paid at a rate of 225% of his base rate of pay for ordinary hours worked on Ordinary Sundays;
 - (iii) otherwise denies the subparagraph;
- (c) denies subparagraph (c).

"Deducted Sunday leave"

41. In response to paragraph 41, the respondent:
- (a) admits subparagraph (a);
 - (b) denies subparagraph (b), and says that on each occasion Mr Cooper took paid annual leave on a Sunday, such Sunday was an Ordinary Sunday;
 - (c) admits subparagraph (c), and says that on each occasion Mr Cooper's annual leave balance was deducted, Mr Cooper:
 - (i) satisfied the Paid Annual Leave Preconditions;
 - (ii) took paid annual leave on an Ordinary Sunday;
 - (d) denies subparagraph (d).
42. In response to paragraph 42, the respondent:
- (a) admits subparagraph (a);
 - (b) denies subparagraph (b), and says that on each occasion Mr Cooper took paid personal leave on a Sunday, such Sunday was an Ordinary Sunday;
 - (c) admits subparagraph (c) and says that on each occasion Mr Cooper's paid personal leave balance was deducted, Mr Cooper:
 - (i) satisfied the Paid Personal/Carer's Leave Preconditions;
 - (ii) took paid personal leave on an Ordinary Sunday;
 - (d) denies subparagraph (d).

"Loss and damage"

43. The respondent denies paragraph 43.
- 43A. Further, or alternatively, during the Claim Period:
- (a) for each Ordinary Sunday during the Claim Period that was taken as annual leave by Mr Cooper, the respondent paid Mr Cooper annual leave loading.

Particulars

Clause 13.4(b) of the Woolworths Agreement provides that during a period of annual leave taken by a team member, the team member (other than a team member who is a shiftworker under this Agreement) will receive annual leave loading calculated at 17.5% of their base rate of pay, or the relevant weeknight and weekend penalty rates - whichever is greater but not both.

- (b) to the extent that Mr Cooper:
- (i) from time to time took paid annual leave on Sundays;
 - (ii) in addition to receiving his base rate of pay for the Sunday, received a payment on account of annual leave loading; and
 - (iii) is taken not to have been on annual leave during such a Sunday (as alleged, but denied by the respondent),

Mr Cooper was only entitled to be paid his ordinary hours of work on such Sundays at his base rate of pay pursuant to s 116 of the FW Act;

- (c) the respondent mistakenly believed that Mr Cooper should be paid the annual leave loading, in accordance with clause 13.4(b) of the Woolworths Agreement; and
- (d) but for the mistaken belief pleaded in subparagraph (c) above, the respondent would not have paid Mr Cooper the annual leave loading;
- (e) by reason of the matters pleaded in subparagraphs (a) to (d) above, Mr Cooper has been unjustly enriched at the expense of the respondent and the respondent is entitled to restitution of an amount equivalent to the annual leave loading paid to Mr Cooper on every Ordinary Sunday taken as leave by Mr Cooper in the Claim Period;
- (f) accordingly, the respondent is entitled to set off, and hereby sets off, against the amounts claimed in the SOC in respect of Mr Cooper, the amounts in subparagraph (e) above;
- (g) further or alternatively to the matters pleaded in subparagraphs (a) to (f) above, if the Court finds that the amounts described in subparagraph (e) above cannot be taken into account for any loss assessed for amounts claimed in the SOC in respect of Mr Cooper, then it would not be appropriate, within the meaning of s 545 of the FW Act, to make an order for compensation in respect of Mr Cooper in circumstances where such an order failed to accord with the compensatory and remedial purposes of s 545 by failing to take into account the amounts paid to Mr Cooper as described in subparagraph (e) above.

E. ALLEGED CONTRAVENTIONS OF THE FW ACT – GROUP MEMBERS

E.1 Woolworths Agreement Employees

"Underpaid Sunday ordinary hours"

44. The respondent admits paragraph 44.

45. In response to paragraph 45, the respondent:

- (a) denies that paragraph in respect of any Sunday during the Claim Period that was also a NES Public Holiday;
- (b) otherwise admits paragraph 45 in respect of Ordinary Sundays; and
- (c) says further that ordinary hours worked on an Ordinary Sunday did not attract the rates of pay pleaded in paragraph 45.

