

September 2019

The following is a response to Coles and Woolworths' [response](#) to the open letter initiated by Professor Justine Nolan, Dr Martijn Boersma and Dr Laurie Berg.

The Australasian Centre for Corporate Responsibility (ACCR) has been engaging with both Coles (including when it was a division of Wesfarmers) and Woolworths regarding the risks stemming from modern slavery and labour rights abuses in their Australian fresh food value chains since 2017. ACCR has been urging both companies to align their ethical sourcing policies and supplier requirements in their domestic horticulture supply chains with industry best-practice for supply chain due diligence and compliance.

Worker-driven social responsibility

ACCR is concerned that both Coles and Woolworths rely on third party audits to mitigate labour risks in their domestic fresh food supply chains. Decades of research into workplace compliance initiatives in global supply chains has found that voluntary self-regulation and “private compliance initiatives” (codes of conduct, auditing, etc.) are insufficient to effectively manage business and operational risks from labour violations in supply chains.¹

Specifically, as third 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 detect 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

By contrast, worker-driven social responsibility (WSR) initiatives, which put workers and their representatives at the centre of supply chain due diligence, are more effective in addressing labour risks and ensuring compliance. These initiatives recognise that “the best auditors are the workers themselves since they are continually present at the production site”.⁴ WSR 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”.⁵

For these reasons, worker driven social responsibility initiatives are increasingly being adopted by the supermarkets' peer companies in Australia and globally. These initiatives include:

- Cleaning Accountability Framework (CAF): Spotless, Woolworths
- Milk with Dignity: Ben and Jerry's
- Fair Foods Standards Council (FFSC): Ahold USA, Aramark, Bon Appetit Management Company, Burger King, Chipotle Mexican Grill, Compass Group, The Fresh Market, McDonald's, Sodexo, Subway, Trader Joe's, Walmart, Whole Foods Market, Yum Brands
- Bangladesh Accord (selected): Aldi, Carrefour, Country Road Group, Sainsbury's, Target - Australia, Tesco, Woolworths

History of Engagement with Coles and Woolworths

¹ Locke (2013). *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy*, New York, Cambridge University Press.

² ETI (2018). “Audits and Beyond”, *The Ethical Trading Initiative*, <https://bit.ly/2n33maQ>.

³ ILO (2016). *Workplace Compliance in Global Supply Chains*, <https://bit.ly/2l0Q1qA>, pp.10 – 15.

⁴ Clean Clothes Campaign (2005). *Looking for a quick fix: How weak social auditing is keeping workers in sweatshops*, <https://bit.ly/2lwo9Db>, p. 79.

⁵ Curtze, L. and Gibbons, S. (2017). *Access to remedy - operational grievance mechanisms. An issues paper for ETI*, <https://bit.ly/2TNHCOM>, p.7.

ACCR recently filed a shareholder resolution with Coles on this issue, to be heard at their AGM on the 13th November 2019. ACCR did not file a resolution in 2018, due to the pending demerger from Wesfarmers Ltd.

In 2017 and 2018 ACCR lodged a resolution with Woolworths (WOW) on the issue of severe, endemic and persistent labour violations in their Australian fresh food supply chains. Due to ongoing dialogue between Woolworths and the workers' chosen representative (the National Union of Workers) since 2018, ACCR elected not to file a resolution with Woolworths in 2019. ACCR will reconsider resolutions in 2020 if those dialogues have not substantially progressed.

Response to Coles' Statement

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 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".⁶ According to ETI, key elements in establishing a robust human rights due diligence framework is direct company engaging workers and their representatives, and "encouraging suppliers to recognise and engage positively with trade unions".⁷

Coles' current Ethical Sourcing Policy has been in place since 2016, when it was still a division of Wesfarmers. A review of Wesfarmers' 2018 Sustainability Report, Coles' 2019 Sustainability report and Coles' ethical sourcing documents indicates a continuity of policies over the course of the demerger. According to Coles' Ethical Sourcing Policy, our company's suppliers are required to complete a self-assessment questionnaire through the Sedex portal. Based on the results of the questionnaire, suppliers are rated on risk. Low-risk suppliers are certified without an audit, and retain their certification for 24 months.⁸ In meetings with Coles, company representatives stated that 30 to 40% of suppliers were rated as low-risk, and were therefore certified without an audit. Coles requires medium and high-risk companies to "provide and upload an independent ethical audit by an approved audit provider".⁹ These audits are booked by the supplier, who knows when the auditor is coming.

See above for an overview on the research regarding the limited efficacy for audits in addressing modern slavery and labour rights risks.

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

Know The Chain only assessed 2 food and beverage companies in Australia (38 globally). Coles was assessed as part of Wesfarmers. The benchmark assesses a company's disclosure only, not its performance. Significantly, Wesfarmers' score for "worker voice" was significantly lower than Wesfarmers' other scores. Know The Chain 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. Where there are regulatory constraints on

⁶ ETI, *Audits and Beyond*.

⁷ ETI, *Audits and Beyond*.

⁸ Coles (2016). *Ethical Sourcing Supplier Requirements*, <https://bit.ly/30kr9BD>; Coles (2019). *Ethical Sourcing*, <https://bit.ly/2mwU0Ux>.

