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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: NSD1021/2015  
File Title: Sean Foley v John Eugene Gay & Ors  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 23/12/2015 11:26:47 AM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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AMENDED STATEMENT OF CLAIM



Form 17  
Rule 8.05(a)

## Amended Statement of Claim

No. 1021 of 2015

Federal Court of Australia

District Registry: NSW

Division: General

**Sean Foley**

Applicant

**John Eugene Gay** and others listed in the Schedule

First Respondent

### A THE APPLICANT AND THE GROUP MEMBERS

1. This proceeding is commenced by the Applicant on his own behalf and on behalf of represented persons pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) being persons who:
  - (a) during the period from 31 August 2009 to 19 February 2010 inclusive (**Relevant Period**) acquired an interest in shares in Gunns Limited ACN 009 478 148 (In Liquidation) (**Gunns**);
  - (b) at the close of business on 19 February 2010 held an interest in shares in Gunns obtained during the Relevant Period;
  - (c) ~~had a current entered into a~~ litigation funding agreement with IMF (Australia) Limited in relation to this proceeding ~~on or before 20 April 2011~~ as at 27 August 2015; and
  - (d) suffered loss and damage by reason of or resulting from one or more of the Contraventions, as defined in paragraph 68 below;

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(the **Group Members**).

2. At the date of commencement of this proceeding there were more than seven Group Members.

## **B GUNNS AND THE RESPONDENTS**

### **B1. Gunns**

3. Gunns is and was at all material times:
  - (a) a public company limited by shares registered pursuant to the *Corporations Act 2001* (Cth) (the **Act**);
  - (b) a company whose shares were quoted and traded on the Australian Securities Exchange (**ASX**) operated by ASX Limited (excluding periods of trading halts);
  - (c) a listed disclosing entity within the meaning of s 111AL(1) of the Act and as such, pursuant to s 111AP(1) of the Act, subject to the continuous disclosure requirements of s 674 of the Act;
  - (d) a participant in a financial market within the meaning of sections 9 and 767A of the Act and subject to and bound by the provisions of the ASX Listing Rules issued by ASX Limited;
  - (e) a trading corporation for the purposes of the *Trade Practices Act 1974* (Cth) (**TPA**);
  - (f) a person within the meaning of section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
  - (g) the controlling entity of a number of subsidiary corporations:
    - (i) the financial performance of all of which was at all material times known to Gunns; and
    - (ii) the financial results of all of which were consolidated in financial results released by Gunns.

**B2. The Respondents**4. The First Respondent (**Gay**):

- (a) is a natural person;
- (b) was, from 4 July 1986 to 27 May 2010, a director of Gunns;
- (c) was:
  - (i) from 4 July 1986 to 30 June 2009, employed as the Managing Director of Gunns;
  - (ii) from some time in 2001 to 27 May 2010, the Chairman of Gunns;
  - (iii) at all times during the period from 4 July 1986 until at least 22 February 2010:
    - (1) a person who made or participated in making decisions that affected the whole or a substantial part of the business of Gunns;
    - (2) a person who had the capacity to affect significantly Gunns' financial standing; and/or
    - (3) a person in accordance with whose instructions or wishes the directors of Gunns were accustomed to act; and

and by reason of the matters in sub paragraph (b) above or sub paragraph (c) above, was, during the period from 4 July 1986 until at least 22 February 2010, an officer (within the meaning of s 9 of the Act) of Gunns.

5. The Second Respondent (**Chapman**):

- (a) is a natural person; and

- (b) was, at all times during the period from on or about 1 January 1998 until at least 22 February 2010, appointed as Company Secretary of Gunns and in that capacity was an officer (within the meaning of s 9 of the Act) of Gunns.

6. The Third Respondent (**L'Estrange**):

- (a) is a natural person;
- (b) was, during the period from 15 April 2008 until on or about 30 June 2009, employed as the Chief Executive Officer of the Timber Products business division of Gunns;
- (c) was, during the period from 1 July 2009 until on or about 26 September 2012, employed as Chief Executive Officer of Gunns; and
- (d) was, at all times during the period from 1 July 2009 until 22 February 2010:
  - (i) a person who made or participated in making decisions that affected the whole or a substantial part of the business of Gunns;
  - (ii) a person who had the capacity to affect significantly Gunns' financial standing; and/or
  - (iii) a person in accordance with whose instructions or wishes the directors of the corporation were accustomed to act;

and

- (e) by reason of the matters in sub para (d) above, was at all times during the period from 1 July 2009 until 22 February 2010, an officer (within the meaning of s 9 of the Act) of Gunns.

**B3. The businesses of the Gunns Group**

7. At all times during the period from 2000 to the present, Gunns and/or the subsidiary corporations of which it was the controlling entity carried on businesses including:
  - (a) the production of woodchips sourced from wood logged from natural native forests, hardwood plantation forests and softwood plantation forests in Australia;
  - (b) the marketing and exporting of woodchips (**Export Woodchip Business**); and
  - (c) the production and marketing of sawn timber products.
  
8. At all times in the period from August 1995 to the end of the Relevant Period, Gunns' Export Woodchip Business was, among all of the businesses carried on by Gunns or by the subsidiary corporations of which it was the controlling entity, the largest contributor to Gunns':
  - (a) revenue; and
  - (b) earnings before interest and tax (**EBIT**).

**B4. The markets for Gunns' Export Woodchip Business**

9. At all times since at least the beginning of FY2001 to the end of the Relevant Period, Japan has constituted the largest export market for Gunns' Export Woodchip Business:
  - (a) by volume of woodchips sold; and
  - (b) by sales revenue earned.
  
10. During the period from the 2008 financial year to the end of the Relevant Period:
  - (a) Gunns also exported wood fibre products to:
    - (i) China; and
    - (ii) Korea, the territory known as Taiwan or as Chinese Taipei, and Indonesia (the **Other Markets**);

- (b) exports to Japan accounted for at least 70% of the woodchips exported by Gunns;
  - (c) exports to China and the Other Markets collectively accounted for 30% or less of the woodchips exported by Gunns; and
  - (d) there was no, or no significant, domestic market for Gunns' woodchips.
11. At all times from the 2008 financial year to the end of the Relevant Period, sales of woodchips by Gunns to the companies in Japan that were customers of Gunns' Export Woodchip Business from time to time, were predominantly denominated in Australian Dollars (A\$) and were priced by reference to an agreed price for that calendar year, fixed per bone dry metric tonne (BDMT) of woodchips sold.
12. The price Gunns obtained for the export of its woodchips to Japan:
- (a) in respect of export sales during the 2007 calendar year, was A\$172.50 per BDMT;
  - (b) in respect of export sales during the 2008 calendar year, was A\$190.50 per BDMT; and
  - (c) in respect of export sales of eucalyptus mixed grade woodchips during the 2009 calendar year, was approximately A\$191.20 - A\$191.30 per BDMT.
13. During the 2009 financial year (FY09) and during the first half of the 2010 financial year (1H10), the companies in Japan that were customers of Gunns' Export Woodchip Business from time to time were or included:
- (a) Nippon Paper Industries Co, Ltd;
  - (b) Oji Paper Co, Ltd;
  - (c) Chu-etsu Pulp & Paper Co, Ltd;
  - (d) Mitsubishi Paper Mills, Ltd;
  - (e) Itochu Corporation;
  - (f) Kishu Paper Co, Ltd (during FY09 only); and

(g) Daio Paper Corporation;

and/or subsidiaries of each of those companies;

(the **Japanese Customers**).

14. In the period from the 2008 financial year to the end of the Relevant Period all, or the majority, of sales of woodchips by Gunns to customers in China and the Other Markets were denominated in United States Dollars (US\$).
15. In the period from the 2008 financial year to the end of the Relevant Period, the prices that Gunns obtained for sales of its woodchips to customers in China and in the Other Markets were lower, in A\$ terms, than the prices Gunns obtained for sales of its woodchips to the Japanese Customers in the same period.

**B5. Release of Gunns' results for the 2009 financial year and for the first half of the 2010 financial year**

16. On 26 February 2009 Gunns released its results for the first half of the 2009 financial year (**1H09**) to the ASX, which included the following results:
- (a) reported revenue of approximately \$427.6 m;
  - (b) reported EBIT of approximately \$69.3 m;
  - (c) reported net profit after tax (**NPAT**) of approximately \$33.6 m.

**Particulars**

*A summary of Gunns' financial results in 1H09, 2H09 and in 1H10 is at Annexure A of this Statement of Claim.*

17. The contribution of Gunns' Export Woodchip Business to its 1H09 results was approximately:
- (a) \$225.2 m in revenue, or approximately 53% of total reported revenue; and
  - (b) \$57.4 m in EBIT, or approximately 83% of total reported EBIT.



18. On 31 August 2009 Gunns released its FY09 results to the ASX, which included:
- (a) reported revenue of approximately \$769.3 m;
  - (b) reported EBIT of approximately \$110.8 m; and
  - (c) reported NPAT of approximately \$56.2 m.
19. The contribution of Gunns' Forest Products segment to Gunns' reported FY09 results:
- (a) was on 31 August 2009 announced by Gunns to the ASX as constituting:
    - (i) \$597.1 m in reported revenue; and
    - (ii) \$91.4 m in reported EBIT; and
  - (b) accounted for approximately:
    - (i) 78% of total reported revenue; and
    - (ii) 82% of total reported EBIT.

**Particulars**

*The financial results of the businesses referred to in sub paragraphs 7(a) to 7(c) above were reported by Gunns from at least 2008 and until the release by Gunns of its 1H10 results, within the business segment described as 'Forest Products'.*

20. On 31 August 2009 Gunns released its financial results for the second half of the 2009 financial year (**2H09**) to the ASX, which included the following results:
- (a) reported revenue of approximately \$341.7 m;
  - (b) reported EBIT of approximately \$41.6 m;
  - (c) reported NPAT of approximately \$22.6 m.
21. The contribution of Gunns' Export Woodchip Business to Gunns' 2H09 reported results was approximately:

- (a) \$133.0 m in revenue, or 39% of total reported revenue;
  - (b) \$33.7 m in EBIT, or 81% of total reported EBIT.
22. On 31 August 2009 Gunns announced to the ASX that it would raise approximately A\$145 m in capital by inviting eligible shareholders to subscribe for one new Gunns share for every existing four Gunns shares held as at 7 pm Australian Eastern Standard Time on 3 September 2009, at a price of \$0.90 per new Gunns share.

**Particulars**

*On 31 August 2009 Gunns gave notice to the market operator, ASX, purportedly under s708AA(2)(f) of the Act of the intended capital raising.*

23. On 22 February 2010 Gunns released its 1H10 results to the ASX.
24. Gunns' 1H10 results included the following results:
- (a) reported revenue of approximately \$325.9 m;
  - (b) reported EBIT of approximately \$4.8 m;
  - (c) reported NPAT of approximately \$0.4 m.
25. The contribution of Gunns' Export Woodchip Business to Gunns' 1H10 results was approximately:
- (a) \$140.6 m in revenue, or 43% of total reported revenue; and
  - (b) \$6.9 m in EBIT, or 144% of total reported EBIT.

**C. CONTINUOUS DISCLOSURE**

**C1. Gunns' Continuous Disclosure Contraventions**

26. In the Relevant Period Gunns did not disclose to the ASX:
- (a) that there was likely to be a material variation between Gunns' results for 1H10 and its results for 1H09, and the likely extent of that variation;

- (b) that there was likely to be a material variation between Gunns' results for 1H10 and the estimates of Gunns' 1H10 results published by a range of industry analysts during the Relevant Period (**Market Expectations**);

**Particulars**

1. *The industry analysts that published regular reports that informed the market about matters relevant to the sale and purchase of shares in Gunns included:*
    - (a) *Bell Potter Securities Limited (**Bell Potter**);*
    - (b) *Bloomberg Finance LP (**Bloomberg**);*
    - (c) *JP Morgan Securities Australia Limited (**JP Morgan**);*
    - (d) *Macquarie Securities (Australia) Ltd (**Macquarie Equities Research**);*
    - (e) *RBS Morgans Limited (**RBS Morgans**);*
    - (f) *UBS Securities Australia Ltd (**UBS**);*  
*(the Analysts).*
  2. *Extracts from reports published by the Analysts in 1H10 and during the Relevant Period that contain estimates of Gunns' 1H10 results including with respect to revenue, EBIT and NPAT are in **Annexure B** to this Statement of Claim.*
- (c) that its financial results in 1H10 were likely to be significantly worse than in the second half of the 2009 financial year (**2H09**); or
- (d) the circumstance that, on and from 1 September 2009, Gunns had previously been aware (within the meaning of paragraph 19.12 of the ASX Listing Rules (**Aware**)) but had not disclosed:
- (i) that there was likely to be a material variation between Gunns' results for 1H10 and its results for 1H09;
  - (ii) that there was likely to be a material variation between Gunns' results for 1H10 and Market Expectations;
  - (iii) that its financial results in 1H10 were likely to be significantly worse than 2H09;

- (iv) that it had not satisfied itself on reasonable grounds following all necessary and reasonable investigations that its public statements were substantially accurate and not misleading or deceptive in any material respect;
  - (v) that it had not disclosed to the public all material matters which members of the public ought take into account in deciding whether to acquire or retain an interest in Gunns shares, as it became Aware of them;
  - (vi) there was a significant risk that Gunns' public statements as to the state of its business were materially inaccurate.
27. Each of the matters in sub paragraphs 26(a), 26(b), 26(c) and 26(d) above (**Material Information**) was information concerning Gunns of which Gunns was Aware:
- (a) in the case of sub paragraphs 26(a), 26(b), 26(c), on 31 August 2009 and thereafter in the Relevant Period;
  - (b) in the case of sub paragraph 26(d), on 1 September 2009 and thereafter in the Relevant Period.

