

Resolution 1 - Special resolution to amend our company's constitution

To insert into our company's constitution the following new clause 7.11:

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."

Supporting statement

Shareholder participation in the affairs of a company, including holding the board of a company to account, is a part of healthy corporate governance. Despite this practice being common in jurisdictions such as the United States and United Kingdom, filing shareholder resolutions at listed Australian company Annual General Meetings is uncommon due to procedural and legal barriers.¹

Australian legislation and its interpretation in case law means that Australian shareholders are unable to directly propose an ordinary resolution. As a result, shareholders have to amend a company's constitution to do so, which limits a key mechanism for investors to influence the direction of companies, particularly their management of ESG risks.² For example, 550 shareholder resolutions were filed in the first quarter of 2024 in the US, compared to a total of 6 in Australia through the entirety of 2023, down from a record 17 in 2021.³

The constitution of Coles Group Limited ("Coles") is not conducive to the rights of shareholders to place resolutions on the agenda of a shareholder meeting. This is contrary to the long-term interests of the company, its board, shareholders and stakeholders.

Resolution 2 - Ordinary resolution

¹Australian Council of Superannuation Investors, *Shareholder resolutions in Australia*, October 2017, <https://acsi.org.au/wp-content/uploads/2020/02/Shareholder-resolutions-in-Australia.Oct17.pdf>

² UN Principles of Responsible Investing, *Strengthening Effective Stewardship in Australia*, June 2023, <https://www.unpri.org/download?ac=18754>

³ See King, Wood & Mallesons, *Deep Dive Into ASX200 AGMs in 2023*, <https://www.kwm.com/au/en/insights/latest-thinking/publication/deep-dive-into-asx200-agms-in-2023.html> and *Shareholders pushing US companies on climate, political lobbying in 2024*, March 2024, <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/shareholders-pushing-us-companies-on-climate-political-lobbying-in-2024-80857370>

Shareholders request that Coles identify and report on the impacts of farmed seafood it procures for its Own Brand products on endangered species under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) List of Threatened Fauna.⁴ The report should be published on the company's website, at reasonable cost and omitting confidential information, by no later than 31 April 2025.

Nothing in this resolution should be read as limiting the Board's discretion to take decisions in the best interests of the company.

Supporting statement

Coles is facing financially material risks through association with a potential extinction event. Research and monitoring has shown that salmon produced in Macquarie Harbour in Tasmania, a product within Coles' supply chain and sold in its stores, threatens the existence of the endangered Maugean Skate, which is endemic to Macquarie Harbour.⁵ The skate population declined 47% between 2014 and 2021.⁶ The Threatened Species Scientific Committee (TSSC) within the Australian Federal Department of Environment noted the primary threat to the Skate is degraded water quality due to increases in salmon aquaculture, and that reducing salmon farming was urgent to improve water quality and recover the Skate's critical habitat.⁷

Despite this, Coles continues to sell Macquarie Harbour farmed salmon using certifications that claim responsible sourcing.⁸ As part of its sustainability commitments, Coles requires its Own Brand farmed seafood to be certified under one of three certifications - Aquaculture Stewardship Council (ASC), Best Aquaculture Practices Farm Standard (BAP) or the GLOBALG.A.P (GGN).⁹ However, ASC states that none of the 11 salmon farming sites in Macquarie Harbour complies

⁴ Australian Government Department of Climate Change, Energy, the Environment and Water, *EPBC Act List of Threatened Fauna*, <https://www.environment.gov.au/cgi-bin/sprat/public/publicthreatenedlist.pl>

⁵ Institute for Marine and Antarctic Studies, Macquarie Harbour last refuge for Maugean Skate, DNA survey finds, September 2022, <https://www.imas.utas.edu.au/news/news-items/macquarie-harbour-last-refuge-for-maugean-skate.-dna-survey-finds>

⁶ Department of Climate Change, Energy, Environment and Water, September 2023, *Conservation Advice for Zearaja maugeana (Maugean skate)*, <https://www.environment.gov.au/biodiversity/threatened/species/pubs/83504-conservation-advice-06092023.pdf>

⁷Parliament of Australia, March 2024, *Order of 20 March 2024 (497) relating to Maugean Skate* https://www.aph.gov.au/Parliamentary_Business/Tabled_Documents/5569

⁸ Environmental Defenders Office, *'Extinction greenwashing': supermarkets target of ACCC complaint over misleading salmon claims*, December 2023, <https://www.edo.org.au/2023/12/05/extinction-greenwashing-supermarkets-target-of-accs-complaint-over-misleading-salmon-claims/>

⁹ Coles Group, *Responsibly sourced products and ingredients*, <https://www.colesgroup.com.au/sustainability/?page=responsible-sourcing>

with their standards.¹⁰ Moreover, BAP and GGN are facing calls from more than 80 global conservation groups to decertify Macquarie Harbour salmon.¹¹

Coles faces growing risks of reputational damage from greenwashing. For example, in 2024, Coles appeared before the Australian Senate Inquiry into Greenwashing over its use of responsibly sourced seafood labels on products linked to Macquarie Harbour farmed salmon.¹² Coles was also accused of potentially false, misleading or deceptive conduct over sustainability claims on Tasmanian salmon products, according to a complaint lodged with the Australian Consumer and Competition Commission (ACCC).¹³

