

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: VID434/2015  
File Title: Cheryl Whittenbury v Vocation Ltd (in Liquidation) & Anor  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 22/04/2020 9:39:06 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

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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Form 33  
Rule 16.32

## Defence to Amended Statement of Cross-Claim (Third Cross-Claim)

No. VID434 of 2015

Federal Court of Australia

District Registry: Victoria

Division: General

**Cheryl Whittenbury**

Applicant

**Vocation Limited (ACN 166 631 330)**

First Respondent / Cross-Claimant by First Cross-Claim and Cross-Respondent by Third Cross-Claim

**PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)**

Second Respondent / Cross-Claimant by Second and Third Cross-Claims

**Mark Edward Hutchinson**

Third Respondent

**Manvinder Grewal**

Fourth Respondent

**John Sydney Dawkins**

Fifth Respondent

**The Partners of Johnson Winter & Slattery**

Cross-Respondent by First and Second Cross-Claims

**Mark Edward Hutchinson and others named in the schedule**

Cross-Respondent by Third Cross-Claim

Filed on behalf of (name & role of party)	Manvinder Gréwal, the Second Cross-Respondent, Third Cross Claim
Prepared by (name of person/lawyer)	Janette McLennan (Clyde & Co) and Elisa Holmes (Counsel)
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This Defence responds to the Amended Statement of Cross-Claim (Third Cross-Claim) filed by the Cross-Claimant by the Second and Third Cross-Claims on 12 March 2020 (**Amended Third Cross-Claim**).

Capitalised terms used but not defined in the Defence to the Amended Third Cross-Claim have the same meaning as in the Applicant's Further Amended Consolidated Statement of Claim dated 2 May 2018 (**FACSOC**), the Applicant's Second Further Amended Consolidated Statement of Claim dated 11 November 2019 (**2FACSOC**) and the Amended Third Cross-Claim. No admissions are thereby made.

For the avoidance of doubt, the Second Cross-Respondent does not plead to the particulars to the allegations contained in the Amended Third Cross-Claim.

## **BACKGROUND MATTERS**

### **Parties**

1. The Second Cross-Respondent admits the allegations contained in paragraph 1 of the Amended Third Cross-Claim.
2. The Second Cross-Respondent admits the allegations contained in paragraph 2 of the Amended Third Cross-Claim.
3. The Second Cross-Respondent admits the allegations contained in paragraph 3 of the Amended Third Cross-Claim.
4. The Second Cross-Respondent admits the allegations contained in paragraph 4 of the Amended Third Cross-Claim.
5. The Second Cross-Respondent admits the allegations contained in paragraph 5 of the Amended Third Cross-Claim.
6. The Second Cross-Respondent admits the allegations contained in paragraph 6 of the Amended Third Cross-Claim.
7. The Second Cross-Respondent admits the allegations contained in paragraph 7 of the Amended Third Cross-Claim.
8. The Second Cross-Respondent admits the allegations contained in paragraph 8 of the Amended Third Cross-Claim.

9. As to paragraph 9 of the Amended Third Cross-Claim, the Second Cross-Respondent:
  - 9.1. says that each of Hutchinson, Gréwal, Dawkins, Tucker, Tredenick and Halley was an officer of Vocation within the meaning of section 9 of the *Corporations Act 2001 (Cth)* (**Corporations Act**);
  - 9.2. otherwise does not admit the allegations contained in paragraph 9 of the Amended Third Cross-Claim.

#### **The Applicant's claim against Vocation**

10. The Second Cross-Respondent admits the allegations contained in paragraph 10 of the Amended Third Cross-Claim.

#### **The Applicant's claims against Hutchinson, Gréwal and Dawkins**

- 10A. The Second Cross-Respondent admits the allegations contained in paragraph 10A of the Amended Third Cross-Claim.

#### **The Applicant's claim against PwC**

11. The Second Cross-Respondent admits the allegations contained in paragraph 11 of the Amended Third Cross-Claim.

#### **Basis of PwC's cross-claims against Hutchinson, Gréwal, Dawkins, Tucker, Tredenick, Halley and Vocation**

12. The Second Cross-Respondent admits the allegations contained in paragraph 12 of the Amended Third Cross-Claim.
13. As to paragraph 13 of the Amended Third Cross-Claim, the Second Cross-Respondent:
  - 13.1. says that that paragraph does not contain any allegations against him; and
  - 13.2. for the avoidance of doubt, denies that he is liable to the Applicant and/or Group Members by reason of the matters alleged by PwC in the Amended Third Cross-Claim or at all, even if PwC is liable to the Applicant and/or Group Members and the Applicant and/or the Group Members have suffered loss and damage by reason of PwC's contraventions.

#### **VOCATION'S CONTRAVENTIONS**

14. As to paragraph 14 of the Amended Third Cross-Claim, the Second Cross-Respondent

does not admit the allegations contained therein because they do not contain allegations against him, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

14AA – 14P The Second Cross-Respondent does not plead to paragraphs 14AA to 14P of the Amended Third Cross-Claim as they do not contain any allegations against him.

## **LIABILITY OF HUTCHINSON, DAWKINS, TUCKER, TREDENICK AND HALLEY FOR VOCATION'S PROSPECTUS CONTRAVENTIONS**

### **Hutchinson**

15. The Second Cross-Respondent does not plead to paragraph 15 of the Amended Third Cross-Claim as it does not contain any allegations against him.
16. The Second Cross-Respondent admits the allegations contained in paragraph 16 of the Amended Third Cross-Claim.
17. The Second Cross-Respondent does not plead to paragraph 17 of the Amended Third Cross-Claim as it does not contain any allegations against him.

### **Dawkins**

18. The Second Cross-Respondent does not plead to paragraph 18 of the Amended Third Cross-Claim as it does not contain any allegations against him.
19. The Second Cross-Respondent admits the allegations contained in paragraph 19 of the Amended Third Cross-Claim.
20. The Second Cross-Respondent does not plead to paragraph 20 of the Amended Third Cross-Claim as it does not contain any allegations against him.

### **Tucker**

21. The Second Cross-Respondent does not plead to paragraph 21 of the Amended Third Cross-Claim as it does not contain any allegations against him.
22. The Second Cross-Respondent admits the allegations contained in paragraph 22 of the Amended Third Cross-Claim.
23. The Second Cross-Respondent does not plead to paragraph 23 of the Amended Third Cross-Claim as it does not contain any allegations against him.

## **Tredenick**

24. The Second Cross-Respondent does not plead to paragraph 24 of the Amended Third Cross-Claim as it does not contain any allegations against him.
25. The Second Cross-Respondent admits the allegations contained in paragraph 25 of the Amended Third Cross-Claim.
26. The Second Cross-Respondent does not plead to paragraph 26 of the Amended Third Cross-Claim as it does not contain any allegations against him.

## **Halley**

27. The Second Cross-Respondent does not plead to paragraph 27 of the Amended Third Cross-Claim as it does not contain any allegations against him.
28. The Second Cross-Respondent admits the allegations contained in paragraph 28 of the Amended Third Cross-Claim.
29. The Second Cross-Respondent does not plead to paragraph 29 of the Amended Third Cross-Claim as it does not contain any allegations against him.

## **INVOLVEMENT BY HUTCHINSON, GRÉWAL AND DAWKINS IN VOCATION'S CONTINUOUS DISCLOSURE CONTRAVENTIONS**

### **Involvement in Vocation's First Continuous Disclosure Contravention**

30. As to paragraph 30 of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 136 to 141 of the FACSOC, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

### Hutchinson's involvement in Vocation's First Continuous Disclosure Contravention

31. The Second Cross-Respondent does not plead to paragraph 31 of the Amended Third Cross-Claim as it does not contain any allegations against him.
32. The Second Cross-Respondent does not plead to paragraph 32 of the Amended Third Cross-Claim as it does not contain any allegations against him.
33. The Second Cross-Respondent does not plead to paragraph 33 of the Amended Third Cross-Claim as it does not contain any allegations against him.
34. The Second Cross-Respondent does not plead to paragraph 34 of the Amended Third

Cross-Claim as it does not contain any allegations against him.

35. The Second Cross-Respondent does not plead to paragraph 35 of the Amended Third Cross-Claim as it does not contain any allegations against him.

Gréwal's involvement in Vocation's First Continuous Disclosure Contravention

36. As to paragraph 36 of the Amended Third Cross-Claim, the Second Cross-Respondent:

36.1. denies the BAWM Conduct Information (as defined in the FACSOC), the BAWM Conduct Risk Information (as defined in the FACSOC), the Systemic Conduct Information (as defined in the FACSOC) and the Systemic Conduct Risk Information (as defined in the FACSOC);

36.2. denies that he was aware of the information referred to therein, if and to the extent it includes any information which existed;

36.3. says that in respect of Systemic Conduct Risk Information, the definition of "Systemic Conduct Non-Compliance Risk" includes "Systemic Non-Compliant Conduct" which is not defined in the FACSOC or in the Amended Third Cross-Claim;

36.4. denies the allegations contained therein.

37. As to paragraph 37 of the Amended Third Cross-Claim, the Second Cross-Respondent:

37.1. admits that he took no steps to cause Vocation to disclose the matters set out in sub-paragraphs (a) and (b) to the ASX;

37.2. repeats the denial pleaded in paragraph 36 above;

37.3. otherwise denies the allegations contained therein.

38. As to paragraph 38 of the Amended Third Cross-Claim, the Second Cross-Respondent:

38.1. repeats paragraphs 30, 36 and 37 above;

38.2. denies that he was involved in Vocation's First Continuous Disclosure Contravention within the meaning of section 79 of the *Corporations Act*,

38.3. further or in the alternative to sub-paragraph 38.2 above, says that even if he was involved in Vocation's First Continuous Disclosure Contravention within the meaning of section 79 of the *Corporations Act* (which is denied),

he took all steps that were reasonable in the circumstances to ensure that Vocation complied with its obligations under section 674(2) of the *Corporations Act*;

38.4. says that the steps referred to in sub-paragraph 38.3 above included that the Second Cross-Respondent:

38.4.1. liaised with the Board of Directors, being comprised of the First and Third to Sixth Cross-Respondents to the Amended Third Cross-Claim (**Board of Directors**), which was, by way of Vocation's Board Charter (**Board Charter**), the body responsible for making decisions as to what information Vocation should disclose and when, and which, as the Second Cross-Respondent understood it, gave ongoing consideration to matters of continuous disclosure, including at Board meetings held between (at least) August and December 2014;

38.4.2. retained and liaised with Company Matters who were professional advisers to Vocation and engaged to provide company secretarial services, which specifically included:

- (a) providing advice to Vocation regarding the ASX Listing Rules and periodic continuous disclosure; and
- (b) providing *Corporations Act* and other regulatory advice.

#### ***Particulars***

Company Matters engagement letter dated 3 December 2013 addressed to the Second Cross-Respondent, Mr Gréwal.

38.4.3. liaised with legal advisers, and sought legal advice (together with the Board of Directors and Hutchinson) and representation from JWS who was retained by Vocation to provide legal advice on Vocation's continuous disclosure obligations under section 674(2) of the *Corporations Act* including:

- (a) advice provided on 11 August 2014 that Vocation was not obliged to notify the ASX of the withholding of payments by the Victorian Department of Education and Early Childhood Development (**Department**) from BAWM Pty Limited (**BAWM**) and Aspin Pty Limited (**Aspin**) in connection with the review being undertaken by the Department (**Department Review**);



### **Particulars**

The advice was provided by JWS to Hutchinson, who reported that advice to the Board of Directors on 11 August 2014.

- (b) advice provided on 21 August 2014 that Vocation was not obliged to notify the ASX of:
  - i. the fact of the withholding of payments by the Department from BAWM under BAWM's 2014-2016 VET Funding Contract;
  - ii. the fact of the withholding of payments by the Department from Aspin under Aspin's 2014-2016 VET Funding Contract;
  - iii. the fact of the suspension of all future enrolments of Eligible Individuals in BAWM and Aspin courses by the Department;
- (c) advice provided on 22 August 2014 that Vocation was not obliged to notify the ASX of the matters in sub-paragraph 38.4.3(b) above;
- (d) communicating with Simon Daniels of the ASX on behalf of Vocation by email on 22 August 2014 and stating that "*no disclosure obligation has arisen*";
- (e) advice provided on 24 August 2014 and 25 August 2014 that Vocation was not obliged to notify the ASX of the matters in sub-paragraph 38.4.3(b) above;
- (f) advice provided between about 21 August 2014 and 25 August 2014 in which:
  - i. JWS advised on and settled the content of the proposed ASX Announcement made by Vocation on 25 August 2014 that included the statement "*Vocation considers that neither the review nor its anticipated outcomes are material to Vocation*" (**25 August Announcement**);

- ii. JWS, in so doing, advised Vocation and the Second Cross-Respondent that the 25 August Announcement was not misleading or deceptive, and that Vocation was not obliged to make any further disclosure to the ASX concerning the Department's audits of BAWM and Aspin regarding their compliance with their respective 2014-2016 VET Funding Contracts and the matters in sub-paragraph 38.4.3(b) above;
- (g) advice provided on 26 August 2014 that Vocation was not obliged, beyond the matters recorded in the 25 August Announcement, to make any further disclosure to the ASX of the Department's audits of BAWM and Aspin regarding their compliance with their respective 2014-2016 VET Funding Contracts and the matters in sub-paragraph 38.4.3(b) above;
- (h) advice provided on 5 September 2014 that Vocation was not obliged, beyond the matters recorded in the 25 August Announcement, to make any further disclosure to the ASX of the Department's audits of BAWM and Aspin regarding their compliance with their respective 2014-2016 VET Funding Contracts and the matters in sub-paragraph 38.4.3(b) above;

#### ***Particulars***

The Second Cross-Respondent was sent a document titled 'Confirmation of Management' by email from Mr James Rozsa of JWS (and which was prepared by JWS) on 5 September 2014 (at 17.03pm) for separate execution by him and Hutchinson in connection with the Placement, that included a statement that *"after having made reasonable inquiries, I confirm I am not aware of any information in respect of the Company which would constitute "excluded information" requiring disclosure in the Cleansing Notice and that nothing has come to my attention that causes me to believe (and I do not believe) that the draft Cleansing Notice provided to me are [sic] false, misleading or deceptive in a material particular"* which was a matter so advised by JWS and upon which he relied.

- (i) advice provided by JWS on 8 September 2014 at the meeting of the Board of Directors (which was also attended by the Second Cross-Respondent) that Vocation was not obliged, beyond the matters recorded in the 25 August Announcement, to make any further disclosure to the ASX of the Department's audits of BAWM and Aspin regarding their compliance with their respective 2014-2016 VET Funding Contracts and the matters in sub-paragraph 38.4.3(b) above;
- (j) advice provided between about 5 September 2014 and 10 September 2014 in which:
  - i. JWS advised on the content of the proposed ASX Announcement made by Vocation on 10 September 2014 (**10 September Announcement**); and
  - ii. in so doing, JWS advised Vocation and the Second Cross-Respondent that the 10 September Announcement was not misleading or deceptive, and that Vocation was not obliged to make any further disclosure to the ASX (beyond that made in the 25 August Announcement and the 10 September Announcement) concerning the Department's audits of BAWM and Aspin regarding their compliance with their respective 2014-2016 VET Funding Contracts and the matters in sub-paragraph 38.4.3(b) above;
- (k) advice provided between about 5 September 2014 and 16 September 2014 in which:
  - i. JWS advised on the content of the proposed Cleansing Notice lodged by Vocation with the ASX under section 708(5) of the *Corporations Act* in respect of the issue of shares by Vocation for a proposed share placement on 16 September 2014 (**Cleansing Notice**) which included a statement that as at that date "*Vocation has complied with the provisions of Chapter 2M of the Corporations Act and section 674 of the Corporations*

Act)";

- ii. in so doing, JWS advised Vocation and the Second Cross-Respondent that the Cleansing Notice was not misleading or deceptive, and that Vocation was not obliged to make any further disclosure to the ASX (beyond that made in the 25 August Announcement and in the 10 September 2014 Announcement) concerning the Department's audits of BAWM and Aspin regarding their compliance with their respective 2014-2016 VET Funding Contracts and the matters in sub-paragraph 38.4.3(b) above;
- (l) advice provided by JWS on 18 September 2014 on the content of an ASX Announcement in response to press speculation (**18 September Announcement**), including advice that Vocation was not obliged to make any further disclosure to the ASX of the Department's audits of BAWM and Aspin regarding their compliance with their respective 2014-2016 VET Funding Contracts and the matters in sub-paragraph 38.4.3(b) above, beyond the matters recorded in the 25 August Announcement, the 10 September Announcement and the 18 September Announcement;
- (m) advice provided by JWS on 19 September 2014 and 22 September 2014 that Vocation was not obliged to make any further disclosure to the ASX of the Department's audits of BAWM and Aspin regarding their compliance with their respective 2014-2016 VET Funding Contracts and the matters in sub-paragraph 38.4.3(b) above, beyond the matters recorded in the 25 August Announcement, the 10 September Announcement and the 18 September Announcement;
- (n) advice provided by JWS between about 21 October 2014 and 27 October 2014 on the content of an announcement made on 27 October 2014 (**27 October Announcement**) concerning a proposed, and later actual, settlement with the

Department (**JWS 27 October 2014 ASX Announcement Advice**);

38.4.4. obtained information and advice on which he reasonably relied to satisfy himself that Vocation had complied, and was complying, with its obligations under section 674(2) of the *Corporations Act*, including from:

(a) Michael Langtree (**Langtree**), Wendy Bonnici (**Bonnici**) and Amanda King (together, **Victorian Management**) who were Victorian-based members of Vocation's Executive Committee who:

- i. had specialist knowledge and experience of the vocational education and training industry;
- ii. were founders of Vocation's operating subsidiaries in Victoria, including BAWM and Aspin, and in the case of Langtree had been the Chief Financial Officer of BAWM and Aspin before the IPO;
- iii. were experienced in dealing with regulatory and governmental bodies relating to the vocational and education and training industry;
- iv. provided information and advice, including that the Department's position was unreasonable and contestable, which assisted the Board of Directors form a view on materiality in relation to the Department Review and matters of disclosure to the ASX;
- v. provided documents titled "Confirmation of Management" (**Management Confirmations**) shortly prior to the Placement in which they provided certification that, amongst other things:
  - A. they had fully and fairly disclosed to the Board of Directors all information that investors and their professional advisors would reasonably require to make an informed assessment of the rights and liabilities attaching to the securities being offered in the Placement and the assets and

liabilities, financial position and performance, profits and losses and prospects of Vocation;

B. all the information that Victorian Management had provided to the Board and Vocation's advisors for the purpose of preparing the Offer Materials (as defined in the Management Confirmations) associated with the Placement was true and accurate and not false, misleading or deceptive and nothing material had been omitted from it.

