



## **Offer information statement**

Australian United Retailers Limited  
ACN 077 879 782 (**AURL**)

AURL lodged this Offer Information Statement with ASIC on 21 December 2012.

### **IMPORTANT INFORMATION**

This is an important document that should be read in its entirety. If you do not understand it, you should consult your professional advisors.

This is the Offer Information Statement lodged by Australian United Retailers Limited on 21 December 2012:

A handwritten signature in blue ink, consisting of stylized loops and a long horizontal stroke extending to the right.

.....  
Tony Pacella

Secretary

**Australian United Retailers Limited**  
**ACN 077 879 782**

**CORPORATE DIRECTORY**

Company

Australian United Retailers Limited  
Trading as FoodWorks  
ACN 077 879 782  
Level 1, 1601 Malvern Road  
Glen Iris, Victoria, 3146  
Ph 03 9809 8600  
Fax 03 9809 8699  
[www.foodworks.com.au](http://www.foodworks.com.au)

Directors

John Bridgfoot – Chairman and Non Executive Director  
Neil Osborne - Deputy Chairman and Non Executive Director  
Allan Burge – Non Executive Director  
Fred Fairthorne – Non Executive Director  
Deborah Smith - Non Executive Director  
Sein Van Nguyen - Non Executive Director  
Malcolm Ward – Non Executive Director  
David Williamson – Non Executive Director  
Paul Job – Non Executive Director  
John Florey – Non Executive Director

Company Secretary

Tony Pacella

Lawyers to the Company

DLA Piper Australia  
Level 21  
140 William Street  
Melbourne, Victoria, 3000

Auditor

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Level 19, 15 William Street  
Melbourne, Victoria, 3000

**Australian United Retailers Limited**  
**ACN 077 879 782**

**IMPORTANT NOTICE**

This is an offer information statement issued under Part 6D.2 of the Corporations Act (**OIS**). Eligible Applicants should note that this document is not a prospectus and that the content requirements for an OIS (set out in section 715 of the Corporations Act) are less onerous than that required for a prospectus.

The offer contained in this OIS is an invitation to Eligible Applicants to apply for a Class A Redeemable Preference Share(s) in Australian United Retailers Limited.

Eligible Applicants should read this OIS in its entirety before deciding to invest in the Company. In particular, Eligible Applicants should refer to sections 8 and 9 for details of the risk factors that could affect the performance of the Company and for financial information relating to the Company. The Offer does not take into account the investment objectives, personal circumstances (including financial and taxation issues) and particular needs of Eligible Applicants. Eligible Applicants should consider the prospects of the Company in the light of their individual objectives, circumstances and needs. Eligible Applicants should seek professional advice from a solicitor, accountant or other independent financial advisor before deciding to apply for a Class A Redeemable Preference Share(s) in the Company. Neither the Company nor any other person guarantees the success of the Company, the repayment of capital or the payment of dividends.

This OIS is dated 21 December 2012 (**OIS Date**). A copy of this OIS was lodged with the Australian Securities and Investments Commission (**ASIC**) on 21 December 2012. The ASIC does not take any responsibility for the contents of this OIS or the merits of the Offer contained in it.

No securities will be allotted or issued on the basis of this OIS later than 13 months after the OIS Date.

No person is authorised to give any information, or to make any representation, in connection with the Offer, other than that which is contained in this OIS. Any information or representation not contained in this OIS may not be relied on as having been authorised by the Company or its Directors or any other person in connection with the Offer. The Company is not liable for this OIS, or in respect of the Offer, except to the extent required by law.

All financial amounts shown in this OIS are expressed in Australian dollars, unless stated otherwise.

**Exposure Period**

The Corporations Act prohibits the Company from processing applications in the seven (7) day period after the OIS Date. This period is known as the Exposure Period. This Exposure Period may be extended by the ASIC by up to seven (7) days. The purpose of the Exposure Period is to enable this OIS to be examined by market participants prior to the raising of funds. That examination may result in the identification of deficiencies in the disclosure document. In those circumstances any application that has been received may need to be dealt with in accordance with section 724 of the Corporations Act.

Applications received during the Exposure Period will not be processed until after the expiry of that period. No preference will be conferred on applications received during the Exposure Period.

**Offer for Australian Residents**

This Offer is available to Australian residents located in Australia. The distribution of this OIS in jurisdictions outside of Australia may be restricted by law. Persons who obtain this OIS in jurisdictions outside of Australia should seek advice on and observe such restrictions. Any failure to comply with these restrictions may constitute a violation of applicable securities laws. This OIS does not constitute an offer or an invitation in any place outside of Australia where, or to any person whom, it would be unlawful to make such an offer or invitation.

**Definitions and Abbreviations**

Please refer to the Glossary in section 2 for explanations of defined terms and abbreviations used in this OIS.

**Australian United Retailers Limited**  
**ACN 077 879 782**

**TABLE OF CONTENTS**

<b>CORPORATE DIRECTORY .....</b>	<b>1</b>
<b>IMPORTANT NOTICE .....</b>	<b>1</b>
<b>1 INVESTMENT OVERVIEW.....</b>	<b>1</b>
<b>2 GLOSSARY .....</b>	<b>3</b>
<b>3 KEY QUESTIONS AND ANSWERS .....</b>	<b>5</b>
<b>4 INFORMATION ABOUT THE COMPANY, ITS BUSINESS AND PLANS .....</b>	<b>7</b>
<b>5 INDUSTRY OVERVIEW .....</b>	<b>14</b>
<b>6 DETAILS OF THE OFFER .....</b>	<b>14</b>
<b>7 DIRECTORS AND SENIOR MANAGEMENT .....</b>	<b>16</b>
<b>8 RISK FACTORS .....</b>	<b>21</b>
<b>9 RIGHTS ATTACHING TO SHARES .....</b>	<b>24</b>
<b>10 ADDITIONAL INFORMATION .....</b>	<b>26</b>
<b>11 DIRECTOR'S STATEMENT AND CONSENTS .....</b>	<b>33</b>

**Australian United Retailers Limited**  
**ACN 077 879 782**

## **1 Investment Overview**

### **1.1 The Offer**

Australian United Retail Limited invites Eligible Applicants to apply for Class A Redeemable Preference Shares in Australian United Retailers Limited (AURL) at an offer price of \$1.00 per share. Under the Constitution, each Eligible Applicant is entitled to be issued and allotted one Class A Redeemable Preference Share in respect of each Approved Store they operate and control. As such, an Eligible Applicant's total investment is expected to be only \$1.00, unless the Eligible Applicant operates and controls more than one Approved Store.

### **1.2 Do you have to pay anything to have a Class A Redeemable Preference Share issued to you?**

Yes, you have to pay \$1.00.

### **1.3 Who is an Eligible Applicant?**

Under the Company's Constitution a person is an Eligible Applicant if the person:

- is an owner or joint owner of an Approved Store or if the Directors determine that the person intends to become an Approved Storeowner; and
- has signed (or proposes to sign) a Unity Agreement.

If you are not an Eligible Applicant then you should not apply for a Class A Redeemable Preference Share(s) under this OIS.

### **1.4 Key Dates**

<b>Event</b>	<b>Date</b>
OIS Lodgement Date at ASIC	21 December 2012
Offer Opens	21 December 2012
Offer Closes	This Offer is open for a period of 13 months from the date of lodgement, and closes on the Closing Date (5:00pm AEST on 21 January 2014)
Shares Issued	Normally after scheduled Board meetings (see section 6.3)

### **1.5 Application Criteria**

The Class A Redeemable Preference Share(s) will be issued to you provided that:

- you are an Eligible Applicant;
- you have correctly completed an Application Form in respect of each Class A Redeemable Preference Share applied for;
- you have not already taken (or are to take) a transfer or transmission of a Class A Redeemable Preference Share in respect of the relevant Approved Store; and
- you have paid (or have had credited as paid) \$1.00 per Class A Redeemable Preference Share applied for.

### **1.6 Purpose of Class A Redeemable Preference Shares**

The purpose of the Offer and issuing Class A Redeemable Preference Shares is not to raise funds for the Company but to secure the status of each Eligible Applicant as an Approved Storeowner. The Unity Agreement which each Eligible Applicant has signed (or proposes to sign) provides that your status as an Approved Storeowner only takes effect once a Class A Redeemable Preference Share is issued to you.

**Australian United Retailers Limited**  
**ACN 077 879 782**

Your Class A Redeemable Preference Share(s) will be your link to membership of the Company. As a shareholder you have the right to receive certain information about the Company. There are also voting rights attached to Class A Redeemable Preference Shares. For example, holders of Class A Redeemable Preference Shares can participate in resolutions electing board members. Section 9 contains detailed information about the rights attaching to each class of Shares under the Company's Constitution. Please read this information carefully and seek professional advice if you have any questions.

**1.7 Key Risks**

Applicants should carefully consider the risks set out in Section 8 (as well as the other information in this OIS) before deciding to subscribe for a Share(s) in the Company.

## **2 Glossary**

"Application Form" means the application for the issue and allotment of a Class A Redeemable Preference Share in the form attached to, or accompanying, this OIS.

"Approved Store" means a Retail Outlet owned or leased and operated and controlled by a Member which the Directors declare from time to time to be an Approved Store under the Constitution.

"Approved Storeowner" means a storeowner (including Joint Owners) who the Directors declare from time to time to be an Approved Storeowner under the Constitution.

"ASIC" means the Australian Securities and Investments Commission.

"ASX Settlement" means ASX Settlement Pty Limited as approved as the Securities Clearing House under the Corporations Act.

"AUR" means Australian United Grocers Pty Ltd (ACN 009 786 485) – formerly Australian United Retailers Ltd – and in this OIS represents the pre Merger Queensland based business.

"AURL" means Australian United Retailers Limited (ACN 077 879 782) trading as FoodWorks and in this OIS represents the post Merger business.

"Back Office System" (BOS) means the computer system, usually located in the back office, which interacts with the Point of Sale systems and helps a retailer manage their pricing, merchandising, stock, accounts payable and cash management processes.

"Best Buy" means the range of proprietary products developed for FoodWorks and packaged with the Best Buy brand.

"Black and Gold" means the generic brand of products produced for and promoted by Metcash and available to FoodWorks Members who own Approved Stores and FoodWorks' corporate stores.

"Board" means the Board of Directors of FoodWorks.

"Brand" means the Business Names, Trade Marks or other Intellectual Property by which the Company promotes FoodWorks Branded Stores and the Company's Private Label program.

