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Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
File Number:	VID1131/2018
File Title:	NORMAN LESLIE WILLS AND JANE ANNE DANAHER (AS TRUSTEES FOR THE MINTY TIN SUPERANNUATION FUND) v WOOLWORTHS GROUP LTD (FORMERLY WOOLWORTHS LTD)
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 6/07/2020 9:41:15 AM AEST

Registrar

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Form 33
Rule 16.32

Defence to the Further Amended Statement of Claim

VID 1131 of 2018

Federal Court of Australia
District Registry: Victoria
Division: General

NORMAN LESLIE WILLS and JANE ANNE DANAHER (AS TRUSTEES FOR THE MINTY TIN SUPERANNUATION FUND) and another

Applicants

WOOLWORTHS GROUP LTD (FORMERLY WOOLWORTHS LTD) (ACN 000 014 675)

Respondent

1 The respondent (**Woolworths**):

- (a) in response to paragraph 1(b), denies that the applicants or any persons suffered loss or damage by or resulting from conduct of Woolworths pleaded in the Statement of Claim; and
- (b) otherwise does not know and cannot admit paragraph 1.

2 Woolworths does not know and cannot admit paragraph 2.

3 Woolworths repeats paragraph 1(a) above and, on that basis, denies paragraph 3.

4 Woolworths:

- (a) in response to paragraph 4(a):
 - (i) denies that Woolworths is a company carrying on a business of the retail sale of home improvement goods;

Filed on behalf of Woolworths Group Ltd, the Respondent

Prepared by Moira Leonie Saville
Law firm **KING & WOOD MALLESONS**
Tel (02) 9296 2311
Email moira.saville@au.kwm.com

Fax +61 2 9296 3999

Address for service

Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000
Ref: MLS:602-0023953

Form approved 01/08/2011

- (ii) says that at all material times Woolworths owned two thirds of the issued shares in Hydrox Holdings Pty Ltd which was a company carrying on a business involving the retail sale of home improvement goods;
- (iii) otherwise denies that Woolworths carried on a business of the retail sale of home improvement goods;
- (iv) otherwise admits paragraph 4(a);
- (b) admits paragraphs 4(b) - (e-f); and
- (c) ~~in response to paragraph 4(f);~~
 - (i) ~~denies paragraph 4(f); and~~
 - (ii) ~~further says that Woolworths operates using a financial year ending on the final Sunday of June, with the subsequent financial year commencing on the day following the final Sunday of June, with the result that some financial years consist of 52 weeks, whereas others consist of 53 weeks.~~

5 Woolworths admits paragraph 5.

6 Woolworths admits paragraph 6.

7 Woolworths admits paragraph 7.

8 Woolworths admits paragraph 8.

9 Woolworths repeats paragraph 4 and otherwise admits paragraph 9.

B.2 Directors and Alleged Officers of Woolworths

B.2.1 The Executive and Alleged Officers

9A. In response to paragraph 9A, Woolworths:

- (a) admits paragraph 9A(a) ~~that Mr Jegen was during the Relevant Period the Managing Director of Supermarkets for Woolworths until on or about 26 February 2015; and~~
- (b) denies paragraph 9A(b).

9B. Woolworths admits paragraph 9B.

9C. Woolworths admits paragraph 9C.

9D. In response to paragraph 9D, Woolworths:

- (a) admits paragraph 9D(a) ~~that Mr Banducci was during the Relevant Period the Managing Director of Supermarkets for Woolworths from on or about 26 February 2015; and~~

- (b) denies paragraph 9D(b).
- 9E. In response to paragraph 9E, Woolworths:
 - (a) admits paragraph 9E(a); and
 - (b) denies paragraph 9E(b).
- 9F. In response to paragraph 9F, Woolworths:
 - (a) admits paragraph 9F(a); and
 - (b) denies paragraph 9F(b).
- 9G. In response to paragraph 9G, Woolworths:
 - (a) admits paragraphs 9G(a) and (b); and
 - (b) denies paragraph 9G(c).
- 9H. In response to paragraph 9H, Woolworths:
 - (a) admits that Mr Roberts was during the Relevant Period the Finance Director – Supermarkets from in or about July 2014; and
 - (b) denies paragraph 9H(b).
- 9I. In response to paragraph 9I, Woolworths:
 - (a) admits paragraph 9I(a); that Ms Lam was during the Relevant Period the Head of Commercial Finance – Supermarkets until in or about January 2015 and was during the relevant period the Head of Finance, Woolworths group from in or about February 2015; and
 - (aa) admits paragraph 9I(aa); and
 - (b) denies paragraph 9I(b).
- 9J. In response to paragraph 9J, Woolworths:
 - (a) admits that Mr Harper was during the Relevant Period Finance Manager, Corporate from in or about September 2014; and
 - (b) denies paragraph 9J(b).
- 9K. In response to paragraph 9K, Woolworths:
 - (a) admits paragraph 9K(a); and
 - (b) denies paragraph 9K(b).
- 9L. In response to paragraph 9L, Woolworths:
 - (a) admits paragraph 9L(a); and

- (b) denies paragraph 9L(b).
- 9M. In response to paragraph 9M, Woolworths:
 - (a) admits paragraph 9M(a); and
 - (b) denies paragraph 9M(b).
- 9N. In response to paragraph 9N, Woolworths:
 - (a) admits paragraph 9N(a); and
 - (b) denies paragraph 9N(b).
- 9O. In response to paragraph 9O, Woolworths:
 - (a) admits paragraph 9O(a); and
 - (b) denies paragraph 9O(b).
- 9P. In response to paragraph 9P, Woolworths:
 - (a) refers to and repeats paragraphs 9A to 9O above;
 - (b) says that paragraph 9P asserts a conclusion of law but makes no allegation of fact;
 - (c) admits that for the purposes of *Listing Rule* 19.12, Woolworths is taken to become aware of information if, and as soon as, an officer of Woolworths has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of Woolworths;
 - (d) says further that a company may be “aware” of information for the purposes of *Listing Rule* 19.12 but not “have” that information for the purposes of s 674(2)(b) of the *Corporations Act*; and
 - (e) otherwise denies paragraph 9P.

B.2.2 The Board of Woolworths

- 9Q. Woolworths admits paragraph 9Q.
- 9R. Woolworths admits paragraph 9R.
- 9S. Woolworths admits paragraph 9S.
- 9T. Woolworths admits paragraph 9T.
- 9U. Woolworths admits paragraph 9U.
- 9V. Woolworths admits paragraph 9V.
- 9W. Woolworths admits paragraph 9W.

9X. Woolworths admits paragraph 9X.

9Y. In response to paragraph 9Y:

- (a) refers to and repeats paragraphs 9B and 9Q to 9X above;
- (b) says that paragraph 9Y asserts a conclusion of law but makes no allegation of fact;
- (c) admits that for the purposes of *Listing Rule* 19.12, Woolworths is taken to become aware of information if, and as soon as, an officer of Woolworths has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of Woolworths;
- (d) says further that a company may be “aware” of information for the purposes of *Listing Rule* 19.12 but not “have” that information for the purposes of s 674(2)(b) of the *Corporations Act*; and
- (e) otherwise denies paragraph 9Y.

B.3 Woolworths’ Businesses

9Z. Woolworths:

- (a) in response to 9Z(a):
 - (i) denies the paragraph; and
 - (ii) says that Woolworths calculated NPAT at a group level and used earnings before interest and tax (**EBIT**) to measure the performance of individual business units;
- (b) in response to paragraph 9Z(b):
 - (i) says that Woolworths’ financial performance at all material times was reliant on Supermarkets’ performance to the extent set out in its published financial statements;
 - (ii) otherwise denies paragraph 9Z(b); and
- (c) in response to paragraph 9Z(c), Woolworths
 - ~~(i) denies the paragraph; and~~
 - (ii) refers to and repeats paragraphs 4(a) and 9Z(a) above; and
 - (iii) otherwise admits paragraph 9Z(c).

B.4 Woolworths’ Strategic Plan and FY15 Budget

9AA. In response to paragraph 9AA, Woolworths:

(a) says that:

- (i) the Board was responsible for overseeing and appraising Woolworths' strategies, policies and performance including reviewing and approving strategic initiatives, reviewing Woolworths' budget and monitoring its financial performance;
- (ii) the principal objective of its Board was to maintain and increase shareholder value while ensuring that Woolworths' overall activities were properly managed; and
- (iii) Woolworths aimed to achieve that objective by achieving sustainable long-term profitable growth;
- (iv) Woolworths released a presentation on 2 November 2011, which included an announcement that Mr O'Brien had four strategic priorities for Woolworths, being:
 - (A) extend and defend leadership in food and liquor;
 - (B) act on Woolworths' portfolio to maximise shareholder value;
 - (C) maintain Woolworths' track record of building new growth businesses; and
 - (D) put in place the enablers for a new era of growth;
- (v) that the strategy summarised in paragraph 9AA(a)(ii) – (iv) above:
 - (A) was a long-term strategy;
 - (B) did not envisage or entail that each week, month, quarter or year would necessarily or invariably deliver uninterrupted profit and/or sales growth;
 - (C) was not and was not intended to be inflexible or unchanging; and
 - (D) was instead intended to adapt, develop and evolve under the oversight of the Board having regard to matters such as Woolworths' assessment of market conditions (including specific business risks and opportunities), Woolworths' past performance and Woolworths' business capacity;
- (b) admits that Woolworths maintained the overarching strategy outlined in paragraph 9AA(a) above at all material times; and
- (c) otherwise denies paragraph 9AA.

9AB. In response to paragraph 9AB, Woolworths:

- (a) admits that prior to 29 May 2014, officers and employees of Woolworths developed a financial plan for FY15-17 which was recorded in the documents particularised in respect of paragraph 9AB of the Further Amended Statement of Claim (EASOC);
- (b) relies upon those documents for their full force and effect; and
- (c) otherwise denies paragraph 9AB.

9AC. Woolworths repeats paragraph 9AB above and otherwise denies paragraph 9AC.

9AD. In response to paragraph 9AD, Woolworths:

- (a) admits paragraphs 9AD(a) and (c);
- (b) says that Mr O'Brien and Mr Marr conducted a "top down" analysis of the budgets provided by the business units, having regard to factors such as market expectations and conditions;
- (c) says that Mr Marr did not generally review or use working documents which had been prepared by business units for the purposes of their "bottom up" budget referred to in paragraph 9AD(a) of the EASOC because the outputs were reflected in material provided to him for the purposes of preparing his presentations to the Woolworths Board; and
- (d) otherwise denies paragraph 9AD.

B.5 The context within which Woolworths operated

9AE. In response to paragraph 9AE, Woolworths:

- (a) says that the pleading is vague, ambiguous and embarrassing in that:
 - (i) the terms Australian Supermarkets Industry and Australian Food Retail Market are not defined; and
 - (ii) the concept of "consolidation" in this context is unclear and, in any event, is not a binary one but exists upon a spectrum from fragmentation to consolidation;
- (b) admits that supermarket businesses operating in Australia are competitive with one another and with other participants in food and grocery retailing; and
- (c) otherwise denies paragraph 9AE.

9AF. Woolworths:

- (a) in response to paragraph 9AF(a):

- (i) says that the performance of its Australian supermarkets business could be affected by external market influences including but not limited to those specified in paragraph 9AF(a)(i) to ~~(xiviii)~~ of the EASOC;
 - (ii) denies that ~~the matters specified in paragraph 9AF(a)(vi) to (xi) Australian expenditure on food, the rate of food inflation or the performance of Woolworths' competitors~~ were entirely outside of Woolworths' control; and
 - (iii) otherwise does not know and does not admit paragraph 9AF(a);
- (b) in response to paragraph 9AF(b):
- (i) admits that its performance relative to its competitors in connection with the supply of food and groceries in Australia could be affected by factors within Woolworths' control including, but not limited to, the factors set out in paragraph 9AF(b)(i) to (v) of the EASOC;
 - (ii) denies that the factors set out in paragraph 9AF(b)(i) to (v) of the EASOC were entirely within Woolworths' control; and
 - (iii) otherwise does not know and does not admit paragraph 9AF(b).

9AG. In response to paragraph 9AG, Woolworths:

- (a) says that its NPAT from time to time was related to factors including, but not limited to, its market share of the markets in which it operated, the size of those markets, Woolworths' costs, Woolworths' prices, Woolworths' revenue and Woolworths' tax burden; and
- (b) otherwise denies paragraph 9AG.

9AH. Woolworths denies paragraph 9AH and further says:

- (a) a reduction in costs associated with improvements in efficiency and productivity would tend to positively rather than negatively affect Woolworths' competitive position; and
- (b) an increase in prices would not have any necessary relationship to Woolworths' NPAT or its competitive position.

9AI. Woolworths denies paragraph 9AI.

9AJ. In response to paragraph 9AJ, Woolworths:

- (a) admits that the performance and competitive position of its Australian supermarkets business could be, and were, measured by reference to the metrics specified in paragraphs 9AJ(a) to (g) of the EASOC; and

(b) otherwise denies paragraph 9AJ.

9AK. Woolworths admits paragraph 9AK.

B.6 Relative Price Position and Price Perception

9AL. In response to paragraph 9AL, Woolworths:

- (a) says that the allegation is hypothetical and artificial in that price position and price perception cannot sensibly be divorced from “all other factors”; and
- (b) on that basis, does not know and does not admit paragraph 9AL.

9AM. In response to paragraph 9AM, Woolworths:

- (a) refers to and repeats the answer to paragraph 9AL;
- (b) admits that consumers’ perceptions of the prices in Woolworths’ supermarkets business could be affected by altering those prices and by engaging in marketing to advertise those alterations;
- (c) says that consumers’ perceptions of the prices in Woolworths relative to Coles was also dependent in part on the pricing and advertising activities of Coles and therefore could not necessarily be “~~increased~~ improved” by activities of Woolworths; ~~and~~

(ca) admits that the relative position of Woolworths’ and Coles’ prices could be affected by altering Woolworths’ prices;

(cb) says that the relative position of Woolworths’ and Coles’ prices was also dependent in part on the pricing activities of Coles (including pricing activities of Coles reactive to pricing activities of Woolworths) and therefore could not necessarily be “improved” by Woolworths conducting price investment; and

(d) otherwise denies paragraph 9AM.

