

## NOTICE OF FILING

### Details of Filing

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File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v  
WOOLWORTHS GROUP LIMITED (ACN 000 014 675)  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*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.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59  
Rule 29.02(1)

**Affidavit**

No VID974/2024

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: 13 April 2026

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<b>Signed:</b>		<b>Taken by</b>	
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Filed on behalf of Mallesons, the Respondent

Prepared by Peta Stevenson  
Law firm **MALLESONS**  
Tel +61 2 9296 2492  
Email [peta.stevenson@mallesons.com](mailto:peta.stevenson@mallesons.com)

Fax

**Address for service**  
Level 61, Governor Phillip Tower,  
1 Farrer Place, Sydney NSW 2000 Australia  
Ref: P Stevenson:602-0051665

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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. I remain on sabbatical.
- 2 Unless otherwise stated, this affidavit is based on my own knowledge.
- 3 I previously swore an affidavit in this proceeding on 26 November 2025 (**First Affidavit**).
- 4 In preparing this affidavit, I have been shown a copy of paragraphs 9, 105, 109 and 145 of the Applicant's outline of opening submissions served on 5 March 2026 (**Applicant's Opening Submissions**). An extract of those paragraphs is annexed and marked "A".
- 5 Paragraphs 105(c), 109 and 145 of the Applicant's Opening Submissions refer to what the Applicant defines as the "**January 2022 CPI Guidance**" (and I adopt that definition for convenience).
- 6 I discuss my involvement in the development and approval of that January 2022 CPI Guidance in paragraphs 49 to 60 of my First Affidavit. A copy of the final January 2022 CPI Guidance was exhibited at paragraph 59 in the document marked MPL.0062.0001.0009.
- 7 I have been shown a copy of the document cited in subparagraph 105(c) of the Applicant's Opening Submissions and referred to as the January 2022 CPI Guidance, which is at MPL.0001.0005.0047 of Supplementary Confidential Exhibit PSH-1. It appears to me to be the same document, in substance, as exhibited at paragraph 59 of my First Affidavit.

Signed



Taken by



8 I understand from paragraphs 109 and 145 of the Applicant's Opening Submission that the Applicant contends that:

- (a) the January 2022 CPI Guidance only applied to products where the Price 1 price (as defined in paragraph 9 of the Applicant's Opening Submissions) was a Prices Dropped price;
- (b) the January 2022 CPI Guidance did not apply to products where the product was not on the Prices Dropped program at the time the price of the product was Price 1 (such as where the Price 1 price was a white ticket price or a Low Price program price);
- (c) even after January 2022, the "**2020 Guidance**" (as defined in paragraph 105(b) of the Applicant's Opening Submissions) continued to govern the price establishment period for all products placed on the Prices Dropped program, save where the Price 1 price was a Prices Dropped price; and
- (d) there were 66 products listed in Annexure B of the Statement of Agreed Facts (filed 13 June 2025) that were placed on the Prices Dropped program after January 2022 in respect of which the price establishment period in the 2020 Guidance applied, rather than the shorter price establishment period in the January 2022 CPI Guidance.

9 Those propositions are incorrect.

10 Once issued, the January 2022 CPI Guidance applied to all products placed on Prices Dropped following a supplier's cost price increase, irrespective of the type of ticket the product had been on immediately prior to the increase. The effect of this was that from late January 2022 onwards, where the retail price of a product being sold on a white ticket or as part of either the Low Price or Prices Dropped program was increased due to a supplier's cost price increase, Woolworths required that the product adhere to the price establishment period rules set out in the January 2022 CPI Guidance before it could be placed on the Prices Dropped Program. As a result, until the Price Trust Policy came into effect on 21 September 2022 (as I describe at paragraphs 62 to 64 of my First Affidavit), the required price establishment period for all such products was 3 to 6 weeks, depending on the product's IPI.

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Signed:



Taken by:



11 At paragraph 61 of my First Affidavit, I exhibit an email I received from James Hepworth on 18 August 2022. In that email, Mr Hepworth relayed to me guidance he had provided to his team outlining the applicable guidance at the time. That email included the following:

*The existing 'Prices Dropped' price establishment rule still applies when moving a product onto a Prices Dropped (the greater of 3 weeks or the IPI, up to a maximum of 6 weeks. Continuous and free from any discounts).*

12 This passage from Mr Hepworth's email is consistent with the January 2022 CPI Guidance and accurately summarises Woolworth's applicable policy at the time. That policy did not depend on whether the Price 1 price was a Prices Dropped price.

