

Response to Coles Limited (ASX:COL) Notice of Meeting

AGM date and location: 13 November 2019, Melbourne

Prepared: 10th October 2019

By: Dr Katie Hepworth, Director of Workers' Rights, katie@accr.org.au, +61 416 825 280

The following is a response to Coles' response to ACCR's resolution in its 2019 notice of meeting 2019.¹ Coles recommended votes against both resolutions. The following is a response to key points in Coles' statement.

This response should be read in conjunction with the original supporting statement and the comparative matrix at Appendix 1, which compares Coles current policies to worker-driven social responsibility (WSR) initiatives globally.

"Coles has a well-established ethical sourcing program and a long history of commitment to human rights. [...] Coles' Program aligns with global best practice and is based on Ethical Trade Initiative (ETI) and International Labour Organisation (ILO) conventions."

The ETI Base Code is a set of labour standards informed by ILO labour rights conventions. They establish minimum standards, but do not prescribe policies and procedures to achieve these standards. The ETI does however, conduct and publish research on the relative effectiveness of models of supply chain compliance and due diligence.

Significantly, ETI's own research states that audits are "limited in scope" and do "not necessarily lead to change". Specifically, as 3rd party audits only "represent a snapshot of a given point in time" they do not give a full picture of "normalised working conditions", and have been shown to be unlikely to pick up the worst forms of labour violations (child labour, modern slavery, etc.).² They are also insufficient for understanding workplace issues such as harassment, wage theft, excessive overtime, and freedom of association violations, and "distort[ing] the realities of a workplace".³

According to ETI, key elements in establishing a robust human rights due diligence framework is direct company engagement with workers and their representatives, and "encouraging suppliers to recognise and engage positively with trade unions".⁴

By contrast, WSR initiatives, which put workers and their representatives at the centre of due diligence processes, are effective in addressing labour risks and ensuring compliance. These initiatives support workers to raise workplace issues early, assisting businesses to resolve them before they escalate into lengthy and more complex disputes.

WSR initiatives are being increasingly adopted by our company's peer companies globally. This trend indicates that WSR initiatives are feasible, and raises the bar for supply chain management globally. Our company will face heightened reputational and operational risks if it does not keep pace with peer action.

See the supporting statement and matrix at Appendix 1 for more research on WSR initiatives, examples of WSR initiatives currently active in various global supply chains, and how they compare to the current ethical sourcing approach employed by Coles.

"Coles has a comprehensive accreditation and auditing process which is reflective of supplier risk [...] 2016 – becoming the first major Australian supermarket chain to adopt the Supplier Ethical Data Exchange (Sedex), a global ethical supply chain management platform used to assess supply chain risk in over 150 countries."

Sedex is simply a platform that streamlines the provision of data from suppliers to lead buyers. As detailed in the supporting statement, ACCR has significant concerns about the reliance on Sedex's self-assessment

¹ Coles (2019). *Notice of Meeting*, <https://bit.ly/2kWOHNx>.

² ETI (2018). "Audits and Beyond", *The Ethical Trading Initiative*, <https://bit.ly/2n33maO>.

³ ILO (2016). *Workplace Compliance in Global Supply Chains*, <https://bit.ly/2l001qA>, pp.10 – 15.

⁴ ETI, *Audits and Beyond*.

questionnaire for the initial triaging of supplier risk, the certification of low-risk suppliers without an audit, and the use of announced audits for medium and high-risk suppliers.

There is a very real risk that labour rights violations at these supplier sites will not be effectively identified and addressed through the current Sedex program.

“Coles was the highest ranked company in Australia, and ninth-highest globally, in the ‘Know The Chain Food and Beverage’ benchmark.”

In 2018, Know The Chain (KtC) only assessed two food and beverage companies in Australia (38 globally) – Woolworths and Wesfarmers. Coles was assessed as part of Wesfarmers. KtC’s assessment is based solely on disclosure, not performance.

Wesfarmers was ranked 9th with a score of 43/100, while Woolworths was ranked 10th with a score of 39/100. Since that assessment was conducted, Woolworths has made changes to their responsible sourcing policies.⁵ ACCR believe that these changes would see Woolworths receive a higher rating than Coles in 2019. These changes were also a key factor in ACCR not filing a resolution with Woolworths in 2019.