46. The respondent denies paragraph 46.

"Underpaid Sunday overtime"

47. The respondent admits paragraph 47.

48. In response to paragraph 48, the respondent:

- (a) denies that paragraph in respect of any Sunday during the Claim Period that was also a NES Public Holiday;
- (b) otherwise admits paragraph 48 in respect of Ordinary Sundays; and
- (c) says further that overtime hours worked on an Ordinary Sunday did not attract the rates of pay pleaded in paragraph 48.

49. The respondent denies paragraph 49.

"Loss and damage"

50. The respondent denies paragraph 50.

E.2 Big W Agreement Employees

"Underpaid Sunday ordinary hours"

51. The respondent admits paragraph 51.

52. In response to paragraph 52, the respondent:

- (a) denies that paragraph in respect of any Sunday during the Claim Period that was also a NES Public Holiday;
- (b) otherwise admits paragraph 52 in respect of Ordinary Sundays;
- (c) says further that ordinary hours worked on an Ordinary Sunday did not attract the rates of pay pleaded in paragraph 52.

53. The respondent denies paragraph 53.

"Underpaid Sunday overtime"

54. The respondent admits paragraph 54.

55. In response to paragraph 55, the respondent:

- (a) denies that paragraph in respect of any Sunday during the Claim Period that was also a NES Public Holiday;
- (b) otherwise admits paragraph 55 in respect of Ordinary Sundays;
- (c) says further that overtime hours worked on an Ordinary Sunday did not attract the rates of pay pleaded in paragraph 55.

56. The respondent denies paragraph 56.

"Loss and damage"

57. The respondent denies paragraph 57.

E.3 Woolworths Award Employees

"Underpaid Sunday ordinary hours"

58. The respondent admits paragraph 58.

59. The respondent denies paragraph 59 and says further:

- (a) that ordinary hours worked on an Ordinary Sunday did not attract the rates of pay pleaded in paragraph 59;
- (b) during the Claim Period, the Woolworths Award Employees:
 - (i) were paid an annual salary and other benefits in satisfaction of their entitlements under the Retail Award, including public holiday penalty rates;

Particulars

- (A) The respondent used a standard form contract of employment which set out the terms of employment and included as a term of that employment a minimum entitlements clause.
 - (B) Clause 6, template employment contract (prior to September 2020).
 - (C) Clause 7, template employment contract (after September 2020).
 - (D) Copies of the respondent's standard form contract are in the possession of the respondents solicitors and will be provided upon request.
- (ii) were provided with additional benefits (such as public holiday allowances) in respect of Sundays during the Claim Period that were NES Public Holidays;
 - (iii) insofar as the Woolworths Award Employee's salary and other benefits exceeded their entitlements under the Retail Award, they comprised over-Award payments;

- (iv) to the extent ordinary hours worked on an Ordinary Sunday are found to attract the rates of pay and entitlements that the respondent is alleged to have failed to provide in paragraph 59 (which the respondent denies), the respondent is entitled to set off those amounts, against the over-Award payments, including to the extent that those over-Award hours satisfied the minimum entitlements provisions of their contract of employment;
- (c) further and in the alternative to subparagraph (b) above, there was a close correlation between the purpose of the payments pleaded at subparagraph 59(b) above, and the purpose of the base rates and penalty rates pleaded at paragraphs 58 to 60 of the SOC;
- (d) by reason of the matters pleaded at subparagraph (c), part of the amounts paid is entitled to be set off against the amount of the entitlements alleged at paragraphs 58 to 60 of the SOC;
- (e) in the premises pleaded at subparagraphs (a) to (d) above, and insofar as the payments pleaded at subparagraph 59(b) above:
 - (i) across the Claim Period; or alternatively
 - (ii) across each pay period –

exceed the amounts payable under the Award across that period, the respondent denies the alleged contraventions.
- (f) alternatively to subparagraph (e) above, in the premises pleaded at subparagraphs (a) to (d) above and insofar as the payments pleaded at subparagraph 59(b) above:
 - (i) across the Claim Period; or alternatively
 - (ii) across each pay period –

do not exceed the amounts payable under the Award, the payments pleaded at subparagraph 59(b) above should be brought into account when assessing the compensable loss for the purposes of s 545 of the FW Act; and
- (g) says further that there were no casual Woolworths Award Employees during the Claim Period.

