

NOTICE OF FILING

Details of Filing

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| File Number: | VID1246/2024 |
| File Title: | ROBBIE LEIGH WHITTOME v WOOLWORTHS GROUP LTD (ACN 000 014 675) |
| Registry: | VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA |



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 33
Rule 16.32

Amended Defence

(Amended pursuant to leave granted by O'Bryan J on 29 September 2025)

No: VID1246/2024

Federal Court of Australia
District Registry: Victoria
Division: General

Robbie Leigh Whittome
Applicant

Woolworths Group Ltd (ACN 000 014 675)
Respondent

In responding to the Applicant's Statement of Claim filed on 13 November 2024 (**SOC**), the Respondent, Woolworths Group Limited (**Woolworths**) uses the terms defined in the SOC for convenience only. This is not an admission by Woolworths that those terms accurately or aptly describe any fact or matter, particularly where the defined terms seek to characterise conduct. The use of the terms "Prices Dropped" Programme (as described in the SOC) and "Prices Dropped" Program are interchangeable references to the same program.

Paragraph 1 of the SOC refers to '276 products (**Affected Products**) listed in Annexure A to this Statement of Claim'. Annexure A refers to 276 Affected Products, comprising 276 separate instances in respect of 266 distinct products. References to Affected Products in Woolworths' defence is a reference to the 276 Affected Products as listed in Annexure A.

The term "Relevant Period" as used in this defence refers to the period between 2 September 2021 and 4 May 2023 (inclusive).

A. INTRODUCTION AND OVERVIEW

1 In response to paragraph 1 of the SOC, Woolworths:

Filed on behalf of Woolworths Group Limited (ACN 000 014 675), the Respondent

Prepared by Peta Stevenson and Tamara Hunter

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- (a) says that, in the years prior to the Relevant Period, there was low inflation and prices (both retail prices and cost prices for most grocery products in Australia) were relatively stable. Requests by suppliers to Woolworths Supermarkets (being a business within Woolworths Group Limited) for cost price increases (**CPI Requests**) were infrequent;
- (b) says that, during the Relevant Period, inflation increased and there was a significant increase in the number and size of CPI requests received by Woolworths Supermarkets;
- (c) admits that, during the Relevant Period, in respect of the 276 products listed in Annexure A to the Statement of Claim (**Affected Products**), there were retail price increases;
- (d) says that the relevant retail price increases were, in most cases, a response to increases in the cost prices of the Affected Products charged by suppliers to Woolworths Supermarkets as a result of cost inflation experienced by those suppliers;
- (e) denies that the relevant retail price increases were “a temporary price spike”, and says that this ignores the long term effect of inflation;
- (f) says that each of the Affected Products was priced and offered for sale by Woolworths Supermarkets at an undiscounted retail price (the **Undiscounted Price**) for a period of time, and that numerous sales of each of the Affected Products were made to customers at that Undiscounted Price;
- (g) says that each of the Affected Products was subsequently the subject of Woolworths Supermarkets’ “Prices Dropped” Program, whereby retail prices were reduced, supported in most instances by funding provided by suppliers, such that the price is reduced or “dropped” from the Undiscounted Price while the “Priced Dropped” program continues (the **Dropped Price**);
- (h) says that, as a result of 1(f) and 1(g) above, each of the Affected Products had its retail price dropped, and the “Prices Dropped” statement was accurate for each of the Affected Products;
- (i) says that it is a mischaracterisation for the Applicant to describe superseded pre-inflationary retail prices as “the price at which each product had ordinary been offered for sale”;
- (j) says that, in respect of the Affected Products, where those Affected Products were on the “Prices Dropped” program during the Relevant Period at a Dropped Price, the relevant product was offered for sale and identified as being on the “Prices

Dropped” program by reference to a red shelf ticket (instore) or a red label (online) which stated (the “**Prices Dropped Ticket**”):

- (i) “Prices Dropped”;
- (ii) the Dropped Price; and
- (iii) ~~other than in limited instances,~~ depending on the circumstances:
 - (A) “was \$XX”, where \$XX was the Undiscounted Price prevailing in the period referred to in paragraph (f);
 - (B) “was ~~XX~~”, (the strikethrough was used for in-store paper Prices Dropped Tickets and in-store electronic labels); and or
 - (C) “Range Was \$XX” where a product was part of a range of products which were priced the same; and
- (iv) the date at which the product was last offered for sale at the Undiscounted Price;
- (k) says that suppliers and Woolworths Supermarkets discussed CPI Requests and resulting price increases, supplier funding and resulting specials or discounted prices (including Dropped Prices), and many other matters, in a process in advance of the effective dates, such that the Undiscounted Price and Dropped Price for an Affected Product formed part of the negotiations between Woolworths Supermarkets and its suppliers;
- (l) otherwise denies paragraph 1 of the SOC.

