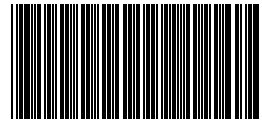




Filed: 13 March 2018 3:13 PM



D0000YXQNN

## SECOND CROSS-CLAIM DEFENCE TO CROSS CLAIM

### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2015/00306222

### TITLE OF PROCEEDINGS

First Plaintiff	Innes Creighton
First Defendant	Australian Executor Trustees Limited ACN 007869794

### TITLE OF THIS CROSS-CLAIM

First Cross Claimant	Australian Executor Trustees Limited ACN 007869794
First Cross Defendant	Marcus Jonathon Anderson Laithwaite and the others listed in schedule 1

### FILING DETAILS

Filed for	Marcus Jonathon Anderson Laithwaite and the others listed in schedule 1, Cross Defendant 1
Filed in relation to	Cross-Claim 2
Legal representative	Moira Leonie Saville
Legal representative reference	
Telephone	9296 2528

### AFFIDAVIT

Deponent Name	Meredith Beattie
Sworn/Affirmed on	13 March 2018

### NOTICE OF LISTING

This matter has been listed at the same time as the cross claim.

## **ATTACHMENT DETAILS**

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Defence to Cross Claim (e-Services), along with any other documents listed below, were filed by the Court.

Defence (UCPR 7A/7B) (Creighton - Defence to Amended Second Cross Claim against PwC - 13 March 2018.pdf)

[attach.]

Form 7A (version 5)  
UCPR 14.3

## DEFENCE TO SECOND CROSS-CLAIM AMENDED STATEMENT OF CROSS-CLAIM

### COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Equity General
Registry	Sydney
Case number	2015/00306222

### TITLE OF PROCEEDINGS

Plaintiff	<b>Innes Creighton</b>
Defendant	<b>Australian Executor Trustees Limited</b>

### TITLE OF THIS CROSS CLAIM

Cross Claimant	<b>Australian Executor Trustees Limited</b>
Cross Defendants	<b>Marcus Jonathon Anderson Laithwaite and the others listed in Schedule 1</b>

### FILING DETAILS

Filed for	<b>Cross Defendants</b>
Filed in relation to	<b>Second Cross Claim</b>
Legal representative	Moira Saville, King & Wood Mallesons
Legal representative reference	602-0020449
Contact name and telephone	Moira Saville (02) 9296 2311
Contact email	Moira.saville@au.kwm.com

### HEARING DETAILS

The proceeding is listed for directions before Justice Ball on 3 April 2018

### PLEADINGS AND PARTICULARS

#### CONTENTS

A. Parties.....	2
B. FY04 Audit.....	7
C. FY05 Audit.....	29
D. FY06 Audit.....	49
E. FY07 Audit.....	69
F. Other Defences.....	93
G. SIGNATURE OF LEGAL REPRESENTATIVE.....	110

Defined terms have the same meaning as those used in the Second Cross-Claim Amended Statement of Cross-Claim ("**SOCC**"), unless otherwise stated.

The Cross-Defendants ("**PwC**") plead to the SOCC as follows:

**A. Parties**

1 PwC admit paragraph 1 of the SOCC.

2 As to paragraph 2 of the SOCC, PwC:

- (a) say that AET (then named Tower Trust Limited) was appointed the trustee for the holders of debentures issued by Provident, subject to and in accordance with the Deed of Amendment between Provident and AET dated 24 November 2005 ("**Consolidated Trust Deed**"); and
- (b) otherwise deny the paragraph.

**Particulars**

*Clause 1A of the Consolidated Trust Deed*

3 PwC admit paragraph 3 of the SOCC.

4 As to paragraph 4 of the SOCC, PwC:

- (a) say that the firm trading as PwC was appointed as auditor of Provident pursuant to section 324AB of the *Corporations Act 2001* (Cth) ("**Corporations Act**") for the period 21 October 1998 to 3 January 2008;
- (b) say that no allegation is made in respect of any audit conducted by PwC prior to FY04;
- (c) say that because the PwC audit for FY04 and FY05 was completed prior to AET's appointment, there is no basis for a claim in FY04 and FY05;
- (d) say that the terms of PwC's appointment as auditor of Provident were the subject of letters of engagement, from time to time, including without limitation, in respect of FY04, FY05, FY06 and FY07;
- (e) refer to paragraphs 12, 50, 88 and 126 below; and
- (f) otherwise deny the paragraph.

5 As to paragraph 5 of the SOCC, PwC:

- (a) repeat their answer to paragraph 4 above;
- (b) say that the persons named in Schedule One of the Notice of Appearance filed by PwC on 1 February 2017 were partners of PwC during the period 21 October 1998 to 3 January 2008;

- (c) deny that the partners who were partners who retired at any time up to the date of the 2005 Audit Report are properly joined as Cross-Defendants; and
  - (d) otherwise do not admit that the persons named as Cross-Defendants are properly joined as Cross-Defendants, and say that the proper Cross-Defendants are those persons who were partners as at the dates on which the alleged acts or omissions occurred.
- 6 As to paragraph 6 of the SOCC, PwC:
- (a) repeat their answer to paragraph 4 above; and
  - (b) admit the paragraph.
- 7 As to paragraph 7 of the SOCC, PwC:
- (a) repeat their answer to paragraph 4 above; and
  - (b) admit the paragraph.
- 8 As to paragraph 8 of the SOCC, PwC:
- (a) rely on the terms of the statutory provisions pleaded in the paragraph for their full force and effect;
  - (b) repeat their answer to paragraph 4 above and otherwise admit the paragraph;
  - (c) say that, throughout the period from 29 September 2004 to 28 September 2007, the *Corporations Act* required:
    - (i) an auditor who conducted an audit of the financial report for a financial year or review of the financial report as at the half year to form an "opinion" about the matters stated therein: section 307; and
    - (ii) an audit of the financial report for a financial year, or an audit or review of the financial report of a half year, to be conducted in accordance with the auditing standards: section 307A;
  - (d) say further that PwC rely upon the terms of the auditing standards in force during the period 29 September 2004 to 28 September 2007 for their full force and effect, and note that the standards recognised the following matters (in successive iterations and notwithstanding non-material changes in language):
    - (i) although the auditor's opinion enhances the credibility of a financial report, the user cannot assume that the audit opinion is an assurance as to the future viability of the entity nor the efficiency or effectiveness with which management has conducted the affairs of the entity;

**Particulars**

*Auditing Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (July 2002) at .03*

*Auditing and Assurance Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (February 2004) at .03*

*Auditing Standard ASA 200 (Objectives and General Principles Governing an Audit of a Financial Report) (April 2006) at 29*

- (ii) an audit in accordance with the auditing standards is designed to provide reasonable assurance that the financial report taken as a whole is free from material misstatement. Reasonable assurance is a concept relating to the accumulation of the audit evidence necessary for the auditor to conclude that there are no material misstatements in the financial report taken as a whole. Reasonable assurance relates to the whole audit process;

**Particulars**

*Auditing Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (July 2002) at .08*

*Auditing and Assurance Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (February 2004) at .08 and .16 to .18*

*Auditing Standard ASA 200 (Objectives and General Principles Governing an Audit of a Financial Report) (April 2006) at 24-29*

- (iii) an auditor cannot obtain absolute assurance because there are inherent limitations in an audit that affect the auditor's ability to detect material misstatements, including limitations resulting from: (a) the use of testing; (b) the inherent limitations of internal control (for example, the possibility of management override or collusion); and (c) the fact that most audit evidence is persuasive rather than conclusive;

**Particulars**

*Auditing Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (July 2002) at .11*

*Auditing and Assurance Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (February 2004) at .09*

*Auditing Standard ASA 200 (Objectives and General Principles Governing an Audit of a Financial Report) (April 2006) at 26*

- (iv) the work undertaken by an auditor to form an audit opinion is permeated by judgement, in particular regarding: (a) the gathering of audit evidence; and (b) the drawing of conclusions based on the audit evidence gathered (for example, assessing the reasonableness of estimates made by management in preparing the financial report);

**Particulars**

*Auditing Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (July 2002) at .10*

*Auditing and Assurance Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (February 2004) at .10 and .16*

*Auditing Standard ASA 200 (Objectives and General Principles Governing an Audit of a Financial Report) (April 2006) at 27*

- (v) an audit is not a guarantee that the financial report is free of material misstatement;

**Particulars**

*Auditing Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (July 2002) at .8 to .13*

*Auditing and Assurance Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (February 2004) at .12*

*Auditing Standard ASA 200 (Objectives and General Principles Governing an Audit of a Financial Report) (April 2006) at 29*

- (vi) the concept of "reasonable assurance" acknowledges that there is a risk that an audit opinion will be inappropriate (known as "audit risk"), which risk is itself a function of the risk of material misstatement of the financial report (known as "risk of material misstatement") and the risk that the auditor will not detect such misstatement (known as "detection risk");

**Particulars**

*Auditing Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (July 2002) at .08 to .13*

*Auditing and Assurance Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (February 2004) at .14 and .16*

*Auditing Standard ASA 200 (Objectives and General Principles Governing an Audit of a Financial Report) (April 2006) at 30 to 41*

- (vii) audit risk, the risk of material misstatement and detection risk cannot be reduced to zero. With respect to detection risk, the risk cannot be reduced to zero because the auditor usually does not examine all of a class of transactions, account balance, or disclosure and because of other factors, including the possibility that the auditor might select an inappropriate audit procedure, misapply an appropriate audit procedure, or misinterpret the audit results;

**Particulars**

*Auditing Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (July 2002) at .08 to .13*

*Auditing and Assurance Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (February 2004) at .15, .16 and .20 to .23*

*Auditing Standard ASA 200 (Objectives and General Principles Governing an Audit of a Financial Report) (April 2006) at 38 to 41*

- (viii) the audit process involves the exercise of professional judgement in designing the audit approach; and

**Particulars**

*Auditing Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (July 2002) at .10*

*Auditing and Assurance Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (February 2004) at .16*

*Auditing Standard ASA 200 (Objectives and General Principles Governing an Audit of a Financial Report) (April 2006) at 34*

- (ix) while the auditor is responsible for forming and expressing an opinion on the financial report, the responsibility for preparing and presenting the financial report in accordance with the applicable financial reporting framework is that of the management of the entity, with oversight from those charged with governance; and



**Particulars**

*Auditing Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (July 2002) at .14*

*Auditing and Assurance Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (February 2004) at .24*

*Auditing Standard ASA 200 (Objectives and General Principles Governing an Audit of a Financial Report) (April 2006) at 42*

- (e) say further that, by reason of the matters identified in paragraph 8(d) above:
- (i) the provision of audit services in accordance with the *Corporations Act* necessarily involved the exercise by an auditor of his or her professional judgement and the forming by the auditor of professional opinions in respect of which reasonable minds could differ; and
  - (ii) in providing audit services in accordance with the *Corporations Act*, an auditor was not providing absolute assurance and was not verifying or warranting the accuracy of the contents of the financial report that had been prepared by the management of the entity the subject of the audit and for which that entity was responsible.

**B. FY04 Audit**

**Alleged damages in negligence at common law**

9 PwC admit paragraph 9 of the SOCC.

10 As to paragraph 10 of the SOCC, PwC:

- (a) rely on the terms of Provident's financial report for FY04 for their full force and effect;
- (b) say, in respect of paragraph 10(a) of the SOCC, the financial report for FY04 states that there were loans and advances in the amount of \$187,576,802;
- (c) say, in respect of paragraph 10(b) of the SOCC, the financial report for FY04 states that an amount of \$45,319,313 was included in the loans and advances as at 30 June 2004 which represented the amount of past due loans;
- (d) say, in respect of paragraph 10(c) of the SOCC, the financial report for FY04 states that no specific provision was made for past due loans as at 30 June 2004 as the directors considered that the recovery of all amounts of principal and

interest at the contractual rate was regarded as reasonably certain given the security cover;

- (e) say, in respect of paragraph 10(d) of the SOCC, that the financial report for FY04 stated that Provident's total assets as at 30 June 2004 were \$202,703,652;
- (f) admit subparagraphs 10(e) and 10(f) of the SOCC;
- (g) say further that Provident's financial report contained a "Directors' Declaration" to the effect that:
  - (i) the directors of Provident declared that the financial statements and notes set out on pages 5 to 19:
    - (A) complied with Accounting Standards, the *Corporations Regulations 2001* (Cth) ("**Corporations Regulations**") and other mandatory professional reporting requirements; and
    - (B) gave a true and fair view of Provident's financial position as at 30 June 2004 and of its performance, as represented by the results of its operations and its cash flows, for the financial year ended on that date; and
  - (ii) in the directors' opinion:
    - (A) the financial statements and notes were in accordance with the *Corporations Act*; and
    - (B) there were reasonable grounds to believe that Provident would be able to pay its debts as and when they became due and payable; and
- (h) otherwise deny the paragraph.