9AN. Woolworths denies paragraph 9AN.

9AO. Woolworths denies paragraph 9AO.

9AP. Woolworths denies paragraph 9AP and further:

- (a) refers to and repeats its denials in paragraphs 9~~E~~A to 9O above that certain of the “WOW Officers” (as defined in paragraph 9P of the EASOC) were in fact officers of Woolworths;
- (b) refers to and repeats paragraphs 9Z and 9AE to 9AO above and denies that the “Supermarkets Industry Information” (as defined in paragraph 9AP of the EASOC) existed;

- (c) says that, insofar as the EASOC alleges matters of opinion or theory (e.g. about market dynamics in paragraphs 9Z and 9AE to 9AO), those matters do not constitute information about specified matters or events that had arisen within the meaning of s 674 of the *Corporations Act*;
- (d) says that if, which is denied, the Supermarkets Industry Information existed, paragraph 9AP of the EASOC is embarrassing in that:
 - (i) it rolls up allegations concerning the state of mind of 23 individual people; and
 - (ii) does not comply with *Federal Court Rule* 16.43 insofar as it alleges that those 23 individuals were actually aware or ought to have been aware of the Supermarkets Industry Information.

C. Events from 29 May to 30 June 2014

9AQ. Woolworths admits paragraph 9AQ.

9AR. In response to paragraph 9AR, Woolworths:

- (a) says that the pleading is embarrassing:
 - (i) by making a series of assertions using vague terms in purported reliance on statements taken out of context from various documents identified in the particulars and on the Morris Report, which itself refers to statistical and other data not necessarily referable to or available at 29 May 2014;
 - (ii) thereby by (at highest) pleading evidence and not material facts; and
- (b) under cover of that objection, denies the paragraph.

9AS. In response to paragraph 9AS, Woolworths understands the word “by” to mean “as at” and subject to that qualification, Woolworths:

- (a) in response to paragraph 9AS(a):
 - (i) refers to and repeats paragraph 9AA above and says that Woolworths’ strategy was intended to adapt, develop and evolve under the oversight of the Board;
 - (ii) denies that Woolworths was developing a revised “Corporate Strategy”, which required change “across all divisions”; and
 - (iii) otherwise denies paragraph 9AS(a);
- (b) denies paragraph 9AS(b) and says further that the document particularised in respect of paragraph 9AS(b) of the EASOC, being a document entitled “2014

Risk Profiling Pre-reading for the Management Board offsite”

(WOW.507.010.6473), does not support the allegation. Rather, that document:

- (i) relates to FY14;
 - (ii) does not indicate that Woolworths’ risk profile had changed substantially between 2013 and 2014;
 - (iii) distinguishes between “inherent risks”, which are the risks faced by Woolworths before any controls are implemented, and “residual risks”, which are the risks faced by Woolworths after controls are implemented;
 - (iv) contains the following residual risk ratings:
 - (A) “Change Management” was “Medium” in 2013 and “High” in 2014;
 - (B) “Customer Service Quality and Process Failure” was “Medium” in 2013 and “Medium” in 2014;
 - (C) “Customer Value Proposition” was “Medium” in 2013 and “Medium” in 2014;
 - (D) “Strategy and Competition” was “High” in 2013 and “Medium” in 2014;
 - (E) “Finance” was “Medium” in 2013 and “Medium” in 2014;
 - (F) “Corporate Responsibility” was “Medium” in 2013 and “Medium” in 2014; and
 - (G) “Macro-economic environment” was “Medium” in 2013 and “Medium” in 2014;
- (c) in response to paragraph 9AS(c):
- (i) says that:
 - (A) the document particularised in respect of paragraph 9AS(c) of the EASOC (WOW.507.015.9455) is a marked-up, draft version of a document entitled “Refreshing Woolworths’ corporate strategy to maintain our retail leadership: Kitchen Cabinet #2 pre-read document”;
 - (B) the final version of the document entitled “Refreshing Woolworths’ corporate strategy to maintain our retail leadership” (WOW.507.018.1383) amends the statement “*over the last 3 years, revenue and margin growth have slowed, while capital*

intensity has increased” so that the statement reads “over the last 3 years, our returns to shareholders and economic profit growth (a measure of the value we create after cost of capital) are slowing. This has been driven by a slowdown in revenue growth due to reduction in market momentum and less M&A and space growth, reduction in margin growth and increasing capital intensity across the business”;

- (C) in the document particularised in respect of paragraph 9AS(c) of the EASOC, the statement “*EBIT profit growth has slowed because of slowing sales and margin growth*” is in the context of comparing EBIT profit growth in 2010-2013 against EBIT profit growth in 2000-2010 and cannot support the allegation at paragraph 9AS(c) of the EASOC; and
- (ii) says further that Woolworths’ Group Sales:
 - (A) grew by 4.7% in FY11;
 - (B) grew by 4.8% in FY12 (from Continuing Operations);
 - (C) grew by 4.8% in FY13 (from Continuing Operations and on a change normalised basis);
 - (D) grew by 5.9% in FY14 (from Continuing Operations and on a change normalised basis);
- (iii) says further that the reference to margin growth is vague and embarrassing in that it does not differentiate between operating or gross margins or identify which is referred to;
- (iv) otherwise denies paragraph 9AS(c);
- (d) in response to paragraph 9AS(d):
 - (i) refers to and repeats paragraph 9AS(c)(i)(A) above;
 - (ii) says that the document particularised in respect of paragraph 9AS(d) of the EASOC is dated 28 February 2014 and is not capable of supporting the allegation; and
 - (iii) denies paragraph 9AS(d);
- (e) in response to paragraph 9AS(e):
 - (i) refers to and repeats paragraph 9AS(c)(i)(A) above;
 - (ii) denies paragraph 9AS(e);

- (f) in response to paragraph 9AS(f):
 - (i) refers to and repeats paragraph 9AS(c)(i)(A) above;
 - (ii) says that the document particularised in respect of paragraph 9AS(f) of the EASOC (WOW.507.015.9455) records the following contributions to Compound Annual Growth Rate (**CAGR**), expressed as percentage points:
 - (A) for "*Organic space growth Growth from extra store space*", growth of 5.4% in Era I (2000-05), growth of 6% in Era II (2005-10) and growth of 4.5% in Era III (2010-13);
 - (B) for "*Real comps growth Same-store real sales growth*", a decline of 0.6% in Era I (2000-05), a decline of 1.7% in Era II (2005-10) and a decline of 1.3% in Era III (2010-13); and
 - (C) for "*Real organic revenue growth CAGR*", growth of 4.8% in Era I (2000-05), growth of 4.3% in Era II (2005-10) and growth of 3.2% in Era III (2010-13); and
 - (iii) otherwise denies paragraph 9AS(f);
- (g) in response to paragraph 9AS(g):
 - (i) says that Australian Supermarkets recorded EBIT for May 2014 that was 1.2% above budget and represented an 8.6% increase on the prior year;
 - (ii) says that Australian Supermarkets recorded sales growth for May 2014 of 2.4%, which was 2.2% behind budget;
 - (iii) otherwise denies paragraph 9AS(g);
- (h) in response to paragraph 9AS(h):
 - (i) admits that, on 25 May 2014, Mr Alex Dower wrote an email to Mr Tjeerd Jegen in which he stated "*Clearly we are going to need a far more aggressive "Value" launch very soon which I am sure you will be discussing tomorrow but whatever this is we are constrained by affordability up until June 30th.*";
 - (ii) otherwise denies paragraph 9AS(h);
- (i) in response to paragraph 9AS(i):
 - (i) denies that Supermarkets had experienced a gradual decline in its Net Promoter Score across the financial year and says further:

- (A) the Net Promoter Scores of Coles and Woolworths oscillated throughout FY14;
 - (B) Woolworths' Supermarkets experienced an overall improvement in its Net Promoter Score from the beginning of the financial year (July 2013) to May 2014;
- (ii) denies that, as at 29 May 2014, Woolworths was aware or ought to have been aware that Supermarkets had experienced a gradual decline in its Net Promoter Score across the financial year and says further that:
 - (A) the document particularised in respect of paragraph 9AS(i) of the EASOC and entitled "Woolworths Supermarkets Brand Health Tracking – Monthly Dashboard – May 2014" (WOW.507.014.1605) was circulated via email on 6 June 2014 (WOW.507.014.1603);
 - (B) the document particularised in respect of paragraph 9AS(i) of the EASOC and entitled "Corporate Scorecard – Aus Supermarket" (WOW.507.014.3057) was circulated via email on 24 July 2014 (WOW.507.014.3010);
- (j) in response to paragraph 9AS(j):
 - (i) admits that, as at 29 May 2014, Woolworths was behind Coles in a measurement of perceived price competitiveness with Coles insofar as during the period December 2013 to May 2014, Coles held a "slight lead" on "best price across total shop";
 - (ii) otherwise denies paragraph 9AS(j);
- (k) denies paragraph 9AS(k);
- (l) refers to and repeats paragraphs 9P(c) and (d) and paragraph 9AP(c) above; and
- (m) otherwise denies paragraph 9AS.

9AT. Woolworths:

- (a) in response to paragraph 9AT(a):
 - (i) denies the paragraph; and
 - (ii) further says that:
 - (A) the paragraph misstates the effect of the email particularised;

- (B) the email in question (BAI.001.001.3388) proposed specific pricing strategies for limited product types (e.g. “‘Hold the line’ on Beef Rump, Small Pack Chicken Fillets, Corned Silverside, Sausages”); and
 - (C) there is no proper basis for alleging that the email ought to have been elevated to the Board or otherwise to have come into the possession of an officer of Woolworths in the discharge of their duties; and
- (b) in response to paragraph 9AT(b):
- (i) refers to and repeats paragraphs 9AP(b) and 9AT(a) above;
 - (ii) admits that Woolworths increased some of its prices in Supermarkets in Q4 FY14 and decreased others;
 - (iii) otherwise denies paragraph 9AT(b); and
- (c) otherwise denies paragraph 9AT.

9AU. Woolworths denies paragraph 9AU.

D. Events from 1 July to 28 August 2014

9AV. Woolworths denies paragraph 9AV.

9AW. Woolworths admits paragraph 9AW.

9AX. In response to paragraph 9AX, Woolworths:

- (a) denies paragraph 9AX(a);
- (b) in response to paragraph 9AX(b):
 - (i) denies paragraph 9AX(b); and
 - (ii) further says that, as at 16 July 2014, the Woolworths Board had been informed in the June 2014 Australian Supermarkets Board Report (WOW.201.014.0111) that “*Woolworths indexed marginally higher (~1%) than Coles for the month on total price basket (including promotions) and standard price basket*”;
- (c) in response to paragraph 9AX(c):
 - (i) admits that Mr Jegen, on 11 July 2014, received the Supermarkets Monthly Dashboard July 2014 (WOW.507.014.1589; WOW.507.014.1591), which stated that in June 2014 “*After closing the gap to Coles in March 2014 across price perceptions, while scores for*

Woolworths have not declined, improvements for Coles have seen the re-emergence of this gap”; and

- (ii) otherwise denies paragraph 9AX(c);
- (d) in response to paragraph 9AX(d):
 - (i) admits that, in an email dated 30 January 2015 (WOW.501.002.0342), Mr Jegen said that *“The underlying health of our company didn’t improve in FY14: i.e. we didn’t really improve on service, fresh perception, price perception and we didn’t tackle our ageing fleet.”*;
 - (ii) says that the document particularised in respect of paragraph 9AX(d) of the EASOC post-dates the allegation by six months;
 - (iii) denies that, as at 16 July 2014, Woolworths was aware or ought to have been aware of the matters pleaded in paragraph 9AX(d); and
 - (iv) otherwise denies paragraph 9AX(d);
- (e) denies paragraph 9AX(e);
- (f) in response to paragraph 9AX(f):
 - (i) says that the performance of its Big W business in FY14 is reported in the Woolworths’ Annual Report for FY14;
 - (ii) says further that the statement by Mr O’Brien particularised at paragraph 9AX(f) of the EASOC is prefaced with the statement *“I am writing this report without the benefit of the finalised numbers for FY14”*;
 - (iii) says that, as at 16 July 2014, the Woolworths Board had received the June 2014 CFO Report (WOW.201.014.0063), which:
 - (A) was marked *“Draft, unaudited and subject to finalisation”*;
 - (B) reported on the financial performance of the Big W business, but noted that *“FY14 results are subject to final adjustments and audit”*;
- (g) in response to paragraph 9AX(g):
 - (i) says that the performance of its Home Improvement business in FY14 is reported in the Woolworths’ Annual Report for FY14;
 - (ii) admits that Woolworths reported an EBIT result for the Home Improvement business for FY14 that was lower than the EBIT result reported for FY13;

- (iii) says further that the statement by Mr O'Brien particularised at paragraph 9AX(g) of the EASOC is prefaced with the statement "*I am writing this report without the benefit of the finalised numbers for FY14*";
- (iv) says that, as at 16 July 2014, the Woolworths Board had received the June 2014 CFO Report (WOW.201.014.0063), which:
 - (A) was marked "Draft, unaudited and subject to finalisation";
 - (B) reported on the financial performance of the Home Improvement business, but noted that "*FY14 results are subject to final adjustments and audit*";

(ga) in response to paragraph 9AX(h):

- (i) says that the paragraph is embarrassing in that it does not specify the measure against which sales at a group level are said to have underperformed or the business units which are said to have underperformed;
- (ii) under cover of that objection denies paragraph 9AX(h); and
- (iii) further says that the June 2014 CFO Report stated of the draft, unaudited FY14 results "sales increased 5.9% on last year and were broadly in line with budget (-0.8%), driven by growth in Australian Food, Liquor and Petrol (+4.9%) which demonstrated pleasing momentum throughout the year and New Zealand Supermarkets (+14.9%) due to favourable movements in the AUD / NZD exchange rate. Overall sales momentum was maintained throughout the year despite challenging conditions during the second half...";

- (h) refers to and repeats paragraphs 9P(c) and (d) and paragraph 9AP(c) above; and
- (i) otherwise denies paragraph 9AX.

