

## NOTICE OF FILING

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### Details of Filing

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



Dated: 17/12/2019 4:55:58 PM AEDT

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

Registrar

### Important Information

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

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 33  
Rule 16.32

## First Respondent's Defence to the Second Further Amended Consolidated Statement of Claim

No. VID 434 of 2015

Federal Court of Australia  
District Registry: Victoria  
Division: General

### Cheryl Whittenbury

Applicant

### Vocation Limited (ACN 166 631 330) (in liq) and others named in the schedule

First Respondent

In answer to the allegations in the Second Further Amended Consolidated Statement of Claim (**SFACSOC**) (dated 11 November 2019) the First Respondent (**Vocation**) says as follows, using the defined terms set out in the SFACSOC and the Replacement Prospectus save where stated:

#### I. Background

1 In answer to paragraph 1, it:

- (a) admits that the proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**) by the Applicant in her individual capacity and in a representative capacity; and
- (b) otherwise does not know and therefore cannot admit paragraph 1.

2 It does not know and therefore cannot admit paragraph 2.

3 It does not know and therefore cannot admit paragraph 3.

4 In answer to paragraph 4, it:

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- (a) admits that it was incorporated on 6 November 2013 (the **Relevant Date**);
- (b) admits that, commencing from the Relevant Date, it was a “person” for the purposes of the legislative provisions pleaded at paragraphs 4(b)-(d); and
- (c) otherwise denies paragraph 4.

5 In answer to paragraph 5, it:

- (a) admits that it was included in the official list of the financial market operated by the ASX from 6 December 2013 (**Completion**);
- (b) says further that:
  - (i) Vocation’s acceptance to the ASX was a condition of the completion of its Initial Public Offering (**IPO**);
  - (ii) the IPO involved the offer of shares in Vocation at the price of \$1.89 per share;
  - (iii) the IPO offer was made pursuant to the issue of the Initial Prospectus on 18 November 2013, which was replaced by the Replacement Prospectus on 27 November 2013;
  - (iv) at the time of the issue of the Initial Prospectus and the Replacement Prospectus, Vocation did not hold (directly or indirectly) the shares in any of the companies intended to become part of the Vocation group should the IPO be successful, other than BAWM Pty Ltd (**BAWM**);
  - (v) on or about 15 November 2013, it acquired all the issued share capital of BAWM pursuant to the terms of the Bawm Sale Agreement dated 15 November 2013;

#### **Particulars**

Vocation refers to the Bawm Sale Agreement, which provided for the transfer of the shares in BAWM to Vocation for consideration constituted by shares in Vocation.

- (vi) Vocation became the owner (directly or indirectly) of the other Founding Companies and Ancillary Businesses (as defined in the Replacement

Prospectus) at or about the time of Completion pursuant to a series of put and call option deeds dated 15 November 2013;

### **Particulars**

Vocation refers to the Aspin Option Deed, the Avana Option Deed, the CSIA Option Deed and the Student Hub Option Deed. Under each of these option deeds (and subject to satisfaction of conditions precedent and exercise of the option), the relevant shares were to be transferred to Vocation at Completion, which was to occur on the Completion Date, defined as the date on which Purchaser Shares (being shares in Vocation) were issued to applicant under the IPO. With the exception of the Aspin Option Deed, the consideration for the transfers was a combination of cash (from the IPO proceeds) and shares in Vocation.

- (c) otherwise denies paragraph 5.
- 6 It admits paragraph 6.
- 7 It admits paragraph 7.
- 8 It admits paragraph 8.
- 9 It admits paragraph 9.
- 10 It admits paragraph 10.
- 11 It admits paragraph 11.
- 12 In answer to paragraph 12, it:
  - (a) admits that the Replacement Prospectus disclosed that, at listing, Vocation would be formed through the merger of the Founding Companies (AVANA, BAWM (as defined in the Replacement Prospectus) and CSIA) and certain “Ancillary Businesses”;
  - (b) says further that the Replacement Prospectus disclosed (at p 111) a corporate structure chart of the companies to be owned, directly and indirectly, by Vocation following Completion of the Offer (as those terms were defined in the Replacement Prospectus);

- (c) denies that TTS-100 Pty Ltd was a subsidiary of CSIA until Completion; and
- (d) otherwise denies paragraph 12.

13 In answer to paragraph 13, it:

- (a) admits paragraphs 13(a), (b), (d) and (e)(i);
- (b) admits that Tucker was a minority shareholder of AVANA;
- (c) admits (in respect of paragraph 13(e)(ii)) that:
  - (i) AVANA reported profit before income tax benefit for FY13 of \$617,946;
  - (ii) AVANA reported revenue for FY13 of \$10,379,808; and
- (d) otherwise denies paragraph 13.

14 In answer to paragraph 14, it:

- (a) admits paragraphs 14(a), (c) and (f)(i);
- (b) says, in answer to paragraph 14(b) that:
  - (i) it admits that, prior to 15 November 2013, BAWM and Aspin were owned by BAWM Group Pty Ltd as trustee for the trusts defined as the BAWM Founders in paragraph 14(b);
  - (ii) admits paragraph 14(b)(ii) so far as it concerns BAWM (but denies it in respect of Aspin);

#### **Particulars**

Vocation refers to the Aspin Option Deed and the Bawm Sale Agreement.

- (c) says, in answer to paragraph 14(d), that it admits that Langtree was Executive Director and Chief Financial Officer of BAWM and Aspin, and also a founder and majority shareholder of BAWM and Aspin (through Broadtree);
- (d) says, in answer to paragraph 14(e), that it admits:
  - (i) that BAWM reported profit before income tax expense for FY13 of \$6,766,493 derived from revenue of \$36,713,675;

- (ii) BAWM had, at FY13, reported net assets and total equity of \$4,736,455;
  - (e) says, in answer to paragraph 14(f)(ii), that it admits that Aspin reported profit before income tax expense for FY13 of \$63,200 and revenue for FY13 of \$270,569; and
  - (f) otherwise denies paragraph 14.
- 15 In answer to paragraph 15, it:
- (a) admits paragraphs 15(a)-(c) and (d)(i); and
  - (b) says, in answer to paragraph 15(d)(ii), that it admits that CSIA reported profit before income tax for FY13 of \$1,785,218 and revenue of \$6,942,500; and
  - (c) otherwise denies paragraph 15.
- 16 In answer to paragraph 16, it:
- (a) admits that the persons named in paragraph 16(a) were directors of Vocation from the Relevant Date and remained directors until at least 26 November 2014;
  - (b) denies paragraph 16(b) and says further that:
    - (i) the Merger was contingent on the successful completion of the Offer and the listing of Vocation on the ASX;
    - (ii) the senior management team listed in the Replacement Prospectus was Vocation's senior management team only following Completion;
    - (iii) Smuskowitz resigned effective July 2014;
    - (iv) Langtree left his position with Vocation in late October 2014, or November 2014; and
  - (c) otherwise denies paragraph 16.
- 17 In answer to paragraph 17, it:
- (a) admits that the knowledge of the Vocation Directors may be attributed to Vocation from the Relevant Date; and
  - (b) otherwise denies paragraph 17.

- 18 In answer to paragraph 18, it:
- (a) admits that, from Completion Vocation carried on a business (through its subsidiaries) with the characteristics stated in paragraph 18; and
  - (b) otherwise denies paragraph 18.
- 19 In answer to paragraph 19, it:
- (a) says, in answer to paragraph 19(a), that the Replacement Prospectus disclosed (at page 32) that:
    - (i) Vocation generated approximately 89% of its total pro forma consolidated revenue from Commonwealth, state and territory government funding schemes in FY13;
    - (ii) Vocation's primary sources of revenue would include state, territory and Commonwealth VET funding schemes;
  - (b) says, in answer to paragraph 19(b), that it admits that as at 18 November 2013, Vocation's business channels were intended by Vocation, following Completion, to be:
    - (i) an "Enterprise" business channel, which would deliver customised workforce-based training and development solutions to employees of Australian corporate and government clients;
    - (ii) a "Direct" business channel, which would be an individual consumer-focused offering, providing training directly to individual students; and
    - (iii) a "Solutions" business channel, which would provide outsourced managed services and other ancillary services to third party VET providers, learning and development businesses and industry specialists in Australia, and which would broadly consist of three areas of operation: "RTO Edge", technology solutions and consulting; and
  - (c) otherwise denies paragraph 19.
- 20 In answer to paragraph 20, it:
- (a) denies paragraph 20 so far as it relates to the period before Completion;

- (b) says further that:
  - (i) from the time of issue of the Initial Prospectus on 18 November 2013, Vocation intended that, following and subject to Completion, it would have in place a number of systems and processes to ensure it fulfilled its compliance obligations;
  - (ii) to that end, Vocation's board had created a framework for managing Vocation including adopting relevant internal controls and a risk management process which it believed was appropriate for Vocation's business; and
- (c) otherwise denies paragraph 20.