13 In paragraph 71 of my First Affidavit, I describe a temporary increase in oversight of the Prices Dropped program that I implemented in around August 2022 to ensure that Woolworths' existing guidelines were being complied with. For products being placed on Prices Dropped following a cost increase from a supplier, the relevant "existing guidelines" were those in the January 2022 CPI Guidance. In exercising that oversight and applying the existing guidelines, no distinction was made between products based on whether or not they were on the Prices Dropped program at the time of the supplier's cost price increase request. For all such products, the required price establishment period was 3-6 weeks, depending on the IPI.

**SWORN** by the deponent  
at Sydney  
in New South Wales  
on 13 April 2026

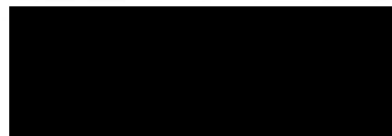
)  
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) Signature of deponent

Before me:

 .....  
Signature of witness ✓

Signed:

Taken by:



Federal Court of Australia  
District Registry: Victoria  
Division: General

**Australian Competition and Consumer Commission**


Applicant

**Woolworths Group Limited (ACN 000 014 675)**

Respondent

**ANNEXURE "A"**

This is the annexure marked "A" referred to in the affidavit of **PAUL STEPHEN HARKER** sworn at 1 Farrer Place, Sydney NSW 2000 on 13 April 2026.

Before me:  ...

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Filed on behalf of Mallesons, the Respondent

Prepared by Peta Stevenson  
Law firm **MALLESONS**  
Tel +61 2 9296 2492  
Email [peta.stevenson@mallesons.com](mailto:peta.stevenson@mallesons.com)

Fax

**Address for service**  
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1 Farrer Place, Sydney NSW 2000 Australia  
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## Annexure A: Extracts of relevant paragraphs in the Applicant's Opening Submissions

[9] In the case of the 276 Particularised Promotions, involving 266 different Affected Products, which are the subject of this proceeding, it is alleged that the Prices Dropped Representations made by Woolworths to consumers were false, misleading, or deceptive because the product's promotional price (Price 3) was, in each case:

- (a) only "dropped" when compared to a temporarily increased price (Price 2) that was charged by Woolworths for a relatively short period of time prior to the promotion (in most cases, after having received a supplier cost price increase which Woolworths was seeking to pass on to consumers in order to preserve its margin<sup>12</sup>); and
- (b) actually, higher than (or, in 11 cases, the same as) the price at which each product had ordinarily been offered for sale by Woolworths for a reasonable period before the relevant promotion and the short-term price spike (Price 1).<sup>13</sup>

<sup>12</sup> See SOAF at [55], [58].

<sup>13</sup> Concise Statement at [1], [13].

[105] The key Prices Dropped Policies which applied during the Relevant Period comprised:

- (a) a document titled, "*Low Price Always*" and "*Prices Dropped!*" – *Campaign Rules and Guidance* (the **2016 Guidance**), which applied from 22 July 2016 until 21 September 2022;<sup>104</sup>
- (b) a document titled, *Low Prices & Prices Dropped Guidelines / Process* (the **2020 Guidance**), which applied from 17 March 2020 until 21 September 2022. The 2020 Guidance took precedence over the 2016 Guidance in respect of the matters it covered and, where it did not cover a matter, staff were directed to raise the issue with Woolworths' Pricing and Customer Value (PVC) team "who would consider the 2016 Guidance and respond";<sup>105</sup>
- (c) a document titled, *Prices Dropped guidelines – proposal* (the **January 2022 CPI Guidance**), which applied from on or about 17 January 2022 until 21 September 2022 and "provided interim guidance for teams that were receiving an unexpectedly high number of cost price increase requests from suppliers, affecting products on the Prices Dropped Program";<sup>106</sup>
- (d) a document titled, *Price Trust Policy* (the **September 2022 Price Trust Policy**), which applied from 21 September 2022 to 2 December 2022 and superseded all earlier guidance with respect to the Prices Dropped Program;<sup>107</sup> and
- (e) an updated version of the September 2022 Price Trust Policy (the **December 2022 Price Trust Policy**), which applied from 2 December 2022 until at least the end of the Relevant Period (May 2023).<sup>108</sup>

<sup>104</sup> MPL.0001.0005.0030 (**2016 Guidance**); 1050794.009.001.0003 (9 February 2024) at .0006, Item 5; 1050794.008.001.0004 (14 December 2023) at row 1.

