

WOOLWORTHS SALARIED EMPLOYEE UNDERPAYMENT CLASS ACTION

Baker & Another v Woolworths Group Limited & Another
(NSD 2004 of 2019, Federal Court of Australia)

NOTICE OF PROPOSED SETTLEMENT & OPT OUT OF CLASS ACTION

KEY POINTS

You have received this notice because you are a class member in the salaried employee underpayment class action legal proceeding that was filed in the Federal Court of Australia against Woolworths. The parties have agreed to settle the proceeding on the basis that it be discontinued. The settlement is subject to approval by the Court.

The workplace regulator, the Fair Work Ombudsman has commenced a separate legal proceeding in relation to alleged underpayments of salaried staff, *Fair Work Ombudsman v Woolworths Group Limited & Anor* (NSD581/2021) ("**FWO Proceeding**"). The FWO Proceeding will continue.

You can do one of three things in response to this notice:

1. Opt out of the class action

You can exclude yourself from the class action by opting out, which means you are not bound by the settlement agreement (if approved) and will not receive any benefits flowing from it.

2. Object to the settlement

You can raise an objection to the settlement of the class action, which means you will remain in the class action but oppose the settlement. The Court will take into account your objection, but you will be bound by the terms of the settlement (if approved).

3. Do nothing (which means you will remain in the class action)

You can do nothing if you would like to remain in the class action, which means you will be bound by the terms of the settlement agreement (if approved). This will be the 'default' option unless you choose option 1 and opt out.

You should read this notice carefully. If there is anything in it that you don't understand, you should seek legal advice. The deadline to opt out or object to the settlement is 4:00pm of 8 December 2021.

ABOUT THE CLASS ACTION

A class action is a legal proceeding brought by someone on behalf of a group of people with similar claims (called a “class” or “group”).

This class action has been commenced in the Federal Court of Australia against Woolworths Group Limited and Woolworths (South Australia) Pty Ltd ("**Woolworths**") on behalf of salaried employees who worked at Woolworths Supermarkets, Woolworths Metro, or BIG W from 29 November 2013 to when the legal proceeding was filed.

The class action alleges that, if an employee's entitlement under the General Retail Industry Award 2010 ("**Award**") was higher than their annual salary, then they should have been paid the higher amount. The class action seeks to recover any additional amounts that should have been paid (beyond the amounts that Woolworths has already repaid under its Salaried Team Pay Review remediation process) and have penalties (like a fine) imposed on Woolworths and paid to class members.

THE SETTLEMENT

The Applicants and Woolworths have agreed to resolve the class action out of Court. This means they will not ask the Court to decide who should win the case. This is called a “settlement.”

The Court still needs to approve the settlement. The Court will need to decide if it is fair and reasonable and in the interests of all class members. The Applicants and Woolworths think it is.

Your legal rights may be affected by the settlement unless you choose to “opt out” of the class action. More information about what this means and how to opt out is set out below.

In deciding whether the settlement is fair and reasonable and in the interests of all class members, the Court will consider information provided by any class members who do not agree with the settlement and who provide an “objection notice”. More information about what this means and how to send an objection notice is set out below.

The Court will hold a hearing (like a trial) in order to decide whether to approve the settlement. It will be at 10.15 am on 15 December 2021 via Microsoft Teams. You can request a link to watch the hearing by emailing the Court at least 48 hours before the hearing at nswreg@fedcourt.gov.au, with the subject line: *Request to Observe Hearing NSD2004/2019*.

SETTLEMENT DETAILS

As part of the settlement, the Applicants and Woolworths have agreed to the following:

- (a) After the end of the FWO Proceeding, Woolworths will pay any outstanding money owed to the Applicants and class members between 29 November 2013 and 7 October 2021 ("**Relevant Period**") according to the legal principles decided by the Court in the FWO Proceeding. In the event that the FWO Proceeding is discontinued or Woolworths does not pay any outstanding money, the Applicants and class members may recommence the class action or bring a new class action to enforce payment;

- (b) Woolworths will pay \$1,750,000 in full satisfaction of the legal costs of the Applicants and those class members who have retained Adero. Woolworths will also pay \$25,000 to the Applicants for their time and expenses in the class action. This means you will not be required to pay any legal costs for the class action (because Woolworths is paying these costs for you);
- (c) If the Court imposes any penalties on Woolworths in the FWO Proceeding, the Applicants will ask the Court that the penalties be paid to class members;
- (d) The class members will not be able to commence, or participate in, any further class actions against Woolworths and its related entities (including Endeavour Group Limited) in relation to underpayment claims during the Relevant Period. This only applies to class actions and does not release Woolworths and its related entities from any individual underpayment (or other) claims you may have;
- (e) The Applicants and Adero, but not class members, will release Woolworths and its related entities from any class action or individual underpayment claim during the Relevant Period. This means Adero cannot advise on underpayment claims or act on behalf of any individual making an underpayment claim against Woolworths and its related entities; and
- (f) The class action will be discontinued.

SETTLEMENT & YOU

If the settlement is approved by the Court, the class action will be discontinued.

However, the FWO Proceeding will continue. The FWO Proceeding makes similar claims that the class action makes against Woolworths, but about the period from 17 June 2015 to 30 September 2019 and only about Woolworths Supermarkets and Metro stores (that is, not BIG W).