"Branded Store" means an Approved Store which the Directors declare from time to time to be a Branded Store under the Constitution.

"Branded Storeowner" means a storeowner who the Directors declare from time to time to be a Branded Storeowner under the Constitution.

"Chargeback" means the accounts payable service, where FoodWorks makes payment to a range of Suppliers on behalf of stores, and debits the stores for their corresponding Supplier purchases.

"Class A Redeemable Preference Share" means a share in FoodWorks with the rights attached as set out in the Constitution.

"Class B Redeemable Preference Share" means a share in FoodWorks with the rights attached as set out in the Constitution.

"Closing Date" means the date on which the Offer closes, being 5:00pm AEST on 21 January 2014.

"Company" means Australian United Retailers Limited (ACN 077 879 782) trading as FoodWorks.

"Constitution" means the Constitution of FoodWorks (as amended from time to time).

**Australian United Retailers Limited**  
**ACN 077 879 782**

"Corporations Act" means the *Corporations Act (Cth) 2001*.

"Customer Value Proposition" means the collective offer presented to the customer including product, pricing and presentation.

"Directors" means the Directors for the time being of FoodWorks or such number of them as has authority to act for FoodWorks.

"Eligible Applicant" means an owner or joint owners of an Approved Store or a person who the Directors determine intends to become an Approved Storeowner, has signed (or proposes to sign) a Unity Agreement, and is entitled to apply for the issue of a Class A Redeemable Preference Share under the Constitution and this OIS.

"Eligible Member" currently means any of the following persons as may be determined by the Directors to be eligible to hold shares in the Company:

- (i) an Approved Storeowner;
- (ii) a Branded Storeowner;
- (iii) a Related Party of an Approved Storeowner;
- (iv) an employee of the Company, but provided that the Board has passed a formal resolution confirming such employee(s) of the Company as constituting Eligible Members for the purposes of holding shares in the Company; and
- (v) subject to the passing of the formal resolution in sub-paragraph (iv) above, a Related Party of an employee of the Company.

"Eligible Warehouse Withdrawals" or "EWW" means the cost price of goods purchased by an Approved Store or Branded Store from Metcash, excluding certain agreed products.

"Exposure Period" means the period of seven days after lodgement of this OIS which may be extended by the ASIC by not more than seven days pursuant to section 727(3) of the Corporations Act.

"FoodWorks" means Australian United Retailers Limited (ACN 077 879 782).

"FoodWorks Retail" means FoodWorks Retail Pty Ltd (ACN 136 178 240)

"FSG" means FoodWorks Supermarket Group Ltd (ACN 077 879 782) and in this OIS represents the pre Merger Victorian based business.

"LiquorLink" means the specific supply, merchandising and promotional program for liquor products covered under FoodWorks' LiquorLink Agreement.

"Listing Rules" means the Listing Rules of the NSX and any other rules of the NSX which apply while the Company is admitted to the Official List, each rule as amended or replaced from time to time, except to the extent of any express written waiver by the NSX.

"Member" means a person for the time being entered into the register of members of FoodWorks in accordance with the Constitution.

"Merger" means the merger of the FSG and AUR in November 2004.

"Metcash" means Metcash Trading Limited (ACN 000 031 569).

"NSX" means National Stock Exchange of Australia Limited.

"Offer" means the offer of Class A Redeemable Preference Share(s) to Eligible Applicants under this OIS.

"Official List" has the same meaning given to the term "official list" in the Listing Rules.



**Australian United Retailers Limited**  
**ACN 077 879 782**

"Private Label" means the branded products which are proprietary to the Company, including the FoodWorks Best Buy, branded products.

"Point of Sale System" means the computer systems which are in place at the checkout lanes to process customer purchases and includes the scanning equipment, scales and the cash registers.

"Relevant Interest" has the meaning ascribed to it in the Corporations Act.

"Retail Outlet" means a business of supermarket retailing and associated businesses.

"Services" means the services provided by the Company including:

- (i) providing marketing, merchandising and promotional advice and services to the stores of Members who own Approved Stores;
- (ii) negotiating supply agreements; and
- (iii) receiving Supplier rebates and allowances (and paying portions of those rebates and allowances to Members who own Approved Stores).

"Share" means a share in the Company.

"Storeowner" means the owner or joint owners of an Approved Store.

"Substantial Holding" means, in relation to the total number of votes attached to voting shares in the Company, 7.5% or more of the total votes attached to voting shares in which a Member or their associates have a Relevant Interest.

"Supplier" means a supplier of goods or services to the retail industry.

"TobaccoLink" means the specific supply, merchandising and promotional program for tobacco products covered under FoodWorks' TobaccoLink Agreement.

"Unbranded Store" means an Approved Store which is not a Branded Store.

"Unity Agreement" means an agreement between FoodWorks and:

- (i) in all cases, an Approved Storeowner, setting out the role of the Company in providing the Services and which governs the rights and obligations between the Company and the Approved Storeowner; and
- (ii) in some cases, a Branded Storeowner, and which governs the rights and obligations between the Company and the Branded Storeowner.

### **3 Key Questions and Answers**

#### **3.1 What is this document?**

Under Chapter 6D.2 of the Corporations Act, an offer of securities for issue needs disclosure to investors unless a relevant exemption applies. Accordingly, AURL has prepared this OIS in connection with the Offer.

This OIS sets out all information that, in the opinion of the Directors, is likely to be material to the decision of an Eligible Applicant whether or not to acquire Class A Redeemable Preference Share(s). The terms of the Offer are set out in section 6 of this OIS.

#### **3.2 Why has this document been provided to you?**

Under the Company's Constitution, where applicants meet the Directors' criteria to become an 'Approved Storeowner' (in other words, an Eligible Applicant), they are entitled to be issued and allotted one Class A Redeemable Preference Share in respect of each Approved Store they

operate and control. This OIS contains the Offer that is made to Eligible Applicants to acquire a Class A Redeemable Preference Share(s) in respect of their Approved Store(s).

If you are not an Eligible Applicant then you should not apply for a Class A Redeemable Preference Share(s) under this OIS.

### **3.3 Why do you need a Share?**

As noted in section 3.2 above, Eligible Applicants are entitled under the Constitution to be issued and allotted one Class A Redeemable Preference Share in respect of each Approved Store they operate and control. Further, the Unity Agreement provides that your status as an Approved Storeowner only takes effect once a Class A Redeemable Preference Share is issued to you.

Your Class A Redeemable Preference Share(s) will be your link to membership of the Company. As a shareholder you have the right to receive certain information about the Company. There are also voting rights attached to Class A Redeemable Preference Shares. For example, holders of Class A Redeemable Preference Shares can participate in resolutions electing board members. Section 9 contains detailed information about the rights attaching to each class of Shares under the Company's Constitution. Please read this information carefully and seek professional advice if you have any questions.

### **3.4 There are different classes of Shares. What's the reason for this?**

Following the Merger, one Class A Redeemable Preference Share was issued to each Member who signed the Approved Store Agreement and one Class B Redeemable Preference Share was issued to each Member who also signed the Banner Agreement.

On 5 March 2007, the holders of both Class A and Class B Redeemable Preference Shares passed special resolutions varying the rights attached to each share class. In addition, the holders of Class A Redeemable Preference Shares voted to amend the Constitution by creating a new class of Share, Class C Redeemable Preference Shares.

The purpose of these amendments was to enable the Company to undertake a capital raising via an issue of Class C Redeemable Preference Shares under a prospectus lodged with the ASIC on 2 April 2007.

Under the terms of issue and the Constitution, Class C Redeemable Preference Shares issued under the prospectus (including any bonus shares issued) converted to Class A Redeemable Preference Shares on 15 June 2009 (the Conversion Date).

Until their conversion to Class A Redeemable Preference Shares on 15 June 2009, Class C Redeemable Preference Shares were listed on the Official List of the exchange operated by the NSX, a prescribed financial market under the Corporations Act. From that date, the Class A Redeemable Preference Shares have been listed on that exchange.

As at the date of this OIS, the Company has 11,560,420 Class A Redeemable Preference Shares and 186 Class B Redeemable Preference Shares on issue.

### **3.5 Once you own a Share, can you sell it or transfer it to someone else?**

Yes. However, the Constitution contains certain restrictions on the transfer of Shares. These restrictions are explained in sections 10.3.3 and 10.3.12.

### **3.6 What is a 'redeemable preference share'?**

Essentially, a redeemable share is a share that can be cancelled (redeemed) if certain events occur. As at the date of this OIS, all of the shares issued by the Company are redeemable shares. Primarily, this is to ensure that all Members continue to be Eligible Members. If you

cease to be an Eligible Member, the Company will be entitled to redeem your Class A Redeemable Preference Share(s).

A preference share is a share that has some kind of preferential rights in comparison to ordinary shares.

Further details on the rights and restrictions attaching to each class of Shares are set out in section 9.

### **3.7 Will you get any dividends?**

Any dividend payment will be subject to the Company's ability to meet any of its then cash funding requirements for the growth of the business and taking into account the capital and trading requirements of the Company and its subsidiaries at the time.

Until the Company has further certainty surrounding the completion of the divestment of the Company owned stores in particular Townsville, the Company is not in a position to predict when it will pay a dividend. The Company remains committed to paying a dividend as soon as possible.

### **3.8 Should you subscribe for Shares?**

Nothing in this OIS constitutes a recommendation by AURL or any other person concerning the subscription for Class A Redeemable Preference Share(s) or any other securities. The right to apply for a Class A Redeemable Preference Share(s) under this OIS arises as a consequence of your status as an Eligible Applicant. The Company recommends that you obtain independent professional advice in relation to any decision made in connection with this OIS.

### **3.9 Who can apply for shares under this OIS?**

This Offer is only open for acceptance by Eligible Applicants who have not already taken (or are to take) a transfer or transmission of a Class A Redeemable Preference Share in respect of the relevant Approved Store.

### **3.10 What should you do if you require further information?**

If you require further information or have any questions relating to this OIS you should seek independent professional advice.

### **3.11 Where else can I obtain a copy of this OIS?**

Copies can be obtained from the Members section of the Company's extranet: [extranet.foodworks.com.au](http://extranet.foodworks.com.au) or by contacting the Company.

## **4 Information about the Company, its business and plans**

### **4.1 Background information**

AURL is an independent retail supermarket group trading under the "FoodWorks" Brand. It was created from the Merger of the FSG and AUR in November 2004.

The Group's foundation members include AUR, Foodstore, FoodWorks, Buy Rite, Cut Price, 727, Rite-Way, Tuckerbag, Food-Rite, Foodwise, Food-Way and Night Owl proprietors.