9AY. Subject to the qualifications set out in the document particularised at paragraph 9AY of the EASOC (WOW.507.019.4380), Woolworths admits that it was aware of the estimations and calculations contained in that document and otherwise denies paragraph 9AY.

FY15 NPAT Guidance

10 Woolworths admits paragraph 10.

10AA. In response to paragraph 10AA, Woolworths:

- (a) says that:
 - (i) the July 2014 CFO Report was made available to the Board on 20 August 2014 (WOW.507.020.8072); and
 - (ii) the Board Meeting at which the July 2014 CFO Report was presented was held on 28 August 2014;
- (b) admits that the July 2014 CFO Report reported:
 - (i) the forecast for FY15 EBIT for the Group was \$4,078.2 million; and
 - (ii) the forecast for FY15 EBIT for Supermarkets was \$3,164.7 million; and
- (c) otherwise denies paragraph 10AA.

10AB. In response to paragraph 10AB, Woolworths:

- (a) denies paragraph 10AB; and
- (b) says that the July 2014 CFO Report included a statement that “the current FY15 analyst consensus is for NPAT growth of 5.9%. Whilst still early in the financial year, identified trading risks are such that the consensus is not significantly different to the risk adjusted forecast”

10A. In response to paragraph 10A, Woolworths:

- (a) admits the paragraph; and
- (b) says further that the Woolworths Board agreed to give the FY15 Earnings Guidance in the form pleaded in paragraphs 11 and 12 below.

10B. In response to paragraph 10B, Woolworths:

- (a) refers to and repeats the denial in paragraph 9AV above that a revised budget was formulated;
- (b) refers to and repeats paragraph 10AA(a) above and paragraphs 25.2 and 25.3 below; and
- (c) admits that no “updated or revised Financial Plan and FY15 Budget” was presented to the Board at the meeting on 28 August 2014;
- (d) says that the July 2014 CFO Report referred to in paragraph 10AA(a) above and paragraph 25.2 below was presented to the Board at that meeting; and
- (e) otherwise denies paragraph 10B.

11 Woolworths:

- (a) admits paragraph 11;

- (b) relies on the full terms and effect of the “29 August 2014 Results Presentation” and the “29 August 2014 Analyst Presentation” and the “29 August 2014 Results Announcement” as defined in paragraph 11; and
- (c) says further that the 29 August 2014 Analyst Presentation was made available to the public via webcast.

12 In response to paragraph 12, Woolworths:

- (a) says that in the 29 August 2014 Results Presentation, Woolworths:
 - (i) reported growth in Net Profit After Tax from continuing operations before significant items (**NPAT**) in FY14 on a normalised 52-week basis of 6.1%;
 - (ii) stated that:
 - (A) it expected that trading conditions would remain challenging in FY15 with consumers managing cost of living pressures in a time of economic uncertainty;
 - (B) subject to those uncertainties, it expected FY15 to be another year of growth with NPAT expected to increase by 4-7%;
 - (C) the presentation contained summary information about Woolworths and its activities current as at the date of the presentation;
 - (D) forward-looking statements contained in the presentation (including statements of expectation) with respect to Woolworths’ business and operations, market conditions, results of operations and financial condition, specific provisions and risk management practices:
 - 1. involve known and unknown risks, uncertainties and assumptions and other important factors that could cause the actual results, performances or achievements of Woolworths to be materially different from future results, performances or achievements of Woolworths expressed or implied by such statements; and
 - 2. speak only as of the date of the presentation;

(First FY15 NPAT Guidance Statement)

- (b) says that in the 29 August 2014 Analyst Presentation, Mr O’Brien, said:

- (i) there was no doubt that it was going to remain a very competitive and challenging time from a consumer point of view;
- (ii) in his view, consumer sentiment remained "a little rocky"; and
- (iii) noting those uncertainties, Woolworths expected the FY15 year to be another year of strong growth for the Woolworths group with NPAT growth expected to be between 4-7% in FY15;

(Second FY15 NPAT Guidance Statement)

(ba) says that in the 29 August 2014 Results Announcement, Woolworths:

- (i) reported growth in Net Profit After Tax from continuing operations before significant items (NPAT) in FY14 on a normalised 52-week basis of 6.1%;
- (ii) reported on its progress against Woolworths' four strategic priorities during FY14; and
- (iii) stated that:
 - (A) it expected that trading conditions would remain challenging in FY15 with consumers managing cost of living pressures in a time of economic uncertainty; and
 - (B) subject to those uncertainties, it expected FY15 to be another year of growth with NPAT expected to increase by 4-7%;

(Third FY15 NPAT Guidance Statement)

- (c) says that the Second and Third FY15 NPAT Guidance Statements were ~~was~~ made in the context of, and were ~~was~~ to be understood together with, the First FY15 NPAT Guidance Statement;
- (d) relies on the full terms and effect of the 29 August 2014 Results Presentation, ~~and~~ the 29 August 2014 Analyst Presentation and the 29 August 2014 Results Announcement; and
- (e) otherwise denies paragraph 12.

12A. Woolworths:

- (a) in response to paragraph 12A(a):
 - (i) denies paragraph 12A(a); and
 - (ii) further says that, as at 29 August 2014, the Woolworths Board had been informed in the July 2014 CFO Report (WOW.201.002.0043) that:

- (A) for the month of July 2014, sales in Supermarkets grew 5.1% against the prior year but were 1% below the FY15 Budget; and
 - (B) Group NPAT for the month of July 2014 grew 6.0% against the prior year and was forecast to grow 6.9% over HY15 and 7.7% over FY15;
- (b) in response to paragraph 12A(b):
 - (i) denies paragraph 12A(b); and
 - (ii) further says that, as at 29 August 2014, the Woolworths Board had been informed in the July 2014 Australian Supermarkets Board Report (WOW.201.002.0358) that:
 - (A) *"Woolworths indexed marginally above Coles (+1%) on the total price basket including promotions and the standard price basket";*
~~and~~
 - (B) *"Woolworths actioned less standard price increases and more price decreases than Coles";* and
 - (C) *"A strong marketing and promotional pipeline has been established with close integration across marketing, commercial and operations to drive growth in customer numbers and units, and enable improved momentum in real sales growth".*
- (c) in response to paragraph 12A(c):
 - (i) admits that Mr Jegen, on 11 August 2014, received the Supermarkets Monthly Dashboard July 2014 (WOW.507.014.1575; WOW.507.014.1577), which indicated that in July 2014 *"price perceptions for Woolworths and Coles have remained stable with Coles continuing its lead"*; and
 - (ii) otherwise denies paragraph 12A(c);
- (d) denies 12A(d);
- (e) in response to paragraph 12A(e):
 - (i) says that, as at 29 August 2014, the Woolworths Board had been informed in the July 2014 Australian Supermarkets Board Report that *"Woolworths market share for the latest quarter dropped by 0.1%, behind both Coles (+0.1%) and Aldi (+0.6%)"*; and
 - (ii) otherwise denies paragraph 12A(e);

- (f) in response to paragraph 12A(f), says that, as at 29 August 2014, the Woolworths Board had been informed in the July 2014 CFO Report that *"In Big W, the GP margin was 229 bps below last year and 155 bps below budget, impacted by clearance activity to sell aged and slow moving inventory and clear winter apparel lines. Pleasing progress is being made in clearing excess inventory"*;
- (g) in response to paragraph 12A(g), says that, as at 29 August 2014, the Woolworths Board had been informed in the July 2014 CFO Report that *"Big W sales increased 0.5% on last year and were 3.3% above budget"*;
- (h) in response to paragraph 12A(h), says that, as at 29 August 2014, the Woolworths Board had been informed in the July 2014 CFO Report that Masters was tracking behind its FY15 Budget;

(ha) in response to paragraph 12A(i):

- (i) says that the paragraph is embarrassing in that it does not specify the measure against which sales at a Group level are said to have underperformed or the business units which are said to have underperformed;
- (ii) under cover of that objection denies paragraph 12A(i); and
- (iii) otherwise relies upon the July 2014 CEO Report and the July 2014 CFO Report for their full force and effect;

(hb) in response to paragraph 12A(j):

- (i) admits that, as at 29 August 2014, the Woolworths Board had been informed in the July 2014 CFO Report (WOW.201.002.0043) that, for the month of July 2014, Group EBIT was 4.7% up against FY14 and 2.8% down against budget; and
- (ii) otherwise denies paragraph 12A(j);
- (i) refers to and repeats paragraphs 9P(c) and (d) and paragraph 9AP(c) above; and
- (j) otherwise denies paragraph 12A.

12AA. In response to paragraph 12AA, Woolworths:

- (a) denies paragraph 12AA; and
- (b) in relation to the so-called "Profit Bubble Information", refers to and repeats paragraph 12B below *mutatis mutandis*; and

- (c) says that the documents particularised at (b)-(d) in respect of paragraph 12AA when read in their entirety do not support the allegations made and, in any event, post-date the allegations by two months and four months respectively.

12AB. Woolworths denies paragraph 12AB.

12AC. In response to paragraph 12AC, Woolworths:

- (a) denies the paragraph; and
(b) in relation to the so-called "August Optimistic Guidance Information", refers to and repeats paragraph 12B below *mutatis mutandis*.

12B. In response to paragraph 12B, Woolworths:

- (a) says that the "information" defined as the "Unachievable Financial Plan and FY15 Budget Information":
- (i) could only be a matter of supposition, speculation or opinion; and
 - (ii) was not capable of being determined to be correct or incorrect as a question of fact or objective truth;
- (b) if, which is unclear, the Applicants allege that officer(s) of Woolworths actually formed that supposition, speculation or opinion:
- (i) denies the allegation; and
 - (ii) says further that the pleading is embarrassing and deficient by reason of its failure to identify any officer(s) who are alleged actually to have formed that supposition, speculation or opinion;
- (c) if, which is unclear, the Applicants allege that officers of Woolworths ought to have formed (but did not actually form) that supposition, speculation or opinion by reason of the matters pleaded at paragraph 12B(a) to (j):
- (i) denies the allegation; and
 - (ii) says further that the pleading is embarrassing and deficient by reason of its failure to identify any officer(s) who ought to have formed that supposition, speculation or opinion;
 - (iii) says further that, even if the allegation were true, Woolworths would not have been "aware" of the "Unachievable Financial Plan and FY15 Budget Information" within the meaning of *Listing Rule 19.12*;
- (d) if, which is unclear, the Applicants allege that some person other than an officer of Woolworths actually formed that supposition, speculation or opinion and that

that supposition, speculation or opinion ought then to have come to the attention of officer(s) of Woolworths in the discharge of their duties:

- (i) denies the allegation; and
- (ii) says further that the pleading is embarrassing and deficient by reason of its failure to identify any person or persons who are alleged actually to have formed that supposition, speculation or opinion;
- (e) therefore denies the paragraph; and
- (f) further:
 - (i) refers to and repeats paragraphs 9P(c) and (d) and paragraph 9AP(c) above; and
 - (ii) says that the “Unachievable Financial Plan and FY15 Budget Information” as defined in the EASOC does not constitute information about a specified matter or event that had arisen within the meaning of s 674 of the *Corporations Act*.

12C. In response to paragraph 12C, Woolworths:

- (a) denies the paragraph; and
- (b) in relation to the so-called “Unachievable FY15 Earnings Guidance Information”, refers to and repeats paragraph 12B above *mutatis mutandis*.

12D. Woolworths:

- (a) denies paragraphs 12D(a) to (c);
- (b) in response to paragraph 12D(d), refers to and repeats paragraph 10B above;
- (c) in response to paragraph 12D(e):
 - (i) denies the paragraph; and
 - (ii) says further that the document particularised in respect of paragraph 12D(e) of the EASOC is an email dated 30 January 2015 referring not to Group guidance but to an aspect of the budgeting for the Supermarkets business;
- (d) otherwise denies paragraph 12D; and
- (e) in relation to the so-called “Insufficient Basis for FY15 Earnings Guidance Information”, refers to and repeats paragraph 12B above *mutatis mutandis*.

12E. In response to paragraph 12E, Woolworths:

- (a) denies the paragraph;
- (b) in relation to the so-called "August No Confidence Information", refers to and repeats paragraph 12B above *mutatis mutandis*; and
- (c) says that the documents particularised in respect of paragraph 12E of the EASOC say nothing about the perceived or actual ability of management of Supermarkets to achieve FY15 Earnings Guidance.

12EA. Woolworths denies paragraph 12EA.

12EB. In response to paragraph 12EB, Woolworths:

- (a) denies the paragraph;
- (b) repeats paragraph 12EA above; and
- (c) in relation to the so-called "EBIT to NPAT Sensitivity Information", refers to and repeats paragraph 12B above *mutatis mutandis*.

F. Events from 29 August to 22 September 2014

12F. Woolworths admits paragraph 12F and adopts the definition contained therein.

12G. In response to paragraph 12G, Woolworths:

- (a) says that in the FY14 Annual Report, Mr O'Brien:
 - (i) stated that:
 - (A) Woolworths expected that trading conditions would remain challenging in FY15 with consumers managing cost of living pressures in a time of economic uncertainty;
 - (B) subject to those uncertainties, Woolworths expected FY15 to be another year of growth with NPAT expected to increase by 4-7%;
 - (ii) immediately below the statements pleaded in 12G(a)(i) above, listed material business risks that could adversely affect Woolworths' financial performance including:
 - (A) that Woolworths faces increasing competition from existing and new competitors;
 - (B) a decline in economic activity in key markets such as Australia;
 - (C) damage or dilution to Woolworths' retail brands;
 - (D) current or future retail offers not responding to customer demands;

- (E) that Woolworths' expansion into new lines of business, such as home improvement and online, may ultimately be unsuccessful;
- (F) that Woolworths does not achieve expected reductions in its cost of doing business and/or increases in gross margins;
- (G) failure to successfully deliver major business transformation and change programs;
- (H) that inability effectively to manage inventory in Woolworths' retail businesses may impair Woolworths' competitive position,

(the ~~Third~~ **Fourth FY15 NPAT Guidance Statement**);

- (b) relies on the FY14 Annual Report for its full force and effect; and
- (c) otherwise denies paragraph 12G.