21 In answer to paragraph 21, it:

- (a) admits, in answer to paragraph 21(a), that, between the date of issue of the Initial Prospectus and Completion, BAWM was an RTO which engaged in teaching activities in Victoria only;
- (b) admits, in answer to paragraph 21(b), that, between the date of issue of the Initial Prospectus and Completion, BAWM was registered with VRQA;
- (c) admits, in answer to paragraph 21(c), that, between the date of issue of the Initial Prospectus and Completion, BAWM was required, in order to maintain its registration, to comply with the conditions of its registration; and
- (d) otherwise denies paragraph 21.

22 In answer to paragraph 22, it:

- (a) admits, in answer to paragraph 22(a), that, between the date of issue of the Initial Prospectus and Completion, Aspin was an RTO which engaged in teaching activities in all states and territories of Australia;
- (b) admits, in answer to paragraph 22(b), that, between the date of issue of the Initial Prospectus and Completion, Aspin was registered with ASQA and otherwise denies the subparagraph;
- (c) admits, in answer to paragraph 22(c), that, between the date of issue of the Initial Prospectus and Completion, Aspin was obliged by reason of s 21 of the

Commonwealth Act to comply with the conditions of its registration, including complying with the National RTO Standards; and

- (d) otherwise denies paragraph 22.
- 23 It denies paragraph 23.
- 24 It denies paragraph 24.
- 25 In answer to paragraph 25, it:
- (a) admits the paragraph in respect of the period between the date of issue of the Initial Prospectus and Completion; and
  - (b) otherwise denies paragraph 25.
- 26 In answer to paragraph 26, it:
- (a) admits the paragraph in respect of the period between the date of issue of the Initial Prospectus and Completion; and
  - (b) otherwise denies paragraph 26.
- 27 In answer to paragraph 27, it:
- (a) will rely at trial on the full terms and effect of the National RTO Standards for their full force and effect; and
  - (b) otherwise denies paragraph 27.
- 28 In answer to paragraph 28, it:
- (a) will rely at trial on the full terms and effect of the National RTO Standards for their full force and effect; and
  - (b) otherwise denies paragraph 28.
- 29 In answer to paragraph 29, it:
- (a) will rely at trial on the full terms and effect of the Victorian RTO Guidelines for their full force and effect; and
  - (b) otherwise denies paragraph 29.

- 30 In answer to paragraph 30, it:
- (a) will rely at trial on the full terms and effect of the 2013 Government Contract; and
  - (b) otherwise denies paragraph 30.
- 31 In answer to paragraph 31, it:
- (a) will rely at trial on the full terms and effect of the 2014 Government Contract; and
  - (b) otherwise denies paragraph 31.
- 32 In answer to paragraph 32, it:
- (a) will rely at trial on the full terms and effect of the 2013 Government Contract and 2014 Government Contract referred to; and
  - (b) otherwise denies paragraph 32.
- 33 In answer to paragraph 33, it:
- (a) will rely at trial on the full terms and effect of the Government Contracts referred to; and
  - (b) otherwise denies paragraph 33.
- 34 In answer to paragraph 34, it:
- (a) will rely at trial on the full terms and effect of the Government Contracts referred to; and
  - (b) otherwise denies paragraph 34.
- 35 In answer to paragraph 35, it:
- (a) admits that the text quoted in sub-paragraphs (i), (ii) and (iii) of paragraph 35(a) is contained in the document entitled "Information for Providers - Key features of VET Funding Contracts"; and
  - (b) otherwise denies paragraph 35.
- 36 It denies paragraph 36 and refers to and repeats paragraph 17 above.

37 In answer to paragraph 37, it says, subject to reference to the full terms of the Replacement Prospectus that it:

- (a) admits that the Replacement Prospectus stated that, as at the date of issue:
  - (i) Vocation intended to pursue a targeted growth strategy;
  - (ii) the Solutions business channel accounted for 43% of the pro forma consolidated revenue for FY14;
  - (iii) 85% of the Solutions revenue forecast for FY14 was forecast to be generated by RTO Edge clients in FY14;
  - (iv) the growth of revenue forecast for FY14 was primarily attributable to expected growth in the volume of students trained across all three business channels and, to a lesser extent, the favourable impact of higher average revenue per new course enrolment;
- (b) says further that the Replacement Prospectus:
  - (i) identified that forward-looking statements are subject to risk factors;
  - (ii) stated (page 53) that Vocation did not intend, after the issue of the Replacement Prospectus, to update or revise forward looking statements or to publish prospective financial information in the future, regardless of whether new information, future events or any other factors affect the information contained in this Prospectus, except where required by law;
  - (iii) stated that forward looking statements should be read in conjunction with, and as qualified by (inter alia) the risk factors set out in Section 5 and the assumptions set out in Sections 4.7.1 and 4.7.2;
  - (iv) contained, in Sections 4.7.1 and 4.7.2 details of the assumptions underpinning the FY14 forecast financial information; and
  - (v) contained, in Section 5, a detailed explanation of the risks that would affect (inter alia) the statements referred to in paragraph 37(a) above; and
- (c) otherwise denies paragraph 37.

## Particulars

Replacement Prospectus pages 2, 8, 40, 41, 53, 67-74, 77-82.

- 38 In answer to paragraph 38, subject to reference to the full terms of the Replacement Prospectus it:
- (a) says that:
    - (i) as disclosed in the Replacement Prospectus (page 40), the Solutions business channel would provide outsourced management services to other VET providers and other ancillary services to third party VET providers and others; and
    - (ii) the Replacement Prospectus disclosed, as a risk (page 78), that any regulatory change affecting its ability to use, inter alia, student brokers, could have a material adverse impact on its operations; and
  - (b) otherwise denies paragraph 38.
- 39 In answer to paragraph 39, subject to reference to the full terms of the Replacement Prospectus, it:
- (a) admits that:
    - (i) the Replacement Prospectus contained the information set out in Figures 4.4.1, 4.3.2.1 and 4.7.2.1.1; and
    - (ii) the FY13 revenue of BAWM and the total assets of BAWM at FY13 were larger than the FY13 revenue and FY13 assets of the other Founding Companies and Ancillary Businesses; and
  - (b) otherwise denies paragraph 39.
- 40 In answer to paragraph 40, it:
- (a) refers to and repeats paragraph 39(a) and otherwise denies paragraphs 40(a) and 40(c);
  - (b) admits that Replacement Prospectus stated (page 77) that it was a risk factor that funding from governments accounted for approximately 80% of Vocation's pro forma consolidated revenue for FY13 and otherwise denies paragraph 40(b);

- (c) denies paragraph 40(d) and says further that the Replacement Prospectus disclosed (Figure 4.4.2) the basis upon which the pro forma goodwill following Completion was calculated, which calculation was based on the consideration to be paid for acquisition of the Founding Companies and Ancillary Businesses other than BAWM; and
  - (d) denies paragraph 40(e).
- 41 In answer to paragraph 41, it:
- (a) admits that the matters stated in paragraphs 41(a) and (b) were stated in the Replacement Prospectus (page 80) to be risk factors; and
  - (b) otherwise denies paragraph 41.
- 42 It denies paragraph 42 and says further that whether or not any particular information was required by s 710(1) of the Corporations Act to be disclosed in the Replacement Prospectus depends, inter alia, on whether the information was:
- (a) information that investors and their professional advisers reasonably required to make an informed assessment of the matters set out in the table, which relevantly included the assets, liabilities, financial position and performance, profits, losses and prospects of Vocation;
  - (b) information that it was reasonable for investors and their professional advisers to expect to find in the Replacement Prospectus; and
  - (c) information which was actually known, or, in the circumstances ought reasonably to have been obtained by a person specified in s 710(3), which relevantly included Vocation itself, and its Directors, but not its proposed Senior Management following Completion.
- 43 It denies paragraph 43 and refers to and repeats paragraph 42 above.
- 43A In answer to paragraph 43A it:
- (a) says that on or about 18 May 2012, BAWM (then known as Taylored Gardens Pty Ltd and trading as “Build It Learning” and “Institute of Counselling and Community Studies”), applied to the VRQA for a scope of registration extension as a RTO for certain courses;

## Particulars

VOC.600.071.3559

The courses were: Certificate I in General Education for Adults; Certificate II in General Education for Adults; Certificate III in Education Support; Certificate II in Tourism; Certificate III in Tourism; and Certificate III in Driving Operations.

