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File Title: CALEB COOPER v WOOLWORTHS (SOUTH AUSTRALIA) PTY LTD
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Sia Lagos

Registrar

Important Information

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

No. VID1606/2025

Caleb Cooper
Applicant

Woolworths (South Australia) Pty Ltd
Respondent

REPLY

To the defence (**defence**) of the respondent (**Woolworths**) dated 17 April 2026, the applicant says as follows (using terms as defined in the statement of claim dated 4 December 2025 (**SOC**) or in the defence unless otherwise indicated):

A. THE PARTIES

1. As to paragraph 1(a), the applicant admits the allegation.
2. As to paragraph 3(b), the applicant says that the word “and” at the end of paragraph 3(c)(i) of the SOC was omitted in error.

B. WOOLWORTHS

3. As to paragraph 6(b), the applicant admits the correction.

C. INDUSTRIAL LAWS AND INSTRUMENTS

4. As to paragraph 8, the applicant admits the correction.
5. At to paragraph 10, the applicant admits the corrections.
6. As to paragraph 12, the applicant:

(a) as to subparagraph (b):

(i) admits the allegations in subparagraph (i);

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- (ii) denies the allegation in subparagraph (ii) and says that all Sundays, including Ordinary Sundays, were public holidays in South Australia; and
 - (iii) denies the allegation in subparagraph (iii), and refers to subparagraph (ii) above; and
- (b) as to subparagraph (c):
 - (i) admits the allegations in subparagraph (i);
 - (ii) denies the allegation in subparagraph (ii) and refers to subparagraph (a)(ii) above; and
 - (iii) denies the allegation in subparagraph (iii) and refers to subparagraph (a)(ii) above.
- 7. As to paragraph 15, the applicant admits the allegation.
- 8. As to paragraph 16, the applicant:
 - (a) as to subparagraph (a), denies the allegation and says further that there were no “parties” to the Woolworths Agreement; and
 - (b) as to subparagraph (b), denies the allegation and says further that no term of the Woolworths Agreement could exclude a provision of the NES, including s 115 of the FW Act.
- 9. As to paragraph 19, the applicant admits the Woolworths Agreement contained terms providing to the effect alleged but otherwise refers to paragraph 6(a)(ii) above.
- 10. As to paragraph 21, the applicant:
 - (a) as to subparagraph (a), refers to paragraph 6(a)(ii) above; and
 - (b) as to subparagraph (b), denies the allegations and refers to paragraph 8 above.
- 11. As to paragraph 24, the applicant admits the allegation.

12. As to paragraph 26, the applicant:
 - (a) admits the allegation in subparagraph (a); and
 - (b) admits the Big W Agreement contained terms providing to the effect alleged in subparagraph (c) but otherwise refers to paragraph 6(a)(ii) above.
13. As to paragraph 28, the applicant:
 - (a) as to subparagraph (a), denies the allegation and says further that there were no “parties” to the Big W Agreement; and
 - (b) as to subparagraph (b), denies the allegation and says further that no term of the Big W Agreement could exclude a provision of the NES, including s 115 of the FW Act.
14. As to paragraph 30, the applicant admits the Big W Agreement contained terms providing to the effect alleged but otherwise refers to paragraph 6(a)(ii) above.
15. As to paragraph 32, the applicant:
 - (a) as to subparagraph (a), refers to paragraph 6(a)(ii) above; and
 - (b) as to subparagraph (b), denies the allegation and refers to paragraph 13 above.
16. As to paragraph 35, the applicant:
 - (a) as to subparagraph (a), denies the allegation and refers to paragraph 6(a)(ii) above; and
 - (b) as to subparagraph (b), denies the allegations and says that no term of the Retail Award could exclude a provision of the NES, including s 115 of the FW Act.
17. As to paragraph 36, the applicant:
 - (a) as to subparagraph (a), denies the allegations and refers to paragraph 6(a)(ii) above; and

(b) as to subparagraph (b), denies the allegations and refers to paragraph 16(b) above.