11 As to paragraph 11 of the SOCC, PwC:

- (a) repeat their answer to paragraphs 4 and 8 above;
- (b) say that on 29 September 2004, Mr Michael O'Sullivan, the Chairman and Managing Director of Provident ("**Mr O'Sullivan**"), signed the Directors' Report and Directors' Declaration in respect of the financial statements for the year ended 30 June 2004;
- (c) say further that, after Mr O'Sullivan took the actions pleaded in paragraph 11(b) above, Mr Michael Codling ("**Mr Codling**") signed the audit report, in his name and in the name of PwC pursuant to section 324AB(3) of the *Corporations Act*, in respect of the year ended 30 June 2004 ("**2004 Audit Report**");

- (d) rely on the terms of the 2004 Audit Report for their full force and effect and say that:
- (i) the 2004 Audit Report was divided into three sections: "Audit Opinion"; "Scope" and "Independence"; and
  - (ii) under the heading "Scope", the 2004 Audit Report stated, *inter alia*, that:
    - (A) the directors of Provident were responsible for the preparation and true and fair presentation of the financial report in accordance with the *Corporations Act*, including responsibility for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial report;
    - (B) PwC conducted an audit in accordance with Australian Auditing Standards, in order to provide reasonable assurance as to whether the financial report was free of material misstatement;
    - (C) the nature of an audit is influenced by factors such as the use of professional judgement, selective testing, the inherent limitations of internal control, and the availability of persuasive rather than conclusive evidence; and
    - (D) an audit cannot guarantee that all material misstatements have been detected; and
- (e) otherwise admit the paragraph.

12 As to paragraph 12 of the SOCC, PwC:

- (a) say that the terms of the contract between PwC and Provident, in relation to the year ended 30 June 2004, are set out in the Letter of Engagement dated 28 January 2003, including the terms and conditions which comprised Appendix 1 to the letter and a Client Assistance Schedule letter dated 29 July 2004 (together, the "**2004 Retainer**");
- (b) rely on the terms of the 2004 Retainer for their full force and effect;
- (c) say that the 2004 Retainer included the following terms:
  - (i) the directors of Provident were responsible for, *inter alia*:
    - (A) ensuring that the company kept accounting records which at any time disclosed with reasonable accuracy the financial position of the company;

- (B) establishing and maintaining an internal control structure;
  - (C) preparing a financial report (including adequate disclosure) which gives a true and fair view of the company's financial position and performance, represented by the results of its operations and cashflows, in accordance with Accounting Standards, other mandatory reporting requirements and the *Corporations Act*; and
  - (D) enabling PwC to access, on an unrestricted basis, all records, information and explanations that PwC considered necessary in connection with the audit;
- (ii) PwC had a statutory responsibility to form an opinion, and report on whether the financial report presented to them by the directors was in accordance with the *Corporations Act* including:
- (A) giving a true and fair view of the company's financial position and performance, represented by the results of its operations and its cash flows; and
  - (B) complying with Accounting Standards, the *Corporations Regulations* and other mandatory professional reporting requirements;
- (iii) a statutory audit of the annual financial report would be conducted in accordance with Australian Auditing Standards to provide reasonable assurance as to whether the annual financial report was free of material misstatement;
- (iv) the procedures adopted by PwC would include examination, on a test basis, of evidence supporting the amounts and disclosures in the financial report and evaluation of accounting policies and significant accounting estimates; and
- (v) there was an unavoidable risk that audits planned and executed in accordance with Australian Auditing Standards may not detect a material error or irregularity; that audits are based on selective testing of the information being examined and that therefore errors and irregularities may not be detected; and that an audit could only provide reasonable and not absolute assurance that the annual financial report was free of material misstatement; and
- (d) otherwise deny the paragraph.

- 13 As to paragraph 13 of the SOCC, PwC:
- (a) admit that they knew that Provident had on issue debentures the subject of Chapter 2L of the *Corporations Act*;
  - (b) admit that they knew that there was a trustee for debenture holders, which trustee owed the duties set out in section 283DA of the *Corporations Act*;
  - (c) admit that they knew that the trustee for debenture holders could be replaced with a new trustee at some date after PwC audited Provident's financial report for FY04 and issued its audit report to Provident;
  - (d) refer to and repeat paragraph 14 below; and
  - (e) otherwise deny the paragraph.
- 14 As to paragraph 14, PwC:
- (a) say that, at the time PwC audited Provident's financial report for FY04 and issued the 2004 Audit Report:
    - (i) AET was not the trustee for holders of debentures issued by Provident;
    - (ii) AET owed no duties under section 283DA of the *Corporations Act* and could not be liable to holders of debentures issued by Provident under section 283F of the *Corporations Act*;
    - (iii) it was incumbent upon the trustee from time to time for the holders of debentures issued by Provident to:
      - (A) exercise reasonable diligence to ascertain whether the property of Provident, and of any guarantor, that was or should be available (whether by way of security or otherwise) would be sufficient to repay the amount deposited or lent when it becomes due: section 283DA(a);
      - (B) exercise reasonable diligence to ascertain whether Provident had committed any breach of the provisions of the Debenture Trust Deed between Provident Capital Limited and I.O.O.F Australia Trustees (NSW) Limited ("**IOOF**") dated 11 December 1998 ("**Trust Deed**") and the Deed of Amendment between Provident Capital Limited and IOOF dated 23 December 1999 ("**Deed of Amendment**") or Chapter 2L of the *Corporations Act*: section 283DA(b); and
      - (C) do everything in its power to ensure that Provident remedied any breach known to the trustee of any provision of the Trust

Deed and the Deed of Amendment, or Chapter 2L of the *Corporations Act* unless the trustee was satisfied that the breach would not materially prejudice the debenture holders' interests or any security for the debentures: section 283DA(c);

- (iv) the trustee from time to time for the holders of debentures issued by Provident enjoyed the power, pursuant to the Trust Deed and the Deed of Amendment, to compel Provident to:
  - (A) make available for inspection by the trustee or the trustee's auditor, the whole of the financial or other records of Provident: Trust Deed, cl 6.0.2;
  - (B) give to the trustee, or the trustee's auditor, such information as the trustee or the trustee's auditor requires with respect to all matters relating to the financial or other records of Provident: Trust Deed, cl 6.0.3; and
  - (C) provide to the trustee, at the trustee's request, a schedule setting out:
    - (aa) details of the amounts of the debenture funds invested in each form of authorised investment at the end of the month;
    - (ab) the amount of the debenture funds at the beginning and at the end of the month;
    - (ac) for each form of authorised investment, the income received during the month and the projected income for the next month;
    - (ad) the amount of interest paid on debentures for the month and the projected amount of interest payable on debentures for the next month; and
    - (ae) particulars of mortgage arrears at the end of the month and the action taken by Provident to recover those arrears: Trust Deed, cl 6.0.8;
- (v) the trustee from time to time for the holders of debentures issued by Provident enjoyed the power, pursuant to the *Corporations Act*, to compel Provident to comply with its obligations to:
  - (A) make all of its financial and other records available for inspection by:

- (aa) the trustee; or
- (ab) a registered company auditor appointed by the trustee to carry out the inspection: section 283BB;
- (B) give the trustee, or a registered company auditor appointed by the trustee to carry out the inspection, any information, explanations or other assistance that they require about matters relating to those records: section 283BB;
- (C) if Provident created a security interest, to give the trustee written details of the security interest within 21 days after it is created; and, if the total amount to be advanced on the security of the security interest is indeterminate and the advances are not merged in a current account with bankers, trade creditors or anyone else – to give the trustee written details of the amount of each advance within 7 days after it was made: section 283BE; and
- (D) within one month after the end of each quarter, to give the trustee a quarterly report that set out the information required by sections 283BF(4), (5), and (6); and
- (vi) the trustee from time to time for the holders of debentures issued by Provident enjoyed an indemnity from Provident for all costs, charges and expenses properly incurred, including without limitation costs charges and expenses:
  - (A) in the carrying out or exercise or the attempted carrying out or exercise by the trustee of any duty or power, express or implied by law;
  - (B) in connection with any breach by Provident of the deed; and
  - (C) charged to the trustee by the trustee's auditor in connection with any function performed by the trustee's auditor concerning the Trust Deed: Trust Deed, cl 8.2;
- (b) say that by reason of the matters pleaded in 14(a) of this Defence above, the trustee for debenture holders, and any replacement trustee, had an obligation, and/or the legal and practical ability, to satisfy itself of the accuracy of Provident's financial report for FY04 and any other aspect of Provident's financial affairs, including through the appointment by the trustee of a registered company auditor, to inspect the records of Provident at the trustee's request;

- (c) say, in respect of paragraph 14(e) of the SOCC, at the time PwC issued the FY04 Audit Report, it was reasonably foreseeable by PwC that a failure by PwC to exercise reasonable care and skill in the conduct of its audit might result in PwC not becoming aware of matters that it would otherwise have been required to report pursuant to s.313(2) of the Corporations Act;
- (d) say further that, if (which is denied) the risk of harm pleaded in paragraph 14 of the SOCC existed, the trustee for debenture holders, and any replacement trustee, had an obligation, and/or the legal and practical ability, to protect itself from the risk of harm.

**Particulars**

*Paragraph 14(a) above*

- (e) otherwise deny the paragraph.
- 15 As to paragraph 15 of the SOCC, PwC:
- (a) repeat their answer to paragraph 14 above;
  - (b) deny the paragraph; and
  - (c) say further that, if (which is denied) the risk of harm pleaded in paragraph 14 of the SOCC existed and was not insignificant:
    - (i) the risk of harm was obvious within the meaning of section 5F of the *Civil Liability Act 2002 (NSW)* ("**CLA**");
    - (ii) AET is presumed to have been aware of the risk of harm, by reason of section 5G of the *CLA*; and
    - (iii) the risk of harm was inherent, within the meaning of section 5I of the *CLA*.

**Particulars**

*Paragraph 8 of this Defence*

- 16 As to paragraph 16 of the SOCC, PwC:
- (a) do not admit subparagraph 16(b);
  - (b) repeat their answer to paragraph 14 above;
  - (c) say that:
    - (i) it would be open to any replacement trustee to require, as a condition of being appointed trustee, the right or power to conduct or commission an audit (or investigation in the nature of an audit), conduct due diligence or make such other inquiries as it saw fit of a debenture issuer prior to



accepting appointment as trustee or suitable indemnities to protect its position;

- (ii) PwC were required to conduct the audit of Provident's financial report for FY04 and issue the 2004 Audit Report, in accordance with the Australian Auditing Standards including relevant ethical requirements, which include an independence requirement; and
- (iii) in accordance with those requirements, PwC as auditor could not allow the trustee for debenture holders, or any replacement trustee, or any other person, to direct, control or unduly influence the conduct of PwC's audit or the contents of the 2004 Audit Report; and

**Particulars**

*Auditing Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (July 2002) at .04*

- (d) otherwise deny the paragraph.

17 As to paragraph 17 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 8 and 12 to 16 above;
- (b) deny the paragraph; and
- (c) say that:
  - (i) at the time PwC audited Provident's financial report for FY04 and issued the 2004 Audit Report, AET was not the trustee for holders of debentures issued by Provident;
  - (ii) the class of "future trustees for debenture holders" in respect of whom PwC is alleged to have owed a duty of care is indeterminate, unworkable, incompatible with PwC's duties to Provident, and would impose an unreasonable burden on the autonomy of PwC in providing audit services;
  - (iii) recognition of a duty of care in the terms pleaded is inconsistent with the regime for the performance of audit services provided for in the *Corporations Act*; and
  - (iv) no duty of care was or could be owed by PwC to AET, as a "future trustee for debenture holders", under Australian law.

17A As to paragraph 17A of the SOCC, PwC:

- (a) repeat their answers to paragraphs 8 and 12 to 17 above;

- (b) rely, in respect of subparagraph 17A(a) of the SOCC, on the particularised standards for their full force and effect and otherwise deny the subparagraph;
  - (c) say, in respect of subparagraph 17A(b) of the SOCC, a reasonably competent auditor in the position of PwC, exercising reasonable care and skill in the conduct of its audit of Provident's financial report for FY04 and in the preparation of its audit report, would have become aware of the matters contained in subparagraphs 17A(b)(i), (iii), (iv) and (v) and otherwise deny the subparagraph;
  - (d) say, in respect of subparagraphs 17A(i) and (j) of the SOCC, that a reasonably competent auditor in the position of PwC exercising reasonable care and skill in the conduct of its audit of Provident's financial report for FY04 and in the preparation of its audit report would have formed an opinion about:
    - (i) whether it had been given all information, explanation and assistance necessary for the conduct of the audit;
    - (ii) whether Provident had kept financial records sufficient to enable a financial report to be prepared and audited; and
  - (e) otherwise deny the paragraph.
- 17B As to paragraph 17B of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8 and 12 to 17A above;
  - (b) rely upon the terms of the documents referred to in paragraph 17B of the SOCC for their full force and effect; and
  - (c) otherwise deny the paragraph
- 17C As to paragraph 17C of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 12 to 17B above; and
  - (b) deny the paragraph.
- 17D As to paragraph 17D of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 12 to 17C above; and
  - (b) deny the paragraph.
- 18 As to paragraph 18 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 12 to 17D above; and
  - (b) deny the paragraph.
- 18AA As to paragraph 18AA of the SOCC, PwC:
- (a) say that AET was not the trustee at the time the 2004 Audit Report was issued;

(b) otherwise do not know and cannot admit the paragraph.

18A As to paragraph 18A of the SOCC, PwC:

(a) repeat their answers to paragraphs 8, 12 to 18AA above;

(b) deny the paragraph.