#### **Particulars**

1. *The Applicant repeats paragraph 41(a), (b) and (c) in respect of the knowledge of the Material Information possessed by each of Gay, Chapman and L'Estrange respectively, each of whom was an officer of Gunns for the reasons set out in paragraphs 4, 5 and 6. By Listing Rule 19.12, the knowledge of the Material Information that each of Gay, Chapman and L'Estrange respectively possessed or ought reasonably to have come into possession of in the course of their duties as an officer of Gunns, is to be attributed to Gunns.*
2. *In 1H09 Gunns exported to Japan approximately 1.55 m green metric tonnes (GMT) of woodchips, in 2H09 approximately 0.65 m GMT, and in 1H10 approximately 0.9 m GMT. In 1H09 Gunns exported approximately 0.3 m GMT to markets other than Japan, in 2H09 approximately 0.65 m GMT, and in 1H10 approximately 0.4 m GMT. In the 2H09 period there had been a significant decrease in the exports of woodchips to Japan by Gunns when compared with 1H09. In the 1H10 period there was a significant decrease in the exports of woodchips to Japan by Gunns when compared with the 1H09 period and there was no sound basis to be confident that export volumes in the 1H10 period would increase to approximate export volumes in the 1H09 period.*
3. *Gunns' results for the 1H10 period were materially worse than:*

- (a) Gunns' results for the 1H09 period;
- (b) Gunns' results for the 2H09 period; and
- (c) the Market Expectations.

**Effect of foreign exchange rates**

4. **Annexure C** to this Statement of Claim shows the movements in the A\$ against the US\$ and the Japanese Yen (**Yen**) in the period from 1 May 2009 to 31 December 2009.
5. Between 1 May 2009 and 31 August 2009:
  - (a) the Australian dollar (A\$) appreciated from US\$0.7295 to US\$0.8416; and
  - (b) the A\$ appreciated from 71.4387 Yen to 78.8698Yen.
6. Between 31 August 2009 and 31 December 2009:
  - (a) the A\$ appreciated to US\$0.8931; and
  - (b) the A\$ appreciated to 82.373 Yen.
7. In the period from 31 August 2009 to 31 December 2009 there was no reason to be confident that there would be a significant sustained fall in the A\$ against the US\$. Predictions of increased Australian currency strength were made by banking sector and government economists and business analysts from mid 2009 and are extracted at **Annexure D** to this Statement of Claim.
8. The appreciation of the A\$ against the US\$ and the Yen had the effect that Gunns' woodchips:
  - (a) became comparatively more expensive for the Japanese Customers than they had been in the 1H09 or 2H09 periods or the calendar year 2009 period; and
  - (b) became comparatively more expensive for the Japanese Customers than purchases from other suppliers which were denominated in either US\$ or Yen;thereby contributing to the reduction in sales of Gunns' woodchips to Japan in 1H10.
9. Further, the appreciation of the A\$ against the US\$ had the effect that sales by Gunns of woodchips to its customers in China and the Other Markets became less profitable for Gunns because sales were denominated in US\$ and Gunns obtained lower prices in those markets by reason of competition from lower cost producers from Vietnam and Indonesia.
10. The average price that Gunns obtained for the sale of its woodchips into Japan in 2H09 was approximately A\$100/GMT whereas Gunns obtained on average approximately A\$85/GMT for the sale of its woodchips into markets other than Japan in the same period. In 1H10 Gunns obtained an average price of approximately A\$95/GMT for the sale of its woodchips into Japan and an average price of approximately A\$60/GMT

for the sale of its woodchips into markets other than Japan. Accordingly, sales by Gunns of woodchips to its customers in China and the Other Markets in 2H09 and 1H10 yielded lower revenue per volume of woodchips sold, and lower margins, than sales to the Japanese Customers in those periods.

11. Owing to Gunns' knowledge of the price applicable for sales of its woodchips to the Japanese Customers in 1H10 and of the prices obtained by sales of Gunns woodchips to China and the Other Markets Gunns was Aware from at least 31 August 2009 and at all times thereafter in the Relevant Period that:
  - (a) Gunns' revenue from the sale of woodchips to the Japanese Customers was likely to significantly deteriorate in the remainder of 1H10;
  - (b) any increase in export sales to customers in China and the Other Markets, as a proportion of Gunns' overall export sales of woodchips in the remainder of 1H10, would not compensate for any comparable decrease in export sales to Japan; and
  - (c) it was reasonably likely that export sales in the remainder of 1H10 of Gunns' woodchips to China and the Other Markets would become unprofitable for Gunns.

**Effect of absence of FSC certification**

12. A further reason for the reduction in sales of Gunns' woodchips to Japan in 1H10 was that during that period the Japanese Customers preferred to purchase woodchips that were produced from wood sourced from forestry operations that had been certified as complying with one of two standards published by the Forest Stewardship Council AC (FSC), an international environmental non governmental organisation based in Bonn, Germany. The relevant standards were FSC Standard Principles and Criteria for Forest Stewardship FSC-STD-01-001 (Version 4-0), and FSC Controlled Wood Standard For Forest Management Enterprises FSC-STD-30-010 (V2-0). Gunns' forest management operations had not been certified as complying with either of those standards.
13. Gunns' Japanese Customers had all, by 26 March 2008, obtained certification to FSC Chain of Custody Standard for Companies Supplying and Manufacturing FSC-Certified Products (Version 1-0) (**Chain of Custody Certification**). Chain of Custody Certification permitted the Japanese Customers, in compliance with that Standard, to apply the label 'FSC Mixed Sources' to wood products, including paper, each manufactured. Each of the Japanese Customers, prior to 28 March 2008, from time to time included, in the manufacture of products labeled 'FSC Mixed Sources', Gunns' woodchips.
14. In addition, Gunns' Japanese Customers that wished to use Gunns' woodchips in the manufacture of wood products to which the label 'FSC Mixed Sources' was to be applied, were also required to comply with FSC Standard for Non-FSC Certified Controlled Wood FSC-STD-40-005

*(Version 1-0) from 1 January 2007 to 1 January 2008 (**Controlled Wood Standard**). From 1 January 2008, Version 2-1 of the Controlled Wood Standard had effect. Paragraphs 11 to 13 of Version 2-1 had the effect that each of the Japanese Customers that wished to use wood products from Gunns in the manufacture of products to be labelled with the 'FSC Mixed Sources' label, was no longer entitled to accept a declaration by or on behalf of Gunns confirming that the wood or wood fibre in the shipment was appropriately sourced but was required to conduct more onerous verification procedures directed at assessing that matter.*

15. *During the period from 28 March 2008 to 31 August 2009 the following events increased the pressure upon each of the Japanese Customers to cease to use Gunns' woodchips in the production of wood products to which the label 'FSC Mixed Sources' was to be applied, because the continued use by the Japanese Customers of Gunns woodchips placed in jeopardy their ability to use the label 'FSC Mixed Sources' on such products:*
  - (a) On 28 March 2008, Accreditation Services International GmbH, a limited liability company registered under German law which delivered accreditation services to the FSC, issued a Corrective Action Request to SGS Qualifor in relation to each of Oji Paper Co, Ltd, Nippon Paper Industries and Daio Paper Corporation. The Corrective Action Request alleged that each of those companies was not in compliance with Version 2-1 of the Controlled Wood Standard with respect to the use of Gunns' woodchips. The basis of the Corrective Action Request was that each of Daio Paper Corporation, Oji Paper Co, Ltd and Nippon Paper Industries Co was using woodchips supplied by Gunns Limited from forests in Tasmania as controlled input into their production of FSC certified paper although there had not been adequate evaluation or approval of the risk assessment and field verification of Gunns. The effect of the Corrective Action Request was that each of those companies was required to cease using Gunns' woodchips as Controlled Wood or undertake a further verification program in relation to any proposed purchase of woodchips from Gunns;*
  - (b) Some time in 2008 prior to 25 November 2008, FSC Australia distributed for public comment a document entitled 'Controlled Wood Risk Assessment Draft 1.5' which found that all uncertified sources of wood in Australia are regarded as having unspecified risk for High Conservation Values, and Tasmania has unspecified risk for conversion of natural forests for plantations and other non-forest uses;*
  - (c) a new Version 2-0 of Chain of Custody Certification required each of the Japanese Customers, by 1 January 2009, to comply with more onerous obligations including with respect to the recording and tracking of inputs in the production of products to which the 'FSC Mixed Sources' was applied. Version 2-0 of Chain of Custody*

*Certification also required compliance with Version 2-1 of the Controlled Wood Standard, even if the relevant company had not sought certification to that standard; and*

- (d) *On 8 July 2009 FSC Australia published the FSC Australia Controlled Wood Risk Assessment Matrix, which determined that wood from all Australian bio-regions was of unspecified risk for wood being harvested from forest in which High Conservation Values were being threatened by management activities.*
16. *Gunns in or about October 2009 commenced discussions between Gunns and Responsible Forest Management Australia Limited trading as FSC Australia concerning obtaining FSC certification with respect to its management of forestry operations.*
17. *The Japanese Customers' preference to purchase woodchips that were produced from wood sourced from forestry operations that had been certified as complying with FSC standards contributed to the decline in volumes of Gunns' woodchips purchased by the Japanese Customers in 1H10.*
18. *The Applicant may supplement these particulars following service of his evidence in chief.*

**Effect of losses incurred on Chinese Contracts**

19. *During the Relevant Period up until in or about November 2009, Gunns exported woodchips to a customer or customers in China pursuant to a contract or contracts (**Chinese Contracts**) denominated in US\$ in respect of which Gunns had not, or had not fully, hedged its risk concerning the movement of the A\$ against the US\$. Approximately 30% of woodchips exported by Gunns in 1H10 were exported pursuant to the Chinese Contracts.*
20. *As a result of Gunns' performance of the Chinese Contracts, and the appreciating A\$, during 1H10 Gunns incurred a loss of approximately \$7 million on the sale of woodchips into China in 1H10. During 1H10 it became unprofitable for Gunns to continue exporting woodchips to China and Gunns ceased to do so in or about November 2009.*
21. *The Applicant may supplement these particulars following service of his evidence in chief.*
28. None of the Material Information was generally available in the Relevant Period.
29. The Material Information, was, as at 31 August 2009 and at all times subsequently during the Relevant Period, information:
- (a) that a reasonable person would expect, if it was generally available, to have a material effect on the price or value of Gunns shares in that it would, if disclosed, cause a material decline in the market price of Gunns shares;



and/or

- (b) that would, or would be likely to, influence persons who commonly invest in shares in deciding whether to acquire or dispose of Gunns shares.

#### **Particulars**

1. *All of the Material Information was information relevant to the most significant part of the business of Gunns in that:*
  - (a) *in FY08 the Forest Products Division contributed \$634.1m in revenue out of a total revenue of \$861.9m and contributed \$104.6m in EBIT out of a total EBIT of \$138.1m, or 74% of total revenue and 76% of total EBIT;*
  - (b) *in FY09 the Forest Products Division contributed \$597.1m in revenue out of a total revenue of \$769.3m and contributed \$104.6m in EBIT out of a total EBIT of \$110.8m, or 78% of total revenue and 94% of total EBIT;*
  - (c) *at all times from 1984 to the end of the Relevant Period the Export Woodchip Business was the largest contributor to Gunns' revenue and EBIT;*
  - (d) *in Gunns' 1H10 Appendix 4D released to the ASX 22 February 2010 the Export Woodchip Business was separated out of the Forest Products Division and was reported as the Wood Fibre Segment, which segment was the largest contributor to revenue and EBIT within Gunns in the 1H10 period;*
  - (e) *at all times since at least 1984 Japan has been Gunns' single largest and most profitable market for the export of woodchips;*
  - (f) *problems with Gunns' business in Japan had the capacity to materially affect Gunns' financial position;*
  - (g) *in FY07 and FY08, sales to Japanese customers accounted for approximately 90% of Gunns' Export Woodchip Business;*
  - (h) *in circumstances where export sales to Japan were diminishing the existence of loss-making contracts with China was likely to further materially affect Gunns' financial position;*
  - (i) *in 1H10, reliance on the Japanese Customers to purchase the overwhelming majority of Gunns' woodchips was material to the continuing profitability of Gunns;*
  - (j) *in a presentation of Gunns' results for FY09 made on 31 August 2009 and released to the ASX, Gunns stated that:*
    - \* Key export markets declined in 3Q09 but stabilised in 4Q09
    - \* Significant uncertainty remains but Gunns is optimistic that "bottom of cycle" has been reached ...

- \* Focused on operational efficiency and balance sheet management
  - Position Gunns for any recovery in woodchip demand and housing construction’;
- (k) *in an announcement to the ASX made on 31 August 2009 entitled ‘Gunns announces \$56.2 million full-year profit’, Gunns stated that:*
  - ‘Gunns Chairman John Gay said: “Demand in our key Forest Products business both in export markets and the domestic construction sector weakened throughout the 2009 financial year, particularly in the third quarter.
  - “These markets have stabilised in the course of the last quarter and are expected to improve progressively through the course of the 2010 financial year.” ...
  - The company’s main business, Forest Products, demonstrated resilience in a challenging operating environment, with revenue declining by a modest 6% and EBIT declining by 13%. ...
  - Mr Gay said the outlook for markets for Gunns’ forest products business remains difficult.
  - “Wood fibre sales are largely dependant on the Japanese market and economic conditions which are expected to remain weak through at least the course of the first quarter of the 2010 financial year with the strengthening Australian dollar adversely impacting our competitive position,” he said’;
- (l) *Gunns’ Chairman stated in his address to the 2009 Annual General Meeting of Gunns on 11 November 2009 that:*
  - ‘The strength of the Australian dollar in our markets has also had an effect on the operating margins of the Company.
  - It is now evident that markets are accepting this higher Australian dollar and prices are improving for our product’; *and*
- (m) *Gunns’ Chief Executive Officer stated in his address to the 2009 Annual General Meeting of Gunns on 11 November 2009 that:*
  - ‘Activity levels in the woodchip business slowed in the second half of the 2009 year, primarily driven by a reduction in economic activity in the Japanese economy from January 2009.
  - This situation has not improved through the course of the 2009 calendar year and current indications are improvements in the 2010 year will be minor.’

2. *The Applicant refers to and repeats paragraph 22 above.*
  3. *The Applicant may supplement these particulars following service of his evidence in chief.*
30. None of the Material Information was information that a reasonable person would not expect to be disclosed.
31. Gunns was obliged pursuant to ASX Listing Rule 3.1 to inform the ASX immediately of the Material Information on and from 31 August 2009.
32. Gunns did not inform the ASX of any of the Material Information at any time during the Relevant Period.
33. By reason of the failure of Gunns to inform the ASX of the Material Information, Gunns during all of the Relevant Period contravened section 674(2) of the Act (**Continuous Disclosure Contraventions**).