<sup>105</sup> MPL.0001.0005.0031 (**2020 Guidance**); 1050794.009.001.0003 (9 February 2024) at .0006, Item 5; 1050794.008.001.0004 (14 December 2023) at row 2. There appears to have been a number of slightly different versions of the 2020 Guidance circulated during the period that it was in effect: see Harker Affidavit at [44] to [45]; MPL.0092.0001.0001; MPL.0092.0001.0003; MPL.0092.0001.0004; MPL.0092.0001.0005.

<sup>106</sup> MPL.0001.0005.0047 (**January 2022 CPI Guidance**); see also MPL.0002.0003.8127. 1050794.009.001.0003 (9 February 2024) at .0006, Item 5; 1050794.008.001.0004 (14 December 2023) at row 3; Harker Affidavit at[59]-[60].

- 107 MPL.0001.0005.0063 (**September 2022 Price Trust Policy**). 1050794.009.001.0003 (9 February 2024) at .0007, Item 5; 1050794.008.001.0004 (14 December 2023) at row 4.
- 108 MPL.0001.0005.0066 (**December 2022 Price Trust Policy**). 1050794.009.001.0003 (9 February 2024) at .0007, Item 5; 1050794.008.001.0004 (14 December 2023) at row 5.

- [109] In January 2022, the January 2022 CPI Guidance was issued by Woolworths in response to teams receiving a high number of cost price increase requests from suppliers in relation to products already on Prices Dropped promotions. As such, it applied only to those Affected Products where Price 1 was itself a Prices Dropped Price.
- [145] There appears to have been at least 79 breaches of the 2020 Guidance — 13 in respect of Particularised Promotions which occurred before the implementation of the January 2022 CPI Guidance,<sup>141</sup> and at least a further 66, in respect of promotions which occurred after January 2022, but to which the 2020 Guidance would have continued to apply because the product was not on Prices Dropped at the time the price establishment period began.<sup>142</sup>

<sup>141</sup> See SOAF at Annexure B, rows 13, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 269, 270.

<sup>142</sup> The ACCC says “at least” because it has conservatively excluded a group of 40 Particularised Promotions where Price 1 was a Prices Dropped Price for most of the Price 1 period, but then switched to a white ticket only price for around 15 days before going on to Price 2: see SOAF at Annexure B, rows 1, 2, 3, 4, 5, 6, 14, 26, 15, 27, 29, 30, 31, 32, 34, 36, 46, 47, 48, 49, 106, 107, 125, 127, 129, 131, 133, 134, 187, 215, 216, 217, 218, 219, 220, 221, 222, 253, 254, 255. Of the 66 promotions referred to in this paragraph, 21 involved instances where the Affected Product was not sold at all during the Price 1 period: see SOAF at Annexure B, rows 37, 38, 39, 50, 52, 59, 62, 66, 67, 68, 172, 173, 174, 175, 229, 230, 233, 234, 235, 238, 264. The other 45 involved instances where Price 1 was at some point promoted as a Prices Dropped price, but the Affected Product had already been taking off the Prices Dropped promotion before the last four weeks of the Price 1 period: see SOAF at Annexure B, rows 53, 54, 55, 56, 57, 58, 60, 61, 63, 64, 65, 69, 70, 71, 72, 139, 140, 141, 142, 143, 144, 145, 149, 150, 239, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 267, 268, 271, 272, 273, 274, 275, 276.

Federal Court of Australia

District Registry: Victoria

Division: General

**Australian Competition and Consumer Commission**

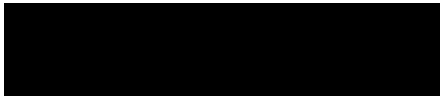
Applicant

**Woolworths Group Limited (ACN 000 014 675)**

Respondent

**Certificate identifying Supplementary Confidential Exhibit PSH-1**

This is **Supplementary Confidential Exhibit PSH-1** to the affidavit of **Paul Stephen Harker** sworn at Level 61, 1 Farrer Place, Sydney NSW 2000 on 13 April 2026 before me:

 .....

Signature of witness



Australian Legal Practitioner

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Filed on behalf of Woolworths Group Limited, the Respondent

Prepared by Peta Stevenson

Law firm **MALLESONS**

Tel +61 2 9296 2492

Email [peta.stevenson@malleasons.com](mailto:peta.stevenson@malleasons.com)

**Address for service**

Level 61, Governor Phillip Tower

1 Farrer Place, Sydney NSW 2000, Australia

Ref: P Stevenson:602-0051665