12H. Woolworths:

- (a) in response to paragraph 12H(a):
 - (i) admits that it was aware as at 22 September 2014 that Supermarkets was experiencing underperformance in sales as against the FY15 Budget and was tracking behind the FY15 Budget;
 - (ii) refers to and repeats paragraph 25.4 below; and
 - (iii) otherwise denies paragraph 12H(a);
- (b) in response to paragraph 12H(b):
 - (i) denies the paragraph; and
 - (ii) refers to and repeats paragraph 12A(b) above;
- (c) in response to paragraph 12H(c):
 - (i) admits that Mr Jegen, on 11 September 2014, received the Supermarkets Monthly Dashboard August 2014, which indicated that in August 2014 Coles maintained a lead in some measures of perceived price competitiveness; and
 - (ii) otherwise denies paragraph 12H(c);
- (d) in response to paragraph 12H(d), refers to and repeats paragraph 12A(f) above;
- (e) in response to paragraph 12H(e), refers to and repeats paragraph 12A(g) above;
- (f) in response to paragraph 12H(f), refers to and repeats paragraph 12A(h) above;
- (fa) in response to paragraph 12H(g):

- (i) says that the paragraph is embarrassing in that it does not specify the measure against which sales at a Group level are said to have underperformed or the business units which are said to have underperformed;
- (ii) under cover of that objection denies paragraph 12H(g); and
- (iii) says that the CEO sent email updates to the Board:
 - A. on 13 September 2014 (WOW.503.008.5036), which stated that “trading at the moment remains scratchy...We have our Quarterly business reviews coming up over the next two weeks that will allow me to ensure the plans are there to deliver on our targets”;
 - B. on 21 September 2014 (WOW.503.008.3329), which stated that “trading remains softer than we would like across the board...It is critical that we increase sales momentum in the next few weeks to ensure we have momentum running into our most important trading period. We have instigated an aggressive value campaign in Australian supermarkets... designed to get momentum into our value perception improvement program”;

(fb) in response to paragraph 12H(h):

- (i) admits that, as at 22 September 2014, the Woolworths Board had been informed in the July 2014 CFO Report (WOW.201.002.0043) that, for the month of July 2014, Group EBIT was 4.7% up against FY14 and 2.8% down against budget; and
- (ii) otherwise denies paragraph 12H(h);
- (g) refers to and repeats paragraphs 9P(c) and (d) and paragraph 9AP(c) above; and
- (h) otherwise denies paragraph 12H.

12HA. In response to paragraph 12HA, Woolworths:

- (a) says that the pleading is vague in that it does not specify which sales and/or profit targets it is referring to; and
- (b) under cover of that objection, denies paragraph 12HA.

12HB. In response to paragraph 12HB, Woolworths:

- (a) denies the paragraph; and

- (b) in relation to the so-called "September Optimistic Guidance Information", refers to and repeats paragraph 12B above *mutatis mutandis*.

12I. In response to paragraph 12I, Woolworths:

- (a) denies the paragraph; and
- (b) in relation to the so-called "September Unmaintainable FY15 Earnings Guidance Information", refers to and repeats paragraph 12B above *mutatis mutandis*.

12J. In response to paragraph 12J, Woolworths:

- (a) denies the paragraph;
- (b) in relation to the so-called "September No Confidence Information", refers to and repeats paragraph 12B above *mutatis mutandis*; and
- (c) says that the documents particularised in respect of paragraph 12J of the EASOC say nothing about the perceived or actual ability of the management of Supermarkets to achieve FY15 Earnings Guidance.

G. Events from 22 September to 3 November 2014

12JA. Woolworths denies paragraph 12JA.

12JB. In answer to paragraph 12JB, Woolworths:

- (a) refers to and repeats paragraph 12JA above;
- (b) refers to and repeats paragraph 25.15(b) below;
- (c) says that at a general level, across its various businesses, Woolworths both reduced and increased various costs and various prices in the ordinary course of its business operations from time to time before and after 11 October 2014; and
- (d) otherwise denies paragraph 12JB.

12JC. Woolworths denies paragraph 12JC.

12JD. In response to paragraph 12JD, Woolworths:

- (a) says that the phrase "trading results" is vague and ambiguous; and
- (b) under cover of that objection, denies the paragraph.

12JE. Woolworths:

- (a) in answer to paragraph 12JE(a):
 - (i) denies the paragraph; and

- (ii) says that the “Supermarkets Performance Analysis & Delivery Plan” presented to the Board on 23 and 24 October 2014 referred to a “run rate” forecast of the FY15 EBIT for Supermarkets of \$2.807 million;

(b) in answer to paragraph 12JE(b):

- (i) denies the paragraph;
- (ii) refers to and repeats paragraph 12EA above; and
- (iii) further says that the September 2014 CFO Report presented to the Board on 23 and 24 October 2014 (referred to at paragraphs 25.5 and 25.6 below) contained a “run rate” forecast for Woolworths’ HY15 NPAT growth of 4.2%.

12JF. In response to paragraph 12JF, Woolworths:

- (a) denies the paragraph; and
- (b) in relation to the so-called “October Optimistic Guidance Information”, refers to and repeats paragraph 12B above *mutatis mutandis*.

12JG. In response to paragraph 12JG, Woolworths:

- (a) denies the paragraph;
- (b) in relation to the so-called “October Guidance Information”, refers to and repeats paragraph 12B above *mutatis mutandis*; and
- (c) says further that the allegation in paragraph 12JG(s) is inconsistent with the allegation in paragraph 17(b).

12K. Woolworths:

- (a) in response to paragraph 12K(a):
 - (i) admits that as at 23 October 2014 it was aware that its Group performance was tracking behind its FY15 Budget;
 - (ii) refers to and repeats paragraphs 25.5 and 25.6 below; and
 - (iii) otherwise denies paragraph 12K(a);
- (b) in response to paragraph 12K(b):
 - (i) admits that Woolworths had developed a plan for the Australian Supermarkets business to deliver its EBIT target in the FY15 Budget, which was presented to the Woolworths Board on 23 and 24 October 2014 (**Supermarkets Performance Analysis and Delivery Plan**);

(ii) refers to and repeats paragraph 12L below; and

(#)(iii) otherwise denies paragraph 12K(b).

12L. In response to paragraph 12L, Woolworths:

(a) says that the Supermarkets Performance Analysis and Delivery Plan was for Australian Supermarkets to achieve:

(i) sales increasing from \$33,971 million in FY14, to \$35,530 million in FY15;

(ii) gross profit increasing from \$10,152 million in FY14, to \$10,702 million in FY15;

(iii) CODB reducing from \$7,277 million in FY14, to \$7,532 million in FY15; and

(iv) EBIT increasing from \$2,875 million in FY14, to \$3,170 million in FY15; and

(b) otherwise denies paragraph 12L.

12M. In response to paragraph 12M, Woolworths:

(a) refers to and repeats paragraphs 25.5 and 25.6 below;

(b) says that, at the Woolworths Board meeting on 23 October 2014, the directors:

(i) discussed the continuous disclosure implications of the program known as "Fuel for Growth";

(ii) noted that the principal driver of the program was to generate savings to invest in prices and in "Full Potential Food" growth initiatives;

(iii) on the basis that there was no change to earnings guidance, and no reason to believe that the program would change analysts' consensus estimates in relation to Woolworths' FY15 earnings, agreed that there was nothing at that point to disclose to the market; and

(c) otherwise denies paragraph 12M.

12N. In response to paragraph 12N, Woolworths:

(a) denies paragraph 12N;

(b) refers to and repeats paragraph 9AA above;

(c) in relation to the so-called "Unachievable Delivery Plan Information", refers to and repeats paragraph 12B above *mutatis mutandis*; and

- (d) says further that:
- (i) the “Unachievable Delivery Plan Information” does not logically follow from the premises alleged in paragraphs 12N(a) to (d h) of the EASOC;
 - (ii) the two documents particularised in respect of paragraph 12N(b):
 - (A) do not contain expressions of concern from Woolworths’ advisors, McKinsey, about the achievability of the Delivery Plan; and
 - (B) instead, address how best the Delivery Plan should be implemented so as to balance long-term and short-term objectives;
 - (iii) the second document particularised in respect of paragraph 12N(b) (WOW.503.006.1245) dates from 25 November 2014 and is incapable of supporting an allegation that McKinsey had expressed concerns by 23 October 2014 or by 28 October 2014; and
 - (iv) the document particularised in respect of paragraph 12N(c) of the EASOC does not indicate that Woolworths “Retail Offer” had fallen further behind that of its competitors, and in particular, Coles, but instead stated that:

“Woolworths has seen an improvement across both store and brand NPS and improvements in fresh perceptions. With Coles hitting some highs on price and loyalty perceptions in the previous months, the latest period has seen this trend flatten and drop off.”

“Store NPS: Woolworths store NPS has continued to achieve strong growth now placing on a score of +17.”

“Brand NPS: Woolworths has seen a slight uplift in % of advocates, narrowing the gap with its competitors.”

13 In response to paragraph 13:

- (a) admits that Mr O’Brien and Mr Matt Tyson participated in a conference call with investment analysts on 3 November 2014 (**First Quarter FY15 Conference Call**);
- (b) Woolworths relies on the full terms and effect of the First Quarter FY15 Conference Call;

- (c) says that Mr O'Brien participated in the First Quarter FY15 Conference Call and said:
 - (i) Woolworths' sales growth in Q1 2015 was below its expectations;
 - (ii) in answer to a question as to whether he was comfortable with the financial guidance that had been given, that:
 - (A) Woolworths was coming up to the most important trading period for most of its businesses (the second quarter including the Christmas period);
 - (B) Woolworths was confident that their plans are going to deliver what was needed in the second quarter; and
 - (C) if there was any change to Woolworths' guidance, he would have mentioned it;

(~~Fourth~~ Fifth FY15 NPAT Guidance Statement) and

- (d) says that the First Quarter FY15 Conference Call was made available to the public via webcast; and
- (e) otherwise denies paragraph 13.

13A. Woolworths:

- (a) in response to paragraph 13A(a):
 - (i) admits that it was aware as at 3 November 2014 that Supermarkets was experiencing underperformance in sales against its FY15 Budget and was tracking behind the FY15 Budget;
 - (ii) refers to and repeats paragraphs 25.5 and 25.6 below; and
 - (iii) otherwise denies paragraph 13A(a);
- (b) in response to paragraph 13A(b):
 - (i) denies the paragraph; and
 - (ii) refers to and repeats paragraph 12A(b) above;
- (c) in response to paragraph 13A(c):
 - (i) admits that the document entitled "Supermarket Brand Tracker Dashboard – September 2014" (WOW.506.007.9256) recorded Woolworths as trailing Coles in measures of price perception in September 2014 despite having reduced Coles' lead in those measures; and

- (ii) otherwise denies paragraph 13A(c);
- (d) in response to paragraph 13A(d), says that, as at 3 November 2014, the Woolworths Board had been informed in the September 2014 CFO Report (WOW.201.005.0038) that Big W's gross profit margin had been negatively affected by *"increased costs in funding slow moving inventory"*;
- (e) in response to paragraph 13A(e), says that, as at 3 November 2014, the Woolworths Board had been informed in the September 2014 CFO Report that the Big W business was tracking behind its FY15 Budget;
- (f) in response to paragraph 13A(f), says that, as at 3 November 2014, the Woolworths Board had been informed in the September 2014 CFO Report that Masters was tracking behind its FY15 Budget;

(fa) in response to paragraph 13A(g):

- (i) says that the paragraph is embarrassing in that it does not specify the measure against which sales at a Group level are said to have underperformed or the business units which are said to have underperformed; and
- (ii) under cover of that objection denies paragraph 13A(g); and
- (iii) otherwise relies upon the September 2014 CFO Report and the September 2014 CEO Report for their full force and effect;

(fb) in response to paragraph 13A(h):

- (i) admits that, as at 3 November 2014, the Woolworths Board had been informed in the September 2014 CFO Report that, for the month of September 2014, Group EBIT was 12.0% down against budget;
- (ii) further says that the September 2014 CFO Report contained a "run rate" forecast for Woolworths' HY15 NPAT growth of 4.2%; and
- (iii) otherwise denies paragraph 13A(h);
- (g) refers to and repeats paragraphs 9P(c) and (d) and paragraph 9AP(c) above; and
- (h) otherwise denies paragraph 13A.

13AA. In response to paragraph 13AA, Woolworths:

- (a) denies the paragraph; and

- (b) in relation to the so-called “3 November Optimistic Guidance Information”, refers to and repeats paragraph 12B above *mutatis mutandis*.

13B. In response to paragraph 13B, Woolworths:

- (a) denies the paragraph; and
- (b) in relation to the so-called “3 November Unmaintainable FY15 Earnings Guidance Information”, refers to and repeats paragraph 12B above *mutatis mutandis*.

13C. In response to paragraph 13C, Woolworths:

- (a) denies the paragraph;
- (b) in relation to the so-called “3 November No Confidence Information”, refers to and repeats paragraph 12B above *mutatis mutandis*; and
- (c) says that the documents particularised in respect of paragraph 13C of the EASOC say nothing about the perceived or actual ability of the management of Supermarkets to achieve FY15 Earnings Guidance.

H. Events from 3 November to 27 November 2014

14 In response to paragraph 14, Woolworths;

- (a) says that on 27 November 2014, it lodged with the ASX and publicly released:
 - (i) an address by Ralph Waters, Chairman of Woolworths, stating that:
 - (A) Q1 FY15 sales were softer than expected;
 - (B) earlier in the year, management of Woolworths provided guidance for FY15 of growth in NPAT of between 4 and 7%; and
 - (C) following a recent review by the Board of Woolworths, Woolworths was reaffirming the previous guidance that day;

(~~Fifth~~ Sixth FY15 NPAT Guidance Statement)

- (ii) an address by Mr O'Brien stating that:
 - (A) Q2 FY15 sales would be heavily reliant on the next six weeks of trading;
 - (B) as had been said by Mr Waters, Woolworths was reaffirming its previous FY15 NPAT guidance that day;

(~~Sixth~~ Seventh FY15 NPAT Guidance Statement) and

- (b) otherwise denies paragraph 14.

