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WOOLWORTHS GROUP LIMITED (ACN 000 014 675)
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Registrar

Important Information

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Form 59
Rule 29.02(1)

Affidavit

No VID 974 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

Australian Competition and Consumer Commission
Applicant

Woolworths Group Limited (ACN 000 014 675)
Respondent

Affidavit of: **Paul Stephen Harker**
Address: 1 Woolworths Way Bella Vista NSW 2153
Occupation: Chief Commercial Officer
Date: 25 November 2025

Signed: 

Taken by: 

Filed on behalf of Woolworths Group Limited, the Respondent

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I, PAUL STEPHEN HARKER, of 1 Woolworths Way Bella Vista NSW 2153, Chief Commercial Officer – Woolworths Supermarkets and Metro at Woolworths Group Limited (**Woolworths**), say on oath:

- 1 I am the Chief Commercial Officer – Woolworths Supermarkets and Metro at Woolworths, the Respondent in this Proceeding.
- 2 Unless otherwise stated, this affidavit is based on my own knowledge.
- 3 Shown to me at the time of swearing this affidavit is an electronic bundle of documents marked 'Confidential Exhibit PSH-1'. The documents are sourced from Woolworths' books and records. References to document identifier numbers in this affidavit are references to documents by that number in 'Confidential Exhibit PSH-1'.


Experience

- 4 I have worked at Woolworths since March 1993. During my time at Woolworths, I have held various roles across Woolworths' business.
- 5 Between 1993 and 2000, I held various store operations roles in Woolworths Supermarkets.
- 6 Since 2000, I held various managerial (or "head office") roles as follows:
 - (a) between October 2000 and July 2015, I held various roles in replenishment, technology and buying;
 - (b) in August 2015, I became Head of Perishables & General Merchandise. In this role I was responsible for the buying of all Chilled (except Fresh), Frozen and General Merchandise products;

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- (c) in February 2016, I became Head of Replenishment. In this role I was responsible for the forecasting and ordering of all products (replenishing our stores and Distribution centres) sold in Woolworths Supermarkets and Liquor;
- (d) in June 2017, I became General Manager - Group Replenishment and Head of Buying - Perishables, General Merchandise & Telco;
- (e) in February 2018, I became Director of Fresh & Buying Support for Woolworths Supermarkets and Group Replenishment. In this role I had responsibility for Buying in Woolworths Supermarkets for fresh and chilled products only. At the time, Peter McNamara, the Director of Buying - Longlife for Woolworths Supermarkets, had responsibility for Buying in Woolworths Supermarkets for long-life products (i.e., all other products including packaged groceries); and
- (f) in July 2020, I became Director of Buying & Group Replenishment for Woolworths Supermarkets. In this role I had responsibility for Buying and Merchandising for all products sold in Woolworths Supermarkets along with leading Replenishment for the Group.

7 In August 2021, my title was changed to Chief Commercial Officer – Woolworths Supermarkets & Metro, however my role with respect to Woolworths Supermarkets did not change and I retained responsibility for Buying for fresh and long-life products. When my title changed, I was no longer responsible for Group Replenishment and I took on responsibility for Buying in Woolworths Metro stores.

My role as Chief Commercial Officer

8 On 16 June 2025, I commenced a 6 month sabbatical from Woolworths. In this affidavit, where I refer to my role as Chief Commercial Officer, I am referring to the role I was performing, and the team structures that were in place, in the period prior to the commencement of my sabbatical. Except where otherwise stated, in this affidavit I describe my role and the practices that applied with respect to Woolworths Supermarkets in the period from September 2021 to May 2023 (**Relevant Period**), which I understand to be the relevant period for purposes of this Proceeding.

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9 My key responsibilities as Chief Commercial Officer include:

- (a) leading the buying and merchandising function across all Woolworths Supermarkets and Metro Stores in Australia and having ultimate responsibility and oversight for Woolworths' procurement, merchandising and sale of all products in Woolworths Supermarkets both online and instore and in Metro Stores. I refer to the team that works under me as the "Commercial Team".
- (b) leading the Commercial Team. The Commercial Team has five trading teams, each headed by a Commercial Director who reports to me. Those trading teams are for:
 - (i) fruit and vegetables;
 - (ii) protein;
 - (iii) chilled products (such as other refrigerated products), bakery and deli;
 - (iv) non-food packaged groceries; and
 - (v) food packaged groceries.

Each trading team is responsible for managing buying and merchandising in their respective product portfolios. This includes managing supply relationships and negotiating cost prices with suppliers, making decisions about product pricing and promotions, and making decisions about the products ranged in Woolworths Supermarkets. Each trading team includes Merchandise Managers, Category Managers and Assistant Category Managers.

- (c) overseeing a Metro buying team, which is responsible for enhancing the range and offer in Metro bannered stores.
- (d) overseeing the following enablement teams that support the work of the trading teams within the Commercial Team:
 - (i) a supplier engagement and capability team, which runs Woolworths events with suppliers, runs voice of supplier programs and administers supplier trading terms;

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- (ii) a customer value team, which is responsible for monitoring and recording competitor pricing, compiling and recording Cost Price Increase Requests from suppliers and monitoring promotional and non-promotional pricing performance for the purposes of assisting the work of Category Managers. Sub-teams within the customer value team have been known from time to time as the “Better Buying,” COGS and Pricing teams;
 - (iii) a merchandising team which is responsible for assisting the trading teams with product range reviews and managing space allocations and planograms, as well as category development; and
 - (iv) a commercial support team which is responsible for enabling system processes and internal governance.
- (e) I have ultimate responsibility for setting and overseeing all Commercial policy and procedures and related governance and compliance, including but not limited to:
- (i) setting and overseeing the pricing “guardrails” to which Commercial Directors (previously known as “General Managers” and “Heads of Business” or HOBs), Merchandise Managers and Category Managers must adhere when making pricing decisions; and
 - (ii) the governance, policy and procedure for Woolworths’ promotional mechanisms and pricing programs (which I describe further at paragraph 10 to 26 below).

Woolworths’ general approach to ranging and pricing in its Supermarkets

10 It is important that Woolworths, as a general supermarket retailer, has in each category a range of products at different qualities and price points to meet the diversity of consumer needs. Within Woolworths, we describe this as the product hierarchy. We divide products by category into “good”, “better” and “best”.