**C2. Involvement of Gay, Chapman and L'Estrange in the Continuous Disclosure Contraventions**

34. On a date no later than 31 August 2009, and at all times in the Relevant Period thereafter:
  - (a) Gay; and/or
  - (b) Chapman; and/or
  - (c) L'Estrange;

knew the matters alleged at paragraphs 16 to 21.

**Particulars - Gay**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 4.*
2. *Gay on or about 26 February 2009 signed the Directors' Declaration giving the opinion of the directors of Gunns that the financial statements and notes within pages 5 to 16 of Gunns' Appendix 4D Half Year Report reporting Gunns' half year results for 1H09 released to the market on*

*that day and referred to in paragraphs 16 and 17 above gave a true and fair view of Gunns' financial position and performance, as at 31 December 2008. Gay also on 26 February 2009 made a statement on behalf of the directors of Gunns entitled 'Statement by the Executive Chairman, Mr J E Gay on behalf of the Board of Directors' in relation to those half year results.*

- 3. Gay on or about 31 August 2009 signed the Compliance Statement on page 14 confirming that Gunns' Appendix 4E Preliminary Final Report reporting Gunns' full year results for FY09 released to the market on that day and referred to in paragraphs 18 to 21 above, gave a true and fair view of the matters disclosed. Gay also on 31 August 2009 made a statement within a release to the ASX entitled 'Gunns announces \$56.2 million full-year profit' in relation to those full year results.*

#### **Particulars - Chapman**

*The knowledge of Chapman is to be inferred from the following facts and circumstances.*

- 1. The Applicant repeats paragraph 5.*
- 2. Gunns' disclosure to the ASX on 26 February 2009 of its half year results for 1H09 and referred to in paragraphs 16 and 17 above was effected by Chapman.*
- 3. Gunns' disclosure to the ASX on 31 August 2009 of its full year results for FY09 and referred to in paragraphs 18 to 21 above was prepared for the Board by Chapman and subsequently effected by Chapman.*

#### **Particulars - L'Estrange**

*The knowledge of L'Estrange is to be inferred from the following facts and circumstances.*

- 1. The Applicant repeats paragraph 6.*
- 2. L'Estrange was present at the Gunns Board meeting on 26 August 2009 at which the draft Appendix 4E Preliminary Final Report reporting Gunns' full year results for FY09 referred to in paragraphs 18 to 21 above was tabled and was adopted by the Board.*
- 3. L'Estrange was involved in the preparation of the disclosures to the ASX made on 31 August 2009.*
- 4. Further particulars may be provided following discovery, subpoenas and the issue of notices to produce.*

35. On or before 31 August 2009, and at all times in the Relevant Period thereafter:

- (a) Gay; and/or
- (b) Chapman;

knew that the financial results achieved by Gunns during July 2009 were significantly less than the results budgeted to be achieved by Gunns in that month.

#### **Particulars - Gay**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *Gay reviewed the Management Reports for July 2009 on or about 20 August 2009 and in any case by no later than 26 August 2009.*
2. *The Management Reports for July 2009 recorded that:*
  - (a) *Gunns' total EBIT for July 2009 was \$1,029,000 as against a budgeted operating EBIT for July 2009 of \$3,065,000;*
  - (b) *Gunns' total PBT for July 2009 was -\$1,045,000 as against a budgeted PBT for July 2009 of \$991,000;*
  - (c) *the performance of Gunns' Export Woodchip Business, among all of Gunns' businesses, was most critical to those results, Gunns' Forest Products division recording in July 2009 profit of \$241,370 as against budgeted profit of \$1,712,761.*

#### **Particulars - Chapman**

*The knowledge of Chapman is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats particular 2 to paragraph 35(a) above.*
2. *Chapman reviewed the Management Reports for July 2009 during the third week of August 2009 and by no later than 26 August 2009, on which date Chapman attended a Board meeting at which the results in particular 6(a) and (b) to paragraph 31B(a) were discussed.*

36. On or before 31 August 2009, and at all times in the Relevant Period thereafter, L'Estrange knew that the financial results achieved by Gunns during July 2009 were significantly less than the results budgeted to be achieved by Gunns in that month.

#### **Particulars**

*The knowledge of L'Estrange is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats particular 2 to paragraph 35(a) above.*
2. *L'Estrange reviewed the Management Reports for July 2009 by on or about 15 August 2009 and by no later than 26 August 2009.*
3. *On 26 August 2009 L'Estrange gave a report to the Board in his capacity as Chief Executive Officer in which he stated that:*
  - (a) *Gunns' total EBIT for July 2009 was \$1,029,000 as against a budgeted operating EBIT for July 2009 of \$3,065,000;*
  - (b) *Gunns' total PBT for July 2009 was -\$1,045,000 as against a budgeted PBT for July 2009 of \$991,000.*

37. Each of:

- (a) Gay; and/or
- (b) Chapman; and/or
- (c) L'Estrange;

knew by no later than 31 August 2009, and at all times in the Relevant Period thereafter, that Gunns' results for 1H10 were likely to be materially worse than its results for 1H09.

#### **Particulars - Gay**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraphs 4, 8, 9, 10, 15, 34(a) and 35(a).*
2. *Between 1 May 2009 and 31 August 2009:*
  - (a) *the Australian dollar (A\$) appreciated from US\$0.7295 to US\$0.8416; and*
  - (b) *the A\$ appreciated from 71.4387 Yen to 78.8876 Yen.*

*Annexure C to this Statement of Claim shows the movements in the A\$ against the US\$ and the Japanese Yen (Yen) in the period from 1 May 2009 to 31 December 2009.*
3. *Gunns' budget for FY10 incorporated the assumption that the A\$ would appreciate no higher than US\$0.76. By 31 August 2009 the A\$ had appreciated to US\$0.8416.*
4. *Between 31 August 2009 and 31 December 2009:*
  - (a) *the A\$ appreciated to US\$0.8931; and*
  - (b) *the A\$ appreciated to 82.373 Yen.*

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5. *Predictions of increasing Australian currency strength were made by banking sector and government economists and business analysts from June 2009 (which are extracted at Annexure D to this Statement of Claim).*
  6. *On or about 30 August 2009, Gunns provided a 'Due Diligence Questionnaire' to Credit Suisse in connection with the capital raising referred to in paragraph 20 in which Gunns stated that:*
    - (a) *a key risk to Gunns' strategy was adverse foreign exchange rates especially AUD/USD and if this occurred it would cause reduced competitiveness, reduced margin on USD denominated sales, weaker cash flows;*
    - (b) *key influences on the outlook for the forest products business were the recovery in the Japanese economy and the relative value of the \$A affecting competitiveness of supply to China;*
    - (c) *business conditions were not presently 'normal' and until they returned to normal Gunns would focus on cost control to limit the damage caused by lower revenues;*
    - (d) *Gunns' margins in its woodchips business were under pressure due to US\$ and increasing exposure to China;*
    - (e) *woodchip pricing was expected to undergo a minor improvement but not until 2H10;*
    - (f) *the key impediments to Gunns achieving its business plan for the woodchips business for FY10 was demand from the Japanese customers and US\$ exchange rates affecting softwood sales and hardwood to China;*
    - (g) *it was expected that Gunns' operating performance for 1H10 would be soft;*
    - (h) *it was expected that EBITDA in FY10 would be \$21.5m lower than the broker consensus figure of \$150m;*
    - (i) *there was a Board policy to hedge all foreign exchange exposures above AUD\$4m.*
  7. *The responses to the Due Diligence Questionnaire were completed by Gay and/or were reviewed by Gay on or before 30 August 2009 or by no later than 31 August 2009.*
  8. *Gunns had, on or about 20 April 2009, executed on behalf of Gunns a contract with Hainan Jinhai Pulp & Paper Co, Ltd (APP), a company of the People's Republic of China, to export to APP and/or its subsidiaries prior to 30 September 2009 approximately 400,000 BDMT of woodchips for a price of US\$135 per BDMT. That contract was executed on Gunns' behalf by Gay and Chapman.*
  9. *Gunns had, on or about 1 July 2009, executed a supplemental agreement to that contract with APP which increased the price to be paid by APP and/or its subsidiaries to US\$140 per BDMT for the final 110,000*

*BDMT of woodchips in the final 5 shipments under the contract. The contract price was increased at Gunns' request because the rise in the A\$ against the US\$ diminished Gunns' profit under the contract. That contract was executed on Gunns' behalf by Gay and Chapman.*

10. *APP and/or its subsidiaries was or were the primary customer or customers of Gunns in China.*
11. *Prior to the A\$ rising beyond US\$0.790 on or about 16 July 2009, Gunns had not, or had not fully, hedged its risk concerning the movement of the A\$ against the US\$, with respect to exports of woodchips made during 1H10 pursuant to the contracts with APP and/or its subsidiaries, despite the fact that Gunns' budget for FY10 incorporated the assumption that the US\$ would rise only to A\$0.76 in FY10.*
12. *The Management Reports for July 2009 recorded that:*
  - (a) *Gunns' total EBIT for July 2009 was \$1,029,000 as against a budgeted operating EBIT for July 2009 of \$3,065,000;*
  - (b) *Gunns' total PBT for July 2009 was -\$1,045,000 as against a budgeted PBT for July 2009 of \$991,000;*
  - (c) *the performance of Gunns' Export Woodchip Business, among all of Gunns' businesses, was most critical to those results, Gunns' Forest Products division recording in July 2009 profit of \$241,370 as against budgeted profit of \$1,712,761.*
13. *The Management Reports for August 2009 recorded that:*
  - (a) *Gunns' total operating EBIT for August 2009 was -\$2,187,000 as against a budgeted operating EBIT for August 2009 of \$2,832,000;*
  - (b) *Gunns' total PBT for August 2009 was -\$6,114,000 as against a budgeted PBT for August 2009 of \$2,156,000;*
  - (c) *the performance of Gunns' Export Woodchip Business, among all of Gunns' businesses, was most critical to those results, Gunns' Forest Products division recording in August 2009 a loss of \$1,638,239 as against budgeted profit of \$1,545,344.*
14. *The Management Reports for September 2009 recorded that:*
  - (a) *Gunns' total operating EBIT for September 2009 was \$864,000 as against a budgeted operating EBIT for September 2009 of \$2,343,000;*
  - (b) *Gunns' total PBT for September 2009 was -\$1,574,000 as against a budgeted PBT for September 2009 of \$1,468,000;*
  - (c) *the performance of Gunns' Export Woodchip Business, among all of Gunns' businesses, was most critical to those results, Gunns' Forest Products division recording in September 2009 a profit of \$224,190 as against budgeted profit of \$1,578,560.*
15. *The Management Reports for October 2009 recorded that:*



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- (a) Gunns' total operating EBIT for October 2009 was -\$1,045,000 as against a budgeted operating EBIT for October 2009 of \$3,751,000;
- (b) Gunns' total PBT for October 2009 was \$518,000 as against a budgeted PBT for October 2009 of \$3,086,000;
- (c) the performance of Gunns' Export Woodchip Business, among all of Gunns' businesses, was most critical to those results, Gunns' Forest Products division recording in October 2009 a loss of \$2,018,538 as against budgeted profit of \$1,611,510.
16. The Management Reports for November 2009 recorded that:
- (a) Gunns' total operating EBIT for November 2009 was \$2,532,000 as against a budgeted operating EBIT for November 2009 of \$3,498,000;
- (b) Gunns' total PBT for November 2009 was -\$1,794,000 as against a budgeted PBT for November 2009 of \$2,343,000;
- (c) the performance of Gunns' Export Woodchip Business, among all of Gunns' businesses, was most critical to those results, Gunns' Forest Products division recording in November 2009 a profit of \$694,867 as against budgeted profit of \$2,051,032.
17. The Management Reports for December 2009 recorded that:
- (a) Gunns' total operating EBIT for December 2009 was \$2,216,000 as against a budgeted operating EBIT for December 2009 of \$5,586,000;
- (b) Gunns' total PBT for December 2009 was \$5,428,000 as against a budgeted PBT for December 2009 of \$4,511,000;
- (c) the performance of Gunns' Export Woodchip Business, among all of Gunns' businesses, was most critical to those results, Gunns' Forest Products division recording in December 2009 a profit of \$2,435,827 as against budgeted profit of \$2,384,353.
18. Gay reviewed the Management Reports for each month in 1H10:
- (a) on or about the 20<sup>th</sup> day of the following month; and/or
- (b) no later than the date of the Board meeting in the following month.

### **Particulars - Chapman**

The knowledge of Chapman is to be inferred from the following facts and circumstances.

1. The Applicant repeats paragraphs 5, 8, 9, 10, 15, 34(b) and 35(b).
2. The Applicant repeats particulars 2 – 6 and 8 – 17 to paragraph 37(a) above.
3. Chapman reviewed the Management Reports for each month in 2H09 prior to the Board meeting in the following month. By 30 July 2009, Gay

had reviewed the Management Reports for each of the months in 2H09, which showed, collectively:

- (a) that Gunns' exports of woodchips to China in 2H09 exceeded Gunns' of woodchips to Japan in 2H09, with Gunns exporting a total of 359,700 BDMT of woodchips to China compared to 341,527 BDMT of woodchips to Japan; and
  - (b) that during 2H09, sales of woodchips to Japan generated slightly more revenue than sales of woodchips to China, with Gunns' revenue in 2H09 for its exports of woodchips to Japan amounting to \$65,175,929 compared with Gunns' revenue in 2H09 for its exports of woodchips to China amounting to \$58,039,967.
4. Some time prior to 20 August 2009 Gunns' bankers ANZ were advised by Gunns management that EBIT for FY10 was anticipated to be only \$129 m. That advice was included in a document entitled 'Debt Capacity Discussion' emailed to Chapman on 20 August 2009.
  5. The responses to the 'Due Diligence Questionnaire' provided to Credit Suisse were completed by Chapman and/or were reviewed by Chapman on or before 30 August 2009 or by no later than 31 August 2009.
  6. Chapman reviewed the Management Reports for each month in 1H10:
    - (a) during the third week of the following month; and/or
    - (b) no later than the date of the Board meeting in the following month.

#### **Particulars - L'Estrange**

The knowledge of L'Estrange is to be inferred from the following facts and circumstances.

