

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/07/2020 11:35:53 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: NSD2004/2019
File Title: CAMERON BAKER & ANOR v WOOLWORTHS LIMITED ABN 88 000 014 675 & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 16/07/2020 11:38:19 AM AEST

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Defence to the Amended Statement of Claim

No. NSD2004 of 2019

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

Cameron Baker

First Applicant

Rhys Piro

Second Applicant

Woolworths Group Limited (ABN 88 000 014 675)

First Respondent

Woolworths (South Australia) Pty Limited (ABN 34 007 873 118)

Second Respondent

1. In answer to paragraph 1, the respondents:
 - (a) admit that Mr Baker brings the proceeding purportedly as a representative proceeding pursuant to part IVA on his own behalf and on behalf of persons described in paragraph 1; and
 - (b) otherwise do not know and therefore cannot admit paragraph 1.
2. In answer to paragraph 2, the respondents:
 - (a) admit that Mr Piro brings the proceeding purportedly as a representative proceeding pursuant to part IVA on his own behalf and on behalf of persons described in paragraph 2; and
 - (b) otherwise do not know and therefore cannot admit paragraph 2.

Filed on behalf of (name & role of party)	Woolworths Group Limited (ABN 88 000 014 675) and Woolworths (South Australia) Pty Limited (ABN 34 007 873 118), First and Second Respondents, respectively	
Prepared by (name of person/lawyer)	Ian Timothy Bolster	
Law firm (if applicable)	Ashurst Australia	
Tel	(02) 9258 6697	Fax
Email	ian.bolster@ashurst.com	
Address for service	c/- Ashurst	
(include state and postcode)	Level 11, 5 Martin Place, Sydney NSW 2000	

3. The respondents admit paragraph 3 insofar as the Group and Group Members are referred to in the Amended Statement of Claim, and otherwise do not know and therefore cannot admit paragraph 3.
4. The respondents admit paragraph 4.
5. In answer to paragraph 5, the respondents:
 - (a) admit that the Award covered throughout Australia any employer engaged in the general retail industry (as that term is defined in clause 3.1 of the Award), other than employers covered by the Fast Food Industry Award 2010, the Meat Industry Award 2010, the Hair and Beauty Industry Award 2010 or the Pharmacy Industry Award 2010;
 - (b) deny that the Award covered all employees of any such employer, and say that the Award only covered employees in the classifications listed in clause 16 of the Award;
 - (c) admit paragraph 5(2);
 - (d) will refer to and rely on the Award for its full force and effect; and
 - (e) otherwise deny paragraph 5.
6. In answer to paragraph 6, the respondents:
 - (a) admit that Mr Baker commenced employment with Woolworths at its supermarket at Camberwell in Victoria on 13 May 2014, in the position "Replenishment Team Manager" pursuant to an offer in writing from Woolworths dated 6 May 2014 with attached Contract of Employment, which Mr Baker accepted on 7 May 2014;
 - (b) say that Mr Baker entered into further contracts of employment over the course of his employment with Woolworths (collectively with the contract referred to in (a) above, the **Baker Contracts**);

Particulars

- (A) Offer in writing from Woolworths dated 9 December 2016, with attached Contract of Employment.
- (B) Offer in writing from Woolworths dated 31 July 2016, with attached Contract of Employment.
- (c) deny that Mr Baker's base salary upon commencement was \$65,000 and say that Mr Baker's remuneration comprised a base salary of \$60,000 and company superannuation of \$5,500 per annum;
- (d) will refer to and rely on the Baker Contracts for their full force and effect; and

- (e) otherwise deny paragraph 6.
7. In answer to paragraph 7, the respondents:
- (a) say that as at 2 September 2013 Mr Piro was a full-time employee of Woolworths SA at its supermarket at Newton Village Shopping Centre in South Australia in the position of "Replenishment Team Manager";
 - (b) say that Mr Piro was employed pursuant to an offer in writing dated 18 July 2013 with attached Contract of Employment, which Mr Piro accepted on 22 July 2013 (**Piro Contract**);
 - (c) deny that Mr Piro's base salary upon commencement was \$48,000 but say that Mr Piro's remuneration comprised a base salary of \$49,200 and company superannuation of \$4,551 per annum;
 - (d) will refer to and rely on the Piro Contract for its full force and effect; and
 - (e) otherwise deny paragraph 7.
8. In answer to paragraph 8, the respondents:
- (a) say that each of the Baker and Piro Contracts set out:
 - (i) Mr Baker and Mr Piro's respective remuneration, which comprised a base salary (less applicable tax) and company superannuation; and
 - (ii) other benefits and allowances paid under the contracts,
 (together, the **Contract Entitlements**);
 - (b) say that it was a term of the Baker Contracts and Piro Contract that the base salary be paid in fortnightly instalments;
 - (c) say that it was a term of the Award that monetary obligations imposed by the Award may be absorbed into over-Award payments;

