



Form 33
Rule 16.32

Defence to Third Cross-Claim

No. VID434 of 2015

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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

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)
Law firm (if applicable) Clyde & Co
Tel 02 9210 4400 Fax 02 9210 4599
Email janette.mclennan@clydeco.com
Address for service Level 15, 333 George Street, Sydney NSW 2000
(include state and postcode)

[Form approved 01/08/2011]

This Defence responds to the Third Cross-Claim filed by the Cross-Claimant by the Second and Third Cross-Claims on 20 July 2018 (**Third Cross-Claim**).

Capitalised terms used but not defined in the Defence to Third Cross-Claim have the same meaning as in the Applicant's Further Amended Consolidated Statement of Claim dated 2 May 2018 (**FACSOC**) and the 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 Third Cross-Claim.

BACKGROUND MATTERS

Parties

1. The Second Cross-Respondent admits the allegations contained in paragraph 1 of the Third Cross-Claim.
2. The Second Cross-Respondent admits the allegations contained in paragraph 2 of the Third Cross-Claim.
3. The Second Cross-Respondent admits the allegations contained in paragraph 3 of the Third Cross-Claim.
4. The Second Cross-Respondent admits the allegations contained in paragraph 4 of the Third Cross-Claim.
5. The Second Cross-Respondent admits the allegations contained in paragraph 5 of the Third Cross-Claim.
6. The Second Cross-Respondent admits the allegations contained in paragraph 6 of the Third Cross-Claim.
7. The Second Cross-Respondent admits the allegations contained in paragraph 7 of the Third Cross-Claim.
8. The Second Cross-Respondent admits the allegations contained in paragraph 8 of the Third Cross-Claim.
9. As to paragraph 9 of the 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 Third Cross-Claim.

The Applicant's claim against Vocation

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

The Applicant's claim against PwC

11. The Second Cross-Respondent admits the allegations contained in paragraph 11 of the 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 Third Cross-Claim.
13. As to paragraph 13 of the 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 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 Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 120 to 210 of the FACSOC, save as otherwise expressly pleaded below in the context of responding to pleaded allegations made 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 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 Third Cross-Claim.

17. The Second Cross-Respondent does not plead to paragraph 17 of the 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 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 Third Cross-Claim.
20. The Second Cross-Respondent does not plead to paragraph 20 of the 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 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 Third Cross-Claim.
23. The Second Cross-Respondent does not plead to paragraph 23 of the 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 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 Third Cross-Claim.
26. The Second Cross-Respondent does not plead to paragraph 26 of the 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 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 Third Cross-Claim.
29. The Second Cross-Respondent does not plead to paragraph 29 of the 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 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 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 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 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 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 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 Third Cross-Claim, the Second Cross-Respondent:
 - 36.1. denies the BAWM Conduct Information, the BAWM Conduct Risk Information, the Systemic Conduct Information and the Systemic Conduct Risk Information;
 - 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 Third Cross-Claim;

- 36.4. denies the allegations contained therein.
37. As to paragraph 37 of the 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 Third Cross-Claim, the Second Cross-Respondent:
- 38.1. repeats paragraphs 30, 36 and 37 above;
- 38.2. further or in the alternative to sub-paragraph 38.1 above, 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 further 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 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 sub-paragraph 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 sub-paragraphs (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 Third Cross-Claim.