Significantly, Wesfarmers’ score for “worker voice” was significantly lower than Wesfarmers’ other scores. KtC commented (emphasis added):

To prevent forced labor in its supply chains, [Coles] is encouraged to work with relevant stakeholders to engage with and educate workers in its supply chains on their labor rights. The company is further encouraged to work with suppliers to improve their practices in relation to freedom of association and collective bargaining and to work with local or global trade unions to support freedom of association in its supply chains.⁶

Furthermore, KtC’s 2018 summary report states that *all companies* assessed need to “do more to identify and address risks and instances of forced labor in their supply chains”.⁷ KtC highlight the agricultural sector as a particular area of risk. They identify the WSR model adopted on Florida farms as having effectively demonstrated an ability to “eliminate long-standing abuses in the agricultural fields”,⁸ and note that the model has already “resulted in tangible improvements in working conditions and helped to address some of the systemic challenges facing agricultural workers”.⁹

For more information about this model and how it compares to Coles current policies, see the comparative matrix at Appendix 1.

“Coles is a strong supporter of worker education and has adopted a multi-stakeholder engagement approach.”

Coles states that it is actively working with trade unions to raise worker standards. However, this is not reflected in their various Ethical Sourcing documents. This resolution calls on Coles to align its policies with current global best practice, by formalising the role for workers and their representative organisations in three key areas: supplier certification, worker education and grievance procedures.

“Coles actively works with the Australian Workers Union (AWU), Shop, Distributive and Allied Employees’ Association (SDA) and Transport Workers Union (TWU) to raise workers’ standards across the fresh produce supply chain. These unions have coverage across the industry.”

One of the key principles of WSR agreements is that “obligations for global corporations must be binding and enforceable” and that “consequences for non-compliant suppliers must be mandatory”.¹⁰

We note that Coles’ work with the AWU/SDA/TWU is not mentioned in their 2019 Sustainability Report, which indicates that these unions do not have a formal or binding role in supplier accreditation. ACCR calls on Coles to publicly release any existing agreement with the AWU/SDA/TWU, to allow investors to determine whether it

⁵ Woolworths (2019). *2019 Sustainability Report*, <https://bit.ly/2p4Jtkp>

⁶ Know The Chain, (2019). *Wesfarmers*, <https://bit.ly/2ln0wNv>.

⁷ Know The Chain, (2019). *2018 Food & Beverage Benchmarks Finding Report*, p. 35, <https://bit.ly/2ydKg3B>.

⁸ *Ibid*, p. 35.

⁹ *Ibid*, p. 36.

¹⁰ <https://wsr-network.org/what-is-wsr/statement-of-principles/>

meets the minimum threshold for best practice human rights supply chain due diligence, as called for in the resolution. Namely, that the agreement contain policies and procedures that satisfy the following principles:

1. Supplier accreditation and compliance is determined through a multi-stakeholder approach, involving workers and the representative organisations of their own choosing.
2. Workers should receive peer-led' labour rights education with the involvement of workers' representative organisations of their own choosing.
3. Worker-led grievance procedures should involve the representative organisations of workers' own choosing in the resolution of complaints.

"In 2019, Coles engaged in a number of meetings with the ACCR and the NUW, including regional town hall meetings with farm workers. Coles is also actively engaged with the horticulture industry through the Fair Work Ombudsman Horticulture Reference Group and the Industry Viticulture Reference Group, which include representatives of unions including the NUW, other civil society representatives and government. In addition, Coles regularly engages with relevant NGOs and industry groups."

ACCR attended the regional town hall forum in Mildura organised by the National Union of Workers (NUW) that was also attended by Coles and Woolworths. At that meeting, almost all workers spoke of illegal underpayments, and a significant proportion also spoke of working on farms without relevant work rights. The evidence presented at this town hall meeting highlighted significant labour violations in the region – including examples that the research shows are red flags for modern slavery. ACCR, LUCRF Super and IFM investors attended a similar town hall forum in Shepparton in May 2019, where similar stories were shared.¹¹

The stories presented at both forums correlated with the significant body of research on endemic labour violations in Australian horticultural supply chains and was a significant factor in the decision to file on Coles in 2019.

At meetings following these forums, ACCR raised the issue that Coles' current ethical sourcing policies were insufficient to identify and mitigate the risks identified in their supply chains.

ACCR notes that participation in meetings is not sufficient to meet the principles identified in the resolution. We call on Coles to commit to a process and timeline to revise their ethical sourcing documents in line with these principles. This process must include input from workers and their representative organisations.

Coles has also supported the development of the StaffSure labour hire certification program, an independent industry-led certification program that assesses labour hire providers to further help suppliers and the recruitment and staffing industry to reduce human rights and workplace compliance risks from third party labour hire.

ACCR has significant concerns about the robustness of the Staffsure program and its ability to identify and address risks of labour violations and modern slavery. Coles' *Ethical Sourcing* documents state that suppliers can use labour-hire providers accredited through one of three systems: state licensing systems for labour-hire, the approved employer program under the Seasonal Worker Programme, or StaffSure.