Particulars

- (A) Award cl 2.2
- (d) say that, insofar as Contract Entitlements exceeded entitlements under the Award (**Award Entitlements**), the Contract Entitlements comprised over-Award payments;

- (e) say that it was a material term of the Baker Contracts and Piro Contract that if, at any time, Mr Baker and Mr Piro were entitled to any payment (whether under legislation, an industrial instrument, the National Employment Standards or otherwise) (**Minimum Entitlements**) Mr Baker and Mr Piro agreed that:
- (i) as far as possible, the remuneration and other benefits under the Baker Contracts and Piro Contract will be in satisfaction of the Minimum Entitlements over a 26 week period calculated at the applicable minimum rate; and
 - (ii) the Minimum Entitlements do not form part of the Baker Contracts or Piro Contract;

Particulars

- (A) Baker Contracts and Piro Contract, clause 6 "minimum entitlements".
- (f) in the premise of (e) above, the Bakers Contracts and Piro Contract provided that:
- (i) the cumulative amount of Contract Entitlements paid to Baker and Piro and group members respectively were in satisfaction of the cumulative amount of all Award Entitlements, calculated over 26 week periods; and
 - (ii) Contract Entitlements were to be set off against Award Entitlements, over 26 week periods;
- (g) say that, accordingly, in respect of each 26 week period of his employment, each of Mr Baker and Mr Piro was entitled to be paid the greater of:
- (i) the cumulative amount of Contract Entitlements; and
 - (ii) the cumulative amount of Award Entitlements;
- (h) say that for each 26 week period of Mr Baker and Mr Piro's employment:
- (i) if the cumulative amount of Award Entitlements exceeded the cumulative amount of Contract Entitlements that had been paid, then Woolworths or Woolworths SA (as the case may be) was required to make a further payment equalling the amount by which Award Entitlements exceeded Contract Entitlements (**Contractual Shortfall**); and
 - (ii) if the cumulative amount of Contract Entitlements that had been paid exceeded the cumulative amount of Award Entitlements, then no further action was required and Mr Baker and Mr Piro were entitled to keep the

amount by which Contract Entitlements exceeded Award Entitlements (**Contractual Surplus**); and

- (i) otherwise deny paragraph 8.
10. In answer to paragraph 10, the respondents:
- (a) deny that Mr Baker worked a shift on 18 June 2019;
 - (b) say that Mr Baker's last worked shift was 5 June 2019; and
 - (c) otherwise admit paragraph 10.
11. In answer to paragraph 11, the respondents:
- (a) say that Mr Piro remained in the Piro Position up until on or around 9 May 2016, at which point he commenced employment as a non-salaried employee with Woolworths SA in the position of "Store Team Member";
 - (b) say that Mr Piro remained employed by Woolworths SA in a non-salaried position until the end of the shift commenced by him on or about 22 July 2018; and
 - (c) otherwise deny paragraph 11.
12. In answer to paragraph 12, the respondents:
- (a) admit that each of the Baker Position and the Piro Position was:
 - (i) in a supermarket in the general retail industry as defined in the Award;
 - (ii) a Manager Position; and
 - (iii) within the Award classification of "Retail Employee Level 6";
 - (b) deny that each of the Baker Position and the Piro Position was in a Big W Discount Department Store; and
 - (c) otherwise deny paragraph 12.
13. In answer to paragraph 13, the respondents:
- (a) save as set out below, admit that the Award as amended from time to time applied to Mr Baker;
 - (b) save as set out below, admit that the Award as amended from time to time applied to Mr Piro;
 - (c) say that, by reason of s 57 of the FWA, the Award did not apply to employees who were covered by an enterprise agreement;
 - (d) say that the Award only applied to Mr Piro while he was employed in the Piro Position and until on or around 9 May 2016;

- (e) deny that the Award as amended from time to time applied to Mr Piro following the Piro Termination, following which he was covered by an enterprise agreement whilst he remained employed by Woolworths SA;
- (f) deny that the Award as amended from time to time applied to Group Members who were covered by an enterprise agreement;
- (g) say that Group Members who did not hold salaried positions were covered by an enterprise agreement.