1. The Applicant repeats paragraphs 6, 8, 9, 10, 15, 34(c) and 36.
2. The Applicant repeats particulars 2 – 6 and 8 – 17 to paragraph 37(a) above.
3. The responses to the Due Diligence Questionnaire were completed by L'Estrange and/or were reviewed by L'Estrange on or before 30 August 2009 or by no later than 30 August 2009.
4. L'Estrange reviewed the Management Reports for each month in 1H10:
  - (a) on or about the 15<sup>th</sup> day of the following month; and/or
  - (b) no later than the date of the Board meeting in the following month.
5. L'Estrange told ASIC under oath on 13 July 2010 that by 31 August 2009 it was evident that there was a trend of declining margins and volumes within the Gunns businesses: T18.14 – 18.15.

38. Each of:

- (a) Gay; and/or

(b) Chapman; and/or

(c) L'Estrange;

knew by no later than 31 August 2009, and at all times in the Relevant Period thereafter, that Gunns' results for 1H10 were likely to be materially worse than its results for 2H09.

**Particulars - Gay**

1. *The knowledge of Gay is to be inferred from the facts and circumstances referred to in the particulars to paragraph 37(a) in relation to Gay.*

**Particulars - Chapman**

2. *The knowledge of Chapman is to be inferred from the facts and circumstances referred to in the particulars to paragraph 37(b) in relation to Chapman.*

**Particulars - L'Estrange**

3. *The knowledge of L'Estrange is to be inferred from the facts and circumstances referred to in the particulars to paragraph 37(c) in relation to L'Estrange.*

39. In the Relevant Period, each of:

(a) Gay; and/or

(b) Chapman; and/or

(c) L'Estrange;

knew the Market Expectations.

**Particulars - Gay**

1. *The Applicant refers to and repeats the particulars to paragraph 26(b).*

2. *The knowledge of Gay is to be inferred from the following facts and circumstances.*

(a) *The Applicant repeats paragraph 4.*

(b) *During 1H10 and the Relevant Period, Gay from time to time reviewed copies of reports by industry analysts that informed the*

market about matters relevant to the sale and purchase of shares in Gunns.

- (c) *On or about 30 August 2009, Gay prepared answers to and/or reviewed answers to a 'Due Diligence Questionnaire' that was provided by Gunns to Credit Suisse in connection with the capital raising referred to in paragraph 20 which stated broker consensus figures for FY09 and FY10 including, for FY10:*
  - (i) *revenue of \$810 m;*
  - (ii) *EBITDA of \$150m;*
  - (iii) *EBIT of \$120m;*
  - (iv) *NPAT of \$64.2m.*

#### **Particulars - Chapman**

- 1. *The Applicant refers to and repeats the particulars to paragraph 26(b).*
- 2. *The knowledge of Chapman is to be inferred from the following facts and circumstances.*
  - (a) *The Applicant repeats paragraph 5.*
  - (b) *During 1H10 and the Relevant Period, Chapman regularly communicated on behalf of Gunns with industry analysts that published regular reports that informed the market about matters relevant to the sale and purchase of shares in Gunns, and regularly reviewed and read copies of such reports.*
  - (c) *On or about 30 August 2009, Chapman prepared answers to and/or reviewed answers to a 'Due Diligence Questionnaire' that was provided by Gunns to Credit Suisse in connection with the capital raising referred to in paragraph 20 which stated broker consensus figures for FY09 and FY10 including, for FY10:*
    - (i) *revenue of \$810 m;*
    - (ii) *EBITDA of \$150m;*
    - (iii) *EBIT of \$120m;*
    - (iv) *NPAT of \$64.2m.*

#### **Particulars - L'Estrange**

- 1. *The Applicant refers to and repeats the particulars to paragraph 26(b).*
- 2. *The knowledge of L'Estrange is to be inferred from the following facts and circumstances.*
  - (a) *The Applicant repeats paragraph 6.*
  - (b) *During 1H10 and the Relevant Period, L'Estrange from time to time reviewed copies of reports by industry analysts that informed the*

*market about matters relevant to the sale and purchase of shares in Gunns;*

- (c) *On or about 30 August 2009, L'Estrange prepared answers to and/or reviewed answers to a 'Due Diligence Questionnaire' that was provided by Gunns to Credit Suisse in connection with the capital raising referred to in paragraph 20 which stated broker consensus figures for FY09 and FY10 including, for FY10:*
  - (i) *revenue of \$810 m;*
  - (ii) *EBITDA of \$150m;*
  - (iii) *EBIT of \$120m;*
  - (iv) *NPAT of \$64.2m.*

40. Each of:

- (a) Gay; and/or
- (b) Chapman; and/or
- (c) L'Estrange;

knew by no later than 31 August 2009, and at all times in the Relevant Period thereafter, that Gunns' results for 1H10 were likely to be materially worse than the Market Expectations.

**Particulars - Gay**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraphs 35(a), 37(a) and 39(a) and the particulars thereto.*

**Particulars - Chapman**

*The knowledge of Chapman is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraphs 35(b), 37(b) and 39(b) and the particulars thereto.*

**Particulars - L'Estrange**

*The knowledge of L'Estrange is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraphs 36, 37(c) and 39(c) and the particulars thereto.*

41. By reason of the matters pleaded in:

- (a) 37(a), 38(a), 40(a) above and/or 56(b) below, Gay; and/or
- (b) 37(b), 38(b), 40(b) above and/or 57(b) below, Chapman; and/or
- (c) 37(c), 38(c), 40(c) above and/or 58(b) below, L'Estrange;

knew the Material Information pleaded in paragraph 24(a) to (d), and each of it.

42. At all times in the Relevant Period:

- (a) Gay; and/or
- (b) Chapman; and/or
- (c) L'Estrange;

knew the matter alleged in paragraph 28.

#### **Particulars - Gay**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 4.*
2. *Gunns' annual budget for FY2010 and the monthly Management Reports were used for Gunns' internal purposes and were not generally available.*
3. *The matters stated in particulars 3 and 8 – 17 of paragraph 37(a) above, which were known to Gay for the reasons stated in paragraph 37(a) and the particulars thereto, were not publicly disclosed.*
4. *The Market Expectations, which were known to Gay for the reasons stated in paragraph 39(a) and the particulars thereto, were inconsistent with, and significantly exceeded, the results in the monthly Management Reports throughout 1H10.*

#### **Particulars - Chapman**

*The knowledge of Chapman is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 5.*
2. *Gunns' annual budget for FY2010 and the monthly Management Reports were used for Gunns' internal purposes and were not generally available.*
3. *The matters stated in particulars particulars 3 and 8 – 17 of paragraph 37(a) which were known to Chapman for the reasons stated in paragraph 37(b) and the particulars thereto, were not publicly disclosed.*
4. *The Market Expectations, which were known to Chapman for the reasons stated in paragraph 39(b) and the particulars thereto, were inconsistent with, and significantly exceeded, the results in the monthly Management Reports throughout 1H10.*

#### **Particulars - L'Estrange**

*The knowledge of L'Estrange is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 6.*
2. *Gunns' annual budget for FY2010 and the monthly Management Reports were used for Gunns' internal purposes and were not generally available.*
3. *The matters stated in particulars 3 and 9 – 17 of paragraph 37(a) above, which were known to L'Estrange for the reasons stated in paragraph 37(c) and the particulars thereto, were not publicly disclosed.*
4. *The Market Expectations, which were known to L'Estrange for the reasons stated in paragraph 39(c) and the particulars thereto, were inconsistent with, and significantly exceeded, the results in the monthly Management Reports throughout 1H10.*

43. At all times in the Relevant Period:

- (a) Gay; and/or
- (b) Chapman; and/or
- (c) L'Estrange;

knew, or ought to have known, the matters alleged at paragraph 29.

#### **Particulars - Gay**

*The facts, matters and circumstances from which it can be inferred that Gay knew, or ought to have known, the matters alleged at paragraph 29, are the matters referred to in paragraph 4 and the particulars to paragraph 29.*

**Particulars - Chapman**

*The facts, matters and circumstances from which it can be inferred that Chapman knew, or ought to have known, the matters alleged at paragraph 29, are the matters referred to in paragraph 5 and the particulars to paragraph 29.*

**Particulars - L'Estrange**

*The facts, matters and circumstances from which it can be inferred that Chapman knew, or ought to have known, the matters alleged at paragraph 29, are the matters referred to in paragraph 6 and the particulars to paragraph 29.*

44. At all times in the Relevant Period:

- (a) Gay; and/or
- (b) Chapman; and/or
- (c) L'Estrange;

knew, or ought to have known, the matter alleged at paragraph 30.

**Particulars - Gay**

*The facts, matters and circumstances from which it can be inferred that Gay knew, or ought to have known, the matters alleged at paragraph 30, are set out below.*

1. *The Applicant repeats paragraph 4 and the particulars to paragraph 29.*
2. *Gay knew, or ought to have known, that none of the exceptions in Listing Rule 3.1A of the ASX Listing Rules applied to the Material Information or any of it, which can be inferred from Gay's transcript of interview by ASIC on 21 July 2010, at T12.01 – T13.05.*
3. *Gunns' Continuous Disclosure Policy, which articulated Gunns' continuous disclosure obligations, was referred to in the FY08 Annual Report released on 30 September 2008 and in the FY09 Annual Report, each of which was approved by Gay in his capacity as a director of Gunns.*
4. *Gay was a member of Gunns' Market Disclosure Committee, which was constituted by the Managing Director (Gay and/or L'Estrange) and the Company Secretary (Chapman).*
5. *On or about 30 August 2009, Gay received a copy of a 'Due Diligence Process Outline' prepared by Freehills, which referred to Gunns' continuous disclosure obligations and to materiality thresholds in connection with the capital raising referred to in paragraph 20.*
6. *On or about 30 August 2009, Gay signed a report of the Due Diligence Committee in connection with the capital raising referred to in paragraph*



20, which report attached a Continuous Disclosure Questionnaire prepared by Freehills, the answers to which were drafted by Chapman, which articulated Gunns' continuous disclosure policy and obligations.

#### **Particulars - Chapman**

*The facts, matters and circumstances from which it can be inferred that Chapman knew, or ought to have known, the matters alleged at paragraph 30, are set out below.*

1. *The Applicant repeats paragraph 5 and the particulars to paragraph 29.*
2. *Chapman knew, or ought to have known, that none of the exceptions in Listing Rule 3.1A applied to the Material Information or any of it, which knowledge can be inferred from Chapman's transcript of interview by ASIC on 14 July 2010, at T17.21 – T1723 and T74.44 – T75.06.*
3. *Chapman prepared Gunns' Continuous Disclosure Policy, which articulated Gunns' continuous disclosure obligations, some time in 2008 or by no later than 17 March 2009.*
4. *Chapman was a member of Gunns' Market Disclosure Committee, which was constituted by the Managing Director (Gay and/or L'Estrange) and the Company Secretary (Chapman).*
5. *On or about 30 August 2009, Chapman received a copy of a 'Due Diligence Process Outline' prepared by Freehills, which referred to Gunns' continuous disclosure obligations and to materiality thresholds in connection with the capital raising referred to in paragraph 22.*
6. *On or about 30 August 2009, Chapman drafted responses to a Continuous Disclosure Questionnaire prepared by Freehills, in connection with the capital raising referred to in paragraph 22, which articulated Gunns' continuous disclosure policy and obligations.*

#### **Particulars - L'Estrange**

*The facts, matters and circumstances from which it can be inferred that L'Estrange knew, or ought to have known, the matters alleged at paragraph 30, are set out below.*

1. *The Applicant repeats paragraph 6 and the particulars to paragraph 29.*
2. *L'Estrange was a member of Gunns' Market Disclosure Committee, which was constituted by the Managing Director (Gay and/or L'Estrange) and the Company Secretary (Chapman).*
3. *On or about 30 August 2009, L'Estrange received a copy of a 'Due Diligence Process Outline' prepared by Freehills, which referred to Gunns' continuous disclosure obligations and to materiality thresholds in connection with the capital raising referred to in paragraph 22.*
4. *On or about 30 August 2009, L'Estrange signed a report of the Due Diligence Committee in connection with the capital raising referred to in*

paragraph 22, which report attached a Continuous Disclosure Questionnaire prepared by Freehills, the answers to which were drafted by Chapman, which articulated Gunns' continuous disclosure policy and obligations.

45. At all times in the Relevant Period:

- (a) Gay; and/or
- (b) Chapman; and/or
- (c) L'Estrange;

knew, or ought to have known, the matter alleged at paragraph 31.

#### **Particulars - Gay**

*The facts, matters and circumstances from which it can be inferred that Gay knew, or ought to have known, the matters alleged at paragraph 31, are set out below.*

1. *The Applicant repeats paragraph 4.*
2. *The Applicant repeats particulars 2 – 6 of paragraph 44(a) with respect to Gay's knowledge of Gunns' statutory duty to comply with the continuous disclosure requirements of section 674(2) of the Act and ASX Listing Rule 3.1.*
3. *With respect to the Material Information:*
  - (a) *referred to in paragraph 26(a), the Applicant repeats paragraph 37(a);*
  - (b) *referred to in paragraph 26(b), the Applicant repeats paragraph 38(a);*
  - (c) *referred to in paragraph 26(c), the Applicant repeats paragraph 40(a);*
  - (d) *referred to in paragraph 26(d), the Applicant repeats paragraphs 37(a), 38(a), 40(a) and 56(b).*
4. *The Applicant repeats paragraphs 42(a), 43(a) and 44(a) and the particulars thereto.*

#### **Particulars - Chapman**

*The facts, matters and circumstances from which it can be inferred that Chapman knew, or ought to have known, the matters alleged at paragraph 31, are set out below.*

1. *The Applicant repeats paragraph 5.*
2. *The Applicant repeats particulars 2 – 6 of paragraph 44(b) with respect to Chapman's knowledge of Gunns' statutory duty to comply with the*

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*continuous disclosure requirements of section 674(2) of the Act and ASX Listing Rule 3.1.*

3. *With respect to the Material Information:*
  - (a) *referred to in paragraph 26(a), the Applicant repeats paragraph 37(b);*
  - (b) *referred to in paragraph 26(b), the Applicant repeats paragraph 38(b);*
  - (c) *referred to in paragraph 26(c), the Applicant repeats paragraph 40(b);*
  - (d) *referred to in paragraph 26(d), the Applicant repeats paragraphs 37(b), 38(b), 40(b) and 57(b).*
4. *The Applicant repeats paragraphs 42(b), 43(b) and 44(b) and the particulars thereto.*

### **Particulars - L'Estrange**

*The facts, matters and circumstances from which it can be inferred that L'Estrange knew, or ought to have known, the matters alleged at paragraph 31, are set out below.*

1. *The Applicant repeats paragraph 6.*
  2. *The Applicant repeats particulars 2 – 4 of paragraph 44(c) with respect to with respect to L'Estrange's knowledge of Gunns' statutory duty to comply with the continuous disclosure requirements of section 674(2) of the Act and ASX Listing Rule 3.1.*
  3. *With respect to the Material Information:*
    - (a) *referred to in paragraph 26(a), the Applicant repeats paragraph 37(c);*
    - (b) *referred to in paragraph 26(b), the Applicant repeats paragraph 38(c);*
    - (c) *referred to in paragraph 26(c), the Applicant repeats paragraph 40(c);*
    - (d) *referred to in paragraph 26(d), the Applicant repeats paragraphs 37(c), 38(c), 40(c) and 58(b).*
  4. *The Applicant repeats paragraphs 42(c), 43(c) and 44(c) and the particulars thereto.*
46. At all times in the Relevant Period:
- (a) Gay; and/or
  - (b) Chapman; and/or
  - (c) L'Estrange;
- knew the matter alleged at paragraph 32.