19 As to paragraph 19 of the SOCC, PwC:

(a) repeat their answers to paragraphs 8,12 to 18A above;

(b) deny the paragraph;

(c) say that:

(i) at the time PwC audited Provident's financial report for FY04 and issued the 2004 Audit Report, AET was not the trustee for holders of debentures issued by Provident;

(ii) AET was not named as trustee for the holders of debentures in the debenture prospectuses issued by Provident until 19 November 2004; and

(iii) in the circumstances, AET could not have suffered loss in respect of FY04;

(d) say further that no claim is made against AET by the Plaintiff for conduct by AET in respect of FY04 and, in the circumstances, the SOCC is incompetent insofar as it purports to assert a claim for damages in respect of FY04; and

(e) say further that if (which is denied) AET has suffered loss:

(i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) of the CLA;

(ii) in respect of that claim, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) of the CLA;

(iii) further, and in the alternative, the true cause of the loss was:

(A) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;

(B) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;

(C) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;

- (D) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
- (E) the defendant's to the Third Cross-Claim ("**HLB**") conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim Amended Statement of Cross Claim ("**Third Cross-Claim**"),

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

#### **Alleged statutory damages for misleading and deceptive conduct**

- 20 As to paragraph 20 of the SOCC, PwC:
- (a) repeat their answer to paragraph 11 above; and
  - (b) deny the paragraph.
- 21 Not used.
- 22 As to paragraph 22 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 11 and 14 above;
  - (b) deny the paragraph; and
  - (c) say that, if (which is denied) any of the representations were made as alleged, the representations were statements of opinion and Mr Codling had reasonable grounds for those opinions.

#### **Particulars**

*The matters giving rise to those reasonable grounds included:*

- (A) *the audit planning and audit work undertaken by Mr Codling and PwC audit staff with respect to the issue of the 2004 Audit Report;*
- (B) *on or about 29 September 2004, Provident represented to PwC and Mr Codling that there had not arisen in the interval following 30 June 2004 any matter or circumstance that had significantly affected or might significantly affect (except as otherwise referred to in the financial statements or Directors' Report):*
  - (aa) *Provident's operations in future financial years; or*
  - (ab) *the results of those operations in future financial years; or*
  - (ac) *Provident's state of affairs in future financial years*

- (C) *by its management representation letter dated 29 September 2004, Provident represented to PwC and Mr Codling that, inter alia:*
- (aa) *Provident's directors and management were responsible for, and acknowledged their responsibility for, ensuring, inter alia, the accuracy of Provident's financial records and the financial reports prepared from them and that Provident's financial report was drawn up to give a true and fair view of the company's financial position as at 30 June 2004 and of its performance, as represented by the results of its operations and cash flows, for the financial year ended on that date; in accordance with the Corporations Act and to comply with the Accounting Standards, the Corporations Regulations and other mandatory professional reporting requirements;*
  - (ab) *All financial records had been made available for the purpose of the audit, and all the transactions undertaken had been properly reflected and recorded in the financial records. All other records and related information that might affect the truth and fairness of, or necessary disclosure in, the financial report, including minutes of directors' and shareholders' meetings (and of all relevant management meetings) had been made available to Mr Codling and audit staff and no such information had been withheld;*
  - (ac) *The financial report as at 30 June 2004 included all cash and bank accounts and all other assets of the company required to be included therein in accordance with the generally accepted accounting principles and Provident had satisfactory title to all recorded assets;*
  - (ad) *Loans and advances totalling \$187,576,802 were owing to the company at 30 June 2004 and Mr O'Sullivan was of the opinion that those debts would be realised in full;*
  - (ae) *Provident's directors had taken reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be*

*written off and adequate provisions to be made for doubtful debts;*

*(af) Mr O'Sullivan was not aware of any material transactions or agreements the effect of which was not properly recorded in Provident's financial records; and*

*(ag) No matters or occurrences had come to the attention of Mr O'Sullivan which would materially affect the financial report or disclosures therein, or which were likely to materially affect the future results or operations of Provident other than as disclosed to Mr Codling and audit staff;*

*(D) Mr Codling was entitled to believe and did believe that the information provided to him and to audit staff by Provident (including the representations particularised above) was not false or misleading in a material particular and did not omit any matter or thing the omission of which rendered that information misleading in a material respect; and*

*(E) Mr Codling was entitled to believe and did believe that:*

*(aa) the information provided to him by his audit staff was not false or misleading in a material particular;*

*(ab) the information provided to him by his audit staff did not omit any matter or thing the omission of which rendered that information misleading in a material respect; and*

*(ac) his staff exercised reasonable skill and care in preparing the audit plan and conducting the audit.*

23 As to paragraph 23 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 17B, 17C, 18, 18A and 22 above;
- (b) deny the paragraph; and
- (c) say that, if (which is denied) any of the representations in paragraph 22 of the SOCC were made as alleged, the representations were statements of opinion and Mr Codling had reasonable grounds for those opinions.

**Particulars**

*PwC repeat the particulars to paragraph 22 above*

- 24 As to paragraph 24 of the SOCC, PwC:
- (a) repeat their answer to paragraphs 20 to 23 above; and
  - (b) deny the paragraph.
- 25 As to paragraph 25 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 11 and 20 to 24 above; and
  - (b) deny the paragraph.
- 26 As to paragraph 26 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 20 to 25 above;
  - (b) deny the paragraph;
  - (c) say that if (which is denied) AET has suffered loss:
    - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) of the *CLA*;
    - (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of former sections 42 and 68 of the *Fair Trading Act 1987* (NSW) ("**FTA**"), it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) of the *CLA*; and
    - (iii) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 24 and 27 of the SOCC, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed;
  - (d) say further, and in the alternative, the true cause of the loss was:
    - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
    - (ii) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;
    - (iii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
    - (iv) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
    - (v) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

27 As to paragraph 27 of the SOCC, PwC:

- (a) repeat their answer to paragraph 26 above; and
- (b) deny the paragraph.

28 As to paragraph 28 of the SOCC, PwC:

- (a) admit that the 2004 Audit Report included a statement to the effect that Mr Codling and PwC had conducted the audit in accordance with Australian Auditing Standards, in order to provide reasonable assurance as to whether the financial report is free of material misstatement;
- (b) say that:
  - (i) at the time PwC issued the 2004 Audit Report, AET was not the trustee for holders of debentures issued by Provident and no representation could have been made to AET in the 2004 Audit Report;
  - (ii) the paragraph is embarrassing insofar as it fails to identify to whom PwC made the alleged representation; and
- (c) otherwise deny the paragraph.

29 PwC deny paragraph 29 of the SOCC.

30 As to paragraph 30 of the SOCC, PwC:

- (a) repeat paragraphs 8, 11 and 12 above;
- (b) admit that, as at 29 September 2004, the Australian Auditing Standards provided that:
  - (i) the ethical principles governing an auditor's professional responsibilities included professional competence and due care; and
  - (ii) an audit in accordance with the Australian Auditing Standards is designed to provide reasonable assurance that the financial report taken as a whole is free from material misstatement; and
- (c) otherwise deny the paragraph.

31 As to paragraph 31 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 18 and 18A above; and
- (b) deny the paragraph.



32 As to paragraph 32 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 28 and 31 above;
- (b) deny the paragraph; and
- (c) say that, if the representation in paragraph 28 of the SOCC was made as alleged, (which is denied) it was a statement of opinion and Mr Codling had reasonable grounds for that opinion.

**Particulars**

*PwC repeat the particulars to paragraph 23 above*

32A As to paragraph 32A of the SOCC, PwC:

- (a) repeat their answer to paragraph 25 above; and
- (b) deny the paragraph.

33 As to paragraph 33 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 19 and 28 to 32A above;
- (b) deny the paragraph;
- (c) say that if (which is denied) AET has suffered loss:
  - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) of the *CLA*; and
  - (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of former sections 44(b) and 68 of the *FTA* it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) of the *CLA*; and
- (d) say further, and in the alternative, the true cause of the loss was:
  - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (ii) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;
  - (iii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
  - (iv) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (v) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

- 34 As to paragraph 34 of the SOCC, PwC:
- (a) repeat their answer to paragraph 33 above; and
  - (b) deny the paragraph.

**Contribution**

- 35 As to paragraph 35 of the SOCC, PwC:
- (a) admit paragraph 35(b);
  - (b) repeat their answer to paragraph 14 above; and
  - (c) otherwise deny the paragraph.
- 36 As to paragraph 36 of the SOCC, PwC:
- (a) repeat their answer to paragraph 35 above;
  - (b) deny the paragraph; and
  - (c) say further that, if (which is denied) the risk of harm pleaded in paragraphs 35(a), (c)-(d) of the SOCC existed and was not insignificant:
    - (i) the risk of harm was obvious within the meaning of:
      - (A) section 5F of the *CLA*; and
      - (B) section 53 of the *Wrongs Act 1958* (Vic);
    - (ii) the holders of debentures issued by Provident are presumed to have been aware of the risk of harm, by reason of section 5G of the *CLA*; and
    - (iii) the risk of harm was inherent, within the meaning of:
      - (A) section 5I of the *CLA*; and
      - (B) section 55 of the *Wrongs Act 1958* (Vic);

**Particulars**

*Paragraph 8 above*

- 37 As to paragraph 37 of the SOCC, PwC:
- (a) repeat their answer to paragraph 35 above;

- (b) say that debenture holders enjoyed the benefit of a trustee who was obliged to act on their behalf, and for their benefit, in the manner provided for by section 283DA of the *Corporations Act*, the Trust Deed, the Deed of Amendment and at law;

**Particulars**

*Paragraph 14 above*

- (c) say that PwC were required to conduct the audit of Provident's financial report for FY04, and issue the 2004 Audit Report, in accordance with the Australian Auditing Standards including relevant ethical requirements;
  - (d) say that in accordance with those requirements, PwC as auditor could not allow the trustee for debenture holders, or any replacement trustee, or any other person, to direct, control or unduly influence the conduct of PwC's audit or the contents of the 2004 Audit Report; and
  - (e) otherwise deny the paragraph.
- 38 As to paragraph 38 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 12 to 14 and 35 to 37 above;
  - (b) deny the paragraph; and
  - (c) say that the posited duty of care is:
    - (i) unknown to Australian law;
    - (ii) inconsistent with the regime for the performance of audit services provided for in the *Corporations Act*; and
    - (iii) indeterminate, unworkable, incompatible with PwC's duties to Provident and would impose an unreasonable burden on the autonomy of PwC in providing audit services.
- 38A As to paragraph 38A of the SOCC, PwC repeat their answers to paragraphs 17A to 18.
- 39 As to paragraph 39 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 17A to 18 and 38 above; and
  - (b) deny the paragraph.
- 39A As to paragraph 39A of the SOCC, PwC repeat their answer to paragraphs 18AA and 18A above.
- 39B As to paragraph 39B of the SOCC, PwC
- (a) do not know and cannot admit the paragraph; and

- (b) say that the claims set out in paragraph 18A are hypothetical, in that the Plaintiff are not persons of the kind referred to in paragraph 39B of the SOCC, and cannot be determined in the current proceedings.

40 As to paragraph 40 of the SOCC, PwC:

- (a) repeat their answer to paragraphs 18 to 19, 39A and 39B, and refer to paragraph 175 below;
- (b) deny that any breach of duty by PwC (which is denied) was a necessary condition of any loss suffered by the Group Members in paragraph 39B of the SOCC;
- (c) say that if (which is denied) the Group Members referred to in paragraph 39B of the SOCC have suffered loss:
  - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of:
    - (A) section 5D(1) of the *CLA*;
    - (B) section 51(1) of the *Wrongs Act 1958 (Vic)*;
  - (ii) in respect of that claim, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of:
    - (A) section 5D(1) of the *CLA*;
    - (B) section 51(1) of the *Wrongs Act 1958 (Vic)*;
- (d) further, and in the alternative, the true cause of any loss suffered by the Group Members referred to in paragraph 39B of the SOCC was:
  - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (ii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
  - (iii) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (iv) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed; and

- (e) otherwise deny the paragraph.

40A As to paragraph 40A of the SOCC, PwC:

- (a) repeat their answer to paragraph 40 above; and
  - (b) deny the paragraph.
- 40B As to paragraph 40B of the SOCC, PwC repeat their answers to paragraphs 20 to 26 and 28 to 33 above.
- 41 As to paragraph 41 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 25, 39B and 40 above; and
  - (b) otherwise do not know and cannot admit the paragraph.
- 41A As to paragraph 41A, PwC:
- (a) repeat their answers to paragraphs 24, 27, 32, 34, 40B and 41 above;
  - (b) deny the paragraph;
  - (c) say that if (which is denied) the Plaintiff and Group Members have suffered loss:
    - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of:
      - (A) section 5D(1) of the *CLA*; and
      - (B) section 51(1) of the *Wrongs Act 1958* (Vic);
    - (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of:
      - (A) former sections 42, 44(b) and 68 of the *FTA*; and
      - (B) sections 9, 12(b) and 159 of the former *Fair Trading Act 1999* (Vic);

it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of:

      - (C) section 5D(1) of the *CLA*; and
      - (D) section 51(1) of the *Wrongs Act 1958* (Vic);
  - (d) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 24, 27 and 42 of the SOCC, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed;
  - (e) say further, and in the alternative, the true cause of any loss suffered by the Plaintiff and Group Members was:
    - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;

- (ii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
- (iii) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
- (iv) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

42 As to paragraph 42 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 40B to 41A above; and
- (b) deny the paragraph.