Particulars

- (A) Woolworths National Supermarket Agreement 2012.
- (B) Woolworths Supermarkets Agreement 2018.
- (C) BIG W Stores Agreement 2012.
- (D) BIG W Stores Agreement 2019.

14. In answer to paragraph 14, the respondents:

- (a) say that, from 26 May 2014 to 17 March 2019, Mr Baker's ordinary roster was from Tuesday night to Saturday night from 10pm to 7am;
- (b) say that, from 18 March 2019 to the termination of his employment, Mr Baker's ordinary roster was from Monday night to Friday night from 9pm to 6am
(collectively, (a) and (b) are referred to in this defence as the **Baker Ordinary Rosters**); and
- (c) otherwise deny paragraph 14.

15. The respondents repeat paragraphs 4 to 6, 8, 10 and 12-14 of this defence, and otherwise admit paragraph 15.

16. In answer to paragraph 16, the respondents:

- (a) refer to paragraph 45 of this defence and say that Mr Piro's roster prior to June 2014 is irrelevant to these proceedings;
- (b) refer to paragraph 11 of this defence and say that Mr Piro's roster following 9 May 2016 is irrelevant to these proceedings;
- (c) say that, from 23 June 2014 to 4 January 2015, Mr Piro's ordinary roster was a two week rotating roster as follows:
 - (i) Week 1: 1pm to 10pm (Monday to Friday); and

- (ii) Week 2: 1pm to 10pm (Monday, Tuesday, Thursday, Friday) and 10am to 7pm (Saturday);
- (d) say that, from 5 January 2015 to 4 October 2015, Mr Piro's ordinary roster was a two week rotating roster as follows:
 - (i) Week 1: 3pm to 12am (Monday, Wednesday to Friday) and 11.30am to 8.30pm (Saturday); and
 - (ii) Week 2: 3pm to 12am (Monday, Wednesday to Friday) and 1pm to 10pm (Tuesday);
- (e) say that, from 5 October 2015 to 6 December 2015, Mr Piro's ordinary roster was a two week rotating roster as follows:
 - (i) Week 1: 3pm to 12am (Monday, Wednesday to Friday), 1pm to 10pm (Tuesday); and
 - (ii) Week 2: 3pm to 12am (Monday, Wednesday, Friday), 1pm to 10pm (Tuesday), 11.30am to 8.30pm (Saturday);
- (f) say that, from 7 December 2015 to 9 May 2016, Mr Piro's ordinary roster was a two week rotating roster as follows:
 - (i) Week 1: 3pm to 12am (Monday to Friday); and
 - (ii) Week 2: 3pm to 12am (Monday to Wednesday and Friday) and 11.30am to 8.30pm (Saturday),

(collectively, (a) to (e) are referred to in this defence as the **Piro Ordinary Rosters**); and

- (g) otherwise deny paragraph 16.

17. In answer to paragraph 17, the respondents:

- (a) repeat paragraphs 4, 5, 7, 8, 11 and 12 to 13 of this defence;
- (b) admit that Mr Piro was a "full time employee" of Woolworth Limited as defined in the Award from 22 July 2013 to 9 May 2016; and
- (c) otherwise deny paragraph 17.

18. In answer to paragraph 18, the respondents:

- (a) say that Mr Piro, other than when he was on leave, worked in accordance with the Piro Ordinary Rosters with limited exceptions (including on public holidays, where applicable);

- (b) say that Mr Baker's work hours (including on public holidays, where applicable) frequently deviated from the Baker Ordinary Rosters but that he did not work more than 5 days per week; and
- (c) otherwise deny paragraph 18

19. The respondents deny paragraph 19 and say that, for the purposes of the Award, "ordinary hours" of work are defined in Part 5 of the Award

The Alleged Evening Work Contraventions

20. In answer to paragraph 20, the respondents:

- (a) repeat paragraph 8 of this defence;
- (b) admit that there were terms of the Award applicable to Mr Baker's employment in the Baker Position and Mr Piro's employment in the Piro Position for any "ordinary hours" worked by them after 18.00 on any Monday to Friday, for which a loading of 25% applied (the **Evening Work Term/Loading**);
- (c) say that the Evening Work Term/Loading was to be taken into account in calculating the Award Entitlements;
- (d) say that the Evening Work Loading is calculated on the rates of pay under the Award;
- (e) say that the Evening Work Loading is only payable for ordinary hours and not overtime hours; and
- (f) otherwise deny paragraph 20.