2 In response to paragraph 2 of the SOC, Woolworths:

- (a) repeats paragraph 1;
- (b) says that Woolworths Supermarkets, by the Price Dropped Ticket, represented to the Applicant and Group Members that the retail prices of Affected Products subject to the “Prices Dropped” promotion had been reduced;
- (c) says that this statement was accurate, because the prices of Affected Products subject to the “Prices Dropped” promotion had in fact been reduced;
- (d) otherwise denies paragraph 2 of the SOC.

3 In response to paragraph 3 of the SOC, Woolworths denies that the Applicant on his own behalf, or for and on behalf of the Group Members, is entitled to the interlocutory and final relief set out in the Originating Application accompanying the SOC.

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

4 In response to paragraph 4 of the SOC, Woolworths:

- (a) says that the Woolworths Supermarkets business is the operator of the largest chain of supermarkets in Australia (by store number), by which it offers products

for sale to its customers in-store through its physical Woolworths Supermarkets and Woolworths Metro Food Stores, and online through Woolworths Online both via www.woolworths.com.au and the Woolworths Online app;

- (b) says that there were approximately 1,037 Woolworths Supermarkets and approximately 97 Woolworths Metro Stores during the Relevant Period; and
- (c) otherwise denies paragraph 4 of the SOC.

B.1 The 'Prices Dropped' Programme

5 Woolworths admits paragraph 5 of the SOC.

6 Woolworths admits paragraph 6 of the SOC.

7 In response to paragraphs 7 of the SOC, Woolworths, says that, during the Relevant Period:

- (a) it had a range of price reduction programs to promote the value of products to customers, and the "Prices Dropped" Program was one such program;
- (b) under the "Prices Dropped" Program, the price of a product was reduced from the Undiscounted Price to a Dropped Price;
- (c) in most cases the funding of the Dropped Price included an investment from the supplier;
- (d) in most cases the investment by the supplier to support the Dropped Price was:
 - (i) in the form of a negotiated discount to the cost price per unit of the product charged by the supplier to Woolworths Supermarkets, and paid to Woolworths Supermarkets after the sale to Woolworths Supermarkets of each unit (known as a "**Deferred Deal**");
 - (ii) negotiated between Woolworths Supermarkets and the supplier, including in relation to the amount and the duration of Deferred Deal funding;
- (e) a "Deferred Deal" usually had terms that included:
 - (i) a commitment by the supplier to contribute a dollar amount per unit once sold by Woolworths Supermarkets (hence "deferred"), for a period terminable at the supplier's option at any time;
 - (ii) a commitment by Woolworths Supermarkets to apply a red ticket with the Dropped Price to the product in store and on-line;
 - (iii) that the Deferred Deal is terminated if the supplier makes a successful CPI Request, with any replacement Deferred Deal to be negotiated and agreed;

- (f) suppliers and Woolworths Supermarkets usually negotiated as to whether products should be placed on the "Prices Dropped" Program, and the extent of price reductions that would be offered;
 - (g) Deferred Deal funding was terminable by the supplier at any point while a product was on the "Prices Dropped" Program (even if the duration of the Deferred Deal funding agreed to between Woolworths Supermarkets and the supplier had not been observed) and, if this occurred, the product was generally removed from the "Prices Dropped" Program and the retail price reverted to the Undiscounted Price;
 - (h) in return for Deferred Deal funding for the "Prices Dropped" Program, a supplier would expect to have the benefit of Woolworths Supermarkets communicating to customers that the price of the product had been reduced through the application of a Prices Dropped Ticket;
 - (i) otherwise denies paragraph 7 of the SOC.
- 8 In response to paragraph 8 of the SOC, Woolworths:
- (a) repeats paragraph 7(a);
 - (b) otherwise denies paragraph 8 of the SOC.
- 9 In response to paragraph 9, Woolworths:
- (a) repeats paragraphs 7 and 8;
 - (b) says that, during the Relevant Period:
 - i. short term specials generally involved the discounting of prices for one or two weeks;
 - ii. Woolworths Supermarkets typically applied the "Prices Dropped" Program for at least 12 weeks;
 - iii. many of the Affected Products were on the "Prices Dropped" Program for six months or longer;
 - (c) otherwise denies paragraph 9 of the SOC.
- 10 In response to paragraph 10 of the SOC, Woolworths:
- (a) repeats paragraphs 9(b);
 - (b) otherwise denies paragraph 10 of the SOC.
- 11 In response to paragraph 11 of the SOC, Woolworths:
- (a) repeats paragraphs 1(j);
 - (b) otherwise admits paragraph 11 of the SOC.
- 12 In response to paragraph 12 of the SOC, Woolworths:
- (a) repeats paragraphs 1(g) and 1(j); and

(b) otherwise admits paragraph 12 of the SOC.