42A As to paragraph 42A of the SOCC, PwC:

- (a) repeat their answers to paragraphs 40B to 41A above;
- (b) do not know and cannot admit subparagraphs (a) and (b); and
- (c) otherwise deny the paragraph

42B As to paragraph 42B of the SOCC, PwC:

- (a) repeat their answers to paragraphs 26, 33 and 42A above; and
- (b) deny the paragraph.

42C As to paragraph 42C of the SOCC, PwC:

- (a) repeat their answers to paragraphs 42 to 42B above; and
- (b) deny the paragraph.

43 PwC deny paragraph 43 of the SOCC.

44 As to paragraph 44 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 35 to 43 above;
- (b) deny the paragraph.

45 PwC deny paragraph 45 of the SOCC.

46 As to paragraph 46 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 35 to 43 and 45 above; and
- (b) deny the paragraph.

### C. FY05 Audit

#### Alleged damages in negligence at common law

47 PwC admit paragraph 47 of the SOCC.

48 As to paragraph 48 of the SOCC, PwC:

- (a) rely on the terms of Provident's financial report for FY05 for their full force and effect;
- (b) say, in respect of paragraph 48(a) of the SOCC, the financial report for FY05 states that there were loans and advances in the amount of \$212,597,297;
- (c) say, in respect of paragraph 48(b) of the SOCC, the financial report for FY05 states that an amount of \$54,246,551 was included in the loans and advances as at 30 June 2005 which represented the amount of past due loans;
- (d) say, in respect of paragraph 48(c) of the SOCC, the financial report for FY05 states that no specific provision for past due loans was made as at 30 June 2005 as the directors considered that the recovery of all amounts of principal and interest, including interest at the contractual rate, was regarded as reasonably certain and that the security held was adequate to cover the past due loans;
- (e) admit subparagraphs 48(d) to 48(f) of the SOCC;
- (f) say that Provident's financial report contained a "Directors' Declaration" to the effect that:
  - (i) the directors of Provident declared that the financial statements and notes set out on pages 6 to 21:
    - (A) complied with Accounting Standards, the *Corporations Regulations* and other mandatory professional reporting requirements; and
    - (B) gave a true and fair view of Provident's financial position as at 30 June 2005 and of its performance, as represented by the results of its operations and its cash flows, for the financial year ended on that date; and
  - (ii) in the directors' opinion:
    - (A) the financial statements and notes were in accordance with the *Corporations Act*; and
    - (B) there were reasonable grounds to believe that Provident would be able to pay its debts as and when they became due and payable;

(g) otherwise deny the paragraph.

49 As to paragraph 49 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 4 and 8 above;
- (b) say that on 28 September 2005, Mr O'Sullivan signed the Directors' Report and Directors' Declaration in respect of the financial statements for the year ended 30 June 2005;
- (c) further say that after Mr O'Sullivan took the actions pleaded in paragraph 49(b) above, Mr Christopher Cooper ("**Mr Cooper**") signed the audit report, in his name and in the name of PwC pursuant to section 324AB(3) of the *Corporations Act* in respect of the year ended 30 June 2005 ("**2005 Audit Report**");
- (d) rely on the terms of the 2005 Audit Report for their full force and effect and say that:
  - (i) the 2005 Audit Report was divided into three sections: "Audit Opinion"; "Scope" and "Independence"; and
  - (ii) under the heading "Scope", the 2005 Audit Report stated, *inter alia*, that:
    - (A) the directors of Provident were responsible for the preparation and true and fair presentation of the financial report in accordance with the *Corporations Act*, including responsibility for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial report;
    - (B) PwC conducted an audit in accordance with Australian Auditing Standards, in order to provide reasonable assurance as to whether the financial report was free of material misstatement;
    - (C) the nature of an audit is influenced by factors such as the use of professional judgement, selective testing, the inherent limitations of internal control, and the availability of persuasive rather than conclusive evidence; and
    - (D) an audit cannot guarantee that all material misstatements have been detected; and
- (e) otherwise admit the paragraph.

50 As to paragraph 50 of the SOCC, PwC:



- (a) say that the terms of the contract between PwC and Provident, in relation to the year ended 30 June 2005, are set out in the Letter of Engagement dated 28 January 2003, including the terms and conditions which comprised Appendix 1 to the letter and a Letter of Arrangement 24 August 2005 (together, the "**2005 Retainer**");
- (b) rely on the terms of the 2005 Retainer for their full force and effect;
- (c) say that the 2005 Retainer included the following terms:
  - (i) the directors of Provident were responsible for, *inter alia*:
    - (A) ensuring that the company kept accounting records which at any time disclosed with reasonable accuracy the financial position of the company;
    - (B) establishing and maintaining an internal control structure;
    - (C) preparing a financial report (including adequate disclosure) which gives a true and fair view of the company's financial position and performance, represented by the results of its operations and cashflows, in accordance with Accounting Standards, other mandatory reporting requirements and the *Corporations Act*; and
    - (D) enabling PwC to access, on an unrestricted basis, all records, information and explanations that PwC considered necessary in connection with the audit;
  - (ii) PwC had a statutory responsibility to form an opinion, and report on whether the financial report presented to them by the directors was in accordance with the *Corporations Act* including:
    - (A) giving a true and fair view of the company's financial position and performance, represented by the results of its operations and its cash flows; and
    - (B) complying with Accounting Standards, the *Corporations Regulations* and other mandatory professional reporting requirements;
  - (iii) a statutory audit of the annual financial report would be conducted in accordance with Australian Auditing Standards to provide reasonable assurance as to whether the annual financial report was free of material misstatement;
  - (iv) the procedures adopted by PwC would include examination, on a test basis, of evidence supporting the amounts and disclosures in the financial

report and evaluation of accounting policies and significant accounting estimates; and

- (v) there was an unavoidable risk that audits planned and executed in accordance with Australian Auditing Standards may not detect a material error or irregularity; that audits are based on selective testing of the information being examined and that therefore errors and irregularities may not be detected; and that an audit could only provide reasonable and not absolute assurance that the annual financial report was free of material misstatement; and

- (d) otherwise deny the paragraph.

51 As to paragraph 51 of the SOCC, PwC:

- (a) admit that they knew that Provident had on issue debentures the subject of Chapter 2L of the *Corporations Act*;
- (b) admit that they knew that there was a trustee for debenture holders, which trustee owed the duties set out in section 283DA of the *Corporations Act*; and
- (c) refer to and repeat paragraph 52 below; and
- (d) otherwise deny the paragraph.

52 As to paragraph 52, PwC:

- (a) say that, at the time PwC audited Provident's financial report for FY05 and issued the 2005 Audit Report:
  - (i) AET was not the trustee for holders of debentures issued by Provident;
  - (ii) AET owed no duties under section 283DA of the *Corporations Act* and could not be liable to holders of debentures issued by Provident under section 283F of the *Corporations Act*;
  - (iii) it was incumbent upon the trustee from time to time for the holders of debentures issued by Provident to:
    - (A) exercise reasonable diligence to ascertain whether the property of Provident and of any guarantor that was or should be available (whether by way of security or otherwise) would be sufficient to repay the amount deposited or lent when it becomes due: section 283DA(a);
    - (B) exercise reasonable diligence to ascertain whether Provident had committed any breach of the provisions of the Trust Deed, and

- the Deed of Amendment or Chapter 2L of the *Corporations Act*: section 283DA(b); and
- (C) do everything in its power to ensure that Provident remedied any breach known to the trustee of any provision of the Trust Deed, and the Deed of Amendment or Chapter 2L of the *Corporations Act* unless the trustee was satisfied that the breach would not materially prejudice the debenture holders' interests or any security for the debentures: section 283DA(c);
- (iv) the trustee from time to time for the holders of debentures issued by Provident enjoyed the power, pursuant to the Trust Deed and the Deed of Amendment, to compel Provident to:
- (A) make available for inspection by the trustee or the trustee's auditor, the whole of the financial or other records of Provident: Trust Deed, cl 6.0.2;
- (B) give to the trustee or the trustee's auditor such information as the trustee or the trustee's auditor requires with respect to all matters relating to the financial or other records of Provident: Trust Deed, cl 6.0.3; and
- (C) provide to the trustee, at the trustee's request, a schedule setting out:
- (aa) details of the amounts of the debenture funds invested in each form of authorised investment at the end of the month;
- (ab) the amount of the debenture funds at the beginning and at the end of the month;
- (ac) for each form of authorised investment, the income received during the month and the projected income for the next month;
- (ad) the amount of interest paid on debentures for the month and the projected amount of interest payable on debentures for the next month; and
- (ae) particulars of mortgage arrears at the end of the month and the action taken by Provident to recover those arrears: Trust Deed, cl 6.0.8;

- (v) the trustee from time to time for the holders of debentures issued by Provident enjoyed the power, pursuant to the *Corporations Act*, to compel Provident to comply with its obligations to:
- (A) make all of its financial and other records available for inspection by:
    - (aa) the trustee; or
    - (ab) a registered company auditor appointed by the trustee to carry out the inspection: section 283BB;
  - (B) give the trustee or a registered company auditor appointed by the trustee to carry out the inspection, any information, explanations or other assistance that they require about matters relating to those records: section 283BB;
  - (C) if Provident created a security interest, to give the trustee written details of the security interest within 21 days after it is created; and, if the total amount to be advanced on the security of the security interest is indeterminate and the advances are not merged in a current account with bankers, trade creditors or anyone else – to give the trustee written details of the amount of each advance within 7 days after it was made: section 283BE; and
  - (D) within one month after the end of each quarter, to give the trustee a quarterly report that set out the information required by sections 283BF(4), (5), and (6); and
- (vi) the trustee from time to time for the holders of debentures issued by Provident enjoyed an indemnity from Provident for all costs, charges and expenses properly incurred, including without limitation costs charges and expenses:
- (A) in the carrying out or exercise or the attempted carrying out or exercise by the trustee of any duty or power express or implied by law;
  - (B) in connection with any breach by Provident of the deed; and
  - (C) charged to the trustee by the trustee's auditor in connection with any function performed by the trustee's auditor concerning the Trust Deed: Trust Deed, cl 8.2;

- (b) say that by reason of the matters pleaded in 52(a) above, the trustee for debenture holders, had an obligation, and/or the legal and practical ability, to satisfy itself of the accuracy of Provident's financial report for FY05 and any other aspect of Provident's financial affairs, including through the appointment by the trustee of a registered company auditor, to inspect the records of Provident at the trustee's request; and
- (c) say, in respect of paragraph 52(e) of the SOCC, at the time PwC issued the FY04 Audit Report, it was reasonably foreseeable by PwC that a failure by PwC to exercise reasonable care and skill in the conduct of its audit might result in PwC not becoming aware of matters that it would otherwise have been required to report pursuant to s.313(2) of the Corporations Act;
- (d) say further that, if (which is denied) the risk of harm pleaded in paragraph 52 of the SOCC existed, the trustee for debenture holders, had an obligation, and/or the legal and practical ability, to protect itself from the risk of harm.

**Particulars**

*Paragraph 52(a) above*

- (e) otherwise deny the paragraph.
- 53 As to paragraph 53 of the SOCC, PwC:
- (a) repeat their answer to paragraph 52 above;
  - (b) deny the paragraph; and
  - (c) say further that, if (which is denied) the risk of harm pleaded in paragraph 52 of the SOCC existed and was not insignificant:
    - (i) the risk of harm was obvious, within the meaning of section 5F of the CLA;
    - (ii) AET is presumed to have been aware of the risk of harm, by reason of section 5G of the CLA;
    - (iii) the risk of harm was inherent, within the meaning of section 5I of the CLA;

**Particulars**

*Paragraph 8 above*

- 54 As to paragraph 54 of the SOCC, PwC:
- (a) do not admit subparagraph 54(a);
  - (b) repeat their answer to paragraph 52 above;
  - (c) say that:

- (i) PwC were required to conduct the audit of Provident's financial report for FY05 and issue the 2005 Audit Report, in accordance with the Australian Auditing Standards including relevant ethical requirements, which include an independence requirement; and
- (ii) in accordance with those requirements, PwC as auditor could not allow the trustee for debenture holders, or any other person, to direct, control or unduly influence the conduct of PwC's audit or the contents of the 2005 Audit Report.

**Particulars**

*Auditing and Assurance Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (February 2004) at .04*

- (d) otherwise deny the paragraph.

55 As to paragraph 55 of the SOCC, PwC:

- (a) PwC repeat their answers to paragraphs 8 and 50 to 54 above;
- (b) deny the paragraph; and
- (c) say that:
  - (i) at the time PwC audited Provident's financial report for FY05 and issued the 2005 Audit Report, AET was not the trustee for holders of debentures issued by Provident;
  - (ii) in the circumstances, no duty of care was or could be owed by PwC to AET;
  - (iii) recognition of a duty of care in the terms pleaded is inconsistent with the regime for the performance of audit services provided for in the *Corporations Act*; and
  - (iv) no duty of care was or could be owed by PwC to AET, as a future trustee for debenture holders, under Australian law.

