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## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: VID790/2014  
File Title: Innes Creighton v Australian Executor Trustees Limited  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 30/07/2015 11:56:44 AM AEST

A handwritten signature in black ink, appearing to read 'Warwick Soden'.

Registrar

### Important Information

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

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**Defence to the Amended Statement of Claim**

No. VID790 of 2014

Federal Court of Australia

District Registry: Victoria

**Innes Creighton**

Applicant

**Australian Executor Trustees Limited (ACN 007 869 794)**

Respondent

**A. REPRESENTATIVE PROCEEDINGS**

1. The Respondent (**AET**) admits the allegations in paragraph 1 of the Amended Statement of Claim dated ~~23 December 2014~~ 26 June 2015 (SoC).
2. In answer to the allegations in paragraph 2 of the SoC, AET:
  - (a) says that on or about 16 November 2011 Provident Capital Limited (**Provident**) issued the Applicant with Investment Certificate D112165501 in the amount of \$100,000; and
  - (b) otherwise does not admit the allegations in paragraph 2 of the SoC.
3. In answer to the allegations in paragraph 3 of the SoC, AET:
  - (a) says that on 11 December 1998 IOOF Australia Trustees Limited (**IOOF**) entered into a trust deed with Provident Capital Limited (**Provident**) titled Debenture Trust Deed (**the Debenture Trust Deed**);
  - (b) says that the Debenture Trust Deed provided to the effect:
    - (i) Provident may at any time issue debentures to any person who applied for debentures under the Debenture Trust Deed (**Debentures**);
    - (ii) Provident would use the debenture funds to provide financial accommodation to other people on the security and terms permitted under the Debenture Trust Deed;
    - (iii) the financial accommodation provided by Provident must satisfy the following criteria:
      - (A) the accommodation is secured by a first ranking registered mortgage over the accommodation security;

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- (B) the accommodation is not greater than the following proportions of the value of the accommodation security (**LVR**): residential land – 85% LVR; commercial land – 75% LVR; industrial land – 75% LVR; rural land – 70% LVR; construction and development – 70% LVR of projected value of the development;
  - (C) be repaid after 10 years after the first draw down;
  - (iv) Provident charged in favour of IOOF all its present and future right, title and interest in and to its assets to secure the due and punctual payment of the amounts payable to debenture holders;
  - (v) Provident covenanted (inter alia) that:
    - (A) if requested by IOOF it would provide monthly reports setting out (inter alia) particulars of mortgage arrears at the end of the month and action taken by Provident to recover those arrears;
    - (B) it would give to IOOF copies of the accounts and reports required to be lodged with the Australian Securities and Investments Commission (**ASIC**);
    - (C) it would promptly give IOOF written notice as soon as it became aware of any potential default or event of default or anything which might result or has resulted in a material adverse change in the financial position of Provident or the ability of Provident to perform its obligations under the Debenture Trust Deed;
  - (c) says that on 15 September 2000 IOOF changed its name to Tower Trust (NSW) Limited (**Tower (NSW)**);
  - (d) says that on or about 7 December 2004 Tower (NSW) retired as trustee of the Debenture Trust Deed and was replaced by AET, then known as Tower Trust Limited;
  - (e) says that, at all material times, the Debenture Trust Deed was a Trust Deed governed by Chapter 2L of the *Corporations Act 2001* (Cth) (**Corps Act**);
  - (f) otherwise does not admit the allegations in paragraph 3 of the SoC.
4. In answer to the allegations in paragraph 4 of the SoC, AET:
- (a) says that it does not know the identity and circumstances of the group members;
  - (b) therefore, does not admit the allegations in paragraph 4.1 and 4.2 of the SoC; and
  - (c) denies that any group member has suffered loss or damage as a result of the contraventions of s283DA of the *Corps Act* alleged against AET in the SoC.

## **B. PROVIDENT AND ITS DUTIES**

5. In answer to the allegations in paragraph 5 of the SoC, AET:
- (a) admits the allegations in paragraph 5.1 of the SoC;

- (b) in relation to paragraph 5.2 of the SoC, says that at all material times Provident was required by s283BF of the Corps Act to give to AET and lodge with ASIC a quarterly report setting out the following information (inter alia):
- (i) any failure by Provident to comply with the terms of debentures, the provisions of the Debenture Trust Deed or Chapter 2L of the Corps Act during the quarter;
  - (ii) any event that has happened during the quarter that has caused or could cause any amount deposited or lent under the debentures to become immediately payable or the debentures, or any right or remedy under the terms of the debentures or provisions of the Debenture Trust Deed, to become immediately enforceable;
  - (iii) any circumstances that have occurred during the quarter that materially prejudice Provident or any of its subsidiaries or any security or charge included in or created by the debentures or the Debenture Trust Deed;
  - (iv) any substantial change in the nature of the business of Provident that occurred during the quarter; and
  - (v) any other matters that may materially prejudice any security or the interests of the debenture holders; and
- (c) otherwise does not admit the allegations in paragraph 5 of the SoC.

### **C. AETL, ITS DUTIES AND POWERS**

6. AET admits the allegations in paragraph 6 of the SoC.
7. AET admits the allegations in paragraph 7 of the SoC and says further that in discharging its duties under s283DA of the Corps Act it was entitled to rely on the accuracy of:
- (a) any information or reports issued by Provident to AET pursuant to Chapter 2L of the Corps Act, the Debenture Trust Deed or otherwise; and
  - (b) any report, certificate or other document and accompanying document provided to AET by Provident's auditor pursuant to s313 of the Corps Act.
8. In answer to the allegations in paragraph 8 of the SoC, AET:
- (a) says that, pursuant to s283BB of the Corps Act, Provident had an obligation to make available for inspection by AET, or an officer or employee of AET authorised to carry out the inspection, or a registered company auditor appointed by AET to carry out the inspection, all of its financial or other records and give any information, explanation or other assistance they require about matters relating to those records;
  - (b) says that, pursuant to s283HA of the Corps Act, on application by a trustee for any direction in relation to the performance of its functions or to determine any question in relation to the interests of debenture holders, the Court may give any direction and make any declaration or determination in relation to the matter that it considers appropriate and may make ancillary or consequential orders;
  - (c) says that, pursuant to s283HB(1) of the Corps Act, in addition to the orders specified in paragraphs (a) – (f) of that section, the Court may make any order it considers appropriate to protect the interests of existing or prospective debenture holders; and

(d) otherwise does not admit paragraph 8 of the SoC.

9. AET admits the allegations in paragraph 9 of the SoC.

**D. PROVIDENT'S BUSINESS AND THE VALUE OF ITS ASSETS AET's ALLEGED GENERAL KNOWLEDGE**

10. In answer to the allegations in paragraph 10 of the SoC, AET:

(a) says that in the period 2008 to 2010, Provident's principal business activities involved fixed rate mortgage lending and the issuing of fixed rate debentures;

(b) says that it knew of the matters in the previous sub-paragraph; and

(c) otherwise does not admit the allegations in paragraph 10 of the SoC.

11. In answer to the allegations in paragraph 11 of the SoC, AET:

(a) says that in about August 2007 Provident entered into a Wholesale Funding Facility with Adelaide Bank Limited (**ABL** and **ABL Facility**) which involved the following features:

(i) Provident would make or refinance loans which loan and its security interest would be assigned to a trust controlled by ABL (**ABL Trust**);

(ii) the loan would be funded by the ABL Trust and not by Provident;

(iii) interest on the loans would be received by Provident and then transferred to ABL;

(iv) Provident would manage the loan for ABL;

(v) Provident was required to pay a cash deposit which was available to be used to repay any losses or operating fees resulting in non-payment of the loans made to borrowers;

(vi) Provident was required to refinance loans more than 270 days past due up to a maximum aggregate of 5% of all loans funded using the ABL Facility upon which the loan and security was transferred back to ABL;

(b) says that from about August 2007, it knew of the matters in the previous sub-paragraph;

(c) says that the cash deposit referred to in sub-paragraph (a)(v) above was \$7.5 million as at 30 June 2008 and \$10 million as at 30 September 2008 and thereafter; and

(d) otherwise does not admit the allegations in paragraph 11 of the SoC.

12. In answer to the allegations in paragraph 12 of the SoC, AET:

(a) says that in the period 2008 to 2010 Provident's lending service was designed to meet the need of borrowers who did not fit the lending criteria of Australia's traditional financial institutions;

(b) says that Provident stated that its typical borrowers included business owners, self employed, property investors raising funds to purchase a property, the credit impaired and borrowers wishing to consolidate debt;

- (c) says that in the period 2008 to 2010 AET knew of the matters in the two preceding sub-paragraphs; and
- (d) does not admit any other allegation in paragraph 12 of the SoC.

13. In answer to the allegations in paragraph 13 of the SoC, AET:

- (a) says that in the period 2008 to 2010, the major asset on Provident's balance sheet were loans and advances;
- (b) says that a primary risk Provident was exposed to was credit risk, being the risk that a counterparty will fail to perform their contractual obligations either in whole or part under the loan or mortgage documents and that the proceeds available from the sale of the property mortgaged to Provident as security for the loan are less than the amount owed under the loan;
- (c) says that in the period 2008 to 2010 AET knew of the matters in the two preceding sub-paragraphs; and
- (d) otherwise does not admit the allegations in paragraph 13 of the SoC.

14. In answer to the allegations in paragraph 14 of the SoC, AET:

- (a) repeats the matters in paragraph 13(a) and (b) above;
- (b) says that in the period 2008 to 2010 the principal assets of Provident that were or would be available to repay the amounts payable under debentures issued pursuant to the Debenture Trust Deed were loans and advances made by Provident and accompanying security for those loans and advances;
- (c) says that in the period 2008 to 2010 AET knew of the matters in the two preceding sub-paragraphs; and
- (d) otherwise does not admit the allegations in paragraph 14 of the SoC.

~~**E. INFORMATION AVAILABLE TO AET IN THE PERIOD TO DECEMBER 2010 ABOUT THE FINANCIAL POSITION AND PERFORMANCE OF PROVIDENT**~~

~~**A) GENERAL MATTERS**~~

**(a) AET alleged to be on notice of risks**

15. In answer to the allegations in paragraph 15 of the SoC, AET:

- (a) repeats the matters in paragraph 11 above;
- (b) repeats the matters in paragraph 13 above; and
- (c) otherwise does not admit the allegations in paragraph 15 of the SoC.

16. In answer to the allegations in paragraph 16 of the SoC, AET says:

- (a) Provident's loan default levels in the period until 2010 were higher than traditional lenders (historically at 20% - 30% of the loan portfolio), and Provident's credit losses as reported in its audited annual financial reports had been historically low, between 0.1% (in 2008) to 0.6% (in 2010) of all loans written;

- (b) Provident asserted that this had been achieved through a proactive management of loans in arrears, coupled with prudent credit policies;
- (c) that in the period 2008 to 2010 AET knew of the matters in the two preceding subparagraphs; and
- (d) otherwise does not admit the allegations in paragraph 16 of the SoC.