***Particulars***

- i. The advice was provided orally and in writing. To the extent it was oral, it was stated by Victorian Management to the Board of Directors at the 26 August 2014 Board meeting that the expected funds that would be permanently withheld was "around \$2 million with \$4 million being used as a safety margin". To the extent it was written, Langtree prepared a calculation of the revenue risk exposure for BAWM in relation to the Department Review which recorded that the most likely scenario was \$4.37 million and the worst case scenario was a \$7.6 million impact on revenue in respect of BAWM, which was sent by email to Hutchinson and Dawkins on 27 August 2014, in which the Second Cross-Respondent was copied, and which was also provided to the Board of Directors.
- ii. From July 2014 to the entry into the settlement with the Department and shortly prior to the issue of the ASX Announcement made on 27 October 2014 Victorian Management advised that the Department's position was contestable and sought to rebut the Department's position in a series of communications, including in a detailed response to the Department sent on 9 October 2014 by Bonnici.

(b) JWS, who was directly in contact with the ASX, Hutchinson, Bonnici and the Board of Directors;

***Particulars***

The Second Cross-Respondent refers to the matters in subparagraph 38.4.3 above regarding JWS. Further particulars will be provided after discovery and completion of evidence.

38.5. says that each of the steps referred to above in sub-paragraph 38.4 were taken by the Second Cross-Respondent in circumstances in which:

38.5.1. the Second Cross-Respondent was aware that Vocation had compliance controls and systems in place for assessing whether information should be disclosed to the ASX, including:

- (a) the continuous disclosure policy (**Continuous Disclosure Policy**) as prepared by JWS and approved by the Board of Directors on 8 November 2013;

***Particulars***

Vocation's Continuous Disclosure Policy is in writing, which the Second Cross-Respondent relies on for its full meaning and effect, and which is to be read in conjunction with the Board Charter and the Risk Charter (as defined below).

- (b) the Board Charter was approved by the Board of Directors on 8 November 2013 and was prepared by JWS and provided, amongst other things, that:
  - i. the Board of Directors had ultimate responsibility for overall governance of the company including the protection of shareholders' interests;

***Particulars***

Clause 2.1 (a) of the Board Charter.

- ii. the Board of Directors had ultimate responsibility for the strategic direction and control of the Company;

***Particulars***

Clause 5.1 of the Board Charter.

- iii. the duties of the Board of Directors included:
  - A. to act honestly, fairly and diligently in the best interests of shareholders, and to act in accordance with relevant laws and regulations;

**Particulars**

Clause 2.2 (a) and (b) of the Board Charter.

- B. the delegation to the CEO (being the First Cross-Respondent, Hutchinson) of the necessary powers to manage the day-to-day business of the Company (by clauses 5.1 and 7 of the Board Charter), except for a number of responsibilities which were expressly reserved to the Board, including:

1. monitoring communications to shareholders and the ASX (including disclosures made under the ASX continuous disclosure requirements);

**Particulars**

Clause 4.2(a) of the Board Charter.

2. approving the annual report and financial statements;

**Particulars**

Clause 4.2(b) of the Board Charter.

3. approving Vocation's risk management framework and internal compliance and controls systems relevant to both financial and non-financial risk;

**Particulars**

Clause 4.3(a) of the Board Charter.

4. overseeing management's implementation of systems to monitor and address the financial, operational and business risk management policies;

**Particulars**



Clause 4.3(b) of the Board Charter.

5. monitoring compliance with regulatory requirements; and

***Particulars***

Clauses 4.3(d) of the Board Charter.

6. evaluating compliance with Vocation's corporate governance policies and procedures;

***Particulars***

Clauses 4.4(b) of the Board Charter.

- (c) the Audit and Risk Charter was approved by the Board of Directors on 8 November 2013 (**Risk Charter**) and was prepared by JWS and provided, amongst other things, that:

- i. an Audit and Risk Committee (**ARC**) was to be established, the membership of which consisted only of non-executive directors and a majority of independent Directors;

***Particulars***

Clause 1 and 2.1 (a) of the Risk Charter. At material times the ARC members were the Third to Seventh Cross-Respondents, being Dawkins, Tucker, Tredenick and Halley.

- ii. the ARC had responsibility for financial reporting, external auditing, risk management and compliance;

***Particulars***

Clauses 5.1 to 5.4 of the Risk Charter.

- iii. the compliance function of the ARC included reporting to the Board of Directors regarding the appropriateness of Vocation's compliance procedures, including:

- A. reviewing the procedures Vocation had in place

to ensure compliance with laws and regulations that were material to Vocation, including any specific compliance requirements for registered training organisations under the National Vocational Education and Training Regulator Act 2011 or requirements imposed by the Australian Skills Quality Authority;

- B. reviewing compliance reports prepared by management in relation to Vocation's compliance with legal or regulatory requirements;
- C. obtaining regular updates from management regarding any material litigation involving Vocation;
- D. reviewing any material recommendations by regulatory agencies in relation to compliance with laws or regulations applying to Vocation;

***Particulars***

Clause 5.4 of the Risk Charter.

- iv. the risk management function of the ARC included:
  - A. reporting to the Board of Directors on specific risks;
  - B. overseeing the establishment, methodology and implementation of the Company's risk management system and its resources, including processes to ensure that there was:
    - 1. an adequate system of internal control, containment and management of business risks and safeguard of assets;
    - 2. a review of internal control systems and the operational effectiveness of the policies and procedures related to risk and control;

3. evaluating the adequacy and effectiveness of the management reporting and control systems used to monitor adherence to policies and limits approved by the Board of Directors for management of balance sheet risks;
4. evaluating the adequacy and effectiveness of Vocation's financial and operational risk management control systems by reviewing reports from management and external auditors;

**Particulars**

Clause 5.3 of the Risk Charter.

- 38.5.2. he acted in a manner which was consistent with Vocation's Continuous Disclosure Policy, Risk Charter and Board Charter by liaising with the CEO and the Board of Directors as to Vocation's continuous disclosure obligations, and attending meetings and communicating with the Board of Directors where those obligations were assessed, including in the presence of and based on legal advice provided by JWS, following which the Board of Directors made decisions as to whether there was price sensitive information which required disclosure under the ASX Listing Rules;
- 38.5.3. he attended meetings of the Board of Directors where he was aware that Vocation's continuous disclosure obligations were assessed (as referred to in sub-paragraph 38.5.2 above) including:
- (a) the Board meeting held on 19 August 2014 at which it was resolved that there was no present matter for disclosure under ASX Listing Rule 3.1;

**Particulars**

*The minutes record "The Board discussed the potential impact of the audits and agreed that, given the expected outcome of the investigation is that only a relatively small amount of funding is expected to be affected which is not material in Vocation's context, the matter is not material for disclosure at this stage*

*under ASX Listing Rule 3.1."*

- (b) the Board meeting held on 22 August 2014 in which it was resolved that there was no matter for disclosure under ASX Listing Rule 3.1;

**Particulars**

*The minutes record "After extensive discussion and advice from JWS regarding disclosure requirements, the Board considered that disclosure is not required at this stage under ASX Listing Rule 3.1, as the expected outcome of the investigation is that only a relatively small amount of funding (\$2 million) is expected to be affected which is not material in Vocation's context and the outcome would not be expected to have a material effect on the price or value of Vocation's securities. JWS confirmed their view that this approach was appropriate."*

- (c) the Board meeting held on 25 August 2014 at which it was resolved that there was no matter for disclosure under ASX Listing Rule 3.1;

**Particulars**

*The minutes record that the Board "confirmed the previous view that disclosure is not required at this stage under ASX Listing Rule 3.1, as the expected outcome of the investigation is that only a relatively small amount of funding is expected to be affected which is not material in Vocation's context and the outcome would not be expected to have a material effect on the price or value of Vocation's securities."*

- (d) the Board meeting held on 26 August 2014 at which it was resolved that there was no matter for disclosure under ASX Listing Rule 3.1;

**Particulars**

*The minutes record that the Board: "agreed that DEECD had misunderstood Vocation's position on materiality, as opposed to understanding any possible cashflow implications. Accordingly the Board believed that DEECD's position could be clarified and modified by discussion at Thursday's meeting.*

*After lengthy discussion of the updates provided and the issues raised in the 26 August Letter, and taking advice from JWS, the Board confirmed the previous view that the matter is not material*

for disclosure at this stage under Listing Rule 3.1, as:

- there has been no loss of contracts;
- the expected outcome of the investigation continues to be that only a relatively small amount of funding is expected to be affected which is not material in Vocation's context; and
- the outcome would not be expected to have a material effect on the price or value of Vocation's securities."

- (e) the Board meeting held on 5 September 2014 at which it was resolved that there was no matter for disclosure under ASX Listing Rule 3.1 when considering a draft Cleansing Notice for the proposed Placement;

**Particulars**

The minutes record that "*The Board noted that the Victorian review had previously been disclosed on the basis that it was not material rather than relying on a ASXLR3.1 exemption.*".

- (f) the Board meeting held on 8 September 2014 at which it was resolved that Vocation was not obliged, beyond the matters recorded in the 25 August Announcement, to make any further disclosure to the ASX of the Department's audits of BAWM and Aspin regarding their compliance with their respective 2014-2016 VET Funding Contracts and the matters in sub-paragraph 38.4.3(b) above;

**Particulars**

The minutes record that:

"Disclosure and Excluded Information

- (d) *Each director has read the Offer Material and confirms that, in his [sic] opinion, to the best of his knowledge and belief:*
- (i) *the issue of Offer Material will not constitute conduct by any person which is misleading or deceptive or likely to mislead or deceive (whether by reason of statements included in or omissions from the Offer Material); and*
  - (ii) *there is no omission from the Offer Material of*

*information required by the Corporations Act or the ASX Listing Rules,*

*and each director also confirms that he has responded to any queries or questions in relation to the preparation of the Offer Material honestly and fully and no information has been withheld and in particular that:*

- (iii) he or she is not aware of any instance of non-compliance by the Company with its financial reporting and continuous disclosure obligations under ASX Listing Rules or the Corporations Act 2001 (Cth);*
- (iv) he or she is not aware of any information that is potentially "excluded information" as referred to in the Memorandum or otherwise material for disclosure in the Offer Material or to the ASX; and*
- (v) if any information arises after the date of this resolution and before the closing of the proposed Placement that is potentially "excluded information" or otherwise material for disclosure in the Offer Material or to the ASX, the then Chairman will be informed immediately.*

- (g) the Board meeting held on 25 September 2014 at which it was resolved that there was no matter for disclosure under ASX Listing Rule 3.1;

**Particulars**

*The minutes record that: "The Board discussed the potential impact of the audits and agreed that, consistent with advice previously received from JWS, given the expected outcome of the investigation is that only a relatively small amount of funding is expected to be affected which is not material in Vocation's context, additional disclosure about the matter is not necessary at this stage under Listing Rule 3.1."*

- (h) the Board meeting held on 10 October 2014 at which it was resolved that there was no matter for disclosure under ASX Listing Rule 3.1;

**Particulars**

The minutes record that: "*The Chairman discussed as to whether this [i.e. updating information on the Victorian audits] was potentially new information that should be disclosed to the market. The Chairman outlined the basis for concluding disclosure was not required including that no decisions had been taken and that the process was continuing with an outcome yet to be released.*

*Separately, the CEO also advised that he directly asked [the Department] if the recent meeting created any new disclosure of information and they advised us that they did not believe so."*

- (i) at the Board meeting held on 15 October 2014 at which it was resolved that there was no matter for disclosure under ASX Listing Rule 3.1;

**Particulars**

The minutes record that: "*The Board discussed whether any market disclosure was required. It was agreed the matter continues to be in progress with outcomes yet to be resolved or certain, but noted progress continues towards resolution.*" At that time a financial settlement was contemplated but the outcome was still uncertain with the Department.

- (j) the Board meeting held on 22 October 2014 at which it was resolved that there was no matter for disclosure under ASX Listing Rule 3.1;

**Particulars**

The minutes record that "*The Board discussed whether any market disclosure was required. It was agreed the matter continues to be in progress with outcomes yet to be resolved or certain, particularly given different options available that still need to be fully assessed.*"

38.5.4. each of the decisions of the Board of Directors referred to in subparagraphs (a) to (j) above were made by individuals whom the Second Cross-Respondent understood to be experienced, authoritative, and responsible including:

- (a) Dawkins who was, and was known by the Second Cross-Respondent to be, a former Federal Minister for Employment,

Education and Training and former Federal Minister for Finance, and a person who had extensive experience in vocational education and training, and government funding of such;

- (b) Halley and Tredenick, who had substantial experience as directors of public companies;
- (c) Tucker, who had previously been the Chief Executive Officer at MLC and Group Executive at the National Australia Bank;

38.6. after taking the steps pleaded in sub-paragraph 38.4 above, and in the circumstances pleaded in sub-paragraphs 38.5 above, believed on reasonable grounds that Vocation was complying with its obligations under section 674(2) of the *Corporations Act*,

38.7. by reason of the matters pleaded in sub-paragraphs 38.3, 38.4, 38.5, and 38.6 above, and the operation of section 674(2B) of the *Corporations Act*, did not contravene section 674(2A) of the *Corporations Act*,

38.8. otherwise denies the allegations contained therein.

39. The Second Cross-Respondent denies the allegations contained in paragraph 39 of the Amended Third Cross-Claim.

40. As to paragraph 40 of the Amended Third Cross-Claim, the Second Cross-Respondent:

40.1. repeats the denial pleaded in paragraph 39 above;

40.2. denies the allegations contained therein.

#### Dawkins' involvement in Vocation's First Continuous Disclosure Contravention

41. The Second Cross-Respondent does not plead to paragraph 41 of the Amended Third Cross-Claim as it does not contain any allegations against him.

42. The Second Cross-Respondent does not plead to paragraph 42 of the Amended Third Cross-Claim as it does not contain any allegations against him.

43. The Second Cross-Respondent does not plead to paragraph 43 of the Amended Third Cross-Claim as it does not contain any allegations against him.

44. The Second Cross-Respondent does not plead to paragraph 44 of the Amended Third Cross-Claim as it does not contain any allegations against him.



45. The Second Cross-Respondent does not plead to paragraph 45 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **Involvement in Vocation's Second Continuous Disclosure Contravention**

46. As to paragraph 46 of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations contained therein because they do not contain allegations against him, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

#### Hutchinson's involvement in Vocation's Second Continuous Disclosure Contravention

47. The Second Cross-Respondent does not plead to paragraph 47 of the Amended Third Cross-Claim as it does not contain any allegations against him.
48. The Second Cross-Respondent does not plead to paragraph 48 of the Amended Third Cross-Claim as it does not contain any allegations against him.
49. The Second Cross-Respondent does not plead to paragraph 49 of the Amended Third Cross-Claim as it does not contain any allegations against him.
50. The Second Cross-Respondent does not plead to paragraph 50 of the Amended Third Cross-Claim as it does not contain any allegations against him.
51. The Second Cross-Respondent does not plead to paragraph 51 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### Gréwal's involvement in Vocation's Second Continuous Disclosure Contravention

52. As to paragraph 52 of the Amended Third Cross-Claim:
- 52.1. in respect of paragraph 52(a), the Second Cross-Respondent:
- 52.1.1. admits that from 4 July 2014 he was aware of a letter dated 3 July 2014 from the Department to BAWM advising that the Department was withholding the payment of funds to BAWM, which letter is defined as "Identified BAWM Non-Compliances" in paragraph 60 of the FACSOC, which is (save for the omission of an "s" after "Non-Compliance") in turn defined as "BAWM Identified Non-Compliance Information" in paragraph 142 of the FACSOC;
- 52.1.2. otherwise cannot identify any allegations contained therein;

- 52.2. in respect of paragraph 52(b), the Second Cross-Respondent:
- 52.2.1. says that the definition of "BAWM Conduct Increased Risk Information" in paragraph 142(b) of the FACSOC includes the definition "BAWM Identified Non-Compliance Issues" which is not defined in the FACSOC, the SFACSOC, or the Amended Third Cross-Claim;
  - 52.2.2. denies the BAWM Conduct Increased Risk Information;
  - 52.2.3. denies that he was aware of the information referred to therein, if and to the extent it includes any information which existed;
  - 52.2.4. therefore denies the allegations contained therein;
- 52.3. in respect of paragraph 52(c), the Second Cross-Respondent:
- 52.3.1. admits the allegations contained therein insofar as they relate to:
    - (a) the Victorian Funding Suspensions, to the extent the allegations relate to Vocation and/or the Second Cross-Respondent's awareness from on or around 4 July 2014 in relation to the BAWM Funding Suspension;
    - (b) the Victorian Enrolment Suspension, to the extent the allegations relate to Vocation and/or the Second Cross-Respondent's awareness from on or around 24 July 2014 in relation to the BAWM Enrolment Suspension;
  - 52.3.2. otherwise denies the BAWM Investigation Information;
  - 52.3.3. otherwise denies that he was aware of the information referred to therein, if and to the extent it includes any information which existed;
- 52.4. in respect of paragraph 52(d), the Second Cross-Respondent:
- 52.4.1. denies the BAWM Investigation Risk Information;
  - 52.4.2. denies that he was aware of the information referred to therein, if and to the extent it includes any information which existed;
  - 52.4.3. therefore denies the allegations therein;
- 52.5. in respect of paragraph 52(e), the Second Cross-Respondent:
- 52.5.1. admits the allegations contained therein insofar as they relate to:
    - (a) the Victorian Funding Suspensions, to the extent the

allegations relate to Vocation and/or the Second Cross-Respondent's awareness from on or around 4 July 2014 of the BAWM Funding Suspension and awareness from on or around 8 August 2014 in respect of the Aspin Funding Suspension;

(b) the Victorian Enrolment Suspension, to the extent the allegations relate to Vocation and/or the Second Cross-Respondent's awareness from on or around 24 July 2014 of the BAWM Enrolment Suspension and awareness from on or around 8 August 2014 in respect of the Aspin Enrolment Suspension;

52.5.2. otherwise denies the Victorian Investigation Information, if and to the extent it includes any information which existed;

52.5.3. otherwise denies that he was aware of the information referred to therein, if and to the extent it includes any information which existed; and

52.5.4. otherwise denies the allegations therein;

52.6. in respect of paragraph 52(f) of the Amended Third Cross-Claim, the Second Cross-Respondent:

52.6.1. denies the Victorian Investigation Risk Information;

52.6.2. denies that he was aware of the information referred to therein, if and to the extent it includes any information which existed;

52.6.3. therefore denies the allegations contained therein;

52.6.4. refers to and repeats paragraph 36 above.