⁹ Coles (2016). *Ethical Sourcing Supplier Requirements*.

freedom of association, the company may consider ensuring workplace environments in which workers in its supply chains are able to pursue alternative forms of organizing.¹⁰

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 formally reflected in their various Ethical Sourcing documents. ACCR's resolution calls on Coles to align its policies with global best practice by formalising the role for workers and their representative organisations in three key areas: supplier certification, worker education and grievance procedures. Meetings with unions and/or participation in community forums are not sufficient to meet the minimum threshold of worker-driven social responsibility.

Response to Woolworths' Statement

Woolworths' statement refers to their 2019 Sustainability report. The following is based on an analysis of that report.

ACCR commends Woolworths for the changes they have made to the supplier risk assessment process detailed in their 2018 Sustainability report, by extending the regular use of unannounced audits to their "specialised" supplier category. Under Woolworths current supplier risk rating methodology, country-level risk is a significant determinant in the overall risk rating of a supplier - making it very difficult for an Australian-based supplier to achieve a priority rating. The "specialised" category allows Woolworths to apply a higher level of due diligence to supply chains where it has identified a level of risk and/or vulnerability greater than that which is typical at a country level.

Woolworths' 2019 Sustainability report details their pilot of unannounced audits in key growing areas. While the shift from announced to unannounced audits is a good first step, and can form part of a robust due diligence process, research shows that these audits will be insufficient to manage the types of risks identified in Woolworths' fresh food supply chain, particularly as they move beyond Tier 1 suppliers.

In February 2019, we released an Addendum to our Responsible Sourcing Standards, Requirements for Labour Providers in our Australian Horticulture Supply Chain.

The Addendum fails to address a number of issues that have been raised consistently with Woolworths and investors.

- The labour provider must be 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 these schemes, and in the threshold for withdrawal of accreditation. For example: in September 2017, Agri Labour was publicly listed as part of the RSCA's pilot program, StaffSure. However, prior to this, in July 2018 workers employed by Agri Labour in Victoria lodged three separate Federal Court actions accusing Agri Labour of wage theft and underpayment and adverse action. There have been numerous media reports about wages as low as \$8 an hour and serious occupational health and safety conditions that workers were forced to endure while working in Australia. Despite findings by the court in the workers' favour, Agri Labour is still listed on the RSCA website as accredited – with a flag that redirects to the company (Agri Labour) for more information. By contrast, the QLD Labour Hire Licensing Authority listed corrective action required for Agri Labour, and they have lost their Approved Employer status under the seasonal worker program due to breaches of the Fair Work Act.¹¹

¹⁰ Know The Chain, (2019). *Wesfarmers*, <https://bit.ly/2ln0wNy>.

¹¹ Brooks, S. (2018). "Agri Labour Australia suspended from government scheme amid underpayment, unsafe work claims", *ABC News*, 23 May 2018, <https://www.abc.net.au/news/2018-05-23/government-suspends-labour-hire-firm-amid-underpayment-claims/9788742>

- The Woolworths Addendum does not mandate that the supplier involve the union in grievance procedures or training. Suppliers are only required to provide workers with Fair Work's Information Statement and 'My employment checklist'.

We further recognise that strategic industry, government, union and supplier collaborations are critical to addressing shared and pervasive challenges in Australia's fresh produce supply chain. This year we deepened our engagement with the National Union of Workers (NUW), cementing our commitment to ongoing dialogue with the Union through the signing of a Collaboration Protocol in May 2019.

ACCR did not file a resolution in 2019 due to the ongoing dialogue between the National Union of Workers (NUW) and Woolworths, as established through their Collaboration Protocol. However, we have continued to highlight the need for Woolworths to adopt a formal, multi-stakeholder approach that includes trade unions, to manage risk in their fresh food supply chains.

Woolworths has already adopted a multi-stakeholder approach in their cleaning supply chains. ACCR calls on Woolworths to adopt a similar approach in their fresh food supply chain, and will continue to engage with the company regarding the timelines and models being discussed with trade unions and other industry partners.

We also partnered with Fair Farms, an industry-led initiative to promote workplace compliance in Australian horticulture, and joined the Fair Work Ombudsman's Horticulture Reference Group.

In January 2019, academics from the University of Adelaide and University of Sydney released a detailed report, funded by industry, that looked at labour challenges in the Australian horticulture industry.¹² In addition to looking at the issues in the horticulture sector, the report considered current and emerging initiatives to deal with those issues, including Growcom's Fair Farms.¹³

Fair Farms is a certification scheme developed by Growcom, and aims to be more tailored to the local, horticultural sector than Sedex. An industry-led initiative, the strength of Fair Farms' approach is that it actively works with lead buyers (e.g. supermarkets) and the Fair Work Ombudsman. However, the report notes that a limitation of the scheme is that it has not involved trade unions or NGOs in its development and ongoing implementation:

International evidence indicates that multi-stakeholder forms of regulation that involve workers, unions or community organisations are more effective than industry-led initiatives at improving labour standards and minimising supply chain risks.¹⁴

Howes et. al. highlight a model established by the Coalition of Immolake Workers (CIW) and adopted by a number of US buyers as a recommended approach to dealing with the issues seen on Australian farms.

For more detail on Fair Farms and the CIW model see the comparative matrix on ACCR's website:

<https://accr.org.au/2019/06/03/coles-and-woolworths-2019/>.

¹² 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>

¹³ Ibid, pp. 20 - 22.

¹⁴ Ibid, p. 16.