21. In answer to paragraph 21, the respondents:

- (a) repeat paragraphs 8 and 20 of this defence;
- (b) say that, in respect of each 26 week period of Mr Baker's, Mr Piro's and other group members' employment, Woolworths or Woolworths SA (as the case may be) in 2019, before the proceedings commenced, began the process of:
 - (i) reconciling their Contractual Entitlements and Award Entitlements, having regard to the Evening Work Term/Loading, the Night Work/Term Loading, the Saturday Work Term/Loading, the Sunday Work Term/Loading, the Public Holiday Work Term/Loading, and the Overtime Term/Rate (as each of those terms is defined or described in paragraphs 20, 23, 26, 29, 32 and 35 of this defence);
 - (ii) paying the Contractual Shortfall (to the extent that any has been determined as arising to date), plus interest on the Contractual Shortfall

calculated at 5.5%, in respect of 26 week periods where Award Entitlements exceeded the amount that had been paid pursuant to Contract Entitlements; and

(iii) making the company superannuation contributions in respect of so much of the Contractual Shortfall which constitutes Ordinary Time Earnings, plus interest on that amount at 10% per annum; and

(c) otherwise deny paragraph 21.

22. In answer to paragraph 22, the respondents:

(a) repeat paragraphs 8, 20 and 21 of this defence; and

(b) otherwise deny paragraph 22.

The Alleged Night Work Contraventions

23. In answer to paragraph 23, the respondents:

(a) repeat paragraph 8 of this defence;

(b) say that there were terms of the Award applicable to Mr Baker's employment in the Baker Position and Mr Piro's employment in the Piro Position for any "ordinary hours" worked by them after 23.00 on any day, for which the following rates applied:

(i) time and a half for the first three hours so worked;

(ii) double time thereafter until 07.00 (Monday to Saturday) or 09.00 (Sunday);
and

(the **Night Work Term/Loading**)

Particulars

(A) Award cl 27.2

(B) Award cl 29(2)(a)

(c) say that the Night Work Term/Loading was to be taken into account in calculating the Award Entitlements;

(d) say that the Night Work Loading is calculated on the rates of pay under the Award;
and

(e) otherwise deny paragraph 23.

24. In answer to paragraph 24, the respondents:
- (a) repeat paragraphs 8, 21 and 23 of this defence; and
 - (b) otherwise deny paragraph 24.
25. In answer to paragraph 25, the respondents:
- (a) repeat paragraphs 8, 23 and 24 of this defence; and
 - (b) otherwise deny paragraph 25.

The Alleged Saturday Work Contraventions

26. In answer to paragraph 26, the respondents:
- (a) repeat paragraph 8 of this defence;
 - (b) admit that there were terms of the Award applicable to Mr Baker's employment in the Baker Position and Mr Piro's employment in the Piro Position for any "ordinary hours" worked by them on a Saturday, for which a loading of 25% applied (the **Saturday Work Term/Loading**);
 - (c) say that the Saturday Work Term/Loading was to be taken into account in calculating the Award Entitlements;
 - (d) say that the Saturday Work Loading is calculated on the rates of pay under the Award;
 - (e) say that the Saturday Work Loading is only payable for ordinary hours and not overtime hours; and
 - (f) otherwise deny paragraph 26.
27. In answer to paragraph 27, the respondents:
- (a) repeat paragraphs 8, 21 and 26 of this defence; and
 - (b) otherwise deny paragraph 27.
28. In answer to paragraph 28, the respondents:
- (a) repeat paragraphs 8, 26 and 27 of this defence; and
 - (b) otherwise deny paragraph 28.

The Alleged Sunday Work Contraventions

29. In answer to paragraph 29, the respondents:

- (a) repeat paragraph 8 of this defence;
- (b) admit that there were terms of the Award applicable to Mr Baker's employment in the Baker Position and Mr Piro's employment in the Piro Position for any "ordinary hours" worked by them on a Sunday, for which a loading applied as follows:
 - (i) 100% loading between 1 January 2010 and 30 June 2017;
 - (ii) 95% loading between 1 July 2017 and 30 June 2018;
 - (iii) 80% loading between 1 July 2018 and 30 June 2019; and
 - (iv) 65% loading between 1 July 2019 to 30 June 2020,(the **Sunday Work Term/Loading**);
- (c) say that the Sunday Work Term/Loading was to be taken into account in calculating the Award Entitlements;
- (d) say that the Sunday Work Loading is calculated on the rates of pay under the Award;
- (e) say that the Sunday Work Loading is only payable for ordinary hours and not overtime hours; and
- (f) otherwise deny paragraph 29.