There are significant differences in corrective action required by each of these schemes, and in the threshold for withdrawal of accreditation. These can be seen in the case of labour-hire firm Agri Labour. Agri Labour was an approved employer under the Seasonal Worker Programme and accredited through StaffSure in September 2017. In 2018, the Federal government withdrew their Approved Employer status due to breaches under the Fair Work Act.¹² Despite findings and financial penalties in 2018 and 2019,¹³ Agri Labour is still listed on the StaffSure website as accredited – with a flag that redirects to the company (Agri Labour) for more information.¹⁴ By contrast, the QLD Labour Hire Licensing Authority listed corrective action required for Agri Labour.

¹¹ For a briefing on that forum, see IFM (2019). *IFM Investors gains insights on labour conditions at 'pickers and packers' workers forum*, <https://bit.ly/33ju7HW>.

¹² Brooks, S. (2018). "Agri Labour Australia suspended from government scheme amid underpayment, unsafe work claims", *ABC News*, 23 May 2018, <https://ab.co/2MI9VhU>

¹³ Dobson, M. and Tuffield, R. (2019). "Agri Labour Australia forced to pay more than \$50,000 to Vanuatu labourers working in northern Victoria", *ABC News*, 24 May 2019, <https://ab.co/31WxhcG>; Schneiders, B. (2018). "We have the same rights': Exploited migrant workers win big payouts", *SMH*, 14 October 2018, <https://bit.ly/30T99xN>.

¹⁴ <https://www.staffsure.org/StaffSure/Registry.aspx>

ACCR states that Coles is one of two principal buyers of fresh fruit and vegetables in Australia and that together these companies supply the majority of fresh fruit and vegetables in Australia. Coles estimates that in FY18, its sales of horticultural products were approximately 12% of Australian production. [...] In tonnes excluding floral and nuts.

Tonnage does not adequately convey Coles' leverage in the Australian fresh food sector – market share *by value* is more indicative of a company's power to initiate change within a supply chain. Coles' substantial market share *by value*, and its power to impact conditions in the horticultural sector, is highlighted in a number of reports.

According to the Fair Work Ombudsman's 2018 *Harvest Train Inquiry* report:

Australia's two largest supermarket retailers - Woolworths and Coles - captured a larger share of Australia's \$18 billion fresh fruit and vegetable market than all the other retail outlets combined (including supermarket IGA, greengrocers, markets, other supermarkets and other non-supermarkets).¹⁵

The critical role of the supermarkets in addressing labour violations in Australian fresh food supply chains has been continually asserted by key stakeholders. In the Senate's *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, the then Deputy Fair Work Ombudsman, argued:

...the more work we are doing in the horticultural sector the more I see part of the solution being pressure put on employers at the top of the supply chain to take responsibility for what is occurring down the lines.... If Coles, Woolworths and others intend to sell the produce, I think they need to care about how it got to their stores.¹⁶

Similarly, Howes et. al. argued that the "nature of the product market" contributes to "downward pressure on wages", as "73% of it made up of only two supermarkets which use price competition to keep wholesale prices down, even below cost price in some cases".¹⁷

In response to the latest research on Australian horticultural supply chains, Associate Professor Justine Nolan and Dr Martijn Boersma, the authors of *Addressing Modern Slavery* (publisher, 2019), together with Dr Laurie Berg, recently initiated an open letter calling on Coles and Woolworths to do more to address modern slavery in their Australian fresh food supply chains.¹⁸ The letter was signed by 59 Australian industrial relations, labour law and supply chain academics and experts, and covered in the press.¹⁹

That letter identified the significant leverage of both Coles and Woolworths to address modern slavery and labour abuses in the Australian horticultural sector, and called on the supermarkets to:

- take a multi-stakeholder approach to supplier certification that actively involves workers and their trade unions;
- actively involve trade unions in labour rights education and in grievance procedures;
- ensure that all contracts with suppliers are sufficient to deliver at award wages to all workers.²⁰

Significantly, Woolworths does not dispute its market share and leverage within Australian fresh food supply chains.

¹⁵ Fair Work Ombudsman (2018). *Harvest Train Inquiry: A Report on Workplace Arrangements along the Harvest Trail*, p. 17, <https://bit.ly/2msBrAJ>

¹⁶ Commonwealth of Australia (2016). *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, p. 283, <https://bit.ly/2LUIsED>

¹⁷ Howes et. al. p. 10.

¹⁸ <http://www.martijnboersma.com/>

¹⁹ Boersma, M., Nolan, J. and Berg, L. (2019) "Message to Coles, Woolworths: Act now to end Modern Slavery", *The New Daily*, 7 September 2019, <https://bit.ly/2k6qK61>.

²⁰ <http://www.martijnboersma.com/>