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- 11 Ranging and pricing decisions are managed by Category Managers. It is important for Category Managers to ensure that there is a logical relationship between prices of products within their category. This involves ensuring that the prices of each product in a sub-category or category reflect the products position in the hierarchy.
- 12 In the Relevant Period, the “guardrails” to be applied by Category Managers for the retail pricing of products in Woolworths Supermarkets were as follows:
- (a) While a supplier could provide a Recommended Retail Price (or **RRP**) for their product, it was Woolworths who would decide the retail price of the product in Woolworths Supermarkets (and via Woolworths Online and the Woolworths App). A supplier could impose a maximum resale price as a condition of providing a promotional discount or promotional funding for the product, but when this occurred, it was still Woolworths that would decide the retail price of the product while it was on promotion.
 - (b) Within Woolworths, Category Managers were responsible for determining the prices at which the products in their category would be sold in Woolworths Supermarkets (and via Woolworths Online and the Woolworths App). In doing so, they would have regard to a range of matters, including the nature of the product (including its past sales performance), annual sales and profitability targets for their category, the supplier’s RRP and competitors’ pricing.
 - (c) Category Managers were required to seek to set prices for products in their category portfolio so that they were competitive on a “weighted basket” basis. Woolworths prepared volume weighted price indexes for baskets of products offered for sale by Woolworths and competitor supermarkets. These indices, expressed in percentage terms of the price of a corresponding competitor product (or group of products), operated as guardrails within which pricing decisions could be made by the Category Managers. For example, there was a general rule that Category Managers were required to review and assess the competitiveness of the retail price of products (or groups of products) in their category where the price index for those products exceeded the corresponding competitor price index for more than four weeks. Category Managers undertook this assessment using weekly data reports.

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- (d) Category Managers were also required to set product prices having regard to the portfolio of products in the category or sub-category to which that product relates. This was to ensure that pricing levels were appropriate across the category or sub-category having regard to the fact that products are typically stratified into “good”, “better” and “best” within the category or sub-category, and the price hierarchy should generally reflect such differences in quality or grade.

Promotions and pricing programs in Woolworths Supermarkets

- 13 In the Relevant Period, Woolworths Supermarkets stocked more than 28,000 products at any one time. Those products are offered for sale to customers at a regular shelf price displayed on a white ticket. Woolworths also has three broad pricing programs:
- (a) the yellow program, offering yellow ticket short-term promotions (typically one to two weeks) known as Specials or Clearances advertising a “save” off the regular shelf price;
 - (b) the orange program, offering members of Woolworths Everyday Rewards program pricing when a member scans their card to pay a lower price; and
 - (c) the red program, which is designed to highlight the value in the current regular shelf price through use of a red ticket.
- 14 Woolworths had two red programs in the Relevant Period:
- (a) the Low Price Program (currently referred to as the “Every Day Low Price” program and previously “Always” or “Low Price Always”), which highlights the value in the product being an every day low price product; and
 - (b) the Prices Dropped program, which highlights that Woolworths has reduced the regular shelf price to a new, lower price either on a seasonal (typically 13 weeks) or longer term basis.
- 15 Yellow ticket promotions typically involve a deeper discount for a much shorter period of time, and were repeated more frequently, such that products to which yellow ticket promotions applied typically cycled regularly through higher (shelf) prices and lower (special) prices. By contrast, red ticket pricing programs involved either a product being sold at an every day low price (**EDLP**) as part of the Low Price program or being sold at a lower and more consistent shelf price for a sustained period as part of the Prices Dropped program.

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- 16 Short-term yellow ticket promotions have been a long-standing and pervasive feature of the supermarkets industry in Australia throughout my career. Yellow ticket specials are generally supported by funding from suppliers. By this I mean that suppliers contribute funding to reduce the retail price of their goods in store for the duration of the promotion. There are a number of mechanisms by which this can occur. For example, the supplier might offer a “scan deal”, whereby the supplier agrees to fund a portion of each unit sold in store during the promotion. The role of supplier funding in funding yellow ticket specials has been the same throughout my career.
- 17 When suppliers propose cost prices and RRP's, they typically construct their offer to Woolworths in a way that generates a promotional funding pool for them to be applied to their products. Promotional investment benefits suppliers in driving volume, managing seasonal product performance and competing with the product ranges of other suppliers. As I explain above, yellow ticket promotions are a means by which suppliers can drive sales volumes in particular periods, or implement promotional strategies across competing supermarkets. Suppliers will often seek to run promotions across different retailers to maximise the effectiveness of their promotional strategy and the frequency at which customers could obtain their products on promotion across different retailers. If suppliers are not able to negotiate the type of promotional activity they want (including the type of ticket they want applied to their products), they are able to move their funding (in part or in whole) to other retailers. The impact of such changes on Woolworths can be significant in terms of enticing consumers to shop elsewhere. Woolworths needs to be alert to the promotions and pricing programs of rival retailers in respect of products that are also sold at Woolworths so as to avoid a circumstance where the same products are offered at lower prices elsewhere on a regular or sustained basis. Woolworths closely monitors pricing at rival supermarkets for this reason.
- 18 Given the benefits to suppliers of promotions, most suppliers of branded packaged goods use short-term promotions from time to time.
- 19 This practice of frequently and cyclically promoting products on yellow ticket specials results in significant fluctuations in the retail price of the goods in question. Within the supermarket industry, it is common to describe this use of short-term promotions as a “high-low” strategy because the retail price fluctuates between the higher shelf price and the lower promotional price.

