



# INVESTOR BRIEFING

NOVEMBER 2018  
WOOLWORTHS (WOW)

AGM: 21 November 2018, Sydney

**ACCR** AUSTRALASIAN  
CENTRE FOR  
CORPORATE  
RESPONSIBILITY

**LUCRF**  
super 

# OVERVIEW

ACCR and LUCRF Super have requisitioned two resolutions for discussion at the AGM of Woolworths Group Limited (ASX: WOW) this year. In addition to the procedural resolution recommending a change to the company's constitution in order to enable advisory resolutions, ACCR and LUCRF Super have filed a resolution relating to:

- the implementation of a labour hire pre-qualification program, mutually agreed upon by the National Union of Workers (NUW) and WOW;
- mandated trade union involvement in grievance procedures and worker education; and
- regular disclosure of progress against these items to shareholders.

The objective of the resolution is to ensure Woolworths fulfils the commitments the company made in 2017 to work with the NUW to implement a series of changes to Woolworths' supply chain management strategies designed to address the severe labour rights violations documented at Woolworths' supplier farms across Australia, thereby mitigating a multitude of associated business and operational risks.

## Summary of 2018 ACCR and LUCRF Super resolutions

Resolution	Type	Issue	Threshold	Page
6(a)	Special	Change to company constitution	75%	2
6(b)	Ordinary	Human rights in our company's operations and supply chains	Contingent on 1 + 50%	2

## ABOUT ACCR

The [Australasian Centre for Corporate Responsibility](#) is a philanthropically-funded NGO that monitors the environmental, social and governance (ESG) practices and performance of ASX-listed companies. We undertake research and highlight emerging areas of business risk through private and public engagement, including the filing of shareholder resolutions.

## ABOUT LUCRF Super

In 1978, [LUCRF Super](#) was established to lay the foundation for the Australian superannuation system as we know it today. We currently manage over \$6.4 billion in assets for over 162,000 hard-working Australians. We partner with over 23,000 employers who contribute on our members' behalf.

As a public offer fund, we're open to everyone. Our members are employed in a range of industries, including warehousing, food processing, market research, poultry, dairy, supply chain and labour hire. We're an industry super fund run only to benefit members. Our aim is to provide consistently competitive returns and excellent service at minimal cost to our members. We exist to help our members achieve financial dignity, now and in retirement.

# RESOLUTIONS AND COMMENTARY

## Resolution 1 – special resolution to amend our company’s constitution

Shareholders request that the following new clause 9.28 be inserted into our company’s constitution:

### Member resolutions at general meeting

The shareholders in general meeting may by ordinary resolution express an opinion, ask for information, or make a request, about the way in which a power of the company partially or exclusively vested in the directors has been or should be exercised. However, such a resolution must relate to an issue of material relevance to the company or the company’s business as identified by the company, and cannot either advocate action which would violate any law or relate to any personal claim or grievance. Such a resolution is advisory only and does not bind the directors or the company.

### Commentary to resolution 1

It is well understood that a special resolution is required under Australian law in order for ordinary resolutions on ESG risk to be put to a vote. All of our comments are contained in our supporting statement.

## Resolution 2 - Ordinary resolution on human rights in our company’s operations and supply chains

In order to effectively protect workers in our company’s domestic fresh food supply chains from human rights and labour abuses, and to protect our company’s interests, shareholders recommend that our company:

1. Reach agreement with the National Union of Workers to introduce a Pre-Qualification Program that will improve labour-hire providers’ compliance with labour and human rights standards, as per the commitment made by our company on 22

November 2017, which is yet to be given formal effect.

2. Ensure trade union involvement in worker rights’ education activities and grievance resolution procedures, to promote compliance by ensuring workers understand and can exercise their rights, and are protected and supported to raise concerns.
3. Provide ongoing disclosure to shareholders, commencing with the company’s 2019 Sustainability Report, about the company’s domestic fresh food supply chain, including reporting on:
  - a. The implementation and impact of the Labour Hire Pre-Qualification Program;
  - b. The nature and outcome of enforcement and remediation activities undertaken by the company, and the impact on supply chain workers’ wages and working conditions;
  - c. How the company is collaborating with stakeholders, including trade unions, to improve compliance and best practice;
  - d. The barriers to sustainable compliance with human and labour rights standards, and the mechanisms the company has identified and implemented to address them.