17. In answer to the allegations in paragraph 17 of the SoC, AET:

- (a) says that in the period 2008 to 2010, it obtained information concerning Provident's portfolio of loans from the following sources:
  - (i) the audited annual financial reports issued by Provident (**Annual Reports**);
  - (ii) the audited interim annual financial reports issued by Provident (**Interim Reports**);
  - (iii) from October 2008 bi-annual reports titled "ASIC Regulatory Guide 69 Benchmark Disclosure Report" issued by Provident (**RG 69 Reports**);
  - (iv) Quarterly Reports supplied by Provident to AET addressing the matters in s283BF of the Corps Act (**Quarterly Reports**);
  - (v) monthly reports supplied by Provident to AET (**Monthly Reports**); and
  - (vi) Provident's Debenture Prospectus 11 dated 24 December 2008 (**DP 11**) and Debenture Prospectus 12 dated 23 December 2009 (**DP 12**).
- (b) says that the Annual Reports from time to time (inter alia):
  - (i) disclosed the number and net fair value of loans made by Provident as at 30 June of each financial year;
  - (ii) disclosed the number and value of loans by security types, (i.e., residential, commercial rural, construction, other) and by location as at 30 June of each financial year;
  - (iii) disclosed the number and value of loans past due as at 30 June of each financial year;
  - (iv) conducted an analysis showing the percentage property price reduction and loan default level necessary to a result in a loss to Provident equal to the net equity as at 30 June of each year;
  - (v) disclosed the five largest loans and their percentage of the total loans and advances;
  - (vi) disclosed impairment losses expensed and impairment provisions made in respect of loans and advances;
  - (vii) contained a directors' declaration stating (inter alia) that the Annual Report gave a true and fair view of Provident's financial position as at 30 June of the year and of its performance for the year ended on that date and that there were reasonable grounds to believe that Provident will be able to pay the debts as and when they became due and payable;

- (viii) contained an auditor's opinion that the Annual Report gave a true and fair view of Provident's financial position as at 30 June and its performance for the year ended on that day and complied with the Corps Act, the *Corporations Regulations 2001* (Cth) (**Corps Regs**), and Australian Accounting Standards.
- (c) says that the Interim Reports (inter alia) from time to time:
- (i) disclosed the net value of loans and advances made by Provident as at 31 December of each year, being the value of loans or advances less an individually assessed impairment provision;
  - (ii) contained a directors' declaration stating (inter alia) that the Interim Report gave a true and fair view of Provident's financial position as at 31 December of the year and of its performance for the half-year ended on that date and that there were reasonable grounds to believe that Provident will be able to pay the debts as and when they became due and payable;
  - (iii) contained an auditor's opinion that based on their review they had not become aware of any matter which made them believe that the Interim Report did not give a true and fair view of Provident's financial position as at 31 December of the year and of its performance for the half-year ended on that date;
- (d) says that the RG 69 Reports reported Provident's status as at the end of the quarter immediately preceding against the eight benchmarks set out in ASIC Regulatory Guide 69, "Debentures and notes: Improving disclosure for retail investors" issued by ASIC (**RG 69**), including, from time to time, stating:
- (i) whether Provident satisfied each of the benchmarks and, if not, why not;
  - (ii) Provident's equity ratio and total equity;
  - (iii) the total number and value of loans made by Provident;
  - (iv) the number and value of loans made by Provident by type of security property (i.e., residential, commercial, rural, construction, or other) and by location of the security property;
  - (v) the largest and ten largest loans made by Provident;
  - (vi) the number and value of loans in arrears or past due and their percentage by value of loans and by number of all loans;
  - (vii) the status of past due loans by category and amount, including the value of loans in respect of which Provident was mortgagee in possession pending sale and in respect of which legal proceedings had been commenced;
  - (viii) the number and value of loans secured by first registered mortgages;
  - (ix) Provident's policies for valuation of securities given for loans; namely that loans be supported by valuations of security made within 3 months of the loan based on the current market value of the property on an "as is" basis and, in the case of construction and development loans, on an "as if complete" basis;
  - (x) details of any valuations of security for loans which represented more than 5% of the total value of the loan portfolio;



- (xi) Provident's policies in respect of LVRs of security property and the average LVRs across the whole of its loan portfolio and in respect of the loans secured by residential, commercial / industrial, rural and development property respectively;
- (e) says that the Quarterly Reports addressed the matters required by s283BF of the Corps Act and referred to in paragraph 5(b) above;
- (f) says that the Monthly Reports:
  - (i) provided cash flow projections for Provident for the three months following the date of the report;
  - (ii) provided a report in relation to loans made by Provident which were in excess of 90 days past due (**Arrears Report**);
- (g) says the Arrears Reports from time to time:
  - (i) identified the loans which were in arrears for 90 days or more;
  - (ii) identified the total value of loans in arrears and their percentage of the value of all loans made by Provident;
  - (iii) identified the principal balance, the net arrears, days in arrears and any impairment provision made in respect of each loan;
  - (iv) stated the valuation of the security property and the relevant LVR for each loan;
  - (v) stated whether legal proceedings had been commenced in relation to the loan, or whether the security property was being sold by the borrower, or whether the security property was being sold by Provident, or whether the security property had been sold and was awaiting exchange or exchanged and awaiting settlement;
  - (vi) identified an estimated discharge date;
  - (vii) gave comments on the status of the loan and/or identified a strategy in relation to Provident's recovery of the amount of the loan;
- (h) says that DP 11 and DP 12 reported Provident's status against the eight benchmarks in RG 69, including the information referred to in sub-paragraph (d) above:
  - (i) says that DP 11 was the subject of an Auditor's Benchmark Assurance Report dated 10 December 2009 (**DP 11 Auditor's Benchmark Assurance Report**) and DP 12 was the subject of an Auditor's Benchmark Assurance Report dated 14 April 2010 (**DP 12 Auditor's Benchmark Assurance Report**);
  - (j) repeats the matters in paragraph 7 above and says that in discharging its duties under Chapter 2L of the Corps Act from time to time, AET was entitled to rely on the accuracy of the information contained in the documents referred to in the preceding sub-paragraphs; and
- (k) otherwise does not admit the allegations in paragraph 17 of the SoC.

17A. In answer to the allegations in paragraph 17A of the SoC, AET:

- (a) says that it maintained hard and soft copy files of documents relating to its role as trustee under the Debenture Trust Deed (the File);
- (b) says that the File contained (inter alia) the documents described in paragraph 17 above as provided to it from time to time;
- (c) says that AET knew the matters disclosed in the documents described in paragraph 17 above as provided to it from time to time;
- (d) otherwise denies the allegations in paragraph 17A of the SoC.

18. In answer to the allegations in paragraph 18 of the SoC, AET:

- (a) repeats the matters in paragraph 17 above;
- (b) says that the reports in paragraph 17 above wholly or substantially covered the matters referred to in paragraph 18 of the SoC; and
- (c) denies the allegations in paragraph 18 of the SoC.

19. In answer to the allegations in paragraph 19 of the SoC, AET:

- (a) says that in DP 11, Provident stated to the effect that it did not satisfy Benchmark 1 in RG 69 because its equity ratio at 30 June 2008 was 6% and not 8%;
- (b) says that in DP 11 Provident stated to the effect that it had not sought a credit rating for its debentures from a credit rating agency recognised by ASIC as required by ASIC Benchmark 4;
- (c) says that compliance with the eight benchmarks in RG 69 was not mandatory and failure to meet one or more of them did not mean that a particular note was a poor investment, but required additional disclosure to investors to address the benchmarks on an "if not, why not" basis so that investors could assess its impact on their investment decision;
- (d) says that in DP 11 in relation to Benchmark 1 in RG 69 Provident stated to the effect that it considered that despite the general market economic slowdown since 30 June 2008, its level of equity capital was appropriate to operate the business and cover any losses that may arise, particularly in the light of Provident's record of low credit losses, management of past loans due, loan to valuation restrictions, business parameters and risks and limited liability under the wholesale funding facility;
- (e) says that in DP 11 in relation to Benchmark 4 in RG 69 Provident stated to the effect that it was continuing to assess a credit rating for its debentures and, as at the date of DP 11, was not satisfied that the potential benefits outweighed the costs of obtaining and maintaining such a rating, particularly in the light of Provident's record of low credit losses, management of past loans due, loan to valuation restrictions, business parameters and risks and limited liability under the wholesale funding facility;
- (f) says that the DP 11 Auditor's Benchmark Assurance Report stated to the effect that in the opinion of the auditors, in all material respects, the internal controls of Provident were adequately designed and operated effectively during the period from 30 June 2008 to 24 December 2008 to achieve the control objective of (inter alia)

the equity ratio of Provident being appropriately monitored and instances where the ratio was less than 8% being identified and reported to the directors;

- (g) says that the DP 12 Auditor's Benchmark Assurance Report stated to the effect that the internal controls of Provident were adequately designed and operated effectively during the period from 1 July 2008 to 30 June 2009 to achieve the control objective of (inter alia) the equity ratio of Provident being appropriately monitored and instances where the ratio was less than 8% being identified and reported to the directors; and
- (h) says that it knew of the matters in sub-paragraphs (a) – (g) above;
- (i) otherwise denies the allegations in paragraph 19 of the SoC.

**~~B) THE FINANCIAL POSITION AND PERFORMANCE OF PROVIDENT AS AT 30 JUNE 2008~~**

**E. INFORMATION TO DECEMBER 2008**

20. In answer to the allegations in paragraph 20 of the SoC, AET:

- (a) says that in its Annual Report for the year ended 30 June 2008 (**2008 Annual Report**), Provident's total assets were stated to be \$239,834,246;
- (b) says that in the 2008 Annual Report, Provident's current assets included loans and advances of \$177,505,337 and its non-current assets included loans and advances of \$15,315,257;
- (ba) says that in the 2008 Annual Report, impairment expenses of loans and receivables of \$1,531,383 were recognised, being \$656,383 in recognised losses and \$875,000 in individually assessed impairments;
- (bb) says that in the 2008 Annual Report, Provident recorded net assets of \$14,476,010;
- (c) says that it knew of the matters in the ~~two~~ four preceding sub-paragraphs; and
- (d) otherwise denies the allegations in paragraph 20 of the SoC.

21. AET admits the allegations in paragraph 21 of the SoC.

22. In answer to the allegations in paragraph 22 of the SoC, AET:

- (a) says that the 2008 Annual Report stated to the effect that:
  - (i) the total value of debentures issued by Provident as at 30 June 2008 was \$154,822,573;
  - (ii) the value of debentures issued by Provident as at 30 June 2008 which matured not longer than three months was \$30,017,474;
  - (iii) the value of debentures issued by Provident as at 30 June 2008 which matured longer than three months and not longer than 12 months was \$67,987,141;
  - (iv) the value of debentures issued by Provident as at 30 June 2008 which matured longer than one and not longer than five years was \$56,817,958;

- (v) the value of debentures issued by Provident as at 30 June 2008 which matured longer than five years was nil;
- (b) says some debentures issued by Provident contained terms enabling Provident to defer repayment and payment of interest for up to one year, others for 180 days and others for 90 days;
- (c) says that by about 5 November 2008, it knew of the matters in sub-paragraph (a) and (b) above; and
- (d) otherwise denies the allegations in paragraph 22 of the SoC.

22A. In answer to the allegations in paragraph 22A of the SoC, AET:

- (a) says that the 2008 Annual Report reported as non-current assets as at 30 June 2008 deferred tax assets of \$1,077,155;
- (b) says that the 2008 Annual Report reported as current assets as at 30 June 2008 current tax assets of \$179,828;
- (c) says that the 2008 Annual Report stated that deferred tax assets were recognised for deductible temporary differences and unused tax losses only if it was probable that the future taxable amounts will be available to utilise those temporary differences and losses;
- (d) refers to the matters in paragraph 7 above and in paragraphs 23(g) and (h) below; and
- (e) otherwise does not admit the allegations in paragraph 22A of the SoC.

23. In answer to the allegations in paragraph 23 of the SoC, AET:

- (a) says that in the 2008 Annual Report, Provident reported as a current asset loan interest receivables of \$7,949,366;
- (b) says that in the 2008 Annual Report, Provident reported that it had 44 loans greater than 30 days plus due with a total outstanding balance of \$70,832,895;
- (c) says that in the 2008 Annual Report, Provident reported that it had 36 loans past due greater than 90 days with a total outstanding balance of \$52,817,247;
- (d) says that in the 2008 Annual Report, Provident reported that of the loans past due greater than 90 days it was in possession of mortgaged property pending sale in respect of those loans to the value of \$28,316,087;
- (e) says that in the 2008 Annual Report, Provident stated that whilst its loan default levels were higher than traditional lenders (historically at 20%-30% of the loan portfolio), its credit losses had been historically low at less than 0.1% of all loans issued;
- (f) says that in the 2008 Annual Report, Provident stated to the effect that in order for it to incur a loss equal to its net equity it would need to suffer one of the following combinations of events: a property price reduction of 35% and a loan default level of 60%; a property price reduction of 40% and a loan default level of 42%; a property price reduction of 45% and a loan default level of 32%;

- (g) says that the 2008 Annual Report contained a directors' declaration stating (inter alia) that it gave a true and fair view of Provident's financial position as at 30 June 2008 and of its performance for the year ended on that date and that there were reasonable grounds to believe that Provident will be able to pay the debts as and when they became due and payable;
- (h) says that the 2008 Annual Report contained an auditor's opinion that the 2008 Annual Report gave a true and fair view of Provident's financial position as at 30 June 2008 and its performance for the year ended on that day and complied with the Corps Act, Corps Regs, and Australian Accounting Standards;
- (i) says that Provident it knew the matters referred to in sub-paragraphs (a) – (h) above; and
- (j) otherwise denies the allegations in paragraph 23 of the SoC.