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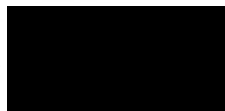


- 20 While yellow tickets promoted the discount that was offered during the course of the special, red programs are a way for customers to easily identify the value offered by the product:
- (a) in the case of the Low Price Program it was that it was the Every Day Low Price, that is to say a price that would be consistent everyday and would never be promoted on a yellow ticket; and
 - (b) in the case of the Prices Dropped program it was that the shelf price had been dropped from a previous higher shelf price.
- 21 The Low Price Program was a red ticket pricing program that Woolworths introduced to ensure consistent, low prices of a range of entry level grocery staples. The program was in retail industry terms an EDLP program. An EDLP program was one where customers were assured that the price was the lowest price that would be offered and that as such these items would never be offered at a lower price via promotions. Typically EDLP products are entry price point products in the category and as such are mostly made up of "Own Brand" or private label products. This was the case at Woolworths. Woolworths' policy in the relevant period was that products on the Low Price Program could not be the subject of any promotion and the Low Price ticket did not make any "was/now" claims. This meant that the Low Price Program price was a consistent price, but that yellow ticket specials could not be applied to products on the Low Price Program.
- 22 The Prices Dropped program was a red ticket program that also provided for longer term reduced prices, but it was subject to different policy rules. A principal feature of the Prices Dropped program was that the red tickets would state a "was" price and the date the "was" price was last charged, and record the "dropped" price, being the reduced price at which the item was being sold on the Prices Dropped program. Unlike the Low Price program, products on the Prices Dropped program could be the subject of up to 8 weeks of yellow ticket promotions per year. As I describe below, this generally made the Prices Dropped program more attractive to suppliers than the Low Price Program because it afforded some flexibility to suppliers to fund promotions off the red ticket price and to thereby drive additional sales volumes on occasion.
- 23 I describe the origins and purpose of the Prices Dropped program in paragraphs 40 to 41 below. As I there explain, the purpose of the program was to redirect supplier funding that was previously directed to "yellow ticket" high-low specials on certain products to offer customers lower and more consistent shelf prices on those products over a longer period. The concept was to move from a "high-low" mechanic to what is often described

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within Woolworths as a “mid-low” mechanic: for each product on the Prices Dropped program the Prices Dropped price was a “mid” price, because it was lower than the previous white ticket shelf price for the product, but the product could still be promoted at an even lower yellow ticket price up to 8 times per year at a shallower level (that is, less of a discount) than previously.

- 24 The Prices Dropped program was predicated on supplier funding and support in that the concept was to redirect existing yellow ticket supplier funding into funding longer and more sustained price reductions. It was never intended to be a program funded largely or solely by Woolworths in the absence of supplier support.
- 25 In the Relevant Period, the average value of the price reductions on the Prices Dropped program was approximately 15%. There were about 2,000 products on the Prices Dropped program at any given time. Most of the funding for price reductions on branded products was provided by suppliers. Given that our average gross margin in Woolworths Supermarkets was approximately 34% and our corporate cost of doing business was around 23%, on my estimation the overall program would have operated at a loss (or a near loss) to Woolworths if suppliers had not provided any funding. Based on these figures, it is unlikely that Woolworths would have funded the whole of the Prices Dropped program based on the impact to the trading results of Woolworths Supermarkets. The Prices Dropped program was only commercially feasible because, for the vast majority of products on the program, the inclusion of the product on the program was supported by supplier funding which was re-directed from the funding of “yellow ticket” specials to this program.
- 26 Suppliers do not typically provide funding to reduce retail prices for their branded goods in Woolworths supermarkets absent the retailer providing some form of promotional or pricing program ticket to advertise the lower retail price and thereby drive additional sales of their products.

Negotiation of cost prices increases with suppliers

- 27 A cost price increase occurs when a supplier informs Woolworths that it proposes to increase the list price (or First Cost) of a product or range of products.

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- 28 When a supplier proposes a cost price increase, the Grocery Code requires retailers like Woolworths to respond within 30 days by doing one of three things:
- (a) accepting the cost price increase;
 - (b) accepting an increase in the price of the product but not agreeing the amount of the price increase (referred to as “Accept - Not Agreed” within Woolworths); or
 - (c) not accepting the price increase.
- 29 If Woolworths accepts an increase in the price but not the amount of the price increase, this usually triggers a further cost price negotiation between the supplier and Woolworths.
- 30 It is important when analysing the impact of, and negotiating, a Cost Price Increase, for Woolworths to understand what a supplier proposes in terms of any promotional activity or pricing program for the relevant products going forwards. This is so Woolworths can assess the overall impact of the cost price increase on the relevant products’ sales volumes and profitability (and for the broader category), which includes consideration of the impact on Woolworths’ competitiveness having regard to Woolworths’ proposed retail price for the relevant products (which is informed by, among other things, the supplier’s RRP). The trading teams therefore typically seek to re-negotiate and agree any revised promotional plans or inclusion on pricing programs for the relevant products at the same time as negotiating on a cost price increase request. This is for the following reasons:
- (a) all previously agreed promotions and pricing was predicated on the previous cost price and retail shelf price of the product, which no longer would be valid (and which had in most instances been negotiated 6 months out for planning purposes) if the cost price increase were accepted; and
 - (b) there is no way to truly assess the impact of the proposal without understanding how it will be promoted or priced in the future and what funding is or is not available and how volume would be affected.
- 31 It is typically the job of the Category Manager for the category in which the product or product range affected by the cost price increase sits to assess the cost price increase and to negotiate with the supplier in relation to it.

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- 32 Depending on the value impact of the cost price increase, it is an internal requirement within the Woolworths Supermarkets Business that a cost price increase be approved by the responsible Merchandise Manager (or in some instances the Commercial Director to whom the Merchandise Manager reports) before the Category Manager communicates any approval of the cost price increase to the supplier. In my experience, I am only notified of a cost price increase request for a specific product if someone in the Commercial Team or a supplier escalates it to me. When this happens, it is typically because of the value involved or because there is an issue for me to resolve about the request. For instance, this can happen when a proposal is outside an applicable Woolworths policy or where there is an impasse with the supplier.
- 33 An example of a proposed cost price increase that was escalated to me is an email that I received from Jason McQuaid (then General Manager - Chilled Dairy) on 8 June 2021. In this email, Jason asked me to approve a proposed Cost Price Increase from Brownes, a supplier of dairy products. I understood that Jason was seeking my approval in this instance due to community focus at that time on the terms of supply of farmgate milk and our requirement that the supplier guarantee that the additional cost was indeed being passed back to milk producers. I also address escalations further at paragraphs 68 to 73 below. A copy of this email is **[MPL.0002.0024.6994] of Confidential Exhibit PSH-1**.
- 34 During my previous roles (starting with Head of Perishables & General Merchandise in August 2015), cost price increase requests from suppliers were relatively infrequent. This began to change shortly after the onset of the COVID-19 pandemic.
- 35 During 2021 and 2022 there were several further economic shocks that disrupted global and local supply chains, and resulted in significantly increased food price inflation. I recall that by approximately the second half of 2021, the number and value of cost price increase requests that Woolworths was receiving from suppliers had increased significantly. I became aware of this from many sources including:
- (a) my regular interactions with personnel in the customer value team;
 - (b) briefings provided by Commercial Directors who reported to me, and other members of the Commercial Team; and

