

RESOLUTION 1

Special resolution to amend our company's constitution

To amend the constitution to insert a new clause 7.11

Member resolutions at general meeting

The Members in general meeting may by ordinary resolution express and opinion or request information 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 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.

SUPPORTING STATEMENT TO RESOLUTION 1 (518 words including footnotes)

Shareholder resolutions are a healthy part of corporate democracy in many jurisdictions other than Australia. As a shareholder, the Australasian Centre for Corporate Responsibility (ACCR) favours policies and practices that protect and enhance the value of our investments.

The Constitution of our company is not conducive to the right of shareholders to place ordinary resolutions on the agenda of the annual general meeting (AGM). In our view, this is contrary to the long-term interests of our company, our company's Board, and all shareholders in our company.

Australian legislation and its interpretation in case law means that Australian shareholders are unable to directly propose ordinary resolutions for consideration at Australian companies' AGMs. In Australia, the *Corporations Act 2001* provides that 100 shareholders or those with at least 5% of the votes that may be cast at an AGM with the right to propose a resolution.¹ However, section 198A specifically provides that management powers in a company reside with the Board.²

Case law in Australia has determined that these provisions, together with the common law, mean that shareholders cannot by resolution either direct that the company take a course of action, or express an opinion as to how a power vested by the company's constitution in the directors should be exercised.

Australian shareholders wishing to have a resolution considered at an AGM have dealt with this limitation by proposing two part resolutions, with the first being a 'special resolution,' such as this one, that amends the company's constitution to allow ordinary resolutions to be placed on the agenda at a company's AGM. Such a resolution requires 75% support to be effective, and as no resolution of this kind has ever been supported by management or any institutional investors, none have succeeded.

It is open to our company's Board to simply permit the filing of ordinary resolutions, without the need for a special resolution. We would welcome this, in this instance. Permitting the raising of advisory resolutions by ordinary resolution at a company's AGM is global best practice, and this right is enjoyed by shareholders in any listed company in the UK, US, Canada or New Zealand.

We note that the drafting of this resolution limits the scope of permissible advisory resolutions to those related to "an issue of material relevance to the company or the company's business as identified by the company" and that recruiting 100 individual shareholders in a company to support a resolution is by no means an easy or straightforward task. Both of these factors act as powerful barriers to the actualisation of any concern that such a mechanism could 'open the floodgates' to a large number of frivolous resolutions.

ACCR, LUCRF Super and Mercy Investment Services urges shareholders to vote for this proposal.

¹ Sections 249D and 249N of the *Corporations Act 2001* (Cth).

² S198A provides that "[t]he business of a company is to be managed by or under the direction of the directors", and that "[t]he directors may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting."

RESOLUTION 2 - Ordinary resolution on modern slavery in our company's operations and supply chains

In order to effectively protect workers in our company's domestic fresh food supply chains from modern slavery and labour abuses, and to protect our company's interests and reputation, shareholders of Coles Limited ("our company") urge the Board of Directors to align our company's ethical sourcing policies and supplier requirements in its domestic fresh food supply chains to industry best-practice for supply chain due diligence and compliance. At a minimum, these should include core principles of worker-driven social responsibility, including but not limited to:

1. Supplier accreditation and compliance to be determined through multi-stakeholder approach, involving workers and the representative organisation(s) of their own choosing.
2. Workers to receive peer-led labour rights education with the involvement of representative organisation(s) of their own choosing.
3. Worker-led grievance procedures that involve the representative organisation(s) of workers' own choosing in the resolution of complaints.

SUPPORTING STATEMENT TO RESOLUTION 2 (958 words including footnotes)

Our company is one of two principal buyers of fresh fruit and vegetables in Australia. Together with the other principal buyer, our company accounts for almost 70% of market share by sales in 2017-18.

Our company's extensive fresh food supply chains expose us to significant modern slavery and labour rights risks. There are estimated 15,000 people living in slavery-like conditions in Australia, with farm work identified as a high-risk sector.³

Serious violations of human rights anywhere in our company's supply chains can lead to negative publicity, public campaigns, and a loss of consumer confidence that can have a negative impact on shareholder value. With the passing of the *Modern Slavery Act* in 2018, there is growing awareness among consumers and shareholders of the responsibility of lead buyers to manage labour rights violations throughout their supply chain.

Endemic exploitation in fresh food supply chains

In January 2019, the University of Sydney and University of Adelaide published a report on labour issues in Australian fresh food supply chains.⁴ This is the latest report to identify major and persistent labour rights violations and breaches of Australian labour law – including potential modern slavery – in Australian fresh food supply chains, including in our company's supply chains. The report's findings are in line with those from numerous government inquiries,⁵ media investigations,⁶ and other research.⁷

³ <https://www.globallslaveryindex.org/2018/findings/country-studies/australia/>

⁴ Howes, J. et. al. (2019). *Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry*, <https://sydney.edu.au/content/dam/corporate/documents/business-school/research/work-and-organisational-studies/towards-a-durable-future-report.pdf>

⁵ FWO (2018). *A Report on Workplace arrangements along the Harvest Trail: Harvest Trail Inquiry* <https://www.fairwork.gov.au/ArticleDocuments/1461/fair-work-ombudsman-harvest-trail-inquiry-report.pdf.aspx>

The potential issues present in our company's supply chains include:

- severe underpayments and withholding of wages
- excessive overtime
- retention of identity documents
- threats of and actual physical and sexual violence
- coercive payments for transport and housing well above market norms
- complex and informal sub-contracting and labour-hire arrangements

These issues continue to be of concern to investors, who highlight the need for improved human rights management in supermarket fresh food supply chains.⁸

Our company's approach

These issues are not new to our company. The lack of sufficient action given their severity is of concern to shareholders. Our company demerged from Wesfarmers Ltd. (ASX:WES) in November 2018. ACCR has engaged with Wesfarmers regarding these supply chain risks since 2017, and has met with our company repeatedly since the demerger to raise these concerns.