24. In answer to the allegations in paragraph 24 of the SoC, AET:

- (a) says that in the 2008 Annual Report, Provident identified its largest loan as at 30 June 2008 as a loan in the amount of \$13,500,429;
- (b) says that in the 2008 Annual Report, Provident identified that it had made two loans as at 30 June 2008 where the security type was "construction" to a value of \$13.5 million;
- (c) says that Provident it knew the matters referred to in the two preceding sub-paragraphs; and
- (d) otherwise denies the allegations in paragraph 24 of the SoC.

**(a) FTI Portfolio**

24A. In answer to the allegations in paragraph 24A of the SoC, AET:

- (a) says that on 1 December 2008 Provident supplied to it the Arrears Report for the month ended 31 October 2008 (October 2008 Arrears Report);
- (b) says that the October 2008 Arrears Report disclosed 28 loans as in arrears for greater than 90 days;
- (c) says that the principal balance of the loans disclosed in the October 2008 Arrears Report as in arrears for greater than 90 days was \$51,822,624.89 and 24.78% of total loans made by Provident and was within the historical experience of Provident as referred to in paragraph 23(e) above;
- (d) says that as at 1 December 2008 it knew the matters referred to in sub-paragraphs 24A(a) – (c) above;
- (e) says that Provident supplied to AET the Arrears Report for the month ended 31 December 2008 on 2 February 2009 (December 2008 Arrears Report);
- (f) denies that it knew, or ought to, or could have, known, by no later than 1 December 2008, the matters disclosed in the December 2008 Arrears Report; and
- (g) otherwise denies the allegations in paragraph 24A of the SoC.

24B. In answer to the allegations in paragraph 24B of the SoC, AET:

- (a) repeats the matters in paragraph 24A above;
- (b) says that the October 2008 Arrears Report disclosed three loans with an LVR of greater than 85%;
- (c) says that the October 2008 Arrears Report disclosed one loan with an LVR of 100% or greater;
- (d) says that as at 1 December 2008 it knew the matters referred to in sub-paragraph 24B(b) – (c) above;
- (e) repeats paragraph 3(b)(iii) above and says that clause 5.2 of the Debenture Trust Deed, on its proper construction, refers to the LVR at the time of the inception of the accommodation transaction (ie., approving the loan) and that the fact that the total debt owing on a loan may subsequently exceed the LVR limit prescribed for the loan does not, for that reason, cause a breach of the Debenture Trust Deed; and
- (f) denies the allegations in paragraph 24B of the SoC.

24C. In answer to the allegations in paragraph 24C of the SoC, AET:

- (a) repeats the matters in paragraphs 20 to 24B above;
- (b) says that on 30 October 2008 Provident supplied to AET its RG 69 Report for the quarter ended 30 September 2008 (30 September 2008 RG 69 Report);
- (c) says that the 30 September 2008 RG 69 Report stated to the effect:
  - (i) Provident's equity as at 30 June 2008 was \$14.5 million;
  - (ii) as at 30 September 2008 the total principal balance of Provident's loans in arrears was \$52,817,247;
  - (iii) Provident's directors considered that the recovery of the amounts of principal on the loans in arrears was reasonably certain and the security held was adequate to cover them;
- (d) says that on 30 October 2008 Provident supplied to AET its Quarterly Report for the 3 months ended 30 September 2008 (30 September 2008 Quarterly Report);
- (e) says that the 30 September 2008 Quarterly Report stated to the effect:
  - (i) there had been no failure in the quarter by Provident to comply with the terms of the debentures, the provisions of the Debenture Trust Deed or Chapter 2L of the Corps Act;
  - (ii) no event had happened in the quarter that had caused or could cause any amount deposited under the debentures to become immediately due and payable, the debentures to become immediately enforceable, or any other right or remedy under the terms of the debentures or provisions of the Trust Deed to become immediately enforceable;
  - (iii) no circumstance that had occurred during the quarter materially prejudiced Provident or its subsidiaries or any security or charge included in or created by the debentures or the Debenture Trust Deed;

- (iv) there had been no matters that may materially prejudice any security or interests of debenture holders;
- (f) says that on or about 30 October 2008 Provident supplied to AET an Issuer Quarterly Reporting Checklist for the quarter ending 30 September 2008 (30 September 2008 Checklist);
- (g) says that the 30 September 2008 Checklist contained a statement by two directors of Provident to the effect that, in accordance with a resolution of the directors, they certified that the directors were of the view that the financial position and performance of Provident was such that the property of Provident (and each guarantor, if relevant) that is or should be available will be available to repay the amount of each debenture when it becomes due and payable; and
- (h) denies the allegations in paragraph 24C of the SoC.

24D. In answer to the allegations in paragraph 24D of the SoC, AET:

- (a) repeats the matters in paragraph 24C above;
- (b) repeats the matters in paragraph 7 above and says that in discharging its duties under s283DA of the Corps Act, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C above; and
- (c) denies the allegations in paragraph 24D of the SoC.

**(b) Burleigh Views Loan**

24E. In answer to the allegations in paragraph 24E of the SoC, AET:

- (a) refers to the matters in paragraph 38(b) - (d) below;
- (b) says that it knew of the matters in paragraph 38(b) - (c) below as at 1 December 2008;
- (c) says that it knew of the matters in paragraph 38(d) below on and from 5 December 2008;
- (d) says that the Burleigh Views loan appears in Arrears Reports issued by Provident to AET for the months ended 31 December 2006, 31 January 2007, 28 February 2007 and 31 March 2007;
- (e) says that in the Arrears Report for the month ended 31 January 2007, the Burleigh Views loan was recorded as having been 27.59 months in arrears;
- (f) says that in the Arrears Report for the month ended 28 February 2007 the Burleigh Views loan was recorded as having been 28.49 months in arrears;
- (g) says that in the Arrears Reports for the months ended 31 January 2007 and 28 February 2007 the LVR for the Burleigh Views loan is recorded as 51.62% and the comment recorded is "Refinance under way";
- (h) says that the Burleigh Views loan did not after the Arrears Report for 31 March 2007 appear in any Arrears Report issued by Provident;
- (i) says that the Burleigh Views loan did not appear as a loan in arrears in the 2008 Annual Report;

(j) says that it knew of the matters referred to in sub-paragraphs 24E(d) - (i) above as at 1 December 2008; and

(k) denies the allegations in paragraph 24E of the SoC.

24F. In answer to the allegations in paragraph 24F of the SoC, AET:

(a) repeats the matters in paragraph 24E above; and

(b) otherwise denies the allegations in paragraph 24F of the SoC.

24G. In answer to the allegations in paragraph 24G above, AET:

(a) repeats the matters in paragraphs 20 – 24E above;

(b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Burleigh Views loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24E above and paragraphs 38(c) - (d) and 24AP(c) below; and

(c) denies the allegations in paragraph 24G of the SoC.

**(c) Ovchinnikov loan**

24H. In answer to the allegations in paragraph 24H of the SoC, AET:

(a) repeats the matters in paragraph 24A above;

(b) says that the October 2008 Arrears Report identified a loan to Mihail Ovchinnikov as a loan in arrears (Ovchinnikov loan);

(c) says that the October 2008 Arrears Report recorded the Ovchinnikov loan as having a principal balance of \$3,918,942, net arrears of \$1,251,966.87 and months in arrears of 46.51;

(d) says that the October 2008 Arrears Report recorded the Ovchinnikov loan as having an LVR of 71% and made the comment "Contracts issued awaiting exchange";

(e) says that on and from 1 December 2008 it knew of the matters referred to in sub-paragraphs 24H(b) – (d) above;

(f) denies that as at December 2008 it knew, or ought to have, or could have known, the matters concerning the Ovchinnikov loan recorded in the December 2008 Arrears Report; and

(g) otherwise denies the allegations in paragraph 24H of the SoC.

24I. In answer to the allegations in paragraph 24I of the SoC, AET:

(a) repeats the matters in paragraphs 20 – 24C and 24H above;

(b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Ovchinnikov loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24H above; and



(c) denies the allegations in paragraph 24I of the SoC.

**(d) Unique Castle Loan**

**24J. In answer to the allegations in paragraph 24J of the SoC, AET:**

- (a) repeats the matters in paragraph 24A above;
- (b) says that the October 2008 Arrears Report identified a loan to Unique Castle Development Pty Limited as a loan in arrears (Unique Castle loan);
- (c) says that the October 2008 Arrears Report recorded the Unique Castle loan as having a principal balance of \$3,844,688, net arrears of \$1,150,272.90 and months in arrears of 21.35 months;
- (d) says that the October 2008 Arrears Report recorded the Unique Castle loan as having an LVR of 95% and made the comment "Under offer negotiating on price";
- (e) says that on and from 1 December 2008 it knew of the matters referred to in sub-paragraphs 24J(b) – (d) above;
- (h) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Unique Castle loan recorded in the December 2008 Arrears Report; and
- (f) otherwise denies the allegations in paragraph 24J of the SoC.

**24K. In answer to the allegations in paragraph 24K of the SoC, AET:**

- (a) repeats the matters in paragraphs 20 – 24C and 24J above;
- (b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Unique Castle loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24J above; and
- (c) denies the allegations in paragraph 24K of the SoC.

**(e) Ozer loan**

**24L. In answer to the allegations in paragraph 24L of the SoC, AET:**

- (a) repeats the matters in paragraph 24A above;
- (b) says that the October 2008 Arrears Report identified a loan to Hasan Ozer as a loan in arrears (Ozer loan);
- (c) says that the October 2008 Arrears Report recorded the Ozer loan as having a principal balance of \$1,877,856, net arrears of \$288,942.40 and months in arrears of 24.94 months;
- (d) says that the October 2008 Arrears Report recorded the Ozer loan as having an LVR of 81% and made the comment "Title dispute with neighbour proceedings commenced to clarify";
- (e) says that on and from 1 December 2008 it knew of the matters referred to in sub-paragraphs 24L(b) – (d) above;

(f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Ozer loan recorded in the December 2008 Arrears Report; and

(g) otherwise denies the allegations in paragraph 24L of the SoC.

24M. In answer to the allegations in paragraph 24M of the SoC, AET:

(a) repeats the matters in paragraphs 20 – 24C and 24L above;

(b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Ozer loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24L above; and

(c) denies the allegations in paragraph 24M of the SoC.

**(f) Tembelli loan**

24N. In answer to the allegations in paragraph 24N of the SoC, AET:

(a) repeats the matters in paragraph 24A above;

(b) says that the October 2008 Arrears Report identified a loan to Tembelli Pty Limited as a loan in arrears (**Tembelli loan**);

(c) says that the October 2008 Arrears Report recorded the Tembelli loan as having a principal balance of \$3,874,080, net arrears of \$1,020,101.33 and months in arrears of 30.38 months;

(d) says that the October 2008 Arrears Report recorded the Tembelli loan as having an LVR of 81% and made the comment "Arrangements agreed for repayment by end of November 2008";

(e) says that on and from 1 December 2008 it knew of the matters referred to in sub-paragraphs 24N(b) – (d) above;

(f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Tembelli loan recorded in the December 2008 Arrears Report; and

(g) otherwise denies the allegations in paragraph 24N of the SoC.

24O. In answer to the allegations in paragraph 24O of the SoC, AET:

(a) repeats the matters in paragraphs 20 – 24C and 24N above;

(b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Tembelli loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24N above; and

(c) denies the allegations in paragraph 24O of the SoC.

**(g) Chrysalis loan**

24P. In answer to the allegations in paragraph 24P of the SoC, AET:

- (a) repeats the matters in paragraph 24A above;
- (b) says that the October 2008 Arrears Report identified a loan to Chrysalis Holdings Pty Limited as a loan in arrears (**Chrysalis loan**);
- (c) says that the October 2008 Arrears Report recorded the Chrysalis loan as having a principal balance of \$5,644,596, net arrears of \$660,937.12 and months in arrears of 24.86 months;
- (d) says that the October 2008 Arrears Report recorded the Chrysalis loan as having an LVR of 67% and made the comment "Contracts for sale being prepared – 2 interested parties";
- (e) says that on and from 1 December 2008 it knew of the matters referred to in subparagraphs 24P(b) – (d) above;
- (f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Chrysalis loan recorded in the December 2008 Arrears Report; and
- (g) otherwise denies the allegations in paragraph 24P of the SoC.