60. The respondent denies paragraph 60.

"Underpaid Sunday overtime"

61. The respondent admits paragraph 61 save that it says there were no casual Woolworths Award Employees.

62. The respondent denies paragraph 62 and:
- (a) says that overtime hours worked on an Ordinary Sunday did not attract the rates of pay pleaded in paragraph 62;
 - (b) refers to and repeats paragraph 59(b) above; and
 - (c) says further that there were no casual Woolworths Award Employees during the Claim Period.

63. The respondent denies paragraph 63.

"Loss and damage"

64. In respect of paragraph 64, the respondent:
- (a) denies paragraph 64; and
 - (b) refers to and repeats paragraph 59(b) above.

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

"Deducted Sunday leave"

65. In response to paragraph 65, the respondent:
- (a) admits that, from time to time during the Claim Period, some Woolworths Employees who were based in South Australia and who were employed on a full-time or part-time basis:
 - (i) satisfied the Paid Annual Leave Preconditions and took paid annual leave pursuant to s 88(1) of the FW Act; or
 - (ii) satisfied the Paid Personal/Carer's Leave Preconditions and took paid personal leave pursuant to s 97 of the FW Act, on a Sunday;
 - (b) in the absence of particulars of the taking of paid annual leave or paid personal carer's leave, does not know and therefore cannot admit paragraph 65.
66. In response to paragraph 66, the respondent:
- (a) admits the paragraph insofar as it relates to periods of paid annual leave taken by full-time or part-time Woolworths Employees who had satisfied the Paid Annual Leave Preconditions and the period of paid annual leave taken included a NES Public Holiday falling on a Sunday;
 - (b) says that the entitlement to not be taken to be on paid annual leave on a Sunday did not apply on Ordinary Sundays;

- (c) otherwise denies the paragraph.
67. In response to paragraph 67, the respondent:
- (a) denies that paragraph in respect of any Sunday during the Claim Period that was also a NES Public Holiday;
 - (b) otherwise admits paragraph 67 in respect of Ordinary Sundays.
68. The respondent denies paragraph 68.
69. In response to paragraph 69, the respondent:
- (a) admits the paragraph insofar as it relates to periods of paid personal/carer's leave taken by full-time or part-time Woolworths Employee who had satisfied the Paid Personal/Carer's Leave Preconditions and the period of personal/carer's leave taken included a NES Public Holiday falling on a Sunday;
 - (b) says that the entitlement to not be taken to be on paid personal/carer's leave on a Sunday did not apply on Ordinary Sundays;
 - (c) otherwise denies the paragraph.
70. In response to paragraph 70, the respondent:
- (a) denies that paragraph in respect of any Sunday during the Claim Period that was also a NES Public Holiday;
 - (b) otherwise admits paragraph 70 in respect of Ordinary Sundays.
71. The respondent denies paragraph 71.

"Unpaid Sunday leave – loss and damage"

72. The respondent denies paragraph 72.
- 72A. Further or in the alternative to paragraphs 50, 57, 64 and 72 above:
- (a) some or all Woolworths Employees took annual leave on Ordinary Sundays during the Claim Period and were paid annual leave loading by the respondent;

Particulars

- (i) Clause 13.4(b) of the Woolworths Agreement provides that, during a period of annual leave taken by a team member, the team member (other than a team member who is a shiftworker under this Agreement) will receive annual leave loading calculated at 17.5% of their base rate of pay, or the relevant weeknight and weekend penalty rates - whichever is greater but not both.

- (ii) Clause 11.5.2 of the Big W Agreement provides that, during a period of annual leave taken by a team member, the team member will receive annual leave loading calculated at 17.5% of their base rate of pay, or the relevant weeknight and weekend penalty rates, whichever is greater but not both.
 - (iii) Clause 32.3 of the Retail Award (up to 30 September 2020) provided that, during a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed in clause 17 of the Retail Award and would be as follows:
 - (A) Day work: Employees who would have worked on day work only had they not been on leave – 17.5% or the relevant weekend penalty rates, whichever is greater but not both.
 - (B) Shiftwork: Employees who would have worked on shiftwork had they not been on leave – a loading of 17.5% or the shift loading (including relevant weekend penalty rates), whichever is the greater but not both.
 - (iv) Clauses 28.3 of the Retail Award (on and from 1 October 2020) provides that during a period of annual leave an employee will receive a loading calculated for the period of leave on the employee's minimum hourly rate specified in clause 22 at the rate of the greater of the following two amounts:
 - (A) 17.5% of the employee's minimum hourly rate for all ordinary hours of work in the period; or
 - (B) the employee's minimum hourly rate for all ordinary hours of work in the period inclusive of penalty rates.
- (b) to the extent that a Woolworths Employee:
- (i) took paid annual leave on a Sunday;
 - (ii) in addition to their pay for the Sunday, received a payment on account of annual leave loading; and
 - (iii) is taken not to have been on annual leave during any such Sunday (as alleged, but denied by the respondent),