Our company's Ethical Sourcing Policy has been in place since 2016, when it was still a division of Wesfarmers. A review of Wesfarmers' 2018 Sustainability Report and Coles ethical sourcing documents indicates a continuity of policies over the course of the demerger.

According to the Ethical Sourcing Policy, our company's suppliers must do a self-assessment questionnaire through the Sedex portal which rates them on risk. Low-risk suppliers are certified without an audit, and retain their certification for 24 months.⁹ In meetings with our company, company representatives confirmed that 30 to 40% of suppliers were rated as low-risk, and therefore certified without an audit. Medium- and high-risk companies are required to provide an "independent ethical audit by an approved audit provider", which are booked and paid for *by the supplier*.

Wesfarmers' state that no "critical breaches of the Coles Ethical Sourcing Policy were identified during FY18".¹⁰ Given the widespread labour violations and illegality in the sector, this failure to identify critical breaches suggests that the current program is not fit for purpose.

⁶ Hardaker, D. and Woods, C. (2019). "Migrant workers are overworked, intimidated and even killed on Australian farms", *Crikey*, 23 July 2019, <https://www.crikey.com.au/2019/07/23/migrant-workers-intimidated-killed-australian-farms/>; McKenzie, N. and Baker, R. (2017). "Fruits of their Labour" *The Sydney Morning Herald*, <http://www.smh.com.au/interactive/2016/fruit-picking-investigation/>; SMH (2015). "Migrant workers in slave-like conditions", *The Sydney Morning Herald*, 4 May 2015, <http://www.smh.com.au/national/migrant-workers-in-slavelike-conditions-abc-four-corners-reports-20150504-ggu12u.html>

⁷ NUW (2019). *Farm Workers Speak Out*, https://www.nuw.org.au/sites/nuw.org.au/files/farm_workers_speak_out_web_0.pdf

⁸ IFM (2019). *IFM Investors gains insights on Labour Conditions at 'Pickers and Packers' Workers Forum*, https://www.ifminvestors.com/docs/default-source/insights/ifm-investors--lessons-from-a-pickers-and-packers-workers-forum.pdf?sfvrsn=45ca2305_3

⁹ <https://bit.ly/30kr9BD>

¹⁰ https://sustainability.wesfarmers.com.au/media/2467/sustainability_website_2018.pdf

Worker-driven social responsibility

Reviews of workplace compliance initiatives in global supply chains have found that “private compliance initiatives” (codes of conduct, auditing, etc.) are insufficient to effectively manage business and operational risks from labour violations in supply chains.¹¹

By contrast, worker-driven social responsibility initiatives, which put workers and their representatives at the centre of compliance, are effective in addressing labour risks and ensuring compliance.¹² These initiatives support workers to raise workplace issues early, allowing businesses to resolve them “before they escalate into more lengthy and complex disputes that may come at a high cost”.¹³

Worker-driven social responsibility initiatives are being increasingly adopted by our company’s peer companies globally, including:

- Cleaning Accountability Framework (CAF): Spotless, Woolworths
- Milk with Dignity: Ben and Jerry’s
- Fair Foods Standards Council (FFSC): Burger King, Chipotle Mexican Grill, Compass Group, McDonald’s, Sodexo, Walmart, Whole Foods Market,
- Bangladesh Accord: Aldi, Carrefour, Target - Australia, Tesco, Woolworths

These companies’ supply chains evidence similar risks to those in our company’s Australian fresh food supply chain. This trend indicates that worker-driven social responsibility 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.

Our company’s present approach falls short of current global best practice and has proven unsuccessful in identifying the types of serious labour violations evidenced in our fresh food supply chains. This resolution simply calls on our company to align with current best practice initiatives. ACCR, LUCRF Super, and Mercy Investment Services encourage shareholders to vote for this proposal.

¹¹ ILO (2016). *Workplace Compliance in Global Supply Chains*, https://www.ilo.org/sector/Resources/publications/WCMS_540914/lang-en/index.htm, pp.10 – 15; Ethical Trading Initiative (2004) “Putting Ethics to Work”, <http://www.ethicaltrade.org/Z/lib/annrep/2004/en/index.shtml>; World Bank (2003) “Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains”, http://siteresources.worldbank.org/INTPSD/Resources/CSR/Strengthening_Implementatio.pdf.

¹² <https://wsr-network.org/success-stories/>

¹³ Curtze, L. and Gibbons, S. (2017). *Access to remedy - operational grievance mechanisms. An issues paper for ETI*, <https://bit.ly/2TNHCM>, p.7.