14A. Woolworths:

- (a) in response to paragraph 14A(a):
 - (i) admits that it was aware as at 27 November 2014 that Supermarkets was experiencing underperformance in sales as against the FY15 Budget and was tracking behind the FY15 Budget;
 - (ii) refers to and repeats paragraphs 25.7 and 25.8 below; and
 - (iii) otherwise denies paragraph 14A(a);
- (b) in response to paragraph 14A(b):
 - (i) denies the paragraph;
 - (ii) refers to and repeats paragraph 12A(b) above;
 - (iii) further says that, as at 27 November 2014, the Woolworths Board had been informed in the October 2014 Australian Supermarkets Board Report (WOW.201.007.0538) that:
 - (A) *“Woolworths’ price basket indexed higher than Coles on the total price basket including promotions (+0.7% vs. Coles) and the standard price basket (+0.9% vs. Coles)”*; and
 - (B) *“Woolworths actioned less price increases, as well as less price ~~increases~~ decreases than Coles”*; and
- (c) in response to paragraph 14A(c):
 - (i) admits that the document entitled “Supermarket Brand Tracker Dashboard – October 2014” (WOW.506.007.1010) recorded Woolworths as marginally trailing Coles in measures of price perception in October 2014 despite having further reduced Coles’ lead in those measures;
 - (ii) says that, as at 27 November 2014, the Woolworths Board had been informed in the October 2014 Australian Supermarkets Board Report that:
 - (A) there was a *“price perception deficit”* against Coles;
 - (B) *“Brand tracker KPIs are showing positive improvements in Net Promoter Score (NPS), price perception and fresh food measures”*; and
 - (C) *“There are early signs of a positive trend in price perception following the launch of ‘Cheap Cheap’”*; and

- (iii) otherwise denies paragraph 14A(c);
- (d) in response to paragraph 14A(d), says that, as at 27 November 2014, the Woolworths Board had been informed in the October 2014 CEO Report (WOW.201.007.0022) that the continued reduction of slow-moving stock was a focus for Big W;
- (e) in response to paragraph 14A(e), says that, as at 27 November 2014, the Woolworths Board had been informed in the October 2014 CFO Report (WOW.201.007.0041) that the Big W business was tracking behind its FY15 Budget;
- (f) in response to paragraph 14A(f), says that, as at 27 November 2014, the Woolworths Board had been informed in the October 2014 CFO Report that Masters was tracking behind its FY15 Budget;

(fa) in response to paragraph 14A(g):

- (i) says that the paragraph is embarrassing in that it does not specify the measure against which sales at a Group level are said to have underperformed or the business units which are said to have underperformed;
- (ii) under cover of that objection denies paragraph 14A(g); and
- (iii) otherwise relies upon the October 2014 CEO Report and the October 2014 CFO Report for their full force and effect;

(fb) in response to paragraph 14A(h):

- (i) admits that, as at 27 November 2014, the Woolworths Board had been informed in the October 2014 CFO Report (WOW.201.007.0041) that, for the month of October 2014, Group EBIT was 2.1% up against FY14 and 7.2% down against budget;
- (ii) refers to and repeats paragraphs 25.7 and 25.8 below; and
- (iii) otherwise denies paragraph 14A(h);

(fc) in response to paragraph 14A(i):

- (i) denies paragraph 14A(i); and
 - (ii) says further that the 'Mind the Gap' initiative was not commenced until early December 2014;
- (g) refers to and repeats paragraphs 9P(c) and (d) and paragraph 9AP(c) above; and

- (h) otherwise denies paragraph 14A.

14AA. In response to paragraph 14AA, Woolworths:

- (a) denies the paragraph; and
- (b) in relation to the so-called "27 November Optimistic Guidance Information", refers to and repeats paragraph 12B above *mutatis mutandis*.

14B. In response to paragraph 14B, Woolworths:

- (a) denies the paragraph;
- (b) in relation to the so-called "27 November Unmaintainable FY15 Earnings Guidance Information", refers to and repeats paragraph 12B above *mutatis mutandis*.

~~14C. In response to paragraph 14C, Woolworths:~~

- ~~(a) denies the paragraph;~~
- ~~(b) in relation to the so-called "27 November Unrealistic FY15 Earnings Guidance Information", refers to and repeats paragraph 12B above *mutatis mutandis*; and~~
- ~~(c) says further that:~~
 - ~~(i) the "delivery plan" (referred to at paragraph 12K(b) above) was a plan for the Supermarkets business to meet its EBIT target in the FY15 Budget; and~~
 - ~~(ii) the document particularised in respect of paragraph 14C of the ASOC makes no statement about whether the FY15 Earnings Guidance was or was not realistic.~~

HA. Events from 28 November 2014 to 9 January 2015

14D. Woolworths:

- (a) in response to paragraph 14D(a):
 - (i) denies the paragraph;
 - (ii) refers to paragraph 25.9 below; and
 - (iii) further says that the November 2014 CFO Report, which was emailed to the Board on 23 December 2014 (WOW.503.006.6396), contained a risk adjusted FY15 NPAT forecast of 5.6% growth, a forecast of 6.6% EBIT growth in H2FY15 and a forecasted total FY15 EBIT for Australian Supermarkets of \$3,015.6 million;

- (b) in response to paragraph 14D(b):
 - (i) admits that O'Brien and Marr, who were officers of Woolworths, were aware of the presentation entitled "H2 FY15 Priorities and Plan: Bringing Woolworths to its Full Potential" (WOW.501.004.8715) emailed to them on 19 December 2014; and
 - (ii) otherwise denies paragraph 14D(b);
- (c) in response to paragraph 14D(c):
 - (i) refers to and repeats paragraph 14D(b)(i) above;
 - (ii) says that the presentation says no more than that "we should consider if our current balance between price investment and initiative delivery is creating a platform for sustainable growth"; and
 - (iii) therefore denies paragraph 14D(c);
- (d) in response to paragraph 14D(d):
 - (i) denies the paragraph;
 - (ii) says that the particularised emails of 18, 19 and 22 December 2014 attached forecast scenarios, one of which did not involve the raising of a provision for General Merchandise, and the other which did; and
 - (iii) says that the raising of the provision was recommended to and approved by the Board at the meeting of 26 February 2015;
- (e) in response to paragraph 14D(e):
 - (i) says that the paragraph is embarrassing in that it does not specify the measure against which sales at a Group level are said to have underperformed or the business units which are said to have underperformed;
 - (ii) under cover of that objection denies paragraph 14D(e); and
 - (iii) otherwise relies upon the November 2014 CEO Report and the November 2014 CFO Report for their full force and effect;
- (f) in response to paragraph 14D(f):
 - (i) admits that, as at 9 January 2015, the Woolworths Board had been informed in the November 2014 CFO Report (WOW.503.006.6406) that, for the month of November 2014, Group EBIT was 1.1% up against FY14 and 8.1% down against budget; and

- (ii) otherwise denies paragraph 14D(f); and
- (g) in relation to the so-called "January Performance Information", refers to and repeats paragraph 12B above *mutatis mutandis*.

14E. In response to paragraph 14E, Woolworths:

- (a) denies the paragraph; and
- (b) in relation to the so-called "January Optimistic Guidance Information", refers to and repeats paragraph 12B above *mutatis mutandis*.

14F. In response to paragraph 14F, Woolworths:

- (a) denies the paragraph; and
- (b) in relation to the so-called "January Unmaintainable FY15 Earnings Guidance Information", refers to and repeats paragraph 12B above *mutatis mutandis*.

15 In response to paragraph 15, Woolworths:

- (a) denies the paragraph; and
- (b) says further that:
 - (i) none of the First, Second, Third, Fourth, Fifth, ~~or~~ Sixth or Seventh FY15 NPAT Guidance Statements (together, the **FY15 NPAT Guidance Statements**) were expressed to be based on any of the assumptions alleged in paragraph 15;
 - (ii) the existence of the alleged "First FY15 Guidance Assumption" is inconsistent with:
 - (A) the statement in the 29 August 2014 Results Presentation "*Embed price leadership through continued price investment*" under the heading "More to Do" (p. 5);
 - (B) the statements in the 29 August 2014 Analyst Presentation that the majority of Woolworth's margin improvements had been reinvested back in prices;
 - (C) the statements in the First Quarter FY15 Conference Call concerning a drive to improve prices and price perception, including the "Cheap Cheap" campaign which had been commenced approximately one month prior to the call;
 - (D) the inclusion in the FY15 Budget of \$205 million of price investment in FY15 in Australian Supermarkets;

- (E) the Supermarkets Performance Analysis and Delivery Plan (referred to in paragraph 12K(b) above including, for example, the statement that “\$154m gross investment in pricing will be required in FY15 to retrieve price perception assuming minimal further competitor price moves”).

J. February 2015 NPAT Guidance

16 Woolworths:

- (a) admits paragraph 16;
- (b) relies on the full terms and effect of “27 February 2015 Results Presentation”, “27 February 2015 Results Announcement” and “27 February Analyst Presentation” as defined in paragraph 16; and
- (c) says further that the 27 February 2015 Analyst Presentation was made available to the public via webcast.

17 Woolworths:

- (a) denies paragraph 17; and
- (b) in relation to the so-called ~~“Necessary Further Investment”, “Guidance Maintenance Information”~~ and the “Guidance Options Information”, refers to and repeats paragraph 12B above *mutatis mutandis*;
- (c) says further that the disclosure of the so-called “Guidance Options Information” to the market on 29 August 2014, 22 September 2014, 12 October 2014, 3 November 2014, 27 November 2014 or 9 January 2015 would have been positively misleading in circumstances where:
 - (i) the Board had not formed the supposition, speculation or opinion reflected in the “Guidance Options Information”;
 - (ii) no decision to abandon or revise the First, Second, Third, Fourth, Fifth, ~~or Sixth~~ or Seventh FY15 NPAT Guidance Statements had been made;
 - (iii) no decision to abandon Woolworths’ longer-term strategy had been made; and
 - (iv) the Board had been advised that Woolworths was forecast to achieve NPAT growth of between 4-7% in FY15 as pleaded in paragraphs 25.1A0 – 25.12 below;
- (d) says further that the “Guidance Options Information” as pleaded is reductive and overly simplistic in that it presents as a binary option a choice to achieve FY15

Earnings Guidance or to deliver sustainable growth, whereas the weighing of short-term profit against longer term investment exists in all businesses and is a matter of degree, balance and business judgment about which reasonable minds may differ;

- (e) says further that the documents particularised as indicating that Woolworths officers were actually aware of the Guidance Options Information do not support the pleaded allegation;
- (f) refers to and repeats the matters alleged in paragraphs 17.01-17.7 and paragraphs 25.10, ~~and~~ 25.11 and 25.15 below by way of further answer to paragraph 17; and
- (g) says further that the allegation in paragraph 17(b) is inconsistent with the allegation in paragraph 12JG(s).

17.01 In the period between 30 January 2015 to 26 February 2015, officers of Woolworths were considering the relative merits of the options available to Woolworths and conducting the weighing exercise identified at paragraph 17(d) above.

Particulars

- a) *Mr O'Brien's email to Mr Dawson dated 30 January 2015 (WOW.503.005.9285);*
- b) *Mr Dawson's email to Mr O'Brien dated 31 January 2015 and the attached document entitled "thoughts" (WOW.503.005.9241; WOW.503.005.9242);*
- c) *Mr O'Brien's note entitled "Blank 7" and emailed on 8 February 2015 (WOW.503.005.7898; WOW.503.005.7899);*
- d) *Mr O'Brien's email to Mr Waters dated 10 February 2015 (WOW.503.005.4344);*
- e) *Mr Dawson's email to Mr O'Brien dated 11 February 2015 and the attached email entitled "Board note including people stuff" (WOW.503.005.4141; WOW.503.005.4142);*
- f) *the matters pleaded at paragraphs 17.1 to 17.5 below.*

17.1 On or about 17 February 2015, Mr O'Brien informed the Board that:

- (a) he and Mr Marr were comfortable that despite the poor sales performance in the supermarkets business, Woolworths did have a realistic scenario "*at current course and speed*" to meet 4% NPAT growth for FY15, "*even with some additional investment in our customer offer*";

- (b) at the upcoming meeting of the Board on 26 February 2015, he wished to discuss a “critical choice” as to whether Woolworths would engage in proactive and decisive further investment in Woolworths’ customer offer in the supermarkets business to address Woolworths’ long-term ability to win against Coles and Aldi; and
- (c) in advance of that meeting, he would share with the Board financial scenarios showing various levels of further investment over time.

Particulars

Mr O'Brien informed the Board of the above matters in a written note attached to an email sent to the Board on 17 February 2015 (WOW.503.005.7537; WOW.503.005.7538).