the Woolworths Employee was only entitled to be paid their ordinary hours of work on such Sundays at their base rate of pay pursuant to s 116 of the FW Act;

- (c) the respondent mistakenly believed the Woolworths Employee should be paid the annual leave loading, in accordance with clause 13.4(b) of the Woolworths Agreement, clause 11.5.2 of the Big W Agreement, clause 32.3 of the Retail Award (up to 30 September 2020) or clause 28.3 of the Retail Award (on and from 1 October 2020);
- (d) but for the mistaken belief pleaded in subparagraph (c) above, the respondent would not have paid the Woolworths Employee the annual leave loading;
- (e) by reason of the matters pleaded in subparagraphs (a) to (d) above, the Woolworths Employee has been unjustly enriched at the expense of the respondent and the respondent is entitled to restitution of an amount equivalent to the annual leave loading paid to the Woolworths Employee on every Ordinary Sunday taken as leave by the Woolworths Employee in the Claim Period;
- (f) accordingly, the respondent is entitled to set off, and hereby sets off, against the amounts claimed in the SOC in respect of the Woolworths Employees, the amounts in subparagraph (e) above; and
- (g) further and in the alternative to subparagraph (a)-(f) above, there was a close correlation between the purpose of the payments pleaded at subparagraph 72A(b) above, and the purpose of the base rates and penalty rates pleaded at paragraphs 48, 55, 59 and 62 of the SOC;
- (h) by reason of the matters pleaded at subparagraph (g), part of the amounts paid is entitled to be set off against the amount of the entitlements alleged at paragraphs 48, 55, 59 and 62 of the of the SOC;
- (i) in the premises pleaded at subparagraphs (a) to (h) above, and insofar as the payments pleaded at subparagraph (b) above:
 - (i) across the Claim Period; or alternatively
 - (ii) across each pay period –exceed the amounts payable under the Award across that period, the respondent denies the alleged contraventions.
- (j) alternatively to subparagraph (i) above, in the premises pleaded at subparagraphs (a) to (h) above and insofar as the payments pleaded at subparagraph (b) above:
 - (i) across the Claim Period; or alternatively
 - (ii) across each pay period –

do not exceed the amounts payable under the Award, the payments pleaded at subparagraph (b) above should be brought into account when assessing the compensable loss for the purposes of s 545 of the FW Act; and

- (k) further or alternatively to the matters pleaded in subparagraphs (a) to (k) above, if the Court finds that the amounts described in (e) above cannot be taken into account for any loss assessed for amounts claimed in the SOC in respect of the Woolworths Employee, then it would not be appropriate, within the meaning of s 545 of the FW Act, to make an order for compensation in respect of the Woolworths Employee in circumstances where such an order failed to accord with the compensatory and remedial purposes of s 545 by failing to take into account the amounts paid to the Woolworths Employee as described in subparagraph (e) above.

73. The respondent denies the Applicants and Group Members are entitled to the relief set out in the Originating Application filed on 4 December 2025, or at all.
74. Further or in the alternative to the whole of the SOC, if, which is denied, the respondent is liable to pay any pecuniary penalty or to have contravened a civil remedy provision, the respondent will rely upon ss 556 and 557 of the FW Act.

Date: 17 April 2026



Signed by Ian Bolster
Ashurst Australia
Lawyer for the Respondent

This pleading was prepared by Ruth Higgins of Senior Counsel, and Vanja Bulut and Sam Gerber of Counsel.

Certificate of lawyer

I, Ian Bolster, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 17 April 2026



Signed by Ian Bolster
Ashurst Australia
Lawyer for the Respondent