### Commentary to Resolution 6(b)

#### BACKGROUND: LABOUR RIGHTS VIOLATIONS IN WOOLWORTHS’ FRESH FOOD SUPPLY CHAIN

Together with Coles, Woolworths is the principal buyer of fresh fruit and vegetables in Australia, with the major supermarkets accounting for 76% of market share by sales value in 2014-15.<sup>1</sup>

Fresh produce has become a key profit/growth center and battleground for supermarkets, with both retailers focusing on winning market share by improving their fresh food offering.

<sup>1</sup> Costa Group Holdings Limited, *Prospectus*, 2015, p. 23.

This strategy has revolved around the development of direct supply relationships with growers, working “with fewer, larger suppliers to get fresh produce into stores more quickly, and back that up with higher levels of customer service”.<sup>2</sup> These purchasing practices have resulted in a concentration in the market, to the point where in most horticultural industries fewer than 8 businesses supply 70%+ of the market.<sup>3</sup>

Close strategic partnerships with large horticultural suppliers – who are featured prominently in Woolworths’ fresh food marketing – exposes Woolworths to a variety of reputational and other risks.

In the past three years, there has been significant media exposure of the major and persistent labour rights violations in Australian domestic fresh food supply chains, including by Woolworths’ major strategic suppliers:

- The underpayment and mistreatment of ni-Vanuatu seasonal workers who were paid as little as \$8 per hour and experienced bleeding from their ears and noses while working at a tomato supplier in 2018.<sup>4</sup>
- Threats to deport and blacklist Seasonal Workers from Vanuatu for questioning unfair wage deductions at Woolworths’ major glasshouse tomato supplier in 2017 (D’Vine Ripe/Perfection Fresh).<sup>5</sup>
- The widespread abuse and underpayment of migrant workers (including undocumented workers) at a major Woolworths lettuce supplier (Lamattina)<sup>6</sup>, stone fruit supplier (Cutri Fruit)<sup>7</sup>, and

asparagus supplier (Vizzarri Farms), where a major Border Force raid led to the detention of 50 unlawful non-citizens<sup>8</sup>, as reported by a special Fairfax/ABC investigation in late 2016.

- Retaliation against migrant workers who spoke out about underpayments, excessive overtime, and unsanitary working conditions at Woolworths’ largest potato supplier in South Australia (Zerella) in 2016.<sup>9</sup>
- The underpayment and sexual abuse of migrant workers at one of Woolworths’ key lettuce suppliers in Victoria (Covino Farms) and tomato suppliers in South Australia (D’Vine Ripe), which featured on the ABC’s Four Corners documentary *Slaving Away*, in 2015.<sup>10</sup>

## ENGAGEMENT

In order to mitigate significant risks stemming from serious violations of human and labour rights Woolworths’ domestic value chain, in 2017 ACCR, the NUW, and LUCRF Super put forward a shareholder resolution to be considered at the company’s 2017 AGM. This resolution came after two years of engagement between the National Union of Workers and Woolworths about ways to end labour rights abuses and improve compliance following the ABC Four Corners ‘Slaving Away’ program in 2015, which revealed widespread abuse of workers on Woolworths supplier farms in Australia.

The resolution was withdrawn by ACCR, NUW and LUCRF Super prior to that AGM, following

<sup>2</sup>

[https://www.woolworthsgroup.com.au/page/media/Press\\_Releases/Woolworths\\_Food\\_Group%E2%80%99s\\_plan\\_to\\_get\\_customers\\_to\\_put\\_us\\_first](https://www.woolworthsgroup.com.au/page/media/Press_Releases/Woolworths_Food_Group%E2%80%99s_plan_to_get_customers_to_put_us_first); Maiden, M. (2015). “Wesfarmers focuses on company’s retail superstars”, *The Age*, 10 May 2018, <http://www.theage.com.au/business/comment-and-analysis/wesfarmers-focuses-on-companys-retail-superstars-20150520-gh5r28.html>.

