



## Infringement Notice

### *Spam Act 2003*

I, Jeremy Fenton, an authorised person for the purposes of clause 9 of Schedule 3 to the *Spam Act 2003 (the Spam Act)*, having reasonable grounds to believe that Woolworths Group Limited ACN 000014675 (**Woolworths**), has committed one or more contraventions of a particular civil penalty provision,

HEREBY give an infringement notice (**the Notice**) under subclause 3(1) of Schedule 3 to the Spam Act to:

**Woolworths Group Limited ACN 000014675**

at

1 Woolworths Way

Bella Vista NSW 2153

#### **Details of alleged civil contraventions**

It is alleged that Woolworths contravened subsection 16(1) of the Spam Act by sending, or causing to be sent, 798 commercial electronic messages to electronic addresses that had an Australian link, which were not designated commercial electronic messages, without the consent of the relevant electronic account-holders. Schedule 1 to the Notice sets out brief details of the alleged civil contraventions.

#### **Amount of penalty**

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$1,003,800. The penalty is calculated in accordance with item 2 of the table under subclause 5(1) of Schedule 3 to the Spam Act, as set out in paragraph 3.1 of Schedule 1 to the Notice.

## Payment of penalty

The penalty should be paid to the Australian Communications and Media Authority (**the ACMA**), on behalf of the Commonwealth, into the following account within 28 days after the Notice is given to Woolworths. Please include the reference 'Woolworths-UCES' with your payment:

ABN:	55 386 169 386
Financial Institution:	ANZ
Branch:	Belconnen Mall
BSB:	012-951
Account No:	837924272
Account Name:	ACMA Official Administered Receipts Account

If the penalty specified in the Notice is paid to the ACMA, on behalf of the Commonwealth, within 28 days after the Notice is given to Woolworths, the ACMA will not commence proceedings against Woolworths for the matters outlined in the Notice and any liability for the alleged contraventions that are the subject of this Notice will be discharged.

### If the penalty is not paid

If Woolworths does not pay the penalty within 28 days after the Notice is given to it, the ACMA may take action for the alleged contravention(s).

That action may include the application for civil penalty proceedings in the Federal Court of Australia. The penalties that the Federal Court of Australia can impose are potentially significantly higher than that in an infringement notice (see section 25 of the Spam Act).

### Withdrawal of the Notice

The ACMA may withdraw the Notice. It may do so of its own volition or upon request from Woolworths if the ACMA agrees. To be effective the withdrawal must occur within 28 days after the Notice was given.

If you wish to request withdrawal of the Notice, you should write as soon as practicable setting out the basis and detailed reasons for the request. Your application should be addressed to me in the first instance.

If the Notice is withdrawn after the penalty is paid, the penalty will be refunded.

DATE: 28 May 2020



**Jeremy Fenton**  
**Executive Manager**  
**Consumer, Consent and Numbers Branch**  
**Australian Communications and Media Authority**

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## SCHEDULE 1

In accordance with clause 4 of Schedule 3 to the Spam Act, brief details of each of the alleged civil contraventions are set out below.

### 1. Background

- 1.1. Woolworths is a registered company under the *Corporations Act 2001*, with a registered office at 1 Woolworths Way Bella Vista NSW 2153.
- 1.2. On 29 March 2019, the ACMA commenced an investigation into whether Woolworths had contravened the Spam Act.
- 1.3. Before commencing the investigation, the ACMA had received complaints from consumers claiming that Woolworths sent commercial electronic messages to electronic addresses more than five business days after the complainants withdrew consent to receive such messages.
- 1.4. The ACMA found it had reasonable grounds to believe that, between 1 October 2018 and 17 July 2019, Woolworths sent a significant number of commercial electronic messages to electronic addresses more than five business days after the relevant electronic account-holders withdrew consent.
- 1.5. The ACMA's investigation uncovered that there were multiple underlying causes of Woolworths's non-compliance.

### 2. Matters giving rise to the Notice

- 2.1. Between 30 May 2019 and 3 June 2019, Woolworths sent electronic messages to electronic addresses.
- 2.2. Information provided by Woolworths showed that the purpose of the messages was to offer to supply or advertise or promote goods sold by Woolworths. Therefore, the electronic messages described at paragraph 2.1 above were commercial electronic messages, as defined in section 6 of the Spam Act.
- 2.3. Subsection 16(1) of the Spam Act is a civil penalty provision that provides that a person must not send, or cause to be sent, a commercial electronic message that has an Australian link and is not a designated commercial electronic message.
- 2.4. The commercial electronic messages were not designated commercial electronic messages as defined in Schedule 1 to the Spam Act.
- 2.5. The commercial electronic messages had an Australian link as defined in section 7 of the Spam Act. They were sent by Woolworths, an organisation whose central management and control is in Australia.
- 2.6. Subsection 16(2) of the Spam Act provides that subsection 16(1) does not apply if the relevant electronic account-holders consented to the sending of the message.
- 2.7. The commercial electronic messages were sent to the electronic addresses noted in paragraph 2.1 after the relevant electronic account-holders had withdrawn consent and the withdrawal had taken effect in accordance with clause 6 of Schedule 2 to the Spam Act. Therefore, between 30 May 2019 and 3 June 2019, Woolworths sent the commercial electronic messages without the consent of the relevant electronic account-holders.
- 2.8. Information provided by Woolworths indicates that this was due to a system failure. Woolworths did not provide information to the ACMA to demonstrate that it had adequate systems, processes and practices in place at the time of the alleged contraventions.
- 2.9. Therefore, there are reasonable grounds to believe that Woolworths has contravened subsection 16(1) of the Spam Act between 30 May 2019 and 3 June 2019. The dates and electronic addresses relevant to the alleged contraventions are set out in Schedule 2 to the Notice.

**3. The amount of the penalty**

3.1. The total penalty specified in the Notice is \$1,003,800, calculated in accordance with item 2 of the table in subclause 5(1) of Schedule 3 to the Spam Act, as set out in Table 1 below.

**Table 1: Penalties for alleged contraventions of subsections 16(1) of the Spam Act**

<b>Date of alleged contraventions</b>	<b>Number of alleged contraventions of subsection 16(1)</b>	<b>Penalty units<sup>1</sup></b>	<b>Penalty</b>
30 May 2020	39	780	\$163,800
31 May 2020	295	1000	\$210,000
1 June 2020	188	1000	\$210,000
2 June 2020	143	1000	\$210,000
3 June 2020	133	1000	\$210,000
<b>Total</b>	<b>798</b>	<b>4,780</b>	<b>\$1,003,800</b>

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<sup>1</sup> At the time of the alleged contraventions, the amount of a penalty unit was \$210, as set by section 4AA of the *Crimes Act 1914*.