53. As to paragraph 53 of the Amended Third Cross-Claim, the Second Cross-Respondent:

53.1. admits that he took no steps to cause Vocation to disclose the matters set out in sub-paragraphs (a), (b) and (c) to the ASX;

53.2. repeats the denials pleaded in paragraph 52 above;

53.3. otherwise denies the allegations contained therein.

54. As to paragraph 54 of the Amended Third Cross-Claim, the Second Cross-Respondent:
- 54.1. denies the allegations contained in paragraph 46 of the Amended Third Cross-Claim;
  - 54.2. repeats paragraphs 52 and 53 above;
  - 54.3. denies that he was involved in Vocation's Second Continuous Disclosure Contravention within the meaning of section 79 of the *Corporations Act*,
  - 54.4. further or in the alternative to sub-paragraph 54.3 above, says that even if he was involved in Vocation's Second Continuous Disclosure Contravention within the meaning of section 79 of the *Corporations Act* (which is denied), he took all steps that were reasonable in the circumstances to ensure that Vocation complied with its obligations under section 674(2) of the *Corporations Act* as follows:
    - 54.4.1. the steps consisted of the matters pleaded in sub-paragraph 38.4 above; and
    - 54.4.2. those steps were taken by the Second Cross-Respondent in the circumstances pleaded in sub-paragraph 38.5 above;
  - 54.5. after taking the steps pleaded in sub-paragraph 54.4.1 above, and in the circumstances pleaded in sub-paragraph 54.4.2 above, believed on reasonable grounds that Vocation was complying with its obligations under section 674(2) of the *Corporations Act*,
  - 54.6. by reason of the matters pleaded in sub-paragraphs 54.4 and 54.5 above, and the operation of section 674(2B) of the *Corporations Act*, did not contravene section 674(2A) of the *Corporations Act*.
  - 54.7. otherwise denies the allegations contained therein.
55. The Second Cross-Respondent denies the allegations contained in paragraph 55 of the Amended Third Cross-Claim.
56. As to paragraph 56 of the Amended Third Cross-Claim, the Second Cross-Respondent:
- 56.1. repeats the denial pleaded in paragraph 55 above;
  - 56.2. denies the allegations contained therein.

Dawkins involvement in Vocation's Second Continuous Disclosure Contravention

57. The Second Cross-Respondent does not plead to paragraph 57 of the Amended Third Cross-Claim as it does not contain any allegations against him.
58. The Second Cross-Respondent does not plead to paragraph 58 of the Amended Third Cross-Claim as it does not contain any allegations against him.
59. The Second Cross-Respondent does not plead to paragraph 59 of the Amended Third Cross-Claim as it does not contain any allegations against him.
60. The Second Cross-Respondent does not plead to paragraph 60 of the Amended Third Cross-Claim as it does not contain any allegations against him.
61. The Second Cross-Respondent does not plead to paragraph 61 of the Amended Third Cross-Claim as it does not contain any allegations against him.

**Involvement in Vocation's Withholding and Suspension Information Continuous Disclosure Contravention**

- 61A. As to paragraph 61A of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations contained therein because they do not contain allegations against him, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

Hutchinson's involvement in Vocation's Withholding and Suspension Information Continuous Disclosure Contravention

- 61B. The Second Cross-Respondent does not plead to paragraph 61B of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 61C. The Second Cross-Respondent does not plead to paragraph 61C of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 61D. The Second Cross-Respondent does not plead to paragraph 61D of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 61E. The Second Cross-Respondent does not plead to paragraph 61E of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 61F. The Second Cross-Respondent does not plead to paragraph 61F of the Amended Third Cross-Claim as it does not contain any allegations against him.

61G. The Second Cross-Respondent does not plead to paragraph 61G of the Amended Third Cross-Claim as it does not contain any allegations against him.

61H. The Second Cross-Respondent does not plead to paragraph 61H of the Amended Third Cross-Claim as it does not contain any allegations against him.

Gréwal's involvement in Vocation's Withholding and Suspension Information Continuous Disclosure Contravention

61I. As to paragraph 61I of the Amended Third Cross-Claim, the Second Cross-Respondent:

61I.1 repeats paragraph 52 above;

61I.2 otherwise denies the allegations contained therein.

61J. As to paragraph 61J of the Amended Third Cross-Claim, the Second Cross-Respondent:

61J.1 denies the Withholding and Suspension Information;

61J.2 admits that he took no steps to cause Vocation to disclose to the ASX the Withholding and Suspension Information;

61J.3 otherwise denies the allegations contained therein

61K. As to paragraph 61K of the Amended Third Cross-Claim, the Second Cross-Respondent:

61K.1 in respect of paragraph 61A of the Amended Third Cross-Claim:

61K.1.1 admits the allegations contained therein;

61K.1.2 for the absence of doubt:

(a) denies the substance of the findings referred to in paragraph 14A of the Amended Third Cross-Claim;

(b) denies the relevance of the findings referred to in paragraph 14A of the Amended Third Cross-Claim;

61K.2 repeats paragraphs 61I and 61J above;

61K.3 further or in the alternative to sub-paragraphs 61K.1 and 61K.2 above, denies that he was involved in Vocation's Withholding and Suspension Information Continuous Disclosure Contravention within the meaning of section 79 of the *Corporations Act*;

61K.4 further or in the alternative to sub-paragraph 61K.3 above, says that even if he was involved in Vocation's Withholding and Suspension Information Continuous Disclosure Contravention within the meaning of section 79 of the *Corporations Act* (which is denied):

61K.4.1 he took all steps that were reasonable in the circumstances to ensure that Vocation complied with its obligations under section 674(2) of the *Corporations Act* as follows:

- (a) the steps consisted of the matters pleaded in sub-paragraph 38.4 above; and
- (b) those steps were taken by the Second Cross-Respondent in the circumstances pleaded in sub-paragraph 38.5 above;
- (c) after taking the steps pleaded in sub-paragraph 61K.4.1 above, and in the circumstances pleaded in sub-paragraph 61K.4.1(a) above, believed on reasonable grounds that Vocation was complying with its obligations under section 674(2) of the *Corporations Act*;
- (d) by reason of the matters pleaded in sub-paragraphs 61K.4.1(a) and 61K.4.1(b) above, and the operation of section 674(2B) of the *Corporations Act*, did not contravene section 674(2A) of the *Corporations Act*;

61L. The Second Cross-Respondent denies the allegations contained in paragraph 61L of the Amended Third Cross-Claim.

61M. As to paragraph 61M of the Amended Third Cross-Claim, the Second Cross-Respondent:

61M.1 repeats paragraph 61L above;

61M.2 denies the allegations contained therein.

Dawkins' involvement in Vocation's Withholding and Suspension Information Continuous Disclosure Contravention

61N. The Second Cross-Respondent does not plead to paragraph 61N of the Amended Third Cross-Claim as it does not contain any allegations against him.

61O. The Second Cross-Respondent does not plead to paragraph 61O of the Amended Third Cross-Claim as it does not contain any allegations against him.

61P. The Second Cross-Respondent does not plead to paragraph 61P of the Amended Third Cross-Claim as it does not contain any allegations against him.

61Q. The Second Cross-Respondent does not plead to paragraph 61Q of the Amended Third Cross-Claim as it does not contain any allegations against him.

61R. The Second Cross-Respondent does not plead to paragraph 61R of the Amended Third Cross-Claim as it does not contain any allegations against him.

61S. The Second Cross-Respondent does not plead to paragraph 61S of the Amended Third Cross-Claim as it does not contain any allegations against him.

61T. The Second Cross-Respondent does not plead to paragraph 61T of the Amended Third Cross-Claim as it does not contain any allegations against him.

**Involvement in Vocation's Third Continuous Disclosure Contravention**

62. As to paragraph 62 of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations contained therein because they do not contain allegations against him, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

Hutchinson's involvement in Vocation's Third Continuous Disclosure Contravention

63. The Second Cross-Respondent does not plead to paragraph 63 of the Amended Third Cross-Claim as it does not contain any allegations against him.

64. The Second Cross-Respondent does not plead to paragraph 64 of the Amended Third Cross-Claim as it does not contain any allegations against him.



65. The Second Cross-Respondent does not plead to paragraph 65 of the Amended Third Cross-Claim as it does not contain any allegations against him.
66. The Second Cross-Respondent does not plead to paragraph 66 of the Amended Third Cross-Claim as it does not contain any allegations against him.
67. The Second Cross-Respondent does not plead to paragraph 67 of the Amended Third Cross-Claim as it does not contain any allegations against him.

Gréwal's involvement in Vocation's Third Continuous Disclosure Contravention

68. As to paragraph 68 of the Amended Third Cross-Claim, the Second Cross-Respondent:
  - 68.1. denies the Cash Requirement Information;
  - 68.2. denies that he was aware of the information referred to therein, if and to the extent it includes any information which existed;
  - 68.3. therefore denies the allegations contained therein.
69. As to paragraph 69 of the Amended Third Cross-Claim, the Second Cross-Respondent:
  - 69.1. admits that he took no steps to cause Vocation to disclose to the ASX the Cash Requirement Information;
  - 69.2. repeats the denials in paragraph 68 above;
  - 69.3. otherwise denies the allegations contained therein.
70. As to paragraph 70 of the Amended Third Cross-Claim, the Second Cross-Respondent:
  - 70.1. denies the allegations contained in paragraph 62 of the Amended Third Cross-Claim;
  - 70.2. repeats paragraphs 68 and 69 above;
  - 70.3. further or in the alternative to sub-paragraphs 70.1 and 70.2 above, denies that he was involved in Vocation's Third Continuous Disclosure Contravention within the meaning of section 79 of the *Corporations Act*;
  - 70.4. further or in the further alternative to sub-paragraph 70.3 above, says that even if he was involved in Vocation's Third Continuous Disclosure Contravention within the meaning of section 79 of the *Corporations Act*, he took all steps that were reasonable in the circumstances to ensure that

Vocation complied with its obligation under section 674(2) of the *Corporations Act*, by:

70.4.1. taking each of the steps referred to in paragraph 38.4 above and the following additional steps:

- (a) settling and providing cash flow forecasts to the Board of Directors modelling a range of alternative scenarios, including scenarios where no funds withheld by the Department were received by BAWM or Aspin;

**Particulars**

- i. On 26 August 2014 the Second Cross-Respondent provided a short term cash flow forecast to Halley that was prepared on a worst case basis in relation to the Department Review.
- ii. On 2 September 2014 the Second Cross-Respondent provided a short term cash flow forecast to the Board of Directors.
- iii. Further particulars will be provided following completion of discovery and evidence.

- (b) presenting to the Board of Directors on cash flow at Board meetings;

**Particulars**

- i. At the Board meeting held on 25 August 2014 the Second Cross-Respondent provided the Board with an update on Vocation's cash position. The Board of Directors agreed that Halley would review the cash flows with management.
- ii. Further particulars will be provided following completion of discovery and evidence.

- (c) providing instructions to the finance team, who reported to the Second Cross-Respondent, to carry out regular cash flow forecasts and modelling on a range of scenarios in August and September 2014;

- (d) liaising with Langtree as to the financial and cash flow position of BAWM and Aspin.

70.4.2. each of the steps referred to in sub-paragraph 70.4.1 above were taken in the circumstances pleaded in sub-paragraph 38.5 above, and in the following additional circumstances, each of which the Second Cross-Respondent was aware:

- (a) the Board of Directors had knowledge of Vocation's cash

position at material times;

**Particulars**

- i. The Second Cross-Respondent repeats the particulars to subparagraph 70.4.1(b) above.
- ii. The Second Cross-Respondent was aware that the Board of Directors received updates as to Vocation's cash position outside Board meetings from him.
- iii. Further particulars will be provided after the completion of discovery and evidence.

(b) the Board of Directors were provided with short term cash flow forecasts, including those representing worst case cash outcomes, in August and September 2014, which the Second Cross-Respondent observed at least some of the Board of Directors consider and assess;

**Particulars**

- i. The Second Cross-Respondent repeats the particulars to subparagraph 70.4.1(a) above.
- ii. Further particulars will be provided following discovery and completion of evidence.

(c) representatives of the Board of Directors (being Halley and Dawkins) were directly involved in negotiations with Vocation's lenders to extend Vocation's bank facility and the Board of Directors had knowledge of those negotiations in August and September 2014;

**Particulars**

- i. Halley was the representative of the Board of Directors who had responsibility as at August and September 2014 for financial matters such as negotiating the extension to the bank facility and cash flow.
- ii. At the Board meeting held on 25 August 2014 the Second Cross-Respondent informed the Board of Directors that an amendment to Vocation's banking facility was being negotiated as a contingency.
- iii. On 29 August 2014 Halley attended meetings with the Second Cross-Respondent and representatives of National Australia Bank and Westpac Banking Corporation in relation to the negotiation of an extension to the banking facility.
- iv. The outcome of the 29 August 2014 meeting referred to above was relayed to the Board of Directors by email on 30 August 2014 by the Second Cross-Respondent.
- v. On 3 September 2014 Dawkins and Hutchinson attended a meeting with the Second Cross-Respondent and each member of Vocation's

banking syndicate in relation to the negotiation of the extension to the banking facility.

- vi. At the Board meeting held on 5 September 2014, which was attended by the Second Cross-Respondent, the Board of Directors was informed by Hutchinson that discussions with the banks were continuing.
- vii. At the Board meeting held on 8 September 2014, the Second Cross-Respondent provided an update to the Board of Directors concerning the ongoing negotiation of the extension to the banking facility.
- viii. The Board of Directors received updates from the Second Cross-Respondent and Hutchinson as to the ongoing negotiation of the banking facility outside of Board meetings during August and September 2014.
- ix. Further particulars will be provided following discovery and completion of evidence.

- (d) the finance team who performed the detailed cash flow forecast analyses on instructions from the Second Cross-Respondent, which were provided to the Board of Directors, were considered by the Second Cross-Respondent to be experienced, careful and qualified to perform that work;

70.5. after taking the steps pleaded in sub-paragraph 70.4.1 above, and in the circumstances pleaded in sub-paragraph 70.4.2 above, believed on reasonable grounds that Vocation was complying with its obligations under section 674(2) of the *Corporations Act*;

70.6. by reason of the matters pleaded in sub-paragraphs 70.4 and 70.5 above, and of the operation of section 674(2B) of the *Corporations Act*, did not contravene section 674(2A) of the *Corporations Act*;

70.7. otherwise denies the allegations contained therein.

71. The Second Cross-Respondent denies the allegations contained in paragraph 71 of the Amended Third Cross-Claim.

72. As to paragraph 72 of the Amended Third Cross-Claim, the Second Cross-Respondent:

72.1. repeats the denial pleaded in paragraph 71 above;

72.2. denies the allegations contained therein.

#### Dawkins' involvement in Vocation's Third Continuous Disclosure Contravention

73. The Second Cross-Respondent does not plead to paragraph 73 of the Amended Third Cross-Claim as it does not contain any allegations against him.
74. The Second Cross-Respondent does not plead to paragraph 74 of the Amended Third Cross-Claim as it does not contain any allegations against him.
75. The Second Cross-Respondent does not plead to paragraph 75 of the Amended Third Cross-Claim as it does not contain any allegations against him.
76. The Second Cross-Respondent does not plead to paragraph 76 of the Amended Third Cross-Claim as it does not contain any allegations against him.
77. The Second Cross-Respondent does not plead to paragraph 77 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **Involvement in Vocation's Fourth Continuous Disclosure Contravention**

78. As to paragraph 78 of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations contained therein because they do not contain allegations against him, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

#### Hutchinson's involvement in Vocation's Fourth Continuous Disclosure Contravention

79. The Second Cross-Respondent does not plead to paragraph 79 of the Amended Third Cross-Claim as it does not contain any allegations against him.
80. The Second Cross-Respondent does not plead to paragraph 80 of the Amended Third Cross-Claim as it does not contain any allegations against him.
81. The Second Cross-Respondent does not plead to paragraph 81 of the Amended Third Cross-Claim as it does not contain any allegations against him.
82. The Second Cross-Respondent does not plead to paragraph 82 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### Gréwal's involvement in Vocation's Fourth Continuous Disclosure Contravention

83. As to paragraph 83 of the Amended Third Cross-Claim, the Second Cross-Respondent:
  - 83.1. denies the Restructure Information;

- 83.2. denies that he was aware of the information referred to therein, if and to the extent it includes any information which existed;
- 83.3. therefore denies the allegations contained therein.
84. As to paragraph 84 of the Amended Third Cross-Claim, the Second Cross-Respondent:
- 84.1. admits that he took no steps to cause Vocation to disclose to the ASX the Restructure Information;
- 84.2. repeats the denials in paragraph 83 above;
- 84.3. otherwise denies the allegations contained therein.
85. As to paragraph 85 of the Amended Third Cross-Claim, the Second Cross-Respondent:
- 85.1. denies the allegations contained in paragraph 78 of the Amended Third Cross-Claim;
- 85.2. repeats paragraphs 83 and 84 above;
- 85.3. further or in the alternative to sub-paragraphs 85.1 and 85.2 above, denies that he was involved in Vocation's Fourth Continuous Disclosure Contravention within the meaning of section 79 of the *Corporations Act*;
- 85.4. further or in the further alternative to sub-paragraph 85.3 above, says that even if he was involved in Vocation's Fourth Continuous Disclosure Contravention within the meaning of section 79 of the *Corporations Act* (which is denied), he took all steps that were reasonable in the circumstances to ensure that Vocation complied with its obligations under section 674(2) of the *Corporations Act* as follows:
- 85.4.1. the steps referred to in sub-paragraph 85.4 above included:
- (a) the matters pleaded in sub-paragraph 38.4 above;
  - (b) that he (together with the Board of Directors) obtained information and advice from JWS, which he relied on to reasonably satisfy himself that Vocation had complied, and was complying with, its obligations under section 674(2) of the *Corporations Act*, in relation to the 27 October Announcement, which included information in relation to Vocation's intention to continue the restructure of its Victorian business;

85.4.2. each of the steps referred to in sub-paragraph 85.4.1 above were taken by the Second Cross-Respondent:

- (a) in the circumstances pleaded in sub-paragraph 38.5 above;
- (b) where the Second Cross-Respondent was aware that the Board of Directors had approved Vocation ceasing its use of third party training providers and had resolved to restructure management roles in Victoria in response to the Department Review;

***Particulars***

- i. At the Board meeting held on 15 October 2014, which the Second Cross-Respondent attended, the Board agreed for Hutchinson to further consider and discuss with the Board the possible scenarios for Vocation's business in Victoria.
- ii. At the Board meeting held on 22 October 2014, which the Second Cross-Respondent attended, the Board considered the proposed restructure of Vocation's Victorian business, the purpose of which was to significantly reduce cost and move to a new business model in Victoria.
- iii. At the Board meeting held on 24 October 2014, which the Second Cross-Respondent attended, the Board gave further consideration to the proposed restructure of Vocation's Victorian business including timing of management departures.
- iv. At the Board meeting held on 26 October 2014, which the Second Cross-Respondent attended, the Board considered the proposed restructure of Vocation's Victorian business and disclosure of this information in a proposed ASX announcement.