As part of the settlement, Woolworths has agreed to apply the legal principles that the Court determines in the FWO Proceeding about the proper interpretation of the Award and contracts of employment, to calculate whether any class member is entitled to any further payment for the Relevant Period (beyond that already received from Woolworths under the Salaried Team Pay Review remediation process). If you are entitled to a further payment after the end of the FWO Proceeding, you will be paid that amount directly by Woolworths. The Fair Work Ombudsman does not require any contributions by class members for its legal costs.

The settlement does not prevent you from making an individual claim against Woolworths, including claims for hours worked but not recorded. Adero cannot act for you in those claims. You can, however, speak to another lawyer for legal advice about an individual claim you may have. If you have a retainer agreement with Adero, Adero will write to you separately regarding the termination of that retainer (if settlement is approved).

You can also access Woolworths' "Salaried Team Pay Review" (STPR) process, which Woolworths has set up as a way for you to be able to resolve any questions or concerns with Woolworths directly. If your question or concern is not resolved directly with Woolworths to your satisfaction, you may refer it for an independent external review under the STPR process. The STPR process is separate

to a legal proceeding, and you can access it directly at no cost to you. You do not have to pay any part of a payment you may receive from that process to any lawyers. Details are available at: team.woolworths.com.au/faqs.html.

YOUR OPTIONS

You have three options:

1. Opt out of the class action

If you "opt out", you will no longer be a class member. This means that you will not be bound by any orders in the class action or the settlement (if approved). The key terms of the settlement are set out above under the heading "settlement details". If you "opt out" of the class action, it means:

- (a) you will not be bound by the restriction in the settlement agreement to not commence, or participate in, any further class actions against Woolworths and its related entities in relation to underpayment claims during the Relevant Period;
- (b) you will not get the benefit of the fact that Woolworths will apply the legal principles determined in the FWO Proceeding to class members for the Relevant Period; and
- (c) you will not get the benefit of any successful application by the Applicants in the FWO Proceeding to have any penalties imposed on Woolworths paid to class members.

If you would like to opt out, you need to fill in the form at Schedule A and send it to the Court by no later than 4:00pm on 8 December 2021 either:

- (a) by email to: nswreg@fedcourt.gov.au, with the subject line: *Opt Out Notice NSD2004/2019*; or
- (b) by post to: Federal Court of Australia Registry, Locked Bag A6000, Sydney South, NSW 1235.

2. Object to the settlement of the class action

If you do not wish to "opt out", but you oppose the settlement reached by the parties, you can object to the settlement. If the Court approves the settlement, despite your objection, you will be bound by the settlement.

If you would like to object to the settlement, you need to fill in the form at Schedule B and by no later than 4:00pm on 8 December 2021:

- (a) send it to the Court either:
 - (i) by email to: nswreg@fedcourt.gov.au, with the subject line: *Objection Notice NSD2004/2019*; or

- (ii) by post to: Federal Court of Australia Registry, Locked Bag A6000, Sydney South, NSW 1235; and
- (b) send it to Adero by email to: woolworths@aderolaw.com.au, with the subject line: *Objection Notice NSD2004/2019*.

3. Do nothing (which, by default, means you will remain in the class action)

If you wish to remain a class member and participate in the settlement, you do not need to do anything. If the settlement is approved by the Court, you will be bound by the settlement agreement. The key terms of the settlement are set out above under the heading “settlement details”.

If the settlement is not approved by the Court, the class action will continue and you will remain a class member.

Schedule A

OPT OUT NOTICE

**ONLY COMPLETE THIS FORM IF YOU WISH TO NOT PARTICIPATE
IN THE CLASS ACTION**

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

Cameron Baker and another
Applicants

Woolworths Group Limited (ABN 88 000 014 675) and another
Respondents

To: nswreg@fedcourt.gov.au
Subject Line: Opt Out Notice NSD2004/2019

OR

Federal Court of Australia Registry
Locked Bag A6000
Sydney South, NSW 1235

The person named below as a group member in this class action gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth) that the group member is **OPTING OUT** of the class action.

<i>Name of group member (print):</i>	
<i>Postal address of group member:</i>	
<i>Telephone:</i>	
<i>Email:</i>	

If you are signing as the representative of the group member:

<i>Name of person completing this form (print):</i>	
<i>Authority of person completing this form</i>	
<i>Postal address of person completing this form:</i>	
<i>Telephone of person completing this form:</i>	
<i>Email of person completing this form:</i>	

Date: Signature: Print name:

Schedule B

NOTICE OF OBJECTION

**ONLY COMPLETE THIS FORM IF YOU WISH TO OBJECT TO THE SETTLEMENT
OF THE CLASS ACTION**

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

Cameron Baker and another
Applicants

Woolworths Group Limited (ABN 88 000 014 675) and another
Respondents

To: nswreg@fedcourt.gov.au
Subject Line: Objection Notice NSD2004/2019

OR

Federal Court of Australia Registry
Locked Bag A6000
Sydney South, NSW 1235

The person below gives notice that the person or entity **OBJECTS** to the proposed settlement of this proceeding.

DETAILS OF OBJECTOR

<i>Name of group member (print):</i>	
<i>Postal address of group member:</i>	
<i>Telephone:</i>	
<i>Email:</i>	

REASONS FOR OBJECTION

[Set out below any submissions, attaching additional pages if necessary and any affidavit evidence.]

--