56 As to paragraph 56 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 8, 17A and 50 to 55 above; and
- (b) otherwise deny the paragraph.

56A As to paragraph 56A of the SOCC, PwC:

- (a) repeat their answers to paragraphs 8, 17A, and 50 to 56 above;

- (b) rely upon the terms of the documents referred to in paragraph 56A of the SOCC for their full force and effect; and
  - (c) otherwise deny the paragraph.
- 56B As to paragraph 56B of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 17A, 50 to 56A above; and
  - (b) deny the paragraph.
- 56C As to paragraph 56C of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 17A, 50 to 56B above; and
  - (b) deny the paragraph.
- 57 As to paragraph 57 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 17A, 50 to 56C above; and
  - (b) deny the paragraph.
- 57AA As to paragraph 57AA of the SOCC, PwC:
- (a) say that AET was not the trustee the time the 2005 Audit Report was issued; and
  - (b) otherwise do not know and cannot admit the paragraph.
- 57A As to paragraph 57A of the SOCC, PwC:
- (a) refer to and repeat paragraphs 8, 17A, and 50 to 57AA above; and
  - (b) deny the paragraph.
- 57B As to paragraph 57B of the SOCC, PwC:
- (a) refer to and repeat paragraphs 8, 17A, and 50 to 57A above;
  - (b) deny the paragraph;
  - (c) say that:
    - (i) at the time PwC audited Provident's financial report for FY05 and issued the 2005 Audit Report, AET was not the trustee for holders of debentures issued by Provident; and
    - (ii) in the circumstances, AET could not have suffered loss in respect of FY05;
  - (d) say further that no claim is made against AET by the Plaintiff for conduct by AET in respect of FY05 and, in the circumstances, the SOCC is incompetent insofar as it purports to assert a claim for damages in respect of FY05; and
  - (e) say further that if (which is denied) AET has suffered loss:

- (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) *CLA*; and
- (ii) in respect of that claim, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) *CLA*;
- (iii) further, and in the alternative, the true cause of the loss was:
  - (A) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (B) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;
  - (C) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
  - (D) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (E) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

**Alleged statutory damages for misleading and deceptive conduct**

58 As to paragraph 58 of the SOCC, PwC:

- (a) repeat their answer to paragraph 49 above; and
- (b) deny the paragraph.

59 PwC do not admit paragraph 59 of the SOCC.

59A PwC admit paragraph 59A of the SOCC.

59B PwC deny paragraph 59B of the SOCC.

60 As to paragraph 60 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 49 and 52 above;
- (b) deny the paragraph; and
- (c) say that if (which is denied) any of the representations were made as alleged, the representations were statements of opinion and Mr Cooper had reasonable grounds for those opinions.



**Particulars**

*The matters giving rise to those reasonable grounds included:*

- (A) *the audit planning and audit work undertaken by Mr Cooper and PwC audit staff with respect to the issue of the 2005 Audit Report;*
- (B) *on 28 September 2005, Provident represented to PwC and Mr Cooper that there had not arisen in the interval following 30 June 2005 any matter or circumstance that had significantly affected or might significantly affect (except as otherwise referred to in the financial statements or Directors' Report):*
  - (aa) *Provident's operations in future financial years; or*
  - (ab) *the results of those operations in future financial years; or*
  - (ac) *Provident's state of affairs in future financial years.*
- (C) *by its management representation letter dated 28 September 2005, Provident represented to PwC and Mr Cooper that, inter alia:*
  - (aa) *Provident's directors and management were responsible for, and acknowledged their responsibility for, ensuring, inter alia, the accuracy of Provident's financial records and the financial reports prepared from them and that Provident's financial report was drawn up to give a true and fair view of the company's financial position as at 30 June 2005 and of its performance, as represented by the results of its operations and cash flows, for the financial year ended on that date; in accordance with the Corporations Act and to comply with the Accounting Standards, the Corporations Regulations and other mandatory professional reporting requirements;*
  - (ab) *All financial records had been made available for the purpose of the audit, and all the transactions undertaken had been properly reflected and recorded in the financial records. All other records and related information that might affect the truth and fairness of, or necessary disclosure in, the financial report, including minutes of directors' and shareholders' meetings (and of all relevant*

*management meetings) had been made available to PwC and audit staff and no such information had been withheld;*

- (ac) The financial report as at 30 June 2005 included all cash at bank accounts and all other assets of the company required to be included therein in accordance with generally accepted accounting principles. The company had satisfactory title to all recorded assets;*
- (ad) Loans and advances totalling \$213,680,514 were owing to the company and represented bona fide claims against debtors at that date and were not subject to discount except for normal cash discounts. Mr O'Sullivan was of the opinion that these debts would be realised in full subject to a provision for doubtful debts of \$1,083,217;*
- (ae) The directors had taken reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and making provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;*
- (af) Mr O'Sullivan was not aware of any material transactions or agreements the effect of which was not properly recorded in Provident's financial records; and*
- (ag) No matters or occurrences had come to the attention of Mr O'Sullivan which would materially affect the financial report or disclosures therein, or which were likely to materially affect the future results or operations of Provident other than as disclosed to Mr Cooper and audit staff;*
- (D) Mr Cooper was entitled to believe and did believe that the information provided to him and to audit staff by Provident (including the representations particularised above) was not false or misleading in a material particular and did not omit any matter or thing the omission of which rendered that information misleading in a material respect; and*
- (E) Mr Cooper was entitled to believe and did believe that:*

- (aa) *the information provided to him by his audit staff was not false or misleading in a material particular;*
- (ab) *the information provided to him by his audit staff did not omit any matter or thing the omission of which rendered that information misleading in a material respect; and*
- (ac) *his staff exercised reasonable skill and care in preparing the audit plan and conducting the audit.*

61 As to paragraph 61 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 56A, 56B, 57, 57A and 60 above;
- (b) deny the paragraph; and
- (c) say that if (which is denied) any of the representations in paragraph 60 of the SOCC were made as alleged, the representations were statements of opinion and Mr Cooper had reasonable grounds for those opinions.

**Particulars**

*PwC repeat the particulars to paragraph 60*

62 Not used.

63 As to paragraph 63 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 58 to 61 above; and
- (b) deny the paragraph.

63A As to paragraph 63A of the SOCC, PwC:

- (a) repeat their answers to paragraphs 49 and 58 to 63 above;
- (b) deny the paragraph.

64 As to paragraph 64 of the SOCC, PwC:

- (a) repeat their answers to paragraph 58 to 63A above;
- (b) deny the paragraph;
- (c) say that if (which is denied) AET has suffered loss:
  - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) of the *CLA*;
  - (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of former sections 42 and 68 of the *FTA*, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) of the *CLA*; and

- (iii) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 63 and 65 of the SOCC, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed;
- (d) say further, and in the alternative, the true cause of the loss was:
  - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (ii) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;
  - (iii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's defence to the Statement of Claim;
  - (iv) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (v) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

65 As to paragraph 65 of the SOCC, PwC:

- (a) repeat their answer to paragraph 64 above; and
- (b) deny the paragraph.

66 As to paragraph 66 of the SOCC, PwC:

- (a) admit that the 2005 Audit Report included a statement to the effect that Mr Cooper and PwC had conducted the audit in accordance with Australian Auditing Standards, in order to provide reasonable assurance as to whether the financial report is free of material misstatement;
- (b) say that
  - (i) at the time PwC issued the 2005 Audit Report, AET was not the trustee for holders of debentures issued by Provident and no representation could be made to AET in the 2005 Audit Report;
  - (ii) the paragraph is embarrassing insofar as it fails to identify to whom PwC made the alleged representation; and
- (c) otherwise deny the paragraph.

- 67 PwC deny paragraph 67 of the SOCC.
- 68 As to paragraph 68 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 49 and 50 above;
  - (b) admit that, as at 28 September 2005, the Australian Auditing Standards provided that:
    - (i) the ethical principles governing an auditor's professional responsibilities included professional competence and due care; and
    - (ii) an audit in accordance with the Australian Auditing Standards is designed to provide reasonable assurance that the financial report taken as a whole is free from material misstatement; and
  - (c) otherwise deny the paragraph.
- 69 As to paragraph 69 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 57 and 57A above; and
  - (b) deny the paragraph.
- 70 As to paragraph 70 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 66 and 69 above;
  - (b) deny the paragraph; and
  - (c) say that, if the representation in paragraph 66 was made as alleged (which is denied) it was a statement of opinion and Mr Cooper had reasonable grounds for that opinion.

**Particulars**

*PwC repeat the particulars to paragraph 61 above*

- 70A As to paragraph 70A of the SOCC, PwC:
- (a) repeat their answer to paragraph 63A above; and
  - (b) deny the paragraph.
- 71 As to paragraph 71 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 57B and 66 to 70A above;
  - (b) deny the paragraph;
  - (c) say that if (which is denied) AET has suffered loss:

- (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) of the *CLA*; and
  - (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of former sections 44(b) and 68 of the *FTA*, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) of the *CLA*; and
  - (iii) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 70 and 72 of the *SOCC*, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed;
- (d) say further, and in the alternative, the true cause of the loss was:
- (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (ii) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;
  - (iii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's defence to the Statement of Claim;
  - (iv) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (v) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

72 As to paragraph 72 of the *SOCC*, PwC:

- (a) repeat their answer to paragraph 71 above; and
- (b) deny the paragraph.

### **Contribution**

73 As to paragraph 73 of the *SOCC*, PwC:

- (a) admit subparagraph 73(b);
- (b) repeat paragraph 52 above; and
- (c) otherwise deny the paragraph.

74 As to paragraph 74 of the SOCC, PwC:

- (a) repeat their answer to paragraph 73 above;
- (b) deny the paragraph; and
- (c) say further that, if (which is denied) the risk of harm pleaded in paragraphs 73(a), (c)-(d) of the SOCC existed and was not insignificant:
  - (i) the risk of harm was obvious within the meaning of:
    - (A) section 5F of the *CLA*; and
    - (B) section 53 of the *Wrongs Act 1958 (Vic)*;
  - (ii) the holders of debentures issued by Provident are presumed to have been aware of the risk of harm, by reason of section 5G of the *CLA*; and
  - (iii) the risk of harm was inherent, within the meaning of:
    - (A) section 5I of the *CLA*; and
    - (B) section 55 of the *Wrongs Act 1958 (Vic)*;

**Particulars**

*Paragraph 8 above*

75 As to paragraph 75 of the SOCC, PwC:

- (a) repeat their answer to paragraph 73 above;
- (b) say that debenture holders enjoyed the benefit of a trustee who was obliged to act on their behalf, and for their benefit, in the manner provided for by section 283DA of the Corporations Act, the Trust Deed, the Deed of Amendment and at law;

**Particulars**

*Paragraph 14 above*

- (c) say that PwC were required to conduct the audit of Provident's financial report for FY05, and issue the 2005 Audit Report, in accordance with the Australian Auditing Standards including relevant ethical requirements;
- (d) say that in accordance with those requirements, PwC as auditor could not allow the trustee for debenture holders, or any replacement trustee, or any other person, to direct, control or unduly influence the conduct of PwC's audit or the contents of the 2004 Audit Report; and
- (e) otherwise deny the paragraph.