30. In answer to paragraph 30, the respondents:

- (a) repeat paragraphs 8, 21 and 29 of this defence; and
- (b) otherwise deny paragraph 30.

31. In answer to paragraph 31, the respondents:

- (a) repeat paragraphs 8, 29 and 30 of this defence; and
- (b) otherwise deny paragraph 31.

The Alleged Public Holiday Contraventions

32. In answer to paragraph 32, the respondents:

- (a) repeat paragraph 8 of this defence;
- (b) admit that there were terms of the Award applicable to Mr Baker's employment in the Baker Position and Mr Piro's employment in the Piro Position for any hours worked by them on a Public Holiday, for which a loading applied as follows:
 - (i) 150% loading between 1 January 2010 and 30 June 2017; and
 - (ii) 125% loading from 1 July 2017,
 (the **Public Holiday Work Term/Loading**);
- (c) say that the Award allowed employees to be given Time Off In Lieu of the Public Holiday Work Loading;
- (d) say that the Public Holiday Work Term/Loading was to be taken into account in calculating the Award Entitlements;
- (e) say that the Public Holiday Work Loading is calculated on the rates of pay under the Award;
- (f) say that the Public Holiday Work Loading is only payable for ordinary hours and not overtime hours; and
- (g) otherwise deny paragraph 32.

33. In answer to paragraph 33, the respondents:

- (a) repeat paragraphs 8, 21 and 32 of this defence; and
- (b) otherwise deny paragraph 33.

34. In answer to paragraph 34, the respondents:

- (a) repeat paragraphs 8, 32 and 33 of this defence; and
- (b) otherwise deny paragraph 34.

The Alleged Overtime Contraventions

35. In answer to paragraph 35, the respondents:

- (a) repeat paragraph 8 of this defence;
- (b) say that the reference to 'space of hours' in paragraph 35 of the Amended Statement of Claim should be a reference to 'span of hours';

- (c) admit that there were terms of the Award applicable to Mr Baker's employment in the Baker Position and Mr Piro's employment in the Piro Position for any hours required by Woolworths or Woolworths SA to be worked by them:
- (i) in excess of the ordinary hours of work (as defined in the Award);
 - (ii) outside the span of hours (excluding shiftwork); or
 - (iii) outside the roster conditions prescribed in clauses 27 and 28 of the Award, to be paid at time and a half for the first three hours and double time thereafter (the "Overtime Term/Rate").

Particulars

(A) Award, cl 29.2

- (d) say that the Award provides that, due to unexpected operational requirements, an employee's roster for a given day may be changed by mutual agreement with the employee prior to the employee arriving for work;

Particulars

(A) Award, cl 28.14(b)

- (e) say that the Award allows employees to be given Time Off In Lieu of Overtime Rates;
- (f) otherwise deny paragraph 35.

36. In response to paragraph 36, the respondents:

- (a) say that the assertion that there was a requirement from time to time has not been properly pleaded or particularised and is therefore embarrassing and liable to be struck out; and
- (b) by reason of paragraph (a), deny paragraph 36.

37. In answer to paragraph 37, the respondents:

- (a) repeat paragraph 8, 21, 35 and 36 of this defence;
- (b) say that, in the premises of paragraphs 35(b) and 35(c) above, Mr Baker and Mr Piro are only entitled to overtime for working hours outside of the Baker Ordinary Rosters or Piro Ordinary Rosters if:
 - (i) they work after their rostered end time; and
 - (ii) their total worked hours are greater than their total rostered hours; and
- (c) otherwise deny paragraph 37.

38. In answer to paragraph 38, the respondents:
- (a) repeat paragraphs 8, 36 and 37 of this defence; and
 - (b) otherwise deny paragraph 38.