24Q. In answer to the allegations in paragraph 24Q of the SoC, AET:

- (a) repeats the matters in paragraph 24P above; and
- (b) otherwise denies the allegations in paragraph 24Q of the SoC.

24R. In answer to the allegations in paragraph 24R of the SoC, AET:

- (a) repeats the matters in paragraphs 20 – 24C, 24P and 24Q above;
- (b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Chrysalis loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24P above; and
- (c) denies the allegations in paragraph 24R of the SoC.

**(h) Koindah loan**

24S. In answer to the allegations in paragraph 24S of the SoC, AET:

- (a) repeats the matters in paragraph 24A above;
- (b) says that the October 2008 Arrears Report identified a loan to Koindah Lifestyle Pty Limited as a loan in arrears (**Koindah loan**);
- (c) says that the October 2008 Arrears Report recorded the Koindah loan as having a principal balance of \$1,047,895, net arrears of \$180,958.14 and months in arrears of 11.97 months;
- (d) says that the October 2008 Arrears Report recorded the Koindah loan as having an LVR of 116% and made the comment "Property for sale by auction in December 2008";

- (e) says that on and from 1 December 2008 it knew of the matters referred to in subparagraphs 24S(b) – (d) above;
- (f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Kooindah loan recorded in the December 2008 Arrears Report; and
- (g) otherwise denies the allegations in paragraph 24S of the SoC.

24T. In answer to the allegations in paragraph 24T of the SoC, AET

- (a) repeats the matters in paragraphs 20 – 24C and 24S above;
- (b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Kooindah loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24S above; and
- (c) denies the allegations in paragraph 24T of the SoC.

**(i) Gardiner loan**

24U. In answer to the allegations in paragraph 24U of the SoC, AET:

- (a) repeats the matters in paragraph 24A above;
- (b) says that the October 2008 Arrears Report identified a loan to Victor and Verna Gardiner as a loan in arrears (**Gardiner loan**);
- (c) says that the October 2008 Arrears Report recorded the Gardiner loan as having a principal balance of \$1,127,945, net arrears of \$182,023.61 and months in arrears of 29.63 months;
- (d) says that the October 2008 Arrears Report recorded the Gardiner loan as having an LVR of 71% and made the comment "Property for sale by private treaty";
- (e) says that on and from 1 December 2008 it knew of the matters referred to in subparagraphs 24U(b) – (d) above;
- (f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Gardiner loan recorded in the December 2008 Arrears Report; and
- (g) otherwise denies the allegations in paragraph 24U of the SoC.

24V. In answer to the allegations in paragraph 24V of the SoC, AET

- (a) repeats the matters in paragraphs 20 – 24C and 24U above;
- (b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Gardiner loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24U above; and
- (c) denies the allegations in paragraph 24V of the SoC.

**(j) Leach loan**

24W. In answer to the allegations in paragraph 24W of the SoC, AET:

- (a) repeats the matters in paragraph 24A above;
- (b) says that the October 2008 Arrears Report identified a loan to Philip Leslie Leach as a loan in arrears (Leach loan);
- (c) says that the October 2008 Arrears Report recorded the Leach loan as having a principal balance of \$1,951,805, net arrears of \$481,176 and months in arrears of 17.08 months;
- (d) says that the October 2008 Arrears Report recorded the Leach loan as having an LVR of 84% and made the comment "Under offer negotiating on price";
- (e) says that on and from 1 December 2008 it knew of the matters referred to in sub-paragraphs 24W(b) – (d) above;
- (f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Leach loan recorded in the December 2008 Arrears Report; and
- (g) otherwise denies the allegations in paragraph 24W of the SoC.

24X. In answer to the allegations in paragraph 24X of the SoC, AET

- (a) repeats the matters in paragraphs 20 – 24C and 24W above;
- (b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Leach loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24W above; and
- (c) denies the allegations in paragraph 24X of the SoC.

**(k) Morrell loan**

24Y. In answer to the allegations in paragraph 24Y of the SoC, AET:

- (a) repeats the matters in paragraph 24A above;
- (b) says that the October 2008 Arrears Report identified a loan to Ms Maureen Kaye Morrell as a loan in arrears (Morrell loan);
- (c) says that the October 2008 Arrears Report recorded the Morrell loan as having a principal balance of \$1,043,343, net arrears of \$185,698.03 and months in arrears of 43.48 months;
- (d) says that the October 2008 Arrears Report recorded the Morrell loan as having an LVR of 75% and made the comment "Contracts issued awaiting exchange";
- (e) says that on and from 1 December 2008 it knew of the matters referred to in sub-paragraphs 24Y(b) – (d) above;

- (f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Morrell loan recorded in the December 2008 Arrears Report; and
- (g) otherwise denies the allegations in paragraph 24Y of the SoC.

24Z. In answer to the allegations in paragraph 24Z of the SoC, AET

- (a) repeats the matters in paragraphs 20 – 24C and 24Y above;
- (b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Morrell loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24Y above; and
- (c) denies the allegations in paragraph 24Z of the SoC.

**(l) Naumovska loan**

24AA. In answer to the allegations in paragraph 24AA of the SoC, AET:

- (a) repeats the matters in paragraph 24A above;
- (b) says that the October 2008 Arrears Report identified a loan to Dimitar and Milicia Naumovska as a loan in arrears (**Naumovska loan**);
- (c) says that the October 2008 Arrears Report recorded the Naumovska loan as having a principal balance of \$465,972, net arrears of \$71,493.28 and months in arrears of 13.26 months;
- (d) says that the October 2008 Arrears Report recorded the Naumovska loan as having an LVR of 93% and made the comment "Subject to litigation";
- (e) says that on and from 1 December 2008 it knew of the matters referred to in sub-paragraphs 24AA(b) – (d) above;
- (f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Naumovska loan recorded in the December 2008 Arrears Report; and
- (g) otherwise denies the allegations in paragraph 24AA of the SoC.

24AB. In answer to the allegations in paragraph 24AB of the SoC, AET

- (a) repeats the matters in paragraphs 20 – 24C and 24AA above;
- (b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Naumovska loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24AA above; and
- (c) denies the allegations in paragraph 24AB of the SoC.

**(m) Hanna loan**

24AC. In answer to the allegations in paragraph 24AC of the SoC, AET:

- (a) repeats the matters in paragraph 24A above;

- (b) says that the October 2008 Arrears Report identified a loan to Paul Vincent Hanna as a loan in arrears (Hanna loan);
- (c) says that the October 2008 Arrears Report recorded the Hanna loan as having a principal balance of \$5,004,150, net arrears of \$614,735.78 and months in arrears of 8.53 months;
- (d) says that the October 2008 Arrears Report recorded the Hanna loan as having an LVR of 86% and made the comment "Borrower refinancing awaiting discharge";
- (e) says that on and from 1 December 2008 it knew of the matters referred to in subparagraphs 24AC(b) – (d) above;
- (f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Hanna loan recorded in the December 2008 Arrears Report; and
- (g) otherwise denies the allegations in paragraph 24AC of the SoC.

24AD. In answer to the allegations in paragraph 24AD of the SoC, AET

- (a) repeats the matters in paragraphs 20 – 24C and 24AC above;
- (b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Hanna loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24AC above; and
- (c) denies the allegations in paragraph 24AD of the SoC.

**(n) Carlsund loan**

24AE. In answer to the allegations in paragraph 24AE of the SoC, AET:

- (a) repeats the matters in paragraph 24A above;
- (b) says that the October 2008 Arrears Report identified a loan to Carl Andrew and Elizabeth Gai Carlsund as a loan in arrears (Carlsund loan);
- (c) says that the October 2008 Arrears Report recorded the Carlsund loan as having a principal balance of \$834,458, net arrears of \$222,700.95 and months in arrears of 19.44 months;
- (d) says that the October 2008 Arrears Report recorded the Carlsund loan as having an LVR of 32% and made the comment "2 lots under contract settlement November";
- (e) says that on and from 1 December 2008 it knew of the matters referred to in subparagraphs 24AE(b) – (d) above;
- (f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Carlsund loan recorded in the December 2008 Arrears Report; and
- (g) otherwise denies the allegations in paragraph 24AE of the SoC.

24AF. In answer to the allegations in paragraph 24AF of the SoC, AET

- (a) repeats the matters in paragraphs 20 – 24C and 24AE above;

(b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Carlsund loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24AE above; and

(c) denies the allegations in paragraph 24AF of the SoC.

(o) **Smith & Arnott loan**

24AG. In answer to the allegations in paragraph 24AG of the SoC, AET:

(a) repeats the matters in paragraph 24A above;

(b) says that the October 2008 Arrears Report identified a loan to Smith and Arnott as a loan in arrears (**Smith & Arnott loan**);

(c) says that the October 2008 Arrears Report recorded the Smith & Arnott loan as having a principal balance of \$245,374, net arrears of \$57,217.77 and months in arrears of 16.20 months;

(d) says that the October 2008 Arrears Report recorded the Smith & Arnott loan as having an LVR of 85% and made the comment "Property for sale by auction December 2008";

(e) says that on and from 1 December 2008 it knew of the matters referred to in subparagraphs 24AG(b) – (d) above;

(f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Smith & Arnott loan recorded in the December 2008 Arrears Report; and

(g) otherwise denies the allegations in paragraph 24AG of the SoC.

24AH. In answer to the allegations in paragraph 24AH of the SoC, AET:

(a) repeats the matters in paragraphs 20 – 24C and 24AG above;

(b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Smith & Arnott loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24AG above; and

(c) denies the allegations in paragraph 24AH of the SoC.

(p) **DS loan**

24AI. In answer to the allegations in paragraph 24AI of the SoC, AET:

(a) repeats the matters in paragraph 24A above;

(b) says that the October 2008 Arrears Report identified a loan to DS Investments Pty Limited as a loan in arrears (**DS loan**);

(c) says that the October 2008 Arrears Report recorded the DS loan as having a principal balance of \$288,995, net arrears of \$54,045.88 and months in arrears of 13.35 months;



- (d) says that the October 2008 Arrears Report recorded the DS loan as having an LVR of 83% and made the comment "Borrower now meeting interest payment arrangements";
- (e) says that on and from 1 December 2008 it knew of the matters referred to in sub-paragraphs 24AI(b) – (d) above;
- (f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the DS loan recorded in the December 2008 Arrears Report; and
- (g) otherwise denies the allegations in paragraph 24AI of the SoC.

24AJ. In answer to the allegations in paragraph 24AJ of the SoC, AET:

- (a) repeats the matters in paragraphs 20 – 24C and 24AI above;
- (b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the DS loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24AI above; and
- (c) denies the allegations in paragraph 24AJ of the SoC.

**(g) Good Life loan**

24AK. In answer to the allegations in paragraph 24AK of the SoC, AET:

- (a) repeats the matters in paragraph 24A above;
- (b) says that the October 2008 Arrears Report identified a loan to Good Life Retirement Systems Limited as a loan in arrears (**Good Life loan**);
- (c) says that the October 2008 Arrears Report recorded the Good Life loan as having a principal balance of \$1,210,727, net arrears of \$293,811.16 and months in arrears of 16.33 months;
- (d) says that the October 2008 Arrears Report recorded the Good Life loan as having an LVR of 67% and made the comment "sold by 2<sup>nd</sup> mortgagee settling November 2008";
- (e) says that on and from 1 December 2008 it knew of the matters referred to in sub-paragraphs 24AK(b) – (d) above;
- (f) denies that as at December 2008 it knew, or ought to have, or could have known the matters concerning the Good Life loan recorded in the December 2008 Arrears Report; and
- (g) otherwise denies the allegations in paragraph 24AK of the SoC.

24AL. In answer to the allegations in paragraph 24AL of the SoC, AET:

- (a) repeats the matters in paragraphs 20 – 24C and 24AK above;
- (b) says that in forming any view as at December 2008 as to whether any provisions for credit losses should be made in respect of the Good Life loan, and if so what

provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24AK above; and

(c) denies the allegations in paragraph 24AL of the SoC.