The combined business has a network of stores which has grown to approximately 609 stores with annual aggregate store turnover in excess of \$1.9 billion.

The Company has built additional strength and value in its core business and throughout its retail network via:

- the introduction of standardised business processes;

- greater bargaining power with Suppliers;
- increased geographic density which has improved marketing and operational efficiencies; and
- a stronger independent retail supermarket identity to influence change on behalf of independent retailers.

In particular, since the Merger, the Company has been delivering on the Company's mission to increase retailer prosperity through a significant increase in store wide sales, total income to the Company and distributions to Members who own Approved Stores.

The Board has also invested significantly in raising the levels of governance and professionalism of the Company, to those expected of a well established, publicly listed organisation.

The composition of the Board, with retailer and independent directors, the Board Committee structures (refer to the 'corporate governance' section in the Company's accounts for details) and the use of qualified third parties to independently assess and advise on risks are now integral elements of the Company's governance and have been designed to provide appropriate levels of assurance to stakeholders.

The Company undertook a capital raising under the prospectus lodged with the ASIC on 2 April 2007 to fund its growth strategy. Approximately \$10.3 million was raised under the prospectus.

On 29 June 2009, the Company announced its intention to purchase up to 45 Coles stores in South Australia, Victoria, New South Wales and Queensland at a total acquisition value of around \$35 million. This acquisition was approved by the Company's members on 17 August 2009 and 22 of those stores were progressively transferred to the FoodWorks group during the period until February 2010. The acquisition was financed by the Wesfarmers group. In March 2010 the Company announced that initial performance benchmarks for the acquired stores had not been met and that plans would be developed to divest a number of stores. In addition to reaching agreement with Coles that FoodWorks was not required to acquire further stores under the original sale and purchase agreement, a divestment and closure plan was developed. As at the date of this OIS, all but two sites have been sold, closed or converted to an alternative use. These two sites are in the process of being sub-let or converted to an alternative use.

#### **4.2 The FoodWorks National Network**

FoodWorks has grown to represent a network of Branded and Unbranded stores, spanning all states and territories across Australia.

In the initial years following the Merger, stores were concentrated in the Eastern seaboard states and supported by offices in Brisbane and Melbourne, with additional representation in NSW. FoodWorks is now a national business following the expansion into Western Australia and South Australia.

#### **4.3 Growth of Member Distributions**

One of the Company's most important achievements to date since the Merger has been the evolution and growth of its advanced, competitive distribution scheme to Members who own Approved Stores. This scheme is based on monthly rebates attached to Eligible Warehouse Withdrawals, along with other behavioural rebates aimed at rewarding participation in major initiatives. The Board believes that the distribution scheme has been effective in rewarding the performance and growth of Members who own Approved Stores, and their support of the business' key drivers.

Over the last three years, total distributions to Members who own Approved Stores has continued to grow. Over the same period, the total distributions as a proportion of Eligible Warehouse Withdrawals have increased materially.

#### **4.4 What does FoodWorks do?**

##### **The Company's Activities - Overview**

FoodWorks has provided the following services to Members who own Approved Stores:

- Negotiating supply arrangements, including pricing, trading terms, logistics, and promotions;
- Building and marketing a range of Private Label (controlled brand) product lines, to improve store sales and margins and generate customer loyalty;
- Conducting marketing and advertising on behalf of Branded Storeowners to grow sales and enhance customer awareness of the FoodWorks Brand;
- Providing a range of support services and tools to assist Members who own Approved Stores to:
  - run** their businesses - such as business plans, product sales benchmarking information, space planning, Retail Development Partners (RDPs), Fresh Specialists
  - manage** their businesses - such as training, manuals, price file hosting and maintenance and accounts payable services (e.g. Chargeback); and
  - reduce** the cost of doing business – such as local area marketing, media buying, production and distribution of catalogues, Telstra, and Commonwealth Bank EFTPOS contracts;
- Assisting Members who own Approved Stores regarding store refurbishment and redevelopment opportunities and the management of their development projects;
- Assisting Members who own Approved Stores in their choices of Point of Sale and Back Office Systems, and associated support arrangements; and
- Representing the interests of independent retailers generally with governments, industry groups or associations.

Unbranded Stores are able to take advantage of a number of the FoodWorks' services – including all Supplier arrangements, the controlled brand ranges including Metcash's Black and Gold products, and FoodWorks' Private Label ranges, price file hosting and maintenance, Point of Sale Systems support, group negotiated EFTPOS rates, telecommunication deals, the Company's store refurbishment and redevelopment expertise and a competitive structure of distribution to Members who own Approved Stores.

#### **4.5 Key FoodWorks Services**

To effectively deliver its diverse range of support services to Members who own Approved Stores, FoodWorks is organised into six primary functions – Merchandising, Support Services (including Marketing, IT and Pricing), Retail Operations (including Business and Store Development), Finance, and People, Culture and Communications. The activities of each of these functions are outlined below.

#### **4.6 Merchandising**

On behalf of its Member retailers, the FoodWorks merchandising team establishes and implements:

- Supplier agreements;
- Private Label ranges;
- Category specific initiatives – i.e. LiquorLink and TobaccoLink;
- Promotional negotiations and support; and
- Space Management.

#### **4.7 Supplier Agreements**

FoodWorks manages the supply arrangements for over 20,000 product lines on behalf of its subsidiaries and its Member retailers.

In particular, FoodWorks and its Member retailers have access to a comprehensive long-term supply agreement with Metcash. The agreement is based on national access to an extensive product range of grocery, perishable, general merchandise, tobacco and packaged liquor items. Further details with respect to this agreement are set out in section 10.7.

Foodworks also manages the supply arrangements for all direct to store suppliers primarily for Fresh Produce, Meat, Deli and Bread categories.

In addition to the merchandising and promotional agreements, Member retailers can also take advantage of Supplier agreements for business consumables such as shopping bags and wraps, as well as Chargeback - a centralised, streamlined Supplier payment system.

#### **4.8 Private Label Ranges**

The Private Label programme is intended to differentiate FoodWorks from competitors, build customer loyalty and deliver Member retailers new sales opportunities, strong gross profit and competitive retail pricing.

Private Label (house brand or control brand) products have grown substantially in recent years for both customers and Suppliers and this has provided the opportunity for FoodWorks to accelerate its own programme and capture additional gross margin for Member retailers.

#### **4.9 Category Specific Initiatives - LiquorLink and TobaccoLink**

LiquorLink and TobaccoLink are FoodWorks' innovative, value added merchandising and promotional programs which provide regular competitive pricing and promotions support from liquor and tobacco Suppliers with retailer commitments to meet merchandising expectations of Suppliers' products.

Both services are optional to Member retailers, and require additional contractual commitments in the form of LiquorLink or TobaccoLink Agreements which are monitored from time to time by the respective Suppliers. The LiquorLink and TobaccoLink arrangements are good examples of the potential prize available to both parties when Suppliers' and Members' objectives are aligned.

#### **4.10 Promotional Negotiations and Support**

FoodWorks provides its members with an ongoing promotional program to drive customers into the stores and to increase sales. There are up to 51 catalogues produced each year which can be distributed around the stores' catchment areas. These catalogues are tailored to the stores' size and are available in a 12 page, 6 page and 2 page version. Promotional activities are typically one week specials, or 4 week price reductions. Supplier support is negotiated on behalf of the network by the Merchandise Team to meet price points that are market competitive and drive increased customer count.

#### **4.11 Space Management**

FoodWorks provides Branded Storeowners with product and category range planograms and consumer-focused floor plans to improve store flow and product category footage allocations.

#### **4.12 Support Services**

The FoodWorks Support Services team provides support services across the following functions:

- Marketing;
- Information Technology; and
- Pricing and Hosting Support Services.

#### **4.13 Marketing**

Over the next 12 months the FoodWorks Marketing Team will continue to drive awareness of the FoodWorks brand, points of difference and competitive advantage in the marketplace. The team continues to support individual store level activity to maximise local presence and drive sales.

The FoodWorks Marketing function drives awareness of the FoodWorks brand and Customer Value Proposition among consumers and other stakeholders. The awareness of the quality and value available from FoodWorks stores assists in driving consumer traffic.

#### **4.14 Marketing Support Services**

The team provides a number of support services to stores and to the Company as a whole including:

- Brand management - protecting the integrity of the FoodWorks brand by ensuring consistent execution of the brand and brand positioning in above and below the line activity
- Development and creation of advertising creative
- Creation and execution of consumer promotions
- Provision of graphic design services
- Promotion of FoodWorks in consumer, trade and local media through media relations activity
- Provision of local area marketing support to individual member stores
- Delivery of consumer research
- Store event support and delivery
- Provision of advice and support for community engagement and charity activities

- Provision of advice and support for the purchase of media

#### **4.15 Pricing and Hosting Support Services**

Member retailers with FoodWorks approved Point of Sale and Back Office Systems can elect to have FoodWorks host their product price files in order to save time and effort during promotional periods and to manage price changes. The flexible “host management system” allows retailers to mix and match pricing zones at a subcategory level to improve profitability.

#### **4.16 Information Technology**

FoodWorks provides advice and direction on retail technologies and aligns with accredited back office software vendors. The Company has relationships and agreements in place to enable Member retailers to take advantage of group pricing for EFTPOS merchant fees, telecommunications and broadband services.

Other services include:

- ScanWorks, which is exclusive to FoodWorks and is a data analysis management tool collecting scanned product sales data from FoodWorks stores on a daily basis.
- The retrieved data underpins many of FoodWorks’ support services – such as special promotional activities (scan deal rebates), category management, analysis of store development potential for new and existing stores, and the creation of meaningful, tailored business plans.
- ScanWorks is also a powerful tool for Member retailers to assist them to benchmark their performance and to make effective merchandising decisions.

#### **4.17 Retail Operations**

The FoodWorks Operations Team and RDPs provide in-store support to bannered stores. The RDPs work with retailers to understand their needs and assist them to achieve their store specific goals.

RDPs assist stores to understand the needs of their customers to capitalise on all available opportunities in order to maximise store efficiency, sales and profitability. They provide coaching to assist retailers to develop and enhance their skills in running a successful business.

The RDPs are the primary contact between the FoodWorks Support Centre and stores, ensuring we provide efficient and appropriate resources where needed.

They also constantly monitor the standards of presentation in all stores to ensure compliance with the FoodWorks standard and protect the integrity of the FoodWorks brand.

RDPs also facilitate regular Member meetings to encourage networking amongst retailers to enable them to discuss industry issues and seek feedback on Support Office services.