40. As to paragraph 40 of the 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 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 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 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 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 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 Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 142 to 149 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 Second Continuous Disclosure Contravention

47. The Second Cross-Respondent does not plead to paragraph 47 of the 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 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 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 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 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 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 or 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 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.
- 53. As to paragraph 53 of the 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 Third Cross-Claim, the Second Cross-Respondent:

- 54.1. denies the allegations contained in paragraph 46 of the Third Cross-Claim;
 - 54.2. repeats paragraphs 52 and 53 above;
 - 54.3. further or in the alternative to sub-paragraphs 54.1 and 54.2 above, 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 further 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 Third Cross-Claim.
56. As to paragraph 56 of the 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 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 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 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 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 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 Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 150 to 155 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 Third Continuous Disclosure Contravention

63. The Second Cross-Respondent does not plead to paragraph 63 of the 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 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 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 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 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 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 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 Third Cross-Claim, the Second Cross-Respondent:
- 70.1. denies the allegations contained in paragraph 62 of the 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 Third Cross-Claim.
72. As to paragraph 72 of the 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 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 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 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 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 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 Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 156 to 161 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 Fourth Continuous Disclosure Contravention

79. The Second Cross-Respondent does not plead to paragraph 79 of the 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 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 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 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 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 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 Third Cross-Claim, the Second Cross-Respondent:
- 85.1. denies the allegations contained in paragraph 78 of the 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 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 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 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 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 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 Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 162 to 167 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 Fifth Continuous Disclosure Contravention

92. The Second Cross-Respondent does not plead to paragraph 92 of the 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 Third Cross-Claim.

106. As to paragraph 106 of the 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 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 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 Third Cross-Claim as it does not contain any allegations against him.

August FY14 Results Representations

110. As to paragraph 110 of the 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 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 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 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 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 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;
- 115.3. 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 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 Third Cross-Claim.
- 117. As to paragraph 117 of the 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 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 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 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 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 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 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 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 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 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 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 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 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 Third Cross-Claim.

131. As to paragraph 131 of the 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 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 Third Cross-Claim.

133. As to paragraph 133 of the 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 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 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 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 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 Third Cross-Claim as it does not contain any allegations against him.

September Placement Representations

139. As to paragraph 139 of the Third Cross-Claim, the Second Cross-Respondent does not admit the allegations made against Vocation in paragraphs 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 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 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 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 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 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 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 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 Third Cross-Claim.

147. As to paragraph 147 of the 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 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 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 Third Cross-Claim.

149. As to paragraph 149 of the 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 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 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 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 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 Third Cross-Claim as it does not contain any allegations against him.

October FY15 Representations

155. As to paragraph 155 of the 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 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 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 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 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 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 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 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 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 Third Cross-Claim.

161.4. otherwise denies the allegations contained in paragraph 161 of the 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 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 Cross-Claim.
163. As to paragraph 163 of the 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 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 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 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 Third Cross-Claim as it does not contain any allegations against him.

Continuous Disclosure Representations

168. As to paragraph 168 of the 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 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 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 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 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 Third Cross-Claim, the Second Cross-Respondent:
- 173.1. repeats paragraphs 36, 52, 68 and 83 above;
 - 173.2. otherwise denies the allegations contained in paragraph 173 of the Third Cross-Claim.
174. As to paragraph 174 of the 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 Third Cross-Claim.
175. As to paragraph 175 of the 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 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 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 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 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 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 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 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 Third Cross-Claim.

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

Director's FY14 Accounts Representations

185. The Second Cross-Respondent does not plead to paragraph 185 of the 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 Third Cross-Claim, the Second Cross-Respondent repeats paragraphs 100 and 104 to 106 above.
232. As to paragraph 232 of the 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 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 Third Cross-Claim.

234. As to paragraph 234 of the 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 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 Third Cross-Claim.

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

GRÉWAL'S FY14 RESULTS CONTRAVENTIONS

238. As to paragraph 238 of the 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 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 Third Cross-Claim.

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

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

GRÉWAL'S FY15 EARNINGS GUIDANCE AND BASIS CONTRAVENTIONS

243. As to paragraph 243 of the 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 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 Third Cross-Claim.
246. The Second Cross-Respondent denies the allegations contained in paragraph 246 of the Third Cross-Claim.
247. The Second Cross-Respondent denies the allegations contained in paragraph 247 of the Third Cross-Claim.