85.5. after taking the steps pleaded in sub-paragraph 85.4.1 above, and in the circumstances pleaded in sub-paragraph to 85.4.2 above, believed on reasonable grounds that Vocation was complying with its obligations under section 674(2) of the *Corporations Act*,

85.6. by reason of the matters pleaded in sub-paragraphs 85.4 and 85.5 above, and the operation of section 674(2B) of the *Corporations Act*, did not contravene section 674(2A) of the *Corporations Act*,

85.7. otherwise denies the allegations contained therein.

86. The Second Cross-Respondent denies the allegations contained in paragraph 86 of the Amended Third Cross-Claim.

#### Dawkins' involvement in Vocation's Fourth Continuous Disclosure Contravention

87. The Second Cross-Respondent does not plead to paragraph 87 of the Amended Third Cross-Claim as it does not contain any allegations against him.
88. The Second Cross-Respondent does not plead to paragraph 88 of the Amended Third Cross-Claim as it does not contain any allegations against him.
89. The Second Cross-Respondent does not plead to paragraph 89 of the Amended Third Cross-Claim as it does not contain any allegations against him.
90. The Second Cross-Respondent does not plead to paragraph 90 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **Involvement in Vocation's Fifth Continuous Disclosure Contravention**

91. As to paragraph 91 of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations contained therein because they do not contain allegations against him, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

#### Hutchinson's involvement in Vocation's Fifth Continuous Disclosure Contravention

92. The Second Cross-Respondent does not plead to paragraph 92 of the Amended Third Cross-Claim as it does not contain any allegations against him.
93. The Second Cross-Respondent does not plead to paragraph 93 of the Amended Third Cross-Claim as it does not contain any allegations against him.
94. The Second Cross-Respondent does not plead to paragraph 94 of the Amended Third Cross-Claim as it does not contain any allegations against him.
95. The Second Cross-Respondent does not plead to paragraph 95 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### Dawkins' involvement in Vocation's Fifth Continuous Disclosure Contravention

96. The Second Cross-Respondent does not plead to paragraph 96 of the Amended Third Cross-Claim as it does not contain any allegations against him.
97. The Second Cross-Respondent does not plead to paragraph 97 of the Amended Third Cross-Claim as it does not contain any allegations against him.
98. The Second Cross-Respondent does not plead to paragraph 98 of the Amended Third



Cross-Claim as it does not contain any allegations against him.

99. The Second Cross-Respondent does not plead to paragraph 99 of the Amended Third Cross-Claim as it does not contain any allegations against him.

**Involvement in Vocation's Further Continuous Disclosure Contravention**

- 99A. As to paragraph 99A of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations contained therein because they do not contain allegations against him, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

**Hutchinson's involvement in Vocation's Further Continuous Disclosure Contravention**

- 99B. The Second Cross-Respondent does not plead to paragraph 99B of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 99C. The Second Cross-Respondent does not plead to paragraph 99C of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 99D. The Second Cross-Respondent does not plead to paragraph 99D of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 99E. The Second Cross-Respondent does not plead to paragraph 99E of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 99F. The Second Cross-Respondent does not plead to paragraph 99F of the Amended Third Cross-Claim as it does not contain any allegations against him.

**Gréwal's involvement in Vocation's Further Continuous Disclosure Contravention**

- 99G. As to paragraph 99G of the Amended Third Cross-Claim, the Second Cross-Respondent:
- 99G.1 says that from 4 July 2014 he was aware of a letter dated 3 July 2014 from the Department to BAWM advising that the Department was withholding the payment of funds to BAWM;
- 99G.2 otherwise denies that he was aware of the Information referred to therein, if and to the extent it includes any information which existed;

99G.3 otherwise denies the allegations contained therein.

99H. As to paragraph 99H of the Amended Third Cross-Claim, the Second Cross-Respondent:

99H.1 admits that he took no steps to cause Vocation to disclose the matters set out in sub-paragraphs (a) and (b) to the ASX;

99H.2 repeats paragraph 99G above;

99H.3 otherwise denies the allegations contained therein.

99I. As to paragraph 99I of the Amended Third Cross-Claim, the Second Cross-Respondent:

99I.1 repeats paragraphs 99A, 99G, and 99H above;

99I.2 otherwise denies the allegations contained therein;

99I.3 further or in the alternative to sub-paragraph 99I.2 above, says that even if he was involved in Vocation's Further Continuous Disclosure Contravention within the meaning of section 79 of the Corporations Act (which is denied):

99I.3.1 he took all steps that were reasonable in the circumstances to ensure that Vocation complied with its obligations under section 674(2) of the Corporations Act as follows:

(a) the steps consisted of the matters pleaded in sub-paragraph 38.4 above; and

(b) those steps were taken by the Second Cross-Respondent in the circumstances pleaded in sub-paragraph 38.5 above;

99I.4 after taking the steps pleaded in sub-paragraph 99I.3.1(a) above, and in the circumstances pleaded in sub-paragraph 99I.3.1(b) above, believed on reasonable grounds that Vocation was complying with its obligations under section 674(2) of the Corporations Act;

99I.5 by reason of the matters pleaded in sub-paragraphs 99I.3.1(a) and 99I.3.1(b) above, and the operation of section 674(2B) of the

Corporations Act, did not contravene section 674(2A) of the Corporations Act;

99J. The Second Cross-Respondent denies the allegations contained in paragraph 99J of the Amended Third Cross-Claim.

99K As to paragraph 99K of the Amended Third Cross-Claim, the Second Cross-Respondent:

99K.1 repeats paragraph 99J above;

99K.2 denies the allegations contained therein.

#### Dawkins' Involvement in Vocation's Further Continuous Disclosure Contravention

99L. The Second Cross-Respondent does not plead to paragraph 99L of the Amended Third Cross-Claim as it does not contain any allegations against him.

99M. The Second Cross-Respondent does not plead to paragraph 99M of the Amended Third Cross-Claim as it does not contain any allegations against him.

99N. The Second Cross-Respondent does not plead to paragraph 99N of the Amended Third Cross-Claim as it does not contain any allegations against him.

99O. The Second Cross-Respondent does not plead to paragraph 99O of the Amended Third Cross-Claim as it does not contain any allegations against him.

99P. The Second Cross-Respondent does not plead to paragraph 99P of the Amended Third Cross-Claim as it does not contain any allegations against him.

### **INVOLVEMENT IN VOCATION'S MISLEADING OR DECEPTIVE CONDUCT CONTRAVENTIONS**

#### **Compliance and Risk Representations**

100. As to paragraph 100 of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 168 to 182 of the FACSOC, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

Hutchinson's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the Compliance and Risk Representations

101. The Second Cross-Respondent does not plead to paragraph 101 of the Amended Third Cross-Claim as it does not contain any allegations against him.
102. The Second Cross-Respondent does not plead to paragraph 102 of the Amended Third Cross-Claim as it does not contain any allegations against him.
103. The Second Cross-Respondent does not plead to paragraph 103 of the Amended Third Cross-Claim as it does not contain any allegations against him.

Gréwal's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the Compliance and Risk Representations

104. As to paragraph 104 of the Amended Third Cross-Claim, the Second Respondent:
  - 104.1. admits that on or after 21 August 2014 he was aware of the matters set out in paragraphs 59 to 63 of the FACSOC;
  - 104.2. otherwise denies the allegations contained therein.
105. As to paragraph 105 of the Amended Third Cross-Claim, the Second Cross-Respondent:
  - 105.1. in respect of sub-paragraph 105(a):
    - 105.1.1. admits, insofar as it is alleged, that on 21 August 2014 he uploaded the FY14 Results Documents to the ASX online portal for release to the market;
    - 105.1.2. admits that he signed the section 295A declaration for the purpose of the FY14 Appendix 4E;
    - 105.1.3. says that he relied on, amongst other things, the resolutions made by the Board of Directors and the ARC on 19 August 2014 in lodging the FY14 Results Documents with the ASX;
    - 105.1.4. denies that the FY14 Results Documents included the August Compliance Representation, the August Materiality Representation and the August Immaterial Risk Representation;
    - 105.1.5. otherwise denies the allegations contained therein, including, for

the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in paragraph 105 of the Amended Third Cross-Claim.

105.2. in respect of sub-paragraph 105(b):

105.2.1. admits, insofar as it is alleged, that on 25 August 2014 he uploaded the 25 August Announcement to the ASX online portal for release to the market;

105.2.2. admits that the 25 August Announcement included the August Materiality Representation;

105.2.3. denies that the 25 August Announcement contained the August Compliance Representation and the August Immaterial Risk Representation;

105.2.4. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in paragraph 105 of the Third Cross-Claim.

105.3. in respect of sub-paragraph 105(c):

105.3.1. admits, insofar as it is alleged, that on 3 September 2014 he uploaded the Audited Annual Report to the ASX online portal for release to the market;

105.3.2. says that he relied on, amongst other things, the resolutions made by the Board of Directors on 2 September 2014 in lodging the Audited Annual Report with the ASX;

105.3.3. denies that the FY14 Annual Report, or the Audit Annual Report insofar as it is alleged, contained the September Compliance Representation, the September Materiality Representation and the September Immaterial Risk Representation;

105.3.4. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in paragraph 105 of the Amended Third Cross-Claim.

- 105.4. in respect of sub-paragraph 105(d):
- 105.4.1. admits, insofar as it is alleged, that on 10 September 2014 he uploaded the 10 September Announcement to the ASX online portal for release to the market;
- 105.4.2. says that he relied on, amongst other things, the resolution made by the Board of Directors on 8 September 2014 in lodging the 10 September Announcement with the ASX (**8 September Board Approval**);
- 105.4.3. admits that the 10 September Announcement contained the August Materiality Representation;
- 105.4.4. denies that the 10 September Announcement contained the September Compliance Representation and the September Immaterial Risk Representation;
- 105.4.5. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in paragraph 105 of the Amended Third Cross-Claim.
- 105.5. in respect of sub-paragraph 105(e):
- 105.5.1. admits, insofar as it is alleged, that on 18 September 2014 he uploaded the 18 September Announcement to the ASX online portal for release to the market;
- 105.5.2. admits that the 18 September Announcement contained the September Materiality Representation;
- 105.5.3. denies that the 18 September Announcement contained the September Compliance Representation and the September Immaterial Risk Representation;
- 105.5.4. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in paragraph 105 of the Amended Third Cross-Claim.

105.6. in respect of sub-paragraph 105(f):

105.6.1. admits, insofar as it is alleged, that on 16 October 2014 he uploaded the 16 October Announcement to the ASX online portal for release to the market;

105.6.2. denies that the 16 October Announcement contained the 16 October Compliance Representation, the 16 October Materiality Representation and the 16 October Immaterial Risk Representation;

105.6.3. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in paragraph 105 of the Amended Third Cross-Claim.

106. As to paragraph 106 of the Amended Third Cross-Claim, the Second Cross-Respondent:

106.1. repeats paragraphs 100, 104 and 105 above;

106.2. denies Vocation's Misleading Conduct Contraventions and Vocation's Section 1041E Contraventions;

106.3. further says that if there was such conduct (which is denied) he denies that he was involved in Vocation's Misleading Conduct Contraventions and/or Vocation's Section 1041E Contraventions within the meaning of section 79 of the *Corporations Act*, the *ASIC Act* and section 2 of the *Australian Consumer Law*.

Dawkins' involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the Compliance and Risk Representations

107. The Second Cross-Respondent does not plead to paragraph 107 of the Amended Third Cross-Claim as it does not contain any allegations against him.

108. The Second Cross-Respondent does not plead to paragraph 108 of the Amended Third Cross-Claim as it does not contain any allegations against him.

109. The Second Cross-Respondent does not plead to paragraph 109 of the Amended Third Cross-Claim as it does not contain any allegations against him.

## **August FY14 Results Representations**

110. As to paragraph 110 of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 180 to 186 of the FACSOC, save as otherwise expressly pleaded below in the context of responding to the pleaded allegations made against him.

### Hutchinson's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the August FY14 Results Representations

111. The Second Cross-Respondent does not plead to paragraph 111 of the Amended Third Cross-Claim as it does not contain any allegations against him.

112. The Second Cross-Respondent does not plead to paragraph 112 of the Amended Third Cross-Claim as it does not contain any allegations against him.

113. The Second Cross-Respondent does not plead to paragraph 113 of the Amended Third Cross-Claim as it does not contain any allegations against him.

114. The Second Cross-Respondent does not plead to paragraph 114 of the Amended Third Cross-Claim as it does not contain any allegations against him.

### Gréwal's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the August FY14 Results Representations

115. As to paragraph 115 of the Amended Third Cross-Claim, the Second Cross-Respondent:

115.1. in respect of the matters pleaded in paragraphs 59 to 64 of the FACSOC:

115.1.1. admits that on or after 21 August 2014 he was aware of the matters set out in paragraphs 59 to 63 of the FACSOC;

115.1.2. otherwise denies the allegations contained in paragraph 115 insofar as they relate to paragraphs 59 to 64 of the FACSOC;

115.2. in respect of the matters pleaded in paragraphs 65 to 67 of the FACSOC;

115.2.1. admits, insofar as it is alleged, that on or after 21 August 2014 he was aware that as at 19 August 2014, the revenue recognition policy of Vocation was described in the notes to the financial statements of the FY14 Appendix 4E;



115.2.2. relies on the Replacement Prospectus and FY14 Results Documents for their full terms, meaning and effect;

115.2.3. otherwise denies the allegations contained in paragraph 115 insofar as they relate to paragraphs 65 to 67 of the FACSOC;

115.2A. in respect of the matters pleaded in paragraph 68 of the FACSOC:

115.2A.1 admits, insofar as it is alleged, that on or after 21 August 2014 he was aware that Vocation released to the ASX its Preliminary Financial Report (Appendix 4E) for the year ending 30 June 2014;

115.2A.2 admits, insofar as it is alleged, that on or after 21 August 2014 he was aware that Vocation released to the ASX an announcement entitled "Vocation delivers strong first full year result, exceeding prospectus guidance";

115.2A.3 admits, insofar as it is alleged, that on or after 21 August 2014 he was aware that Hutchinson participated in the FY14 Results Presentation;

115.2A.4 admits, insofar as it is alleged, that on or after 21 August 2014 he was aware of the AFR article "Training wheels wobbly?";

115.2A.5 relies on the Preliminary Financial Report, FY14 Results Announcement, FY14 Results Presentation and the article referred to in paragraph 115.2A.4 above for their full terms, meaning and effect;

115.2A.6 otherwise denies the allegations contained in paragraph 115 insofar as they relate to paragraph 68 of the FACSOC;

115.2B in respect of the matters pleaded in paragraph 69 of the FACSOC:

115.2B.1 admits, insofar as it is alleged, that he was aware that the FY14 Results Announcement made express statements to the effect alleged in subparagraphs (a), (b), (c), and (d) of paragraph 69 of the FACSOC;

115.2B.2 relies on the FY14 Results Documents (as defined in

- paragraph 69 of the FACSOC) for its full terms, meaning and effect;
- 115.2B.3 otherwise denies the allegations contained in paragraph 115 insofar as they relate to paragraph 69 of the FACSOC;
- 115.2C in respect of the matters pleaded in paragraph 70 of the FACSOC:
- 115.2C.1 admits, insofar as it is alleged, that he was aware that in the FY14 Results Presentation, Vocation made express statements to the effect alleged in subparagraphs (a), (b), (c), (d) and (e) of paragraph 70 of the FACSOC;
- 115.2C.2 relies on the FY14 Results Presentation (as defined in the FACSOC) for its full terms, meaning and effect;
- 115.2C.3 otherwise denies the allegations contained in paragraph 115 insofar as they relate to paragraph 70 of the FACSOC;
- 115.3. in respect of the matters pleaded in paragraph 71 of the FACSOC:
- 115.3.1. admits, insofar as it is alleged, that on or after 21 August 2014 he was aware that the FY14 Results Presentation contained a statement that "*Management are comfortable with current market consensus range*";
- 115.3.2. relies on the FY14 Results Presentation for its full terms, meaning and effect;
- 115.3.3. otherwise denies the allegations contained in paragraph 115 insofar as they relate to paragraph 71 of the FACSOC;
- 115.4. in respect of the matters pleaded in paragraph 72 of the FACSOC:
- 115.4.1. admits that on or after 21 August 2014 he was aware the FY14 Results Documents did not contain information or statements to the effect of those set out in sub-paragraph 72(a)-(e) of the FACSOC;
- 115.4.2. repeats the denials in sub-paragraph 115.2 above;
- 115.4.3. relies on the FY14 Results Documents for their full terms, meaning and effect;
- 115.4.4. otherwise denies the allegations contained in paragraph 115 insofar

as they relate to paragraph 72 of the FACSOC.