**(r) Residual loans**

24AM. In answer to the allegations in paragraph 24AM of the SoC, AET:

(a) says that on 11 June 2008 Provident's auditors, Walter Turnbull, prepared a document with the subject "Financial Assets – Loans and Advances - Directors Impairment assessment" (Walter Turnbull document);

(b) says that under the heading "Other Receivables – Audit is yet to receive any formally documented impairment testing conducted on this balance", the Walter Turnbull document:

(i) identified a receivable in the amount of \$730,531.81 in respect of the Clucor loan and contained the comment "They are chasing the remainder of the principal plus legal's";

(ii) identified a receivable in the amount of \$775,363.84 in respect of the Agara/MMT loan and contained the comment "Security has been sold but they are in a court case to recover the GST";

(c) denies that as at December 2008 AET knew, or ought to have known, of the matters referred to in sub-paragraphs 24AM(a) and (b) above;

(d) says that the 2008 Annual Report was audited by Walter Turnbull and contained the impairment expenses and provisions referred to in paragraph 20(ba) above; and

(e) denies the allegations in paragraph 24AM of the SoC.

24AN. In answer to the allegations in paragraph 24AN of the SoC, AET:

(a) repeats the matters in paragraph 20 – 24C and 24AM above;

(b) says that in forming any view as at December 2008 as to whether any impairments on account of the residuals for the Clucor loan and the Agara/MMT loan, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C and 24AM(d) above; and

(c) denies the allegations in paragraph 24AN of the SoC.

**F. ALLEGED OBLIGATIONS AND CONTRAVENTIONS – DECEMBER 2008**

**(a) Alleged proper conclusions and response**

24AO. AET denies the allegations in paragraph 24AO of the SoC and further:

(a) repeats the matters in paragraphs 7, 17 and 20 – 24AN above;

(b) says that having regard to:

(i) the net assets of Provident as disclosed in the 2008 Annual Report and the impairment expenses for which the 2008 Annual Report made provision (pleaded in paragraph 20(ba) and (bb) above); and

(ii) the matters referred to in paragraph 23(f) – (h) above,

even if it was necessary or appropriate to make the provisions for credit losses and impairments alleged in paragraph 24AO of the SoC, that would not dictate the conclusion as at December 2008 that Provident would be unable to repay the debentures when they became due and payable;

(c) says that Provident's Interim Financial Report for the half year ended 31 December 2008 (December 2008 Interim Report):

(i) recorded net assets of \$15,522,343;

(ii) recognised expenses for impairment of loans and receivables of \$1,399,365;

(iii) contained a directors' declaration stating (inter alia) that the December 2008 Interim Report gave a true and fair view of Provident's financial position as at 31 December 2008 and of its performance for the half-year ended on that date and that there were reasonable grounds to believe that the company will be able to pay the debts as and when they became due and payable;

(iv) contained an auditor's opinion that based on their review they had not become aware of any matter which made them believe that the December 2008 Interim Report did not give a true and fair view of Provident's financial position as at 31 December 2008 and of its performance for the half-year ended on that date;

(d) says that having regard to the matters in the previous sub-paragraph, even if it was necessary or appropriate to make the provisions for credit losses and impairments alleged in paragraph 24AO of the SoC, that would not dictate the conclusion as at December 2008 that Provident would be unable to repay the debentures when they became due and payable.

24AP. In answer to the allegations in paragraph 24AP of the SoC, AET:

(a) repeats the matters in paragraph 24AO above;

(b) says that in DP 11, Provident:

(i) stated that its equity capital as at 30 June 2008 was \$14.5 million;

(ii) stated that the net value of Provident's loans and advances (accounting for provisions for impairments of \$875,000) was \$192,820,594;

(iii) stated the matters referred to in paragraph 36(b)(i) below;

(iv) in relation to the Burleigh Views loan, stated the matters referred to in paragraph 38(d) below;

(v) stated that, as at 30 November 2008, the average LVR across Provident's whole portfolio was 63% and for each of residential use, commercial / industrial use and rural use property was 64%, 63% and 55% respectively;

(vi) stated that Provident expected to trade profitably for the year ended 30 June 2009 and expected that it would meet all interest and principal payments as they fell due;

(c) says that by letter of 22 December 2008 Provident informed AET to the effect that:

- (i) DP 11 had been prepared in accordance with all laws, including without limitation the Corps Act and the Corps Regs;
  - (ii) no material statement that is false or misleading had been made in DP 11 and there was no material omission from DP 11;
  - (iii) to the extent that any statement of fact or opinion in DP 11 was not within Provident's own knowledge, Provident had taken all reasonable precautions and made all reasonable enquiries to verify the statement;
  - (iv) Provident had undertaken adequate due diligence in relation to the matters referred to in the previous sub-paragraphs;
  - (v) Provident was satisfied that its assets that are, or should be, available will be sufficient to repay the principal amount lent to Provident as a result of DP 11 as and when it became due for repayment in accordance with the terms of the offer in DP 11;
  - (vi) Provident's performance against the benchmarks in RG 69 was accurately disclosed in DP 11; and
  - (vii) Provident acknowledges that in consenting to be named in DP 11, AET was relying on the confirmations and acknowledgments contained in the letter;
- (d) says that AET was entitled to rely on the matters in paragraphs 20 – 24AN and 24AP(b) and (c) above in determining its actions in relation to DP 11;
- (e) says that any application of the kind alleged in paragraph 24AP of the SoC made in December 2008 would have been unsupported by evidence which AET was capable of adducing which would have demonstrated that property of Provident would be insufficient to pay the amount due on the debentures when they became due and payable; and
- (f) denies the allegations in paragraph 24AP of the SoC.

24AQ. In answer to the allegations in paragraph 24AQ of the SoC, AET:

- (a) repeats the matters in paragraph 24AP above;
- (b) says that any application of the kind alleged in paragraph 24AP of the SoC made in December 2008 would have been opposed by Provident which opposition would have been supported by evidence purporting to demonstrate that its property would be sufficient to pay the amount due on the debentures when they became due and payable, including evidence:
  - (i) of the 2008 Annual Report and the unqualified audit opinions provided in connection with the 2008 Annual Report;
  - (ii) of the 30 September 2008 RG 69 Report;
  - (iii) of the 30 September 2008 Quarterly Report;
  - (iv) of the 30 September 2008 Checklist;
  - (v) to the effect of the matters referred to in paragraph 24AP(b) and (c) above;

(vi) to the effect of the matters contained in the December 2008 Interim Report and the opinions referred to in paragraph 24AO(c) above;

(vii) to the effect of the DP 11 Auditor's Benchmark Assurance Report referred to in paragraphs 19(f) above and 36(d) below; and

(c) denies the allegations in paragraph 24AQ of the SoC.

24AR. In answer to the allegations in paragraph 24AR of the SoC, AET:

(a) repeats the matters in paragraphs 24AO and 24AP above;

(b) says that any notification to ASIC of the kind alleged in paragraph 24AR of the SoC in December 2008 would have been unsupported by evidence which AET was capable of providing to ASIC which would have demonstrated that property of Provident would be insufficient to pay the amount due on the debentures when they became due and payable; and

(c) denies the allegations in paragraph 24AR of the SoC.

24AS. In answer to the allegations in paragraph 24AS of the SoC, AET:

(a) repeats the matters in paragraph 24AR above;

(b) says that any notification of the kind alleged in paragraph 24AS of the SoC made in or about December 2008 would have been answered by Provident, which answer would have been supported by evidence purporting to demonstrate that its property would be sufficient to pay the amount due on the debentures when they became due and payable, including the evidence referred to in paragraph 24AQ(b) above; and

(c) denies the allegations in paragraph 24AS of the SoC.

**(b) Alleged contraventions and causation:**

24AT. In answer to the allegations in paragraph 24AT of the SoC, AET:

(a) repeats the matters in paragraphs 7, 17 and 20 – 24AS above; and

(b) denies the allegations in paragraph 24AT of the SoC.

24AU. In answer to the allegations in paragraph 24AU of the SoC, AET:

(a) repeats the matters in paragraphs 24AO - 24AS above;

(b) repeats the matters in paragraph 24AO(b) – (d) above and says, in the premises, even if it was necessary or appropriate to make the provisions for credit losses and impairments alleged in paragraph 24AO of the SoC, that would not have disclosed a circumstance requiring or justifying the appointment of a receiver to Provident; and

(c) denies the allegations in paragraph 24AU of the SoC.

24AV. In answer to the allegations in paragraph 24AV of the SoC, AET:

(a) denies the applicant and group members have suffered any loss and damage by reason of any contravention by AET of s283DA of the Corps Act;

- (b) says that if, which is denied, AET contravened s283DA of the Corps Act and the applicant and group members suffered loss and damage, the cause of that loss and damage are the actions and omissions of Provident and not the contravention of AET;
- (c) says that, in the premises of the previous sub-paragraph, if AET contravened s283DA of the Corps Act, and the applicant and group members suffered loss and damage, no compensation is recoverable by the applicant and group members pursuant to s283F of the Corps Act;
- (d) says that if, which is denied, AET contravened s283DA of the Corps Act and the applicant and group members are entitled to recover compensation from AET pursuant to s283F of the Corps Act, that compensation must be reduced to account for any amounts recovered or to be recovered by the applicant and group members pursuant to the receivership of Provident, including the proceedings commenced by the Receivers of Provident against the directors of Provident in the Supreme Court of New South Wales (proceedings no 2014/63700); and
- (e) does not admit any other allegation in paragraph 24AV of the SoC.

24AW. In further answer to the whole of the cause of action pleaded in paragraphs 24A - 24AV of the SoC, AET:

- (a) says that pursuant to Rules 1.32, 1.33 and/or 8.21 of the Federal Court Rules 2011 (Cth) and order 1 of the orders made on 26 June 2015, the amendments to the SoC introduced by the document dated 26 June 2015, and the Amended Originating Application dated 26 June 2015, should be ordered to take effect from 26 June 2015 and not from the date of the commencement of the proceedings;
- (b) says that pursuant to s283F(2) of the Corps Act, the limitation period applicable to a cause of action created by that section is six years from the day on which the cause of action arose;
- (c) says that if (which is denied) AET contravened s283DA of the Corps Act by failing to form the opinions and take the steps pleaded in paragraphs 24AO – 24AV of the SoC by (at the latest) 23 December 2008, the cause of action under s283F in respect of that contravention arose on 23 December 2008;
- (d) says that, in the premises, the limitation period applicable to the applicant's and group members' cause of action under s283F in relation to the alleged contravention of s283DA of the Corps Act referred to in the previous sub-paragraph expired no later than 24 December 2014; and
- (e) says that, in the premises of the previous sub-paragraphs, the applicant's and group members' cause of action pleaded in paragraphs 24A – 24AV of the SoC is statute barred and ought to be dismissed.