#### **4.18 Store Development**

FoodWorks’ store development function encompasses a range of specialist services, from investigating and identifying new business opportunities through to computer aided design (CAD) based design documentation.

The team has been built around the establishment of the expertise and resources necessary to overcome the traditional barriers preventing Member retailers from undertaking the store relays, refurbishments, expansions or relocations necessary to meet their customers’ needs and grow their businesses.



These barriers include:

- Lack of data necessary to make a confident decision on a store's possible development options;
- Limited specialist expertise – i.e. limited ability to assess and quantify the opportunities, costs and potential return on investment or the high cost of accessing such expertise;
- High cost of development – ad hoc use of contractor and professional services and equipment, without formalised trading terms or standard specification.

FoodWorks' response has been to develop structured systems to assist in analysing existing supermarket floor space (supply) and available supermarket spend from demographics (demand) information. The approach is systematic and comprehensive, having regard to the existing FoodWorks network and to the identification and assessment of opportunities to grow the network either through new stores or the enhancement of existing stores.

In addition to the analysis and development activities, the team also supports Member retailers with:

- Internal retail design - offering Member retailers a cost effective way to create a new and innovative shopping experience for their customers by focusing on interior fit-outs.
- Sourcing competitive pricing for equipment and services to enable our members to operate more cost effectively.
- Provision of signage and branding to FoodWorks standards at no charge to the retailer.

#### **4.19 Finance**

The Company's objective is to ensure that its legal and fiduciary corporate obligations are discharged fully in a cost effective manner.

Business controls and systems are in place to increase income generation, control spending, and mitigate risk areas which improve the services and financial return to Member retailers. The management of the Company's working capital is important so as not to hinder the pursuit of growth opportunities.

In addition, the finance team also maintains important relationships with direct suppliers such as banks, telephone suppliers and insurance companies delivering value to Member retailers by reducing their costs of doing business. The Finance team receives and distributes rebates, executes the Chargeback (accounts payable) service and analyses the effectiveness of, and recommends changes to, the rebate scheme.

#### **4.20 People, Culture and Communications**

FoodWorks has a team which is dedicated to developing the capability of FoodWorks support office employees and providing varied human resources related services to Member retailers.

The team provides strategic direction in relation to the capability and development of FoodWorks support staff. It develops and maintains the Company's human resources policies, to ensure compliance with various state and federal legislation, to provide effective governance and to assist in attracting and retaining staff.

This team is responsible for the attraction, recruitment, induction, development and remuneration and performance management activities for FoodWorks support staff. It is also responsible for determining which of these activities could be provided or co-ordinated effectively on behalf of Member retailers, and for establishing relationships with appropriate external providers.

**Australian United Retailers Limited**  
**ACN 077 879 782**

The team provides all Member retailers' communications, corporate communications and media support and services. Through ensuring the right mix of technology and traditional methods, the team seeks to ensure all Member retailers are aware of company activities and actively share news and ideas to grow the business.

#### **4.21 FoodWorks' Vision**

FoodWorks' Vision in relation to its Members' retailer stores is to offer its Member retailers a smart, contemporary, retail and business system that:

- improves retailer standard profitability;
- listens to customers and responds to their needs; and
- strives to be Australia's premier independent retail Brand.

Importantly, all key stakeholders (Board, employees, Members and store teams) focus on customer needs as the basis for prosperity.

One of FoodWorks' strengths is the relationship between the Company and its Members, which comes from the retailer co-operative buying group heritage.

### **5 Industry overview**

If you are an Eligible Applicant, then you are already a participant in or are familiar with the retail grocery and liquor industry. The Company has reached the view that it is not necessary for this OIS to contain information about the industry or market environment in which the Company will operate.

### **6 Details of the Offer**

This section sets out important information in relation to the Offer and its terms.

#### **6.1 Key dates**

<b>Event</b>	<b>Date</b>
OIS Lodgement Date at ASIC	21 December 2012
Offer Opens	21 December 2012
Offer Closes	This offer is open for a period of 13 months from the date of lodgement, and closes on the Closing Date (5:00pm AEST on 21 January 2014)
Shares Issued	Normally after a scheduled Board meeting (see section 6.3)

#### **6.2 Offer terms**

The Company offers to issue to Eligible Applicants who have not already taken (or are to take) a transfer or transmission of a Class A Redeemable Preference Share in respect of the relevant Approved Store one Class A Redeemable Preference Share for each Approved Store that is owned or controlled by that Eligible Applicant.

This Offer is restricted to Eligible Applicants. Each Eligible Applicant must execute a Unity Agreement or an Approved Store Agreement for each retail store in respect of which they wish to become an Approved Storeowner (and must comply with the terms of that agreement). Unless waived by the Company, an Eligible Applicant's status as an Approved Storeowner will only be confirmed when a Class A Redeemable Preference Share(s) has/have been allotted to them.

The consideration for each Class A Redeemable Preference Share issued will be \$1.00.

### **6.3 Offer structure**

The only persons eligible to apply for Shares are Eligible Applicants.

By lodging a completed Application Form with AURL in respect of each Class A Redeemable Preference Share applied for, the Applicant is deemed to acknowledge that the Offer set out in this OIS is only capable of acceptance by AURL where the conditions set out in paragraph 6.2 above are met.

The Company will determine whether an Applicant is an Eligible Applicant.

The issue of Class A Redeemable Preference Shares under this OIS will normally be approved at a scheduled Board meeting (usually held every one to two months) for applications received and processed since the last Board meeting. Following such a meeting, Class A Redeemable Preference Share(s) shall be issued to Eligible Applicants whose applications have been accepted by the Board.

Applicants should note that the Company has reached agreement with NSX that applications for quotation on NSX of Shares issued under this Offer will be made in batch lots on 30 June and 31 December each year (with earlier application to be made in the event that 100 Shares are issued). Accordingly while an application will be made to quote any Share(s) issued to an Eligible Applicant under the Offer, there may be a delay of up to 6 months between the issue and quotation of Shares on NSX.

### **6.4 Minimal cash will be raised pursuant to the Offer**

The purpose of this OIS is not to raise funds for the Company but to comply with the disclosure requirements of the Corporations Act relating to the issue of securities. As noted in the Investment Overview and Section 6.2 above, the consideration for each Class A Redeemable Preference Share issued under this OIS will be \$1.00. Accordingly, funds raised under the Offer will be minimal, and will be incorporated into the Company's general revenue.

As set out in section 9 of the OIS, Class A Redeemable Preference Shares and / or Class B Redeemable Preference Shares may be redeemed in accordance with the Redemption Procedure upon the occurrence of a Redemption Event. In addition, section 254K of the Corporations Act provides that a company may only redeem redeemable preference shares out of profits or the proceeds of a new issue of shares made for the purpose of the redemption.

In order to ensure compliance with section 254K of the Corporations Act, the Directors have resolved that funds raised under the Offer (**Offer Proceeds**) may be applied to fund the Redemption Amount payable by the Company on redemption of any Class A Redeemable Preference Shares and / or Class B Redeemable Preference Shares. In other words, the amount payable by the Company (per share redeemed) where the Board elects to redeem Class A Redeemable Preference Shares and / or Class B Redeemable Preference Shares will be funded by the Offer Proceeds.

Where the Directors determine that funds are not required for the purposes of making payments where shares are redeemed, the funds raised under the offer will be re-allocated into the Company's general revenue.

### **6.5 How to apply for Shares**

Applications can be made by completing and lodging the Application Form attached to or accompanying this OIS. A separate Application Form must be completed in respect of each Class A Redeemable Preference Share applied for.

The Application Form must be completed in accordance with the instructions set out in the Application Form.

## **6.6 Closing Date**

Applications are open for a period of 13 months from the date of lodgement of this OIS, unless AURL elects to close the Offer at an earlier date and time, which may be done without further notice.

## **6.7 What to do if you have queries or want extra copies of this OIS**

Applicants who require additional copies of the OIS can contact:

Company Secretary

Australian United Retailers Ltd

Ph: 03 9809 8600

Email: [companysecretary@foodworks.com.au](mailto:companysecretary@foodworks.com.au)

The OIS may be downloaded from <http://extranet.foodworks.com.au> under the My Shares section of the website.

## **6.8 Company's discretion**

The Company also reserves the right to close the Offer early and reject any Application or part thereof.

## **7 Directors and senior management**

### **7.1 Who are AURL's directors and officers?**

The Board of Directors of FoodWorks includes storeowners who have significant experience owning and operating FoodWorks stores.

The Board also includes independent directors who have been appointed to the Board based on their experience and diverse skills outside of supermarket retailing. These skills include financial, accounting, legal, corporate governance, commercial, marketing, operational and management, which enables the Board to:

- Engage in prudent financial management;
- Set strategy and direction for the Company;
- Monitor results on an on-going basis;
- Establish compelling Business Plans including stretch targets; and
- Apply best practice corporate governance practices.

None of the Directors is a nominee appointed to represent a substantial shareholder of the Company. Further, in respect of each Director, the Board does not consider that any business or other relationships or interests of that Director will interfere with the independent exercise of the Director's judgment in performing their duties as a Director of the Company.

The Board comprises the following Directors:

#### **7.1.1 John Leslie Bridgfoot - Chairman and Non Executive Director**

John was appointed as a director of Australian United Retailers (AUR) in October 2001 and as the Chairman in July 2004, and has been a director and Chairman of AURL since the Merger. He is an ex-officio member of the Audit & Risk and Remuneration & Nomination committees.

John is currently the Managing Director of Pacific Rim Securities, a private equities and commodities trader, which he established in 1998.

**Australian United Retailers Limited**  
**ACN 077 879 782**

John was previously an independent retail storeowner and operator from January 1999 until March 2006.

Prior to this, John held a number of senior executive service roles with the Victorian Government from 1985 until 1998, principally in the health industry.

During that time, from 1993 until 1996, John also worked for Arrow Consulting and First Capital Alliance as a business analyst, providing consulting advice to their clientele in the field of economics and securities analysis.

#### **7.1.2 Neil Anthony Osborne – Deputy Chairman and Non Executive Director**

With over 20 years' experience in the retail industry, Neil was appointed to AURL as a director in November 2006. He is Chairman of the Board's Audit & Risk Committee.

Neil is a Director of the Vita Group, a company listed on the ASX.

Neil has held a variety of senior executive positions with Myer Grace Bros and Coles Myer Ltd as well as being a former partner of the world's largest consulting and technology services firm, Accenture.