76 As to paragraph 76 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 8, 50 to 52 and 73 to 75 above;
  - (b) deny the paragraph; and
  - (c) say that the posited duty of care is:
    - (i) unknown to Australian law;
    - (ii) inconsistent with the regime for the performance of audit services provided for in the *Corporations Act*; and
    - (iii) indeterminate, unworkable, incompatible with PwC's duties to Provident and would impose an unreasonable burden on the autonomy of PwC in providing audit services.
- 76A As to paragraph 76A of the SOCC, PwC repeat their answers to paragraphs 56 to 57 above.
- 77 As to paragraph 77 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 56 to 57 and 76 above; and
  - (b) deny the paragraph.
- 77A As to paragraph 77A of the SOCC, PwC repeat their answers to paragraphs 57AA and 57A above.
- 77B As to paragraph 77B of the SOCC, PwC:
- (a) do not know and cannot admit the paragraph; and
  - (b) say that the claims set out in paragraph 57A are hypothetical, in that the Plaintiff are not persons of the kind referred to in paragraph 77B of the SOCC, and cannot be determined in the current proceedings.
- 78 As to paragraph 78 of the SOCC, PwC:
- (a) repeat their answer to paragraphs 57 to 57B, and 77A to 77B above, and refer to paragraph 175 below;
  - (b) deny that any breach of duty by PwC (which is denied) was a necessary condition of any loss suffered by the Group Members in paragraph 77B of the SOCC;
  - (c) say that if (which is denied) the Group Members referred to in paragraph 77B of the SOCC have suffered loss:
    - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of:
      - (A) section 5D(1) of the *CLA*; and
      - (B) section 51(1) of the *Wrongs Act 1958 (Vic)*;



- (ii) in respect of that claim, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of:
    - (A) section 5D(1) of the *CLA*; and
    - (B) section 51(1) of the *Wrongs Act 1958* (Vic);
  - (d) further, and in the alternative, the true cause of any loss suffered by the Group Members referred to in paragraph 77B of the SOCC was:
    - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
    - (ii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
    - (iii) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
    - (iv) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,
 

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed; and
  - (e) otherwise deny the paragraph.
- 78A As to paragraph 78A of the SOCC, PwC:
- (a) repeat their answer to paragraph 78 above; and
  - (b) deny the paragraph.
- 78B As to paragraph 78B of the SOCC, PwC repeat their answers to paragraphs 58 to 64 and 66 to 71 above.
- 79 As to paragraph 79 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 63A, 77B and 78 above; and
  - (b) otherwise do not know and cannot admit the paragraph.
- 79A As to paragraph 79A of the SOCC, PwC:
- (a) repeat their answers to paragraphs 63, 65, 70, 72, 78B and 79 above;
  - (b) deny the paragraph;
  - (c) say that if (which is denied) the Plaintiff and Group Members have suffered loss:
    - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of:

- (A) section 5D(1) of the *CLA*;
  - (B) section 51(1) of the *Wrongs Act 1958* (Vic);
- (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of:
- (A) former sections 42, 44(b) and 68 of the *FTA*;
  - (B) sections 9, 12(b) and 159 of the former *Fair Trading Act 1999* (Vic);
- (iii) it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of:
- (A) section 5D(1) of the *CLA*;
  - (B) section 51(1) of the *Wrongs Act 1958* (Vic);
- (d) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 63, 65, 72 and 80 of the SOCC, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed; and
- (e) say further, and in the alternative, the true cause of any loss suffered by the Plaintiff and Group Members was:
- (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (ii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
  - (iii) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (iv) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

80 As to paragraph 80 of the SOCC, PwC repeat their answers to paragraphs 78B to 79A and deny the paragraph.

80A As to paragraph 80A of the SOCC, PwC:

- (a) repeat their answers to paragraphs 78B to 79A above;
- (b) do not know and cannot admit subparagraphs (a) and (b); and

- (c) otherwise deny the paragraph.
- 80B As to paragraph 80B of the SOCC, PwC:
- (a) repeat their answers to paragraphs 64, 71 and 80A above; and
  - (b) deny the paragraph.
- 80C As to paragraph 80C of the SOCC, PwC:
- (a) repeat their answers to paragraphs 80 to 80B above; and
  - (b) deny the paragraph.
- 81 As to paragraph 81 of the SOCC, PwC repeat their answer to paragraph 43 above.
- 82 As to paragraph 82 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 73 to 81 above;
  - (b) deny the paragraph.
- 83 PwC deny paragraph 83 of the SOCC.
- 84 As to paragraph 84 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 73 to 81 and 83 above; and
  - (b) deny the paragraph.

#### **D. FY06 Audit**

##### **Alleged damages in negligence at common law**

- 85 PwC admit paragraph 85 of the SOCC.
- 86 As to paragraph 86 of the SOCC, PwC:
- (a) rely on the terms of Provident's financial report for FY06 for their full force and effect;
  - (b) say, in respect of paragraph 86(a) of the SOCC, the financial report for FY06 states that there were loans and advances in the amount of \$186,368,972;
  - (c) say, in respect of paragraph 86(b) of the SOCC, the financial report for FY06 states that an amount of \$42,504,014 was included in the loans and advances as at 30 June 2006 which represented the amount of past due loans;
  - (d) say, in respect of paragraph 86(c) of the SOCC, the financial report for FY06 states that, aside from one loan (for which an individual provision of \$1 million was made in the balance sheet), the directors considered that the recovery of all amounts of principal and interest, including interest at the contractual rate, was

regarded as reasonably certain and that the security held was adequate to cover the past due loans;

- (e) say, in respect of paragraph 86(d) of the SOCC, the financial report for FY06 states under the heading "Non-accrual loans" that, as at 30 June 2006, there were no loans and advances where the recovery of all interest and principal was considered to be reasonably doubtful other than the loan against which the provision had been raised, and otherwise deny paragraph 86(d);
- (f) admit subparagraphs 86(e), 86(f) and 86(g) of the SOCC;
- (g) say further that Provident's financial report contained a "Directors' Declaration" to the effect that:
  - (i) the directors of Provident declared that the financial statements and notes set out on pages 7 to 26:
    - (A) complied with Accounting Standards, the *Corporations Regulations* and other mandatory professional reporting requirements; and
    - (B) gave a true and fair view of Provident's financial position as at 30 June 2006 and of its performance, as represented by the results of its operations and its cash flows, for the financial year ended on that date; and
  - (ii) in the directors' opinion:
    - (A) the financial statements and notes were in accordance with the *Corporations Act*; and
    - (B) there were reasonable grounds to believe that Provident would be able to pay its debts as and when they became due and payable; and
- (h) otherwise deny the paragraph.

87 As to paragraph 87 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 4 and 8 above;
- (b) say that on 18 October 2006, Mr O'Sullivan signed the Directors' Report and Directors' Declaration in respect of the financial statements for the year ended 30 June 2006;
- (c) further say that after Mr O'Sullivan took the actions pleaded in paragraph 87(b) above, Mr Cooper signed the audit report, in his name and in the name of PwC

pursuant to section 324AB(3) of the *Corporations Act* in respect of the year ended 30 June 2006 ("**2006 Audit Report**");

- (d) rely on the terms of the 2006 Audit Report for their full force and effect and say that:
- (i) the 2006 Audit Report was divided into three sections: "Audit Opinion"; "Scope" and "Independence"; and
  - (ii) under the heading "Scope", the 2006 Audit Report stated, *inter alia*, that:
    - (A) the directors of Provident were responsible for the preparation and true and fair presentation of the financial report in accordance with the *Corporations Act*, including responsibility for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial report;
    - (B) PwC conducted an audit in accordance with Australian Auditing Standards, in order to provide reasonable assurance as to whether the financial report was free of material misstatement;
    - (C) the nature of an audit is influenced by factors such as the use of professional judgement, selective testing, the inherent limitations of internal control, and the availability of persuasive rather than conclusive evidence; and
    - (D) an audit cannot guarantee that all material misstatements have been detected; and
- (e) otherwise admit the paragraph.

88 As to paragraph 88 of the SOCC, PwC:

- (a) say that the terms of the contract between PwC and Provident, in relation to the year ended 30 June 2006, are set out in the Letter of Engagement dated 24 March 2006, including the terms and conditions which comprised Appendix 1 to the letter and a Letter of arrangement dated 24 March 2006 (together, the "**2006 Retainer**");
- (b) rely on the terms of the 2006 Retainer for their full force and effect;
- (c) say that the 2006 Retainer included the following terms:
  - (i) the directors of Provident were responsible for, *inter alia*:

- (A) ensuring that the company kept accounting records which at any time disclosed with reasonable accuracy the financial position of the company;
  - (B) establishing and maintaining an internal control structure;
  - (C) preparing a financial report (including adequate disclosure) which gives a true and fair view of the company's financial position and performance, represented by the results of its operations and cashflows, in accordance with Accounting Standards, Urgent Issue Group Pronouncements, other mandatory reporting requirements and the *Corporations Act*; and
  - (D) enabling PwC to access, on an unrestricted basis, all records, information and explanations that PwC considered necessary in connection with the audit;
- (ii) PwC had a statutory responsibility to form an opinion, and report on whether the financial report presented to them by the directors was in accordance with the *Corporations Act* including:
- (A) giving a true and fair view of the company's financial position and performance, represented by the results of its operations and its cash flows; and
  - (B) complying with Accounting Standards, the *Corporations Regulations* and other mandatory professional reporting requirements;
- (iii) a statutory audit of the annual financial report would be conducted in accordance with Australian Auditing Standards to provide reasonable assurance as to whether the annual financial report was free of material misstatement;
- (iv) the procedures adopted by PwC would include examination, on a test basis, of evidence supporting the amounts and disclosures in the financial report and evaluation of accounting policies and significant accounting estimates; and
- (v) there was an unavoidable risk that audits planned and executed in accordance with Australian Auditing Standards may not detect a material error or irregularity; that audits are based on selective testing of the information being examined and that therefore errors and irregularities may not be detected; and that an audit could only provide reasonable and

not absolute assurance that the annual financial report was free of material misstatement; and

(d) otherwise deny the paragraph.

89 As to paragraph 89 of the SOCC, PwC:

(a) admit that they knew that Provident had on issue debentures the subject of Chapter 2L of the *Corporations Act*;

(b) admit that they knew that there was a trustee for debenture holders, which trustee owed the duties set out in section 283DA of the *Corporations Act*;

(c) repeat their answer to paragraph 51 above;

(d) refer to and repeat paragraph 90 below; and

(e) otherwise deny the paragraph.

90 As to paragraph 90, PwC:

(a) say that, at the time PwC audited Provident's financial report for FY06 and issued the 2006 Audit Report:

(i) it was incumbent upon the trustee from time to time for the holders of debentures issued by Provident to:

(A) exercise reasonable diligence to ascertain whether the property of Provident and of any guarantor that was or should be available (whether by way of security or otherwise) would be sufficient to repay the amount deposited or lent when it becomes due: section 283DA(a);

(B) exercise reasonable diligence to ascertain whether Provident had committed any breach of the provisions of the Consolidated Trust Deed or Chapter 2L of the *Corporations Act*: section 283DA(b); and

(C) do everything in its power to ensure that Provident remedied any breach known to the trustee of any provision of the Consolidated Trust Deed or Chapter 2L of the *Corporations Act* unless the trustee was satisfied that the breach would not materially prejudice the debenture holders' interests or any security for the debentures: section 283DA(c);

(ii) the trustee from time to time for the holders of debentures issued by Provident enjoyed the power, pursuant to the Consolidated Trust Deed, to compel Provident to:

- (A) make available for inspection by the trustee or the trustee's auditor, the whole of the financial or other records of Provident: Consolidated Trust Deed, cl 6.0.2;
  - (B) give to the trustee or the trustee's auditor such information as the trustee or the trustee's auditor requires with respect to all matters relating to the financial or other records of Provident: Consolidated Trust Deed, cl 6.0.3; and
  - (C) provide to the trustee, at the trustee's request, a schedule setting out:
    - (aa) details of the amounts of the debenture funds invested in each form of authorised investment at the end of the month;
    - (ab) the amount of the debenture funds at the beginning and at the end of the month;
    - (ac) for each form of authorised investment, the income received during the month and the projected income for the next month;
    - (ad) the amount of interest paid on debentures for the month and the projected amount of interest payable on debentures for the next month; and
    - (ae) particulars of mortgage arrears at the end of the month and the action taken by Provident to recover those arrears: Consolidated Trust Deed, cl 6.0.8;
- (iii) the trustee from time to time for the holders of debentures issued by Provident enjoyed the power, pursuant to the *Corporations Act*, to compel Provident to comply with its obligations to:
- (A) make all of its financial and other records available for inspection by:
    - (aa) the trustee; or
    - (ab) a registered company auditor appointed by the trustee to carry out the inspection: section 283BB;
  - (B) give the trustee or a registered company auditor appointed by the trustee to carry out the inspection, any information, explanations or other assistance that they require about matters relating to those records: section 283BB;



- (C) if Provident created a security interest, to give the trustee written details of the security interest within 21 days after it is created; and, if the total amount to be advanced on the security of the security interest is indeterminate and the advances are not merged in a current account with bankers, trade creditors or anyone else – to give the trustee written details of the amount of each advance within 7 days after it was made: section 283BE; and
  - (D) within one month after the end of each quarter, to give the trustee a quarterly report that set out the information required by sections 283BF(4), (5), and (6); and
- (iv) the trustee from time to time for the holders of debentures issued by Provident enjoyed an indemnity from Provident for all costs, charges and expenses properly incurred, including without limitation costs charges and expenses:
- (A) in the carrying out or exercise or the attempted carrying out or exercise by the trustee of any duty or power express or implied by law;
  - (B) in connection with any breach by Provident of the deed; and
  - (C) charged to the trustee by the trustee's auditor in connection with any function performed by the trustee's auditor concerning the trust deed: Consolidated Trust Deed, cl 8.2;
- (b) say that by reason of the matters pleaded in paragraph 90(a) above, the trustee for debenture holders, had an obligation, and/or the legal and practical ability, to satisfy itself of the accuracy of Provident's financial report for FY06 and any other aspect of Provident's financial affairs, including through the appointment by the trustee of a registered company auditor, to inspect the records of Provident at the trustee's request;
- (c) say, in respect of paragraph 90(e) of the SOCC, at the time PwC issued the FY04 Audit Report, it was reasonably foreseeable by PwC that a failure by PwC to exercise reasonable care and skill in the conduct of its audit might result in PwC not becoming aware of matters that it would otherwise have been required to report pursuant to s.313(2) of the Corporations Act;
- (d) say further that, if (which is denied) the risk of harm pleaded in paragraph 90 of the SOCC existed, the trustee for debenture holders, had an obligation, and/or the legal and practical ability, to protect itself from the risk of harm; and