<sup>3</sup>

<http://www.daff.gov.au/SiteCollectionDocuments/abares/outlook/2012/conference-presentations/David-McKINNA.pdf>.

<sup>4</sup> Schneiders, B. (2018). “Key farm scheme badly rorted, farm workers paid \$8 per hour” *The Sydney Morning Herald*, 19 May 2018, <https://www.smh.com.au/business/workplace/key-farm-scheme-badly-exploited-migrant-workers-paid-8-an-hour-20180518-p4zg53.html>.

<sup>5</sup> McKenzie, N. and Toscano, N. (2017). “Seasonal Workers Program participants told if they join union they’ll get no work”, *The Sydney Morning Herald*, 11 March 2017, <http://www.smh.com.au/business/seasonal-workers-warned-if-they-join-a-union-theyll-get-no-work-20170309-guujgv.html>;

Jones, R. (2017). “Two Wells tomato growers Perfection Fresh face scrutiny after worker, union speak out”, *ABC News*, 11 August 2017, <http://www.abc.net.au/news/2017-08-11/union-calls-for-urgent-audit-of-tomato-grower/8799686>.

<sup>6</sup> Baker, R., McKenzie N. and Schneiders, B. (2016), “Another supermarket fruit supplier caught allegedly underpaying migrants”, *The Sydney Morning Herald*, 15 Nov 2018, <http://www.smh.com.au/business/workplace-relations/another-supermarket-fruit-supplier-caught-allegedly-underpaying-migrants-20161115-gspu0v.html>.

<sup>7</sup> McKenzie, N. and Baker, R. (2017). “Fruits of their Labour” *The Sydney Morning Herald*, <http://www.smh.com.au/interactive/2016/fruit-picking-investigation/>.

<sup>8</sup> McKenzie, N. and Baker, R. (2016). “Major supermarkets selling the fruits of forbidden labour”, *The Sydney Morning Herald*, 2 Dec 2016,

<http://www.smh.com.au/national/investigations/major-supermarkets-selling-the-fruit-of-forbidden-labour-20161201-gt1w0l.html>.

<sup>9</sup> Schneiders, B. and Millar, R. (2016). “Workers at Woolworths supplier paid a pittance, threatened”, *The Sydney Morning Herald*, 6 Mar 2016,

<http://www.smh.com.au/national/investigations/workers-at-woolworths-supplier-paid-a-pittance-threatened-20160304-gnaft8.html>.

<sup>10</sup> SMH (2015). “Migrant workers in slave-like conditions, 4-corners reports”, *The Sydney Morning Herald*, 4 May 2015, <http://www.smh.com.au/national/migrant-workers-in-slavelike-conditions-abcs-four-corners-reports-20150504-ggu12u.html>.

Woolworths' commitments, via ASX announcement on 22 November 2017 ('Commitment'), to:

*work collaboratively towards the implementation of an agreed pre-qualification programme for labour-hire providers to ensure that all labour providers who wish to operate in Woolworths' direct fresh food supply chains comply with labour and human rights standards;*

*support workers in Woolworths' supply chains:*

- *to be educated about their workplace rights, including their right to join a labour union of their choice;*
- *to have access to an effective grievance mechanism to ensure that human rights violations are reported, investigated and remediated; and*
- *to be protected if they report human rights violations.*

Since Woolworths' announcement in November 2017, the NUW and Woolworths have engaged in ongoing discussions regarding the formal implementation of their commitment.

**Despite making significant progress, agreement on the pre-qualification programme and the necessary changes to Woolworths' existing grievance and remediation mechanisms has not yet been reached.**

Woolworths have recently released a new Responsible Sourcing Standard, which contains some enhancements to the company's Ethical Sourcing Policy. However, ACCR and LUCRF Super have concerns that this Standard falls short of international best practice and the company's 2017 commitment by not addressing the issue of trade union involvement in worker education and grievance resolution.

As detailed below, the International Labour Organisation (ILO) has conducted a comprehensive review of policies and programmes that have been developed to ensure workplace compliance in global supply chains. They clearly find that an approach that relies on regulatory reform or industry self-regulation or self-auditing, without the active participation by trade unions in oversight and worker education, is insufficient to resolve the types of serious labour violations evidenced in Woolworths' domestic food supply chains.