The Alleged Record Keeping Contraventions

39. The respondents admit paragraph 39.
40. In answer to paragraph 40, the respondents:
- (a) repeat paragraph 36 of this defence;
 - (b) say that Woolworths and Woolworths SA required employees, including Mr Baker and Mr Piro, to clock in / out at the start and end of each shift;

Particulars

- (A) Woolworths and Woolworths SA directed employees to use the biometric finger scan clock in / clock out system orally and in writing as part of induction training: Store induction handbook – all team members (2016).
 - (B) It was a requirement that employees use the biometric finger scan clock in/ clock out system, compliance with which was followed-up by Store Administrators: Document entitled "Time Clock" available on the intranet and accessible by Mr Baker and Mr Piro.
- (c) say that the clock in records were retained by Woolworths and Woolworths SA as records of the actual hours worked by Mr Baker and Mr Piro, and therefore of the overtime worked by them;
- (d) say that the clock in records show when Mr Baker and Mr Piro started and finished working each day and can be compared to the Baker Ordinary Rosters and Piro Ordinary Rosters; and
- (e) otherwise deny paragraph 40
41. In response to paragraph 41, the respondents:
- (a) admit that any contravention of each of the Evening Work Term, Night Time Work Term, Saturday Work Term, Sunday Work Term, Public Holiday Work Term and Overtime Work Term was prohibited by s 45 of the FWA;
 - (b) admit that a contravention of the Record Keeping Obligation would be prohibited by s 45 of the FWA;

- (c) admit that a contravention of s 45 of the FWA is, by operation of s 539 of the FWA a civil remedy provision for the purposes of ss 545 and 546;
- (d) repeat paragraphs [20] to [40] of this defence and deny that the respondents engaged in any of the contraventions alleged;
- (e) say that if, which is denied, the respondents engaged in any of the contraventions alleged, they rely on s 556 and s 557 of the FWA;
- (f) further say that if, which is denied, Woolworths and Woolworths SA are liable for contravening more than one of the Evening Work Term/Loading, the Night Work/Term Loading, the Saturday Work Term/Loading, the Sunday Work Term/Loading, the Public Holiday Work Term/Loading, and the Overtime Term/Rate (as each of those terms is defined or described in paragraphs 20, 23, 26, 29, 32 and 35 of this defence), and upon the applicants affording procedural fairness to the respondents as to the case they have to meet on the question of penalty and the finding of the Court on the finding of liability (if any), the respondents reserve the right to invoke section 557;
- (g) in the same premises, the respondents reserve the right to contend that, by operation s 556, only a single penalty can be imposed in respect of a particular course of conduct;
- (h) say that in the premises of sub-paragraph (g) above, any penalty imposed in respect of Mr Baker and Mr Piro operates as a bar against penalties pleaded in respect of other Group Members; and
- (i) otherwise deny paragraph 41.

Group Members and their claims

- 42. In answer to paragraph 42, the respondents:
 - (a) repeat paragraphs 8, 20, 23, 26, 29, 32, 35 of this defence; and
 - (b) otherwise deny paragraph 42.
- 43. In answer to paragraph 43, the respondents:
 - (a) repeat paragraphs 21 and 42 of this defence; and
 - (b) otherwise deny paragraph 43.
- 44. In answer to paragraph 44, the respondents:
 - (a) repeat paragraphs 41 to 43 of this defence;

- (b) say that, to the extent group members seek compensation and/or damages with respect to alleged contraventions arising prior to 29 November 2013 in the case of claims against Woolworths (subject to paragraph 45 below), and prior to 24 June 2014 in the case of claims against Woolworths SA, those claims are statute barred pursuant to s 544 of the FWA; and
 - (c) otherwise deny paragraph 44.
45. Further, in respect of the amendments to the originating application and statement of claim filed on 24 June 2020 and 18 June 2020 respectively:
- (a) the Court should order that those amendments take effect as at the date of the making of those amendments, namely 24 June 2020;
 - (b) those amendments do not add or substitute a new claim for relief, or a new foundation in law for a claim for relief, that arises out of the same facts or substantially the same facts as those pleaded in the statement of claim filed 29 November 2019;
 - (c) to the extent that the causes of action of the applicants and each Group Member raised by those amendments accrued or arose more than six years prior to 24 June 2020, those causes of action are statute barred pursuant to s 544 of the FWA.

Date: 16 July 2020



Signed by Ian Timothy Bolster
Lawyer for the First and Second Respondents

This pleading was prepared by Ian Timothy Bolster, lawyer and settled by Yaseen Shariff of Counsel and Ruth C A Higgins SC.

Certificate of lawyer

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

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

Date: 16 July 2020



Signed by Ian Timothy Bolster
Lawyer for the First and Second Respondents