- (b) says that on or around 13 August 2012 PricewaterhouseCoopers provided BAWM (then known as Taylored Gardens Pty Ltd) with draft audit reports dated 24 and 25 July 2012 (**Extension to Scope Draft Audit Reports**) assessing BAWM's suitability for an extension of its scope of registration as an RTO for 3 courses;
- (c) says that in respect of the AQTF Essential Conditions and Standards for Continuing Registration draft audit report BAWM was audited against AQTF Essential Conditions and Standards for Continuing Registration and PricewaterhouseCoopers concluded BAWM was compliant with:
  - (i) AQTF Conditions 3, 7 and 8;
  - (ii) AQTF Standards 1.4; and
  - (iii) Elements 2.3, 2.3 and 3.3;
- (d) says that in respect of the VRQA Guidelines for VET Providers draft audit report BAWM was audited against VRQA Guidelines and PricewaterhouseCoopers concluded BAWM was compliant with elements 1.3.4, 2.1.2, 2.2, 4.1, 4.2 and 4.4;
- (e) says further that it was a routine feature of the regulatory system for the VRQA to conduct audits when an RTO submitted an extension to scope application; and
- (f) otherwise denies paragraph 43A.

## Particulars

VOC.500.011.3477; VOC.500.011.3479; VOC.500.011.3488

The courses referred to in paragraph (c) are: CHC30812 Certificate III in Education Support; TLI31210 Certificate III in Driving Operations; and SIT30107 Certificate III in Tourism.

43B In answer to paragraph 43B, it:

- (a) admits that PricewaterhouseCoopers provided BAWM with the Extension to Scope Draft Audit Reports on 13 August 2012;
- (b) in relation to the conclusions contained in the Extension to Scope Draft Audit Reports referred to in paragraph 43A(d) and (e) above, says that on or around 14 August 2012, Amanda King stated in email to BAWM management that she was “[i]n two minds as to whether or not to appeal some of these non-compliances as they are not correct”;

**Particulars**

VOC.500.011.3477 and VOC.500.011.3479.

- (c) says further that on or around 1 August 2012, Protiviti delivered to BAWM (then known as Taylored Gardens Pty Ltd) a draft Skills for Victoria 2012 Contract Compliance Audit which concluded “[n]o control weaknesses were identified which may impact the RTO’s ability to comply with the Service Agreement”; and

**Particulars**

Protiviti is a consulting firm specialising in internal audit, risk and compliance, technology, business processes, data analytics and finance.

VOC.500.001.3987; VOC.500.011.3477.

- (d) otherwise denies paragraph 43B.

43C In answer to paragraph 43C, it:

- (a) says that on or around 20 September 2012, the VRQA notified BAWM of the outcome of BAWM’s application for an extension to scope of registration to conduct six further courses (**Extension to Scope Audit Reports**);
- (b) says further that:

- (i) the AQTF Essential Conditions and Standards for Continuing Registration audit report identified that BAWM was compliant with:
    - (A) AQTF Conditions 3,7 and 8;
    - (B) AQTF Standards 1.4; and
    - (C) Elements 2.3, 2.4, 3.3.
  - (ii) The VRQA Guidelines for VET Providers audit report identified that BAWM was compliant with elements 1.3.4, 2.1.2 and 2.2, 4.1, 4.2 and 4.4;
- (c) says further that:
- (i) in or around January 2013, BAWM applied for a further extension to scope of registration to conduct eight further courses;

**Particulars**

VOC.500.001.7324

The courses were: Certificate I in General Education for Adults; Certificate II in General Education for Adults; Certificate III in Home and Community Care; Certificate III in Education Support; Certificate IV in Aged Care; Certificate II in Tourism; Certificate III in Tourism; and Certificate III in Driving Operations.

- (ii) on or around 14 February 2013, the VRQA conducted a further extension to scope audit on BAWM for five courses;

**Particulars**

VOC.600.005.3222; VOC.600.005.3270.

The further courses sought under the further extension to scope audit on or around 14 February 2013 included Certificate II in General Education for Adults, Certificate III in Tourism, Certificate IV in Aged Care, Certificate III in Driving Operations and Certificate III in Education Support.

- (iii) as part of that audit, the VRQA concluded BAWM was compliant with VRQA Guidelines 1.3.4, 2.1.2, 4.1, 4.2 and 4.4;
- (iv) on or around 26 March 2013, BAWM was informed that extension to scope had been granted for the following courses:
  - (A) Certificate III in Education Support;
  - (B) Certificate III in Tourism;
  - (C) Certificate III in Home and Community Care;
  - (D) Certificate IV in Aged Care;
  - (E) Certificate II in Tourism;
  - (F) Certificate II in Business;
  - (G) Certificate III in Business;
  - (H) Certificate III in Business Administration;
  - (I) Certificate II in Civil Construction; and
- (d) otherwise denies paragraph 43C.

### **Particulars**

VOC.600.016.8813; VOC.600.016.8815.

## **II. Events prior to listing**

44 In answer to paragraph 44, it:

- (a) admits that, on or around 15 to 18 July 2013, VRQA conducted a VRQA Guidelines for VET Providers and an AQTF Essential Conditions and Standards for Continuing Registration audit of BAWM (the **2013 VRQA BAWM Audits**) in respect of the renewal of its registration as an RTO;
- (b) says further that:
  - (i) it was a routine feature of the regulatory system for VRQA to conduct audits when an RTO's registration was approaching expiry;

- (ii) BAWM disputed various of the VRQA's findings, resulting in a follow up visit being undertaken on 13 August 2013 at which VRQA was able to verify compliance with audit findings which were in dispute;
  - (iii) under cover of a letter dated 16 August 2013, VRQA renewed BAWM's registration as an RTO on an unrestricted basis to expire on 31 July 2018, and confirmed that the audit reports indicated only minor non-compliance with the Essential Conditions and Standards;
  - (iv) it may be inferred that, if VRQA considered the areas of non-compliance with the Essential Conditions and Standards or the Guidelines to be material or concerning to it, it would not have renewed BAWM's registration or would have imposed additional conditions on the renewal;
- (c) says further that on or around 22 to 23 July 2013, BAWM participated in a Business Process and Transaction audit in relation to its 2013 Government Contract (**2013 Business Process and Transaction Audit**), which audit:
- (i) was designed to monitor performance against contractual standards;
  - (ii) was related to training and delivery of assessment for the last 18 months;
  - (iii) covered all areas of enrolment, eligibility, participation, assessment and recording of concession holders and jobseeker referrals; and
- (d) otherwise denies paragraph 44.

### **Particulars**

VOC.015.037.2005; VOC.001.016.2631; VOC.015.002.0874.

44A In answer to paragraph 44A, it:

- (a) admits that the VRQA Guidelines for VET Providers audit report and the AQTF Essential Conditions and Standards for Continuing Registration audit report (**2013 VRQA BAWM Audit Reports**) contained the non-compliance findings stated in that report;
- (b) says further that the 2013 VRQA BAWM Audit Reports concluded BAWM was compliant with Relevant Victorian Guidelines 2.1.2, 2.2 and 4;

- (c) says further that, on 16 August 2013, BAWM's RTO registration was granted for the maximum available period of 5 years;
- (d) says further that, on or around 18 November 2014, Lynn Glover, Director of VRQA, wrote to BAWM in relation to the 2013 VRQA BAWM Audits and the 2013 VRQA BAWM Audit Reports, stating that:
  - (i) the VRQA made the decision to renew BAWM's registration as an RTO on 16 August 2013 and conveyed the decision in a letter attached to the AQTF Essential Conditions and Standards for Continuing Registration audit and VRQA Guidelines for VET Providers audit;
  - (ii) the body of the 2013 VRQA BAWM Audit Reports included areas which an Authorised Officer had verified compliance with post audit; and
  - (iii) there were minor non-compliances remaining;
- (e) refers to and repeats paragraph 44 above; and
- (f) otherwise denies paragraph 44A.

#### **Particulars**

VOC.007.013.0006; VOC.500.013.0984; VOC.500.013.0985.

45 In answer to paragraph 45, it:

- (a) admits that the 2013 VRQA BAWM Audit Reports contained the non-compliance findings stated in that report;
- (b) refers to and repeats paragraphs 44 and 44A above; and
- (c) otherwise denies paragraph 45.

45A In answer to paragraph 45A, it says that on or about 21 October 2013, an audit of BAWM was conducted for the purposes of assessing BAWM's suitability to be granted an extension of its scope of registration as an RTO for one course.

#### **Particulars**

The further course sought under the 2013 Further AQTF BAWM Audit is Certificate III in Driving Operations.

45B In answer to paragraph 45B, it:

- (a) admits that the 2013 AQTF Further BAWM Audit Report contained the non-compliance findings stated in that report;
- (b) says further that the 2013 AQTF Further BAWM Audit Report concluded BAWM was compliant with:
  - (i) the Relevant National RTO Conditions of Registration; and
  - (ii) Relevant RTO Standard 2; and
- (c) otherwise denies paragraph 45B.