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- (c) regular reports that I received and reviewed such as the Treasury briefings in which I participated (which I describe below at paragraph 38) and regular “Price Trust Forum” slide decks. The “Price Trust Forum” was a regular meeting (generally held monthly) attended by senior Woolworths leadership including Woolworths’ Chief Executive Officer, Managing Director of Supermarkets and Chief Marketing Officer. The Price Trust Forum was established to provide senior executives with visibility of what was happening with prices and cost inflation, an opportunity to ask questions and an opportunity for decisions to be taken there to ensure alignment of approach across the Woolworths senior leadership.

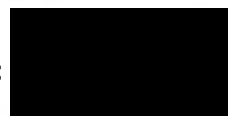
36 For instance:

- (a) the September 2021 Price Trust Forum slide deck, a copy of which is at **[MPL.0002.0028.0866] of Confidential Exhibit PSH-1**, referred to inflation and challenges in labour, shipping and packaging that would impact product costs and higher cost price inflation at page _0022 and increased cost price increase pressure relative to FY202 at page _0070;
- (b) the 17 November 2021 Price Trust Forum slide deck, a copy of which is at **[MPL.0001.0008.0016] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases at pages _0005 to _0016, including that the higher level of supplier cost price increases was largely due to pressures on input costs and global shipping and packaging. It was clear to me from this slide deck that within two months of the new financial year, the total value of supplier CPI “asks” was greater than the entirety for the previous financial year, as shown on page _0017, with a greater impact in branded products, as shown on page _0018;
- (c) the November 2021 Price Trust Forum slide deck, a copy of which is at **[MPL.0001.0008.0004] of Confidential Exhibit PSH-1**, referred to cost price increase requests being 130% up from FY2021 as commodity and transport cost increases flow through the supply chain at page 4 and inflation and cost price increases on pages _0051 to _0057;
- (d) the December 2021 Price Trust Forum slide deck, a copy of which is at **[MPL.0001.0008.0001] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0047 to _0050;

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37 I recall that the significantly increased level of cost price increase requests from suppliers continued throughout 2022 and did not start to reduce until around 2023. For instance:

- (a) the February 2022 Price Trust Forum slide deck, a copy of which is at **[MPL.0001.0008.0020] of Confidential Exhibit PSH-1**, recorded the following matters page _0022 of the slide deck concerning cost price increase requests at that time:
 - (i) cost price increase requests had been submitted for almost 50% of the Woolworths cost base for packaged groceries during the financial year to date;
 - (ii) 143 of Woolworths' top 200 selling suppliers had submitted cost increases during the financial year to date; and
 - (iii) food inflation was expected to remain elevated at 4%-5% for the balance of FY22;
- (b) the March 2022 Price Trust Forum slide deck (with data for February 2022), a copy of which is at **[MPL.0001.0008.0012] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0015 to _0025 of the slide deck;
- (c) the April Price Trust Forum slide deck (with data for March 2022), a copy of which is at **[MPL.0001.0008.0022] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0019 to _0025 of the slide deck;
- (d) the May 2022 Price Trust Forum slide deck (with data for April 2022), a copy of which is at **[MPL.0001.0008.0015] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0048 to _0059 of the slide deck;
- (e) the June 2022 Price Trust Forum slide deck (with data for May 2022), a copy of which is at **[MPL.0001.0008.0008] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0027 to _0033 of the slide deck, noting that Woolworths had received on average 4 to 5 times the number of cost price increase requests than the previous year;

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- (f) the July 2022 Price Trust Forum slide deck (with data for June 2022), a copy of which is at **[MPL.0001.0008.0017] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0031 to _0042 of the slide deck;
- (g) the August 2022 Price Trust Forum slide deck (with data for July 2022), a copy of which is at **[MPL.0002.0001.0559] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on a pages _0022 to _0028 of the slide deck;
- (h) the September 2022 Price Trust Forum slide deck (with data for August 2022), a copy of which is at **[MPL.0001.0008.0011] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0048 to _0053 of the slide deck;
- (i) an October 2022 Price Trust Forum slide deck (with data for September 2022), a copy of which is at **[MPL.0001.0008.0006] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0012 to _0016 and _0036 to _0044 of the slide deck;
- (j) a November 2022 Price Trust Forum slide deck (with data for October 2022), a copy of which is at **[MPL.0001.0008.0010] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0034 to _0037 of the slide deck;
- (k) the December 2022 Price Trust Forum slide deck (with data for November 2022), a copy of which is at **[MPL.0001.0008.0044] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0019 to _0023 of the slide deck;
- (l) the January 2023 Price Trust Forum slide deck (with data for December 2022), a copy of which is at **[MPL.0001.0008.0007] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0019 to _0025 of the slide deck.
- (m) the February 2023 Price Trust Forum slide deck (with data for January 2023), a copy of which is at **[MPL.0002.0001.0383] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0033 to _0035 of the slide deck, including a softening in total cost price increase requests on page _0034 of the slide deck;

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- (n) the March 2023 Price Trust Forum slide deck (with data for February 2023), a copy of which is at **[MPL.0001.0008.0013] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0019 to _0025 of the slide deck, including continuing softening in total cost price increase requests on page _0021 of the slide deck;
- (o) the April 2023 Price Trust Forum slide deck (with data for March 2023), a copy of which is at **[MPL.0001.0008.0014] of Confidential Exhibit PSH-1**, referred to inflation and cost price increases on pages _0003 and _0022 to _0030 of the slide deck, including that cost price increase requests had decreased in volume on page _0003 of the slide deck.