116. As to paragraph 116 of the Amended Third Cross-Claim, the Second Cross-Respondent:

116.1. repeats sub-paragraph 105.1.1 and 105.1.2 above;

116.2. relies on the FY14 Results Documents for their full terms, meaning and effect;

116.3. admits the FY14 Results Documents included the True and Fair View Representation and the Reliability Representation;

116.4. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in paragraph 116 of the Amended Third Cross-Claim.

117. As to paragraph 117 of the Amended Third Cross-Claim, the Second Cross-Respondent:

117.1. repeats the denials in paragraphs 115 and 116 above;

117.2. admits that he took no steps to cause Vocation to withdraw or otherwise correct the August FY14 Results Representations, if and to the extent they existed;

117.3. otherwise denies the allegations contained therein.

118. As to paragraph 118 of the Amended Third Cross-Claim, the Second Cross-Respondent:

118.1. repeats paragraphs 110 and 115 to 117 above;

118.2. denies Vocation's Misleading Conduct Contraventions and Vocation's Section 1041E Contraventions;

118.3. further says that if there was such conduct (which is denied) he denies that he was involved in Vocation's Misleading Conduct Contraventions and/or Vocation's Section 1041E Contraventions within the meaning of section 79 of the *Corporations Act*, the *ASIC Act* and section 2 of the *Australian Consumer Law*.

Dawkins' involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the August FY14 Results Representations

119. The Second Cross-Respondent does not plead to paragraph 119 of the Amended Third Cross-Claim as it does not contain any allegations against him.
120. The Second Cross-Respondent does not plead to paragraph 120 of the Amended Third Cross-Claim as it does not contain any allegations against him.
121. The Second Cross-Respondent does not plead to paragraph 121 of the Amended Third Cross-Claim as it does not contain any allegations against him.
122. The Second Cross-Respondent does not plead to paragraph 122 of the Amended Third Cross-Claim as it does not contain any allegations against him.

**August FY15 Earnings Representations**

123. As to paragraph 123 of the Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 187 to 191 of the FACSOC, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

Hutchinson's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the August FY15 Earnings Representations

124. The Second Cross-Respondent does not plead to paragraph 124 of the Amended Third Cross-Claim as it does not contain any allegations against him.
125. The Second Cross-Respondent does not plead to paragraph 125 of the Amended Third Cross-Claim as it does not contain any allegations against him.
126. The Second Cross-Respondent does not plead to paragraph 126 of the Amended Third Cross-Claim as it does not contain any allegations against him.
127. The Second Cross-Respondent does not plead to paragraph 127 of the Amended Third Cross-Claim as it does not contain any allegations against him.
128. The Second Cross-Respondent does not plead to paragraph 128 of the Amended Third Cross-Claim as it does not contain any allegations against him.

Gréwal's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the August FY15 Earnings Representations

129. As to paragraph 129 of the Amended Third Cross-Claim, the Second Cross-Respondent:

129.1. in respect of the matters pleaded in paragraphs 59 to ~~67 and 71~~ to 72 of the FACSOC, repeats paragraph 115 above;

129.2. in respect of the matters pleaded in paragraphs 102 to 103 of the FACSOC:

129.2.1. admits, in so far as it is alleged, that at a time prior to 27 October 2014 he was aware that Vocation intended to restructure its business to, amongst other things, cease using third party training providers;

129.2.2. otherwise denies the allegations contained in paragraph 129 insofar as they relate to paragraphs 102 to 103 of the FACSOC;

129.3. in respect of the matters pleaded in paragraph 143 of the FACSOC:

129.3.1. repeats sub-paragraph 52.3.1 above;

129.3.2. otherwise denies the allegations contained in paragraph 129 insofar as they relate to paragraph 143 of the FACSOC;

129.4. otherwise denies the allegations contained therein.

130. As to paragraph 130 of the Amended Third Cross-Claim, the Second Cross-Respondent:

130.1. repeats sub-paragraph 105.1.1 and 105.1.2 above;

130.2. relies on the FY14 Results Presentation for its full terms, meaning and effect;

130.3. denies that the FY14 Results Presentation included the August FY15 Earnings Guidance Representation and the August FY15 Earnings Basis Representation;

130.4. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in paragraph 130 of the Amended Third Cross-Claim.

131. As to paragraph 131 of the Amended Third Cross-Claim, the Second Cross-

Respondent:

- 131.1. repeats paragraphs 129 and 130 above;
- 131.2. further or in the alternative to paragraph 130.3 above, denies that Vocation did not have reasonable grounds for the August FY15 Earnings Guidance Representation;

**Particulars**

- i. Vocation embarked on a growth strategy which included the acquisition of Endeavour Learning Group Pty Ltd (**Endeavour**) on 1 July 2014, Real Institute in May 2014 and Australian College of Applied Education (**ACAE**) and the Australian School of Management (**ASM**) in April 2014, which was expected to increase revenue and profit for the business;
    - ii. Vocation acquired a VET FEE HELP license in April 2014, which was expected to increase revenue and profit for the business;
    - iii. Further particulars will be provided after discovery and completion of evidence.
  - 131.3. further or in the further alternative, denies that he was aware that Vocation did not have reasonable grounds for the August FY15 Earnings Guidance Representation;
  - 131.4. otherwise denies the allegations therein.
132. As to paragraph 132 of the Amended Third Cross-Claim, the Second Cross Respondent:
- 132.1. in response to sub-paragraph 132(a):
    - 132.1.1. repeats the denials in paragraphs 130 to 131 above;
    - 132.1.2. admits that he took no steps to cause Vocation to withdraw or otherwise correct the August FY15 Earnings Guidance Representation and the August FY15 Earnings Basis Representation (which he denies were made);
    - 132.1.3. otherwise denies the allegations contained therein;
  - 132.2. in response to sub-paragraph 132(b):
    - 132.2.1. repeats the denials in paragraphs 130 to 131 above;
    - 132.2.2. repeats paragraph 105.4.1 and 105.4.2 above;
    - 132.2.3. denies that the August FY15 Earnings Guidance Representation and the August FY15 Earnings Basis Representation was made by way of the 10 September Announcement;

132.2.4. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in sub-paragraph 132(b) of the Amended Third Cross-Claim.

133. As to paragraph 133 of the Amended Third Cross-Claim, the Second Cross-Respondent:

133.1. repeats paragraphs 123 and 129 to 132 above;

133.2. denies Vocation's Misleading Conduct Contravention;

133.3. further says that if there was such conduct (which is denied) he denies that he was involved in Vocation's Misleading Conduct Contravention within the meaning of section 79 of the *Corporations Act*, the *ASIC Act* and section 2 of the *Australian Consumer Law*.

Dawkins' involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the August FY15 Earnings Representations

134. The Second Cross-Respondent does not plead to paragraph 134 of the Amended Third Cross-Claim as it does not contain any allegations against him.

135. The Second Cross-Respondent does not plead to paragraph 135 of the Amended Third Cross-Claim as it does not contain any allegations against him.

136. The Second Cross-Respondent does not plead to paragraph 136 of the Amended Third Cross-Claim as it does not contain any allegations against him.

137. The Second Cross-Respondent does not plead to paragraph 137 of the Amended Third Cross-Claim as it does not contain any allegations against him.

138. The Second Cross-Respondent does not plead to paragraph 138 of the Amended Third Cross-Claim as it does not contain any allegations against him.

## **September Placement Representations**

139. As to paragraph 139 of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 79 to 89, 91 to 96, 100, 101(e) and 192 to 199 of the FACSOC, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

### Hutchinson's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the September Placement Representations

140. The Second Cross-Respondent does not plead to paragraph 140 of the Amended Third Cross-Claim as it does not contain any allegations against him.

141. The Second Cross-Respondent does not plead to paragraph 141 of the Amended Third Cross-Claim as it does not contain any allegations against him.

142. The Second Cross-Respondent does not plead to paragraph 142 of the Amended Third Cross-Claim as it does not contain any allegations against him.

143. The Second Cross-Respondent does not plead to paragraph 143 of the Amended Third Cross-Claim as it does not contain any allegations against him.

144. The Second Cross-Respondent does not plead to paragraph 144 of the Amended Third Cross-Claim as it does not contain any allegations against him.

### Gréwal's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the September Placement Representations

145. As to paragraph 145 of the Amended Third Cross-Claim, the Second Cross-Respondent:

145.1. admits that on or after 10 September 2014 he was aware of the matters set out in paragraphs 85 to 87 of the FACSOC;

145.2. says that in respect of paragraphs 79, 80 and 82 of the FACSOC, the defined term "Investigation Consequences Information" (which forms part of the meaning of the definition "August 2014 Cash Flow Analysis") is not properly defined and so he cannot identify any allegations contained therein;

145.3. in respect of paragraph 81 of the FACSOC, admits, insofar as it is alleged, that Vocation entered into negotiations with Vocation's Lenders to increase



the working capital component of Vocation's then current debt facility by \$15 million;

145.4. in respect of paragraph 83 of the FACSOC, admits, insofar as it is alleged, that during the Relevant Period, Vocation's Lenders did not increase the working capital component of Vocation's then current debt facility by \$15 million;

145.5. otherwise denies the allegations contained therein.

146. As to paragraph 146 of the Amended Third Cross-Claim, the Second Cross-Respondent:

146.1. repeats sub-paragraph 105.4.1 and 105.4.2 above;

146.2. denies that the 10 September Announcement includes the September Placement Representation;

146.3. otherwise denies the allegations contained therein including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in paragraph 146 of the Amended Third Cross-Claim.

147. As to paragraph 147 of the Amended Third Cross-Claim, the Second Cross-Respondent:

147.1. repeats paragraphs 145 and 146 above;

147.2. denies that Vocation did not have reasonable grounds for the September Placement Representation;

147.3. further or in the further alternative, denies that he was aware that Vocation did not have reasonable grounds for the September Placement Representation;

147.4. otherwise denies the allegations contained therein.

148. As to paragraph 148 of the Amended Third Cross-Claim, the Second Cross-Respondent:

148.1. in respect of sub-paragraph 148(a):

148.1.1. repeats paragraphs 145 to 147 above;

148.1.2. admits that he took no steps to cause Vocation to withdraw or otherwise correct the September Placement Representation (which he denies was made), if, and to the extent, it existed;

- 148.1.3. otherwise denies the allegations contained therein;
- 148.2. in respect of sub-paragraph 148(b), the Second Cross-Respondent:
- 148.2.1. repeats paragraphs 145 to 147 above;
- 148.2.2. admits, insofar as it is alleged, that on 11 September 2014 he uploaded the ASX announcement dated 11 September 2014 to the ASX online portal for release to the market (**11 September Announcement**);
- 148.2.3. says that he relied on, amongst other things, the authorisation provided by the Board in lodging the 11 September Announcement with the ASX, of which the Board's approval was later ratified by a resolution of the Board on 10 October 2014 (**10 October Board Approval**);
- 148.2.4. denies that the September Placement Representation was made by way of the 11 September Announcement;
- 148.2.5. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in sub-paragraph 148(b) of the Amended Third Cross-Claim;
- 148.3. in respect of sub-paragraph 148(c), the Second Cross-Respondent:
- 148.3.1. repeats paragraphs 145 to 147 above;
- 148.3.2. admits, insofar as it is alleged, that on 16 September 2014 he uploaded the 16 September 2014 Appendix 3B to the ASX online portal for release to the market;
- 148.3.3. admits, insofar as it is alleged, that he signed the 16 September 2014 Appendix 3B on behalf of Vocation in his capacity as Company Secretary;
- 148.3.4. says that he relied on, amongst other things, the following in lodging the 16 September 2014 Appendix 3B with the ASX:
- (a) the 8 September Board Approval;
  - (b) information and advice provided by JWS on or around 12 September 2014 to the Second Cross-Respondent to lodge an executed Cleansing Notice and 16 September 2014

Appendix 3B with the ASX prior to the market opening on 16 September 2014, with such drafts having been prepared by JWS;

148.3.5. denies that the September Placement Representation was made by way of the 16 September 2014 Appendix 3B;

148.3.6. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in paragraph 148(c) of the Amended Third Cross-Claim.

149. As to paragraph 149 of the Amended Third Cross-Claim, the Second Cross-Respondent:

149.1. repeats paragraphs 139 and 145 to 148 above;

149.2. denies Vocation's Misleading Conduct Contraventions and Vocation's Section 1041E Contraventions;

149.3. further says that if there was such conduct (which is denied) he denies that he was involved in Vocation's Misleading Conduct Contraventions and/or Vocation's Section 1041E Contraventions within the meaning of section 79 of the *Corporations Act*, the *ASIC Act* and section 2 of the *Australian Consumer Law*.

Dawkins' involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the September Placement Representations

150. The Second Cross-Respondent does not plead to paragraph 150 of the Amended Third Cross-Claim as it does not contain any allegations against him.

151. The Second Cross-Respondent does not plead to paragraph 151 of the Amended Third Cross-Claim as it does not contain any allegations against him.

152. The Second Cross-Respondent does not plead to paragraph 152 of the Amended Third Cross-Claim as it does not contain any allegations against him.

153. The Second Cross-Respondent does not plead to paragraph 153 of the Amended Third Cross-Claim as it does not contain any allegations against him.

154. The Second Cross-Respondent does not plead to paragraph 154 of the Amended

Third Cross-Claim as it does not contain any allegations against him.

### **October FY15 Representations**

155. As to paragraph 155 of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 200 to 206 of the FACSOC, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

#### Hutchinson's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the October FY15 Representations

156. The Second Cross-Respondent does not plead to paragraph 156 of the Amended Third Cross-Claim as it does not contain any allegations against him.

157. The Second Cross-Respondent does not plead to paragraph 157 of the Amended Third Cross-Claim as it does not contain any allegations against him.

158. The Second Cross-Respondent does not plead to paragraph 158 of the Amended Third Cross-Claim as it does not contain any allegations against him.

159. The Second Cross-Respondent does not plead to paragraph 159 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### Gréwal's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the October FY15 Representations

160. As to paragraph 160 of the Amended Third Cross-Claim, the Second Cross-Respondent:

160.1. in respect of sub-paragraph 160(a), repeats paragraph 115 above;

160.2. in respect of sub-paragraph 160(b), repeats paragraph 131 above;

160.3. in respect of sub-paragraph 160(e):

160.3.1. denies that Vocation did not have reasonable grounds for representing that Vocation would achieve EBITDA of between \$53 million and \$57 million in FY15;

#### **Particulars**

- i. The Second Cross-Respondent repeats the matters particularised at paragraph 131.2 above;
- ii. In September 2014 Vocation took steps to accelerate the growth of the Higher Education division (which included Endeavour,

- ACAE and ASM) by acquiring the remaining 50% of ASM, completing due diligence on a bolt-on acquisition in New Zealand and rolling out ASM courses in selected Endeavour campuses;
- iii. On 27 October 2014 Vocation entered into a settlement with the Department, from which it was forecast that for FY15 there would be a non-recurring impact of approximately \$5 million to EBITDA;
  - iv. As a result of the Department Review, Vocation forecast reduced enrolments in BAWM and Aspin across September and October;
  - v. As a result of Vocation's decision to restructure part of its business model in Victoria, which included making a number of individuals redundant, Vocation forecast a non-recurring EBITDA impact for FY15 as well as related cost savings from the restructure;
  - vi. Further particulars will be provided after discovery and completion of evidence.

160.3.2. denies that he was aware that Vocation did not have reasonable grounds for representing that Vocation would achieve EBITDA of between \$53 million and \$57 million in FY15;

160.4. otherwise denies the allegations contained therein.

161. As to paragraph 161 of the Amended Third Cross-Claim:

161.1. in response to sub-paragraph 161(a), the Second Respondent:

161.1.1. admits, insofar that it is alleged, that on 27 October 2014 he uploaded the 27 October Announcement to the ASX online portal for release to the market;

161.1.2. says that he relied on, amongst other things, the following in lodging the 27 October Announcement with the ASX:

(a) the resolutions made by the Board on 26 October 2014 (**26 October Board Approval**) whereby Hutchinson was delegated with authority of the Board of Directors to finalise the 27 October Announcement and release the announcement to the ASX;

(b) the JWS 27 October 2014 ASX Announcement Advice;

161.1.3. denies that the 27 October Announcement included the 27 October Disclosure Representation, 27 October FY15 Earnings Guidance Representation and the 27 October FY15 Earnings Guidance Basis Representation;

161.1.4. in the alternative, if the 27 October Disclosure Representation, 27 October FY15 Earnings Guidance Representation and the 27 October FY15 Earnings Guidance Basis Representation was made (which is denied), Vocation had reasonable grounds for making the 27 October FY15 Earnings Guidance Basis Representation;

**Particulars**

The Second Cross-Respondent repeats the matters particularised at sub-paragraph 160.3.1 above.

161.1.5. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in sub-paragraph 161(a) of the Amended Third Cross-Claim.

161.2. in response to sub-paragraph 161(b), the Second Respondent:

161.2.1. admits, insofar that it is alleged, that on 30 October 2014 he uploaded the 30 October Announcements to the ASX online portal for release to the market;

161.2.2. denies that the 30 October Announcements included the 30 October FY15 Earnings Guidance Representation and the 30 October FY15 Earnings Guidance Basis Representation;

161.2.3. in the alternative, if the 30 October FY15 Earnings Guidance Representation and the 30 October FY15 Earnings Guidance Basis Representation was made (which is denied), Vocation had reasonable grounds for making the 30 October FY15 Earnings Guidance Basis Representation;

**Particulars**

The Second Cross-Respondent relies on the matters particularised at sub-paragraph 160.3.1 above which remained relevant as at the time of the release of the 30 October Announcements.