**Particulars - Gay**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 4.*
2. *The schedule of ASX announcements for the preceding month was reviewed at each monthly Board meeting. Gay attended Board meetings during 1H10 and in the Relevant Period on 30 July 2009, 26 August 2009, 30 August 2009, 28 September 2009, 7 October 2009, 29 October 2009, 26 November 2009, 15 December 2009, and 28 January 2010.*

**Particulars - Chapman**

*The knowledge of Chapman is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 5.*
2. *On every occasion in CY 2009 and CY 2010 on which Gunns made disclosures or releases to the ASX, it did so by Chapman and under his signature as Company Secretary of Gunns.*
3. *The schedule of ASX announcements for the preceding month was reviewed at each monthly Board meeting.*
4. *Chapman attended Board meetings during 1H10 and in the Relevant Period on 30 July 2009, 26 August 2009, 30 August 2009, 28 September 2009, 7 October 2009, 29 October 2009, 26 November 2009, 15 December 2009, and 28 January 2010.*

**Particulars - L'Estrange**

*The knowledge of L'Estrange is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 6.*
2. *The schedule of ASX announcements for the preceding month was reviewed at each monthly Board meeting.*
5. *L'Estrange attended Board meetings during 1H10 and in the Relevant Period on 30 July 2009, 26 August 2009, 30 August 2009, 28 September 2009, 7 October 2009, 29 October 2009, 26 November 2009, 15 December 2009, and 28 January 2010.*

47. By reason of the matters pleaded in:

- (a) paragraphs 41(a), 42(a), 43(a), 44(a), 45(a) and/or 46(a), and each of them, Gay; and/or

- (b) paragraphs 41(b), 42(b), 43(b), 44(b), 45(b) and/or 46(b), and each of them, Chapman; and/or
- (c) paragraphs 41(c), 42(c), 43(c), 44(c), 45(c) and/or 46(c), and each of them, L'Estrange;

was or were involved, within the meaning in section 79 of the Act, in Gunns' Continuous Disclosure Contraventions pleaded in paragraph 33 and each of them, and thereby contravened section 674(2A) of the Act.

## **D MISLEADING OR DECEPTIVE CONDUCT**

### **D1. Gunns' Representation Contraventions**

48. At all times during the Relevant Period Gunns was under a statutory duty to comply with the continuous disclosure requirements of section 674(2) of the Act and ASX Listing Rule 3.1 and by reason of this, Gunns made an implied representation or a representation by silence that:

- (a) Gunns had satisfied itself on reasonable grounds following all necessary and reasonable investigations that its public statements were substantially accurate and not misleading or deceptive in any material respect;
- (b) Gunns had disclosed to the public, all material matters which members of the public ought take into account in deciding whether to acquire or retain an interest in Gunns shares, as it became Aware of them;
- (c) there was no significant risk that Gunns' public statements as to the state of its business were materially inaccurate; and
- (d) there was no other material information to disclose;

**(Gunns Disclosure Silence).**

49. On:

- (a) 30 September 2008, in the FY08 Annual Report, Gunns made the following statements:

1. *'The Company has a Continuous Disclosure Policy, which is implemented to ensure timely and appropriate disclosure of information to the market. The policies establish processes for the identification and dissemination of market sensitive information in a manner consistent with the Company's obligations to the market, and are designed to ensure accountability at a senior executive level for compliance with the ASX's Listing Rule disclosure requirements'; and*
2. *'The Board aims to ensure that shareholders are informed of all major developments affecting the consolidated entity's state of affairs'.*

**Particulars**

*The statements referred to above are at page 18 of the Gunns FY08 Annual Report.*

- (b) 31 August 2009 Gunns released its FY09 results to the ASX, at which time it stated that *'As at [31 August 2009] Gunns Limited has complied with ... section 674 of the [Corporations] Act'*.

**Particulars**

*Statement made in ASX Release headed 'Gunns Lodge Cleansing Notice' dated 31 August 2009.*

50. In making the statements referred to:

- (a) in sub paragraph 49(a) above, Gunns expressly represented that Gunns had implemented and would abide by continuous disclosure guidelines and Gunns would ensure that it met its continuous disclosure obligations under the ASX Listing Rules and the CA;
- (b) in sub paragraph 49(b) above, Gunns expressly represented that, as at 31 August 2009, Gunns had complied with section 674 of the CA.

(collectively the **First Continuous Disclosure Compliance Representations**).

51. On 29 September 2009, in the FY09 Annual Reports, Gunns made the following statements:

- (a) *'The Company has a Continuous Disclosure Policy, which is implemented to ensure timely and appropriate disclosure of information to the market. The policies establish processes for the identification and dissemination of market sensitive information in a manner consistent with the Company's obligations to the market, and are designed to ensure accountability at a senior executive level for compliance with the ASX's Listing Rule disclosure requirements'; and*
- (b) *'The Board aims to ensure that shareholders are informed of all major developments affecting the consolidated entity's state of affairs'.*

**Particulars**

*The statements referred to above are at pages 13 and 19 of the Amended Annual Report and were also included in the other FY09 Annual Reports.*

- 52. In making the statements referred to in sub paragraphs 51(a) and 51(b) above, Gunns expressly represented that Gunns had implemented and would abide by continuous disclosure guidelines and Gunns would ensure that it met its continuous disclosure obligations under the ASX Listing Rules and the CA (**Second Continuous Disclosure Compliance Representation**).
- 53. Each of the representations referred to in paragraphs 48, 50 and 52 above was:
  - (a) made by Gunns in relation to a financial product or a financial service within the meaning of section 1041H(1) of the Act;
  - (b) made by Gunns in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act, or within the meaning of section 52 of the TPA;
  - (c) misleading or deceptive or likely to mislead or deceive;

**Particulars**

- 1. *Gunns did not disclose the Material Information during the Relevant Period. By reason of this, Gunns did not disclose to the public all material matters regarding its profitability which members of the public ought to have taken into account in deciding whether to acquire or retain an interest in Gunns shares, as it became Aware of those matters. The Applicant repeats paragraphs 26 to 33 above and the particulars thereto above.*

2. *By reason of the matters pleaded in paragraphs 8 to 33 above there were risks that Gunns' public statements would prove significantly inaccurate during the period and such risks were not so insignificant that members of the public could safely ignore them and not take them into account in deciding whether to acquire or retain an interest in Gunns shares.*
3. *The Applicant may supplement these particulars following service of his evidence in chief.*

54. Insofar as each of the representations pleaded in paragraphs 48, 50 and 52 above was a representation as to future matters within the meaning of:

- (a) section 769C(1) of the Act;
- (b) section 12BB of the ASIC Act; or
- (c) section 51A of the TPA;

Gunns had no reasonable basis for making that representation at the time it was made.

55. By making each of the representations pleaded in paragraphs 48, 50 and 52 above Gunns engaged in conduct in contravention of:

- (a) section 1041H(1) of the Act;
- (b) section 12DA(1) of the ASIC Act; and
- (c) section 52 of the TPA;

(the **Representation Contraventions**).

## **D2. Involvement of Gay, Chapman and L'Estrange in Gunns' Representation Contraventions**

56. At all times during the Relevant Period, Gay knew:

- (a) that Gunns was under a statutory duty to comply with the continuous disclosure requirements of section 674(2) of the Act and ASX Listing Rule 3.1; and



**Particulars**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 4.*
  2. *Gunns' Continuous Disclosure Policy, which articulated Gunns' continuous disclosure obligations, was referred to in the FY08 Annual Report released on 30 September 2008 and in the FY09 Annual Report, each of which was approved by Gay in his capacity as a director of Gunns.*
  3. *Gay was a member of Gunns' Market Disclosure Committee, which was constituted by the Managing Director (Gay and/or L'Estrange) and the Company Secretary (Chapman).*
  4. *On or about 30 August 2009, Gay received a copy of a 'Due Diligence Process Outline' prepared by Freehills, which referred to Gunns' continuous disclosure obligations and to materiality thresholds in connection with the capital raising referred to in paragraph 20.*
  5. *On or about 30 August 2009, Gay signed a report of the Due Diligence Committee in connection with the capital raising referred to in paragraph 20, which report attached a Continuous Disclosure Questionnaire prepared by Freehills, the answers to which were drafted by Chapman, which articulated Gunns' continuous disclosure policy and obligations.*
- (b) what disclosures had been made by Gunns to the ASX during the Relevant Period.

**Particulars**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 4.*
  2. *The schedule of ASX announcements for the preceding month was reviewed at each monthly Board meeting. Gay attended Board meetings during 1H10 and in the Relevant Period on 30 July 2009, 26 August 2009, 30 August 2009, 28 September 2009, 7 October 2009, 29 October 2009, 26 November 2009, 15 December 2009, 28 January 2010 and 19 February 2010.*
57. At all times during the Relevant Period, Chapman knew:
- (a) that Gunns was under a statutory duty to comply with the continuous disclosure requirements of section 674(2) of the Act and ASX Listing Rule 3.1; and

**Particulars**

*The knowledge of Chapman is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 5.*
2. *Chapman prepared Gunns' Continuous Disclosure Policy, which articulated Gunns' continuous disclosure obligations, some time in 2008 or by no later than 17 March 2009.*
3. *Chapman was a member of Gunns' Market Disclosure Committee, which was constituted by the Managing Director (Gay and/or L'Estrange) and the Company Secretary (Chapman).*
4. *On or about 30 August 2009, Chapman received a copy of a 'Due Diligence Process Outline' prepared by Freehills, which referred to Gunns' continuous disclosure obligations and to materiality thresholds in connection with the capital raising referred to in paragraph 22.*
5. *On or about 30 August 2009, Chapman in connection with the capital raising referred to in paragraph 22 drafted responses to a Continuous Disclosure Questionnaire prepared by Freehills, which articulated Gunns' continuous disclosure policy and obligations.*

- (b) what disclosures had been made by Gunns to the ASX during the Relevant Period.

**Particulars**

*The knowledge of Chapman is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 5.*
2. *On every occasion in CY 2009 and CY 2010 on which Gunns made disclosures or releases to the ASX, it did so by Chapman and under his signature as Company Secretary of Gunns.*
3. *The schedule of ASX announcements for the preceding month was reviewed at each monthly Board meeting.*
4. *Chapman attended Board meetings during 1H10 and in the Relevant Period on 30 July 2009, 26 August 2009, 30 August 2009, 28 September 2009, 7 October 2009, 29 October 2009, 26 November 2009, 15 December 2009, 28 January 2010 and 19 February 2010.*

58. At all times during the Relevant Period, L'Estrange knew:

- (a) that Gunns was under a statutory duty to comply with the continuous disclosure requirements of section 674(2) of the Act and ASX Listing Rule 3.1; and

**Particulars**

*The knowledge of L'Estrange is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 6.*
2. *L'Estrange was a member of Gunns' Market Disclosure Committee, which was constituted by the Managing Director (Gay and/or L'Estrange) and the Company Secretary (Chapman).*
3. *On or about 30 August 2009, L'Estrange received a copy of a 'Due Diligence Process Outline' prepared by Freehills, which referred to Gunns' continuous disclosure obligations and to materiality thresholds in connection with the capital raising referred to in paragraph 22.*
4. *On or about 30 August 2009, L'Estrange signed a report of the Due Diligence Committee in connection with the capital raising referred to in paragraph 22, which report attached a Continuous Disclosure Questionnaire prepared by Freehills, the answers to which were drafted by Chapman, which articulated Gunns' continuous disclosure policy and obligations.*

- (b) what disclosures had been made by Gunns to the ASX during the Relevant Period.

**Particulars**

*The knowledge of L'Estrange is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 6.*
2. *The schedule of ASX announcements for the preceding month was reviewed at each monthly Board meeting.*
3. *L'Estrange attended Board meetings during 1H10 and in the Relevant Period on 30 July 2009, 26 August 2009, 30 August 2009, 28 September 2009, 7 October 2009, 29 October 2009, 26 November 2009, 15 December 2009, 28 January 2010 and 19 February 2010.*

59. Gay knew the matters pleaded in:

- (a) paragraph 49(a); and

**Particulars**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 4.*
2. *Gay approved the FY08 Annual Report in his capacity as a director of Gunns.*

- (b) paragraph 49(b);

**Particulars**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 4.*
2. *Gay on 30 August 2009 at a meeting of the Board proposed and/or consented to the lodgment of the notice in which that statement was made.*

and/or

- (c) paragraphs 51(a) and (b).

**Particulars**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 4.*
2. *Gay on 28 September 2009 at a meeting of the Board proposed and/or consented to the approval of the FY09 Annual Report.*
3. *Gay signed the FY09 Annual Reports on behalf of the Board.*

60. Chapman knew the matters pleaded in:

- (a) paragraph 49(a);

**Particulars**

*The knowledge of Chapman is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 5.*
2. *Chapman drafted or assisted in drafting the FY08 Annual Report.*

- (b) paragraph 49(b);

**Particulars**

*The knowledge of Chapman is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 5.*
2. *Chapman prepared and/or lodged the notice in which the statement was made.*

3. *Chapman on 30 August 2009 was present at a meeting of the Board at which the Board consented to the lodgment of the notice in which that statement was made.*

and/or

- (c) paragraphs 51(a) and (b).

