



SCHEDULE A

OPT-OUT NOTICE

FEDERAL COURT OF AUSTRALIA

Woolworths Class Action

Robbie Leigh Whittome v Woolworths Group Ltd (VID1246 / 2024)

Part A

Why is this notice important?

1. A class action has been commenced in the Federal Court of Australia by Robbie Leigh Whittome (**Applicant**) against Woolworths Group Ltd (**Woolworths**). The action is brought by the Applicant on his own behalf and on behalf of persons (**Group Members**) who purchased one or more of the 276 products listed in Annexure A to the Statement of Claim (**Affected Products**) from Woolworths between September 2021 and May 2023 (**Relevant Period**) (see the section “**Are you a Group Member?**” below).
2. The class action alleges that Woolworths contravened certain provisions of the Australian Consumer Law in respect of the pricing of the Affected Products during the Relevant Period, and seeks relief by way of declarations to that effect and compensation for loss or damage suffered by the Applicant and Group Members. Further details as to the allegations are found in the section “**What is this class action about?**” below.
3. Woolworths denies that it has engaged in any conduct that contravenes the Australian Consumer Law. It further denies that the Applicant and Group Members have suffered the alleged loss or damage or are otherwise entitled to any of the relief sought in the class action.
4. The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek independent legal advice.

What is a class action?

5. A class action is a legal proceeding that is brought by one person or a small number of persons (**Applicant(s)**) on their own behalf and on behalf of a class of people (class members or **Group Members**) against another person or entity

(**Respondent**) where the Applicant and the Group Members have similar claims against the Respondent.

6. Group Members in a class action **are not** individually responsible for any “out of pocket” legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for the costs. However, in the event that an award of damages or settlement sum is payable to the Applicant and Group Members, the Applicant will seek the approval of the Court for the deduction from any settlement or judgment of such amount of the Applicant’s legal costs (i.e. his lawyers’ professional fees, plus an uplift of 25% on professional fees, and disbursements) as the Court considers just (see also the section “**Will you be liable for legal costs if you remain a Group Member?**”).
7. Group Members are “bound” by the outcome in the class action, unless they have opted out of the proceeding. A binding outcome can happen in two ways being either a judgment following a trial, or a *settlement* at any time. If there is a *judgment* or a settlement of a class action, Group Members *will not* be able pursue the same claims and *may not* be able to pursue similar or related claims against the Respondent in other legal proceedings. Group Members should note that:
 - (a) in a *judgment* following trial, the Court will decide various factual and legal issues in respect of the claims made by the Applicant and Group Members. Unless those decisions are successfully appealed, they bind the Applicant, Group Members and the Respondent. Importantly, if there are other proceedings between a Group Member and the Respondent, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
 - (b) in a *settlement* of a class action, where the settlement provides for compensation to some or all Group Members, the settlement is likely to extinguish all rights to compensation which a Group Member might have against the Respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.
8. If you consider that you have claims against Woolworths which are based on your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

What is this class action about?

9. This class action is brought by the Applicant, Robbie Leigh Whittome, on his own behalf and on behalf of all persons who are “Group Members” as defined in the

proceeding.

10. The class action concerns Woolworths' conduct and alleged representations made by it in respect of the pricing of Affected Products during the Relevant Period.
11. The Applicant alleges that between September 2021 and May 2023, Woolworths:
 - (a) temporarily increased prices of the Affected Products before placing them on 'Prices Dropped' promotions at prices which were higher than, or the same as, the price at which each product had ordinarily been offered for sale; and
 - (b) represented to the Applicant and Group Members that the prices of Affected Products subject to the 'Prices Dropped' promotion were discounted when, in fact, the purported discount was illusory.
12. The Applicant alleges that the above conduct by Woolworths contravenes certain provisions of the Australian Consumer Law which prohibit misleading or deceptive conduct and/or false or misleading representations about the price of goods. The Applicant seeks declarations of contravention, and compensation for loss or damage alleged to have been suffered by the Applicant and Group Members.
13. The Respondent to the class action is Woolworths Group Ltd. Woolworths is defending the class action. Woolworth contends that:
 - (a) the price increases of the Affected Products were, in most cases, a response to increases in the cost prices charged by Woolworths' suppliers as a result of inflation;
 - (b) the Affected Products were offered for sale at the increased price for a period of time and numerous sales of each of the Affected Products were made to customers prior to being placed on the 'Prices Dropped' programme; and
 - (c) therefore the 'Prices Dropped' representation for each Affected Product was accurate.
14. Woolworths denies that it has engaged in any conduct that contravenes the Australian Consumer Law and denies that the Applicant and Group Members suffered any loss or damage or are entitled to any of the relief sought in the class action. A copy of Woolworths' Defence is available at <https://www.gerardmaloufpartners.com.au/woolworths-class-action/>.