45C In answer to paragraph 45C:

- (a) says that on or about 31 October 2013 the DEECD wrote to BAWM stating that DEECD identified that:
  - (i) BAWM may have been inappropriately represented in advertising by a third party on the websites [cudo.com.au](http://cudo.com.au) and [deals.com.au](http://deals.com.au);
  - (ii) the course advertised was for a 6-week Certificate IV in Frontline Management starting 22 October 2013;
  - (iii) the organisation that advertised the course was Customised Training Solutions;
  - (iv) if the course was being conducted on behalf of BAWM, the advertisement is a breach of section 6.1(e) of its Service Agreement; and
  - (v) a further review of BAWM's website identified that BAWM was offering potential students a Myki Card to cover the cost of transport and a clothing allowance to purchase work appropriate clothing;

### **Particulars**

VOC.500.013.0674; VOC.500.013.0675

- (b) says that on or around 12 November 2013 representatives of BAWM and DEECD met to discuss the matters described in subparagraph (a) above;

### **Particulars**

VOC.600.094.6400

- (c) says further that on or around 21 November 2013, BAWM responded to the letter from DEECD letter dated 31 October 2013 and enclosed information on its management of third party brokers. In its letter BAWM indicated:
  - (i) in relation to the course advertised by Customised Training Solutions, that advertisement did not relate to BAWM but to another RTO (POW WOW Toid 21819);
  - (ii) BAWM had removed the Myki Card and clothing allowance provision from the Building Brighter Futures Program; and

### **Particulars**

VOC.500.013.0692; VOC.600.094.6400

- (d) otherwise denies 45C.

45D In answer to paragraph 45D, it:

- (a) refers to and repeats paragraphs 43A to 44A, and 45 to 45B above; and
- (b) otherwise denies paragraph 45D.

45E In answer to paragraph 45E, it:

- (a) refers to and repeats paragraphs 45D; and
- (b) otherwise denies paragraph 45E.

45F In answer to paragraph 45F, it:

- (a) says that the Initial Review of Vocation RTOs dated September 2014 conducted by DEECD relates to conduct after both the Initial Public Offering and Completion;
- (b) refers to and repeats paragraphs 44(b) to (c) and 44A(b) to (e) above;
- (c) refers to and repeats paragraph 44(c) and says that on or around 22 and 23 July 2013, BAWM passed the 2013 Business Process and Transaction Audit;

- (d) says further that the 2013 Business Process and Transaction Audit covered all areas of enrolment, eligibility, participation, assessment and recording of concession holders and jobseeker referrals; and

**Particulars**

VOC.001.016.2671; VOC.001.016.2673;

VOC.015.037.2005; VOC.001.016.2631.

- (e) otherwise denies paragraph 45F.

45G In answer to paragraph 45G, it:

- (a) refers to and repeats paragraph 45F above; and
- (b) otherwise denies paragraph 45G.

45H In answer to paragraph 45H, it:

- (a) refers to and repeats paragraphs 45G above; and
- (b) otherwise denies 45H.

45I In answer to paragraph 45I, it:

- (a) refers to and repeats paragraphs 45H above; and
- (b) otherwise denies paragraph 45I.

45J In answer to paragraph 45J, it:

- (a) says that the Applicant's particulars in paragraph 45J relate to conduct after both the Initial Public Offering and Completion;
- (b) refers to and repeats paragraphs 44(b) to (c) and 44A(b) to (e) above;
- (c) refers to and repeats paragraph 44(c) and says that on or around 22 and 23 July 2013, BAWM passed the 2013 Business Process and Transaction Audit;
- (d) says further that the 2013 Business Process and Transaction Audit covered was related to training and delivery of assessment for the last 18 months; and
- (e) otherwise denies paragraph 45J.

### **Particulars**

VOC.001.016.2671; VOC.001.016.2673;

VOC.015.037.2005; VOC.001.016.2631.

45K In answer to paragraph 45K, it:

- (a) refers to and repeats paragraph 45J above; and
- (b) otherwise denies paragraph 45K.

45L In answer to paragraph 45L, it:

- (a) refers to and repeats paragraph 45J above; and
- (b) otherwise denies paragraph 45L.

45M In answer to paragraph 45M:

- (a) refers to and repeats paragraph 45J above; and
- (b) otherwise denies paragraph 45M.

45N In answer to paragraph 45N, it:

- (a) says that the Applicant's particulars in paragraph 45N (ii) and (iii) relate to conduct after both the Initial Public Offering and Completion;
- (b) refers to and repeats paragraphs 44(b) to (c) and 44A(b) to (e) above;
- (c) refers to and repeats paragraph 44(c) and says that on or around 22 and 23 July 2013, BAWM passed the 2013 Business Process and Transaction Audit;
- (d) says further that the 2013 Business Process and Transaction Audit covered was related to training and delivery of assessment for the last 18 months; and
- (e) otherwise denies paragraph 45N.

### **Particulars**

VOC.001.016.2671, VOC.001.016.2673;

VOC.015.037.2005; VOC.001.016.2631.

45O In answer to paragraph 45O, it:

- (a) refers to and repeats paragraph 45N above; and
- (b) otherwise denies paragraph 45O.

45P In answer to paragraph 45P, it:

- (a) says that the particulars identified in paragraph 45P (i) to (vi) relate to conduct after the Initial Public Offering;
- (b) refers to and repeats paragraphs 44(b) to (c) and 44A(b) to (e) above;
- (c) refers to and repeats paragraph 44(c) and says that on or around 22 and 23 July 2013, BAWM passed the 2013 Business Process and Transaction Audit;
- (d) says further that the 2013 Business Process and Transaction Audit covered was related to training and delivery of assessment for the last 18 months;
- (e) says further that the Quorum QA Australia Pty Ltd report into course length for funded standalone and dual enrolment programs identified that programs were delivered in a shorter time frame in 2014 than in 2013; and
- (f) otherwise denies paragraph 45P.

#### **Particulars**

VOC.001.016.2671, VOC.001.016.2673; VOC.015.037.2005;  
VOC.001.016.2631; VOC.001.001.1006 at .1099

45Q In answer to paragraph 45Q, it:

- (a) refers to and repeats paragraph 45P above; and
- (b) otherwise denies paragraph 45Q.

46 In answer to paragraph 46, it:

- (a) refers to and repeats paragraphs 45F, 45G, 45H, 45J, 45L, 45N and 45P above;  
and
- (b) otherwise denies paragraph 46.

- 47 In answer to paragraph 47, it:
- (a) refers to and repeats paragraphs 45I(a), 45K(a), 45M(a), 45O(a) and 45Q(a) above; and
  - (b) otherwise denies paragraph 47.
- 48 It denies paragraph 48.
- 49 It denies paragraph 49.
- 50 In answer to paragraph 50, it:
- (a) admits that, at the time of the issue of the Replacement Prospectus, it was known and disclosed (page 47) that TTS-100 Pty Ltd was scheduled to have a re-registration audit in November 2013;
  - (b) denies that TTS-100 Pty Ltd was a subsidiary of CSIA until Completion; and
  - (c) otherwise denies paragraph 50.
- 51 It denies paragraph 51.
- 51A It denies paragraph 51A.
- 51B It denies paragraph 51B.
- 51C It denies paragraph 51C.
- 51D It denies paragraph 51D.
- 51E It denies paragraph 51E.
- 51F In answer to paragraph 51F, it:
- (a) says an internal audit of AVANA Learning Pty Ltd and Training & Development Australia Pty Ltd was conducted between 7 and 9 August 2013;

#### **Particulars**

VOC.600.040.6205

- (b) says further that a draft audit report was issued by Barrack St Compliance to AVANA on or around 28 August 2013; and

**Particulars**

VOC.600.034.7110; VOC.600.034.7112

- (c) otherwise denies paragraph 51F.

51G In answer to paragraph 51G, it:

- (a) says the audit report template used by the auditor in the AVANA Audit contained categories to measure the risk level of non-compliance of an RTO at audit and those categories were 'low', 'medium' or 'high risk' for all audited standards;
- (b) says further that 21 of the 34 standards audited by Barrack St Compliance were assessed as having a low risk of non-compliance; and
- (c) otherwise denies paragraph 51G.

51H In answer to paragraph 51H, it:

- (a) refers to and repeats paragraph 51G above; and
- (b) says the draft AVANA Audit report stated the following:
  - (i) "The RTO's current management system can be classified as well defined and outcomes focussed. That is the system describes the inputs that are required to achieve the desired end result. This includes providing a high degree of structure and guidance, particularly with regard to management and student support services. This approach is appropriate for a mature RTO of AVANA's size and scope"; and
  - (ii) "Training and assessment materials reviewed were generally developed to a good standard, including supporting elements (such as session plans, marking guides) used to support Avana's stated delivery modes"; and
- (c) otherwise denies paragraph 51H.