**Particulars**

*The knowledge of Chapman is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 5.*
2. *Chapman was involved in drafting the FY09 Annual Reports.*
3. *Chapman on 28 September 2009 was present at a meeting of the Board at which the Board approved the FY09 Annual Report.*

61. L'Estrange knew the matters pleaded in:

- (a) paragraph 49(b);

**Particulars**

*The knowledge of L'Estrange is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 6.*
2. *L'Estrange on 30 August 2009 was present at a meeting of the Board at which the Board consented to the lodgment of the notice in which that statement was made.*

and/or

- (b) paragraphs 51(a) and (b).

**Particulars**

*The knowledge of L'Estrange is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 6.*
2. *L'Estrange was involved in drafting the FY09 Annual Reports.*
3. *L'Estrange on 28 September 2009 was present at a meeting of the Board at which the Board approved the FY09 Annual Report.*

62. Further and in the alternative to paragraphs 56 and 59, to the extent that the representations in paragraphs 48, 50 and 52, and each of them, were representations as to future matters, Gay knew that those representations were made without reasonable basis at the time they were made.

**Particulars**

*The knowledge of Gay is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 4.*
2. *The Applicant repeats paragraphs 37(a), 41(a), 42(a), 43(a), 44(a), 45(a) and 46(a) and the particulars thereto.*

63. Further and in the alternative to paragraphs 57 and 60, to the extent that the representations in paragraphs 48, 50 and 52 and each of them, were representations as to future matters, Chapman knew that those representations were made without reasonable basis at the time they were made.

**Particulars**

*The knowledge of Chapman is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 5.*
2. *The Applicant repeats paragraphs 37(b), 41(b), 42(b), 43(b), 44(b), 45(b) and 46(b) and the particulars thereto.*

64. Further and in the alternative to paragraphs 58 and 61, to the extent that the representations in paragraphs 48, 50 and 52 and each of them, were representations as to future matters, L'Estrange knew that those representations were made without reasonable basis at the time they were made.

**Particulars**

*The knowledge of L'Estrange is to be inferred from the following facts and circumstances.*

1. *The Applicant repeats paragraph 6.*
2. *The Applicant repeats paragraphs 37(c), 41(c), 42(c), 43(c), 44(c), 45(c) and 46(c) and the particulars thereto.*

65. By reason of the matters pleaded in:

- (a) paragraphs 56, 59 and/or 62, Gay; and/or

(b) paragraphs 57, 60 and/or 63, Chapman; and/or

(c) paragraphs 58, 61 and/or 64, L'Estrange;

was, or were, involved, within the meaning in section 79 of the Act and/or within the meaning in section 12GF of the ASIC Act and/or within the meaning in section 75B of the TPA, in the Representation Contraventions by Gunns pleaded in paragraph 55, and each of them.

## **F LOSS AND DAMAGE SUFFERED BY THE APPLICANT AND GROUP MEMBERS**

66. During the Relevant Period, the Applicant and Group Members acquired Gunns shares or acquired an interest in Gunns shares.

### **Particulars**

*The Applicant purchased 12,001 Gunns shares on 30 December 2009 at a price of \$0.94 each and sold 12,000 Gunns shares on 31 May 2010 at a price of \$0.48 each.*

*The Applicant's share purchase details are detailed in Annexure E to this Statement of Claim.*

67. The Applicant and Group Members acquired Gunns shares or acquired an interest in Gunns shares in a financial market:

(a) regulated by, inter alia, the ASX Listing Rules and section 674(2) of the Act; and

(b) where the price or value of Gunns shares was informed or affected, or would reasonably be expected to have been informed or affected, by information required to be disclosed in accordance with the ASX Listing Rules and section 674(2) of the Act.

68. During the Relevant Period by reason of the Continuous Disclosure Contraventions and/or the Representation Contraventions (collectively, the **Contraventions**), the market price of Gunns shares was materially greater than:
- (a) it otherwise would have been had the Contraventions not occurred; and/or
  - (b) the true value of Gunns shares.
69. Further or alternatively to paragraph 68 above the Applicant and Group Members:
- (a) believed that the price of Gunns shares on the ASX as at the date of acquisition of the Gunns shares reflected all information that a reasonable person would expect to have a material effect on the price or value of the Gunns shares; and
  - (b) relying on that belief acquired an interest in Gunns shares.
70. By reason of the matters alleged in paragraphs 66 to 69 above, the Applicant and the Group Members have suffered loss and damage resulting from the Contraventions.

**Particulars**

1. *Had it not been for the Contraventions, as defined in paragraph 68 above, the Applicant:*
  - (a) *would not have acquired an interest in Gunns shares; or*
  - (b) *would not have paid as much as he did for an interest in Gunns shares.*
2. *The loss suffered by the Applicant and Group Members will be calculated by reference to:*
  - (a) *the difference between the price at which he and they acquired an interest in Gunns shares and the true value of that interest as at the date of purchase; or*
  - (b) *the difference between the price at which he and they acquired an interest in each Gunns share and the market price that would have prevailed but for the Contraventions or any of them; or*
  - (c) *the difference between the price at which he and they acquired an interest in Gunns shares; and*
    - (i) *the price at which the interest was sold; or*
    - (ii) *(for those Group Members who have not disposed of their interest in the Gunns shares by the date of judgment) the market value of that interest as at that date;*



*and;*

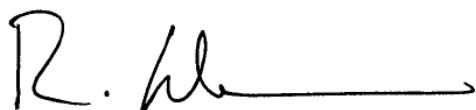
(d) *in the case of and in addition to either 2(a) or 2(b) or 2(c) above:*

- (i) *the loss of the opportunity to achieve a reasonable rate of return on the monies used to acquire the interest in Gunns shares; or*
- (ii) *interest from the date of acquiring an interest in the Gunns shares.*

3. *Further particulars of the Applicant's loss will be provided following service of the Applicant's evidence in chief.*

AND the Applicant and Group Members claim the relief specified in the Originating Application.

Date: ~~27 August~~ 22 December 2015



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Signed by Rebecca Gilsonan  
Lawyer for the Applicant

This pleading was prepared by Miranda Nagy, Special Counsel, Maurice Blackburn.

## Annexure A

Particulars to paragraphs 16 to 21 and 23 to 25 – Gunns’ financial results in 1H09, 2H09 and 1H10

**Table 1. Reported revenue, EBIT and NPAT for 1H09, 2H09, 1H10**

	1H09	2H09	1H10
<b>Reported revenue</b>	\$427.6m	\$341.7m	\$325.9m
<b>Reported EBIT</b>	\$69.3m	\$41.6m	\$4.8m
<b>Reported NPAT</b>	\$33.6m	\$22.6m	\$0.4m

**Table 2. Contribution of Export Woodchip Business to reported revenue, EBIT and NPAT for 1H09, 2H09, 1H10**

	1H09 (Overall reported)	1H09 (Export Woodchip Business)	2H09 (Overall reported)	2H09 (Export Woodchip Business)	1H10 (Overall reported)	1H10 (Export Woodchip Business)
<b>Revenue</b>	\$427.6m	\$225.2m	\$341.7m	\$133.0m	\$325.9m	\$140.6m
<b>EBIT</b>	\$69.3m	\$57.4m	\$41.6m	\$33.7m	\$4.8m	\$6.9m

## Annexure B

## Particulars to paragraph 26(b) - Market Expectations

Table 3. Analysts' reports

Date of report	Analyst	Half Year Predictions - 1H10	
31 August 2009	Bell Potter	Revenue EBITDA (adjusted) Depreciation & Amortisation EBIT (adjusted) Net Profit	\$393.2m \$73.3m (\$16.8m) \$56.5m \$29.5m
21 September 2009	Bell Potter	Revenue EBITDA (adjusted) Depreciation & Amortisation EBIT (adjusted) Net Profit	\$393.2m \$73.3m (\$16.8m) \$56.5m \$29.5m
28 September 2009	Bell Potter	Revenue EBITDA (adjusted) Depreciation & Amortisation EBIT (adjusted) Net Profit	\$393.2m \$73.3m (\$16.8m) \$56.5m \$29.5m
28 October 2009	Bell Potter	Revenue EBITDA (adjusted) Depreciation & Amortisation EBIT (adjusted) Net Profit	\$383.1m \$50.8m (\$16.8m) \$34.0m \$7.2m
23 November 2009	Bell Potter	Revenue EBITDA (adjusted) Depreciation & Amortisation EBIT (adjusted) Net Profit	\$383.1m \$50.8m (\$16.8m) \$34.0m \$7.2m
25 November 2009	Bell Potter	Revenue EBITDA (adjusted) Depreciation & Amortisation EBIT (adjusted) Net Profit	\$383.1m \$50.8m (\$16.8m) \$34.0m \$7.2m
25 November 2009	Bloomberg - consensus forecast, mean estimate and	Sales EBITDA EBIT Net Income Adjusted+	\$402.667m \$50.65m \$36.35m \$12.25m

Date of report	Analyst	Half Year Predictions - 1H10	
	median estimate	EPS (adjusted)	2.4c
21 December 2009	UBS	Revenue EBITDA (adjusted) Depreciation & Amortisation EBIT (adjusted) Net Profit (reported)	\$372.6m \$49.7m (\$16.8m) \$32.9m \$10.8m
21 December 2009	Bell Potter	Revenue EBITDA (adjusted) Depreciation & Amortisation EBIT (adjusted) Net Profit	\$372.6m \$49.7m (\$16.8m) \$32.9m \$10.8m
21 January 2010	JP Morgan	Operating Revenue EBITDA Underlying EBIT NPAT	\$401.3m \$64.0m \$49.0m \$23.6m
22 January 2010	Macquarie Equities Research	Revenue EBIT Forestry Products Total EBIT NPAT	\$341.6m \$31.5m \$41.7m \$10.5m
1 February 2010	Bell Potter	Revenue EBITDA (adjusted) Depreciation & Amortisation EBIT (adjusted) Net Profit	\$383.1m \$46.0m (\$16.8m) \$29.2m \$8.1m
17 February 2010	RBS Morgans	Revenue (total) Revenue (Forest Products total) Revenue (Wood chips) EBIT (total) EBIT (Forest Products total) EBIT (Wood chips) NPAT	\$386.2m \$311.6m \$144.5m \$38.0m \$38.7m \$28.6m \$18.2m
18 February 2010	JP Morgan	Operating Revenue EBITDA Underlying EBIT NPAT	\$401.3m \$64.0m \$49.0m \$23.6m
Not presently known to the	Bloomberg consensus	EBIT EPS	\$36.4m 2.4¢

Date of report	Analyst	Half Year Predictions - 1H10	
Applicant. The Applicant may supplement these particulars following service of his evidence in chief.	forecast (reported in <i>Australian Financial Review</i> on 23 February 2010)		
Not presently known to the Applicant. The Applicant may supplement these particulars following service of his evidence in chief.	Market consensus forecast (reported in <i>the Australian</i> on 25 February 2010)	NPAT	\$12.3m

## Annexure C

## Particulars to paragraph 27 - Foreign exchange rates

Table 4. Relevant exchange rates between 1 May 2009 and 31 December 2009

Date	AUD to USD	AUD to JPY	USD to JPY	JPY to USD	JPY to AUD
01.05.2009	0.7295	71.4387	97.9615	0.01021	0.014005
02.05.2009	0.7289	72.2241	99.1126	0.010091	0.013854
03.05.2009	0.7312	72.4773	99.2057	0.01009	0.013826
04.05.2009	0.7311	72.4724	99.2144	0.01009	0.013827
05.05.2009	0.7356	73.0611	99.3337	0.01007	0.013697
06.05.2009	0.742	73.3675	98.8815	0.010115	0.013636
07.05.2009	0.7421	73.0962	98.488	0.010155	0.013688
08.05.2009	0.7553	74.7943	99.0126	0.010102	0.01338
09.05.2009	0.7583	75.1442	99.0606	0.010097	0.013315
10.05.2009	0.7692	75.757	98.512	0.010161	0.013226
11.05.2009	0.7691	75.7657	98.5283	0.01016	0.013225
12.05.2009	0.7647	74.9705	98.0328	0.010203	0.013346
13.05.2009	0.7622	74.0198	97.1074	0.010299	0.013516
14.05.2009	0.7631	73.3392	96.0958	0.010408	0.013641
15.05.2009	0.7541	72.0426	95.5292	0.01047	0.013887
16.05.2009	0.7562	72.1904	95.4708	0.010476	0.01386
17.05.2009	0.7496	71.397	95.258	0.010509	0.014036
18.05.2009	0.7495	71.3719	95.2325	0.010512	0.014041
19.05.2009	0.7549	72.092	95.5011	0.010473	0.013878
20.05.2009	0.7708	74.2232	96.2877	0.010387	0.013479
21.05.2009	0.7742	74.0122	95.5986	0.010462	0.013517
22.05.2009	0.774	73.2421	94.6349	0.010569	0.013659
23.05.2009	0.7817	73.7128	94.2978	0.010607	0.013573
24.05.2009	0.7833	74.26	94.828	0.010557	0.013493
25.05.2009	0.7831	74.2368	94.8185	0.010557	0.013497
26.05.2009	0.781	74.0897	94.8586	0.010544	0.013504
27.05.2009	0.7794	73.9197	94.8371	0.010546	0.013534
28.05.2009	0.7854	74.8006	95.2328	0.010502	0.013375
29.05.2009	0.7809	75.3425	96.473	0.010367	0.013278
30.05.2009	0.7934	76.2405	95.8922	0.010431	0.013122
31.05.2009	0.8015	76.436	95.392	0.010494	0.013109
01.06.2009	0.8018	76.4509	95.3721	0.010496	0.013105
02.06.2009	0.8077	77.1163	95.4716	0.010476	0.012973