Class Action Initial Trial:

15. The Federal Court has ordered that an initial trial in the class action (**Class Action Initial Trial**) is to be held to determine whether Woolworths contravened provisions of the Australian Consumer Law. The Class Action Initial Trial will not consider whether Woolworths' conduct caused any loss or damage to the Applicant and Group Members, whether the Applicant or Group Members are entitled to recover for any loss or damage; or what the amount of any such loss or damage may be.
16. The Class Action Initial Trial is to be conducted in respect of a list of 12 **Sample Products** drawn from the larger list of 276 Affected Products. The Applicant and Woolworths have agreed the Sample Products for the purpose of the Class Action Initial Trial. It is the intention of the Applicant and Woolworths that the result of the Class Action Initial Trial in respect of the Sample Products will provide guidance as to questions of liability in respect of the remaining Affected Products which are not included within the list of Sample Products.
17. If the Applicant is successful at the Class Action Initial Trial, a second stage trial may be held at a later date to determine if there has been any loss or damage suffered by the Applicant and Group Members.

The ACCC Proceeding:

18. Separate from the class action, the Australian Competition and Consumer Commission (**ACCC**) has also commenced a proceeding in the Federal Court against Woolworths (**ACCC Proceeding**) alleging the same contraventions of the Australian Consumer Law in respect of the same Affected Products in the same Relevant Period and seeking relief including declarations of contravention and a pecuniary penalty to be imposed on Woolworths for its contraventions. A pecuniary penalty is in the nature of a fine, and is paid to the Australian Government, not as compensation to consumers who have suffered loss or damage. Woolworths denies the allegations in the ACCC Proceeding and denies that the ACCC is entitled to any relief sought in the ACCC Proceeding. Woolworths is defending the ACCC Proceeding. The Federal Court has ordered that questions of liability in the ACCC Proceeding be determined in an initial trial (**ACCC Initial Trial**) in respect of a list of sample products. The list of sample products in the ACCC Initial Trial is the same as the list of Sample Products in the Class Action Initial Trial.
19. In light of the substantively similar allegations between the class action and the ACCC Proceeding, and so as to minimise unnecessary expenditure on Court and legal fees, the Applicant and Woolworths have agreed, and the Federal Court has ordered, that:
 - (a) the Class Action Initial Trial will be heard concurrently with the ACCC Initial Trial in a **Joint Liability Trial**; and

- (b) evidence in the ACCC Initial Trial will be evidence in the Class Action Initial Trial; and
- (c) up to and including the time of the Joint Liability Trial, the Applicant will need to obtain the leave (i.e. permission) of the Court:
 - (i) to take any step in the class action, including adducing evidence or making arguments; or
 - (ii) to seek to intervene (i.e. get involved in) the ACCC Proceeding; and
- (d) the Applicant has undertaken to the Court and to the Respondent on his own behalf and on behalf of all Group Members *except those who opt out of the class action*, to be bound by all findings of fact, findings of law and mixed findings of fact and law which the Court makes in the Joint Liability Trial.

20. It is the intention of the Applicant and Woolworths that these arrangements will minimise the expenditure incurred by the Applicant and Woolworths in respect of the class action, while at the same time allowing questions of liability to be effectually determined in the Joint Liability Trial.

What is 'Opt-Out'?

21. An Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf or to identify a specific Group Member. However, Group Members can cease to be Group Members by opting out of the class action. An explanation of how Group Members are able to opt out is found below in the subsection headed "**How can you opt out of the class action?**".

Are you a Group Member?

- 22. You are a Group Member if at any time during the Relevant Period you purchased one or more of the Affected Products from Woolworths.
- 23. The Statement of Claim in the class action, which includes the list of Affected Products as Annexure A, is available at:
<https://www.gerardmaloufpartners.com.au/woolworths-class-action/>.
- 24. If you are unsure whether or not you are a Group Member, you should in the first instance visit the Applicant's solicitors' website for the class action: <https://www.gerardmaloufpartners.com.au/woolworths-class-action/>. If you are still unsure after visiting the website, you may contact the Applicant's lawyers, Gerard Malouf & Partners on 1800 934 243 or email WoolworthsClassAction@gmp.net.au, or seek your own independent legal advice without delay. Gerard Malouf & Partners is the law firm acting for the

Applicant.