The resolutions presented by ACCR and LUCRF Super are premised on the evidence that a tripartite approach is best suited to addressing human rights risks in the Woolworths' supply chain and mitigating the multitude of business and operational risks faced by Woolworths due to labour rights violations.

### **EXISTING TRIPARTE APPROACHES TO LABOUR RIGHTS VIOLATIONS IN WOOLWORTHS' APPAREL SUPPLY CHAIN**

Woolworths has already committed to partnering with trade unions in a tripartite approach to improving compliance and protecting workers rights in the company's international apparel supply chain.

In 2018, Woolworths re-signed the Bangladesh Fire Safety Accord. The Accord is a legally-binding agreement between buyers, suppliers and trade unions in Bangladesh. The 2018 Accord contains enhanced Freedom of Association commitments, and recognises that "safe workplaces cannot be assured in the long term without the active participation of the people who work in them".<sup>11</sup> Signatory companies to the Accord – including Woolworths – will require:

...suppliers to provide access to their factories to training teams designated by the Training Coordinator [...] that include safety training experts, as well as Accord - certified trade union trainers. Such training shall cover the importance of Freedom of Association and the role of industrial relations in ensuring the functionality and empowerment of effective Health and Safety Committees and protecting workers' health and safety.<sup>12</sup>

The Accord recognises that when national legislation is insufficient to ensure respect for labour and human rights, retailers and brands have a responsibility to put in place mechanisms to ensure that these rights are upheld.

The resolutions presented here by ACCR and LUCRF Super will prevent asymmetrical approaches developing in different parts of Woolworths' supply chain to mitigate human and labour rights violations, and the multitude of business and operational risks stemming from these violations. The resolutions will ensure that the best practice approach that is already working in the company's international supply chain is also replicated in how the company manages domestic supply chain labour rights risks.

<sup>11</sup> <http://bangladeshaccord.org/wp-content/uploads/2018-Accord-full-text.pdf>.

<sup>12</sup> <http://bangladeshaccord.org/wp-content/uploads/2018-Accord-full-text.pdf>, p. 5.

## AUDITS AND INDUSTRY SELF-REGULATION INSUFFICIENT TO ADDRESS HUMAN RIGHTS RISKS IN WOOLWORTHS' SUPPLY CHAINS

ACCR and LUCRF Super remain concerned about Woolworths' reliance on a 3rd party industry certification program to mitigate labour risks in their domestic food supply chain.

Woolworths' Responsible Sourcing Standards state that they are benchmarked to "ILO's core conventions, UN Declaration of Human Rights, UNGPs, ETI's Base Code, UN Global Compact, emerging best practices from global peer programmes in various industry sectors".<sup>13</sup>

However, Woolworths' failure to reach agreement on the implementation of supply chain requirements that directly involve trade unions in worker education and grievance procedures in their domestic food supply chains, and their reliance on industry self-regulation, means that they fall short of current best practice as identified by the International Labour Organisation (ILO), Ethical Trading Initiative (ETI), OECD, and the World Bank.

The International Labour Organisation (ILO) has conducted a comprehensive review of policies and programmes that have been developed to ensure workplace compliance in global supply chains. Their 2016 report *Workplace Compliance in Global Supply Chains* highlights current best practice across multiple industry sectors.

The report is particularly critical of the ability of voluntary self-regulation and "private compliance initiatives" (codes of conduct, auditing, certification schemes or other self-reporting mechanisms such as the UN Global Compact or the Global Reporting Initiative) to sufficiently manage business and operational risks from labour violations in supply chains.<sup>14</sup>

Furthermore, reliance on auditing has been criticised as 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".<sup>15</sup> In addressing the failures of social audits to fully capture issues at particular worksites, the Clean Clothes Campaign argues that "the best auditors are the workers themselves since they are continually present at the production site".<sup>16</sup> Before workers can adequately participate in monitoring their own workplaces, studies show that they must be provided with in-depth education on their workplace rights by trade unions.<sup>17</sup>

Studies clearly demonstrate that workers and their unions are crucial to an effective due diligence process to mitigate labour rights violations in supply chains. A World Bank study concludes that one of the main barriers to effective code implementation is the "absence of a comprehensive and accountable means of engaging workers as well as their unions".<sup>18</sup>

Similarly, a 2017 OECD report states that:

Enterprises should involve workers and trade unions and representative organisations of the workers' own choosing in the due diligence process as referenced in the section above. Enterprises may also directly enter into agreements with trade unions: (i) to facilitate worker involvement in the design and implementation of due diligence processes, (ii) to implement standards on workers' rights and hold enterprises accountable to them, or (iii) to raise grievances against enterprises in relation to workers' rights.