GRÉWAL'S SEPTEMBER PLACEMENT CONTRAVENTION

248. As to paragraph 248 of the Third Cross-Claim, the Second Cross-Respondent repeats paragraphs 139 and 145 to 149 above.
249. As to paragraph 249 of the 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 Third Cross-Claim.
251. The Second Cross-Respondent denies the allegations contained in paragraph 251 of the Third Cross-Claim.
252. The Second Cross-Respondent denies the allegations contained in paragraph 252 of the Third Cross-Claim.

GRÉWAL'S CONTINUOUS DISCLOSURE REPRESENTATIONS CONTRAVENTIONS

253. As to paragraph 253 of the Third Cross-Claim, the Second Cross-Respondent repeats

paragraphs 168 and 173 to 176 above.

254. As to paragraph 254 of the 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 Third Cross-Claim.

255. As to paragraph 255 of the 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 Third Cross-Claim.

256. The Second Cross-Respondent denies the allegations contained in paragraph 256 of the Third Cross-Claim.

257. The Second Cross-Respondent denies the allegations contained in paragraph 257 of the Third Cross-Claim.

258. The Second Cross-Respondent denies the allegations contained in paragraph 258 of the Third Cross-Claim.

RELIEF

Claims for contribution and/or indemnity

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

260. As to paragraph 260 of the 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 sub-paragraphs (c), (m), (n), (o), (p) or (q):

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:

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

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

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

262. As to paragraph 262 of the 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 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 and 85.4.1 which were reasonable in the circumstances set out at paragraphs 38.5, 54.4.2, 70.4.2 and 85.4.2 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;

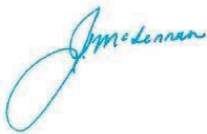
262.4. further, or in the further alternative, says that the contribution and/or indemnity pursuant to Part IV of the *Wrongs Act* 1958 (Vic) or equitable contribution to which PwC is entitled is limited by the factors set out in subparagraph 262.2 above;

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

RESERVATION OF RIGHTS

263. The Second Cross-Respondent does not plead to paragraph 263 of the Third Cross-Claim as it does not contain any allegations against him.

Date: 4 December 2018



Signed by Janette McLennan

Lawyer for the Second Cross-Respondent to
the 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 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: 4 December 2018



Signed by Janette McLennan

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

Schedule

No. VID434 of 2015

Federal Court of Australia
District Registry: Victoria
Division: General

Applicant

Applicant Cheryl Whittenbury

Respondents

First Respondent Vocation Limited (ACN 166 631 330)
Second Respondent PricewaterhouseCoopers (A Firm) (ABN 52 780 433 757)

First Cross-Claim

Cross-Claimant

Cross-Claimant by
First Cross-Claim Vocation Limited (ACN 166 631 330)

Cross-Respondent

Cross-Respondent by
First Cross-Claim The Partners of Johnson Winter & Slattery

Second Cross-Claim

Cross-Claimant

Cross-Claimant by
Second Cross-Claim PricewaterhouseCoopers (A Firm) (ABN 52 780 433 757)

Cross-Respondent

Cross-Respondent by
Second Cross-Claim The Partners of Johnson Winter & Slattery

Third Cross-Claim

Cross-Claimant

Cross-Claimant by
Third Cross-Claim PricewaterhouseCoopers (A Firm) (ABN 52 780 433 757)

Cross- Respondent

First Cross-Respondent by
Third Cross-Claim Mark Edward Hutchinson

Second Cross-Respondent by
Third Cross-Claim Manvinder Gréwal

Third Cross-Respondent by
Third Cross-Claim John Sydney Dawkins

Fourth Cross-Respondent by
Third Cross-Claim

Stephen John Tucker

Fifth Cross-Respondent by
Third Cross-Claim

Michelle Kim Tredenick

Sixth Cross-Respondent by
Third Cross-Claim

Douglas James Halley

Seventh Cross-Respondent by
Third Cross-Claim

Vocation Limited (ACN 166 631 330)