38 During the Relevant Period, Woolworths regularly reported to Federal Treasury on trends in food inflation drivers at the time and the increased level of supplier cost price increases that it was receiving. I was involved in nearly all of these briefings and otherwise received copies. For instance:

- (a) On 12 August 2022, Woolworths presented to Federal Treasury on Food inflation drivers and outlook. I attended this presentation. The slide deck that was presented to Federal Treasury referred to, among other things, global supply-side shocks causing food inflation including global commodity prices, poor weather impacts on fruit and vegetables, the war in the Ukraine and the number and value of supplier cost price requests that Woolworths had been receiving. The slide deck also referred to cost headwinds that Woolworths was facing on wages, transport, energy and payroll tax. A copy of this slide deck is at **[MPL.0002.0020.2169] of Confidential Exhibit PSH-1**.
- (b) On 1 December 2022, Woolworths presented to Federal Treasury on an Inflation outlook. I attended this presentation. The slide deck that was presented to Federal Treasury referred to, among other things, the impacts of supply chain disruption, increasing energy and fuel prices, increasing commodity price and poor weather conditions on food costs. It also referred to the high level of supplier cost asks including the average number of asks per month. A copy of this slide deck is at **[MPL.0002.0021.8218] of Confidential Exhibit PSH-1**.

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- (c) On 1 March 2023, Woolworths presented to Federal Treasury on an Inflation outlook. I attended this presentation. The slide deck that was presented to Federal Treasury referred to, among other things, the impacts of supply chain disruptions and the energy and fuel prices on food inflation. It also stated that supplier cost-asks have remained high both in number and value. A copy of this slide deck is at **[MPL.0002.0020.0497] of Confidential Exhibit PSH-1.**

The Prices Dropped program and applicable policies

- 39 I was not involved in the original decision to introduce the Prices Dropped program in 2015, but I am aware of the purpose of the program, both as a result of my involvement in implementing the program in 2015 as Head of Perishables & General Merchandise and from my subsequent roles. In particular, in my role as Chief Commercial Officer, I had ultimate responsibility for overseeing the implementation of the program in accordance with Woolworths' strategy and policies. The purpose or strategy underlying the program remained consistent throughout its operation.
- 40 The Prices Dropped program was introduced at a time when food price inflation was low and yellow ticket promotional intensity was at a high in the Australian retail supermarket sector. At that time, Woolworths was looking to implement a program to lower the promotional intensity of the packaged groceries it offered for sale to customers over longer periods. By promotional intensity I mean that many packaged grocery products were being offered for sale at that time by reference to the "high-low" promotional strategy I describe above at paragraph 19, which saw products continuously cycle between a higher price (standard shelf price) for a short period and then a lower price (being its promotional price) for a short period. It was also a competitive response to another major retailer introducing a similar program addressing these industry dynamics.
- 41 The Prices Dropped program was designed to instead utilise funding support that was previously allocated by suppliers to fund "yellow" ticket promotions to instead lower the shelf prices offered to consumers. Woolworths considered that this would benefit customers because they would not have to wait for a product to go on sale to obtain a lower price and could consistently access lower shelf prices. Woolworths also considered that this was a benefit to it by building trust with customers and facilitating a more consistent pattern of sales, which increased efficiency in replenishment both to stores and instore, compared to cyclical sales that resulted when prices fluctuated frequently (as with high-low pricing).

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- 42 When I became Director of Buying & Group Replenishment for Woolworths Supermarkets in July 2020, I was aware that there were internal written guidelines in place for both the Low Price Program and the Prices Dropped program and that these guidelines were managed by the pricing team within the customer value team. The trading teams were required to follow these guidelines.
- 43 The relevant guidelines at the time I became Director of Buying & Group Replenishment for Woolworths Supermarkets were recorded in a document titled **Low Price & Prices Dropped - Guidelines/Process** dated 17 March 2020.
- 44 In preparing this affidavit, it has been brought to my attention that Woolworths' Google-based document system captured different versions of this document on different dates. I have been informed by Jordan Sidhom, Senior eDiscovery Specialist at Woolworths, and believe that the following versions were captured on the relevant dates:
- (a) at **[MPL.0092.0001.0001] of Confidential Exhibit PSH-1** dated 10 May 2020;
 - (b) at **[MPL.0092.0001.0003] of Confidential Exhibit PSH-1** dated 17 January 2021;
 - (c) at **[MPL.0092.0001.0004] of Confidential Exhibit PSH-1** dated 28 June 2021 and
 - (d) at **[MPL.0092.0001.0005] of Confidential Exhibit PSH-1** dated 6 August 2021.

Each of these documents bears the date 17 March 2020 on the front page.

- 45 Those slide decks accord with my recollection of the guidelines for products for Always (or Low Price) or Prices Dropped programs at that time. None of those documents mention me.
- 46 I have been shown a version of the Low Price & Prices Dropped - Guidelines/Process which is at **[MPL.0092.0001.0002] of Confidential Exhibit PSH-1**. I am informed by Jordan Sidhom and believe that this "version" was extracted from the version history of the document as at 17 August 2021. This document refers to me on slide 5 as having a role in approvals for adding and removing documents from the Low Price & Prices Dropped program. The document might be read as suggesting that I had some regular role in approving the addition or removal of products from the Low Price or Prices Dropped programs but that was not the case. While decisions to add products to these

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programs might have come to me on occasion, it was never my practice to personally approve each addition to or removal from these programs.