The involvement of trade unions in worker education and grievance mechanisms gives workers more faith in these mechanisms, and increases the likelihood that they raise new, emerging or endemic workplace issues early on, allowing businesses to resolve these issues "before they escalate into more lengthy and complex disputes that may come at a high cost, predominantly for the worker but also the supplier, and, ultimately, the buyer".<sup>19</sup>

<sup>13</sup> Woolworths (2018). *Responsible Sourcing Standards*, [https://www.woolworthsgroup.com.au/content/Document/Responsible%20Sourcing%20Standards\\_%20FINAL%20July%202021%208.pdf](https://www.woolworthsgroup.com.au/content/Document/Responsible%20Sourcing%20Standards_%20FINAL%20July%202021%208.pdf).

<sup>14</sup> ILO (2016). *Workplace Compliance in Global Supply Chains*, [https://www.ilo.org/sector/Resources/publications/WCMS\\_540914/lang-en/index.htm](https://www.ilo.org/sector/Resources/publications/WCMS_540914/lang-en/index.htm), pp.10 – 15.

<sup>15</sup> ILO (2016). *Workplace Compliance in Global Supply Chains*, [https://www.ilo.org/sector/Resources/publications/WCMS\\_540914/lang-en/index.htm](https://www.ilo.org/sector/Resources/publications/WCMS_540914/lang-en/index.htm), pp.10 – 15.

<sup>16</sup> Clean Clothes Campaign (2005). *Looking for a quick fix: How weak social auditing is keeping workers in sweatshops*, <https://cleanclothes.org/resources/publications/05-quick-fix.pdf/view>, p. 79.

<sup>17</sup> Ethical Trading Initiative (2004) "Putting Ethics to Work", ETI Annual Report 2003/2004, available at:

<http://www.ethicaltrade.org/Zlib/annrep/2004/en/index.shtml>.

<sup>18</sup> World Bank (2003) "Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains", available at:

[http://siteresources.worldbank.org/INTPSD/Resources/CSR/Strengthening\\_Implementatio.pdf](http://siteresources.worldbank.org/INTPSD/Resources/CSR/Strengthening_Implementatio.pdf).

<sup>19</sup> Curtze, L. and Gibbons, S. (2017). *Access to remedy - operational grievance mechanisms. An issues paper for ETI*, Ergon,

[https://www.ethicaltrade.org/sites/default/files/shared\\_resource\\_s/ergon\\_-](https://www.ethicaltrade.org/sites/default/files/shared_resource_s/ergon_-)

In their investigation of endemic non-compliance in Woolworths' Tasmanian cleaning contracts, the Fair Work Ombudsman (FWO) highlighted the insufficiency of relying on vulnerable workers to self-report labour rights violations to the FWO:

...the FWO found many workers were reluctant to engage with or approach the FWO for assistance due to cultural reasons, immigration status, limited workplace rights knowledge, or concerns about employment security.<sup>20</sup>

...none of the cleaners from the bottom of the supply chain were willing to 'go on the record' regarding their pay or entitlements, the identity of their employer or the agent who actually employed and paid them.<sup>21</sup>

Similarly, initial departmental investigations into Agri Labour Australia – a labour hire provider to Woolworths' suppliers – did not uncover the significant issues that were later highlighted by the union, and which led to Agri Labour's suspension from the seasonal worker program.<sup>22</sup>

### **Industry self-regulation: the case of Agri Labour Australia**

We note significant issues with StaffSure, the program Woolworths proposes to rely upon to certify that labour providers are able to manage risks from labour rights violations. StaffSure was launched with the Recruitment, Consulting and Staffing Association (RCSA) in 2017, and Agri Labour Australia was one of the first companies to be certified under the program.