Neil's qualifications include Fellow Australian Institute of Company Directors (FAICD), Bachelor of Commerce (University of Queensland), Certified Practising Accountant, Strategic Management Programme – Monash University Graduate School of Management, Advanced Logistics Programme – University of North Florida and Company Directors Course Diploma – Australian Institute of Company Directors.

#### **7.1.3 Allan Burge – Non Executive Director**

Allan has been a retailer since 1968 and currently operates two Foodworks Supermarkets at Loganholme and Woodridge in Queensland. He was appointed as a Director of the Company in November 2010 and is Chairman of the Remuneration & Nomination Committee of the Board.

Allan was appointed to the Q.I.W. Board in 1981. In 1983, when Q.I.W. was taken over by Q.I.W. Retailers, Allan was elected a Director and was founding Chairman, a position he was elected to annually for the next 10 years, eventually retiring from the Board in 1993. At the direction of a General Meeting of SPAR Retailers during 1993, a group of retailers prepared a business plan for the purchase and distribution of fresh fruit and vegetables for QLD and N.S.W. SPAR Fresh Pty Ltd was registered and commenced operations in 1999 trading as Independent Produce Professionals. It is still progressing into its 13<sup>th</sup> year. Allan was elected a Director and founding Chairman and he has retained these positions to date.

In the past Allan was a member of The Institute of Company Directors of Australia and is a foundation fellow of The Australian Institute of Company Directors. Allan successfully completed the course and assessment for Company Directors through The University of New England, and The Institute of Company Directors. He was awarded a Diploma of Company Director in November 1990.

#### **7.1.4 Frederick Falkener Fairthorne - Non Executive Director**

Fred was appointed as a Director of the Company in September 2009. He is a member of the Audit & Risk Committee of the Board.

Fred has been closely involved in the operation and management of supermarkets for many years. His family has been involved in supermarket operations since 1961; consequently Fred has been personally involved from an early age. He was a co-founding shareholder of Action Supermarkets in WA in 1977. Subsequently he co-founded Newmart Supermarkets in 1988.

**Australian United Retailers Limited**  
**ACN 077 879 782**

Fred has a strong presence in supermarket retailing, and is currently involved in the ownership and operation of several facilities in the Perth area with a strong focus on merchandising, marketing product offerings and store layout development. Fred therefore brings to the Board a depth of relevant and diverse retailing experience at both operational and management levels.

**7.1.5 Deborah Smith - Non Executive Director**

Deborah was appointed a director of the Company in October 2003 and has been a director of AURL since the Merger. Deborah is a member of the Board's Remuneration & Nomination Committee.

Since 1996, Deborah has been an independent retail storeowner and operator.

Deborah holds a Master of Business Administration, Diploma in Education, a Diploma of Management, Graduate Certificate of Management, is a Member of the Australian Institute of Company Directors and is a Director of Master Grocers of Australia.

**7.1.7 Sien (John) Van Nguyen - Non Executive Director**

John was appointed as a Director of the Company in November 2011 and is a member of the Audit & Risk Committee of the Board.

John currently owns three FoodWorks supermarkets in Queensland. He is the Managing Director of a family group of companies operating the stores and other enterprises.

Before entering the retail industry, John and his family operated an award-winning restaurant in Brisbane, which catered for 200 patrons. He was responsible for its operation, financial management, purchasing and quality control.

John brings a broad range of relevant commercial and practical experience to the board and is highly committed to the future and success of the FoodWorks group through service to its customers.

**7.1.8 Malcolm Geoffrey Ward – Non Executive Director**

Malcolm was appointed as a Director of the Company in November 2010 and is a member of the Audit & Risk Committee of the Board.

Malcolm and his wife Liz have been owner/operators of supermarkets since joining the industry in 1994. Malcolm is the Managing Director of their family companies operating 4 FoodWorks stores in Western Australia. He is a director of Supermarkets West Pty Ltd, the marketing and promotion company for FoodWorks and Farmer Jacks stores in WA.

Malcolm is a director and audit committee member of several production and marketing companies in the Australian egg industry including Farm Pride Foods Ltd and has a broad range of commercial experience having been involved in a number of industries including retailing, business management, agricultural production and marketing, project and property management, and banking.

**7.1.9 David William Williamson – Non Executive Director**

David was appointed as a Director of the Company in November 2010 and is a member of the Remuneration & Nomination Committee of the Board.

David has been part of a family who has been serving its local community as owners of an Independent Retail Business for over 30 years. He has grown up in this industry, helping his family run their Tuckerbag Supermarket from a young age. At the age of 17, he became Store Manager of his family's second store, Riddell's Creek Riteway. From there he moved on to manage their third store which became a Payless Super barn and then graduated to their biggest store, Tuckerbag. He continued as the Store manager until 13 years ago when he was

made Company Director when the family's Gisborne and Riddells Creek stores joined the Foodworks Supermarket Group.

In 2002 David was voted onto the Foodworks Supermarket Group board as a Retail board member and served for two years before choosing to resign in 2004 to help reduce the number of board members when the two groups merged to become the AUR. In 2006, with his wife, David purchased the Gisborne store, excited by the prospect of carrying on his family's legacy. Since this time he has also purchased Sunbury FoodWorks.

#### **7.1.10 Paul Job – Non Executive Director**

Paul was appointed as a Director of the Company in November 2012 and is a member of the Remuneration & Nomination Committee of the Board.

Paul currently owns two FoodWorks supermarkets, one in Pearce in the ACT and the other in Bradbury in NSW. He is also the Managing Director of a group of companies operating these and other businesses.

Paul has more than 30 years' experience in the retail industry. He started with a single service station and has since expanded this to over 13 retail stores. These stores operate over 3 States, with in excess of 220 staff and an annual turnover of more than \$100 million.

#### **7.1.11 John Florey – Non Executive Director**

John was appointed as a Director of the Company in November 2012 and is a member of the Remuneration & Nomination Committee of the Board.

John is a career retailer with over 30 years' experience. He brings a range of relevant expertise, from store and operational expertise through to strategic domestic and overseas sourcing, developing strategic direction and implementation, profit & loss management, sales & marketing, merchandise buying/demand planning, inventory management and business/product development for both the independent and corporate retail sectors.

John is the CEO of the Gippsland Business Developers group (GBD) which is the majority owner of 14 independent supermarkets under the FoodWorks banner. GBD is also a major shareholder in the "Best is Fresh" fresh produce wholesaler and in the "JV Retail business services" accountancy firm.

John has held General Manager positions for a number of companies, including:

- GM – General Merchandise Apparel, Entertainment & Paper at Coles Group;
- GM – Merchandise & Marketing at Mitre 10 and Tru Value Hardware;
- GM – Merchandise & Marketing at Repco Automotive; and
- the Channel Strategy Manager at Telstra, developing and implementing the Telstra Licensed Country Shop program for Independent retailers.

John has also held Board positions with Sands Print Group, Mitre 10 Mega stores and Sensational Foods Ltd.

#### **7.1.12 Antonio Pacella - Company Secretary**

Tony brings to FoodWorks a strong background in finance and strategy, particularly in retail businesses.

He joined FoodWorks in 2010. Tony has previously held senior finance positions with Stockland and Coles.

Tony holds a Bachelor of Business with an Accounting Major and has Associate Chartered Accountant status.

## **7.2 The senior management team**

FoodWorks' senior management comprises a group of experienced professionals with widespread expertise in their areas of business management, retail operations and services, people management, marketing, merchandise and finance.

The Company's Management Team comprises:

### **7.2.1 Ricky Francis Wight - Chief Executive Officer**

Rick was appointed as CEO in October 2010. Prior to this he was the Chief Operating Officer. Rick brings to FoodWorks his strong background in finance, franchising and strategy management.

During his time with the Company, Rick has overseen the creation of a new retail operations function which aligns support services to the needs of our stores and customers. He was also responsible for communicating FoodWorks' brand and point of difference in the marketplace.

Rick joined FoodWorks from Blockbuster Australia where he was Chief Executive Officer for ten years and Area Senior Vice President - Asia for five of these.

Working for Blockbuster for 15 years, Rick held a number of senior management positions including the General Manager Development (Company and Franchise), Finance and Administration and Chief Financial Officer - Australia/Asia. Previously, Rick also worked for Arthur Anderson for eight years in senior business management and accounting roles.

Rick holds a Bachelor of Business in Accounting & Economics and has Fellow Chartered Accountant status.

### **7.2.2 Antonio Pacella - Chief Financial Officer**

Refer to paragraph 7.1.12.

### **7.2.3 Midhat Massoud - General Manager, Merchandise**

Midhat joined FoodWorks in 2009 from the wholesale retail sector.

He has extensive experience with the Coles Myer Group in national category management and supply chain management and has also worked on the supplier side of retailing with a major national brand.

Midhat has undertaken extensive professional development in areas such as strategic planning and management in retailing, from institutions such as Deakin and Monash University.

He is responsible for overseeing the national category management and promotions team.

Midhat is committed to developing relationships with our suppliers that provide our members with competitive pricing on in-demand products, a promotional program that drives consumer foot traffic and sales while maintaining store profitability and product range and pricing that meets the diverse needs of our member network.

### **7.2.4 Theodoros Stratopoulos - General Manager Retail Operations**

Theo joined the FoodWorks group in mid 2009 as the National Operations Manager for FoodWorks Retail. Theo drove the store transition program as well as overseeing day to day operations for all stores across 4 States.



In March 2011, Theo moved into the role of General Manager – Retail Operations, taking on the responsibility for all FoodWorks stores and also overseeing the business and store development teams.

Theo has over 20 years experience in supermarket retailing, 23 of which were with the Coles Group at all levels of store operation and a number of senior state and national positions.

A graduate of Victoria University and Deakin University, Theo holds an Associate Diploma in Food Retailing and a Diploma of Management.

He has also undertaken professional development in areas such as Strategic Planning, Supply Chain Management, efficiency process mapping and solution implementation.

Theo is passionate about supermarkets and imparting his knowledge as well as developing people.

## **8 Risk factors**

Applicants should carefully consider the following factors and other information in this OIS before deciding to subscribe for a Share(s) in the Company. If any of the following risks actually occur, the Company's business, financial condition, results of operations and prospects for growth may suffer.

### **8.1 Specific Key Risks**

There are a range of specific key risks associated with the Company's operations. Potential investors in the Company should note the following risks prior to subscribing for a share under this Offer. The Directors have sought to list these key risks in the order of materiality, with what they consider to be the most material risk listed first.