161.2.4. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in sub-paragraph 161(b) of the Amended Third Cross-Claim.

- 161.3. in response to sub-paragraph 161(c), the Second Respondent:
- 161.3.1. admits, insofar as it is alleged, that on 17 November 2014 he uploaded the 17 November Announcement to the ASX online portal for release to the market;
- 161.3.2. denies that the 17 November Announcement included the November FY15 Earnings Guidance Representation and the November FY15 Earnings Guidance Basis Representation;
- 161.3.3. in the alternative, if the November FY15 Earnings Guidance Representation and the November FY15 Earnings Guidance Basis Representation was made (which is denied), Vocation had reasonable grounds for making the November FY15 Earnings Guidance Basis Representation;

**Particulars**

The Second Cross-Respondent relies on the matters particularised at sub-paragraph 161.1.4 above which remained relevant as at the time of the release of the 17 November Announcement.

- 161.3.4. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in sub-paragraph 161(c) of the Amended Third Cross-Claim.
- 161.4. otherwise denies the allegations contained in paragraph 161 of the Amended Third Cross-Claim, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation.
162. As to paragraph 162 of the Amended Third Cross-Claim, the Second Cross-Respondent:
- 162.1. in response to sub-paragraph 162(a):
- 162.1.1. repeats the denials in paragraphs 160 and 161 above;
- 162.1.2. admits that he took no steps to cause Vocation to withdraw or otherwise correct the 27 October Disclosure Representation, the 27 October FY15 Earnings Guidance Representation and the 27 October FY15 Earnings Guidance Basis Representation (which he denies were made);

- 162.1.3. otherwise denies the allegations contained therein;
  - 162.2. in response to sub-paragraph 162(b):
    - 162.2.1. repeats the denials in paragraphs 160 and 161 above;
    - 162.2.2. admits that he took no steps to cause Vocation to withdraw or otherwise correct the 30 October FY15 Earnings Guidance Representation and the 30 October FY15 Earnings Guidance Basis Representation (which he denies were made);
    - 162.2.3. otherwise denies the allegations contained therein;
  - 162.3. in response to sub-paragraph 162(c):
    - 162.3.1. repeats the denials in paragraphs 160 to 161 above;
    - 162.3.2. admits that he took no steps to cause Vocation to withdraw or otherwise correct the November FY15 Earnings Guidance Representation and the November FY15 Earnings Guidance Basis Representation (which he denies were made);
    - 162.3.3. otherwise denies the allegations contained therein;
  - 162.4. otherwise denies the allegations contained in paragraph 162 of the Third Amended Cross-Claim.
163. As to paragraph 163 of the Amended Third Cross-Claim, the Second Cross-Respondent:
- 163.1. repeats paragraphs 155 and 160 to 162 above;
  - 163.2. denies Vocation's Misleading Conduct Contraventions;
  - 163.3. further says that if there was such conduct (which is denied) he denies that he was involved in Vocation's Misleading Conduct Contraventions within the meaning of section 79 of the *Corporations Act*, the *ASIC Act* and section 2 of the *Australian Consumer Law*.

Dawkins' involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the October FY15 Representations

164. The Second Cross-Respondent does not plead to paragraph 164 of the Amended Third Cross-Claim as it does not contain any allegations against him.
165. The Second Cross-Respondent does not plead to paragraph 165 of the Amended Third Cross-Claim as it does not contain any allegations against him.



166. The Second Cross-Respondent does not plead to paragraph 166 of the Amended Third Cross-Claim as it does not contain any allegations against him.

167. The Second Cross-Respondent does not plead to paragraph 167 of the Amended Third Cross-Claim as it does not contain any allegations against him.

### **Continuous Disclosure Representations**

168. As to paragraph 168 of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 207 to 210 of the FACSOC, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

#### Hutchinson's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the Continuous Disclosure Representations

169. The Second Cross-Respondent does not plead to paragraph 169 of the Amended Third Cross-Claim as it does not contain any allegations against him.

170. The Second Cross-Respondent does not plead to paragraph 170 of the Amended Third Cross-Claim as it does not contain any allegations against him.

171. The Second Cross-Respondent does not plead to paragraph 171 of the Amended Third Cross-Claim as it does not contain any allegations against him.

172. The Second Cross-Respondent does not plead to paragraph 172 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### Gréwal's involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the Continuous Disclosure Representations

173. As to paragraph 173 of the Amended Third Cross-Claim, the Second Cross-Respondent:

173.1. repeats paragraphs 36, 52, 61G, 68 and 83 above;

173.2. otherwise denies the allegations contained in paragraph 173 of the Amended Third Cross-Claim.

174. As to paragraph 174 of the Amended Third Cross-Claim, the Second Cross-Respondent:

174.1. admits, insofar as it is alleged, that he uploaded the following documents to the ASX online portal for release to the market:

174.1.1. the Audited Annual Report, which he uploaded on 3 September 2014;

174.1.2. the FY14 Annual Report, which he uploaded on 16 September 2014;

174.1.3. the Cleansing Notice, which he uploaded on 16 September 2014;

174.1.4. the 18 September Announcement, which he uploaded on 18 September 2014;

174.1.5. Vocation's response to the "ASX aware query", which he uploaded on 30 October 2014;

174.1.6. Vocation's ASX market release dated 2 November 2014, which he uploaded on 3 November 2014 (**2 November Announcement**);

174.1.7. Vocation's ASX market release dated 14 November 2014, which he uploaded on 14 November 2014 (**14 November Announcement**);

174.1.8. the 17 November Announcement, which he uploaded on 17 November 2014;

174.1.9. Vocation's ASX market release dated 27 November 2014, which he uploaded on 27 November 2014 (**27 November Announcement**);

174.2. says that he relied on, amongst other things:

174.2.1. the resolutions made by the Board on 2 September 2014 in lodging the Audited Annual Report with the ASX;

174.2.2. the 8 September Board Approval in lodging the Cleansing Notice with the ASX;

174.2.3. the information provided by the Board in lodging the 2 November Announcement, 14 November Announcement, 17 November Announcement with the ASX, of which the Board's approval was later ratified by a resolution of the Board on 18 November 2014 (**18 November Board Approval**);

174.3. does not admit that the Continuous Disclosure Representations were made

by way of the documents in sub-paragraph 174.1 above.

174.4. otherwise denies the allegations contained therein, including, for the avoidance of doubt, that the conduct the subject of the above admissions amounts to authorisation or participation in authorisation as those terms are used in paragraph 174 of the Amended Third Cross-Claim.

175. As to paragraph 175 of the Amended Third Cross-Claim, the Second Cross-Respondent:

175.1. repeats the denials in paragraph 174 above;

175.2. admits that he took no steps to cause Vocation to withdraw or otherwise correct the Continuous Disclosure Representations;

175.3. otherwise denies the allegations contained therein.

176. As to paragraph 176 of the Amended Third Cross- Claim, the Second Cross-Respondent:

176.1. repeats paragraphs 168 and 173 to 175 above;

176.2. denies Vocation's Misleading Conduct Contraventions;

176.3. further says that if there was such conduct (which is denied) he denies that he was involved in Vocation's Misleading Conduct Contraventions within the meaning of section 79 of the *Corporations Act*, the *ASIC Act* and section 2 of the *Australian Consumer Law*.

Dawkins' involvement in Vocation's Misleading and Deceptive Contraventions and/or Vocation's Section 1041E Contraventions in respect of the Continuous Disclosure Representations

177. The Second Cross-Respondent does not plead to paragraph 177 of the Amended Third Cross-Claim as it does not contain any allegations against him.

178. The Second Cross-Respondent does not plead to paragraph 178 of the Amended Third Cross-Claim as it does not contain any allegations against him.

179. The Second Cross-Respondent does not plead to paragraph 179 of the Amended Third Cross-Claim as it does not contain any allegations against him.

180. The Second Cross-Respondent does not plead to paragraph 180 of the Amended Third Cross-Claim as it does not contain any allegations against him.

**No Suspension Representation, Reasonable Grounds Representation and Continuing Representation**

Hutchinson

180A. The Second Cross-Respondent does not plead to paragraph 180A of the Amended Third Cross-Claim as it does not contain any allegations against him.

180B. The Second Cross-Respondent does not plead to paragraph 180B of the Amended Third Cross-Claim as it does not contain any allegations against him.

180C. The Second Cross-Respondent does not plead to paragraph 180C of the Amended Third Cross-Claim as it does not contain any allegations against him.

180CA. The Second Cross-Respondent does not plead to paragraph 180CA of the Amended Third Cross-Claim as it does not contain any allegations against him.

180CB. The Second Cross-Respondent does not plead to paragraph 180CB of the Amended Third Cross-Claim as it does not contain any allegations against him.

180D. The Second Cross-Respondent does not plead to paragraph 180D of the Amended Third Cross-Claim as it does not contain any allegations against him.

Gréwal

180E. As to paragraph 180E of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations contained therein because they do not contain any allegations against him, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

180F. As to paragraph 180F of the Amended Third Cross-Claim, the Second Cross-Respondent repeats paragraph 105.2 above.

180G. As to paragraph 180G of the Amended Third Cross-Claim, the Second Cross-Respondent repeats paragraphs 36 and 104 above.

180H. As to paragraph 180H of the Amended Third Cross-Claim, the Second Cross-Respondent:

180H.1 repeats paragraphs 180F and 180G above;

180H.2 denies Vocation's Further August Contraventions;

180H.3 further says that if there was such conduct (which is denied) he denies that he was involved in Vocation's Further August Contraventions within the meaning of section 79 of the *Corporations Act*, the *ASIC Act* and section 2 of the *Australian Consumer Law*.

#### Dawkins

180I. The Second Cross-Respondent does not plead to paragraph 180I of the Amended Third Cross-Claim as it does not contain any allegations against him.

180J. The Second Cross-Respondent does not plead to paragraph 180J of the Amended Third Cross-Claim as it does not contain any allegations against him.

180K. The Second Cross-Respondent does not plead to paragraph 180K of the Amended Third Cross-Claim as it does not contain any allegations against him.

180L. The Second Cross-Respondent does not plead to paragraph 180L of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **First Review Scope Representation, Second Review Scope Representation, Second No Suspension Representation, Second Reasonable Grounds Representation and Second Continuing Representation**

#### Hutchinson

180M. The Second Cross-Respondent does not plead to paragraph 180M of the Amended Third Cross-Claim as it does not contain any allegations against him.

180N. The Second Cross-Respondent does not plead to paragraph 180N of the Amended Third Cross-Claim as it does not contain any allegations against him.

180O. The Second Cross-Respondent does not plead to paragraph 180O of the Amended Third Cross-Claim as it does not contain any allegations against him.

180P. The Second Cross-Respondent does not plead to paragraph 180P of the Amended Third Cross-Claim as it does not contain any allegations against him.

## Gréwal

180Q. As to paragraph 180Q of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations contained therein because they do not contain any allegations against him, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

180R. As to paragraph 180R of the Amended Third Cross-Claim, the Second Cross-Respondent repeats paragraph 105.4 above.

180S. As to paragraph 180S of the Amended Third Cross-Claim, the Second Cross-Respondent repeats paragraphs 36 and 104 above.

180T. As to paragraph 180T of the Amended Third Cross- Claim, the Second Cross-Respondent:

180T.1 repeats paragraphs 180R and 180S above;

180T.2 denies Vocation's Further 10 September Contraventions;

180T.3 further says that if there was such conduct (which is denied) he denies that he was involved in Vocation's Further 10 September Contraventions within the meaning of section 79 of the *Corporations Act*, the *ASIC Act* and section 2 of the *Australian Consumer Law*.

## Dawkins

180U. The Second Cross-Respondent does not plead to paragraph 180U of the Amended Third Cross-Claim as it does not contain any allegations against him.

180V. The Second Cross-Respondent does not plead to paragraph 180V of the Amended Third Cross-Claim as it does not contain any allegations against him.

180W. The Second Cross-Respondent does not plead to paragraph 180W of the Amended Third Cross-Claim as it does not contain any allegations against him.

180X. The Second Cross-Respondent does not plead to paragraph 180X of the Amended Third Cross-Claim as it does not contain any allegations against him.

**Third Review Scope Representation, Third No Suspension Representation, Third Reasonable Grounds Representation and Third Continuing Representation**

Hutchinson

180Y. The Second Cross-Respondent does not plead to paragraph 180Y of the Amended Third Cross-Claim as it does not contain any allegations against him.

180Z. The Second Cross-Respondent does not plead to paragraph 180Z of the Amended Third Cross-Claim as it does not contain any allegations against him.

180ZA. The Second Cross-Respondent does not plead to paragraph 180ZA of the Amended Third Cross-Claim as it does not contain any allegations against him.

180ZB. The Second Cross-Respondent does not plead to paragraph 180ZB of the Amended Third Cross-Claim as it does not contain any allegations against him.

Gréwal

180ZC. As to paragraph 180ZC of the Amended Third Cross-Claim, the Second Cross-Respondent does not admit the allegations contained therein because they do not contain allegations made against him, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made against him.

180ZD. As to paragraph 180ZD of the Amended Third Cross-Claim, the Second Cross-Respondent repeats paragraph 105.5 above.

180ZE. As to paragraph 180ZE of the Amended Third Cross-Claim, the Second Cross-Respondent repeats paragraphs 36 and 104 above.

180ZF. As to paragraph 180ZF of the Amended Third Cross- Claim, the Second Cross-Respondent:

180ZF.1 repeats paragraphs 180R and 180S above;

180ZF.2 denies Vocation's Further 18 September Contraventions;

180ZF.3 further says that if there was such conduct (which is denied) he denies that he was involved in Vocation's Further 18 September Contraventions within the meaning of section 79 of the *Corporations Act*, the *ASIC Act* and

section 2 of the *Australian Consumer Law*.

### Dawkins

180ZG. The Second Cross-Respondent does not plead to paragraph 180ZG of the Amended Third Cross-Claim as it does not contain any allegations against him.

180ZH. The Second Cross-Respondent does not plead to paragraph 180ZH of the Amended Third Cross-Claim as it does not contain any allegations against him.

180ZI. The Second Cross-Respondent does not plead to paragraph 180ZI of the Amended Third Cross-Claim as it does not contain any allegations against him.

180ZJ. The Second Cross-Respondent does not plead to paragraph 180ZJ of the Amended Third Cross-Claim as it does not contain any allegations against him.

## **FY14 ANNUAL REPORT CONTRAVENTIONS OF HUTCHINSON, DAWKINS, TUCKER, TREDENICK, HALLEY AND VOCATION**

### **Compliance requirements and legal duties**

181. The Second Cross-Respondent does not plead to paragraph 181 of the Amended Third Cross-Claim as it does not contain any allegations against him.

182. The Second Cross-Respondent does not plead to paragraph 182 of the Amended Third Cross-Claim as it does not contain any allegations against him.

### **PwC's retainer with Vocation**

183. The Second Cross-Respondent admits the allegations contained in paragraph 183 of the Amended Third Cross-Claim.

184. The Second Cross-Respondent admits the allegations contained in paragraph 184 of the Amended Third Cross-Claim.

### **Director's FY14 Accounts Representations**

185. The Second Cross-Respondent does not plead to paragraph 185 of the Amended Third Cross-Claim as it does not contain any allegations against him.

186. The Second Cross-Respondent does not plead to paragraph 186 of the Amended Third Cross-Claim as it does not contain any allegations against him.



187. The Second Cross-Respondent does not plead to paragraph 187 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **Vocation's FY14 Accounts Representations**

188. The Second Cross-Respondent does not plead to paragraph 188 of the Amended Third Cross-Claim as it does not contain any allegations against him.

189. The Second Cross-Respondent does not plead to paragraph 189 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **Allegations made by the Applicant in the FACSOC regarding the FY14 Financial Statements**

190. The Second Cross-Respondent does not plead to paragraph 190 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **Directors' contraventions in respect of FY14 Accounts**

191. The Second Cross-Respondent does not plead to paragraph 191 of the Amended Third Cross-Claim as it does not contain any allegations against him.

192. The Second Cross-Respondent does not plead to paragraph 192 of the Amended Third Cross-Claim as it does not contain any allegations against him.

193. The Second Cross-Respondent does not plead to paragraph 193 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **Vocation's contraventions in respect of FY14 Accounts**

194. The Second Cross-Respondent does not plead to paragraph 194 of the Amended Third Cross-Claim as it does not contain any allegations against him.

195. The Second Cross-Respondent does not plead to paragraph 195 of the Amended Third Cross-Claim as it does not contain any allegations against him.

196. The Second Cross-Respondent does not plead to paragraph 196 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **HUTCHINSON'S COMPLIANCE, IMMATERIAL RISK AND MATERIALITY CONTRAVENTIONS**

197. The Second Cross-Respondent does not plead to paragraph 197 of the Amended

Third Cross-Claim as it does not contain any allegations against him.

198. The Second Cross-Respondent does not plead to paragraph 198 of the Amended Third Cross-Claim as it does not contain any allegations against him.

199. The Second Cross-Respondent does not plead to paragraph 199 of the Amended Third Cross-Claim as it does not contain any allegations against him.

200. The Second Cross-Respondent does not plead to paragraph 200 of the Amended Third Cross-Claim as it does not contain any allegations against him.

201. The Second Cross-Respondent does not plead to paragraph 201 of the Amended Third Cross-Claim as it does not contain any allegations against him.

202. The Second Cross-Respondent does not plead to paragraph 202 of the Amended Third Cross-Claim as it does not contain any allegations against him.

203. The Second Cross-Respondent does not plead to paragraph 203 of the Amended Third Cross-Claim as it does not contain any allegations against him.

204. The Second Cross-Respondent does not plead to paragraph 204 of the Amended Third Cross-Claim as it does not contain any allegations against him.

**HUTCHINSON'S FURTHER AUGUST CONTRAVENTIONS, FURTHER 10 SEPTEMBER CONTRAVENTIONS AND FURTHER 18 SEPTEMBER CONTRAVENTIONS**

204A. The Second Cross-Respondent does not plead to paragraph 204A of the Amended Third Cross-Claim as it does not contain any allegations against him.