18. As to paragraph 37, the applicant:

- (a) as to subparagraph (b), admits the allegations;
- (b) as to subparagraph (c), admits the allegation;
- (c) as to subparagraph (f), admits the allegation; and
- (d) as to subparagraph (g), admits that the Woolworths Agreement contained terms providing to the effect alleged in subparagraph (g) but otherwise refers to paragraph 6(a)(ii) above.

19. As to paragraph 38, the applicant:

- (a) as to subparagraph (b), denies the allegation and refers to paragraph 6(a)(ii) above;
- (b) as to subparagraph (c), denies the allegations and refers to paragraphs 16 and 17 above; and
- (c) as to subparagraph (d), refers to paragraphs 18(a)-18(c) above.

D. CONTRAVENTIONS OF THE FW ACT – MR COOPER

20. As to paragraph 41 the applicant:

- (a) as to subparagraph (b), admits the allegations, refers to paragraph 6(a)(ii) above and says further that, by operation of s 89 of the FW Act, the applicant was taken not to be on annual leave on each such day; and
- (b) as to subparagraph (c), denies the allegations and refers to subparagraph (a) above.

21. As to paragraph 42, the applicant:

- (a) as to subparagraph (b), admits the allegations, refers to paragraph 6(a)(ii) above and says further that, by operation of s 98 of the FW Act, the applicant was taken not to be on personal leave on each such day; and

- (b) as to subparagraph (c), denies the allegations and refers to subparagraph (a) above.

22. As to paragraph 43A, the applicant:

- (a) as to subparagraph (a):
 - (i) says that on each Sunday for the period between 21 March 2022 and 31 December 2023 on which the applicant was treated as being on annual leave, Woolworths paid him annual leave loading; and
 - (ii) otherwise, does not know and therefore cannot admit the allegation;
- (b) as to subparagraph (b), admits the allegation;
- (c) as to subparagraph (c), does not know and therefore cannot admit the allegation;
- (d) as to subparagraph (d), does not know and therefore cannot admit the allegation;
- (e) as to subparagraph (e), denies the allegation and says further that:
 - (i) on each occasion on which the applicant was paid annual leave loading, Woolworths deducted a commensurate number of hours from the applicant's annual leave balance such that the applicant suffered a commensurate depletion in his accrued annual leave;
 - (ii) the consequence of (i) above was that the alleged enrichment was not, and could not have been, unjust;
- (f) denies the allegation in subparagraph (f) and refers to subparagraph (e) above; and
- (g) as to subparagraph (g), denies the allegation, refers to subparagraph (e) above and says that if the amounts pleaded are to be brought to account the commensurate deduction from the applicant's annual leave balance that occurred when the annual leave loading was paid must also be brought to account.

E. CONTRAVENTIONS OF THE FW ACT – GROUP MEMBERS

23. As to paragraph 45(c), the applicant denies the allegation and refers to paragraph 6(a)(ii) above.
24. As to paragraph 48(c), the applicant denies the allegation and refers to paragraph 6(a)(ii) above.
25. As to paragraph 52(c), the applicant denies the allegation and refers to paragraph 6(a)(ii) above.
26. As to paragraph 55(c), the applicant denies the allegation and refers to paragraph 6(a)(ii) above.
27. As to paragraph 59, the applicant:
- (a) as to subparagraph (a), denies the allegation and refers to paragraph 6(a)(ii) above;
 - (b) as to subparagraph (b), does not know and therefore cannot admit the payments and other benefits alleged at subparagraphs (i)-(iv) and says further that to the extent that an employee's contract of employment contained a clause of the kind pleaded in subparagraph (b)(i), such clause did not, and does not, authorise Woolworths to set off the amounts alleged in paragraph 59 of the SoC;

Particulars

1. *It was not in the contemplation of either party to the relevant contracts that Sundays were public holidays and attracted the rates of pay and entitlements pleaded at paragraph 59 of the SoC.*
2. *By reason of (1), there was no meeting of the minds on the question of whether the benefits under the contract could be set off against those rates of pay and entitlements.*
3. *By reason of (1) and (2), the contracts are not to be construed as authorising Woolworths to set off amounts paid*

under the contracts against Retail Award entitlements that were not in the contemplation of the parties.