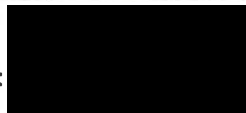
47 I make the following observations about the content of the guidelines that appear on slide 2 of each of these versions of the Low Price & Prices Dropped - Guidelines/Process document insofar as they relate to the Prices Dropped program:

- (a) The "Price establishment period" in the first row referred to the period for which a product being placed on the Prices Dropped program had to have been held at its former (i.e., "Was") price before placement on the program, whether for a first or subsequent time.
- (b) The first bullet point in the Price establishment period box states "Minimum of 8 to 12 weeks, depending on IPI. 12 weeks is preferred". The acronym "IPI" refers to the "Inter-Purchase Interval" of a product, which is the average time between consumers' purchases of products in a particular sub-category. For example, we would not use the category Breakfast Foods; we would use the relevant sub-category in Breakfast Foods, such as Muesli and Oats. For the overwhelming majority of products sold in Woolworths Supermarkets (other than some general merchandise), the IPI is less than 8 weeks. I discuss the role of IPIs further below.
- (c) The "Resting period before new red message" in the second row referred to the period for which a product that had been removed from the Prices Dropped program had to have been off the program, being for at least 6 months, before it could be returned to the program.
- (d) The "Was price" in the first row referred to the shelf price of the product immediately before being placed on the Prices Dropped program. The guideline in relation to the Was price stated "Must be deemed reasonable – eg, in line with market and / or similar products in the category on a CUP basis". CUP stands for Comparative Unit Pricing.
- (e) It was my understanding at the time when I became Director of Buying & Group Replenishment in July 2020, and it remains my understanding, that the Price Establishment Period of 8 to 12 weeks and the resting period of at least 6 months were intended to work together to stop suppliers and Category Managers from cycling products on and off the Prices Dropped program because that would be inconsistent with the program's intent of providing sustained lower

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prices in contrast to cyclical high-low pricing. At the time, I considered that a Price Establishment Period of 8 to 12 weeks and a resting period of 6 months before returning a product to the Prices Dropped program required the Category Manager and the supplier to commit to working as hard as possible to ensure the products on the program had longevity. In a low inflation environment, it acted as a disincentive for removal from the program unless there was a real and long term commercial justification (such as a genuine increase in the cost price), thereby preventing suppliers from "gaming" the system. It was a disincentive because:

- (i) not selling products at a market competitive price for 8 to 12 weeks in the establishment window would see suppliers cede sales to competitor products, and also, for the Category Managers, would conflict with Woolworths' pricing guardrails; and
 - (ii) being off the Prices Dropped program for 6 months may result in the product's position in the Prices Dropped program being given to another competitor supplier's product.
- (f) I regard the requirement to consider the IPI as being consistent with the purpose of the Price Establishment Period described above. The circumstance that the overwhelming majority of products sold in Woolworths Supermarkets have an IPI of less than 8 weeks underscores that the likely effect of the policy was that suppliers would have lost sales (because customers would have purchased from that subcategory once or more in the 8 week period). This is consistent with my understanding that the principal intent of the policy at the time was to ensure genuine commitment by suppliers to the program and to disincentivise cycling products on and off Prices Dropped.
- (g) The reference to "Event seasonal: minimum of 12 weeks" in the first line was a reference to seasonal products that were not available year round (such as Easter eggs). It was not a reference to what was later known as the "Seasonal Prices Dropped" campaigns that I describe in paragraph 48 below (which post-dated the first version of the Low Price & Prices Dropped - Guidelines/Process).

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- 48 Shortly after I started my role as Director for Buying & Group Replenishment in July 2020, Woolworths implemented a strategy of conducting shorter “seasonal” prices dropped campaigns from September 2020 onwards. This involved campaigns like “prices dropped for Spring” or “prices dropped for Christmas” that involved reducing the shelf price of products included in the campaign for a season, typically 3 months. The thinking behind this strategy was that in a more inflationary environment than had existed previously, Woolworths and suppliers could be more confident of maintaining a dropped price on a product for a seasonal commitment, rather than doing so for a longer term.
- 49 With the significant increase in food price inflation and the unprecedented influx of cost price increase requests that occurred in the second half of 2021 (which I describe at paragraph 35 above), I increasingly received feedback from members of the Commercial Team that the existing guidelines for the Prices Dropped program were not fit for purpose in a high inflation environment where a vast number of suppliers faced genuine cost pressures, needed to increase their cost prices to Woolworths and were making significant cost price increase requests, including repeat requests in some cases. This was reflected in reporting to senior management at the Price Trust Forums, including in September 2021 and November 2021 (see **[MPL.0002.0028.0866]** and **[MPL.0001.0008.0004] of Confidential Exhibit PSH-1**). While it had been often possible up until that time for Woolworths to negotiate with suppliers to achieve cost price increases across a group of products without affecting products within that group that were on the Prices Dropped program (which would have required their removal from the program), the number and size of the of requests that suppliers were making meant this was increasingly no longer possible. I considered that this warranted a reconsideration of the guidelines for the reasons I explain in more detail below in paragraph 60.
- 50 The challenge in this environment was that, in order to offer lower retail prices, Woolworths needed to secure supplier funding for promotions and pricing programs, but, as I explain above, such supplier funding is typically dependent upon Woolworths agreeing to promote or highlight the reduced price through the use of yellow or red tickets. In other words, in order to secure a reduction in shelf prices through supplier funding, Woolworths needed a means to communicate to consumers that such reductions had been obtained and that Woolworths’ retail pricing reflected those reductions.

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- 51 In November 2021, at the regular Commercial Team meeting that I held weekly on Tuesdays with my direct reports (including Commercial Directors), Richard Lowe presented some proposals in relation to the Prices Dropped program in response to the high inflationary environment that Woolworths was facing. The slide deck he presented was titled "Cost framework and Prices Dropped policy review". A copy of this is at **[MPL.0002.0029.0021] of Confidential Exhibit PSH-1 (the Cost framework and Prices Dropped policy review presentation)**.
- 52 The slides at _0005 and _0006 of the Cost framework and Prices Dropped policy review presentation recorded a proposal for allocating additional human resources to the COGS team so they could provide better support to the trading teams in dealing with the substantial increase in cost price increase requests. I approved this proposal.
- 53 The slide at _0008 of the Cost framework and Prices Dropped policy review presentation identified in my mind the key problem for the Prices Dropped program posed by the recent influx of cost price increases. It had resulted in many product lines being removed from the program without any clear path under Woolworths' internal guidelines for those products to subsequently rejoin the program with reduced retail prices in any timely way.
- 54 I recall that at this time my team and I were thinking about how Woolworths could help customers navigate the supermarket to find value when faced with this environment in which many shelf prices were increasing due to supplier cost price increases. Insofar as the Prices Dropped program was concerned, a key question we discussed was whether the current approach taken by Woolworths, in this inflationary environment, would see a return to excessive high-low promotions, so I therefore was considering how long Woolworths should wait after a cost price increase (and corresponding shelf price increase) before the team could implement a deal with a supplier to return the product to the Prices Dropped program at a lower price for consumers, as opposed to prices staying high and customers having to manage promotional cycles.
- 55 At this time, as the slide at _0008 records, the customer value team identified three potential options for managing the Prices Dropped program in this inflationary environment. I have the following observations concerning the options that were proposed:
- (a) Option 1 was a reference to amending the existing Low Price & Prices Dropped Guidelines/Process so that products could be returned to the Prices Dropped program following a period of 3 months after a price increase.