**G) G. THE FINANCIAL POSITION AND PERFORMANCE OF PROVIDENT AS AT 30 JUNE 2009**

25. In answer to the allegations in paragraph 25 of the SoC, AET:

- (a) says that Provident's RG 69 Report for the quarter ended 30 September 2009 (30 September 2009 RG 69 Report) stated to the effect that:
  - (i) the total value of debentures issued by Provident as at 30 June 2009 was \$116,542,499;

- (ii) the value of debentures issued by Provident as at 30 June 2009 which matured within three months was \$20,262,417;
  - (iii) the value of debentures issued by Provident as at 30 June 2009 which matured within three months and one year was \$52,075,529;
  - (iv) the value of debentures issued by Provident as at 30 June 2009 which matured within one year and five years was \$44,204,553;
  - (v) the value of debentures issued by Provident as at 30 June 2009 which matured greater than five years was nil;
- (b) repeats the matters in paragraph 22(b) above and refers to the matters in paragraph 42(d) below;
  - (c) says that it knew of the matters referred to in sub-paragraphs (a) and (b) above by 30 October 2009; and
  - (d) otherwise denies the allegations in paragraph 25 of the SoC.
26. In answer to the allegations in paragraph 26 of the SoC, AET:
- (a) says that in its Annual Report for the year ended 30 June 2009 (**2009 Annual Report**), Provident reported as a current asset loan interest receivable of \$10,469,931;
  - (b) says that in the 2009 Annual Report, Provident:
    - (i) reported in its income statement gross interest income of \$31,346,411;
    - (ii) reported in its cash flow statement interest received of \$26,369,171;
  - (c) says that the 2009 Annual Report reported that Provident had net assets and equity of \$14,567,368, being total assets of \$226,626,209 and total liabilities of \$212,058,841;
  - (d) says that in the 2009 Annual Report, Provident:
    - (i) expensed impairment losses of \$4,877,308;
    - (ii) made impairment provisions in the amount of \$3,454,952;
    - (iii) stated that the net fair value of its loans and advances (taking into account impairment provisions) as at 30 June 2009 was \$192,599,346;
  - (e) says that in the 2009 Annual Report, Provident reported that it had 60 loans in excess of 30 days past due with a total outstanding balance of \$88,951,683;
  - (f) says that in the 2009 Annual Report, Provident reported that it had 41 loans in excess of 90 days past due with a total outstanding balance of \$62,758,593;
  - (g) says that the September 2009 RG 69 Report stated that its loans in excess of 90 days past due represented 32.6% by value and 23.2% by number of Provident's total loan portfolio;
  - (h) says that in the 2009 Annual Report Provident and the September 2009 RG 69 Report reported that as at 21 September 2009, of the loans past due greater than

90 days it was in possession of mortgaged property pending sale in respect of those loans to the value of \$28,703,656;

- (k) says that in the 2009 Annual Report, Provident stated that whilst its loan default levels were higher than traditional lenders (historically at 20%-30% of the loan portfolio), its credit losses had been historically low at less than 0.4% of all loans issued;
  - (l) says that in the 2009 Annual Report, Provident stated to the effect that in order for it to incur a loss equal to its net equity it would need to suffer one of the following combinations of events: a property price reduction of 35% and a loan default level of 45%; a property price reduction of 40% and a loan default level of 43%; a property price reduction of 45% and a loan default level of 41%;
  - (m) says that the 2009 Annual Report contained a directors' declaration stating (inter alia) that it gave a true and fair view of Provident's financial position as at 30 June 2009 and of its performance for the year ended on that date and that there were reasonable grounds to believe that Provident will be able to pay the debts as and when they became due and payable;
  - (n) says that the 2009 Annual Report contained an auditor's opinion that the 2009 Annual Report gave a true and fair view of Provident's financial position as at 30 June 2009 and its performance for the year ended on that day and complied with the Corps Act, Corps Regs, and Australian Accounting Standards;
  - (o) says that it knew the matters referred to in sub-paragraphs (a) – (n) above on and from about 30 October 2009;
  - (i) otherwise denies the allegations in paragraph 26 of the SoC.
27. In answer to the allegations in paragraph 27 of the SoC, AET:
- (a) says that the September 2009 RG 69 Report identified one loan for which the security type was "construction" to the value of \$15.1 million;
  - (b) says that the September 2009 RG 69 Report identified the loan referred to in the previous sub-paragraph as being 7.8% by value and 0.6% by number of Provident's loan portfolio;
  - (c) says that the September 2009 RG 69 Report stated to the effect that in respect of Benchmark 1 in RG 69, the ASIC ratio applicable to Provident was 8% as Provident was not engaged in property development and lending funds directly or indirectly for property development was only a minor part of Provident's activities;
  - (d) says that the September 2009 RG 69 Report stated to the effect that Provident's equity ratio as at 30 June 2009 was 6.43% (\$14.6 million) which was considered appropriate to operate the business and cover any losses that may arise particularly in light of Provident's record of low credit losses management of past loans due, loan to valuation ratio restrictions, business parameters and risks and limited liability under the wholesale funding facility;
  - (e) says that it knew the matters referred to in sub-paragraphs (a) – (d) above on and from about 30 October 2009; and
  - (f) denies any other allegation in paragraph 27 of the SoC.



D) **H. THE FINANCIAL POSITION AND PERFORMANCE OF PROVIDENT AS AT 30 JUNE 2010**

(a) **General security**

28. In answer to the allegations in paragraph 28 of the SoC, AET:

- (a) admits that Provident's total assets as reported in its Annual Report for the year ended 30 June 2010 (**2010 Annual Report**) was \$222,011,825;
- (b) says that the 2010 Annual Report reported loans and advances as current assets of \$165,354,556 and loans and advances as non-current assets of \$12,951,690;
- (c) says that the 2010 Annual Report reported that Provident had net assets and equity of \$14,020,695, being total assets of \$222,011,825 and total liabilities of \$207,911,130;
- (d) says that it knew of the matters in the ~~two~~ three preceding sub-paragraphs from about 28 September 2010; and
- (e) otherwise denies the allegations in paragraph 28 of the SoC.

29. AET admits the allegations in paragraph 29 of the SoC.

30. In answer to the allegations in paragraph 30 of the SoC, AET:

- (a) says that the 2010 Annual Report stated to the effect that:
  - (i) the total value of the debentures issued by Provident as at 30 June 2010 was \$116,977,143;
  - (ii) the value of debentures issued by Provident as at 30 June 2010 which matured not longer that three months was \$20,028,181;
  - (iii) the value of debentures issued by Provident as at 30 June 2010 which matured longer than three and not longer than 12 months was \$60,476,907;
  - (iv) the value of debentures issued by Provident as at 30 June 2010 which matured longer than one and not longer that five years was \$36,472,055;
  - (v) the value of debentures issued by Provident as at 30 June 2010 which matured longer than five years was nil;
- (b) repeats the matters in paragraph 22(b) above;
- (c) says that from about 28 September 2008 it knew of the matters referred to in sub-paragraphs (a) and (b) above; and
- (d) otherwise denies the allegations in paragraph 30 of the SoC.

31. In answer to the allegations in paragraph 31 of the SoC, AET:

- (a) says that the 2010 Annual Report disclosed as non-current assets of Provident deferred tax assets of \$1,153,988;
- (b) says that the 2010 Annual Report stated that deferred tax assets relating to temporary differences and unused tax losses are recognised only to the extent it is

probable that future taxable profit will be available against which benefits of that deferred tax asset can be utilised;

- (c) refers to the matters in paragraph 34(q) and (r) below;
  - (d) says that it knew of the matter in the previous sub-paragraphs from about 28 September 2010; and
  - (e) otherwise denies the allegations in paragraph 31 of the SoC.
32. In answer to the allegations in paragraph 32 of the SoC, AET:
- (a) says that the 2010 Annual Report reported that the total value of Provident's loans as at 30 June 2010 was \$178,306,246 and the total number of loans was 158;
  - (b) says that the 2010 Annual Report reported that 114 of Provident's loans to a total value of \$105.7 million had a security type "residential";
  - (c) says that the 2010 Annual Report reported that 23 of Provident's loans to a total value of \$16.8 million had a security type "commercial";
  - (d) says that the 2010 Annual Report reported that one of Provident's loans to a total value of \$17.5 million had a security type "construction";
  - (e) says that it knew of the matter in the sub-paragraphs (a) to (d) above from about 28 September 2010; and
  - (f) denies any other allegation in paragraph 32 of the SoC.
33. In answer to the allegations in paragraph 33 of the SoC, AET:
- (a) says that Provident's RG 69 Report for the quarter ended 30 September 2010 dated 22 October 2010 (**September 2010 RG 69 Report**) stated that Provident had made one loan for which the type of security property was "construction" to a value of \$17.5 million;
  - (b) says that September 2010 RG 69 Report identified the loan referred to in the previous sub-paragraph as being 9.8% by value and 0.6% by number of Provident's loan portfolio;
  - (c) says that the September 2010 RG 69 Report stated to the effect that in respect of Benchmark 1 in RG 69, the ASIC ratio applicable to Provident was 8% as Provident was not engaged in property development and lending funds directly or indirectly for property development was only a minor part of Provident's activities;
  - (d) says that the September 2010 RG 69 Report stated to the effect that Provident's equity ratio as at 30 June 2010 was 6.32% (\$14 million) which was considered appropriate to operate the business and cover any losses that may arise particularly in light of Provident's record of low credit losses management of past loans due, loan to valuation ratio restrictions, business parameters and risks and limited liability under the wholesale funding facility;
  - (e) says that it knew the matters referred to in sub-paragraphs (a) – (d) above on and from about 22 October 2010; and
  - (f) denies any other allegation in paragraph 33 of the SoC.

34. In answer to the allegations in paragraph 34 of the SoC, AET:
- (a) says that in the 2010 Annual Report, Provident reported as a current asset of Provident interest receivable of \$13,105,946;
  - (b) says that in the 2010 Annual Report, Provident:
    - (i) reported in its statement of comprehensive income as at 30 June 2010 interest income of \$26,652,106; and
    - (ii) reported in its statement of cash flows as at 30 June 2010 interest received of \$24,767,422;
  - (c) says that in the 2010 Annual Report, Provident:
    - (i) expensed impairment losses of \$2,612,904; and
    - (ii) made impairment provisions in the amount of \$1,466,932;
    - (iii) stated that the net fair value of its loans and advances (taking into account impairment provisions) as at 30 June 2010 was \$178,306,246;
  - (d) says that in the 2010 Annual Report Provident reported that as at 30 June 2010 it had 44 loans in excess of 30 days past due with a total outstanding balance of \$88,710,332;
  - (e) says that in the 2010 Annual Report, Provident stated that of the loans past due \$54,890,105 had been assessed as not impaired;
  - (f) says that in the 2010 Annual Report Provident reported that as at 30 June 2010 it had 25 loans in excess of 90 days past due with a total outstanding balance of \$57,295,183;
  - (g) says that in the September 2010 RG 69 Report, Provident stated that it had commenced legal proceedings in respect of 6 loans with an aggregate principal of \$15,019,535, being 8.4% by value and 3.8% by number of the loan portfolio;
  - (h) says that in the 2010 Annual Report, Provident stated that whilst its loan default levels were higher than traditional lenders (historically at 20%-30% of the loan portfolio), its credit losses had been historically low at less than 0.6% of all loans issued;
  - (p) says that the 2010 Annual Report Provident stated to the effect that in order for it to incur a loss equal to its net equity it would need to suffer one of the following combinations of events: a property price reduction of 35% and a loan default level of 60%; a property price reduction of 40% and a loan default level of 43%; a property price reduction of 45% and a loan default level of 33%;
  - (q) says that the 2010 Annual Report contained a directors' declaration stating (inter alia) that it gave a true and fair view of Provident's financial position as at 30 June 2010 and of its performance for the year ended on that date and that there were reasonable grounds to believe that Provident will be able to pay the debts as and when they became due and payable; and
  - (r) says that the 2010 Annual Report contained an auditor's opinion that the 2010 Annual Report gave a true and fair view of Provident's financial position as at 30

June 2010 and its performance for the year ended on that day and complied with the Corps Act, Corps Regs, and Australian Accounting Standards; and

- (s) says that it knew the matters referred to in sub-paragraphs (a) – (r) above on and from about 28 September 2010; and
  - (t) denies any other allegation in paragraph 34 of the SoC.
35. In answer to the allegations in paragraph 35 of the SoC, AET:
- (a) says that in the 2010 Annual Report, Provident reported in its statement of cash flows:
    - (i) proceeds from the issue of debentures of \$20,419,532; and
    - (ii) repayments of debentures redeemed of \$19,984,888;
  - (b) says that it knew the matters referred to in the previous sub-paragraph on and from about 28 September 2010; and
  - (c) denies any other allegation in paragraph 35 of the SoC.
36. In answer to the allegations in paragraph 36 of the SoC, AET:
- (a) repeats the matters in paragraphs 7 and 10 to 35 above;
  - (b) says that in:
    - (i) DP 11 (as at 30 June 2008);
    - (ii) ~~the RG 69 Report for the quarter ended 30 September 2008 (September 2008 RG 69 Report)~~ the 30 September 2008 RG 69 Report;
    - (iii) the RG 69 Report for the quarter ended 31 March 2009 (**March 2009 RG 69 Report**);
    - (iv) DP 12 (as at 21 September 2009)
    - (v) the 30 September 2009 RG 69 Report; and
    - (vi) the RG 69 Report for the quarter ended 31 March 2010 (**March 2010 RG 69 Report**);

Provident's directors stated that they considered that the recovery of the amounts of principal on loans greater than 90 days past due was reasonably certain subject to provisions already made and the security held was adequate to cover them;

- (c) says that the September 2010 RG 69 Report stated to the effect that:
  - (i) 98.8% by value and 99.3% by number of Provident's loans were secured by registered first mortgages;
  - (ii) the details of loans more than 30 days past due set out in the September 2010 RG 69 Report were consistent with previous analysis of the loan portfolio and with the nature of the loan transactions made by Provident;