51I It denies paragraph 51I.

51J It denies paragraph 51J.

- 51K It denies paragraph 51K.
- 51L It denies paragraph 51L.
- 52 It denies paragraph 52.
- 53 It denies paragraph 53.
- 54 It denies paragraph 54 and says further that the Replacement Prospectus stated (page 77) that the risk factors included the risk that Vocation could lose government funding contracts as a result of breaches or non-compliance.
- 55 In answer to paragraph 55, it:
- (a) admits, subject to reference to the full terms and effect of the Replacement Prospectus, that the Replacement Prospectus contained statements to the general effect pleaded in paragraph 55;
  - (b) says further that all of those statements were disclosed as “Risk factors”; and
  - (c) otherwise denies paragraph 55.
- 56 In answer to paragraph 56, it:
- (a) admits that the Replacement Prospectus contained statements to the effect that (and assuming Completion occurred) Vocation intended to pursue a growth strategy and described aspects of the growth strategy and the risks relating thereto;
  - (b) save that the NPAT figure in the table in paragraph 56(b) should be “3.8” (not “8.3”), it admits that the Replacement Prospectus contained statements of the forecast financial information set out at paragraph 56(b) and disclaimers and cautionary statements concerning reliance on it;
  - (c) refers to and repeats paragraph 40(c); and
  - (d) otherwise denies paragraph 56.
- 57 It denies paragraph 57.
- 58 In answer to paragraph 58, it:

- (a) admits that the Replacement Prospectus did not contain statements describing the various risks and conduct as they are defined by the Applicant in the SFACSOC;
- (b) refers to and repeats paragraphs 43A-49 and 51-54 above; and
- (c) otherwise denies paragraph 58.

59 [not used]

60 [not used]

61 [not used]

62 [not used]

63 [not used]

64 [not used]

65 [not used]

66 [not used]

67 [not used]

68 [not used]

69 [not used]

70 [not used]

71 [not used]

72 [not used]

73 It does not know and therefore cannot admit paragraph 73.

74 It does not know and therefore cannot admit paragraph 74.

74A It does not know and therefore cannot admit paragraph 74A.

75 [not used]

76 [not used]

77 [not used]

78 [not used]

79 [not used]

80 [not used]

81 [not used]

82 [not used]

83 [not used]

84 [not used]

85 [not used]

86 [not used]

87 [not used]

88 [not used]

89 [not used]

90 [not used]

91 It does not know and therefore cannot admit paragraph 91.

92 [not used]

93 [not used]

94 It does not know and therefore cannot admit paragraph 94.

95 [not used]

96 [not used]

97 [not used]

98 [not used]

- 99 It does not know and therefore cannot admit paragraph 99.
- 100 It does not know and therefore cannot admit paragraph 100.
- 100A It does not know and therefore cannot admit paragraph 100A.
- 101 [not used]
- 102 [not used]
- 103 [not used]
- 104 [not used]
- 105 [not used]
- 106 It does not know and therefore cannot admit paragraph 106.
- 107 It does not know and therefore cannot admit paragraph 107.
- 108 It does not know and therefore cannot admit paragraph 108.
- 109 [not used]
- 110 It does not know and therefore cannot admit paragraph 110.
- 111 It does not know and therefore cannot admit paragraph 111.
- 112 [not used]
- 113 It does not know and therefore cannot admit paragraph 113.
- 114 [not used]
- 115 [not used]
- 116 It does not know and therefore cannot admit paragraph 116.
- 117 It does not know and therefore cannot admit paragraph 117.
- 118 It does not know and therefore cannot admit paragraph 118.
- 119 It does not know and therefore cannot admit paragraph 119.

### **III. Alleged Prospectus Liability Contraventions**

120 It admits paragraph 120.

121 Save that it says that "SaleCo" (as defined in the Replacement Prospectus) was also a person making the offer under the Replacement Prospectus, it admits paragraph 121.

122 It denies paragraph 122.

123 It denies paragraph 123.

123A It denies paragraph 123A.

124 It denies paragraph 124 and says further that if it made the alleged Prospectus Guidance Representations (which is denied), by reason of the matters stated in paragraph 134 below, it had reasonable grounds for making them.

125 It denies paragraph 125.

126 It denies paragraph 126.

127 It denies paragraph 127.

128 It denies paragraph 128 and says further that, if (which is denied) the Replacement Prospectus contained a misleading or deceptive statement within the meaning of s 728(1)(a)(i) of the Corporations Act, by reason of the matters stated in paragraph 134 below, it has a defence under s 731 and/or s 733 of the Corporations Act.

129 It denies paragraph 129.

129A It denies paragraph 129A.

129B It denies paragraph 129B.

129C It denies paragraph 129C.

129D It denies paragraph 129D.

129E It denies paragraph 129E.

129F It denies paragraph 129F.

129G It denies paragraph 129G.

129H It denies paragraph 129H.

129I It denies paragraph 129I.

129J It denies paragraph 129J.

129K It denies paragraph 129K.

130 It denies paragraph 130.

130A It denies paragraph 130A.

131 It denies paragraph 131.

132 It denies paragraph 132.

133 It denies paragraph 133 and says further that, if (which is denied) the Replacement Prospectus contained an omission of material required by s 710 of the Corporations Act, within the meaning of s 728(1)(b) of the Corporations Act, by reason of the matters stated in paragraph 134 below, it has a defence under s 731 and/or s 733 of the Corporations Act.

134 It denies paragraph 134 and says further that the Initial Prospectus and the Replacement Prospectus were issued following the conduct of a due diligence process which included the following features:

- (a) there was a due diligence committee (the **DDC**) which met regularly between 5 September 2013 and 5 December 2013;
- (b) the members and persons invited to attend meetings of the DDC included:
  - (i) James Rozsa (Chairman of the DDC) of Johnson Winter Slattery (**JWS**), a suitably qualified and experienced commercial law firm;
  - (ii) the following proposed (and from the Relevant Date, actual) directors of Vocation:
    - (A) John Dawkins AO;
    - (B) Mark Hutchinson (**Hutchinson**), founder and CEO of AVANA;
    - (C) Steve Tucker;

- (iii) Brett Whitford, founder and executive director of CSIA;
  - (iv) Michael Langtree (**Langtree**), founder, executive director and CFO of BAWM;
  - (v) Wendy Bonnici (**Bonnici**), founder and managing director of BAWM;
  - (vi) Jonathan Smuskiowitz, commercial director of AVANA;
  - (vii) Manvinder Grewal (**Grewal**) of Absolute Partners and also the proposed CFO of Vocation;
  - (viii) Troy Porter of PricewaterhouseCoopers (**PWC**);
- (c) JWS was responsible for, inter alia:
- (i) participating in the DDC;
  - (ii) conducting legal due diligence investigations relating to certain matters connected with the IPO;
  - (iii) assisting with the design and implementation of the due diligence process;
  - (iv) assisting in the drafting of the prospectus;
  - (v) coordinating verification of the prospectus and verifying parts of the prospectus for which JWS was allocated responsibility;
  - (vi) providing an opinion to members of the DDC and the board of Vocation on:
    - (A) the adequacy of the due diligence system;
    - (B) whether the due diligence and reasonable reliance defences are available to the directors, the company and the DDC members;
    - (C) whether the prospectus complies with the requirements of the Corporations Act;

#### **Particulars**

JWS's role is set out in para 4.7(b) of the Due Diligence Planning Memorandum: Project Churchill.

- (d) PWC was responsible for:

- (i) participating in the DDC;
- (ii) preparing materiality guidance;
- (iii) conducting a review of pro forma historical and forecast financial information to be included in the prospectus;
- (iv) preparing an Investigating Accountant's Report (IAR) for inclusion in the prospectus;
- (v) providing a financial information report to assist members of the DDC and Vocation with their due diligence enquiries;
- (vi) preparing a due diligence sign off on the final version of the prospectus;
- (vii) verifying the IAR and assisting Vocation, SaleCo and the DDC in the verification of statements in the prospectus;
- (viii) considering and commenting on drafts of the prospectus in relation to matters relevant to their scope of work;

#### **Particulars**

PWC's role is referred to in its Engagement Letter and para 4.7(c) of the Due Diligence Planning Memorandum: Project Churchill.