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- (b) Option 2 was a reference to increasing Woolworths' focus on using seasonal Prices Dropped campaigns, which as I described at paragraph 48 above, typically involved dropping the price of several products for a season of about 3 months. In my mind, the rationale for pivoting more to seasonal Prices Dropped campaigns, in contrast to longer term Prices Dropped products, was because Woolworths could be more confident in an inflationary environment that a product on a seasonal campaign would not be affected by a cost price increase during the campaign. I recall that I encouraged greater use of seasonal Prices Dropped campaigns at this time.
- (c) Option 3 was a reference to having fewer products on the Prices Dropped program, for instance, by not replacing or returning products removed from the program due to a cost price increase, and as a consequence increasing the incident of products on high-low promotions in order to retain supplier funding.
- 56 The slide at _0009 of the Cost framework and Prices Dropped policy review presentation recorded some proposals for discussion concerning potential changes to the existing Low Price & Prices Dropped Guidelines/Process. The first was a suggestion that the resting period for returning a product to the program should be 3 months. The second was a suggestion that we review the Price Establishment Period for including a product on the Prices Dropped program, dependent on the timeframe for the resting period.
- 57 On 14 December 2021, a pricing strategy meeting took place with the Commercial Directors to further the discussion about amending the Price Establishment Period and resting period in the existing Low Price & Prices Dropped Guidelines/Process. I was invited to attend that meeting, but do not believe I attended as I had another meeting at the same time.
- 58 On 21 December 2021, a Pricing & Cost meeting was held by the customer value team to discuss a revised guideline for the Prices Dropped program, under which a new resting period before returning a product to the Prices Dropped program after a cost price increase was proposed, being the IPI for the product subject to a minimum of 3 weeks and maximum of 6 weeks. The revised guideline was put forward for final alignment amongst my Commercial Leadership team. A copy of the slides for this meeting that were included in the meeting invitation is at **[MPL.0002.0029.0050]** of **Confidential Exhibit PSH-1**. I cannot now recall if I attended that meeting.

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59 On 17 January 2022, I received an email from Richard Lowe with a link to a final proposed version of the updated Prices Dropped guidelines. Mr Lowe said he would be seeking approval for the revised guidelines in the Commercial Forum meeting the next day and believed the guidelines needed to be shared with the broader commercial team by the end of the month. By “broader commercial team” I understood Mr Lowe to be referring to the trading teams and the customer value team. A copy of Richard Lowe’s email is at **[MPL.0002.0027.5553] of Confidential Exhibit PSH-1**, and a copy of the Google Document slides to which it linked is at **[MPL.0062.0001.0009] and [MPL.0062.0001.0008] of Confidential Exhibit PSH-1**.

60 I supported the revised resting period following a cost price increase in the revised Prices Dropped guidelines for the following reasons:

- (a) First, I considered that the information on the red Prices Dropped ticket concerning the “Was” price and the “Was” price date was, and would remain, factually accurate. In addition to the “Was” price, the ticket included the date the product was sold at the previous shelf price and the product was, in fact, sold at that price on and before that date.
- (b) Second, in the inflationary environment at the time with substantially increased cost price increase requests, the position was different to that which had existed previously. I did not consider it necessary to have a lengthy resting period to disincentivise suppliers from “gaming” the program by trying to add and remove products from the program, given we were no longer in a low inflation environment. It was my view that the cost price increase requests that Woolworths was receiving at that time generally reflected genuine cost pressures that suppliers were facing.
- (c) Third, the average Woolworths customer purchases from Woolworths approximately 2.5 times a week, and in those circumstances I considered that a resting period based on the IPI for the sub-category to which the product related was a reasonable period. By reasonable period I mean that I considered this provided ample opportunity for customers to see the product at the new shelf price following a price increase before it returned to the Prices Dropped program. The IPI is based on frequency of purchase, not the frequency of supermarket visit. So, for example, a product with an IPI of 2 weeks is a product that the average Woolworths purchaser of that product purchases once every two weeks. If that same customer visits the supermarket in line with the average frequency

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of visit of 2.5 times per week, they would visit a supermarket 5 times in those two weeks, meaning that there would have been multiple occasions on which they could have seen the changed shelf price in addition to the occasion on which they purchased the relevant product.

- 61 Later that year, on 18 August 2022, I received an email from James Hepworth (then Commercial Director - Everyday Needs) forwarding to me an email he had sent to his team outlining interim price establishment guidance he had shared with his team that day. The email noted that the price establishment guidance for Prices Dropped was “the greater of 3 weeks or the IPI, up to a maximum of 6 weeks. Continuous and free from any discounts.” This is consistent with what I have described above. A copy of this email is at **[MPL.0002.0020.7161] of Confidential Exhibit PSH-1.**
- 62 On 19 September 2022, I sent an email to the whole Commercial Team attaching a new policy document that addressed various price trust issues including guidelines for the Price Establishment Period for the Prices Dropped program (the **September 2022 Price Trust Policy**). In the second paragraph I said, “I am looking forward to seeing as many of you as possible on Wednesday morning as we go through this important topic”. This was a reference to a training session for the relevant members of the Commercial team on the September 2022 Price Trust Policy that I was to open on 21 September 2022. A copy of this email is at **[MPL.0002.0007.6038] of Confidential Exhibit PSH-1** and a copy of the attached Price Trust Policy is at **[MPL.0002.0007.6039] of Confidential Exhibit PSH-1.**
- 63 The Price Establishment Period in the September 2022 Price Trust Policy was the same as the January 2022 guideline save that the resting period after a price increase became the IPI with a minimum of 4 weeks (instead of 3 weeks) and maximum of 6 weeks in those instances where the product had been on the Priced Dropped Program for more than 18 months.
- 64 On 21 September 2022, I opened a training session conducted by the Customer value team on the September 2022 Price Trust Policy. The slides that were presented were titled “Price Trust Policy Training 21 September 2022”. A copy of these slides is at **[MPL.0001.0010.0053] of Confidential Exhibit PSH-1.** In particular:
- (a) the slides at _0012 to _0019 addressed the Price Establishment Period guidelines for products on the Prices Dropped program and for products placed on Yellow Ticket specials;