**Particulars**

*Paragraph 90(a) above*

- (e) otherwise deny the paragraph.
- 91 As to paragraph 91 of the SOCC, PwC:
- (a) repeat their answer to paragraph 90 above;
- (b) deny the paragraph; and
- (c) say further that, if (which is denied) the risk of harm pleaded in paragraph 90 of the SOCC existed and was not insignificant:
- (i) the risk of harm was obvious, within the meaning of section 5F of the *CLA*;
- (ii) AET is presumed to have been aware of the risk of harm, by reason of section 5G of the *CLA*;
- (iii) the risk of harm was inherent, within the meaning of section 5I of the *CLA*;

**Particulars**

*Paragraph 8 above*

- 92 As to paragraph 92 of the SOCC, PwC:
- (a) do not admit subparagraph 92(a);
- (b) repeat their answer to paragraph 90 above;
- (c) say that:
- (i) PwC were required to conduct the audit of Provident's financial report for FY06 and issue the 2006 Audit Report, in accordance with the Australian Auditing Standards including relevant ethical requirements, which include an independence requirement; and
- (ii) in accordance with those requirements, PwC as auditor could not allow the trustee for debenture holders, or any other person, to direct, control or unduly influence the conduct of PwC's audit or the contents of the 2006 Audit Report;

**Particulars**

*Auditing and Assurance Standard AUS 202 (Objectives and General Principles Governing an Audit of a Financial Report) (February 2004) at .04*

*APES 110 Code of Ethics for Professional Accountants (June 2006) at 120, 200 and 290*

*CPA Australia and The Institute of Chartered Accountants in  
Australia and the Institute of Public Accountants - Independence  
Guide*

- (d) otherwise deny the paragraph.
- 93 As to paragraph 93 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8 and 88 to 92 above; and
  - (b) deny the paragraph; and
  - (c) say that recognition of a duty of care in the terms pleaded is inconsistent with the regime for the performance of audit services provided for in the *Corporations Act*.
- 94 As to paragraph 94 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 17A, and 88 to 93 above; and
  - (b) otherwise deny the paragraph.
- 94A As to paragraph 94A of the SOCC, PwC:
- (a) refer to and repeat their answers to paragraphs 8, 17A, and 88 to 94 above;
  - (b) rely upon the terms of the documents referred to in paragraph 94A of the SOCC for their full force and effect; and
  - (c) otherwise deny the paragraph.
- 94B As to paragraph 94B:
- (a) refer to and repeat paragraphs 8, 17A, and 88 to 94A above; and
  - (b) deny the paragraph.
- 94C As to paragraph 94C:
- (a) refer to and repeat paragraphs 8, 17A, and 88 to 94B above; and
  - (b) deny the paragraph.
- 95 As to paragraph 95 of the SOCC, PwC:
- (a) refer to and repeat paragraphs 8, 17A, and 88 to 94C above; and
  - (b) deny the paragraph.
- 95AA As to paragraph 95AA of the SOCC, PwC does not know and cannot admit the paragraph.
- 95A As to paragraph 95A:
- (a) refer to and repeat paragraphs 8, 17A, and 88 to 95AA above; and
  - (b) deny the paragraph.

95B As to paragraph 95B:

- (a) refer to and repeat paragraphs 8, 17A, and 88 to 95A above;
- (b) deny the paragraph;
- (c) say that no claim is made against AET by the Plaintiff for conduct by AET in respect of FY06 and, in the circumstances, the SOCC is incompetent insofar as it purports to assert a claim for damages in respect of FY06; and
- (d) say further that if (which is denied) AET has suffered loss:
  - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) *CLA*;
  - (ii) in respect of that claim, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) *CLA*;
  - (iii) further, and in the alternative, the true cause of the loss was:
    - (A) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
    - (B) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;
    - (C) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
    - (D) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
    - (E) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

**Alleged statutory damages for misleading and deceptive conduct**

96 As to paragraph 96 of the SOCC, PwC:

- (a) repeat their answer to paragraph 87 of the SOCC; and
- (b) deny the paragraph.

97 PwC do not admit paragraph 97 of the SOCC.

97A As to paragraph 97A of the SOCC:

- (a) PwC repeat their answer to paragraph 97 above; and
  - (b) deny the paragraph.
- 97B PwC deny paragraph 97B of the SOCC.
- 98 As to paragraph 98 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 87 and 90 above;
  - (b) deny the paragraph;
  - (c) say that if (which is denied) any of the representations were made as alleged, the representations were statements of opinion and Mr Cooper had reasonable grounds for those opinions;

### **Particulars**

*The matters giving rise to those reasonable grounds included:*

- (A) *the audit planning and audit work undertaken by Mr Cooper and PwC audit staff with respect to the issue of the 2006 Audit Report;*
- (B) *on 18 October 2006, Provident represented to PwC and Mr Cooper that there had not arisen in the interval following 30 June 2006 any matter or circumstance that had significantly affected or might significantly affect (except as otherwise referred to in the financial statements or Directors' Report):*
  - (aa) *Provident's operations in future financial years; or*
  - (ab) *the results of those operations in future financial years; or*
  - (ac) *Provident's state of affairs in future financial years*
- (C) *by its management representation letter dated 18 October 2006, Provident represented to PwC and Mr Cooper that, inter alia:*
  - (aa) *Provident's directors and management were responsible for, and acknowledged their responsibility for, ensuring, inter alia, the accuracy of Provident's financial records and the financial reports prepared from them and that Provident's financial report was drawn up to give a true and fair view of the company's financial position as at 30 June 2006 and of its performance, as represented by the results of its operations and cash flows, for the financial year ended on that date, in accordance with the Corporations Act and to comply with the Accounting*

*Standards, the Corporations Regulations and other mandatory professional reporting requirements;*

- (ab) All financial records had been made available for the purpose of the audit, and all the transactions undertaken had been properly reflected and recorded in the financial records. All records and related information that might affect the truth and fairness of, or necessary disclosure in, the financial report, including minutes of directors' and shareholders' meetings (and of all relevant management meetings) had been made available to PwC and no such information had been withheld;*
- (ac) The financial report as at 30 June 2006 included all cash and bank accounts and all other assets of the company required to be included therein in accordance with generally accepted accounting principles. The company had satisfactory title to all recorded assets;*
- (ad) Loans and advances totalling \$187,368,972 were owing to the company and represented bona fide claims against debtors at that date and were not subject to discount except for normal cash discounts. Mr O'Sullivan was of the opinion that the debts will be realised in full subject to a provision for doubtful debts of \$1,000,000;*
- (ae) The directors had taken reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provision for doubtful debts and to cause all known bad debts to be written off and adequate provisions to be made for doubtful debts;*
- (af) Mr O'Sullivan was not aware of any material transactions that had not been properly recorded in the financial records underlying Provident's financial report; and*
- (ag) No matters or occurrences had come to the attention of Mr O'Sullivan which would materially affect the financial report or disclosures therein, or which were likely to materially affect the future results or operations of Provident other than as disclosed to Mr Cooper and audit staff;*

- (D) *Mr Cooper was entitled to believe and did believe that the information provided to him and to audit staff by Provident (including the representations particularised above) was not false or misleading in a material particular and did not omit any matter or thing the omission of which rendered that information misleading in a material respect; and*
- (E) *Mr Cooper was entitled to believe and did believe that:*
- (aa) *the information provided to him by his audit staff was not false or misleading in a material particular;*
- (ab) *the information provided to him by his audit staff did not omit any matter or thing the omission of which rendered that information misleading in a material respect; and*
- (ac) *his staff exercised reasonable skill and care in preparing the audit plan and conducting the audit.*

99 As to paragraph 99 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 94A, 94B, 95, 95A and 98 above;
- (b) deny the paragraph; and
- (c) say that if (which is denied) any of the representations in paragraph 98 of the SOCC were made as alleged, the representations were statements of opinion and Mr Cooper had reasonable grounds for those opinions;

**Particulars**

*PwC repeat the particulars to paragraph 98*

100 Not used

101 As to paragraph 101 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 96 to 99 above; and
- (b) deny the paragraph.

101A As to paragraph 101A of the SOCC, PwC:

- (a) repeat their answers to paragraphs 87 and 96 to 101 above;
- (b) deny the paragraph.

102 As to paragraph 102 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 96 to 101A above;
- (b) deny the paragraph;

- (c) say that if (which is denied) AET has suffered loss:
- (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) of the *CLA*;
  - (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of former sections 42 and 68 of the *FTA*, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) of the *CLA*; and
  - (iii) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 101 and 103 of the *SOCC*, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed;
- (d) say further, and in the alternative, the true cause of the loss was:
- (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (ii) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;
  - (iii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
  - (iv) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (v) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,
- which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

103 As to paragraph 103 of the *SOCC*, PwC:

- (a) repeat their answer to paragraph 102 above; and
- (b) deny the paragraph.

104 As to paragraph 104 of the *SOCC*, PwC:

- (a) admit that the 2006 Audit Report included a statement to the effect that Mr Cooper and PwC had conducted the audit in accordance with Australian Auditing Standards, in order to provide reasonable assurance as to whether the financial report is free of material misstatement;



- (b) say that the paragraph is embarrassing insofar as it fails to identify to whom PwC made the alleged representation; and
  - (c) otherwise deny the paragraph.
- 105 PwC deny paragraph 105 of the SOCC.
- 106 As to paragraph 106 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 87 and 88 above;
  - (b) admit that, as at 18 October 2006, the Australian Auditing Standards provided that:
    - (i) the ethical principles governing an auditor's professional responsibilities included professional competence and due care; and
    - (ii) an audit in accordance with the Australian Auditing Standards is designed to provide reasonable assurance that the financial report taken as a whole is free from material misstatement; and
  - (c) otherwise deny the paragraph.
- 107 As to paragraph 107, PwC:
- (a) repeat their answers to paragraphs 95 and 95A above; and
  - (b) deny the paragraph.
- 108 As to paragraph 108 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 104 and 107 above;
  - (b) deny the paragraph; and
  - (c) say that, if the representation in paragraph 104 of the SOCC was made as alleged (which is denied) it was a statement of opinion and Mr Cooper had reasonable grounds for that opinion:

**Particulars**

*PwC repeat the particulars to paragraph 99 above*

- 108A As to paragraph 108A of the SOCC, PwC:
- (a) repeat their answer to paragraph 101A above; and
  - (b) deny the paragraph.
- 109 As to paragraph 109 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 95B, 104 to 108A above;
  - (b) deny the paragraph;

- (c) say that if (which is denied) AET has suffered loss:
- (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) of the *CLA*; and
  - (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of former sections 44(b) and 68 of the *FTA*, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) of the *CLA*; and
  - (iii) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 108 and 110 of the SOCC, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed;
- (d) say further, and in the alternative, the true cause of the loss was:
- (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (ii) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;
  - (iii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
  - (iv) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (v) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

110 As to paragraph 110 of the SOCC, PwC:

- (a) repeat their answer to paragraph 109; and
- (b) deny the paragraph.

### **Contribution**

111 As to paragraph 111 of the SOCC, PwC:

- (a) admit paragraph 111(b);
- (b) repeat their answer to paragraph 90 above; and

(c) otherwise deny the paragraph.

112 As to paragraph 112 of the SOCC, PwC:

(a) repeat their answer to paragraph 111 above;

(b) deny the paragraph; and

(c) say further that, if (which is denied) the risk of harm pleaded in paragraphs 111(a), (c) and (d) of the SOCC existed and was not insignificant:

(i) the risk of harm was obvious within the meaning of:

(A) section 5F of the *CLA*; and

(B) section 53 of the *Wrongs Act 1958* (Vic);

(ii) the holders of debentures issued by Provident are presumed to have been aware of the risk of harm, by reason of section 5G of the *CLA*; and

(iii) the risk of harm was inherent, within the meaning of:

(A) section 5I of the *CLA*; and

(B) section 55 of the *Wrongs Act 1958* (Vic);

**Particulars**

*Paragraph 8 above*

113 As to paragraph 113 of the SOCC, PwC:

(a) repeat their answer to paragraph 111 above;

(b) say that debenture holders enjoyed the benefit of a trustee who was obliged to act on their behalf, and for their benefit, in the manner provided for by section 283DA of the Corporations Act, the Trust Deed the Deed of Amendment and at law;

**Particulars**

*Paragraph 14 above*

(c) say that PwC were required to conduct the audit of Provident's financial report for FY06, and issue the 2006 Audit Report, in accordance with the Australian Auditing Standards including relevant ethical requirements;

(d) say that in accordance with those requirements, PwC as auditor could not allow the trustee for debenture holders, or any replacement trustee, or any other person, to direct, control or unduly influence the conduct of PwC's audit or the contents of the 2006 Audit Report; and

(e) otherwise deny the paragraph.