Agri Labour Australia was recently suspended by the federal government from recruitment workers to the seasonal worker program in response to allegations of workers' being paid as little as \$8

[\\_issues\\_paper\\_on\\_access\\_to\\_remedy\\_and\\_operational\\_grievance\\_mechanims\\_-\\_revised\\_draft.pdf](#), p. 7.

<sup>20</sup> FWO (2018). *An inquiry into the procurement of cleaners in Tasmanian supermarkets*, <https://www.fairwork.gov.au/reports/inquiry-into-the-procurement-of-cleaners-in-tasmanian-supermarkets/download-pdf>, p. 7.

<sup>21</sup> FWO (2018). *An inquiry into the procurement of cleaners in Tasmanian supermarkets*, <https://www.fairwork.gov.au/reports/inquiry-into-the-procurement-of-cleaners-in-tasmanian-supermarkets/download-pdf>, p. 17.

<sup>22</sup> <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2F696e7d39-ba20-4164-9725-b97c30e2bee4%2F0001;query=Id%3A%22committees%2Festimate%2F696e7d39-ba20-4164-9725-b97c30e2bee4%2F0000%22>

<sup>23</sup> Schneiders, B. (2018) "Hiring ban after revelations of \$8-an-hour tomato pickers' conditions", *Sydney Morning Herald*, 24 May 2018, <https://www.smh.com.au/politics/federal/hiring-ban>

per hour and exposed to dangerous working conditions.<sup>23</sup> In October 2018, five of these workers were collectively awarded \$150,000, in a negotiated settlement.<sup>24</sup>

Despite their suspension from the Seasonal Worker Program by the federal government while investigations were taking place, Agri Labour retains their StaffSure certification.<sup>25</sup>

## **THE CHANGING AUSTRALIAN REGULATORY CONTEXT**

Having recognised the problem of widespread labour rights violations by, and in the supply chains of, Australian businesses, federal and state governments have introduced or are in the process of introducing legislation to combat these issues. These include labour-hire licensing legislation and the Modern Slavery Act.

### **Labor-hire licensing**

In 2017, the Queensland and Victorian state governments passed legislation establishing a mandatory licensing scheme for all labour hire providers operating in their respective states. In each case, the licensing scheme is intended to increase barriers to entry for labour hire providers and introduce significant penalties for providing labour hire services without a license.

The federal Labor Party has indicated that if it is elected at the next federal election it will introduce a national labour hire licensing scheme.<sup>26</sup>

The implementation of labour hire licensing schemes in Queensland and Victoria are a recognition that increasing barriers to entry for labour hire providers is critical to weeding out unscrupulous and rogue labour hire providers and addressing endemic labour rights violations in

[after-revelations-of-8-an-hour-tomato-pickers-conditions-20180524-p4zh72.html](#); Brooks, S. (2018). "Agri Labour Australia suspended from government scheme amid underpayment, unsafe work claims", *ABC*, 23 May 2018, <http://www.abc.net.au/news/2018-05-23/government-suspends-labour-hire-firm-amid-underpayment-claims/9788742>

<sup>24</sup> Schneiders, B. (2018). "We have the same rights': Exploited migrant workers win big payouts", *the Sydney Morning Herald*, 14<sup>th</sup> October 2018, <https://www.smh.com.au/business/workplace/we-have-the-same-rights-exploited-migrant-workers-win-big-payouts-20181012-p5098q.html>

<sup>25</sup> Kotsios, N. (2018) "Suspended labour-hire company still listed", *The Weekly Times*, 15 Aug 2018, <https://www.weeklytimesnow.com.au/news/national/suspended-labour-hire-company-still-listed/news-story/6fa08b291baf311cc46a7d2740663a40>

<sup>26</sup> Patty, A. (2018) "Second class citizens': ALP pledges to lift pay for labour hire workers", *Sydney Morning Herald*, 16 July 2018, <https://www.smh.com.au/business/workplace/second-class-citizens-alp-pledge-to-lift-pay-for-labour-hire-workers-20180716-p4zrqp.html>

horticulture supply chains. It is, furthermore, an indication that industry self-regulation is not sufficient to address widespread labour hire violations, and that external oversight and accountability is necessary.