204B. The Second Cross-Respondent does not plead to paragraph 204B of the Amended Third Cross-Claim as it does not contain any allegations against him.

204C. The Second Cross-Respondent does not plead to paragraph 204C of the Amended Third Cross-Claim as it does not contain any allegations against him.

204CA. The Second Cross-Respondent does not plead to paragraph 204CA of the Amended Third Cross-Claim as it does not contain any allegations against him.

204CB. The Second Cross-Respondent does not plead to paragraph 204CB of the Amended Third Cross-Claim as it does not contain any allegations against him.

204D. The Second Cross-Respondent does not plead to paragraph 204D of the Amended Third Cross-Claim as it does not contain any allegations against him.

204E. The Second Cross-Respondent does not plead to paragraph 204E of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **HUTCHINSON'S FY14 RESULTS CONTRAVENTIONS**

205. The Second Cross-Respondent does not plead to paragraph 205 of the Amended Third Cross-Claim as it does not contain any allegations against him.

206. The Second Cross-Respondent does not plead to paragraph 206 of the Amended Third Cross-Claim as it does not contain any allegations against him.

207. The Second Cross-Respondent does not plead to paragraph 207 of the Amended Third Cross-Claim as it does not contain any allegations against him.

208. The Second Cross-Respondent does not plead to paragraph 208 of the Amended Third Cross-Claim as it does not contain any allegations against him.

209. The Second Cross-Respondent does not plead to paragraph 209 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **HUTCHINSON'S FY15 EARNINGS GUIDANCE AND BASIS CONTRAVENTIONS**

210. The Second Cross-Respondent does not plead to paragraph 210 of the Amended Third Cross-Claim as it does not contain any allegations against him.

211. The Second Cross-Respondent does not plead to paragraph 211 of the Amended Third Cross-Claim as it does not contain any allegations against him.

212. The Second Cross-Respondent does not plead to paragraph 212 of the Amended Third Cross-Claim as it does not contain any allegations against him.

213. The Second Cross-Respondent does not plead to paragraph 213 of the Amended Third Cross-Claim as it does not contain any allegations against him.

214. The Second Cross-Respondent does not plead to paragraph 214 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **VOCATION'S DUE DILIGENCE QUESTIONNAIRE CONTRAVENTIONS**

214A. The Second Cross-Respondent does not plead to paragraph 214A of the Amended Third Cross-Claim as it does not contain any allegations against him.

214B. The Second Cross-Respondent does not plead to paragraph 214B of the Amended Third Cross-Claim as it does not contain any allegations against him.

- 214C. The Second Cross-Respondent does not plead to paragraph 214C of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214D. The Second Cross-Respondent does not plead to paragraph 214D of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214E. The Second Cross-Respondent does not plead to paragraph 214E of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 204E. The Second Cross-Respondent does not plead to paragraph 204E of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214F. The Second Cross-Respondent does not plead to paragraph 214F of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214G. The Second Cross-Respondent does not plead to paragraph 214G of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214H. The Second Cross-Respondent does not plead to paragraph 214H of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214I. The Second Cross-Respondent does not plead to paragraph 214I of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214J. The Second Cross-Respondent does not plead to paragraph 214J of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214K. The Second Cross-Respondent does not plead to paragraph 214K of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214L. The Second Cross-Respondent does not plead to paragraph 214L of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214M. The Second Cross-Respondent does not plead to paragraph 214M of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214MA. The Second Cross-Respondent does not plead to paragraph 214MA of the Amended Third Cross-Claim as it does not contain any allegations against him.
- 214N. The Second Cross-Respondent does not plead to paragraph 214N of the Amended

Third Cross-Claim as it does not contain any allegations against him.

214O. The Second Cross-Respondent does not plead to paragraph 214O of the Amended Third Cross-Claim as it does not contain any allegations against him.

204P. The Second Cross-Respondent does not plead to paragraph 214P of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **HUTCHINSON'S DUE DILIGENCE QUESTIONNAIRE CONTRAVENTIONS**

214Q. The Second Cross-Respondent does not plead to paragraph 214Q of the Amended Third Cross-Claim as it does not contain any allegations against him.

214R. The Second Cross-Respondent does not plead to paragraph 214R of the Amended Third Cross-Claim as it does not contain any allegations against him.

214S. The Second Cross-Respondent does not plead to paragraph 214S of the Amended Third Cross-Claim as it does not contain any allegations against him.

214SA. The Second Cross-Respondent does not plead to paragraph 214SA of the Amended Third Cross-Claim as it does not contain any allegations against him.

214SB. The Second Cross-Respondent does not plead to paragraph 214SB of the Amended Third Cross-Claim as it does not contain any allegations against him.

214T. The Second Cross-Respondent does not plead to paragraph 214T of the Amended Third Cross-Claim as it does not contain any allegations against him.

214U. The Second Cross-Respondent does not plead to paragraph 214U of the Amended Third Cross-Claim as it does not contain any allegations against him.

214V. The Second Cross-Respondent does not plead to paragraph 214V of the Amended Third Cross-Claim as it does not contain any allegations against him.

214W. The Second Cross-Respondent does not plead to paragraph 214W of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **HUTCHINSON'S INVOLVEMENT IN VOCATION'S DDQ CONTRAVENTIONS**

214X. The Second Cross-Respondent does not plead to paragraph 214X of the Amended Third Cross-Claim as it does not contain any allegations against him.

214Y. The Second Cross-Respondent does not plead to paragraph 214Y of the Amended Third Cross-Claim as it does not contain any allegations against him.

214Z. The Second Cross-Respondent does not plead to paragraph 214Z of the Amended Third Cross-Claim as it does not contain any allegations against him.

214ZA. The Second Cross-Respondent does not plead to paragraph 214ZA of the Amended Third Cross-Claim as it does not contain any allegations against him.

214ZB. The Second Cross-Respondent does not plead to paragraph 214ZB of the Amended Third Cross-Claim as it does not contain any allegations against him.

214ZC. The Second Cross-Respondent does not plead to paragraph 214ZC of the Amended Third Cross-Claim as it does not contain any allegations against him.

214ZD. The Second Cross-Respondent does not plead to paragraph 214ZD of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **HUTCHINSON'S SEPTEMBER PLACEMENT CONTRAVENTION**

215. The Second Cross-Respondent does not plead to paragraph 215 of the Amended Third Cross-Claim as it does not contain any allegations against him.

216. The Second Cross-Respondent does not plead to paragraph 216 of the Amended Third Cross-Claim as it does not contain any allegations against him.

217. The Second Cross-Respondent does not plead to paragraph 217 of the Amended Third Cross-Claim as it does not contain any allegations against him.

218. The Second Cross-Respondent does not plead to paragraph 218 of the Amended Third Cross-Claim as it does not contain any allegations against him.

219. The Second Cross-Respondent does not plead to paragraph 219 of the Amended Third Cross-Claim as it does not contain any allegations against him.

#### **HUTCHINSON'S CONTINUING FY15 EARNINGS GUIDANCE AND BASIS CONTRAVENTIONS**

220. The Second Cross-Respondent does not plead to paragraph 220 of the Amended Third Cross-Claim as it does not contain any allegations against him.

221. The Second Cross-Respondent does not plead to paragraph 221 of the Amended Third Cross-Claim as it does not contain any allegations against him.

222. The Second Cross-Respondent does not plead to paragraph 222 of the Amended Third Cross-Claim as it does not contain any allegations against him.
223. The Second Cross-Respondent does not plead to paragraph 223 of the Amended Third Cross-Claim as it does not contain any allegations against him.
224. The Second Cross-Respondent does not plead to paragraph 224 of the Amended Third Cross-Claim as it does not contain any allegations against him.
225. The Second Cross-Respondent does not plead to paragraph 225 of the Amended Third Cross-Claim as it does not contain any allegations against him.

### **HUTCHINSON'S CONTINUOUS DISCLOSURE REPRESENTATIONS**

226. The Second Cross-Respondent does not plead to paragraph 226 of the Amended Third Cross-Claim as it does not contain any allegations against him.
227. The Second Cross-Respondent does not plead to paragraph 227 of the Amended Third Cross-Claim as it does not contain any allegations against him.
228. The Second Cross-Respondent does not plead to paragraph 228 of the Amended Third Cross-Claim as it does not contain any allegations against him.
229. The Second Cross-Respondent does not plead to paragraph 229 of the Amended Third Cross-Claim as it does not contain any allegations against him.
230. The Second Cross-Respondent does not plead to paragraph 230 of the Amended Third Cross-Claim as it does not contain any allegations against him.

### **GRÉWAL'S COMPLIANCE, IMMATERIAL RISK AND MATERIALITY CONTRAVENTIONS**

231. As to paragraph 231 of the Amended Third Cross-Claim, the Second Cross-Respondent repeats paragraphs 100 and 104 to 106 above.
232. As to paragraph 232 of the Amended Third Cross-Claim, the Second Cross-Respondent:
- 232.1. repeats sub-paragraphs 105.1.1 and 105.1.2;
  - 232.2. in respect of sub-paragraph (a):
    - 232.2.1. says he was not, on his own, the person who made the FY14 Results Presentation;
    - 232.2.2. says the FY14 Results Presentation was delivered by Langtree, Hutchinson and the Second Cross-Respondent;

232.2.3. otherwise admits the sub-paragraph in so far as it relates to the Second-Cross Respondent having participated in the FY14 Results Presentation;

232.3. otherwise admits the allegations contained in sub-paragraph (b).

233. As to paragraph 233 of the Amended Third Cross-Claim, the Second Cross-Respondent:

233.1. repeats sub-paragraphs 105.1.1 and 105.1.2;

233.2. otherwise denies the allegations contained in paragraph 233 of the Amended Third Cross-Claim.

234. As to paragraph 234 of the Amended Third Cross-Claim, the Second Cross-Respondent:

234.1. repeats paragraphs 231 to 233 above;

234.2. otherwise denies the allegations contained therein.

235. The Second Cross-Respondent denies the allegations contained in paragraph 235 of the Amended Third Cross-Claim.

236. On the assumption that the reference in this paragraph to "Hutchinson" should be a reference to "Gréwal", the Second Cross-Respondent denies the allegations contained in paragraph 236 of the Amended Third Cross-Claim.

237. The Second Cross-Respondent denies the allegations contained in paragraph 237 of the Amended Third Cross-Claim.

## **GRÉWAL'S FY14 RESULTS CONTRAVENTIONS**

238. As to paragraph 238 of the Amended Third Cross-Claim, the Second Cross-Respondent repeats paragraphs 110, 115 to 118 and 232 to 233 above.

239. As to paragraph 239 of the Amended Third Cross-Claim, the Second Cross-Respondent:

239.1. repeats paragraphs 115 to 118 above;

239.2. denies he made the August FY14 Results Representations, if and to the extent they existed;

239.3. otherwise denies the allegations contained therein.

240. The Second Cross-Respondent denies the allegations contained in paragraph 240 of the Amended Third Cross-Claim.



241. The Second Cross-Respondent denies the allegations contained in paragraph 241 of the Amended Third Cross-Claim.

242. The Second Cross-Respondent denies the allegations contained in paragraph 242 of the Amended Third Cross-Claim.

### **GRÉWAL'S FY15 EARNINGS GUIDANCE AND BASIS CONTRAVENTIONS**

243. As to paragraph 243 of the Amended Third Cross-Claim, the Second Cross-Respondent repeats paragraphs 123, 129 to 133 and 232 to 233 above.

244. As to paragraph 244 of the Amended Third Cross-Claim, the Second Cross-Respondent:

244.1. repeats paragraphs 129 to 133 above;

244.2. denies he made the August FY15 Earnings Guidance Representation and the August FY15 Earnings Guidance Basis Representation if and to the extent they existed;

244.3. otherwise denies the allegations contained therein.

245. The Second Cross-Respondent denies the allegations contained in paragraph 245 of the Amended Third Cross-Claim.

246. The Second Cross-Respondent denies the allegations contained in paragraph 246 of the Amended Third Cross-Claim.

247. The Second Cross-Respondent denies the allegations contained in paragraph 247 of the Amended Third Cross-Claim.

### **GRÉWAL'S DUE DILIGENCE QUESTIONNAIRE CONTRAVENTIONS**

247A. As to paragraph 247A of the Amended Third Cross-Claim, the Second Cross-Respondent:

247A.1. in respect of paragraph 214A:

(a) admits the allegations contained in paragraph 214A(a);

(b) as to paragraphs 214A(b) and 214A(c):

i) says that it is recorded in the minutes of the 7 September Board Meeting that the DDQ was discussed and:

A. Directors asked management a number of

questions and certain amendments were agreed;

B. Hutchinson confirmed that in addition to the requirements for himself and Gréwal to sign the DDQ, Wendy Bonnici, Amanda King and Michael Langtree would also sign the DDQ;

- ii) will rely at trial on the full terms, meaning and effect of the minutes of the 7 September Board Meeting;
- iii) otherwise does not know and therefore cannot admit the allegations contained therein.

247A.2. in respect of paragraph 214B:

- (a) says that Macquarie's involvement and participation in the proposed September placement ceased on 9 September 2014;
- (b) otherwise admits the allegations contained therein.

247A.3. in respect of paragraph 214C:

- (a) admits that at 9.51pm on 8 September 2014, Hutchinson sent an email to Macquarie and UBS to formally commence the Proposed Placement;
- (b) refers to and repeats paragraph 247A.2 above;
- (c) otherwise does not know and therefore cannot admit the allegations contained therein.

247A.4. in respect of paragraph 214D:

- (a) admits the allegations contained therein; and
- (b) says that attached to the email referred to in paragraph 214D was a copy of the current draft, as at that date, of the Macquarie Due Diligence Questionnaire.

247A.5. in respect of paragraph 214E, admits the allegations contained therein;

247A.6. in respect of paragraph 214F, admits the allegations contained therein;

247A.7. in respect of paragraph 214G, admits the allegations contained therein;

247A.8. in respect of paragraph 214H, admits the allegations contained therein;

247A.9. in respect of paragraph 214I, insofar as it is alleged that the Second Cross-Respondent made the DDQ Representations to UBS:

- (a) denies the allegations contained therein;
- (b) says further that in respect of the alleged DDQ Representations insofar as they pertain to him, in the event they were made (which he denies), the Second Cross-Respondent had regard to and relied on:
  - i) information and opinion provided by Vocation's Board of Directors;
  - ii) information and opinion provided by the Victorian Management Team;
  - iii) the fact that Vocation's Board and the Victorian Management Team had the following attributes that Gréwal did not have:
    - A. most of them had specialist knowledge and/or experience of the vocational education and training industry;
    - B. in some cases they were founders of Vocation's operating subsidiaries in Victoria;
    - C. in most cases they were experienced in the vocational education and training industry;
    - D. the Third Cross-Respondent and the Victorian Management Team were experienced in dealing with regulatory and governmental bodies relating to the vocational education and training industry;
    - E. the fact that the Third Cross-Respondent was, and was known by the Second Cross-Respondent to be, a former Australian Treasurer, former Minister for Employment, Education and Training, and former Minister for Finance, and a person who had extensive experience in vocational

education and training and government funding of such;

- iv) advice and information provided by JWS;
  - v) Vocation's management structure and practice was such that the Second Cross-Respondent, as CFO and Company Secretary, did not engage with industry regulators or the DEECD;
  - vi) the duties in respect of which the Second Cross-Respondent was employed and/or appointed by Vocation were such that engagement with industry regulators or the DEECD and/or assessment of regulatory matters fell outside the scope of his duties;
  - vii) the 24 October 2014 board resolution, whereby the Board of Directors authorised the First Cross-Respondent to pursue a commercial settlement with the Department;
  - viii) the approval given by the Board at the meeting held on 26 October 2014, whereby the First Cross-Respondent was delegated with authority to finalise the 27 October Announcement and release the announcement to the ASX;
- (c) says that if he was involved in the making of the DDQ Representations as alleged (which he denies), they were representations made on the basis of reasonable grounds;

247A.10. in respect of paragraph 214J, denies the allegations contained therein;

247A.11 in respect of paragraph 214MA:

- (a) admits that on 1 November 2019 Nicholas J made declarations of contravention in *Australian Securities and Investments Commission v Vocation Limited (In Liquidation) (No 2)* [2019] FCA 1783;
- (b) otherwise denies the allegations contained therein.

247B. As to paragraph 247B of the Amended Third Cross-Claim, the Second Cross-Respondent:

247B.1 refers to and repeats paragraph 247A.9 above;

247B.2 denies the allegations contained therein.

247C. The Second Cross-Respondent denies the allegations contained in paragraph 247C of the Amended Third Cross-Claim.

247CA. As to paragraph 247CA of the Amended Third Cross-Claim, the Second Cross-Respondent:

247CA.1 admits the allegations contained therein;

247CA.2 for the absence of doubt:

(a) denies the substance of the declarations referred to therein;

(b) denies the relevance of the declarations referred to therein;

247CB. The Second Cross-Respondent denies the allegations contained in paragraph 247CB of the Amended Third Cross-Claim.

247D. The Second Cross-Respondent denies the allegations contained in paragraph 247D of the Amended Third Cross-Claim.

247E. The Second Cross-Respondent denies the allegations contained in paragraph 247E of the Amended Third Cross-Claim.

247F. The Second Cross-Respondent admits the allegations contained in paragraph 247F of the Amended Third Cross-Claim.

247G. The Second Cross-Respondent denies the allegations contained in paragraph 247G of the Amended Third Cross-Claim.

## **GRÉWAL'S INVOLVEMENT IN VOCATION'S DDQ CONTRAVENTIONS**

247H. As to paragraph 247H of the Amended Third Cross-Claim, the Second Cross-Respondent:

247H.1. in respect of paragraphs 214A to 214J and 214MA of the Amended Third Cross-Claim, refers to and repeats paragraph 247A above;

247H.2 in respect of paragraphs 214K to 214M and 214N to 214P, the Second Cross-Respondent does not admit the allegations contained therein because

they do not contain allegations against him, save as otherwise expressly pleaded below in the context of responding to the pleaded allegations made against him.