- 17.2 On 19 February 2015, Wesfarmers Limited released its half-year results, including results for the Coles supermarkets business operated by Wesfarmers, the major competitor of Woolworths.
- 17.3 On or about 20 February 2015, Mr O'Brien provided the Board with a “pre-read” document entitled “*Customer-led growth in supermarkets to reach full potential*” in advance of the Board meeting to be held on 26 February 2015 which stated that:
 - (a) a number of scenarios would be brought to the Board meeting on 26 February 2015;
 - (b) the half-year results of Coles indicated profit growth lower than Mr O'Brien would have expected in light of that business’ strong sales growth, “*showing that they are investing*”;
 - (c) “*despite some further downside sales risk in supermarkets, we believe we could meet our 4-7% NPAT guidance if we chose to*”;
 - (d) Mr O'Brien’s preferred path was to announce that:
 - (i) while Woolworths could meet its FY15 NPAT guidance, instead it would invest in the supermarkets business in order to regain “top-line” momentum; and
 - (ii) as such, Woolworths would not commit to the FY15 NPAT guidance previously issued.
- 17.4 At the meeting of the Board of Woolworths on 26 February 2015, Mr Marr presented two papers:

- (a) the “*CFO Report, January 2015*” (WOW.201.012.0116) which included three models for NPAT for FY15:
- (i) the “base case” model which indicated full-year NPAT growth of 4.2%;
 - (ii) the “low case” model which indicated full-year NPAT growth of 4.0%; and
 - (iii) the “downside case” model which indicated full-year NPAT growth of 4.0%;
- (b) the “*Group NPAT scenarios*” presentation (WOW.201.012.0139), which:
- (i) stated that on current trajectory and prior to additional price investment Woolworths can reach FY15 4-7% NPAT guidance even with pessimistic assumptions on competition and growth; and
 - (ii) modelled three scenarios for future performance of the company:
 - (A) the “low case” model for FY15 with no investment in the supermarkets business beyond that already planned, which indicated:

	FY15	FY16	FY17	FY18
Supermarkets sales	34,763	35,989	36,853	37,553
Supermarkets sales growth	2.33%	3.53%	2.40%	1.90%
Group NPAT	2,550	2,708	2,946	3,063
Group NPAT growth	4.0%	6.1%	8.8%	4.0%

- (B) the “FY16 investment case” which modelled further investment in the supermarkets business commencing in FY16 and indicated:

	FY15	FY16	FY17	FY18
Supermarkets sales	34,763	35,656	37,128	38,943
Supermarkets sales growth	2.33%	2.57%	4.13%	4.89%
Group NPAT	2,550	2,590	2,762	3,080
Group NPAT growth	4.0%	1.5%	6.6%	11.5%

- (C) the “FY15 phased investment case” which modelled further investment in the supermarkets business commencing in FY15 and indicated:

	FY15	FY16	FY17	FY18
Supermarkets sales	34,713	35,927	37,584	39,494
Supermarkets sales growth	2.19%	3.5%	4.61%	5.08%
Group NPAT	2,514	2,638	2,851	3,194
Group NPAT growth	2.5%	4.8%	8.1%	12.1%

- (iii) and recommended that the Board approve immediate investment to allow Woolworths to protect its market share and return to a solid sales and EBIT trajectory sooner (in FY17).

17.5 At the meeting of 26 February 2015, having considered the Group NPAT scenario presentation, the Board of Woolworths resolved (subject to the finalisation of Woolworths’ draft H1 FY15 financial statements):

- (a) to accept management’s recommendation to provide revised market guidance; and
- (b) factoring in the investment initiatives now planned in the supermarkets division, the directors’ current expectations were that growth in FY15 NPAT before significant items would be towards the lower end of the current analysts’ consensus range of 1.8%-6.6% NPAT growth.

17.6 At the meeting of 26 February 2015, the Board resolved to form a committee consisting of Michael Ullmer, Jillian Broadbent and Mr O’Brien to approve the H1FY15 financial statements.

17.7 Before the commencement of trading on 27 February 2015, the committee referred to in paragraph 17.6 above met and resolved to approve the H1FY15 financial statements.

18 In response to paragraph 18, Woolworths:

- (a) says that the 27 February 2015 Results Presentation, 27 February 2015 Results Announcement and 27 February 2015 Analyst Presentation:
 - (i) stated:
 - (A) the decision which had been taken by the Board on 26 February 2015 described in paragraph 17.5(b) above;

- (B) the reasons for that decision; and
- (C) that, factoring in the planned investment initiatives, the Woolworths Board's current expectations were that growth in FY15 net profit after tax before significant items would be towards the lower end of the analyst consensus range of 1.8-6.6% growth;
- (D) that forward-looking statements (including statements of expectation) with respect to Woolworths' business and operations, market conditions, results of operations and financial condition, specific provisions and risk management practices:
 1. involve known and unknown risks, uncertainties and assumptions and other important factors that could cause the actual results, performances or achievements of Woolworths to be materially different from future results, performances or achievements of Woolworths expressed or implied by such statements; and
 2. speak only as of the date of the presentation;

(together, **the February FY15 Revised Guidance**)

(ii) contained no statement or inference that:

- (A) the alleged First or Second ~~or Third~~ Guidance Assumptions existed, the FY15 Earnings Guidance had been based on the First or Second Guidance Assumptions, or assumptions underlying the FY15 NPAT Guidance Statements had been erroneous;
 - (B) any of the FY15 NPAT Guidance Statements had been unreliable or had lacked a reasonable basis; or
 - (C) was to the effect of the so-called "Guidance Options Information" or the "Guidance Information";
- (b) says that the pleading is vague and embarrassing in that it does not explain or identify which parts of the "Guidance Options Information" and the "Guidance Information" are alleged to have been disclosed and which parts are alleged to have been withheld from disclosure;
- (c) says that contemporaneous statements in media articles and analyst reports are inconsistent with any inference that the FY15 Earnings Guidance was based on the First or Second FY15 Guidance Assumptions;

Particulars

(i) *Woolworths refers to and repeats the particulars to paragraph 33.1(a) below.*

(ii) *Further particulars may be provided following evidence.*

(d) relies upon the 27 February 2015 Results Presentation, 27 February 2015 Results Announcement and 27 February 2015 Analyst Presentation for their full force and effect; and

(e) otherwise denies paragraph 18.

18A. In response to paragraph 18A, Woolworths:

(a) denies the paragraph; and

(b) in relation to the so-called “February Growth Information”, refers to and repeats paragraph 12B above *mutatis mutandis*;

19 In response to paragraph 19, Woolworths:

(a) says that:

(i) on 27 February 2015, in addition to the matters specifically pleaded at paragraph 18(a) above, Woolworths also announced a number of other matters including:

(A) its sales results for Q2 FY15; and

(B) its H1 FY15 financial statements including NPAT growth of 4.7% in H1 FY15; and

(ii) in the two months preceding 27 February 2015, Woolworths’ shares had traded on the ASX at prices of between \$29.55 and \$34.71;

(iii) on 26 February 2015, Woolworths’ shares closed at \$33.95;

(iv) on 27 February 2015, Woolworths’ shares opened at \$30.70, traded between \$31.28 and \$30.60, and closed at \$30.71;

(v) on 2 March 2015, Woolworths’ shares opened at \$30.41, traded between \$30.45 and \$29.18, and closed at \$29.29; and

(b) otherwise denies paragraph 19.

K. 6 May Investor Strategy Day

20 Woolworths admits paragraph 20 and adopts the terms defined therein.

21 In response to paragraph 21, Woolworths:

- (a) admits that the statement at paragraph 21(a) was made by Mr O'Brien;
- (b) admits that the statement at paragraph 21(b) was made by Mr O'Brien;
- (c) admits paragraph 21(c) save for the omission of a footnote to that statement;
- (d) admits that the 6 May Presentation Slides contained the statement pleaded at paragraph 21(d) on a slide entitled "Observations 10 weeks in" and immediately following the words:

*"A strong franchise – with good people, assets and capabilities
A clear strategic plan with significant potential
However,"*

- (e) admits that the statement at paragraph 21(e) immediately followed the statement at paragraph 21(d);
- (f) denies paragraph 21(f) and says that *"neutralise Coles and contain Aldi on pricing"* was listed as a priority, not a need;
- (g) admits paragraph 21(g);
- (h) admits that the matters pleaded at paragraph 21(h) were listed as priorities in addition to other priorities;
- (i) admits paragraph 21(i);
- (j) admits paragraph 21(j);
- (k) denies paragraph 21(k) and says that the matters pleaded were listed as priorities, not needs;
- (l) admits paragraph 21(l);
- (m) admits that Mr Banducci made the statement *"we are currently at our most competitive prices we have been since January of 2014, so we're not in a bad place in price. That doesn't mean we don't have more to do, but we've started in a very good position going into next year. The key issue in price to me, as I say, it's not only what our index price is, relative to our major competitor, but it's how we construct that, that's the real question"*;
- (n) admits that Mr Banducci made the statement pleaded at paragraph 21(n);
- (o) admits that Mr O'Brien made the statement pleaded at paragraph 21(o);
- (p) admits that Mr Banducci made the statement pleaded at paragraph 21(p);
- (q) admits that Mr Dave Chambers, Director, Woolworths Supermarkets, made the statement pleaded at paragraph 21(q);

- (r) admits that Mr Chambers made the statement pleaded at paragraph 21(r) immediately following a statement that, *"What I was going to add to the earlier question is a balance about how many refurbishments we do. So we've got some great new stores that are doing really well, but we've got a tail of our store network that we're focusing on for refurbishments to bring the standards up. It's actually the balance of what we focus on. A lot of new store, a little in refurbishments."*;
- (s) admits that Mr Chambers made the statement pleaded at paragraph 21(s);
- (t) admits that Mr Chambers made the statement pleaded at paragraph 21(t);
- (u) admits that Mr Banducci made the statement pleaded at paragraph 21(u);
- (v) admits Mr O'Brien made the statement pleaded at paragraph 21(v) shortly following a statement *"Why we find ourselves here is that we've got a very strong results oriented culture, always have and that's in part what has made Woollies successful over the years. In the main good outcomes for customers have gone hand in hand with that results oriented culture."*;
- (w) admits that Mr Marr made the statement pleaded at paragraph 21(w);
- (x) relies upon the 6 May Announcement, the 6 May Presentation Slides, the 6 May Media Releases and the 6 May Presentation for their full force and effect; and
- (y) otherwise denies paragraph 21.

21A. Woolworths denies paragraph 21A.

22 In response to paragraph 22, Woolworths:

- (a) says that:
 - (i) on 6 May 2015, in addition to the statements admitted at paragraph 21 above, Woolworths announced a number of other matters including:
 - (A) its sales results for Q3 FY15; and
 - (B) a three-year strategy for its supermarkets business;
 - (ii) on 5 May 2015, Woolworths' shares closed at \$29.63;
 - (iii) on 6 May 2015, Woolworths' shares opened at \$28.50, traded between \$29.01 and \$28.10, and closed at \$28.14;
 - (iv) on 7 May 2015, Woolworths' shares opened at \$28.00, traded between \$28.10 and \$27.45, and closed at \$27.57; and

- (v) in the ten days immediately following the announcement of 6 May 2015, Woolworths shares traded between \$27.02 and \$29.05, closing at \$29.00 on 15 May 2015, down approximately 2.1% from their closing price on 5 May 2015 in circumstances where the All Ordinaries index was down by approximately 1.5% over the same period; and
- (b) denies paragraph 22.

L. First alleged misleading or deceptive conduct contravention

23 In response to paragraph 23, Woolworths:

- (a) refers to and repeats its pleading of the First, Second, Third, Fourth, Fifth, ~~and Sixth~~ and Seventh FY15 NPAT Guidance Statements in paragraphs 12(a)(ii), 12(b), 12(ba), 12G(a), 13(c), and 14(a)(i) and 14(a)(ii) above; and
- (b) otherwise denies paragraph 23.

24 Woolworths:

(a) denies paragraph 24;

(b) repeats paragraph 18 above; and

(c) further says:

- (i) the First FY15 NPAT Guidance Statement appeared in the 29 August 2014 Results Presentation, and Woolworths refers to and repeats the matters in paragraph 12(a) above;
- (ii) the Second FY15 NPAT Guidance Statement was a statement of present expectation made orally in remarks given on the morning of the release of the 29 August 2014 Results Presentation, and Woolworths refers to and repeats the matters in paragraphs 12(b) and 12(c) above;
- (iii) the Third FY15 NPAT Guidance Statement appeared in the 29 August 2014 Results Announcement, and Woolworths refers to and repeats the matters in paragraph 12(ba), 12(c) and 12(d) above;
- (iv) the ~~Third~~ Fourth FY15 NPAT Guidance Statement was a statement of present expectation made in the FY14 Annual Report and refers to and repeats the matters pleaded in paragraph 12G above;
- (v) the ~~Fourth~~ Fifth FY15 NPAT Guidance Statement was also a statement of present fact to the effect that the First, ~~and Second~~ and Third FY15 NPAT Guidance Statements were not being revised at that time and was,

or ought to have been, understood as such by those to whom the statement was made; and

Particulars

Research report of Phillip Kimber and Nick Basile of Goldman Sachs of 3 November 2014, pp 1 and 4:

“WOW did not make any explicit comment regarding its prior guidance for 4% to 7% FY15E NPAT growth...

***FY15 guidance:** WOW has not provided FY15 sales guidance and does not typically comment on profit guidance at its sales results. Consistent with this, WOW did not make any explicit comments regarding prior guidance.”*

(vi) the ~~Fifth and Sixth~~ and Seventh FY15 NPAT Guidance Statements stated that Woolworths held, as at 27 November 2014, the expectation which had been conveyed as at 29 August 2014 by the First, ~~and Second~~ and Third FY15 NPAT Guidance Statements;

(vii) the allegation that the “FY15 Guidance Representation” was a continuing representation after 27 February 2015 is unmaintainable in light of the statements made by Woolworths on that day, including the February FY15 Revised Guidance, and is inconsistent with the allegations made by paragraphs 36E and 36F.

25 In response to paragraph 25, Woolworths:

- (a) refers to and repeats paragraph 24 above;
- (b) says that paragraph 25 is embarrassing in that it contains no allegation that the alleged “FY15 Guidance Representation” in fact was a representation as to a future matter or matters;
- (c) denies paragraph 25; and
- (d) says further that by reason of the matters in paragraphs 25.1-25.14 below:
 - (i) Woolworths had a reasonable basis for each of the FY15 NPAT Guidance Statements; and
 - (ii) if, which is denied, any of the FY15 NPAT Guidance Statements constituted a continuing representation as to future matters made until 27 February 2015, Woolworths had a reasonable basis for that representation.

25.1 Woolworths achieved NPAT growth of 8.5% in FY14, 6.1% in FY13 and 3.6% in FY12.

25.1A In advance of the meeting of the Board on 29 May 2014, Mr Marr provided the FY15-FY17 Financial Plan to the Board (WOW.201.013.0115; WOW.507.016.6913), which included the following:

- (a) *“NPAT increasing 7.7% exceeding current consensus of c.7.0%. Risk adjusted NPAT growth of circa 7.0%”*;
- (b) that Woolworths expected no significant change from the macro economic environment with consumers remaining cautious;
- (c) the FY15 Budget forecast NPAT growth of 7.7%;
- (d) listed the following strategic priorities for Supermarkets:
 - (i) *“Re-energise our brands and stores”*;
 - (ii) *“Unbeatable value”*;
 - (iii) *“First choice for fresh food”*;
 - (iv) *“Certainty of stock”*;
 - (v) *“Great service every day”*;
 - (vi) *“Set groundwork to grow incremental share of stomach, convenience missions & premium”*; and
- (e) that the risk adjusted EBIT and NPAT growth figures of circa 7.0% reflects a prudent outlook on discretionary businesses.