13 In response to paragraph 13 of the SOC, Woolworths:

- (a) refers to paragraph 14;
- (b) admits that the features described in paragraph 14 herein remained the same during the Relevant Period;
- (c) otherwise denies paragraph 13.

B.2 The 'Prices Dropped' Representation

14 In response to paragraph 14 of the SOC, Woolworths:

- (a) says, in relation to paragraph 14(a), that the electronic labels included a red shroud (i.e., snap on frame as pictured below), and otherwise admits the paragraph;
- (b) refers to sub-paragraphs 1(g) and 1(j) above and otherwise admits paragraphs 14(b), and 14(c) and 14(d);
- (c) says ~~further~~, in relation to paragraph 14(d), that, throughout the Relevant Period, the Prices Dropped Tickets displayed by Woolworths Supermarkets generally, ~~where a product was on the "Prices Dropped" Program for i. less than 12 months, had a "Was" price of the product, being the retail price at which the product was previously sold and the date at which the product was last available at that retail price, displayed as, depending on the circumstances:~~
 - (A) 'Was \$XX [date];
 - (B) 'Was \$XX [date]'; or
 - (C) 'Range Was \$XX [date]' (which applied in circumstances where a product was part of a range of products priced the same); and or
 - ~~ii. more than 12 months, had a "since [date]" being the date at which the product was last available at the previous higher retail price, but the Prices Dropped Ticket did not display that price;~~
- (d) otherwise denies paragraph 14 of the SOC.

Example of the red shroud "snap on frame"



- 15 In response to paragraph 15 of the SOC, Woolworths:
- (a) repeats paragraph 14;
 - (b) otherwise denies paragraph 15 of the SOC.
- 16 In response to paragraph 16 of the SOC, Woolworths says that paragraph 16 is not a proper characterisation of the correct position and Woolworths:
- (a) says that, in relation to the 276 Affected Products, each Prices Dropped Ticket contained a representation to consumers that the retail price of the product had been reduced from a previous higher retail price, which was true in each case;
 - (b) says that it is unclear what is meant by "genuine" in paragraph 16, and the SOC is embarrassing in that respect;
 - (c) denies that the Undiscounted Price on the Prices Dropped Tickets was only a "temporary increase" from any previous, superseded, pre-inflationary retail price;
 - (d) otherwise denies paragraph 16 of the SOC.

B.3 Misleading representations in relation to the Affected Products

- 17 In response to paragraph 17 of the SOC, Woolworths:
- (a) repeats paragraphs 1, 2 and 16;
 - (b) otherwise denies paragraph 17 of the SOC.
- 18 In response to paragraph 18 of the SOC, Woolworths:
- (a) repeats paragraph 17;
 - (b) says that the period of time at which the 276 Affected Products were sold at the Undiscounted Price compared with the period of time at which those Affected Products were sold at a pre-inflationary price cannot provide a basis for establishing that customers did not receive a genuine saving or discount in the Dropped Price;
 - (c) says that the retail price applied to most of the Affected Products prior to the inflationary effects in the Relevant Period was a "dropped" price (i.e., a **Pre-**

inflationary Dropped Price), rather than a pre-inflationary undiscounted price (**Pre-inflationary Undiscounted Price**);

- (d) says that paragraph 18(b) of the SOC confuses different concepts:
- i. the price referred to as the “Previous Long -Term Regular Price” is, in most cases, a Pre-inflationary Dropped Price, not a Pre-inflationary Undiscounted Price. Paragraph 18(b) improperly compares the price of a product on the “Prices Dropped” Program with an Undiscounted Price, and therefore is not comparing like with like;
 - ii. the price referred to as the “Previous Long-Term Regular Price” is the price prior to the making of any CPI Request or the acceptance of such a request, and therefore is in most cases a Pre-inflationary Dropped Price or a Pre-inflationary Undiscounted Price (and therefore a superseded price), rather than a price that is relevant to consumers. Paragraph 18(b) is therefore confusing and misleading;
- (e) otherwise denies paragraph 18 of the SOC.