- (e) due diligence questionnaires were issued to the founders and senior management of the merging entities, including Langtree and Bonnici, and each of Langtree and Bonnici answered "no" (or "NA") to (inter alia) questions 8.3, 8.4, 9.4, 9.6 and 9.8 to 9.10 and "yes" to questions 9.1 to 9.3, 9.5 and 9.7 where those questions made the following enquiries:
  - (i) "8.3: Are you aware of any breach by the Current business of any material contract or of any circumstance that might give rise to such a breach?"
  - (ii) "8.4: Are you aware of any event (including the proposed IPO) that has occurred (or that might occur) which might be grounds for termination of any material contract of the Current Business?";

- (iii) “9.1: Are all registrations, approvals and permits required to be held by the Current Business to operate as a training provider held and in force and full effect, valid and subsisting?”;
- (iv) “9.2: Are all accreditations and certifications required in relation to training courses or programmes offered by the Current Business held and in force and full effect, valid and subsisting?”;
- (v) “9.3: Is the Current Business in compliance with all conditions and compliance obligations applicable to maintaining the registrations, approvals, permits, accreditations and certifications referred to in Questions 9.1 and 9.2?”
- (vi) “9.4: Are there any facts or circumstances which may give rise to the termination, revocation, suspension, modification or non-renewal of any of the registrations, approvals, permits, accreditations and certifications referred to in Questions 9.1 and 9.2?”;
- (vii) “9.5: Is the Current business in compliance with all conditions and compliance obligations applicable to the provision of any Government funding?”;
- (viii) “9.6: Are you aware of any facts or circumstances which may give rise to a breach or non-compliance of any material applicable law, regulation, ordinance, by-law, rule, decree or order applicable to the Current Business?”;
- (ix) “9.7: Has the Current Business adopted formal systems and controls for ensuring compliance with applicable law, regulations, ordinances, by-laws, rules, decrees and orders and/or with the conditions of its licences, approvals, permits, consents, accreditations and authorities?”;
- (x) “9.8: Has the Current Business been the subject of any finding of material non-compliance in the last 3 years in the course of any audit undertaken by any regulatory or governmental body?”;
- (xi) “9.9: Is the Current business the subject of any inquiry, investigation, request for information ... or prosecution or other enforcement action by any regulatory or government body?”;

- (xii) “9.10: Are you aware of any complaint against the Current Business made by any student within the last 3 years alleging or involving discrimination, harassment, bullying or other serious misconduct by the Current Business which was not dismissed or unconditionally withdrawn?”;

**Particulars**

Wendy Bonnici Questionnaire; Mark Hutchinson Questionnaire; Bret Whitford Questionnaire; John Dawkins Questionnaire; Doug Halley Questionnaire; Stephen Tucker Questionnaire; Michelle Tredenick Questionnaire; Amanda King Questionnaire; Michael Langtree Questionnaire; Brendan Morrissey Questionnaire; Ben Gillingham Questionnaire; and Jonathon Smuskowitz Questionnaire.

- (f) PWC gave guidance on quantitative materiality thresholds for the then proposed prospectus;

**Particulars**

Letter from PWC dated 18 September 2013.

- (g) JWS prepared a “Due Diligence Planning Memorandum” which specified (inter alia) the responsibilities of the DDC and the procedures to be adopted, including as to verification of the prospectus being prepared;

**Particulars**

Due Diligence Planning Memorandum: Project Churchill. The Due Diligence Planning Memorandum was adopted by the DDC at its meeting on 15 November 2013.

- (h) there was a “Material Issues List” which was maintained by JWS, reviewed by the DDC and updated from time to time as issues were raised and reviewed;
- (i) JWS prepared a “Verification Report” dated 15 November 2013 (the **Verification Report**):

- (i) in which JWS confirmed that:

- (A) all statements in the prospectus had been verified in accordance with the Verification Guidelines at Annexure 1 to the Verification Report;

- (B) it held verification certificates obtained from each person responsible for verifying the relevant statements in the prospectus;
  - (C) it had conducted a review of at least 20 randomly selected verification statements and source materials to ensure that the selected statement referred to (or cross-referred to) independent source documents where appropriate and/or was signed-off to the knowledge of the appropriate verifier and that that process had not caused JWS to believe that the source documents reviewed were not appropriate to support the statements;
- (ii) to which JWS attached (as Annexure 2) a Verification Schedule (the **Verification Schedule**) identifying the persons responsible for verifying each statement in the prospectus and the source documents used to verify, inter alia, each factual statement;

**Particulars**

Verification Report.

- (j) Verification Certificates confirming verification of statements in the prospectus were completed and signed by, inter alia, Hutchinson, Bonnici, Langtree and Whitford (as Founders), Rozsa of JWS and Grewal;

**Particulars**

Founders Verification Certificate, Rozsa Verification Certificates and Grewal Verification Certificate.

- (k) on or about 15 November 2013, JWS issued a “Final Legal Due Diligence Exceptions Report” which identified, inter alia, various risks to be disclosed in the prospectus and confirmation that such risks had been disclosed;

**Particulars**

Final Legal Due Diligence Exceptions Report.

- (l) on or about 15 November 2013, JWS issued to the Directors of Vocation the “JWS Prospectus Opinion”;
- (m) thereafter, the “JWS Prospectus Opinion” was tabled at a meeting of the Due Diligence Committee held on 15 November 2013;

## **Particulars**

Minutes of Due Diligence Committee meeting held on 15  
November 2013: VOC.503.004.0411.

- (n) the JWS Prospectus Opinion identified, inter alia, that nothing had come to the attention of JWS that caused them to believe, and they did not believe that:
  - (i) the inquiries conducted as part of the Due Diligence Process including the verification procedures set out in the Due Diligence Planning Memorandum:
    - (A) would not be likely to be held to constitute all enquiries that were reasonable in the circumstances for the purposes of section 731 of the Corporations Act, such that each member of the Due Diligence Committee and their representative would have reasonable grounds for believing that the Prospectus does not contain a misleading or deceptive statement and that there is no omission from the Prospectus of information required to be included by the Corporations Act; or
    - (B) had not been implemented substantially in accordance with the Due Diligence Planning Memorandum (or that there were any material deviations from it not approved by the Due Diligence Committee);
  - (ii) to the extent that a Recipient has relied on information provided by another person pursuant to the Due Diligence Process, in circumstances where the Due Diligence Planning Memorandum contemplated that it would be so provided and relied on, such reliance would not be likely to be held to constitute reasonable reliance on information for the purposes of section 733(1) of the Corporations Act provided that information was provided by:
    - (A) if the person seeking to make out the defence is a company - someone other than a director, employee or agent of the company; and
    - (B) if the person seeking to make out the defence is an individual – someone other than an employee or agent of the individual.

## **Particulars**

JWS Prospectus Opinion: JWS.501.013.2235

- (o) on or about 15 November 2013, PWC issued a “Financial Information Report” in which PWC detailed, inter alia:
  - (i) the procedures they performed on the pro forma historical and pro forma forecast financial information included in the prospectus (referred to as the “Financial Information”);
  - (ii) the key accounting policies applied, including in relation to goodwill;
  - (iii) the basis upon which the Financial Information was prepared, which included, in respect of forecast financial information, FY14 forecasts prepared on a business-by-business basis by each of the founding groups;
  - (iv) their analysis of the FY14 pro forma forecast as against the performance of the merging businesses in Q1 of FY14 and management plans and having regard to a risk analysis of the clients of the various merging businesses;

**Particulars**

PWC Financial Report.

- (p) on or about 15 November 2013, PWC issued a “Due Diligence Sign Off” letter in respect of the Financial Information which confirmed that no “exceptions” arose from the procedures they performed;

**Particulars**

PWC Due Diligence Sign Off letter.

- (q) on or about 15 November 2013, PWC issued the IAR which was subsequently incorporated into the Initial Prospectus and the Revised Prospectus, and which confirmed, inter alia, that:
  - (i) nothing had come to the attention of PWC which caused it to believe that the Historical Financial Information in section 4 of the Prospectus was not presented fairly and in accordance with the basis stated;
  - (ii) nothing had come to the attention of PWC which caused it to believe, in respect of the Forecast Financial Information, that:
    - (A) the directors’ best-estimate assumptions did not provide reasonable grounds for the forecast information;

- (B) that the forecast information was not prepared on the basis of the directors' best-estimate assumptions or was not presented fairly; or
- (C) that the forecast information itself was unreasonable;

**Particulars**

PWC IAR.

- (r) on or about 15 November 2013, each of Hutchinson, Bonnici, Langtree, Whitford and Grewal issued a "Management Sign-Off" in which they each confirmed, inter alia, that:
  - (i) to the best of his or her knowledge and belief, the prospectus contained all information investors and professional advisers would reasonably require to find in the prospectus in order to make an informed assessment of [the matters specified in s 710 of the Corporations Act];
  - (ii) having made due enquiry, nothing had come to his or her attention and he or she did not believe that the prospectus contained any misleading or deceptive statements or any material omissions;
  - (iii) there were reasonable grounds for statements included in the prospectus about future matters;
  - (iv) he or she had answered all questions and requests for information made during the due diligence process to the best of his or her knowledge and ability;
  - (v) he or she had satisfied him/herself that all matters he or she considered material relating to his or her knowledge of Vocation's business had been identified to the Committee; and
  - (vi) all information provided to the DDC was true, accurate and not misleading or deceptive and nothing material had been omitted from it;

**Particulars**

Bonnici Management Sign-Off; Grewal Management Sign-Off;  
Hutchinson Management Sign-Off; Whitford Management Sign-  
Off; Langtree Management Sign-Off.