- (c) as to subparagraph (c), denies the allegations and says that the payments pleaded at subparagraph 59(b) of the defence were not in contemplation of Sundays being public holidays within the meaning of s 115 of the FW Act, and there is accordingly no correlation of the kind alleged;
 - (d) as to subparagraph (d), denies the allegations and refers to subparagraph (c) above;
 - (e) as to subparagraph (e), denies the allegations and refers to subparagraphs (c) above; and
 - (f) as to subparagraph (f), denies the allegations and refers to subparagraph (c) above.
28. As to paragraph 62(a), the applicant denies the allegation and refers to paragraph 6(a)(ii) above.
29. As to paragraph 66(b), the applicant denies the allegation and refers to paragraph 6(a)(ii) above.
30. As to paragraph 69(b), the applicant denies the allegation and refers to paragraph 6(a)(ii) above.
31. As to paragraph 72A, the applicant:
- (a) as to subparagraph (a), admits that at least some Woolworths Employees who took annual leave on Ordinary Sundays were paid annual leave loading by Woolworths, and otherwise does not know, and therefore cannot admit, the allegation;
 - (b) as to subparagraph (b), admits the allegation;
 - (c) as to subparagraph (c), does not know and therefore cannot admit the allegation;
 - (d) as to subparagraph (d), does not know and therefore cannot admit the allegation;

- (e) as to subparagraph (e), denies the allegations and says further that:
- (i) on each occasion on which a Woolworths Employee was paid annual leave loading Woolworths deducted a commensurate number of hours from the employee's annual leave balance, such that the employee suffered a commensurate depletion in their accrued annual leave;
 - (ii) the consequence of subparagraph (i) was that the alleged enrichment was not, and could not have been, unjust;
 - (iii) says further that -
 - 1. Woolworths was required, when an employee's employment ended and the employee had a period of untaken paid annual leave, to pay to the employee the amount that would have been payable to the employee had the employee taken that period of leave;
 - 2. where (1) occurred, the amount that would have been payable to the employee was to be calculated as at the date the employment ended;
 - 3. as a result of (1) and (2), the employee, when their employment ended, was entitled to be paid for their accrued but untaken annual leave, including leave loading, calculated at that date; and

Particulars to (1) to (3)

Fair Work Act s 90(2).

Woolworths Agreement cl 13.5.

Big W Agreement, cl 11.6.

Retail Award up to 30 September 2020, cl 32.3.

Retail Award on and from 1 October 2020, cl 28.3.

- 4. by reason of the wage increases prescribed by the applicable instrument, for some employees the amount payable at the date the employment ended was higher than the amount paid

to the employee during the pay periods in which the employee was wrongly taken to have been on annual leave on Sundays;

- (f) denies the allegation in subparagraph (f) and refers to subparagraph (e) above;
- (g) as to subparagraph (g), denies the allegation and says that the payments pleaded at paragraph 72A(b) of the defence were not in contemplation of Sundays being public holidays within the meaning of s 115 of the FW Act and there is accordingly no correlation of the kind alleged;
- (h) as to subparagraph (h), denies the allegation and:
 - (i) says that the basis in law for the right to set off the amounts is not identified; and
 - (ii) refers to and relies on subparagraph (e) and (g);
- (i) as to subparagraph (i), denies the allegation and says that even if the circumstances in subparagraph (i) arose, Woolworths would still have contravened the FW Act by taking the employee to be on annual leave when it was not authorised to do so; and
- (j) as to subparagraph (j) say that if the amounts pleaded are to be brought to account so too must:
 - (i) the commensurate deduction from the employee's annual leave balance that occurred when annual leave loading was paid; and
 - (ii) where an employee's employment has ended, the difference between the amounts in fact paid to the employee at the time the employee was wrongfully taken to be on annual leave and the value of the entitlement (including any annual leave loading) at the end of the employee's employment when it would otherwise have been paid out.

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

Date: 11 May 2026

A handwritten signature in black ink, appearing to read 'C Allsopp', written in a cursive style.

Signed by Craig Allsopp

Lawyer for the Applicant

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