- (iii) as at 30 June 2010, the average LVR across Provident's whole portfolio was 65% and for each of residential use, commercial / industrial use and rural use property was 66.3%, 60.2% and 60.7% respectively;
- (d) says that the DP 11 Auditor's Benchmark Assurance Report stated to the effect that the internal controls of Provident were adequately designed and operated effectively during the period 30 June 2008 to 24 December 2008 to achieve (inter alia) the control objective of maximum loan to valuation ratios of 70% of the latest "as if complete" valuation where the loan relates to development property and 80% of the latest market valuation for other loans being met (or disclosed otherwise);
- (e) says that the DP 12 Auditor's Benchmark Assurance Report stated to the effect that the internal controls of Provident were adequately designed and operated effectively during the period 1 July 2008 to 30 June 2009 to achieve (inter alia) the control objective of maximum loan to valuation ratios of 70% of the latest "as if complete" valuation where the loan relates to development property and 80% of the latest market valuation for other loans being met (or disclosed otherwise);
- (f) says that the Arrears Reports for the period 2008 to October 2010:
  - (i) reported the value of Provident's loans in arrears as between a low of about \$51 million (in November 2008) and a high of about \$71 million (in May 2009) and, as at October 2010, as about \$57 million;
  - (ii) reported the percentage of Provident's loans in arrears as between a low of about 23% (in August 2008) and a high of about 36% (in January 2010) and, as at October 2010, as about 31%;
  - (iii) reported the number of Provident's loans in arrears as between a low of 22 in August 2010 and a high of 38 in April 2009 and, as at October 2010, as 24;
  - (iv) disclosed Provident's loans in arrears, measured by value, number and percentage, in the period January 2010 to October 2010 as steady or declining;
  - (v) from July 2010, indicated where any impairment provision had been made in respect of a loan in arrears as further pleaded in paragraph 42(g) below;
- (g) repeats the matters in paragraphs 0(a), 23(e), 26(k) and 34(h) above and says that the Arrears Reports in the period 2008 to 2010 disclosed Provident's loan default rates as generally within its reported historical experience;
- (h) says that in its Quarterly Reports for the quarters ended 31 March 2009 (dated 29 April 2009), 30 September 2009 (dated 30 October 2009), 31 March 2010 (dated 21 April 2010) and 30 September 2010 (dated 22 October 2010), Provident stated to the effect that for each of those quarters:
  - (i) there had been no failure to comply with the terms of the debentures, the Debenture Trust Deed or Chapter 2L of the Corps Act during the quarter;
  - (ii) no event had happened during the quarter that caused or could cause (inter alia) any right or remedy under the Debenture Trust Deed to become immediately enforceable;
  - (iii) no circumstances had occurred during the quarter that materially prejudiced Provident or the security under the Debenture Trust Deed; and

(iv) there had been no other matters that may materially prejudice any security or the interests of debenture holders; and

(i) denies the allegations in paragraph 36 of the SoC.

**~~F. FURTHER INQUIRIES THAT AET IS ALLEGED TO HAVE BEEN OBLIGED TO MAKE~~**

**(b) AET's alleged obligations of enquiry – general security**

37. In answer to the allegations in paragraph 37 of the SoC, AET:

- (a) repeats the matters in paragraphs 7 and 10 to 356 above;
- (b) says that the matters referred to in paragraph 37 of the SoC were wholly or substantially disclosed in the reports referred to in paragraph 17 above;
- (c) says that it was entitled to rely in the discharge of its duties under s283DA of the Corps Act on the accuracy of the reports referred to in paragraph 17 above and the audit assurances provided in relation to them; and
- (d) denies the allegations in paragraph 37 of the SoC.

**~~A) ALLEGED INQUIRIES ABOUT DEVELOPMENT AT BURLEIGH HEADS, QUEENSLAND~~**

**(c) Inquiries about Burleigh Views loan**

38. In answer to the allegations in paragraph 38 of the SoC, AET:

- (a) repeats the matters in paragraphs 24E – 24G and 37 above;
- (b) says that the Burleigh Views loan was not disclosed in any Arrears Report provided by Provident in the period 2008 to 2010;
- (c) says that in the September 2008 RG 69 Report, Provident stated to the effect that:
  - (i) the loan amount for the Burleigh Views loan as at 30 June 2008 was \$13,500,429 based on an initial valuation made as at 23 December 2003 for construction funding purposes and which assessed the "as if complete" value at \$17,222,000;
  - (ii) the work was nearing completion and the borrower had supplied a valuation report dated September 2007 assessing the "as if complete" value at \$26,000,000 (exclusive of GST);
  - (iii) the security property was located on the Gold Coast in Queensland;
  - (iv) the LVR in relation to the Burleigh Views loan was 70% or less;
- (d) says that in DP 11 Provident stated to the effect:
  - (i) the matters in sub-paragraph (c) above; and
  - (ii) that the LVR of the Burleigh Views loan on a cost to complete basis was 54.6%;

- (e) says that the Burleigh Views loan was not disclosed as a loan in arrears in the 2009 Annual Report or the 2010 Annual Report;
- (f) says that in the March 2009 RG 69 Report, Provident stated to the effect that:
- (i) the loan amount for the Burleigh Views loan as at 31 December 2008 was \$14,320,559 based on an initial valuation made as at 23 December 2003 for construction funding purposes and which assessed the "as if complete" value at \$17,222,000;
  - (ii) the work was nearing completion and the borrower had supplied a valuation report dated September 2007 assessing the "as if complete" value at \$26,000,000 (exclusive of GST);
  - (iii) the security property was located on the Gold Coast in Queensland;
  - (iv) the LVR in relation to the Burleigh Views loan was less 70% or less;
- (g) says that in the September 2009 RG 69 Report, Provident stated to the effect that:
- (i) the loan amount for the Burleigh Views loan as at 30 June 2009 was \$15,101,887 based on an initial valuation made as at 23 December 2003 for construction funding purposes and which assessed the "as if complete" value at \$17,222,000;
  - (ii) the work was nearing completion and the borrower had supplied a valuation report dated September 2007 assessing the "as if complete" value at \$26,000,000 (exclusive of GST);
  - (iii) the security property was located on the Gold Coast in Queensland;
  - (iv) the LVR in relation to the Burleigh Views loan on a costs to complete basis was 78.3%;
- (h) in DP 12 Provident stated to the effect that:
- (i) the loan amount for the Burleigh Views loan as at 30 June 2009 was \$15,101,887;
  - (ii) the latest valuation of the development in December 2009 assessed the "as if complete" value at \$26,680,000;
  - (iii) the security property was located in south east Queensland; and
  - (iv) the LVR on a cost to complete basis using the December 2009 valuation was 56.6%;
- (i) says that in the March 2010 RG 69 Report Provident stated to the effect that:
- (i) the loan amount for the Burleigh Views loan as at 31 December 2009 was \$15,977,139;
  - (ii) the latest valuation of the development in December 2009 assessed the "as if complete" valuation at \$26,680,000 (exclusive of GST);
  - (iii) the security property was located on the Gold Coast in Queensland;

- (iv) the LVR in relation to the Burleigh Views loan on a costs to complete basis using the December 2009 valuation was 59.9%;
- (j) says that in the September 2010 RG 69 Report, Provident stated to the effect that:
  - (i) the loan amount for the Burleigh Views loan as at 30 June 2010 was \$17,518,058;
  - (ii) the latest valuation of the development in September 2010 assessed the "as if complete" valuation at \$26,680,000 (exclusive of GST);
  - (iii) the security property was located on the Gold Coast in Queensland;
  - (iv) the LVR in relation to the Burleigh Views loan on a costs to complete basis using the September 2010 valuation was 65.7%;
- (k) says that despite making the statements concerning the Burleigh Views loan referred to in sub-paragraphs (c) to (i) above, Provident did not disclose in any RG 69 Report or in any other report or otherwise to AET from 2008 to 2010 that the Burleigh Views loan was in default or in arrears, that the borrower had entered into liquidation, that Provident had entered into possession or that the development approval for the site had lapsed; and
- (l) denies the allegations in paragraph 38 of the SoC.

39. In answer to the allegations in paragraph 39 of the SoC, AET:

- (a) repeats the matters in paragraph 38 above; and
- (b) says that in forming any view between 30 October 2010 to 22 December 2010 as to whether any provisions for credit losses should be made in respect of the Burleigh Views loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C, 24E – 24G, 28 – 36 and 38 above;
- (c) denies the allegations in paragraph 39 of the SoC.

**~~B) ALLEGED INQUIRIES ABOUT DEVELOPMENT AT NEWCASTLE, NEW SOUTH WALES~~**

**(d) Inquiries about Chrysalis loan, Newcastle NSW**

40. In answer to the allegations in paragraph 40 of the SoC, AET:

- (a) repeats the matters in paragraphs 24P - 24R and 37 above;
- (b) says that in the Arrears Report for the month of April 2010, Provident stated:
  - (i) the principal balance of the Chrysalis loan was \$6,295,344, the net arrears were \$667,178 and the days in arrears were 1194;
  - (ii) Provident was selling the security property and the total valuation was \$8,437,300;
  - (iii) the estimated discharge date was December 2010;
  - (iv) Provident's strategy in relation to the Chrysalis loan was as follows:



- (A) in order to preserve the development application (DA), Provident had undertaken the works required to preserve the DA which involved the demolition of the structure, including basement, shoring and other works to the site;
  - (B) substantial commencement of the works prior to the expiry of the DA ensured that Provident had a valid DA;
  - (C) it was envisaged that the works would be completed by early 2010, but due to various delays this was now estimated to be late May 2010, which was confirmed by advice received from the architect;
  - (D) once the works were complete, Provident would commence a sales and marketing campaign which, depending on the success of the auction / tender process, would take 4 – 6 months;
  - (E) Provident was receiving good interest from developers who owned sites on both sides of the security;
  - (F) the likely settlement date was September 2010– December 2010;
- (c) in the Arrears Report for the month of May 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,296,489, the net arrears were \$667,295 and the days in arrears were 1225;
  - (ii) Provident was selling the security property and the total valuation was \$8,437,300;
  - (iii) the matters in sub-paragraphs (a)(b)(iii) and (a)(b)(iv) above;
- (d) in the Arrears Report for the month of June 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,296,489, the net arrears were \$667,295 and the days in arrears were 1254;
  - (ii) Provident was selling the security property and the total valuation was \$8,437,300;
  - (iii) the matters in sub-paragraphs (a)(b)(iii) and (a)(b)(iv) above;
- (e) in the Arrears Report for the month of July 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,322,496, the net arrears \$667,181 and the days in arrears were 1280;
  - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
  - (iii) that no impairment provision was made in respect of the Chrysalis loan;
  - (iv) the matters in sub-paragraphs (a)(b)(iii) and (a)(b)(iv) above;
- (f) in the Arrears Report for the month of August 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,351,434, the net arrears were \$667,378 and the days in arrears were 1305;

- (ii) Provident was selling the security property and the total valuation was \$7,300,000;
  - (iii) that no impairment provision was made in respect of the Chrysalis loan;
  - (iv) the matters in sub-paragraphs (a)(b)(iii) and (a)(b)(iv) above;
- (g) in the Arrears Report for the month of September 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,351,434, the net arrears were \$667,632 and the days in arrears were 1335;
  - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
  - (iii) that no impairment provision was made in respect of the Chrysalis loan;
  - (iv) the matters in sub-paragraphs (a)(b)(iii) and (a)(b)(iv) above;
- (h) in the Arrears Report for the month of October 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,354,554, the net arrears were \$667,617 and the days in arrears were 1365;
  - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
  - (iii) that no impairment provision was made in respect of the Chrysalis loan;
  - (iv) the matters in sub-paragraphs (a)(b)(iii) and (a)(b)(iv) above;
- (i) in the Arrears Report for the month of November 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,354,604, the net arrears were \$667,651 and the days in arrears were 1395;
  - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
  - (iii) Provident's strategy in relation to the Chrysalis loan was as follows:
    - (A) the property was a large commercial site in Newcastle with a DA for 44 units;
    - (B) in order to ensure the added value provided by the DA, Provident had recently completed the DA process and obtained the construction certificate;
    - (C) demolition works were now complete and awaiting final certification;
    - (D) interest in the site remained with the owners of adjoining properties who needed the site to maximise the potential of their own property and had sought an option to purchase the site for \$7 million plus GST;
  - (iv) the estimated discharge date was June 2011;~~and~~
  - (j) that no impairment provision was made in respect of the Chrysalis loan; and

- (k) denies the allegations in paragraph 40 of the SoC.
41. In answer to the allegations in paragraph 41 of the SoC, AET:
- (a) repeats the matters in paragraph 40 above;
- (b) says that in forming any view between 30 October 2010 to 22 December 2010 as to whether any provisions for credit losses should be made in respect of the Chrysalis loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C, 24P - 24R, 28 – 36 and 40 above; and
- (c) denies the allegations in paragraph 41 of the SoC.