- (s) on or about 15 November 2013, each of the Directors of Vocation provided a letter confirming, inter alia, that:
- (i) he or she was satisfied that reliance on the work of others in the course of the due diligence process was reasonable;
  - (ii) he or she had made such enquiries of management as he or she felt necessary;
  - (iii) he or she had satisfied him/herself that the enquiries undertaken as part of the due diligence process had been conducted by appropriately qualified external advisers and management with relevant experience and capability;
  - (iv) he or she had satisfied him/herself that he or she had no query or doubt concerning any statement in the prospectus or any matter omitted from the prospectus;
  - (v) he or she did not believe that the prospectus was misleading or deceptive or that there was an omission from the prospectus of material required to be included by the Corporations Act, or that any statements as to future matters in the prospectus were not based on reasonable grounds;
  - (vi) he or she had answered all questions and requests for information made during the due diligence process to the best of his or her knowledge and ability;
  - (vii) he or she had satisfied him/herself that all matters he or she considered material relating to his or her knowledge of Vocation's business had been identified to the Committee;

#### **Particulars**

Director certificate - Mark Hutchinson (Saleco); Director certificate - Mark Hutchinson (Vocation); Director certificate - Stephen Tucker; Director certificate - John Dawkins; Director certificate - Michelle Tredenick; Director certificate - Douglas Halley.

- (t) on or about 15 November 2013, Vocation entered into an Implementation Agreement with the BAWM Founders (as defined), Whitford (the CSIA Founder) and Hutchinson (the AVANA Founder) pursuant to which:
  - (i) the respective founders undertook to procure that the AVANA Group (as defined), the BAWM Group, Student Hub and OzSoft (each, as defined) and the CSIA Group (as defined) would provide all information concerning, inter alia, the relevant entities as was required to ensure that the prospectus complied with the requirements of the Corporations Act, the ASX Listing Rules and all applicable Regulatory Guides and acknowledged that Vocation would rely on that information to prepare the prospectus (cl 4);
  - (ii) the BAWM Founders represented and warranted, inter alia, that the BAWM Prospectus Information (as defined) would (cl 12.2):
    - (A) be prepared in good faith and on the understanding that Vocation and its directors would rely on that information for the purpose of considering and approving the prospectus;
    - (B) comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and relevant ASIC regulatory guides;
    - (C) not be misleading or deceptive in any material respect, whether by omission or otherwise;
- (u) Hutchinson and Whitford (as the AVANA Founder and the CSIA Founder) gave representations and warranties in equivalent terms as those stated for BAWM Prospectus Information in paragraph 134(t)(ii) above (cl 12.1 and 12.3);

**Particular**

Implementation Agreement.

- (v) on or about 15 November 2013, Vocation entered into the BAWM Sale Agreement pursuant to which the Vendor (being BAWM Group Pty Ltd) the BAWM Founders (as defined) and the BAWM Executives (as defined) gave warranties including warranties to the general effect that (cl 9 and Sch 3):
  - (i) the accounts provided a true and fair view;

- (ii) nothing had arisen since 30 June 2013 that materially and adversely affected the operations and affairs of BAWM;
- (iii) BAWM was not in material contravention of any legislation or law;
- (iv) the records of BAWM did not contain or reflect any material inaccuracies or discrepancies;
- (v) there was no reason to think that any Statutory Licence (as defined) would be altered or revoked;
- (vi) BAWM was not (to the best of the knowledge of the Warrantors (as defined)) in breach of any Material Contract (as defined);

**Particulars**

BAWM Sale Agreement.

- (w) on or about 15 November 2013, Vocation entered into a series of option deeds pursuant to which:
  - (i) it acquired the right to call for a transfer of the shares in Aspin, Avana Group Pty Ltd, CSIA, CSIA Education Services Pty Ltd and Student Hub Pty Ltd;
  - (ii) it obtained the benefit of warranties in relation to the companies, accounts and affairs of each entity in respect of which it obtained an option which were to the same effect as those given in respect of BAWM set out in paragraph 134(v) above;

**Particulars**

Aspin Option Deed; AVANA Option Deed; CSIA Option Deed;  
Student Hub Option Deed.

- (x) on or about 5 December 2013, the members of the DDC (including representatives of JWS) each provided a "New Circumstances Sign-off" in which he confirmed that nothing had come to his attention causing him to believe, and he did not believe that:
  - (i) the prospectus (which had by then been issued as the Replacement Prospectus) contained a statement that was misleading or deceptive;

- (ii) there was, having regard to ss 710, 711 and 716 of the Corporations Act, any omission from the prospectus of matters required to be included; and
- (iii) there was any new circumstance arising since the prospectus was lodged with ASIC which would have required inclusion in the prospectus had it arisen before the prospectus was lodged;

**Particulars**

DDC New Circumstances Sign-Off.

- (y) in the premises, in releasing the Initial Prospectus, releasing the Replacement Prospectus and permitting the IPO to proceed to Completion (resulting in the issue of shares pursuant to the Offer and the listing of Vocation on the ASX)  
Vocation:
  - (i) made all inquiries that were reasonable in the circumstances; and
  - (ii) after doing so, believed on reasonable grounds that the statements made in the Initial Prospectus and the Replacement Prospectus were not misleading or deceptive and did not contain any material omissions;
  - (iii) has a valid defence under s 731 of the Corporations Act;

**Particulars**

Vocation refers to the inquiries made through the due diligence process as pleaded above and the results of, and answer to those enquiries, including the JWS Prospectus Opinion (JWS.501.013.2235) and the various certifications and verifications pleaded above.

- (z) further or alternatively, in the premises Vocation placed reasonable reliance on information provided by persons other than its directors, employees or agents for the purposes of s 733(1) of the Corporations Act.

**Particulars**

Vocation refers to the information which was included in the Initial Prospectus and the Replacement Prospectus by or on behalf of the Founding Companies and Ancillary Businesses and which was verified in the manner pleaded above, the due

diligence process designed and managed by JWS and the assurances given by JWS and PWC pleaded above.

JWS Prospectus Opinion: JWS.501.013.2235

135 It denies paragraph 135 and refers to and repeats paragraph 134 above.

135A In answer to paragraph 135A, it:

- (a) refers to and repeats paragraph 134 above; and
- (b) otherwise does not know and therefore cannot admit paragraph 135A.

135B In answer to paragraph 135B, it:

- (a) insofar as the allegations in paragraph 135B relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 135B;
- (b) refers to and repeats paragraph 134 above; and
- (c) otherwise denies paragraph 135B.

135C In answer to paragraph 135C, it:

- (a) insofar as the allegations in paragraph 135C relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 135C;
- (b) it refers to and repeats paragraph 134 above; and
- (c) otherwise denies paragraph 135C.

136 There are no paragraphs 136-245.

#### **IV. Loss and damage**

246 In answer to paragraph 246, it:

- (a) says that the Applicant did not acquire shares in Vocation through the IPO, but (if paragraph 2 of the SFACSOC is proved, which is denied) first acquired shares in Vocation in June 2014, more than six months after the IPO;

- (b) insofar as the allegations in paragraph 246 relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 246;
- (c) refers to and repeats paragraph 134 above; and
- (d) otherwise denies paragraph 246.

247 In answer to paragraph 247:

- (a) insofar as the allegations in paragraph 247 relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 247;
- (b) it refers to and repeats paragraph 134 above; and
- (c) otherwise denies paragraph 247.

247A. In answer to paragraph 247A, it:

- (a) insofar as the allegations in paragraph 247A relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 247A;
- (b) refers to and repeats paragraph 134 above; and
- (c) otherwise denies paragraph 247A.

247B. In answer to paragraph 247B, it:

- (a) insofar as the allegations in paragraph 247B relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 247B;
- (b) refers to and repeats paragraph 134 above; and

248 otherwise denies paragraph 247B. In answer to paragraph 248, it:

- (a) says that the price at which shares in Vocation traded on the ASX after Completion was or may have been affected by, inter alia:
  - (i) economic conditions following Completion;

- (ii) sentiment concerning the VET industry after Completion;
  - (iii) regulatory activity after Completion;
  - (iv) business activities undertaken by, and public announcements of, Vocation after Completion;
- (b) insofar as the allegations in paragraph 248 relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 248;
- (c) refers to and repeats paragraph 134 above; and
- (d) otherwise denies paragraph 248.