There is a growing global expectation that companies take responsibility for finding and addressing real or potential adverse nature impacts in their supply chains.¹⁴ For example, the Nature Action 100 initiative that represents over 200 institutional investors with \$28 trillion in AUM publishes actions they expect companies with a high impact on nature to take to protect and restore nature and ecosystems. While Coles is not one of them, its competitor, Woolworths, is.¹⁵ The EU now requires this for large companies after passing the mandatory Corporate Sustainability Due Diligence Directive.¹⁶ This shift is a recognition that many certifications have failed to prevent harms to human rights and the environment.^{17,18}

¹⁰ Aquaculture Stewardship Council, *ASC response to the Review of Eco-labelling Standards in Relation to Salmon Farming in Macquarie Harbour, a report commissioned by WWF Australia*, September 2021, <https://au.asc-aqua.org/news/the-aquaculture-stewardship-council-responds-to-recent-wwf-australia-report-on-macquarie-harbour/>

¹¹ Seafood Source, *NGOs push BAP, GlobalGAP to drop certification of fish farms in Tasmania*, July 2023, <https://www.seafoodsource.com/news/environment-sustainability/ngos-push-bap-globalgap-to-drop-certification-of-fish-farms-in-tasmania-to-protect-endangered-skate>

¹² Parliament of Australia, *Environment and Communications References Committee: Greenwashing*, May 2024, https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/27971/toc_pdf/Environment%20and%20Communications%20References%20Committee_2024_05_24.pdf;fileType=application%2Fpdf#search=%22committees/commsen/27971/0000%22

¹³ Environmental Defenders Office, *'Extinction greenwashing': supermarkets target of ACCC complaint over misleading salmon claims*, December 2023, <https://www.edo.org.au/2023/12/05/extinction-greenwashing-supermarkets-target-of-acc-c-complaint-over-misleading-salmon-claims/>

¹⁴ Including: TNFD and TNFD additional guidance for financial institutions, Global Reporting Initiative (GRI) standards on biodiversity, Climate Disclosure Standards Board (CDSB) application guidance for biodiversity-related disclosures, Science Based Targets Network (SBTN), and The Accountability Framework initiative.

¹⁵ Nature 100, *Target Companies*, <https://www.natureaction100.org/companies/>

¹⁶ European Commission, *Corporate sustainability Due Diligence*, May 2024, https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-possible-business/corporate-sustainability-due-diligence_en#what-are-the-estimated-costs-of-the-new-rules-for-companies

¹⁷ Review of European, Comparative & International Environmental Law, *Due diligence in global value chains: Conceptualizing 'adverse environmental impact'*, June 2021 <https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12406>

¹⁸ Greenpeace International, *Destruction: Certified*, May 2021, https://www.greenpeace.org/static/planet4-international-stateless/2021/04/b1e486be-greenpeace-international-report-destruction-certified_finaloptimised.pdf

A recent legal opinion considered that directors' existing duty under Australian law to exercise 'care and diligence' already requires directors to take into account nature-related risks and caution that they may be held liable for their failure to do so. The authors stated directors should be disclosing nature-related risks and impacts where they pose a financially material risk to the company.¹⁹

Coles' approach falls short of current global best practice and has proven unsuccessful in identifying serious threats to biodiversity evidenced in its farmed salmon supply chain. By conducting its own due diligence, Coles will better understand its exposure to biodiversity risk in its supply chains, the impact of its decisions on threatened species, and the action it can take to avoid contributing to biodiversity loss.

Resolution 3 - Ordinary resolution

Shareholders request that Coles cease procuring farmed salmon for its Own Brand products from Macquarie Harbour in Tasmania by no later than 31 April 2025.

Supporting statement

The growth of farmed salmon in Macquarie Harbour, reduced dissolved oxygen levels and the declining population of the Maugean Skate in the harbour is clear, with destocking of salmon farms below levels permitted by government licences deemed an urgent priority to substantially improve and sustain oxygen levels. It was recommended this was before summer of 2023/24, highlighting the urgency of the situation.²⁰

Macquarie Harbour farmed salmon is a small part of the overall Tasmanian salmon industry (approximate 12% of total production)²¹. We believe Macquarie Harbour salmon accounts for a small percentage of all Coles Own Brand farmed salmon sold in Coles stores, which constitutes a small part of the company's overall \$40.5 billion AUD sales revenue.²² The level of reputational risk the company exposes itself to from continuing to sell this product is not warranted.

¹⁹Minter Ellison, *Landmark legal opinion cautions directors may be liable for nature-related risk under existing Australian law*, November 2023, <https://www.minterellison.com/articles/new-hartford-davis-and-bush-legal-opinion-on-directors-role-in-managing-nature-related-risk-released%5C>

²⁰ Department of Climate Change, Energy, Environment and Water, *Conservation Advice for Zearaja maugeana (Maugean skate)*, September 2023, <https://www.environment.gov.au/biodiversity/threatened/species/pubs/83504-conservation-advice-06092023.pdf>

²¹ See figures for total tonnage produced: Tasmanian Salmon Farming Data (Salmon Portal), <https://salmonfarming.nre.tas.gov.au/macquarie-harbour> and Salmon Tasmania, <https://salmontasmania.au/macquarieharbour/#:~:text=Tasmanian's%20have%20been%20farming%20salmon.Northern%20and%20North%2DWest%20Tasmania.>

²² Coles Group, *2023 Annual Report*, <https://www.colesgroup.com.au/investors/?page=reports#>

Coles has stated that as part of its 'Tasmanian Salmon Plan' it is reviewing its Coles Own Brand salmon sourcing strategy to better understand near, medium, and long-term options for diversification.²³ We encourage Coles not to rely on government intervention to address this issue and to instead proactively reduce its exposure and contribution to a potential extinction event.

²³ Correspondence between Sustainable Investment Exchange and Coles Group