C. THE APPLICANT AND GROUP MEMBERS’ LOSS OR DAMAGE

C.1 The Applicant’s purchase of one or more Affected Products

19 In response to paragraph 19 of the SOC, Woolworths:

- (a) admits that the Applicant purchased the Affected Products particularised in paragraph 19; and
- (b) denies that the Applicant purchased the Affected Products at the Prices Dropped Price (as reflected in Annexure A to the Statement of Claim) as particularised in paragraph 19;
- (c) says that the Applicant redeemed an online coupon discount such that he purchased the products particularised in paragraph 19 at the following prices:

| <u>Date</u> | <u>Product description</u> | <u>Purchase Price</u> | <u>Online Coupon Discount Applied</u> |
|---------------------|--|-----------------------|---|
| <u>10 June 2022</u> | <u>Arnott's Tiny Teddy Variety 15pk 375g</u> | <u>\$4.95</u> | <u>Market Day - June 2022 (10% off grocery sub-total)</u> |
| <u>10 June 2022</u> | <u>Carman's Muesli Bars Fruit & Nut Bars 12pk 540g</u> | <u>\$9.00</u> | <u>Market Day - June 2022 (10% off grocery sub-total)</u> |
| <u>15 July 2022</u> | <u>Arnott's Tiny Teddy Variety 15pk 375g</u> | <u>\$5.17</u> | <u>Back to school off (\$10 off grocery sub-total)</u> |

| | | | |
|-------------------------|--|---------------|---|
| <u>28 October 2022</u> | <u>Arnott's Tiny Teddy Variety 15pk 375g</u> | <u>\$4.95</u> | <u>Market Day - October 2022 (10% off grocery sub-total)</u> |
| <u>04 February 2023</u> | <u>Arnott's Tiny Teddy Variety 15pk 375g</u> | <u>\$4.95</u> | <u>Market Day - February 2023 (10% off grocery sub-total)</u> |
| <u>03 March 2023</u> | <u>Arnott's Tiny Teddy Variety 15pk 375g</u> | <u>\$4.95</u> | <u>Market Day - March 2023 (10% off grocery sub-total)</u> |

(d) otherwise does not know and therefore cannot admit paragraph 19 of the SOC.

20 In response to paragraph 20 of the SOC, Woolworths:

(a) refers to and repeats paragraphs 16 to 19;

(b) otherwise denies paragraph 20 of the SOC.

21 In response to paragraph 21 of the SOC, Woolworths:

(a) refers to and repeats paragraphs 16 to 19;

(b) otherwise denies paragraph 21 of the SOC.

C.2 The Group Members' purchases of Affected Products

22 In response to paragraph 22 of the SOC, Woolworths does not know and therefore cannot admit paragraph 22 of the SOC.

23 In response to paragraph 23 of the SOC, Woolworths:

(a) refers to and repeats paragraphs 16 to 18;

(b) otherwise denies paragraph 23 of the SOC.

24 Woolworths denies paragraph 24 of the SOC.

25 In response to paragraph 25 of the SOC, Woolworths:

(a) refers to and repeats paragraphs 16 to 18;

(b) says that the question of what Group Members would or would not have done had representations on the "Prices Dropped" ticket not been made is a question particular to each Group Member;

(c) otherwise denies paragraph 25 of the SOC.

C.3 The Applicant's loss or damage

26 Woolworths denies paragraph 26 of the SOC.

C.4 Group Members' loss or damage

27 Woolworths denies paragraph 27 of the SOC.

D. PRIMARY LEGAL GROUNDS FOR RELIEF CLAIMED

28 Woolworths denies paragraph 28 of the SOC.

29 Woolworths does not plead to paragraph 29 of the SOC as that paragraph contains no allegation against it.

E. COMMON QUESTIONS OF LAW OR FACT

30 Woolworths does not plead to paragraph 30 of the SOC as that paragraph contains no allegation against it.

F. RELIEF CLAIMED

31 Woolworths denies that the Applicant, on his own behalf, or for and on behalf of the Group Members, is entitled to the interlocutory and final relief sought in the Originating Application as alleged in paragraph 31 of the SOC.

Date: 30 September 2025 ~~4 April 2025~~



Peta Stevenson
Lawyer for the Respondent
King & Wood Mallesons

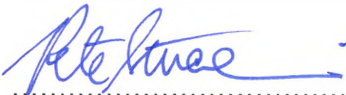
This pleading was prepared by Peta Stevenson, solicitor, and settled by Ruth Higgins SC and Amelia Smith of counsel.

Certificate of lawyer

I, Peta Stevenson, certify to the Court that, in relation to the defence filed on behalf of the Respondent the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 30 September 2025 ~~4-April-2025~~



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Peta Stevenson
Lawyer for the Respondent
King & Wood Mallesons