Date	AUD to USD	AUD to JPY	USD to JPY	JPY to USD	JPY to AUD
03.06.2009	0.8135	78.1713	96.0952	0.010408	0.012798
04.06.2009	0.8178	78.4314	95.9264	0.010428	0.01276
05.06.2009	0.8018	77.2582	96.3573	0.01038	0.012949
06.06.2009	0.802	78.0195	97.2663	0.010283	0.012824
07.06.2009	0.7937	78.342	98.71	0.010141	0.012789
08.06.2009	0.7939	78.3568	98.7124	0.010141	0.012787
09.06.2009	0.7909	77.9038	98.5116	0.010153	0.012843
10.06.2009	0.7943	77.8462	98.0118	0.010204	0.012851
11.06.2009	0.8056	78.7901	97.807	0.010226	0.012697
12.06.2009	0.8125	79.573	97.9341	0.010212	0.012572
13.06.2009	0.8143	79.8226	98.0215	0.010204	0.012534
14.06.2009	0.8129	80.028	98.464	0.010166	0.012519
15.06.2009	0.8129	80.0262	98.4621	0.010167	0.012519
16.06.2009	0.8018	78.7192	98.1779	0.010187	0.012709
17.06.2009	0.796	77.0759	96.8283	0.010329	0.01298
18.06.2009	0.7926	76.2456	96.2055	0.010396	0.013121
19.06.2009	0.7972	76.5253	96.0016	0.010418	0.013073
20.06.2009	0.8041	77.689	96.6115	0.010353	0.012878
21.06.2009	0.8069	77.704	96.323	0.010393	0.012894
22.06.2009	0.8069	77.6973	96.3191	0.010393	0.012895
23.06.2009	0.7967	76.4765	95.998	0.010419	0.013082
24.06.2009	0.7875	75.1115	95.3809	0.010486	0.013319
25.06.2009	0.798	76.1311	95.4015	0.010484	0.013141
26.06.2009	0.7988	76.7765	96.1177	0.010405	0.01303
27.06.2009	0.8059	77.0624	95.621	0.01046	0.012983
28.06.2009	0.8078	76.938	95.242	0.010511	0.013023
29.06.2009	0.8078	76.9376	95.2425	0.01051	0.013023
30.06.2009	0.8048	76.9	95.5498	0.010468	0.01301
01.07.2009	0.81	77.7925	96.0386	0.010414	0.01286
02.07.2009	0.807	77.9896	96.6471	0.010348	0.012827
03.07.2009	0.8019	77.3041	96.4018	0.010375	0.012941
04.07.2009	0.7969	76.4764	95.964	0.010423	0.013083
05.07.2009	0.7974	76.612	96.09	0.010418	0.013078
06.07.2009	0.7973	76.6122	96.0965	0.010417	0.013078
07.07.2009	0.793	75.6308	95.3727	0.010487	0.013228
08.07.2009	0.7966	75.8156	95.169	0.010509	0.013195
09.07.2009	0.7842	73.7204	94.0015	0.01064	0.013571
10.07.2009	0.7822	72.7614	93.0269	0.010751	0.01375
11.07.2009	0.7796	72.253	92.6856	0.010791	0.013847

Date	AUD to USD	AUD to JPY	USD to JPY	JPY to USD	JPY to AUD
12.07.2009	0.7793	72.164	92.624	0.010808	0.013886
13.07.2009	0.7793	72.164	92.624	0.010808	0.013886
14.07.2009	0.7794	72.1812	92.6276	0.010804	0.013875
15.07.2009	0.7868	73.2674	93.1188	0.01074	0.013655
16.07.2009	0.7985	74.8398	93.7281	0.010671	0.013368
17.07.2009	0.8013	75.2145	93.8795	0.010653	0.013301
18.07.2009	0.8015	75.2348	93.8699	0.010655	0.013299
19.07.2009	0.8029	75.651	94.259	0.01062	0.013245
20.07.2009	0.8028	75.6409	94.2601	0.01062	0.013247
21.07.2009	0.8101	76.5289	94.4794	0.010587	0.013074
22.07.2009	0.8139	76.4611	93.9467	0.010646	0.013084
23.07.2009	0.8156	76.3283	93.5819	0.010687	0.013107
24.07.2009	0.8179	77.1978	94.387	0.010596	0.012959
25.07.2009	0.8158	77.3652	94.8361	0.010546	0.012932
26.07.2009	0.8177	77.543	94.849	0.010554	0.012921
27.07.2009	0.8178	77.5595	94.8529	0.010554	0.012918
28.07.2009	0.821	78.0105	95.0214	0.010526	0.012825
29.07.2009	0.8271	78.43	94.8154	0.010548	0.012756
30.07.2009	0.8212	77.7508	94.6783	0.010564	0.012867
31.07.2009	0.8222	78.312	95.2542	0.0105	0.012775
01.08.2009	0.8291	78.9993	95.2887	0.010496	0.012665
02.08.2009	0.8364	79.215	94.734	0.010567	0.012648
03.08.2009	0.8363	79.2172	94.7373	0.010566	0.012647
04.08.2009	0.839	79.6709	94.9582	0.010533	0.012557
05.08.2009	0.8425	80.1411	95.1254	0.010514	0.012483
06.08.2009	0.8423	80.1242	95.1185	0.010515	0.012486
07.08.2009	0.8414	80.1807	95.2972	0.010495	0.012477
08.08.2009	0.8383	80.5356	96.0681	0.010411	0.012423
09.08.2009	0.8377	81.764	97.615	0.010255	0.012253
10.08.2009	0.8376	81.749	97.617	0.010254	0.012255
11.08.2009	0.8382	81.5399	97.2737	0.010282	0.01227
12.08.2009	0.834	80.5142	96.5385	0.01036	0.012425
13.08.2009	0.8275	79.3196	95.8478	0.010435	0.012613
14.08.2009	0.8389	80.442	95.8803	0.010431	0.012437
15.08.2009	0.8399	79.8379	95.0521	0.010523	0.012531
16.08.2009	0.8331	79.121	94.987	0.010539	0.012663
17.08.2009	0.8329	79.0896	94.9718	0.01054	0.012667
18.08.2009	0.8226	77.782	94.555	0.010578	0.012863
19.08.2009	0.8241	78.133	94.8183	0.010548	0.012804



Date	AUD to USD	AUD to JPY	USD to JPY	JPY to USD	JPY to AUD
20.08.2009	0.8255	77.8532	94.3126	0.010605	0.01285
21.08.2009	0.8305	78.2585	94.2207	0.010615	0.012783
22.08.2009	0.8313	78.1715	94.0293	0.010637	0.012799
23.08.2009	0.8354	78.873	94.435	0.010601	0.012703
24.08.2009	0.8354	78.871	94.4334	0.010601	0.012703
25.08.2009	0.8394	79.4794	94.6887	0.010563	0.012587
26.08.2009	0.8375	78.9103	94.2241	0.010615	0.012678
27.08.2009	0.8328	78.43	94.1737	0.01062	0.012756
28.08.2009	0.8313	77.9326	93.7516	0.010668	0.012837
29.08.2009	0.8417	78.8852	93.7125	0.010674	0.012685
30.08.2009	0.8415	78.928	93.69	0.010696	0.012734
31.08.2009	0.8416	78.8876	93.671	0.010698	0.012741
01.09.2009	0.8405	78.1467	92.9808	0.010757	0.012804
02.09.2009	0.8378	77.978	93.0849	0.010745	0.012829
03.09.2009	0.8312	76.9858	92.6275	0.010798	0.012995
04.09.2009	0.8374	77.3748	92.3995	0.010824	0.01293
05.09.2009	0.8434	78.2612	92.7873	0.010779	0.012784
06.09.2009	0.8512	79.192	93.057	0.010758	0.012652
07.09.2009	0.8512	79.1951	93.0569	0.010758	0.012651
08.09.2009	0.8545	79.5271	93.0736	0.010747	0.012581
09.09.2009	0.8597	79.5246	92.5046	0.010812	0.01258
10.09.2009	0.8618	79.5125	92.2618	0.01084	0.012582
11.09.2009	0.8602	79.1378	91.9959	0.010872	0.012641
12.09.2009	0.8637	78.6365	91.0489	0.010985	0.012723
13.09.2009	0.8641	78.43	90.773	0.011029	0.012775
14.09.2009	0.864	78.4102	90.7489	0.011032	0.012778
15.09.2009	0.859	77.8894	90.677	0.011031	0.012845
16.09.2009	0.8609	78.4284	91.0906	0.010979	0.012754
17.09.2009	0.8691	78.8941	90.7725	0.011018	0.012679
18.09.2009	0.8734	79.5198	91.0645	0.010983	0.012579
19.09.2009	0.8695	79.3405	91.2637	0.010959	0.012609
20.09.2009	0.868	79.255	91.341	0.01096	0.012641
21.09.2009	0.868	79.2557	91.3423	0.01096	0.012641
22.09.2009	0.8638	79.3699	91.901	0.010883	0.012605
23.09.2009	0.871	79.6833	91.4927	0.010931	0.012555
24.09.2009	0.8746	79.6725	91.0917	0.01098	0.012557
25.09.2009	0.8704	79.2355	91.0275	0.010987	0.012626
26.09.2009	0.866	78.3212	90.4421	0.011059	0.012774
27.09.2009	0.8685	77.92	89.7102	0.011159	0.012858

Date	AUD to USD	AUD to JPY	USD to JPY	JPY to USD	JPY to AUD
28.09.2009	0.8686	77.9273	89.7081	0.01116	0.012857
29.09.2009	0.8663	77.4343	89.3773	0.011191	0.01292
30.09.2009	0.8729	78.5487	89.978	0.011115	0.012736
01.10.2009	0.8797	78.9604	89.7591	0.011142	0.012669
02.10.2009	0.8791	78.9841	89.8375	0.011133	0.012666
03.10.2009	0.867	77.5673	89.4611	0.01118	0.012898
04.10.2009	0.8652	77.721	89.8526	0.011142	0.012891
05.10.2009	0.8655	77.732	89.8366	0.011144	0.012889
06.10.2009	0.8738	78.4063	89.7311	0.011146	0.012759
07.10.2009	0.8854	78.8698	89.0782	0.011228	0.012684
08.10.2009	0.8901	78.9716	88.7127	0.011274	0.012667
09.10.2009	0.9021	79.7661	88.4142	0.011312	0.012541
10.10.2009	0.9042	80.6518	89.1945	0.011214	0.012404
11.10.2009	0.9042	81.181	89.793	0.011149	0.012341
12.10.2009	0.9042	81.1708	89.7774	0.011151	0.012342
13.10.2009	0.9047	81.4261	90.0031	0.011113	0.012286
14.10.2009	0.9071	81.4521	89.7909	0.011139	0.012282
15.10.2009	0.9123	81.5479	89.3858	0.011189	0.012267
16.10.2009	0.9193	82.692	89.9438	0.01112	0.012097
17.10.2009	0.9203	83.6564	90.8962	0.011004	0.011959
18.10.2009	0.917	83.374	90.934	0.011009	0.012016
19.10.2009	0.917	83.3777	90.9445	0.011009	0.012015
20.10.2009	0.9206	83.5826	90.7922	0.011017	0.011969
21.10.2009	0.9264	83.8496	90.5102	0.01105	0.01193
22.10.2009	0.925	84.0457	90.8627	0.011007	0.011902
23.10.2009	0.9245	84.3602	91.2504	0.01096	0.011858
24.10.2009	0.9259	84.9525	91.7455	0.010902	0.011776
25.10.2009	0.923	84.99	92.08	0.010866	0.011787
26.10.2009	0.9227	84.9617	92.0972	0.01087	0.01179
27.10.2009	0.9222	84.8085	91.9655	0.010875	0.011796
28.10.2009	0.9172	84.4188	92.0429	0.010866	0.01185
29.10.2009	0.9076	82.7728	91.1965	0.010967	0.012085
30.10.2009	0.905	82.2378	90.8709	0.011006	0.012164
31.10.2009	0.9109	82.8441	90.9577	0.010996	0.012076
01.11.2009	0.9001	81.126	90.9577	0.010996	0.012349
02.11.2009	0.9001	81.1052	90.1225	0.011108	0.012353
03.11.2009	0.9029	81.3417	90.0927	0.011103	0.012301
04.11.2009	0.9008	81.303	90.2617	0.011081	0.012304
05.11.2009	0.9059	82.0754	90.5984	0.011039	0.012188

Date	AUD to USD	AUD to JPY	USD to JPY	JPY to USD	JPY to AUD
06.11.2009	0.9085	82.2247	90.5003	0.011051	0.012166
07.11.2009	0.9145	82.6789	90.4141	0.011062	0.012099
08.11.2009	0.9194	82.6757	89.94	0.011131	0.012117
09.11.2009	0.9198	82.7109	89.942	0.01113	0.012112
10.11.2009	0.9267	83.3981	89.9951	0.011114	0.011995
11.11.2009	0.9286	83.4917	89.9045	0.011124	0.011981
12.11.2009	0.9305	83.5453	89.7816	0.01114	0.011973
13.11.2009	0.9304	83.7381	90.0073	0.011112	0.011946
14.11.2009	0.9279	83.4991	89.9884	0.011114	0.01198
15.11.2009	0.934	83.7318	89.6858	0.011162	0.011964
16.11.2009	0.934	83.7316	89.6852	0.011162	0.011964
17.11.2009	0.9349	83.6415	89.4731	0.011179	0.01196
18.11.2009	0.9314	83.0268	89.1457	0.011219	0.012048
19.11.2009	0.9301	83.0087	89.2464	0.011206	0.012051
20.11.2009	0.922	82.0998	89.0568	0.01123	0.012184
21.11.2009	0.9159	81.4533	88.9452	0.011244	0.012281
22.11.2009	0.9156	81.4045	88.94	0.011256	0.012307
23.11.2009	0.9155	81.3948	88.9322	0.011257	0.012308
24.11.2009	0.9214	81.9287	88.92	0.011248	0.01221
25.11.2009	0.9198	81.6018	88.7154	0.011274	0.012259
26.11.2009	0.9263	81.5221	88.0044	0.011365	0.01227
27.11.2009	0.9206	79.969	86.8584	0.011515	0.012509
28.11.2009	0.9045	78.1422	86.3941	0.011577	0.012803
29.11.2009	0.9067	78.5122	86.5935	0.011562	0.012761
30.11.2009	0.9076	78.6401	86.6563	0.011553	0.01274
01.12.2009	0.9148	79.0781	86.4428	0.01157	0.01265
02.12.2009	0.9197	79.8215	86.791	0.011524	0.012532
03.12.2009	0.9266	80.7014	87.0942	0.011483	0.012395
04.12.2009	0.9283	81.6098	87.9075	0.011377	0.012257
05.12.2009	0.9219	81.8559	88.7891	0.011264	0.012221
06.12.2009	0.9153	82.902	90.6057	0.011049	0.012084
07.12.2009	0.9152	82.8789	90.5818	0.011052	0.012087
08.12.2009	0.9132	82.0761	89.886	0.011127	0.012188
09.12.2009	0.9111	80.9179	88.814	0.011261	0.012362
10.12.2009	0.9065	79.8576	88.0909	0.011353	0.012526
11.12.2009	0.9149	80.639	88.1489	0.011346	0.012405
12.12.2009	0.9152	81.3422	88.878	0.011253	0.012298
13.12.2009	0.9133	81.3814	89.1235	0.011233	0.012311
14.12.2009	0.9131	81.3577	89.1144	0.011234	0.012313