#### **8.1.1 Divestment and Closure of Coles stores**

The closure and divestment program associated with certain corporate owned stores from Coles is nearing completion. All but two sites have been sold, closed or converted to an alternative use. These two sites are in the process of being sub-let or converted to an alternative use.

It is important to note that, in respect of a number of the stores that have been closed (as opposed to sold), the Company (or one of its subsidiaries) has ongoing payment obligations in respect of those stores. In addition, in respect of a number of the stores that have been sold, the Company (or one of its subsidiaries) has remained as a lessee and has sub-let the premises to the purchaser. In these instances, the Company remains liable to the landlord under the terms of the lease. These arrangements expose the Company to certain counterparty risks in the event that the sub-lessee (or purchaser) fails to comply with the terms of its sub-lease.

The Company is actively managing its remaining obligations in relation to the divestment and closure process and expects that these will be discharged in a satisfactory manner but there remains some element of uncertainty around the finalisation of these matters.

#### **8.1.2 Supply Chain Risk**

The Company has, via its relationship with Metcash and other Suppliers, an extensive supply chain that provides for the procurement and delivery of grocery, dairy and frozen products, fresh products (including produce), liquor and tobacco to FoodWorks Members who own Approved Stores. Significant disruption of any aspect of this supply chain by any major Supplier could have a material adverse impact on the Company's operational and financial performance. Such disruptions may occur in a number of ways, including as a result of a

dispute between FoodWorks and a Supplier or the inability or unwillingness of a Supplier to comply with the contractual arrangements that are in place with FoodWorks.

Further details of the Company's contractual arrangements with Suppliers are set out in section 9.

## **8.2 Specific Other Risks**

While it is difficult to evaluate the effect that a risk may have on the Company, the Board is of the view that the risks set out below may have a lesser impact on the performance of the Company than those Specific Key Risks discussed above. Again, these risks are intended to be listed in the order of materiality, with the most material risk (in the directors' opinion) listed first.

### **8.2.1 Litigation and Dispute Risk**

From time to time, the Company may be involved in litigation in relation to issues such as contractual, personal injury, employee and other claims which may arise in the ordinary course of business. Depending on the nature of the dispute and the identity of the opposing party, the dispute may involve or result in the other party withholding money to which the Company is entitled. This is especially relevant in the context of the Company's agreement with Suppliers. Any claim made against the Company may adversely impact upon the operational and financial performance of the Company. In addition, should the Company decide to pursue claims against a third party, including any party with whom the Company has entered into agreements, this process may incur significant management and financial resources, and a positive outcome for the Company cannot be guaranteed. Further, even if the Company was successful in obtaining a judgment against a third party, the Company may be unable to recover any monies from that party.

### **8.2.2 Retention of Members**

Notwithstanding the introduction of the Unity Agreement (see section 10.4), some Member retailers operate under the Approved Store Agreement and / or Banner Agreement (see sections 10.5 and 10.6). There is a risk that these Members may terminate such agreements, which may occur without fault on FoodWorks' behalf following either 30 or 90 days' written notice. There is also a risk that the Company may not be able to retain Members that do sign the Unity Agreement, either because of a breach of the Unity Agreement or the Member invalidly terminates the Agreement. Likewise, it may be that Members do not renew their Unity Agreements at the date of expiration of the relevant term.

Notwithstanding the current rebate model in place with Member retailers, there is a risk that other competing groups may be able to offer more competitive rebate models to Member retailers, or that the Company may not be able to maintain its current rebate offering. Larger and multiple store retailers make up a significant proportion of the Company's turnover. In this regard, the Company notes that consolidation amongst suppliers may impact upon the level of rebates received by the Company and in turn, the rebates received by Member retailers. This, in turn, could impact on retention of Storeowners. The loss of retailers could have a material adverse impact on the Company's operational and financial performance.

### **8.2.3 Competitive retail environment**

The retail grocery environment in Australia is highly competitive. The major chains are pursuing an active strategy of acquisition, alliance and growth, and will continue to pose a significant challenge to independent grocery retailers. The Company will continue to compete with both the major chains and other independent grocery retailers for target customers. The entry of new retailers, or the actions of current retailers, including a change of strategic direction, along

with changes in consumer preference, may have a material adverse effect on the Company's performance.

#### **8.2.4 Risks associated with losing key personnel**

The Company's ongoing performance will depend to some extent on its key personnel, in particular the Management Team discussed in section 7.2. Despite efforts to retain the services of key employees, the loss of key personnel could have a material adverse effect on the Company's growth prospects. The Company may not be able to recruit suitable replacements within a short timeframe.

#### **8.2.5 Information Technology**

The Company is continually monitoring its information technology systems as well as those of its Members who own Approved Stores. There is a risk that any investment in information technology could be compromised by technological failure, implementation issues or other such difficulties which may have a material adverse impact on capital expenditure, operations and the financial performance of the Company.

#### **8.2.6 Australian Competition and Consumer Act Risks**

Whilst FoodWorks continually seeks legal advice on a range of operational matters, there is a risk that FoodWorks may be required to alter its actual or proposed business practices to ensure compliance with competition legislation. Such alterations may adversely affect the financial performance of FoodWorks.

#### **8.2.7 Government Legislation**

Australian and international government legislation is subject to review and change from time to time. Any such change is likely to be beyond the control of the Company and could affect the Company's profitability.

Revenues and operating costs of the Company may be affected by change in international, federal, state, or local government laws, regulations or policies, or in taxation legislation.

#### **8.2.8 Liability and Insurance Risk**

The Company's insurance arrangements may not be adequate to protect the Company against liability for losses relating to public liability, property damage, product liability, business interruption and other risks that may arise in the course of its operations. Should the Company be unable to maintain adequate insurance to cover these risks or experience claims for losses in excess of the level of its insurance coverage, the Company's financial performance could be materially affected.

### **8.3 General Risks**

Factors such as government legislation, inflation, interest rates, taxation law, accounting standards, natural disasters, social upheaval, war and terrorism may have an impact on prices, operating costs and market conditions generally. The Company's operations and future profitability can be affected by these factors, which are beyond the control of the Company.

The Company's performance will depend significantly on Australian and global economic conditions including inflation, currency fluctuation, interest rates, supply and demand and industrial disruption. Changes in any of these conditions may impact the Company's business and profitability.

## **9 Rights attaching to Shares**

### **9.1 What rights and restrictions attach to the Class A Shares?**

By way of summary, the Class A Redeemable Preference Shares:

- 9.1.1 may only be held by an Eligible Member;
- 9.1.2 may be redeemed in accordance with the Redemption Procedure upon the occurrence of a Redemption Event (see section 10.3.4);
- 9.1.3 carry the sole right to vote (on the basis of one vote for each share held) at general meetings, and the voting restrictions attached to shares in the Company generally (see section 10.3.6);
- 9.1.4 carry the right to participate in any dividend declared and paid by the Company to holders of shares in the class;
- 9.1.5 carry the right, on a winding up of the Company, to participate in any distribution of assets; and
- 9.1.6 carry a restriction on transfer (see section 10.3.12).

### **9.2 What rights and restrictions attach to the Class B Shares?**

By way of summary, the Class B Redeemable Preference Shares:

- 9.2.1 may only be held by an Eligible Member;
- 9.2.2 may be redeemed in accordance with the Redemption Procedure upon the occurrence of a Redemption Event (see section 10.3.4);
- 9.2.3 carry the right to participate in any dividend declared and paid by the Company to holders of shares in the class, but not as of right an entitlement to the same dividend as each other share in the class;
- 9.2.4 do not carry any right to vote at general meetings, but a right to vote at a meeting of the Class B Redeemable Preference Shareholders;
- 9.2.5 do not carry a right to participate on a winding up of the Company or reduction of capital; and
- 9.2.6 carry a restriction on transfer (see section 10.3.12).

### **9.3 In what circumstances can Shares be redeemed?**

Shares, including Class A Redeemable Preference Shares (i.e. the Shares offered under this OIS), may be redeemed at the discretion of the Board where a 'Redemption Event' occurs in respect of an applicable Member. Relevant Redemption Events include:

- 9.3.1 the Member ceasing (for whatever reason) to be an Approved Storeowner of the Approved Store in respect of which the share was allotted, or otherwise ceasing to be an Eligible Member;
- 9.3.2 the holder becoming bankrupt or insolvent;
- 9.3.3 where the Member is an Approved Storeowner, a Default Event occurs (see section 9.4); or
- 9.3.4 the holder requests in writing that the Company redeems some or all of the Redeemable Preference Shares held by that holder; and

- 9.3.5 the holder fails to give notice within one month that they hold the shares as trustee and the Board reasonably believes that the reason a notice was not given was to avoid disclosing full particulars of the beneficial ownership of the Shares so held.

Shares may only be redeemed in accordance with the Corporations Act. Further details in respect of redemption are contained in section 10.3.4.

#### **9.4 What are 'Default Events'?**

Relevant Default Events in respect of an Approved Storeowner include:

- 9.4.1 default or breach of any contractual obligation or commitment owed by the Approved Storeowner to the Company;
- 9.4.2 failure to pay, when due and payable, for goods ordered by or on behalf of the Approved Storeowner from a Supplier;
- 9.4.3 failure to pay, when due and payable, monies owed to the Company;
- 9.4.4 vacation or ceasing to own, lease, operate or control an Approved Store without the prior written consent of the Directors;
- 9.4.5 the acquisition by a person of a controlling interest in the Member and that person did not have a controlling interest in the holder at the time the share was allotted, transferred or transmitted to the holder, without the prior written consent of the Directors; or
- 9.4.6 the acquisition, without the consent of the Directors, by a person of the Relevant Interest in a share held by the Approved Storeowner where the person did not have a Relevant Interest at the time the share was allotted, transferred or transmitted to the Approved Storeowner.

This ability to redeem Shares is necessary to minimise the likelihood that Shares are transferred to individuals or entities that are not approved by the Board.

#### **9.5 What is the 'Redemption Procedure'?**

- 9.5.1 Where a Redemption Event occurs, the Directors have a right at their option exercisable at any time to:
- 9.5.2 Suspend the voting rights attached to the relevant Shares with immediate effect.
- 9.5.3 Give written notice that a Redemption Event has occurred and the Member has 90 days from receipt of the Notice to either transfer those shares to an Eligible Member, or satisfy the Directors that the Redemption Event has been remedied.
- 9.5.4 Upon expiration of that 90 day period, if the Member has failed to either transfer the shares or satisfy the Directors that the Redemption Event has been remedied, the Directors may in their absolute discretion redeem the Redeemable Preference Shares in accordance with the Redemption Procedure and the Corporations Act.