247I. As to paragraph 247I of the Amended Third Cross-Claim, the Second Cross-Respondent:

247I.1. refers to and repeats paragraph 247A.9(b) above;

247I.2. says further that Hutchinson completed most of the statements in the UBS DDQ relevant to, and in respect of, the BAWM Investigation and the Aspin Investigation;

247I.3. says further that, to the extent that he contributed to or amended any of the statements contained in the UBS DDQ regarding the BAWM Investigation and the Aspin Investigation, in making such contributions or amendments he relied upon information and reports provided to him by:

- (a) the First Cross-Respondent;
- (b) the Third Cross-Respondent;
- (c) the Board of Directors of Vocation, comprising the First, Third, and Fourth to Sixth Cross-Respondents;
- (d) JWS; and
- (e) the Victorian Management Team;

and such contributions or amendments were reviewed and approved by the First Cross-Respondent;

247I.4. otherwise denies the allegations contained therein;

247I.5 will rely at trial on the full terms, meaning and effect of the UBS DDQ.

247J. As to paragraph 247J of the Amended Third Cross-Claim, the Second Cross-Respondent:

247I.1. refers to and repeats paragraph 145 above;

247I.2. otherwise denies the allegations contained therein.

247K. The Second Cross-Respondent admits the allegations contained in paragraph 247K of the Amended Third Cross-Claim.

247KA. As to paragraph 247KA of the Amended Third Cross-Claim, the Second Cross-Respondent refers to and repeats paragraph 247CA above.

247KB. The Second Cross-Respondent denies the allegations contained in paragraph 247KB of the Amended Third Cross-Claim.

247L. As to paragraph 247L of the Amended Third Cross-Claim, the Second Cross-Respondent:

247L.1. refers to and repeats paragraphs 36, 52, 68, 104, 115, 129, 145, 247H, 247I, 247J, 247K, 247KA and 247KB above;

247L.2. denies Vocation's DDQ Contraventions;

180H.3 further says that if there was such conduct (which is denied) he denies that he was involved in Vocation's DDQ Contraventions within the meaning of section 79 of the *Corporations Act*, the *ASIC Act* and section 2 of the *Australian Consumer Law*.

## **GRÉWAL'S SEPTEMBER PLACEMENT CONTRAVENTION**

248. As to paragraph 248 of the Amended Third Cross-Claim, the Second Cross-Respondent repeats paragraphs 139 and 145 to 149 above.

249. As to paragraph 249 of the Amended Third Cross-Claim, the Second Cross-Respondent:

249.1. repeats paragraphs 145 to 149 above;

249.2. denies he made the September Placement Representation if and to the extent it existed;

249.3. denies the allegations contained therein.

250. The Second Cross-Respondent denies the allegations contained in paragraph 250 of the Amended Third Cross-Claim.
251. The Second Cross-Respondent denies the allegations contained in paragraph 251 of the Amended Third Cross-Claim.
252. The Second Cross-Respondent denies the allegations contained in paragraph 252 of the Amended Third Cross-Claim.

### **GRÉWAL'S CONTINUOUS DISCLOSURE REPRESENTATIONS CONTRAVENTIONS**

253. As to paragraph 253 of the Amended Third Cross-Claim, the Second Cross-Respondent repeats paragraphs 168 and 173 to 176 above.
254. As to paragraph 254 of the Amended Third Cross-Claim, the Second Cross-Respondent:
- 254.1. repeats sub-paragraphs 174.1 and 174.2 above;
  - 254.2. admits the allegations contained in paragraph 254 of the Amended Third Cross-Claim.
255. As to paragraph 255 of the Amended Third Cross-Claim, the Second Cross-Respondent:
- 255.1. repeats paragraphs 253 to 254 above;
  - 255.2. denies he made the Continuous Disclosure Representations;
  - 255.3. otherwise denies the allegations contained in paragraph 255 of the Amended Third Cross-Claim.
256. The Second Cross-Respondent denies the allegations contained in paragraph 256 of the Amended Third Cross-Claim.
257. The Second Cross-Respondent denies the allegations contained in paragraph 257 of the Amended Third Cross-Claim.
258. The Second Cross-Respondent denies the allegations contained in paragraph 258 of the Amended Third Cross-Claim.

### **FURTHER OR ALTERNATIVE LIABILITY OF HUTCHINSON, GRÉWAL AND DAWKINS AS ALLEGED IN THE 2FACSOC**

- 258A. As to paragraph 258A of the Amended Third Cross-Claim, the Second Cross-Respondent refers to and repeats paragraphs 404 to 542 of his Defence to the



SFACSOC dated 17 January 2020.

## RELIEF

### Claims for contribution and/or indemnity

259. The Second Cross-Respondent does not plead to paragraph 259 of the Amended Third Cross-Claim as it does not contain any allegations against him.

260. As to paragraph 260 of the Amended Third Cross-Claim, the Second Cross-Respondent:

260.1. denies the contraventions insofar as they relate to him;

260.2. further or in the alternative, denies that the contraventions alleged in subparagraphs (c), (m), (n), (na), (o), (p), (q), or (s):

260.2.1. caused and/or contributed to the Applicant's and Group Members' Loss and Damage;

260.2.2. give rise to a liability for that same loss and damage as that caused by the Cross-Claimant as alleged in the FACSOC pursuant to:

(c) section 1941I or section 1325 of the *Corporations Act*;

(d) section 12GF and/or 12 GM of the *ASIC Act*;

(e) section 236 of the *Australian Consumer Law*;

260.3. otherwise does not plead to the allegations contained therein as they are not allegations against him.

261. The Second Cross-Respondent does not plead to paragraph 261 of the Amended Third Cross-Claim as it does not contain any allegations against him.

262. As to paragraph 262 of the Amended Third Cross-Claim, the Second Cross-Respondent:

262.1. denies the allegations contained therein insofar as they relate to him;

262.2. further or in the alternative, says that PwC is not entitled to contribution and/or indemnity from him pursuant to Part IV of the *Wrongs Act 1958* (Vic) or to equitable contribution because it would not be just and equitable that he make such contribution since:

262.2.1. in respect of the Second Cross-Respondent's alleged involvement

in Vocation's Continuous Disclosure Contraventions:

- (a) the Second Cross-Respondent had regard to and relied on:
  - i. information and opinion provided by Vocation's Board of Directors, being the First and Third to Sixth Cross-Respondents to the Amended Third Cross-Claim;
  - ii. information and opinion provided by Victorian Management;
  - iii. the fact that Vocation's Board of Directors and Victorian Management had the following attributes that the Second Cross-Respondent did not have:
    - A. most of them had specialist knowledge and/or experience of the vocational education and training industry;
    - B. in some cases they were founders of Vocation's operating subsidiaries in Victoria;
    - C. in most cases they were experienced in the vocational education and training industry;
    - D. Dawkins and Victorian Management were experienced in dealing with regulatory and governmental bodies relating to the vocational education and training industry;
  - iv. the fact that the Third Cross-Respondent was, and was known by the Second Cross-Respondent to be, a former Australian Treasurer, former Minister for Employment, Education and Training, and former Minister for Finance, and a person who had extensive experience in vocational education and training and government funding of such;
  - v. advice and information provided by JWS and Company Matters;
  - vi. Vocation's management structure and practice was such that the Second Cross-Respondent, as CFO and

Company Secretary, did not engage with industry regulators or the Department;

vii. the duties in respect of which the Second Cross-Respondent was employed and/or appointed by Vocation were such that engagement with industry regulators or the Department and/or assessment of regulatory matters fell outside the scope of his duties;

(b) he took the steps set out at paragraphs 38.4, 54.4.1, 70.4.1, 61K.4.1, 85.4.1, and 99I.3.1 which were reasonable in the circumstances set out at paragraphs 38.5, 54.4.2, 70.4.2, 61K.4.2, 85.4.2, and 99I.3.2 to ensure Vocation complied with its obligations under section 674(2) of the *Corporations Act*.

262.2.2. in respect of the alleged Gréwal's Compliance, Immaterial Risk and Materiality Contraventions, Gréwal's FY14 Results Contraventions, Gréwal's FY15 Earnings Guidance and Basis Contraventions, Gréwal's September Placement Contravention and Gréwal's Continuous Disclosure Representations Contraventions, the Second Cross-Respondent:

(a) repeats sub-paragraph 262.2.1 above;

(b) had regard to and relied on PwC who:

i. was retained by Vocation on or about 20 May 2014 to form an opinion about whether the financial report presented to PwC by Vocation's Board of Directors was in accordance with the *Corporations Act* for FY14, including that they have a true and fair view of Vocation's financial position and the consolidated entity's financial position and performance;

ii. conducted an audit of the Vocation's financial report for FY14 to be included in Vocation's Audited Annual Report for the purposes of which they:

A. attended meetings of Vocation's Board of Directors and ARC;

- B. had access to the books and records of Vocation;
  - C. carried out audit testing (including substantive testing and controls testing);
  - D. communicated with and made enquiries of Vocation's management, including by consulting with management in relation to the preparation of detailed accounting papers on all key matters including, amongst other things, revenue recognition;
- iii. advised, by way of the 15 August PwC Report that PwC had completed its audit work in relation to the underlying trading results and revenue recognition and a number of key areas such as acquisition accounting;
- iv. gave the following opinions:
- A. PwC August Opinion, which was given during PwC's audit and prior to the lodgement by Vocation of its Appendix 4E, whereby PwC stated that in PwC's opinion the financial information contained in Vocation's FY14 financial statements upon which the draft Appendix 4E was based, was prepared in compliance with Accounting Standards and/or would give a true and fair view of Vocation's financial position and financial performance in FY14;
  - B. PwC September Opinions which were given in PwC's independent auditor's report dated 2 September 2014, completed following its audit in advance of Vocation lodging the FY14 financial statements with the ASX as part of Vocation's Audited Annual Report, whereby PwC stated to:
    - 1. Vocation and the Second Cross-Respondent that, in their opinion, the financial report contained in the Audited Annual Report gave a true and fair view of Vocation's financial position and financial performance in FY14 and complied with Australian Accounting Standards;

2. members of Vocation (including the Second Cross-Respondent), the market of investors or potential investors in Vocation, that in their opinion, the financial report contained in the Audited Annual Report gave a true and fair view of Vocation's financial position and financial performance in FY14 and complied with Australian Accounting Standards;
- v. made the following representations:
- A. PwC August Representation, whereby PwC represented to Vocation and the Second Cross-Respondent that the PwC August Opinion was based upon reasonable grounds and was the product of an exercise of reasonable skill and care;
  - B. PwC September Representations, whereby PwC represented to:
    1. Vocation and the Second Cross-Respondent that the PwC September Opinion to Vocation was based upon reasonable grounds and was the product of an exercise of reasonable skill and care;
    2. members of Vocation (including the Second Cross-Respondent), the market of investors or potential investors in Vocation, that the PwC September Opinion to ASX was based upon reasonable grounds and was the product of an exercise of reasonable skill and care;
- vi. had regard to and relied on advice, information and resolutions of Vocation's Board of Directors, including:
- A. the 18 July Board Approval, whereby the Board of Directors resolved that Vocation's FY15 budget with an EBITDA of \$68 million be approved;

- B. the 19 August Board Approval, whereby subject to the final review and approval by a committee of any two of Vocation's directors, the Board of Directors resolved that the FY14 Results Documents be approved, the CFO be authorised to sign the FY14 Appendix 4E and the Company Secretary be authorised to lodge the FY14 Results Documents with the ASX immediately;
- C. the 20 August Board Committee Approval, whereby the Board Committee (comprising Halley, Hutchinson and Tucker), resolved pursuant to its delegated authority of the Board of Directors that the FY14 Results Documents be approved, the CFO be authorised to sign the FY14 Appendix 4E and the Company Secretary be authorised to lodge the FY14 Results Documents with the ASX prior to market opening on 21 August 2014;
- D. the approval given by the Board at the meeting held on 25 August 2014 that the Second Cross-Respondent was authorised to release the 25 August Announcement to the ASX;
- E. the 2 September Board Committee Approval, whereby the Board Committee (comprising Halley, Hutchinson and Tucker), resolved pursuant to its delegated authority of the Board of Directors that the Audited Annual Report be approved, the management representation letter to PwC be signed and sent to PwC, the financial report and directors' declaration be sent to PwC and the Company Secretary be authorised to lodge the Audited Annual Report, the independent audit report on the financial report and the directors report with the ASX;
- F. the 8 September Board Approval, whereby the Board of Directors authorised and directed that the Cleansing Notice be lodged with the ASX and the 10 September Announcement be made;

- G. the 10 October Board Approval, whereby the Board of Directors resolved that the 10 September Announcement and the 11 September Announcement be ratified and approved;
  - H. the 24 October 2014 board resolution, whereby the Board of Directors authorised Hutchinson to pursue a commercial settlement with the Department;
  - I. the 26 October Board Approval, whereby Hutchinson was delegated with authority to finalise the 27 October Announcement and release the announcement to the ASX;
  - J. the 18 November Board Approval, whereby the Board of Directors resolved to ratify the approval of the 2 November Announcement, 14 November Announcement and 17 November Announcement and the content therein;
  - K. the 3 December 2014 Board resolution, whereby the Board of Directors resolved to approve Vocation's FY15 EBITDA reforecast of \$25 million to \$30 million and the 4 December Announcement;
- vii. had regard to and relied on advice, information and recommendations of Vocation's ARC, including the 19 August ARC Recommendation whereby the ARC advised and resolved at the ARC meeting held on 19 August 2014 that the FY14 Presentation and the FY14 ASX Announcement be approved and that the Appendix 4E be submitted to the Board for approval, in circumstances where the ARC had responsibility for external auditors and financial reporting pursuant to the ARC Risk Charter;
- viii. says that he, as authorised by the Board of Directors, lodged the following documents to the ASX on behalf of Vocation in good faith and for a proper purpose:
- A. 25 August Announcement;

- B. FY14 Results Documents;
- C. Audited Annual Report;
- D. 10 September Announcement;
- E. 11 September Announcement;
- F. FY14 Annual Report;
- G. Cleansing Notice;
- H. 27 October Announcement;
- I. 30 October Announcements;
- J. 2 November Announcement;
- K. 14 November Announcement;
- L. 17 November Announcement;
- M. 27 November Announcement;
- N. 4 December Announcement;

ix. says that if he was involved in the making of the representations as alleged (which he denies) they were representations made on the basis of reasonable grounds pleaded in paragraph 130, 131, 160 and 161 above;

262.3. reserves the right to add to the matters listed in paragraph 262.2 after discovery and evidence;

262.4. further, or in the further alternative, says that the contribution and/or indemnity pursuant to Part IV of the *Wrongs Act 1958* (Vic) or equitable contribution to which PwC is entitled is limited by the factors set out in subparagraph 262.2 above;

262.5. otherwise does not plead to the allegations contained therein as they are not allegations against him.



## RESERVATION OF RIGHTS

263. As to paragraph 263 of the Amended Third Cross-Claim, the Second Cross-Respondent:

263.1. denies the effectiveness of the purported reservation of rights;

263.2. says that:

263.2.1. if PwC subsequently seeks to further amend the Amended Third Cross-Claim in order to claim damages from the Second Cross-Respondent, as foreshadowed in paragraph 263, then, to the extent that the Second Cross-Respondent is in any way prejudiced by any such amendments, he will oppose those amendments on the ground that the claim for damages should have been brought forward by PwC together with the rest of its cross-claim; and

263.2.2. if PwC seeks to claim damages from the Second Cross-Respondent in subsequent proceedings, as foreshadowed in paragraph 263, the Second Cross-Respondent will oppose such proceedings on the ground that any claim for damages reasonably should have been made by PwC in this proceeding.

Date: 22 April 2020



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Signed by Janette McLennan

Lawyer for the Second Cross-Respondent to  
the Amended Third Cross-Claim

This pleading was prepared by Janette McLennan, lawyer, and settled by Elisa Holmes of Counsel

## **Certificate of lawyer**

I, Janette McLennan, certify to the Court that, in relation to the defence filed on behalf of the Second Cross-Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 22 April 2020



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Signed by Janette McLennan

Lawyer for the Second Cross-Respondent to  
the Amended Third Cross-Claim

## Schedule

No. VID434 of 2015

Federal Court of Australia  
District Registry: Victoria  
Division: General

### **Applicant**

Applicant Cheryl Whittenbury

### **Respondents**

Second Respondent: PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)  
Third Respondent: Mark Edward Hutchinson  
Fourth Respondent: Manvinder Gréwal  
Fifth Respondent: John Sydney Dawkins

### **First Cross-claim**

Cross-claimant: Vocation Limited (in liquidation) (ACN 166 631 330)  
Cross-respondent: The Partners of Johnson Winter & Slattery

### **Second Cross-claim**

Cross-claimant: PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)  
Cross-respondent: The Partners of Johnson Winter & Slattery

### **Third Cross-claim**

Cross-claimant: PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)  
First Cross-respondent: Mark Edward Hutchinson  
Second Cross-respondent: Manvinder Gréwal  
Third Cross-respondent: John Sydney Dawkins  
Fourth Cross-respondent: Stephen John Tucker  
Fifth Cross-respondent: Michelle Kim Tredenick  
Sixth Cross-respondent: Douglas James Halley  
Seventh Cross-respondent: Vocation Limited (in liquidation) (ACN 166 631 330)

### **Fourth Cross-claim**

Cross-claimant: John Sydney Dawkins  
Cross-respondent: The Partners of Johnson Winter & Slattery

**Fifth Cross-claim**

Cross-claimant: The Partners of Johnson Winter & Slattery  
First Cross-respondent: Mark Edward Hutchinson  
Second Cross-respondent: Manvinder Gréwal  
Third Cross-respondent: John Sydney Dawkins  
Fourth Cross-respondent: Stephen John Tucker  
Fifth Cross-respondent: Michelle Kim Tredenick  
Sixth Cross-respondent: Douglas James Halley  
Seventh Cross-respondent: Vocation Limited (in liquidation) (ACN 166 631 330)

**Sixth Cross-claim**

Cross-claimant: Mark Edward Hutchinson  
Cross-respondent: The Partners of Johnson Winter & Slattery

**Seventh Cross-claim**

Cross-claimant: Manvinder Gréwal  
Cross-respondent: The Partners of Johnson Winter & Slattery