Funding of the class action

25. The class action is being run by Gerard Malouf & Partners on a no-win, no-fee basis pursuant to a Conditional Costs Agreement entered into between that firm and the Applicant.
26. If the class action results in an award of damages or a settlement sum payable to Group Members, the Conditional Costs Agreement provides that, subject to approval by the Court, Gerard Malouf & Partners is entitled to recover its professional fees and disbursements, plus an uplift of 25% on its professional fees. The uplift is in consideration for the firm running the risk of the class action not resulting in damages or a settlement, and in the meantime for its professional fees not being paid and for meeting out-of-pocket disbursements.
27. In the event that an award of damages or settlement sum is payable to the Applicant and Group Members, the Applicant will seek the approval of the Court for the deduction from any settlement or judgment of such amount of the Applicant's legal costs (i.e. his lawyers' professional fees, uplift on professional fees, and disbursements) as the Court considers just.
28. The total of any amounts deducted from compensation payable to Group Members for legal costs will never exceed the amount a Group Member receives in the event of a successful outcome. **That is, you will never be out of pocket by remaining in the class action.**

Will you be liable for legal costs if you remain a Group Member?

29. You will **not become liable for any "out of pocket" legal costs** simply by remaining as a Group Member for the determination of the common questions in the class action (including such of the questions as are addressed in the Class Action Initial Trial).
30. However, if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicant in running the class action but which are not able to be recovered from the Respondent. Any such amounts will only be payable in the event of a successful outcome by way of a deduction from any compensation to which you become entitled, and will never exceed the amount of compensation to which you may otherwise become entitled. The Court will assess whether any amounts proposed to be deducted are just. You will be given a notice at that time informing you of the amount which it is proposed to be deducted and given an opportunity to tell the Court if you agree or disagree with what is proposed.

What will happen if you choose to remain a Group Member?

31. Unless you opt out, you will be bound by any settlement or judgment of the class action. If the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and Group Members, although you may have to satisfy certain conditions before you receive any compensation. If the class action is unsuccessful or is not as successful as you might have wished, you will not be able pursue the same claims and may not be able to pursue related claims against Woolworths in other legal proceedings.

What Group Members need to do

(a) How you can remain a Group Member?

32. **If you wish to remain** a Group Member there is nothing you need to do at the present time. The Applicant will continue to advance the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicant and the Group Members. However, you may visit the Applicant's solicitors' website for the class action (<https://www.gerardmaloufpartners.com.au/woolworths-class-action/>) and register your details so that future notices about the class action can be sent to your preferred address.

(b) How you can opt out of the class action?

33. **If you do not wish to remain** a Group Member you must opt out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against Woolworths, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against Woolworths, you should seek your own independent legal advice about your claim and the applicable time limit **prior** to opting out.
34. **If you wish to opt out** of the class action you **must** do so by completing an "**Opt out notice**" in the form shown in Part B below (Form 21 of the Court's approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form. **IMPORTANT: the Opt out notice must reach the Registrar by no later than 4.00 pm (AEDT) on 21 November 2025**, otherwise it will not be effective.
35. Each Group Member seeking to opt out should fill out a separate Opt out notice. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

Where can you obtain copies of relevant documents?



36. Copies of pleadings filed by the parties, including the Origination Application, the Statement of Claim, the Defence and the Reply, may be obtained by:
- (a) downloading them from <https://www.gerardmaloufpartners.com.au/woolworths-class-action/>; or
 - (b) by contacting a District Registry of the Federal Court (contact details are available www.fedcourt.gov.au) and paying the appropriate inspection fee.
37. Please consider the above matters carefully. If there is anything of which you are unsure, you should in the first instance visit the Applicant's solicitors' website for the class action (<https://www.gerardmaloufpartners.com.au/woolworths-class-action/>). If you are still unsure after visiting the website, you may contact Gerard Malouf & partners on 1800 934 243 or e-mail WoolworthsClassAction@gmp.net.au or seek your own independent legal advice. You should not delay in making your decision.



Part B

Form 21
Rule 9.34

Opt out notice

Important: You should only complete this form if you do **NOT** want to participate in the Woolworths Class Action

No. VID1246 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

Robbie Leigh WHITTOME

Applicant

WOOLWORTHS GROUP LTD (ACN 000 014 675)

Respondent

To: The Registrar
Federal Court of Australia
Victorian District Registry
Owen Dixon Commonwealth Law Courts Building
Level 7, 305 William Street
Melbourne VIC 3000

[Name of group member], a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [Name of group member] is opting out of the representative proceeding.

Date:

.....
Signed by [Name]
[Insert capacity eg group member / Lawyer
for the group member]

*****PLEASE ALSO COMPLETE CONTACT DETAILS OVER THE PAGE*****



Group Member details

Full Name

Address

Telephone

Email

If you are signing as the solicitor or representative of the Group Member

Full Name

Capacity

Address

Telephone

Email