Applicants should note that as under the Corporations Act a redemption can only occur from profits or the proceeds of a further share issue.

#### **9.6 What is the 'Redemption Amount'?**

The price payable in respect of each Share on redemption will be the aggregate of the price paid (or credited as paid) by or on behalf of the holder in the opinion of the Directors acting reasonably in respect of the issue, transfer, allotment or other disposal of the share to that holder, plus any dividends declared and unpaid in respect of the Share(s) being redeemed.

Applicants should note that the occurrence of a Redemption Event will not necessarily result in Class A Redeemable Preference Shares being redeemed.

## **9.7 Voting Restrictions**

The general position is that the maximum voting entitlement of a Member and their associates with respect to all shares in which they hold a Relevant Interest is limited to 7.5% of the total voting rights attached to the Class A Redeemable Preference Shares. Where a Redemption Event has occurred but the Board has not exercised its discretion to redeem the relevant Share(s), the holder shall not have the right to vote at any general meeting of the Company (whether or not the Member initially enjoyed such rights) nor the right to vote at a meeting of the holders of the class of shares that the Member holds until such time as the Directors consider that:

- the Member has again become an Approved Storeowner; or
- the Member has again become an employee of the Company.

Notwithstanding the voting restriction, the level of share ownership potentially available to any one Member is unrestricted.

## **9.8 Future Entitlement to Issue Additional Shares**

The Board is empowered in the future to issue further Class C Redeemable Preference Shares for the purpose of raising additional funds, or at the discretion of the Board, in order to attract new Members.

The Constitution allows for a staff share scheme. As at the date of this OIS, no employees have been nominated as Eligible Members and none have been invited to participate in this Offer.

## **9.9 Risks**

Given the limited volume and value of Class A Redeemable Preference Shares issued under this OIS, an investment under the Offer does not involve a significant degree of risk.

Regardless, Applicants are advised to carefully consider the Risks Section of this OIS set out in section 8.

## **10 Additional information**

### **10.1 Incorporation**

Australian United Retailers Limited ACN 077 879 782 was incorporated in Victoria on 25 March 1997.

### **10.2 Rights and Liabilities Attaching to Shares**

The rights attaching to Shares in the Company are:

- set out in the Constitution of the Company, and summarised in section 9 above and 10.3 below; and
- in certain circumstances, regulated by the Corporations Act and the general law.

### **10.3 Constitution**

The following is a summary of the key provisions in the Company's Constitution.

#### **10.3.1 General**

The rights and liabilities attaching to the Shares are set out in the Company's Constitution, and are regulated by the Corporations Act and the general law. The Constitution is subject to the

**Listing Rules.** Set out below is a summary of the key terms of the Constitution, including the difference between share classes, and the principal rights and liabilities attaching to the Shares. This summary is not exhaustive and is not a definitive statement of the rights and liabilities of the shareholders of the Company. In particular, the summary should be read in conjunction with the summaries of the Unity Agreements, Approved Store Agreements and Banner Store Agreements contained in sections 10.4, 10.5 and 10.6 of this OIS.

### **10.3.2 Application of Listing Rules**

As previously noted, Class A Redeemable Preference Shares are listed on the Official List of the exchange operated by the NSX. As a consequence, the Constitution is subject to the Listing Rules. In particular:

- (i) Despite anything contained in the Constitution, if the Listing Rules prohibit an act being done, the act must not be done.
- (ii) Nothing contained in the Constitution prevents an act being done that the Listing Rules require to be done.
- (iii) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (iv) If the Listing Rules require the Constitution to contain a provision and it does not contain that provision, the Constitution is deemed to contain that provision.
- (v) If the Listing Rules require the Constitution not to contain a provision and it contains that provision, the Constitution is deemed not to contain that provision.
- (vi) If any provision of the Constitution is or becomes inconsistent with the Listing Rules the Constitution is deemed not to contain that provision to the extent of the inconsistency.

### **10.3.3 Right to hold Shares**

The Company has two classes of shares on issue: Class A Redeemable Preference Shares and Class B Redeemable Preference Shares. There are restrictions on who can hold Shares. In particular, Shares may only be issued, transferred or allotted or otherwise disposed of to an Eligible Member. The onus is on the applicant for such issue, transfer, allotment or disposal to demonstrate to the Directors that they are qualified to be an Eligible Member. An Eligible Member is defined to be any of an Approved Storeowner, a Branded Storeowner, the Related Parties of an Approved Storeowner or an employee of the Company (provided that the Board has passed a formal resolution confirming such employee(s) of the Company as constituting Eligible Members for the purpose of holding Shares in the Company and, subject to the passing of a formal resolution, a Related Party of an employee of the Company). Public companies (other than a co-operative), an entity controlled by a public company, or (unless otherwise agreed by the Board) a person who is in the employ of, or controls or is controlled by a Supplier of goods or services to the retail industry and a Member in respect of whom a Redemption Event has occurred (but where the Board has not exercised its discretion to redeem the Share(s) of that Member) are expressly excluded from the class of Eligible Members.

### **10.3.4 Redemption & Forfeiture**

Any Share in the Company may be redeemed if a 'Redemption Event' occurs in accordance with the redemption procedure set out in the Constitution. Redemption Events that may occur in respect of an applicable Member (as determined by the Directors in their absolute discretion) may be summarised as:

**Australian United Retailers Limited**  
**ACN 077 879 782**

- ceasing to be an Approved Storeowner (in the case of a Class A Redeemable Preference Shareholder), a Branded Storeowner (in the case of a Class B Redeemable Preference Shareholder), or otherwise ceasing to be an Eligible Member;
- where the holder is an Approved Storeowner, the occurrence of a Default Event, which includes where an Approved Storeowner is in default of any contractual obligations owed to the Company, fails to pay any amounts owing to either the Company or a supplier or ceases to operate or control an Approved Store;
- the holder (or any controller) becomes bankrupt, makes an assignment or composition with its creditors, dies or becomes of unsound mind;
- the holder becomes insolvent;
- the holder requests that some or all of their redeemable preference shares be redeemed; or
- the holder fails to give notice that they hold their redeemable preference share(s) on trust for a third party.

The price payable in respect of each Share on redemption will be the aggregate of the price paid (or credited as paid) by or on behalf of the holder in the opinion of the Directors acting reasonably in respect of the issue, transfer, allotment or other disposal of that Share to the holder, plus any dividends declared and unpaid in respect of the Share(s) being redeemed.

#### **10.3.5 Partly paid Shares**

The Company has a first and paramount lien on every Share which is not fully paid and on all dividends payable in respect of that Share. Such partly paid Shares may not be transferred unless the sum in respect of which the lien exists is paid. Failure to pay a call made in respect of an unpaid portion of a partly paid Share, or where the terms of allotment specify a date for payment of an instalment in respect of a partly paid Share to pay that instalment, may result in forfeiture of the Share in accordance with the procedure set out in the Constitution.

#### **10.3.6 Voting Rights & Restrictions**

The voting rights attached to each Share class differ. In particular:

- Class A Redeemable Preference Shares carry one vote for each Share held, to a maximum of 7.5% of the total voting rights attached to the Class A Redeemable Preference Shares. As the Class A Redeemable Preference Shares are admitted to the Official List, a Member must comply with the requirements to give information set out in section 671B of the Corporations Act, namely information about Substantial Holdings in the Company.
- Class B Redeemable Preference Shares carry no voting right, other than at a meeting of the Members of the class.

#### **10.3.7 General Meeting and Notices**

Each holder of Shares will be entitled to receive all notices, accounts and other documents required to be sent to Members under the Constitution and the Corporations Act, and to attend such meetings.

#### **10.3.8 Dividends**

Each Share carries the right to participate in any dividend declared and paid to the holders of shares in that class. Class B Redeemable Preference Shares do not as of right have an entitlement to the same dividend as Class A Redeemable Preference Shares.



### **10.3.9 Variation of Class Rights**

The rights and restrictions attaching to each class of Shares can only be altered if the holders of 75% of the shares issued in that class consent to the variation in writing, or a special resolution is passed at a meeting of the holders of shares in that class. Further, in the absence of prior consent in writing from all Class A Redeemable Preference Shareholders, there can be no variation of class rights that would result in the shares ranking in priority to the Class A Redeemable Preference Shares for payment of any return of capital.

For the avoidance of doubt, the Directors may issue redeemable preference shares that are ranked equally with existing redeemable preference shares (including but not limited to any Class A Redeemable Preference Shares and Class B Redeemable Preference Shares) at any time and from time to time in accordance with the Constitution and no such further issue will be taken to vary or affect the rights of existing holders of redeemable preference shares.

### **10.3.10 Further Issues of Shares**

The Directors may issue further fully paid or partly paid Shares of classes already issued which rank equally with those Shares without the approval of the holders of Shares in that class. Such Shares may be issued on the basis that their dividend entitlement is restricted until a fixed time.

### **10.3.11 Winding Up**

The right to participate in a winding up varies depending on the class of Share. In particular:

- Class A Redeemable Preference Shares carry an entitlement to participate in any distribution of the Company's assets.
- Class B Redeemable Preference Shares do not carry a right to participate in surplus assets on a winding up.

### **10.3.12 Transfer of Shares**

The transfer of Shares is restricted. In particular, with respect to any transfer that is not an ASX Settlement regulated transfer, the Directors may in their absolute discretion refuse to register any proposed transfer or transmission of Shares. Further, Members should be mindful of the restrictions as to who can hold Shares in the Company prior to any transfer.

### **10.3.13 Directors**

The Company currently has ten Directors. The Company's Constitution sets out the manner in which the Board must be constituted, including specifying both a minimum (six) and maximum (ten) number of Directors. The Company may by resolution (or otherwise in accordance with the Corporations Act) remove any Director before the expiration of their period of office and appoint another person in their stead.

### **10.3.14 Indemnities and Insurance**

To the extent permitted by law, and subject to the Corporations Act, the Company is required to indemnify current and past Directors, Secretaries and Officers of the Company against any liability incurred by them acting in their capacity as an officeholder. The Company may also pay legal costs for an officeholder where the action arises as a consequence of their office, and the premium on a policy of insurance.

### **10.3.15 Amendment of the Constitution**

In accordance with the Corporations Act, the Company's Constitution may be modified or repealed by a special resolution passed by Members of the Company.

#### **10.4 Unity Agreements**

Most Branded Storeowners have entered into Unity Agreements with FoodWorks. Unbranded Approved Storeowners may also enter into Unity Agreements with FoodWorks.