25.1B At the meeting of the Board on 29 May 2014:

- (a) Mr Marr presented and discussed the FY15 Budget and FY15-FY17 Financial Plan, including:
 - (i) that the four key strategic priorities underpin an ambitious FY15-FY17 Financial Plan;
 - (ii) the factors impacting the budget;
 - (iii) the assumption that there would be no significant change to the macro economic environment with consumers remaining cautious;
 - (iv) that, based on the budget, Woolworths would continue with guidance of 4-7% NPAT and noted that there would be a further discussion on guidance at the next meeting of the Board; and
- (b) after discussion, the Board approved the FY15 budget.

25.1C In advance of the meeting of the Board on 14-16 July 2014, Mr Marr provided the CFO Report for June 2014 (WOW.201.014.0063) to the Board, which recorded:

- (a) that the sales results for FY14 demonstrated pleasing momentum;
- (b) that sales momentum had been maintained throughout FY14 despite the impact of increased consumer caution in the lead up to and post the Federal budget announcement, the declining trend in consumer confidence and unseasonal warm weather; and
- (c) that the NPAT growth figure for FY14 of 6.1% was within their market guidance and above analyst consensus of 5.8%.

25.1D At the meeting of the Board on 16 July 2014, the Board agreed FY15 guidance of 4-7% NPAT growth.

25.2 In advance of the meeting of the Board on 28 August 2014, Mr Marr provided the CFO Report for July 2014 (WOW.201.002.0043) to the Board, which:

- (a) included a forecast that Woolworths would achieve NPAT growth of 6.9% in H1 FY15 and 7.7% in FY15;
- (b) reported that:
 - (i) Woolworths had achieved NPAT growth of 6.0% in the month of July;
 - (ii) Woolworths had achieved pleasing growth in the month of July but that sales were 2.4% below budget;
 - (iii) sales in Australian Supermarkets for the month of July were 1.0% below budget;
 - (iv) the FY15 forecast figures of EBIT and NPAT growth of 8.0% and 7.7% respectively on FY14 remain broadly in line with budget underpinned by ongoing momentum in the Australian Food, Liquor and Petrol business.

25.3 At the meeting of the Board on 28 August 2014, the Board agreed to give FY15 NPAT guidance of 4-7% growth concurrently with the release of Woolworths' preliminary final report for FY14.

25.4 On 26 September 2014, Mr Marr provided the CFO report to the Board for August 2014 (WOW.201.004.0021), which included forecasts of NPAT growth of 5.1% in H1 FY15 and 6.7% in FY15 and risk and opportunity adjusted forecasts of NPAT growth of 5.2% in H1 FY15 and 7.0% in FY15.

25.5 In advance of the meeting of the Board on 23 and 24 October 2014, Mr Marr provided the CFO report to the Board for September 2014 (WOW.201.005.0038), which included

a forecast that Woolworths would achieve H1 FY15 NPAT growth of 6.0%. In light of year-to-date under-performance, the report also included three further modelled scenarios with H1 FY15 NPAT growth of 4.2%, 5.2% and 6.6% respectively.

25.6 At the meeting of the Board on 23 October 2014, the Board:

- (a) considered the scenarios which had been presented by Mr Marr and resolved that no change to Woolworths' guidance was required; and
- (b) requested that Mr Marr continue to report on financial performance against the scenario analysis at future board meetings.

25.7 In advance of the meeting of the Board on 26 November 2014, Mr Marr provided the CFO report to the Board for October 2014 (WOW.201.007.0041), which included forecasts that Woolworths would achieve NPAT growth of 5.4% in H1 FY15 and 6.0% in FY15. The report also included two further modelled scenarios with H1 FY15 NPAT growth of 4.3% and 5.7%.

25.8 On 26 November 2014, the Board considered the scenario analysis and resolved that Woolworths' market guidance should be confirmed at the company's Annual General Meeting.

25.9 On 23 December 2014, Mr Marr provided a report to the Board for November 2014 (WOW.503.006.6406) which stated that "FY15 full year outlook remains within profit guidance range". The report forecast that Woolworths would achieve NPAT growth of 4.5% in H1 FY15 and ~~4.3%~~ 5.6% in FY15 and modelled two further scenarios with 5.4% and 4.2% growth in H1 FY15.

25.10 On 11 January 2015, Mr O'Brien sent an email to the Board (WOW.503.006.0606) which stated that:

- (a) while there had been a "lift" in October and November, the sales growth in the supermarkets business in December was flat; and
- (b) it appeared likely that Woolworths' H1 FY15 profit growth would be within the guidance that had been given by Woolworths towards the lower end of the range.

25.11 On 27 January 2015, the Board was provided with an H1 FY15 Board Update paper (WOW.201.008.0010) which:

- (a) stated that preliminary H1 FY15 NPAT growth was within Woolworths' FY15 market guidance range of 4-7% and above the then-current analyst consensus of 4.3%; and
- (b) indicated that an update on the FY15 forecast would be provided at the February board meeting.

- 25.12 At the meeting of the Board on 26 February 2015, Mr Marr presented the CFO Report referred to in paragraph 17.4 above which also stated:

"FY15 Forecast

We have undertaken significant modelling of our divisional forecasts for the balance of the year and risk adjusted these forecasts as appropriate.

The biggest variable is Supermarkets comparable sales, especially in light of the rapid underlying deterioration in recent months. Taking this into account, on our current trajectory, I remain confident we can deliver within the 4-7% profit guidance."

- 25.13 On 26 February 2015, the Board passed the resolution referred to in paragraph 17.5 above.
- 25.14 In addition to the matters pleaded in paragraphs 25.1-25.13 above, Woolworths refers to and relies upon the following documents and information that were provided to the Board from time to time:
- (a) oral updates during meetings of the Board;
 - (b) CEO Board Reports;
 - (c) Australian Supermarkets Board Reports;
 - (d) update emails sent from Mr O'Brien to the Board; and
 - (e) strategy papers and updates.
- 25.15 Further to paragraph 25.14 above (and insofar as it is alleged that Woolworths' guidance statements lacked a reasonable basis because achievement of that guidance would have detrimental long-term effects on its Supermarkets business), Woolworths relies in particular upon:
- (a) the suite of corporate strategy papers presented to the Board between March 2014 and October 2014:

Particulars

(i) Paper entitled "Refreshing Woolworths' Corporate Strategy to Maintain our Retail Leadership" (WOW.201.019.0011), presented to the Board on 25 March 2014;

(ii) Slide deck entitled "Refreshing Woolworths' Corporate Strategy to Maintain our Retail Leadership" (WOW.201.019.0017), presented to the Board on 25 March 2014;

(iii) Paper entitled "Refreshing Woolworths' Corporate Strategy to Maintain our Retail Leadership" (WOW.201.013.0100), presented to the Board on 29-30 May 2014;

(iv) Slide deck entitled "Refreshing Woolworths' Corporate Strategy to Maintain our Retail Leadership" (WOW.201.013.0070), presented to the Board on 29-30 May 2014;

(v) Paper entitled "Reaching Full Potential in Food in Australia" (WOW.201.013.0232), presented to the Board on 29-30 May 2014;

(vi) Paper entitled "Woolworths' Corporate strategy to deliver our "Full Potential" and extend our Retail Leadership" (WOW.503.009.1706), circulated to the Board on 8 October 2014;

(vi) Paper entitled "Woolworths' Corporate strategy to deliver our "Full Potential" and extend our Retail Leadership" (WOW.503.008.0494), circulated to the Board on 15 October 2014;

(vii) Slide deck entitled "Woolworths' corporate strategy to deliver our Full Potential and grow our retail leadership" (WOW.503.008.2889), presented to the Board on 23-24 October 2014;

- (b) the programs and initiatives that were implemented to pursue the strategies outlined in the suite of papers referred to at paragraph 25.15(a) above, including:
 - (i) the "Full Potential Food" program, being a strategic initiative within the Supermarkets business intended to, amongst other things, address the challenge from discount retailers and changing consumer preferences by focussing on customer loyalty and data, a low-cost operating model, format development and the convenience market, automation and online shopping; and
 - (ii) the "Fuel for Growth" program, being a multi-year strategic initiative intended to lower Woolworths' cost base and thereby deliver savings which could be invested back into the business, including in "Full Potential" initiatives; and
- (c) the Supermarkets Performance Analysis and Delivery Plan which was designed to, among other things, improve existing trade plans and accelerate Fuel for Growth initiatives in order to meet the Supermarkets' FY15 EBIT budget while also making "price investments" and engaging in marketing in order to improve price perception,

each of which was prepared by Woolworths in conjunction with McKinsey & Company.

26 Woolworths denies paragraph 26.

27 Woolworths denies paragraph 27.

M. First alleged continuous disclosure contravention

28 In response to paragraph 28, Woolworths:

- (a) refers to and repeats paragraphs 17, 17.01-17.7, 21, 24, 25 and 25.1-25.4~~4~~¹⁵ above;
- (b) denies paragraph 28;
- (c) in relation to the so-called "Guidance Information", refers to and repeats paragraph 12B above *mutatis mutandis*.

29 In response to paragraph 29, Woolworths:

- (a) refers to and repeats paragraph 28 above; and
- (b) denies paragraph 29.

30 In response to paragraph 30, Woolworths:

- (a) repeats paragraph 28 above;
- (b) says that it did not tell the ASX the alleged "Guidance Information" at any time, whether in part or in full; and
- (c) otherwise denies paragraph 30 ~~the allegations~~.

31 Woolworths:

- (a) says that the pleading of alleged contravention of s 674 of the *Corporations Act* in paragraphs 28-32 is embarrassing and deficient as it contains no allegation that Woolworths had information about specified events or matters that had arisen and which the Listing Rules required Woolworths to notify to the ASX at any time prior to 27 February 2015; and
- (b) denies paragraph 31.

32 Woolworths denies paragraph 32.

N. Second alleged continuous disclosure contravention

33 In response to paragraph 33, Woolworths:

- (a) refers to and repeats paragraphs 17 and 17.01-17.7 above;
- (b) denies paragraph 33.

33.1 Further or in the alternative, in answer to paragraph 33, Woolworths says that, to the extent that the alleged “Guidance Options Information” existed at all as a matter of speculation, supposition or opinion, it:

- (a) was generally available within the meaning of s 676 of the *Corporations Act*;

Particulars

(i) On 3 December 2014, David Errington and Michael Courtney of Bank of America Merrill Lynch published a research report which recorded their opinion that:

- (A) Woolworths’ determination to meet its short-term earnings targets was causing its underlying core business (the Australian supermarkets business) to deteriorate;*
- (B) Woolworths was pursuing a sub-optimal strategy in its Australian supermarkets business in which it was not price competitive, which strategy was likely to contribute to meeting short-term profit objectives but compromise the growth of the business in future years; and*
- (C) Woolworths’ current earnings needed rebasing if future growth was to be sustained.*

(ii) Sue Mitchell published an article in the Sydney Morning Herald online on 4 December 2014 and in print on 5 December 2014, which reported the substance of Mr Errington and Mr Courtney’s research report, including that Mr Errington believed that continued growth in grocery margins would undermine Woolworths’ competitive position, triggering deteriorating same-store sales and ultimately a fall in margins. The article also reported that Woolworths was under pressure from many analysts to sacrifice its grocery margins and cut prices harder to overcome consumer perceptions its prices were not as low as those of Coles.

(iii) On 14 January 2015, Shaun Cousins and Quinn Pierson of J.P. Morgan published a research report (WOW.501.003.7561) which recorded their opinion that:

- (A) Woolworths would engage in cost management to achieve its NPAT guidance of 4-7%;*
- (B) investors could punish a company that meets guidance by reducing costs in what could appear to be an unsustainable way,*

especially if gross margins expand, as this would exacerbate any correction in value perception required in the future.

(iv) Morgan Stanley research report dated 29 August 2014 (SUB.008.001.0459):

(v) Citi research report dated 30 August 2014 (WOW.501.009.1846).

(vi) Morgan Stanley research report dated 3 September 2014 (MIN.500.001.0116):

(vii) Article published in the Sydney Morning Herald on 5 November 2014, authored by Sue Mitchell (WOW.501.008.5423):

(viii) UBS research report dated 18 November 2014 (WOW.501.005.6772):

(ix) Article published in the Australian Financial Review on 24 November 2014, authored by Adele Ferguson (WOW.501.006.2859):

(x) Article published in The Age on 27 November 2014, authored by Sue Mitchell (WOW.501.006.0792):

(xi) Article published in the Australian Financial Review on 28 November 2014, authored by Michael Smith (WOW.501.006.0038):

- (b) a reasonable person would not expect the alleged "Guidance Options Information" to have a material effect on the price or value of Woolworths shares in the absence of further information:
 - (i) that the opinion was held by the Board of Woolworths; and
 - (ii) the Board of Woolworths had determined to act upon that opinion in a particular fashion; and
- (c) the alleged "Guidance Options Information" would not be likely to have the effect pleaded in the absence of the further information described in paragraph 33.1(b) above.

34 In response to paragraph 34, Woolworths:

- (a) repeats paragraph 33 above;
- (b) admits that it did not tell the alleged "Guidance Options Information" to the ASX at any time prior to 27 February 2015; and
- (c) otherwise denies the allegations.