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Date	AUD to USD	AUD to JPY	USD to JPY	JPY to USD	JPY to AUD
15.12.2009	0.9116	80.8482	88.6947	0.011277	0.012373
16.12.2009	0.9103	81.1959	89.1961	0.011213	0.01232
17.12.2009	0.9008	80.7536	89.6486	0.011156	0.012388
18.12.2009	0.8913	80.1983	89.9772	0.011115	0.012473
19.12.2009	0.8881	79.9879	90.0631	0.011105	0.012506
20.12.2009	0.8905	80.6042	90.5294	0.011058	0.012429
21.12.2009	0.8907	80.6147	90.5265	0.011059	0.012428
22.12.2009	0.8858	80.2456	90.6058	0.011039	0.012466
23.12.2009	0.8793	80.3466	91.422	0.01094	0.012451
24.12.2009	0.8773	80.4509	91.6971	0.010907	0.012435
25.12.2009	0.8824	80.749	91.5025	0.010931	0.01239
26.12.2009	0.8846	80.9974	91.4804	0.010944	0.012376
27.12.2009	0.885	80.5802	91.21	0.010967	0.01241
28.12.2009	0.8849	81.0542	91.4514	0.010953	0.012376
29.12.2009	0.887	81.2146	91.5521	0.010926	0.012321
30.12.2009	0.8922	81.8455	91.7677	0.010898	0.012222
31.12.2009	0.8931	82.373	92.2401	0.010843	0.012144

## Annexure D

### Particulars to paragraph 27 – Predictions concerning foreign exchange movements

- (i) ABARE, *Australian Commodities: June quarter 09.2*: 'A recent appreciation of the Australian dollar against the US dollar, if sustained, has the potential to adversely affect commodity export earnings. In preparing this set of commodity forecasts, the Australian dollar is assumed to average US77c in 2009-10, compared with an average of US75c in 2008-09' (p 261).

'The recent appreciation of the Australian dollar appears to reflect an improvement in financial market sentiment toward the prospects for world economic recovery, the likely effect of stronger world economic activity on commodity demand and prices, and the implications of the above developments for Australia's terms of trade and export performance.

Another factor which has affected movements in the Australian dollar is a weakening of the US dollar against major international currencies. The US dollar was trading around Euro0.72 and Yen96 in early June 2009, compared with Euro0.74 and Yen98 in late March 2009, and Euro0.80 and Yen102 in late October 2008.

Looking forward, an assumed improvement in world economic activity is expected to provide support to the Australian dollar in the short term. ... [T]here is a distinct possibility the Australian dollar could remain at its current level or even appreciate further against the US dollar in the near term. This would especially be the case if economic indicators continue pointing to a stronger than expected world economic recovery.

There is considerable uncertainty surrounding the short-term outlook for the Australian dollar. ... Consequently, it remains important for primary producers and exporters to manage the risks associated with fluctuations in the Australian exchange rate.' (pp273-274)

- (ii) St George Bank, *Aussie Dollar Outlook* 15 June 2009: 'We expect the AUD/USD exchange rate to finish near the mid 80s by the end of this year.'

Forecast exchange rates effective 9 June 2009:

	Jun-09	Sep-09	Dec-09	Mar-10	Jun-10
AUD-USD	0.7800	0.8000	0.8300	0.8500	0.8600
US-JPY	102.00	104.00	106.00	107.00	108.00
AUD-JPY	79.60	83.20	88.00	91.00	92.90

- (iii) NAB, *NAB Agribusiness* June 2009: 'NAB's forecast is for the AUD to rise modestly to around US83 cents at year end ... It is hard to justify the AUD trading beyond US83 cents given a likely weak global economic recovery, unless the USD collapses ...'.

Forecast exchange rates as at 15 June 2009:

	Jun-09	Sep-09	Dec-09	Mar-10	Jun-10
AUD-USD	0.78	0.82	0.83	0.84	0.84
US-JPY	96	98	102	104	106
AUD-JPY	75	80	85	87	89

- (iv) NAB, *NAB Agribusiness* July 2009: 'NAB currently expects the AUD/USD to spend most of the next few months trading around US80-85 cents, with the bullish factors being strong Chinese growth, RBA rate cutting over and relatively high interest rate differentials. However if the global recovery is modest in strength this will cap the upside.'

Forecast exchange rates as at 14 July 2009:

	Sep-09	Dec-09	Mar-10	Jun-10
AUD-USD	0.82	0.83	0.84	0.84
US-JPY	98	102	104	106
AUD-JPY	80	85	87	89

- (v) NAB, *NAB Agribusiness* August 2009: 'NAB currently expects the AUD/USD to spend most of the next few months trading around US.80-.86 with bullish factors including: strong Chinese growth, no further rate cutting by the RBA and relatively high interest rate differentials. ... Since [last month], NAB has upgraded its forecast for the AUD/USD reflecting improved growth prospects and a smaller likelihood that stock markets and risk appetite fall sharply. As a result the AUD/USD is now forecast to average US86c in the December quarter ...'

Forecast exchange rates as at 25 August 2009:

	Sep-09	Dec-09	Mar-10	Jun-10
AUD-USD	0.85	0.86	0.87	0.88
US-JPY	98	102	104	106
AUD-JPY	83	86	89	92

- (vi) St George Bank, *AUD/NZD Outlook* 14 August 2009:

Forecast exchange rates effective 6 August 2009:

	Sep-09	Dec-09	Mar-10	Jun-10
AUD-USD	0.8600	0.8700	0.8800	0.8900

- (vii) RBS Equities (Australia) Limited, Analyst Report, *Gunns: Outlook Looks Tough* 25 August 2009: 'FX assumptions - A\$ strength: We have moved our currency forecasts to reflect the stronger A\$. Our US\$/A\$ exchange rate forecast has moved from US\$0.77/A\$ to US\$0.83/A\$ in FY10 ....'

- (viii) St George Bank, *Aussie Dollar Outlook* 9 September 2009: 'We continue to expect the AUD/USD exchange rate to finish the end of the year above the mid 80s. The AUD is receiving underlying support from attractive interest-rate differentials, attractive economic-growth differentials, improving risk appetites and brightening prospects for the global economy. ... we think ... there is some room for a pull back in the AUD in the near term. However, as mentioned earlier much of the AUD's direction in the near term will likely rely on the domestic data outcomes. Strong data could see the AUD push higher and stretch towards 90 US cents. We continue to expect the AUD will end the year around USD0.8700 ...'

Forecast exchange rates effective 6 August 2009:

	Sep-09	Dec-09	Mar-10	Jun-10
AUD-USD	0.8600	0.8700	0.8800	0.8900
US-JPY	97.00	99.00	101.00	103.00
AUD-JPY	83.40	86.10	88.90	91.70

- (ix) NAB, *NAB Agribusiness* September 2009: '... in recent weeks the global economic recovery is looking stronger than expected; the market prices less tightening by the RBA than NAB anticipate; while the USD looks even sicker than NAB had forecast. As such, we have raised our end-year forecast for AUD/USD to US89 cents from US86 cents and now expect a peak of US93 cents in 2010 from our earlier forecast of US90 cents.'

Forecast exchange rates:

	Sep-09	Dec-09	Mar-10	Jun-10
AUD-USD	0.86	0.89	0.90	0.91
US-JPY	94	96	100	103
AUD-JPY	81	85	90	94

- (x) ABARE, *Australian Commodities: September quarter 09.3*: 'After depreciating significantly in the second half of 2008, the Australian dollar has appreciated markedly since March 2009, both against the US dollar and on a trade weighted basis. The Australian dollar was trading around US86c and TWI 67 in mid-September 2009. This compares with a low of US63c and TWI 67 in mid-September 2009. This compares with a low of US63c and TWI 54 in early March 2009. In the first three months of 2009-10, the Australian dollar is estimated to average around US82c and TWI 65.

The recent appreciation of the Australian dollar appears to reflect an improvement in financial market sentiment toward the prospects for world economic recovery, the likely effect of stronger world economic activity on commodity demand and prices, and the implications of the above developments for Australia's terms of trade and export performance.

Another factor which has affected movements in the Australian dollar is a weakening of the US dollar against major international currencies. The US dollar was trading

around Euro0.68, Pound0.60 and Yen91 in mid-September 2009, compared with Euro0.80, Pound0.71 and Yen99 in early March 2009.

... [T]here is a distinct possibility the Australian dollar could remain at its current level or even appreciate further against the US dollar in the near term. This would especially be the case if economic indicators continue pointing to a stronger than expected world economic recovery.

In preparing this set of commodity forecasts, the Australian dollar is assumed to average around US83c and TWI 66 in 2009-10. This compares with an average of US75c and TWI 60 in 2008-09.

There is considerable uncertainty surrounding the short-term outlook for the Australian dollar. ... Therefore, it remains important for primary producers and exporters to manage the risks associated with fluctuations in the Australian exchange rate.' (pp429–430)

- (xi) St George Bank, *Aussie Dollar Outlook* 15 October 2009: 'We believe the AUD has further room to appreciate over the next six to nine months. We do not rule out the AUD breaching parity ... The Aussie dollar continues to march higher; it has risen a long way from its 2009 low of USD0.6249 to its 14-month high of just above US 92 cents at the time of writing this report. In this report ... we have upgraded the profile of our AUD forecasts. We expect the AUD to be at USD0.9600 at the end of this year and at SD0.9900 at the end of next June.' (p1)

Forecast exchange rates effective 13 October 2009:

	Dec-09	Mar-10	Jun-10
AUD-USD	0.9600	0.9800	0.9900
US-JPY	91.00	93.00	95.00
AUD-JPY	87.40	91.10	94.10

- (xii) NAB, *NAB Agribusiness* November 2009: 'NAB's view on the exchange rate has not altered since last month, with AUD forecast to appreciate in the short term ...'

Forecast exchange rates as at 20 November 2009:

	Dec-09	Mar-10	Jun-10
AUD-USD	0.97	1.00	1.02
US-JPY	92	94	96
AUD-JPY	89	94	98

- (xiii) NAB, *NAB Agribusiness* December 2009: 'In November, AUD/USD continued the pattern of rising to higher highs (hitting US94.06 on November 16), which it has done for 9 months in a row this year. ... NAB continues to believe that AUD/USD is cheap on any pullbacks below 90 cents given current expectations that it will be trading at parity at end-March 2009.'

Forecast exchange rates as at 14 December 2009:



	Dec-09	Mar-10	Jun-10
AUD-USD	0.97	1.00	1.02
US-JPY	92	94	96
AUD-JPY	89	94	98

- (xiv) ABARE, *Australian Commodities: December quarter 09.4*: 'Over the past few months the Australian dollar has appreciated significantly, both against the US dollar and on a trade weighted basis. The Australian dollar was trading around US91c and TWI 70 in early December 2009, compared with US87c and TWI 67 in early October and US84c and TWI 66 in late August. For the first half of 2009-10, the Australian dollar is estimated to have averaged around US87c and TWI 68. ...

Changes in financial market sentiment toward the US dollar may also have significantly affected the recent movements in the Australian exchange rate against the US dollar. ... the value of the US dollar has weakened markedly against other major international floating currencies. The US dollar was trading around Yen88 and Euro0.68 in early December 2009, compared with Yen96 and Euro0.71 in early July and Yen98 and Euro0.79 in early March 2009.

The value of the Australian dollar is likely to remain strong, at least in the short term. ...However, as economic recovery gathers pace in other OECD countries toward mid-2010, financial market sentiment could turn more favourable toward other OECD countries, placing some downward pressure on the value of the Australian dollar.

There is considerable uncertainty surrounding the short-term outlook for the Australian dollar. ... Consequently, it remains important for primary producers and exporters to manage the risks associated with fluctuations in the Australian exchange rate.' (pp 589 – 590)

## Annexure E

## Particulars to paragraph 66 – Applicant's trades in Gunns shares

The Applicant purchased Gunns shares in December 2009 and sold them after 19 February 2010.

Table 1. Applicant's purchase details

Date of Purchase	Number of Gunns shares	Average price per security	Amount paid (not including brokerage)	Brokerage	GST on brokerage	Amount paid (including brokerage)
30 December 2009	12,001	\$0.935	\$11,220.91	\$13.64	\$1.36	\$11,235.91
<b>Total</b>	<b>12,001</b>		<b>\$11,220.91</b>	<b>\$13.64</b>	<b>\$1.36</b>	<b>\$11,235.91</b>

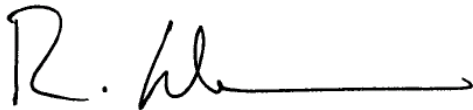
Table 2. Applicant's sale details

Date of Sale	Number of Gunns shares	Average price per security	Trade value (not including brokerage)	Brokerage	GST on brokerage	Net proceeds (including brokerage)
31 May 2010	12,000	\$0.48	\$5,760.00	\$13.64	\$1.36	\$5,745.00
<b>Total</b>	<b>12,000</b>		<b>\$5,760.00</b>	<b>\$13.64</b>	<b>\$1.36</b>	<b>\$5,745.00</b>

**Certificate of lawyer**

I, Rebecca Gilsenan, certify to the Court that, in relation to the Statement of Claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~27 August 2015~~ 22 December 2015

A handwritten signature in black ink, appearing to read 'R. Gilsenan', with a long horizontal flourish extending to the right.

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Signed by Rebecca Gilsenan  
Lawyer for the Applicant

**Schedule**

No. of 20

Federal Court of Australia

District Registry: NSW

Division: General

**Respondents**

Second Respondent: **Wayne Leonard Chapman**

Third Respondent: **Gregory Phillip L'Estrange**

Date: ~~27 August 2015~~ 22 December 2015