**~~C) THE BALANCE OF THE FTI PORTFOLIO~~**

**(e) Inquiries about FTI Portfolio**

42. In answer to the allegations in paragraph 42 of the SoC, AET:
- (a) repeats the matters in paragraphs 7, 17 and 10 to 36 above;
- (b) says that in the September 2008 RG 69 Report, Provident stated that:
- (i) the loans in respect of which Provident was in possession of mortgaged property pending sale were to a value of \$28,316,087;
- (ii) the directors of Provident considered that the recovery of the amounts of principal on the loans past due as at 30 June 2008 was reasonably certain and the security held was adequate to cover them;
- (c) says that in the March 2009 RG 69 Report, Provident stated that:
- (i) the loans in respect of which Provident was in possession of mortgaged property pending sale were to a value of \$31,667,572;
- (ii) the directors of Provident considered that the recovery of the amounts of principal on the loans past due as at 31 December 2008 was reasonably certain and the security held was adequate to cover them;
- (d) says that in the September 2009 RG 69 Report, Provident stated that:
- (i) the loans in respect of which Provident was in possession of mortgaged property pending sale were to a value of \$28,703,656;
- (ii) the directors of Provident considered that the recovery of the amounts of principal on the loans past due as at 30 June 2009 was reasonably certain and the security held was adequate to cover them;
- (e) says that in the March 2010 RG 69 Report, Provident stated that:
- (i) the loans in respect of which Provident was in possession of mortgaged property pending sale were to a value of \$30,368,858;
- (ii) the directors of Provident considered that the recovery of the amounts of principal on the loans past due as at 31 December 2009 was reasonably certain and the security held was adequate to cover them;

- (f) says that in the Arrears Report for the month of October 2010, Provident disclosed to the effect that:
- (i) the total value of the loans in respect of which Provident was in possession of the security property and was in the course selling that property (**PBSBP loans**) was approximately \$31 million;
  - (ii) the total value of the security in respect of PBSBP loans was approximately \$37 million;
  - (iii) the aggregate LVR of PBSBP loans was around 88.5%;
- (g) says that the Arrears Reports for the period July 2010 to December 2010:
- (i) made provisions in respect of the loans appearing in those Arrears Reports in the total amounts of \$1,581,632 for July 2010, \$1,939,482 for August 2010, \$1,964,482 for September 2010, \$2,078,332 for October 2010, \$7,130,673 for November 2010 and \$2,566,382 for December 2010;
  - (ii) in respect of the loans appearing in those Arrears Reports, stated Provident's strategy in respect of the recovery of the loan, including where appropriate realisation of the security; and
  - (iii) indicated that Provident had net positive assets;
- (h) says that the Interim Report for the half year ended 31 December 2010 (**December 2010 Interim Report**):
- (i) made impairment provisions as at 31 December 2010 in the amount of \$1,792,932;
  - (ii) recorded impairment losses of \$312,343, including recognised losses of \$76,343 and individually assessed impairment losses of \$236,000;
  - (iii) reported total equity of \$14,817,421;
  - (iv) contained a directors' declaration stating (inter alia) that the 2010 Interim Report gave a true and fair view of Provident's financial position as at 31 December 2010 and of its performance for the half-year ended on that date and that there were reasonable grounds to believe that the company will be able to pay the debts as and when they became due and payable;
  - (v) contained an auditor's opinion that based on their review that had not become aware of any matter which made them believe that the 2010 Interim Report did not give a true and fair view of Provident's financial position as at 31 December 2010 and of its performance for the half-year ended on that date;
- (i) says that in the Provident Capital Debenture Prospectus 2011 (**the 2011 Prospectus**) Provident stated:
- (i) its total loan Portfolio consisted of 158 loans to a total value of \$178.3 million;
  - (ii) as at 30 June 2010, the provisions for impairment of its loans and advances made by Provident were \$1,466,932;

- (iii) the net value of loans and advances made by Provident (after providing for impairment) was \$178,306,246 and the total value of Provident's assets was \$222,011,825;
  - (iv) Provident had net equity of \$14,020,695;
  - (v) a total of 44 loans with combined outstanding principal and interest equal to \$100,726,191 were more than 30 days past due at 30 June 2010;
  - (vi) the level of loans more than 30 days past due at 30 June 2010 was consistent with the monthly balance throughout the 12 months ended 30 June 2010 and the subsequent 5 months to 30 November 2010, and was considered by Provident to be acceptable for the type of loans in the portfolio;
  - (vii) as at the date of the prospectus, the directors of Provident considered the amount of loans more than 30 days past due as at 30 June 2010 to be recoverable;
  - (viii) Provident did not consider this aspect of the loan portfolio to be a material indicator of possible credit losses in the portfolio, as in the majority of these loans the default was rectified or the loan was repaid;
- (j) says that on 17 December 2010 Provident wrote to AET (17 December 2010 letter) stating to the effect:
- (i) the 2011 Prospectus had been prepared in accordance with all laws, including the Corps Act and the Corps Regs;
  - (ii) no material statement that is false or misleading had been made in the 2011 Prospectus and there is no material omission from the 2011 Prospectus;
  - (iii) the assets of Provident that are, or should be, available will be sufficient to repay the principal amount lent to Provident as a result of the offer in the 2011 Prospectus as and when they become due for repayment in accordance with the terms of that offer; and
  - (iv) Provident acknowledged that AET was relying on the confirmations and acknowledgements contained in the 17 December 2010 letter;
- (k) says that the Auditor's Benchmark Assurance Report dated 31 January 2011 relating to the September 2010 RG 69 Report and the 2011 Prospectus (**January 2011 Auditor's Benchmark Assurance Report**) stated to the effect that the internal controls of Provident were adequately designed and operated effectively during the period 1 July 2009 to 22 December 2010 to achieve (inter alia) the control objective of maximum loan to valuation ratios of 70% of the latest complying valuation where the loan relates to development property and 80% of the latest complying market valuation for other loans being met;
- (l) says that in forming any view between 30 October 2010 to 22 December 2010 as to whether any provisions for credit losses should be made in respect of the balance of the FTI Portfolio, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 20 – 24C, 28 – 36, 42(b) – (g) and 42(i) – (j) above;
- (m) denies the allegations in paragraph 42 of the SoC.

~~G. ALLEGED CONCLUSIONS TO BE REACHED AS A RESULT OF FURTHER INVESTIGATIONS~~

~~I. ALLEGED OBLIGATIONS AND CONTRAVENTIONS~~

~~(a) Alleged proper conclusions and response~~

43. In answer to the allegations in paragraph 43 of the SoC, AET:

- (a) repeats the matters in paragraphs 7 and 10 to 42 above; and
- (b) denies the allegations in paragraph 43 of the SoC.

~~H. ALLEGED CESSATION OF FUND-RAISING~~

44. In answer to the allegations in paragraph 44 of the SoC, AET:

- (a) repeats the matters in paragraphs 10 to 42 above;
  - (b) says that any application of the kind alleged in paragraph 44 of the SoC made in or about December 2010 would have been unsupported by evidence which AET was capable of adducing which would have demonstrated that property of Provident would be insufficient to pay the amount due on the debentures;
  - (c) says that any application of the kind alleged in paragraph 44 of the SoC made in or about December 2010 would have been opposed by Provident, which opposition would have been supported by evidence purporting to demonstrate that its property would be sufficient to pay the amount due on the debentures including evidence:
    - (i) of the unqualified audit opinions expressed in relation to the 2009 Annual Report and the 2010 Annual Report;
    - (ii) of the opinions expressed in the DP 12 Auditor's Benchmark Assurance Report; and
    - (iii) of the Quarterly Reports referred to in paragraph 36(h) above;
    - (iv) of the Arrears Reports referred to in paragraph 42(g) above;
    - (v) to the effect of the unqualified audit opinions expressed in relation to the December 2010 Interim Report;
    - (vi) to the effect of the opinions expressed in the January 2011 Auditor's Benchmark Assurance Report;
    - (vii) to the effect of the statements contained in the 2011 Prospectus and the 17 December 2010 letter referred to in paragraph 42 above;
  - (d) denies the allegations in paragraph 44 of the SoC.
45. In answer to the allegations in paragraph 45 of the SoC, AET:
- (a) repeats the matters in paragraph 44 above; and
  - (b) denies the allegations in paragraph 45 of the SoC.

46. In answer to the allegations in paragraph 46 of the SoC, AET:
- (a) repeats the matters in paragraphs 10 to 42 above;
  - (b) says that any notification to ASIC of the kind alleged in paragraph 46 of the SoC made in or about December 2010 would have been unsupported by evidence which AET was capable of adducing which would have demonstrated that property of Provident would be sufficient to pay the amount due on the debentures;
  - (c) says that any notification of the kind alleged in paragraph 46 of the SoC made in or about December 2010 would have been responded to by Provident, which response would have been supported by evidence purporting to demonstrate that its property would be sufficient to pay the amount due on the debentures including evidence of the kind referred to in paragraph 44(c) above; and
  - (d) denies the allegations in paragraph 45 of the SoC.
47. In answer to the allegations in paragraph 47 of the SoC, AET:
- (a) repeats the matters in paragraph 46 above; and
  - (b) denies the allegations in paragraph 47 of the SoC.

**~~I. ALLEGED CONTRAVENTION BY AET OF SECTION 283DA~~**

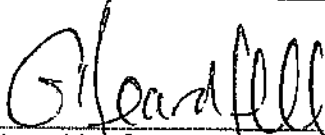
**(b) Alleged contraventions and causation**

48. In answer to the allegations in paragraph 48 of the SoC, AET:
- (a) repeats the matters in paragraph 36 to 46 above;
  - (b) denies the allegations in paragraph 48 of the SoC.
49. In answer to the allegations in paragraph 49 of the SoC, AET:
- (a) repeats the matters in paragraph 48 above;
  - (b) says that if it was necessary or appropriate for Provident to make the provisions for credit losses and impairments alleged in paragraph 43 of the SoC, that would not itself as at December 2010 have dictated a conclusion that:
    - (i) Provident would not be able to repay the debentures when they became due and payable; and
    - (ii) it was necessary or appropriate to appoint a receiver to Provident; and
  - (c) denies the allegations in paragraph 49 of the SoC.
50. AET denies the allegations in paragraph 50 of the SoC and says further that:
- (a) if, which is denied, AET contravened s283DA of the Corps Act and the applicant and group members suffered loss and damage, the cause of that loss and damage are the actions and omissions of Provident and not the contravention of AET; and
  - (b) in the premises of the previous sub-paragraph, if AET contravened s283DA of the Corps Act, and the applicant and group members suffered loss and damage, no

compensation is recoverable by the applicant and group members pursuant to s283F of the Corps Act.

51. AET denies the allegations in paragraph 51 of the SoC and says further that if, which is denied, AET contravened s283DA of the Corps Act and the applicant and group members are entitled to recover compensation from AET pursuant to s283F of the Corps Act, that compensation must be reduced to account for any amounts recovered or to be recovered by the applicant and group members pursuant to the receivership of Provident, including the proceedings commenced by the Receivers of Provident against the directors of Provident in the Supreme Court of New South Wales (proceedings no 2014/63700).
52. In answer to the allegations in paragraph 52 of the SoC, AET denies that the applicant and group members are entitled to the relief sought in the Amended originating application, or any relief.

Date: ~~13 March 2015~~ 30 July 2015



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Signed by Gavin Beardsell  
Lawyer for the Respondent

This pleading was prepared by Michael O'Meara of counsel



**Certificate of lawyer**

I, Gavin Beardsell, certify to the Court that, in relation to the defence to the amended statement of claim 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: ~~43 March 2015~~ 30 July 2015



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Signed by Gavin Beardsell  
Lawyer for the Respondent