Absent a national scheme, the impact of these legislative initiatives on Woolworths' domestic supply chains will remain piecemeal, making it essential that Woolworths introduce a pre-qualification program where accountability is predicated on the involvement of trade unions. This would represent a proactive approach to managing risks in Woolworths' domestic food supply chain.

### **Modern Slavery Act**

The proposed Act will require entities above a consolidated revenue threshold of \$100 million to report on modern slavery risks in their global supply chains. This will require Woolworths to have deep knowledge of its supply chains – both domestically and globally. This resolution builds on this legislated reporting to include more comprehensive measures of risk assessment and mitigation activities tailored to the company's operations and risk profile.

### **REGULATORY AND ACCESSORIAL RISK**

Since 2014 the FWO has paid increasing attention to the responsibility of lead companies in a supply chain for labour rights violations by their suppliers and labour-hire providers:

Increasingly, if we find a business underpaying workers and that business is part of a supply chain, we are looking up to the top, because the business at the top of the supply chain is the price-maker and controls the settings. [...] The law can extend legal liability to individuals involved in procurement and to companies further up the supply chain.

**So, if boardrooms are not considering these procurement and compliance risks involved, then someone is asleep at the wheel.**<sup>27</sup>

The *Fair Work Act 2009* (Cth) (**FW Act**) provides a mechanism where someone other than the direct

employer can be considered an accessory to any contraventions of workplace laws, and potentially be held liable for any penalties and compensation that stem from this contravention.<sup>28</sup> This is known as accessory liability.

Woolworths has been subject to penalties and FWO compliance orders due to accessory liability in their supply chain in relation to their cleaning contracts in Tasmania and trolley collection contracts nationally. In the case of trolley collection, the FWO found that Woolworths had "legal, moral and ethical responsibility" for its supply chain arrangements.<sup>29</sup> It required Woolworths to establish a \$1 million fund to cover payments to trolley collectors where their direct employer failed to back-pay workers.<sup>30</sup>

### **Enforcement activity is likely to escalate**

Following the introduction of higher penalties for non-compliance in the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, suppliers will face additional scrutiny, and the company will need to manage ongoing reputational and material compliance risks, including the risk of supply disruptions, should key suppliers be no longer be able to use undocumented workers to harvest crops.

### **DISCLOSURE**

Woolworths' currently publishes its supplier lists for its global apparel supply chains on its website.<sup>31</sup> This resolution seeks to address this asymmetry and align the disclosure requirements in Woolworths' domestic food supply chain in line with those in its global apparel supply chains.

The Modern Slavery Act will require Woolworths to analyse their supply chain and provide regular disclosure of Modern Slavery risks in their supply chain. The disclosure requirements under this resolution go beyond the requirements of the Modern Slavery Act to encompass decent work and compliance with the Modern Award. However, we believe that this is necessary to address the reputational, regulatory, and accessory risks to which the company is exposed through its supply chain.

<sup>27</sup> James, N. "Board rooms 'on notice' to pay attention to their labour supply chains", *Sydney Morning Herald*, 8 Aug 2016, <https://www.smh.com.au/business/boardrooms-on-notice-to-pay-attention-to-their-labour-supply-chains-20160408-go1kmj.html>.

<sup>28</sup> Landers and Rogers Lawyers, (2017). *Accessorial Liability: where do your responsibilities begin and end?*, <https://www.landers.com.au/insights/publications/workplace-relations-and-safety/reach-of-accessorial-liability/>.

<sup>29</sup> FWO (2016). *Woolworths trolley collection services*, [https://www.fairwork.gov.au/about-us/news-and-media-](https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/june-2016/20160625-woolworths-trolley-mr)

[releases/2016-media-releases/june-2016/20160625-woolworths-trolley-mr](https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/june-2016/20160625-woolworths-trolley-mr).

<sup>30</sup> FWO (2016). *Woolworths trolley collection services*, <https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/june-2016/20160625-woolworths-trolley-mr>.

<sup>31</sup> <https://www.woolworthsgroup.com.au/content/Document/Woolworths%20Food%20Group%20Apparel%20Textile%20Factory%20list%20120218.pdf>.