A Unity Agreement supersedes any prior agreement which a Member who is an Approved Storeowner may have with FoodWorks.

The Unity Agreements set out the rights and obligations of Members who have entered into such an agreement with FoodWorks (**Unity Storeowners**). Unity Agreements generally continue for a term of six years from their date of commencement, subject to termination provisions and the right of both parties to consent to the renewal of an agreement.

In addition to current Unity Storeowners who have been issued with a Class A Redeemable Preference Share, a Class A Redeemable Preference Share may be issued to all new Members who enter into Unity Agreements in the future.

Under the Unity Agreements, and largely consistent with Approved Store Agreements (see section 10.5) Unity Storeowners must comply with all relevant FoodWorks policies, as well as a range of specific obligations, including the maintenance of adequate stock and staffing levels, stocking recommended levels of allocated brands and compliance with specified store upkeep requirements. Branded Storeowners who have signed Unity Agreements, referred to throughout as Unity Branded Storeowners, are also subject to additional obligations, including ongoing compliance with specified branding criteria, the provision of information relating to store performance, compliance with FoodWorks' promotional programs, the maintenance of accurate sales data and ensuring that staff training and uniform requirements are met.

FoodWorks is required to provide a range of services to Unity Storeowners, primary of which is providing access to negotiated supply arrangements with Suppliers. FoodWorks negotiates and receives Supplier rebates and allowances, and pays portions of those rebates and allowances to Unity Storeowners.

Unity Branded Storeowners are provided with additional FoodWorks services under the Unity Agreement, primary of which is the ability to use specified FoodWorks intellectual property, subject to a range of conditions, including signage, logos and advertising materials. Unity Branded Storeowners also receive FoodWorks operating documentation and assistance with advertising and training strategies. FoodWorks is also obliged to maintain an advertising, marketing and promotional strategy for all Unity Branded Storeowners, in addition to reviewing and measuring the sales performance and marketing direction of the Unity Branded Stores.

Under the terms of most Unity Agreements, the relevant Unity Storeowners who wish to sell the business of their stores must provide FoodWorks with a right of first and last refusal in relation to the purchase of the business, but only if the sale is to occur during the term of the relevant Unity Agreement, or whilst there is an outstanding financial accommodation provided by FoodWorks to the Unity Storeowner or whilst FoodWorks is the lessor of the relevant store's premises.

#### **10.5 Approved Store Agreements**

Those Members who own Approved Stores but have not executed a Unity Agreement are subject to an Approved Store Agreement (and, in some cases, a Banner Agreement). The Approved Store Agreements provide for Members who own Approved Stores to benefit from the wholesale supply arrangements between FoodWorks and the Suppliers (see sections 10.7 and 10.8 of this OIS), as well as outlining primary obligations and benefits to such Members. As mentioned above, a number of Members who own Approved Stores have since entered into

Unity Agreements which supersede the old form Approved Store Agreements (see section 10.4 of this OIS).

A party which has entered into an Approved Store Agreement with FoodWorks is issued with a Class A Redeemable Preference Share.

Under the Approved Store Agreement, and in addition to complying with all specified FoodWorks policies, Approved Storeowners must also comply with a range of obligations, including the maintenance of adequate stock and staffing levels, stocking specified levels of allocated brands and compliance with Approved Store upkeep requirements.

Further, and under the Approved Store Agreements, Approved Storeowners are entitled to a range of rebates and allowances from Suppliers.

#### **10.6 Banner Agreements**

A number of Members who entered into Approved Store Agreements with FoodWorks also entered into Banner Agreements, which provide for both additional obligations and benefits superseded by Unity Agreements. As with Approved Store Agreements, the Banner Agreements of those parties who have since entered into Unity Agreements will have been superseded by the latter.

Members who entered into Banner Agreements with FoodWorks, referred to as 'Branded Storeowners' and formerly referred to as 'Banner Storeowners', were also issued with a Class B Redeemable Preference Share (refer to section 10.2 of this OIS) per Branded Store.

Members who have entered into Banner Agreements are provided with a range of additional FoodWorks services, primary of which is the ability to use specified FoodWorks intellectual property, including signage, logos and advertising materials.

A condition of Banner Store Agreements which were entered into after May 2006 is that the Branded Storeowners enter into a Deed of Right of Refusal for Store Acquisition (**Deed of Refusal**) with FoodWorks. Under the terms of the Deed of Refusal, a Branded Storeowner who wishes to sell the business of their Branded Store agrees to provide FoodWorks with a right of first and last refusal in relation to the purchase of the business of the Branded Store, but only if the sale is to occur during the term of the Banner Store Agreement, or whilst there is an outstanding financial accommodation provided by FoodWorks to the Branded Storeowner or whilst FoodWorks is the lessor of the Branded Store's premises.

#### **10.7 Metcash Supply Agreement**

In September 2009, FoodWorks entered into a Corporate Stores Supply Agreement, under which FoodWorks-owned stores have agreed to purchase products available from Metcash (subject to competitive carve-outs), as well as a Member Store Supply Agreement, under which Metcash agrees that it will use its reasonable endeavours to supply or procure the supply to Foodworks member stores with products ordered by such members and that are available through Metcash. Each agreement continues for an initial term of 10 years, and can be terminated without cause with 1 year's notice following that initial term. However, the agreements can be terminated earlier in certain circumstances, including if a party materially breaches its obligations under an agreement. Both agreements provide for the provision of rebates by Metcash, based in part on the volume of goods supplied under the agreements.

#### **10.8 Supply Agreements**

In addition to the Metcash supply agreements, as referred to in section 10.7, FoodWorks has entered into numerous supply agreements with various other Suppliers relating to a range of retailer products. These agreements set out the principal terms under which the Suppliers

agree to provide various products to FoodWorks Members who own Approved Stores, including the specification of rebate levels.

The supply agreements are either fixed term or open contracts (with no fixed term), with the latter often being subject to a review process that may be initiated by either FoodWorks or the relevant supplier.

The supply agreements specify the relevant terms of trade between FoodWorks and the Suppliers, including the specific rebate levels to be calculated against supplied products and payable to FoodWorks at first instance. Further, these supply agreements outline reporting requirements as well as delivery and invoicing obligations that must be met by the Suppliers.

A Supplier or FoodWorks can generally terminate a Supply Agreement without cause, after having provided written notice of a specified period to the other party.

### **10.9 Acquisition of supermarkets from Coles**

In June 2009, FoodWorks entered into various transaction documents, under which a subsidiary of FoodWorks agreed to acquire the assets of up to 45 supermarkets (and 8 liquor outlets) from the Coles Group. The Supermarkets Sale Agreement sets out the primary terms of these acquisitions, including the manner in which FoodWorks subsidiaries would become the tenant under the relevant property leases and the employer of relevant supermarket staff. A purchase price was allocated to each portfolio store (which is then adjusted with respect to matters including the value of stock, cash float and accrued employee entitlements). A number of representations and warranties were provided by Coles, and a limitation of liability regime applies.

These arrangements were subsequently varied such that the number of supermarkets whose assets would be acquired was reduced to 22 stores and, by early 2010, the 22 stores were acquired. The divestment and closure of these stores has subsequently occurred in respect of all but two stores as outlined in section 4.1.

Under a Credit Agreement (and related documents), the Coles Group agreed to provide FoodWorks with finance in order to fund the store acquisitions, and FoodWorks (and various subsidiaries) have agreed to provide security in favour of Coles. The initial funding arrangements included a 3 year deferred credit facility of approximately \$35 million and a 1 year term facility of up to \$11,875,000. The Credit Agreement set out the terms on which this funding is provided, including the repayment obligations of FoodWorks, the conditions for draw downs, the interest charged by Coles and the events of default which may trigger early repayment obligations (amongst other matters). Security has also been granted by FoodWorks and the various FoodWorks subsidiaries to Coles to secure the liability under the Credit Agreement. FoodWorks has provided a featherweight charge and the various FoodWorks subsidiaries have provided various fixed and floating charges and mortgages of lease. The shares in the FoodWorks subsidiaries, including FoodWorks Retail, have also been mortgaged.

The initial financing agreements with the vendor financiers were varied on 28 June 2011 such that all debt outstanding under this agreement has been reduced to a zero balance.

### **10.10 Deeds of indemnity, insurance and access**

The Company has entered into Deeds of Indemnity, Insurance and Access with all FoodWorks Directors who were in office at December 2006 or have been appointed since. The Deeds provide that the Company will indemnify its Directors against liabilities, costs and expenses as permitted under the Corporations Act, related to each Director's period of office.

In addition, the Company must arrange and maintain Directors' insurance during each Director's period of office and for a period of 7 years after a Director ceases to hold office.

**Australian United Retailers Limited**  
**ACN 077 879 782**

Further, the Company must allow its Directors access to papers, documents and other information relating to the affairs of the Company during the period the Director is a Director of the Company and for a period of 7 years after the Director ceases to hold office.

**10.11 CEO employment agreement**

In October 2010, the Company entered into a new employment agreement with Rick Wight, the Company's Chief Executive Officer. It operates for the period to 26 October 2013 and incorporates a base fixed salary and an annual bonus which is dependent on attainment of annual performance targets.

**10.12 Tax Considerations**

It is not appropriate to set out, in this OIS, the taxation implications for individual investors based on the current law. Potential investors should seek professional advice as to the implications of ownership of Shares in the Company.

**11 Director's statement and Consents**

**11.1 Directors**

Every Director of FoodWorks has given, and has not withdrawn, before the OIS Date, their consent to the lodgement of this OIS with the ASIC and the issue of this OIS in accordance with section 720 of the Corporations Act.

**11.2 Pitcher Partners**

Pitcher Partners has consented, and has not withdrawn, before the OIS Date its consent to:

- inclusion of its report for the Company in respect of the year ended 30 June 2012 in this OIS; and
- being named in the OIS as the auditor to Australian United Retailers Limited in the form and context in which it appears in the OIS.

Pitcher Partners has had no involvement in the preparation of this OIS other than being named as auditor to Australian United Retailers Limited. Pitcher Partners has not authorised or caused the issue of, and expressly disclaims and takes no responsibility for, any part of this OIS.

**11.3 DLA Piper Australia**

DLA Piper Australia has given and, at the date of lodgement of this OIS with the ASIC, has not withdrawn, its consent to be named in this OIS as lawyers to the Company in the form and context in which it is named.

Dated 21 December 2012

Signed for, and on behalf of, FoodWorks



John Bridgfoot

Chairman and Non Executive Director