249 In answer to paragraph 249, it:

- (a) refers to and repeats paragraphs 134, 0 and 248 above;
- (b) admits that the IPO was regulated by Chapter 6D of the Corporations Act;
- (c) insofar as the allegations in paragraph 249 relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 249; and
- (d) otherwise denies paragraph 249.

250 In answer to paragraph 250, it:

- (a) says that the price on which shares in Vocation traded on the ASX after Completion was or may have been affected by, inter alia:
  - (i) economic conditions following Completion;
  - (ii) sentiment concerning the VET industry after Completion;
  - (iii) regulatory activity after Completion;
  - (iv) business activities undertaken by, and public announcements of, Vocation after Completion; and

- (b) insofar as the allegations in paragraph 250 relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 250;
- (c) it refers to and repeats paragraph 134 above; and
- (d) otherwise denies paragraph 250.

251 In answer to paragraph 251, it:

- (a) refers to and repeats paragraph 248(a) above;
- (b) insofar as the allegations in paragraph 251 relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 251; and
- (c) otherwise denies paragraph 251.

251A. In answer to paragraph 251A, it:

- (a) it refers to and repeats paragraph 248(a) above;
- (b) insofar as the allegations in paragraph 251A relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 251A; and
- (c) otherwise denies paragraph 251A.

252 In answer to paragraph 252, it:

- (a) refers to and repeats paragraph 248(a) above;
- (b) insofar as the allegations in paragraph 252 relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 252; and
- (c) otherwise denies paragraph 252.

253 [not used]

254 In answer to paragraph 254, it:

- (a) insofar as the allegations in paragraph 254 relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 254; and
- (b) otherwise denies paragraph 254.

255 In answer to paragraph 255, it:

- (a) insofar as the allegations in paragraph 255 relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 255; and
- (b) otherwise denies paragraph 255.

255A In answer to paragraph 255A, it:

- (a) insofar as the allegations in paragraph 255A relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 255A;
- (b) refers to and repeats paragraph 134 above; and
- (c) otherwise denies paragraph 255A.

256 In answer to paragraph 256, it:

- (a) insofar as the allegations in paragraph 256 relate to a Vocation Prospectus Misleading Conduct Contravention, says it does not know and therefore cannot admit paragraph 256; and
- (b) otherwise denies paragraph 256.

257 It denies paragraph 257.

258 [not used]

259 [not used]

260 [not used]

### III. Claim against PWC

261 Save as stated below, it does not plead to paragraphs 261-403 of the SFACSOC as Part III make no allegations against it.

262 So far as the pleas advanced against the Second Respondent overlap with pleas advanced against the First Respondent, it says as follows:

- (a) as to paragraph 262, it refers to and repeats paragraph 5 and otherwise does not know and therefore cannot admit paragraph 262;
- (b) as to paragraph 270, it refers to and repeats paragraph 7;
- (c) as to paragraph 271, it refers to and repeats paragraph 10;
- (d) as to paragraph 272, it refers to and repeats paragraph 12;
- (e) as to paragraph 273, it refers to and repeats paragraph 14;
- (f) as to paragraph 274, it refers to and repeats paragraph 39;
- (g) as to paragraph 275, it refers to and repeats paragraph 40;
- (h) as to paragraph 276, it refers to and repeats paragraph 25;
- (i) as to paragraph 277, it refers to and repeats paragraph 32;
- (j) as to paragraph 278, it refers to and repeats paragraph 33;
- (k) as to paragraph 279, it refers to and repeats paragraph 34;
- (l) as to paragraph 280, it refers to and repeats paragraph 56; and
- (m) as to paragraph 281, it:
  - (i) admits, in answer to paragraph 281(a), that the Replacement Prospectus stated (at page 61) that “Enterprise revenue is recognised based on the contractual terms of Vocation’s client agreements and typically results in revenue recognition either at the time the training is delivered to students or at the time a student has completed the qualification (or unit of competency) within that qualification.”;

- (ii) admits, in answer to paragraph 281(b), that the Replacement Prospectus stated (at page 62) that “Direct revenue is recognised at the time a direct student has completed a unit of competency within a program.”;
- (iii) says, in answer to paragraph 281(c), that it admits the five factors stated in paragraph 281(c)(i)-(v) in respect only of Government contract training fees;
- (iv) says further that each of the proposed Enterprise, Direct and Solutions business channels included businesses from a range of the Founding Companies (as defined in the Replacement Prospectus) and not just businesses of BAWM and/or Aspin; and
- (v) otherwise denies paragraph 281.

#### **IV. Claim against Hutchinson, Gréwal and Dawkins**

404 Save as stated below, it does not plead to paragraphs 404-540 of the SFACSOC as Part IV make no allegations against it.

405 So far as the pleas advanced against the Third to Fifth Respondents overlap with pleas advanced against the First Respondent, it says as follows:

- (a) as to paragraph 407, it refers to and repeats paragraph 5 and otherwise does not know and therefore cannot admit paragraph 407;
- (b) as to paragraph 408, it refers to and repeats paragraph 7;
- (c) as to paragraph 409, it refers to and repeats paragraph 10;
- (d) as to paragraph 410, it refers to and repeats paragraph 12;
- (e) as to paragraph 411, it refers to and repeats paragraph 14;
- (f) as to paragraph 412, it refers to and repeats paragraph 39;
- (g) as to paragraph 413, it refers to and repeats paragraph 40;
- (h) as to paragraph 414, it refers to and repeats paragraph 25;
- (i) as to paragraph 415, it refers to and repeats paragraph 32;

- (j) as to paragraph 416, it refers to and repeats paragraph 33;
- (k) as to paragraph 417, it refers to and repeats paragraph 34;
- (l) as to paragraph 418, it refers to and repeats paragraph 56; and
- (m) as to paragraph 419, it:
  - (i) admits, in answer to paragraph 419(a), that the Replacement Prospectus stated (at page 61) that “Enterprise revenue is recognised based on the contractual terms of Vocation’s client agreements and typically results in revenue recognition either at the time the training is delivered to students or at the time a student has completed the qualification (or unit of competency) within that qualification.”;
  - (ii) admits, in answer to paragraph 419(b), that the Replacement Prospectus stated (at page 62) that “Direct revenue is recognised at the time a direct student has completed a unit of competency within a program.”;
  - (iii) says, in answer to paragraph 419(c), that it admits the five factors stated in paragraph 419(c)(i)-(v) in respect only of Government contract training fees;
  - (iv) says further that each of the proposed Enterprise, Direct and Solutions business channels included businesses from a range of the Founding Companies (as defined in the Replacement Prospectus) and not just businesses of BAWM and/or Aspin; and
  - (v) otherwise denies paragraph 419.

Date: 17 December 2019



Signed by Crispian Paul Lynch  
Lawyer for the First Respondent

This pleading was prepared by C Platford, C Lynch, A Pailthorpe, C Harb and S Bekric, solicitors, and settled by S Gory and C M Caleo, of counsel.

### Certificate of lawyer

I, Crispian Paul Lynch, certify to the Court that, in relation to the defence filed on behalf of the First 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: 17 December 2019



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Signed by Crispian Paul Lynch

Lawyer for the First Respondent

## Schedule

No. VID 434 of 2015

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Applicant** Cheryl Whittenbury

### **Respondents**

First Respondent	Vocation Limited (ACN 166 631 330) (in liq)
Second Respondent	PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)
Third Respondent	Mark Edward Hutchinson
Fourth Respondent	Manvinder Gréwal
Fifth Respondent	John Sydney Dawkins

### **Details of all cross-claims in the proceeding**

#### **First Cross-Claim**

Cross-Claimant	Vocation Limited (ACN 166 631 330)
Cross-Respondent	The Partners of Johnson Winter & Slattery

#### **Second Cross-Claim**

Cross-Claimant	PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)
Cross-Respondent	The Partners of Johnson Winter & Slattery

#### **Third Cross-Claim**

Cross-Claimant	PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)
First Cross-Respondent	Mark Edward Hutchinson
Second Cross-Respondent	Manvinder Gréwal
Third Cross-Respondent	John Sydney Dawkins
Fourth Cross-Respondent	Stephen John Tucker

Fifth Cross-Respondent Michelle Kim Tredenick  
Sixth Cross-Respondent Douglas James Halley  
Seventh Cross-Respondent Vocation Limited (ACN 166 631 330)

**Fourth Cross-Claim**

Cross-Claimant John Sydney Dawkins  
Cross-Respondent The Partners of Johnson Winter & Slattery

**Fifth Cross-Claim**

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

**Sixth Cross-Claim**

Cross-Claimant Mark Edward Hutchinson  
Cross-Respondent The Partners of Johnson Winter & Slattery

**Seventh Cross-Claim**

Cross-Claimant Manvinder Gréwal  
Cross-Respondent The Partners of Johnson Winter & Slattery