35 In response to paragraph 35, Woolworths says that:

- (a) the pleading of alleged contravention of s 674 of the *Corporations Act* in paragraphs 33-35 is embarrassing and deficient as it contains no allegation that Woolworths had information about specified events or matters that had arisen and which the Listing Rules required Woolworths to notify to the ASX at any time prior to 27 February 2015 and, specifically, does not address the application of Listing Rule 3.1A; and
 - (b) denies paragraph 35.
- 35.1 In further answer to paragraph 35, Woolworth says that Listing Rule 3.1 did not apply to any information concerning the matters pleaded in paragraphs 17.01-17.6 above (or the alleged "Guidance Options Information" to the extent that Woolworths was aware of it) because:
- (a) the information:
 - (i) comprised matters of supposition or was insufficiently definite to warrant disclosure;
 - (ii) concerned an incomplete proposal; and/or
 - (iii) had been generated for the internal management purposes of Woolworths;
 - (b) the information was confidential; and
 - (c) a reasonable person would not expect the information to be disclosed.

Particulars

Woolworths refers to and relies upon Listing Rule 3.1A, Guidance Note 8 and, in particular, sections 5.4, 5.5, 5.6, 5.8, 5.9, 7.1 and 7.3 of Guidance Note 8.

For the purposes of paragraph 35.1(c), a reasonable person would have regard to the contents of that Guidance Note, including the following opinions of the ASX:

"A proposal is a course of action put forward for adoption... A proposal involving an entity is incomplete unless and until the entity has adopted it and is committed to proceeding with it... Hence, all other things being equal... [w]here a unilateral proposal requires the approval of the board of directors of entity, and nothing more, for the entity to be committed to it... it will be complete when the board formally approves the proposal and resolves to proceed with it, and not beforehand."

"[F]or an entity to have to disclose under Listing Rule 3.1 market sensitive information about an expected difference in its earnings for the current reporting period compared to market expectations, there needs to be a reasonable degree of certainty that there will be such a difference."

36 Woolworths denies paragraph 36.

O. Third alleged continuous disclosure contravention

36A. In response to paragraph 36A, Woolworths:

- (a) refers to and repeats paragraph 18A above; and
- (b) denies paragraph 36A.

36B. In response to paragraph 36B, Woolworths:

- (a) repeats paragraph 36A above;
- (b) says that it did not tell the ASX the alleged "February Growth Information" at any time prior to 6 May 2015; and
- (c) otherwise denies the allegations.

36C. In response to paragraph 36C, Woolworths:

- (a) says that the pleading of alleged contravention of s 674 of the *Corporations Act* in paragraphs 36A-36D is embarrassing and deficient as it contains no allegation that Woolworths had information about specified events or matters that had arisen and which the Listing Rules required Woolworths to notify to the ASX at any time prior to 6 May 2015 and, specifically, does not address the application of Listing Rule 3.1A; and
- (b) denies paragraph 36C.

36D. Woolworths denies paragraph 36D.

P. Second alleged misleading or deceptive conduct contravention

36E. In answer to paragraph 36E, Woolworths:

- (a) refers to and repeats its pleading of the February FY15 Revised Guidance in paragraph 18 above; and
- (b) otherwise denies paragraph 36E.

36F. Woolworths:

- (a) refers to and repeats paragraph 36E above; and
- (b) denies paragraph 36F.

36G. In response to paragraph 36G, Woolworths:

- (a) refers to and repeats paragraph 36E above;
- (b) says that paragraph 36G is embarrassing in that it contains no allegation that the alleged "February Growth Representation" in fact was a representation as to a future matter or matters;
- (c) denies paragraph 36G; and
- (d) says further that by reason of the matters pleaded at paragraph 17.5 above and paragraphs 36GA – 36GC below:
 - (i) Woolworths had a reasonable basis for the February FY15 Revised Guidance; and
 - (ii) if, which is denied, the February FY15 Revised Guidance constituted a continuing representation as to future matters made until 6 May 2015, Woolworths had a reasonable basis for that representation.

36GA At the meeting of the Board of Woolworths on 27 March 2015, Mr Marr presented the CFO Report for February 2015 (WOW.201.019.0047), which:

- (a) forecast a risk adjusted NPAT growth for FY15 of 1.9%;
- (b) included four models for NPAT for FY15, all of which indicated full-year NPAT growth (after releases) of 1.9%:
 - (i) the "base case" model;
 - (ii) the "GPBF – 20bps vs fcst" model;
 - (iii) the "0% Comp" model; and
 - (iv) the "Combined" model.
- (c) detailed the risk adjusted forecast assumptions;
- (d) contained the following statements:
 - (i) *"we remain confident we can meet our revised market guidance";*
 - (ii) *"sensitivity analysis supports our ability to reach guidance, even if sales and margin deteriorate further";*
 - (iii) *"we are consciously balancing the increased investment in price and labour with our profit imperatives";*

- (iv) *“the scenarios highlight that even if comp sales were flat for the March to June period and GP margin % reduced by a further 20bps, we could still exceed the lower end of guidance of 1.8% NPAT growth”.*

36GB At the meeting of the Board of Woolworths on 30 April 2015:

- (a) Mr Marr presented the CFO Report for March 2015 (WOW.201.019.0412), which:
 - (i) forecast a risk adjusted NPAT growth for FY15 of 1.9%;
 - (ii) detailed the assumptions and sensitivities that accompanied the risk adjusted forecast of NPAT growth for FY15 of 1.9%;
 - (iii) indicated that, whilst delivering NPAT growth for FY15 of 1.8% (i.e. the lower end of analyst consensus) remained possible, the following important factors would need to be considered:
 - (A) *“will require releasing significant contingency funds”;*
 - (B) *“creates additional challenge for FY15 budget delivery (cycling one-off releases)”;* and
 - (C) *“current market consensus is lower at 1.5%, and includes a range from -0.4% to 3.7%”*
- (b) Mr Marr and Mr O'Brien answered questions from the directors about the FY15 NPAT forecast;
- (c) Mr Marr and Mr O'Brien emphasized that they had no reason to believe that a material change to the current NPAT growth forecast was likely; and
- (d) the directors noted Mr Marr's report and stated that they would continue to monitor the forecasts carefully.

36GC In addition to the matters pleaded in paragraphs 36GA and 36GB above, Woolworths refers to and relies upon the following documents and information that were provided to the Board from time to time:

- (a) oral updates during meetings of the Board;
- (b) CEO Board Reports;
- (c) Australian Supermarkets Board Reports;
- (d) update emails sent from Mr O'Brien to the Board; and
- (e) strategy papers and updates.

36H. Woolworths denies paragraph 36H.

36I. Woolworths denies paragraph 36I.

Q. Alleged causation of loss

42 In response to paragraph 42, Woolworths:

- (a) admits that sections 674 and 1041H, Rules 3.1 of the Listing Rules (subject to rule 3.1A), section 12DA of the *ASIC Act*, and section 18 of the *Australian Consumer Law* applied in the Relevant Period; and
- (b) refers to and repeats paragraphs 23 and 36E above;
- (c) admits that a reasonable person would expect the First, ~~Fourth and Fifth~~ Sixth FY15 NPAT Guidance Statements and the February FY15 Revised Guidance to have, at the time each statement was made, a "material effect" on the price of Woolworths shares in the sense defined in section 677 of the *Corporations Act*;
- (d) refers to and repeats its:
 - (i) denials in paragraphs 27, 31, 35(b), 36C and 36I above that any of the alleged contraventions occurred; and
 - (ii) pleadings in paragraphs 19(a)(i) and 22(a)(i) above as to the disclosure of other information (including Q2 FY15 and Q3 FY15 sales results) on 27 February 2015 and 6 May 2015;
- (e) admits that the applicants entered into contracts to acquire an interest in Woolworths shares during the Relevant Period;
- (f) admits that each Group Member, by definition, entered into a contract to acquire an interest in Woolworths shares during the Relevant Period; and
- (g) otherwise denies paragraph 42.

43 Woolworths denies paragraph 43.

44 In response to paragraph 44, Woolworths:

- (a) repeats paragraphs 23 and 36E above;
- (b) does not know and cannot admit whether the applicants relied directly on any of the First, Second, Third, Fourth, Fifth, ~~or Sixth~~ or Seventh FY15 NPAT Guidance Statements or the February FY15 Revised Guidance in deciding to acquire interests in Woolworths shares; and
- (c) otherwise denies paragraph 44.

45 In response to paragraph 45, Woolworths:

- (a) repeats paragraphs 23 and 36E above;
- (b) does not know and cannot admit whether any Group Members relied directly on any of the First, Second, Third, Fourth, Fifth, ~~or Sixth~~ or Seventh FY15 NPAT Guidance Statements or the February FY15 Revised Guidance in deciding to acquire interests in Woolworths shares; and
- (c) otherwise denies paragraph 45.

46 In response to paragraph 46, Woolworths:

- (a) repeats paragraphs 23 and 36E above;
- (b) does not know and cannot admit whether any of the First, Second, Third, Fourth, Fifth, ~~or Sixth~~ or Seventh FY15 NPAT Guidance Statements or the February FY15 Revised Guidance materially contributed to the decision of any Group Members to purchase Woolworths shares; and
- (c) otherwise denies paragraph 46.

R. Loss alleged to have been suffered

47 Woolworths denies paragraph 47.

48 Woolworths denies paragraph 48.

48.1 In the alternative to paragraph 48 above, if, which is denied, any of the alleged contraventions occurred, Woolworths:

- (a) says that to the extent that any Group Member disposed of any Woolworths shares after 28 August 2014 and prior to 27 February 2015 (in the case of the first alleged misleading or deceptive conduct contravention) and prior to 6 May 2015 (in the case of the second alleged misleading or deceptive conduct contravention and the first, second and third alleged continuous disclosure contraventions):
 - (i) any loss suffered through that disposal was not caused by and did not result from the contraventions alleged in the Statement of Claim; and
 - (ii) any gain realised through that disposal (including by disposal of Woolworths shares for more than their alleged “true value”) must be accounted for in determining any loss or damage alleged by a Group Member;
- (b) denies that any Group Member has suffered loss to the extent that the Group Member (whether through hedging, derivative or securities lending arrangements or otherwise):

- (i) did not assume full economic exposure in respect of Woolworths shares acquired during the Relevant Period; or
- (ii) reduced their economic exposure in respect of Woolworths shares acquired during the Relevant Period;
- (c) denies that Group Members have suffered loss resulting from the conduct of Woolworths insofar as those Group Members did not rely on any representation or conduct of Woolworths; and
- (d) otherwise denies the paragraph.

49 In response to paragraph 49, Woolworths denies that either applicant or any group member has any entitlement to any of the relief specified in the application or at all.

49.1 Further, or in the alternative, to paragraph 49 above, Woolworths says that:

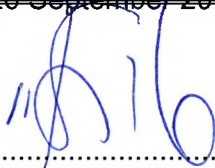
- (a) if, which is denied, Woolworths has contravened s 674 of the *Corporations Act*, Woolworths:
 - (i) acted honestly; and
 - (ii) having regard to all of the circumstances of the case (including the matters pleaded in paragraphs 17.01-17.7, 25.1- 25.44~~15~~15 and 36GA - 36GC above) ought fairly to be excused for the contravention and relieved wholly of liability under s 1317S(2)(b) of the *Corporations Act*;
- (b) if, which is denied, Woolworths has contravened s 674 of the *Corporations Act*, and is not relieved from liability under s 1317S(2)(b) of the *Corporations Act*, in determining whether and, if so, how to exercise a discretion to make an order for compensation in respect of a given Group Member under s 1317HA(1) or s 1325 of the *Corporations Act*, the Court should, *inter alia*, have regard to:
 - (i) whether, in deciding to purchase Woolworths shares, the Group Member (or their advisor or representative) relied directly or indirectly on any representation or conduct of Woolworths; and
 - (ii) whether, in deciding to purchase Woolworths shares, the Group Member (or their advisor or representative) formed an opinion as to whether the purchase was at an under-value, an over-value or a fair value and the basis upon which that opinion was formed (including any analysis considered or conducted by or on behalf of the Group Member);
- (c) if, which is denied, Woolworths has contravened s 1041H(1) of the *Corporations Act*, Woolworths:

- (i) acted honestly; and
 - (ii) having regard to all of the circumstances of the case (including the matters pleaded in paragraphs 17.01-17.7, 25.1-25.14~~15~~15 and 36GA - 36GC above) ought fairly to be excused for the contravention and relieved wholly of liability under s 1317S(2)(b) of the *Corporations Act* as applied by s 1041I(4);
- (d) if:
 - (i) Woolworths contravened s 1041H(1) of the *Corporations Act*, s 12DA(1) of the *ASIC Act*, or s 18 of the *Australian Consumer Law* (which is denied); and
 - (ii) a Group Member suffered economic loss:
 - (A) partly as a result of that conduct (which is denied); and
 - (B) partly as a result of failure of the Group Member to take reasonable care;

the amount that a Group Member may recover must be reduced in accordance with s 1041I(1B) of the *Corporations Act*, s 12GF(1B) of the *ASIC Act*, and 137B of the *Competition and Consumer Act*;
- (e) further to paragraph (d) above, any Group Member who purchased Woolworths shares in the Relevant Period without forming a reasonable opinion (or taking advice) as to whether the purchase was at an over-value, an under-value or a fair value, failed to take reasonable care; and
- (f) if, which is denied, Woolworths has contravened s 12DA(2) of the *ASIC Act*, in determining whether and, if so, how to exercise a discretion to make an order for compensation in respect of a given Group Member under s 12GM of the *ASIC Act*, the Court should, *inter alia*, have regard to the matters described in paragraph 49.1(b) above.

49.2 Woolworths says, in respect of the entire EASOC, that, to the extent that particulars contain allegations of fact travelling beyond the pleaded allegations themselves, the Applicants may not rely upon them and Woolworths does not plead to them.

Date: ~~26 September 2019~~ 3 July 2020



.....
Moira Leonie Saville
Lawyer for the Respondent
King & Wood Mallesons

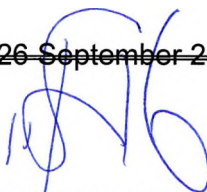
This pleading was prepared by Moira Leonie Saville and Alexander Basil Morris, lawyers, and J K Kirk SC, Nicholas De Young, ~~and~~ Hugh Atkin and Alison Hammond of Counsel.

Certificate of lawyer

I, Moira Leonie Saville, 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: ~~26 September 2019~~ 3 July 2020



.....
Lawyer for the Respondent