

# CLAYTON UTZ

Sydney Melbourne Brisbane Perth Canberra Darwin

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## By Post/Fax

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### Private and Confidential

Dear Mr Dunkel

### Complaint of Russell Matthews against Woolworths Limited

We refer to Ms Karen Toohey's letter dated 20 February 2008 enclosing a complaint made by Mr Russell Matthews against Woolworths Limited (**the Complaint**). We confirm that we act on behalf of Woolworths Limited (**Woolworths**).

Thank you for allowing us further time in which to provide Woolworths' response to the Complaint.

#### 1. SUMMARY

- 1.1 Woolworths denies that it has engaged in unlawful or discriminatory conduct contrary to the Disability Discrimination Act 1992 (Cth) (**the "DDA"**).
- 1.2 Woolworths respectfully submits that the Complaint should be terminated under section 46PH(1)(a) and/or (c) of the Human Rights and Equal Opportunity Commission Act 1986 (Cth) on the grounds that the conduct complained of is not unlawful or otherwise misconceived or lacks substance.

#### 2. THE COMPLAINT

- 2.1 The Complaint is set out in a statement of complaint. We understand the Complaint was prepared with the assistance of the Commission.
- 2.2 The Complaint provides that on 27 October 2007:
  - (a) Mr Matthews was allegedly refused entry into the Buranda store of Woolworths (**the Store**) because he was accompanied by what he refers to as being his assistance animals. We understand Mr Matthews asserts that two dogs that he owns

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and which accompanied him to the Store are assistance animals as defined under section 9(1)(f) of the DDA (**Assistance Animals**).

- (b) Mr Matthews was advised by a female employee of Woolworths that he needed a letter confirming that his two dogs were in fact Assistance Animals.
- (c) Mr Matthews told the Woolworths employee that such a letter was not required by the DDA.
- (d) Mr Matthews took a photo of the Woolworths employee because he intended to make a complaint about her to the Commission.
- (e) Mr Matthews was advised by Senior Constable Andrews that he was banned from the Store and that he would be committing a public nuisance if he continued to take more photos in Woolworths.
- (f) Mr Matthews claims that he was refused entry into the Store because he was accompanied by what he refers to as being his assistance animals.

2.3 The Complaint does not provide what Mr Matthews' particular disability is and, in what way, both of his dogs collectively (or separately) assist Mr Matthews to alleviate the effect of any specific disability.

## 3. RESPONSE

3.1 Woolworths is not aware of any of incident on 27 October 2007 as alleged by Mr Matthews. However, our client instructs that Mr Matthews attended the Store on 1 November 2007. With respect to that attendance, we are instructed as follows:

- (a) Mr Matthews attended the Store accompanied by two small dogs. In the absence of any identification or clarifying information from Mr Matthews, the dogs appeared to be domestic pet dogs. It was also not readily apparent in what way the dogs alleviated the effect of any disability Mr Matthews has.
- (b) Mr Matthews entered the Store accompanied by his two dogs. Upon entering, the Customer Service Manager, Ms Pauline Mann, who was working behind the Customer Service Desk at the time, politely sought to clarify the status of the dogs.
- (c) Mr Matthews' response was unhelpful. He aggressively asserted that his dogs were assistance dogs and that he was being "discriminated against".
- (d) Not unreasonably, Ms Mann then politely asked Mr Matthews whether he had any information that would assist in verifying that his two dogs were in fact Assistance Animals.
- (e) Mr Matthews did not respond. Instead, Mr Matthews took out a camera and proceeded to take a number of successive photos (10 to 20) at close range of both Ms Mann and another staff member who was nearby. The conduct of Mr Matthews was unnecessary and disruptive. Mr Matthews was asked to stop taking the photos. Mr Matthews did not stop and he kept on taking them. Mr Matthews then continued to enter the Store with his dogs for a brief period before leaving.
- (f) The Police attended the Store after Mr Matthews had left. Woolworths cannot comment on what (if any) conversation was had between Senior Constable Andrews and Mr Matthews after his departure from the Store.

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- 3.2 Woolworths is committed to ensuring that it meets the highest levels of compliance with the laws that govern it as a national retailer, including in relation to anti-discrimination and health and hygiene. To that end, Woolworths submits that it has acted reasonably in all the circumstances, having regard to its various obligations under the DDA and other regulatory requirements. That being so, it would not have been unreasonable for Woolworths to seek clarification from Mr Matthews as to the matter of what he refers to as being his assistance dogs.
- 3.3 It was also not unreasonable for Mr Matthew to have conducted himself in a respectful and cooperative manner with respect to his dealings with Woolworths staff. Woolworths does not seek to preclude Mr Matthews from attending Woolworths' stores and it has not done so, but Mr Matthews should appreciate that as a customer, he needs also to be courteous and respectful and have regard to the comfort of other customers and this, we would say, extends to Woolworths' staff.
- 3.4 Importantly, Mr Matthews was not refused entry into the Store. While he was asked to clarify the status of his two dogs, it would be misconceived to consider how that can give rise to unlawful conduct under the terms of the DDA. While Mr Matthews seems to suggest that the DDA does not prescribe a requirement that documentation need be provided, Woolworths submits that neither would it be contrary to the DDA to reasonably request information that will assist with clarifying the status of animals where customers seek to have those animals accompany them into Woolworths' stores.

## 4. EQUAL OPPORTUNITY POLICIES AND PROCEDURES

- 4.1 Woolworths regards its obligations under the DDA seriously. Woolworths opposes all forms of discrimination, including disability discrimination. Woolworths' Code of Conduct deals with anti-discrimination and equal opportunity. The Codes also reinforces Woolworths' commitment to deliver a quality shopping experience for its customers. All Woolworths staff are fully inducted and trained on the Code and provided updated training and reminders concerning the Code.
- 4.2 Copies of Woolworths' anti-discrimination and equal opportunity policies and procedures can be readily accessed on Woolworths' intranet, staff noticeboards and staff tearooms. As part of an induction process, Woolworths' employees and contractors are required to undergo training on Woolworths' anti-discrimination and equal opportunities policies and procedures.
- 4.3 From time to time, updated training is also provided. Woolworth's anti-discrimination and equal opportunity policies also form a part of its Code of Conduct.
- 4.4 As a national retailer, Woolworths recognises and acknowledges its obligations under the DDA and that includes its obligations as a provider with respect to persons who may be accompanied by assistance dogs which includes guide dogs, hearing dogs and other kinds of assistance dogs that meet the definition under section 9.

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Should the Commission have any queries in relation to Woolworths' response, please do not hesitate to contact Millen Lo of our office.

Yours faithfully



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