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- (b) the slides at _039 to _0056 addressed the guidelines for the Prices Dropped program with some worked examples; and
- (c) the reference on slide at _0040 under “After Prices Dropped” to “Must return to the white ticket shelf price ...” was a reference to the fact that there is a basic expectation that if a product is removed from the program, its shelf price will return to the “Was” price if no other terms with the supplier have changed. This expectation was a consistent feature of the Prices Dropped program in my time as Director of Buying & Group Replenishment and Chief Commercial Officer.
- 65 There was a further training session on the September 2022 Price Trust Policy conducted on 23 November 2022. A copy of the slides for that training session is at **[MPL.0001.0010.0047] of Confidential Exhibit PSH-1**. I do not recall whether I attended or presented at this session.
- 66 A further revised version of the Price Trust Policy was implemented in December 2022 (the **December 2022 Price Trust Policy**). A copy of this revised Price Trust Policy is at **[MPL.0001.0005.0066] of Confidential Exhibit PSH-1**. There was no change to the Price Establishment Period for the Prices Dropped program in this revised version of the policy.
- 67 There were training sessions on the December 2022 Price Trust Policy conducted for relevant Commercial team members who had not previously attended training on 15 February 2023 and 13 April 2023. Copies of the slides for these training presentations are at **[MPL.0001.0010.0046] of Confidential Exhibit PSH-1** and **[MPL.0001.0010.0050] of Confidential Exhibit PSH-1**. I do not recall whether I attended or presented these sessions.

Compliance Review of the Prices Dropped program

- 68 Although I cannot remember the precise timing, around July or early August 2022 I recall becoming aware of an issue concerning a Fab laundry detergent product following an ACCC inquiry of Woolworths about the Prices Dropped program. After being informed of this, I visited a Woolworths store and observed the “Was” price for the product, which I regarded as being too high compared to the Prices Dropped price. I then directed that the product be removed from the Prices Dropped program. I subsequently learnt that the “Was” price was the RRP proposed by the supplier.

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- 69 Shortly after the ACCC's inquiry concerning the Prices Dropped program, I also directed Richard Lowe, who was the Senior Pricing Manager for Everyday Value (which included the Prices Dropped program), to conduct a review of products on the Prices Dropped program to confirm compliance with the existing Price Establishment Period guidelines and to assess whether the new "Was" price corresponded to the old "Was" price plus the cost price increase.
- 70 As part of the review, I recall that Richard identified several products that required further review. A slide deck titled "Prices Dropped History Deep Dive" dated 29 August 2022 records analysis of compliance with the Price Establishment Period in relation to several products. A copy of that slide deck is at **[MPL.0002.0032.5984] of Confidential Exhibit PSH-1**.
- 71 Around this time, I also implemented a temporary increase in oversight of the Prices Dropped program to ensure that Woolworths' existing guidelines were being complied with. This involved directing Richard Lowe to provide me with regular updates on proposals to add products to the Prices Dropped program and whether those proposals complied with the existing guidelines.
- 72 An example of this is an email I received from Richard Lowe on 29 August 2022, concerning 9 products proposed to be placed on the Prices Dropped program, a copy of which is at **[MPL.0002.0002.5478] of Confidential Exhibit PSH-1** at page _0005. Richard's email identified for each proposal whether the Price Establishment Period guideline would be met and whether there was any variance between the new "Was" price and the old "Was" price plus the cost price increase. One of the products in the email was the Sakata Rice Cracker price family of products. Richard noted in his email that the product was slightly outside "the strictest interpretation of "Was Price + CPI"" but "was close enough for us to be comfortable with the proposal following discussions with Ewan". "Ewan" was a reference to Ewan Shearer, the Commercial Director - Grocery Food.
- 73 I replied to Richard the next day and agreed with his suggestion that 8 of the proposals (including Sakata) should be approved. In relation to the proposal for the Burgerman Cheezels product, for which the proposed new "Was" price would have exceeded the old "Was" price plus cost price increase by 8.6%, I considered that the product's shelf price should be re-established at a lower level for three weeks before being added to the Prices Dropped program. A copy my reply is at **[MPL.0002.0002.5478] of Confidential Exhibit PSH-1** at pages _0004 and _0005.

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74 On 2 September 2022, I received an email from Richard Lowe regarding the outcome of the review of the Prices Dropped program that I had directed. Richard informed me that of the roughly 300 product families on the program, only 7 had been identified as not having sufficiently complied with the Price Establishment Guidelines. I agreed with Richard's recommendation that 6 of these products should be removed from the program because they had fallen short of the Price Establishment Period guideline by 1 week or more. A copy of the email chain containing Richard's email and my reply is at [MPL.0002.0020.7116] of Confidential Exhibit PSH-1.

SWORN by the deponent
at Sydney
in New South Wales
on 24 November 2025

)
)
)
)
) Signature of deponent

Before me:

.....
Signature of witness

ZAREEN QAYYUM
.....
Name of authorised witness (block letters)

LEVEL 61, 1 FARRER PLACE, GOVERNOR PHILLIP TOWER, SYDNEY NSW 2000
.....
Address of authorised witness

AUSTRALIAN LEGAL PRACTITIONER.
.....
Capacity (eg Justice of the Peace)

No VID 974 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

Australian Competition and Consumer Commission

Applicant

Woolworths Group Limited (ACN 000 014 675)

Respondent

Certificate identifying Confidential Exhibit PSH-1

This is **Confidential Exhibit PSH-1** to the affidavit of **Paul Stephen Harker** sworn at 1 Farrer Place, Sydney NSW 2000 on 25 November 2025 before me:


.....
Signature of witness

Australian Legal Practitioner

Filed on behalf of Woolworths Group Limited, the Respondent

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