- 114 As to paragraph 114 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 88 to 90 and 111 to 113 above;
  - (b) deny the paragraph; and
  - (c) say that the posited duty of care is:
    - (i) unknown to Australian law;
    - (ii) inconsistent with the regime for the performance of audit services provided for in the *Corporations Act*; and
    - (iii) indeterminate, unworkable, incompatible with PwC's duties to Provident and would impose an unreasonable burden on the autonomy of PwC in providing audit services.
- 114A As to paragraph 114A of the SOCC, PwC repeats their answers to paragraphs 94 to 95 above.
- 115 As to paragraph 115 of the SOCC, PwC:
- (a) repeat their answer to paragraphs 94 to 95 and 114 above; and
  - (b) deny the paragraph.
- 115A As to paragraph 115A of the SOCC, PwC repeats their answers to paragraphs 95AA and 95A above.
- 115B As to paragraph 115B of the SOCC, PwC:
- (a) do not know and cannot admit the paragraph; and
  - (b) say that the claims set out in paragraphs 95A of the SOCC are hypothetical, in that the Plaintiff are not persons of the kind referred to in paragraph 115B of the SOCC, and cannot be determined in the current proceedings.
- 116 As to paragraph 116 of the SOCC, PwC:
- (a) repeat their answer to paragraphs 95 to 95B, and 115A to 115B above, and refer to paragraph 175 below;
  - (b) deny that any breach of duty by PwC (which is denied) was a necessary condition of any loss suffered by the Group Members in paragraph 115B of the SOCC;
  - (c) say that if (which is denied) the Group Members referred to in paragraph 115B of the SOCC have suffered loss:
    - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of:
      - (A) section 5D(1) of the *CLA*; and

- (B) section 51(1) of the *Wrongs Act 1958* (Vic);
  - (ii) in respect of that claim, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of:
    - (A) section 5D(1) of the *CLA*; and
    - (B) section 51(1) of the *Wrongs Act 1958* (Vic);
  - (d) further, and in the alternative, the true cause of any loss suffered by the Group Members referred to in paragraph 115B of the SOCC was:
    - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
    - (ii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
    - (iii) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
    - (iv) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,
 

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed; and
  - (e) otherwise deny the paragraph.
- 116A As to paragraph 116A of the SOCC, PwC:
- (a) repeat their answers to paragraph 116 above; and
  - (b) deny the paragraph.
- 116B As to paragraph 116B of the SOCC, PwC repeat their answers to paragraphs 96 to 102 and 104 to 109 above.
- 117 As to paragraph 117 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 101A, 115B and 116 above; and
  - (b) otherwise do not know and cannot admit the paragraph.
- 117A As to paragraph 117A, PwC:
- (a) repeat their answers to paragraphs 101, 103, 108, 110, 116B and 117 above;
  - (b) deny the paragraph;
  - (c) say that if (which is denied) the Plaintiff and Group Members have suffered loss:

- (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of:
  - (A) section 5D(1) of the *CLA*; and
  - (B) section 51(1) of the *Wrongs Act 1958* (Vic);
- (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of:
  - (A) former sections 42, 44(b) and 68 of the *FTA*; and
  - (B) sections 9, 12(b) and 159 of the former *Fair Trading Act 1999* (Vic);
- (iii) it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of:
  - (A) section 5D(1) of the *CLA*; and
  - (B) section 51(1) of the *Wrongs Act 1958* (Vic);
- (d) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 101, 103 and 110 of the SOCC, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed; and
- (e) say further, and in the alternative, the true cause of any loss suffered by the Plaintiff and Group Members was:
  - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (ii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
  - (iii) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (iv) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

118 As to paragraph 118 of the SOCC, PwC repeat their answers to paragraphs 116B to 117A above and deny the paragraph.

118A As to paragraph 118A of the SOCC, PwC:

- (a) repeat their answers to paragraphs 116B to 117A above;
  - (b) do not know and cannot admit subparagraphs (a) and (b); and
  - (c) otherwise deny the paragraph.
- 118B As to paragraph 118B of the SOCC, PwC:
- (a) repeat their answers to paragraphs 102, 109 and 118A above; and
  - (b) deny the paragraph.
- 118C As to paragraph 118C of the SOCC, PwC:
- (a) repeat their answers to paragraphs 118 to 118B above; and
  - (b) deny the paragraph.
- 119 As to paragraph 119 of the SOCC, PwC repeat their answer to paragraph 43 above.
- 120 As to paragraph 120 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 111 to 119 above;
  - (b) deny the paragraph.
- 121 PwC deny paragraph 121 of the SOCC.
- 122 As to paragraph 122 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 111 to 119 and 121 above; and
  - (b) deny the paragraph.
- E. FY07 Audit**
- Alleged damages in negligence at common law**
- 123 PwC admit paragraph 123 of the SOCC.
- 124 As to paragraph 124 of the SOCC, PwC:
- (a) rely on the terms of Provident's financial report for FY07 for their full force and effect;
  - (b) say, in respect of paragraph 124(a) of the SOCC, the financial report for FY07 states that there were loans and advances in the amount of \$212,250,616;
  - (c) say, in respect of paragraph 124(b) of the SOCC, the financial report for FY07 states that an amount of \$41,636,821 was included in the loans and advances as at 30 June 2007 which represented the amount of past due loans;
  - (d) say, in respect of paragraph 124(c) of the SOCC, the financial report for FY07 states that no specific provision was made for past due loans in the balance sheet

as at 30 June 2007 because the directors considered that the recovery of the amounts of principal and interest accrued was regarded as reasonably certain and that the security held was adequate to cover the past due loans;

- (e) say, in respect of paragraph 124(d) of the SOCC, the financial report for FY07 states that the directors considered that the recovery of the amounts of principal and interest accrued in respect of past due loans was regarded as reasonably certain and that the security held was adequate to cover the past due loans;
- (f) admit subparagraphs 124(e), 124(f) and 124(g) of the SOCC;
- (g) say further that Provident's financial report contained a "Directors' Declaration" to the effect that:
  - (i) the directors of Provident declared that the financial statements and notes set out on pages 6 to 25:
    - (A) complied with Accounting Standards, the *Corporations Regulations* and other mandatory professional reporting requirements; and
    - (B) gave a true and fair view of Provident's financial position as at 30 June 2007 and of its performance, as represented by the results of its operations and its cash flows, for the financial year ended on that date; and
  - (ii) in the directors' opinion:
    - (A) the financial statements and notes were in accordance with the *Corporations Act*; and
    - (B) there were reasonable grounds to believe that Provident would be able to pay its debts as and when they became due and payable; and
- (h) otherwise deny the paragraph.

125 As to paragraph 125 of the SOCC, PwC:

- (a) repeat their answer to paragraphs 4 and 8 above;
- (b) say that on 28 September 2007, Mr O'Sullivan, signed the Directors' Report and Directors' Declaration in respect of the financial statements for the year ended 30 June 2007;
- (c) further say that after Mr O'Sullivan took the actions pleaded in paragraph 125(b) above, Mr Marcus Laithwaite ("**Mr Laithwaite**") signed the audit report, in his



name and in the name of PwC pursuant to section 324AB(3) of the *Corporations Act* in respect of the year ended 30 June 2007 ("**2007 Audit Report**");

- (d) rely on the terms of the 2007 Audit Report for their full force and effect and say that, the 2007 Audit Report stated, *inter alia*:
- (i) under the heading "Director' responsibility for the financial report", that the directors of Provident were responsible for the preparation and fair presentation of the financial report in accordance with the Australian Accounting Standards and the *Corporations Act*, including responsibility for establishing and maintaining internal control relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud and error, selecting and applying appropriate accounting policies and making accounting estimates that are reasonable in the circumstances;
  - (ii) under the heading "Auditor's responsibility":
    - (A) that PwC conducted an audit in accordance with Australian Auditing Standards, in order to obtain reasonable assurance as to whether the financial report was free of material misstatement; and
    - (B) an audit involves performing procedures to obtain audit evidence about the amounts and disclosure in the final reports. The procedures selected depend on the auditor's judgement, including the assessment of the risk of material misstatement of the financial report whether due to fraud or error. The auditor considers internal control relevant to the entity preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances; and
  - (e) otherwise admit the paragraph.

126 As to paragraph 126 of the SOCC, PwC:

- (a) say that the terms of the contract between PwC and Provident, in relation to the year ended 30 June 2007, are set out in the Letter of Engagement dated 24 March 2006, including the terms and conditions which comprised Appendix 1 to the letter and a Letter of arrangement dated 7 May 2007 (together, the "**2007 Retainer**");
- (b) rely on the terms of the 2007 Retainer for their full force and effect;
- (c) say that the 2007 Retainer included the following terms:
  - (i) the directors of Provident were responsible for, *inter alia*:

- (A) ensuring that the company kept accounting records which at any time disclosed with reasonable accuracy the financial position of the company;
  - (B) establishing and maintaining an internal control structure;
  - (C) preparing a financial report (including adequate disclosure) which gives a true and fair view of the company's financial position and performance, represented by the results of its operations and cashflows, in accordance with Accounting Standards, Urgent Issue Group Pronouncements, other mandatory reporting requirements and the *Corporations Act*; and
  - (D) enabling PwC to access, on an unrestricted basis, all records, information and explanations that PwC considered necessary in connection with the audit;
- (ii) PwC had a statutory responsibility to form an opinion, and report on whether the financial report presented to them by the directors was in accordance with the *Corporations Act* including:
- (A) giving a true and fair view of the company's financial position and performance, represented by the results of its operations and its cash flows; and
  - (B) complying with Accounting Standards, the *Corporations Regulations* and other mandatory professional reporting requirements;
- (iii) a statutory audit of the annual financial report would be conducted in accordance with Australian Auditing Standards to provide reasonable assurance as to whether the annual financial report was free of material misstatement;
- (iv) the procedures adopted by PwC would include examination, on a test basis, of evidence supporting the amounts and disclosures in the financial report and evaluation of accounting policies and significant accounting estimates; and
- (v) there was an unavoidable risk that audits planned and executed in accordance with Australian Auditing Standards may not detect a material error or irregularity; that audits are based on selective testing of the information being examined and that therefore errors and irregularities may not be detected; and that an audit could only provide reasonable and

not absolute assurance that the annual financial report was free of material misstatement; and

(d) otherwise deny the paragraph.

127 As to paragraph 127 of the SOCC, PwC:

(a) admit that they knew that Provident had on issue debentures the subject of Chapter 2L of the *Corporations Act*;

(b) admit that they knew that there was a trustee for debenture holders, which trustee owed the duties set out in section 283DA of the *Corporations Act*;

(c) repeat their answer to paragraph 51 above;

(d) refer to and repeat paragraph 128 below; and

(e) otherwise deny the paragraph.

128 As to paragraph 128 of the SOCC, PwC:

(a) say that, at the time PwC audited Provident's financial report for FY07 and issued the 2007 Audit Report:

(i) it was incumbent upon the trustee from time to time for the holders of debentures issued by Provident to:

(A) exercise reasonable diligence to ascertain whether the property of Provident and of any guarantor that was or should be available (whether by way of security or otherwise) would be sufficient to repay the amount deposited or lent when it becomes due: section 283DA(a);

(B) exercise reasonable diligence to ascertain whether Provident had committed any breach of the provisions of the Consolidated Trust Deed or Chapter 2L of the *Corporations Act*: section 283DA(b); and

(C) do everything in its power to ensure that Provident remedied any breach known to the trustee of any provision of the Consolidated Trust Deed or Chapter 2L of the *Corporations Act* unless the trustee was satisfied that the breach would not materially prejudice the debenture holders' interests or any security for the debentures: section 283DA(c);

(ii) the trustee from time to time for the holders of debentures issued by Provident enjoyed the power, pursuant to the Consolidated Trust Deed, to compel Provident to:

- (A) make available for inspection by the trustee or the trustee's auditor, the whole of the financial or other records of Provident: Consolidated Trust Deed, cl 6.0.2;
  - (B) give to the trustee or the trustee's auditor such information as the trustee or the trustee's auditor requires with respect to all matters relating to the financial or other records of Provident: Consolidated Trust Deed, cl 6.0.3; and
  - (C) provide to the trustee, at the trustee's request, a schedule setting out:
    - (aa) details of the amounts of the debenture funds invested in each form of authorised investment at the end of the month;
    - (ab) the amount of the debenture funds at the beginning and at the end of the month;
    - (ac) for each form of authorised investment, the income received during the month and the projected income for the next month;
    - (ad) the amount of interest paid on debentures for the month and the projected amount of interest payable on debentures for the next month; and
    - (ae) particulars of mortgage arrears at the end of the month and the action taken by Provident to recover those arrears: Consolidated Trust Deed, cl 6.0.8;
- (iii) the trustee from time to time for the holders of debentures issued by Provident enjoyed the power, pursuant to the *Corporations Act*, to compel Provident to comply with its obligations to:
- (A) make all of its financial and other records available for inspection by:
    - (aa) the trustee; or
    - (ab) a registered company auditor appointed by the trustee to carry out the inspection: section 283BB;
  - (B) give the trustee or a registered company auditor appointed by the trustee to carry out the inspection, any information, explanations or other assistance that they require about matters relating to those records: section 283BB;

- (C) if Provident created a security interest, to give the trustee written details of the security interest within 21 days after it is created; and, if the total amount to be advanced on the security of the security interest is indeterminate and the advances are not merged in a current account with bankers, trade creditors or anyone else – to give the trustee written details of the amount of each advance within 7 days after it was made: section 283BE; and
  - (D) within one month after the end of each quarter, to give the trustee a quarterly report that set out the information required by sections 283BF(4), (5), and (6); and
- (iv) the trustee from time to time for the holders of debentures issued by Provident enjoyed an indemnity from Provident for all costs, charges and expenses properly incurred, including without limitation costs charges and expenses:
- (A) in the carrying out or exercise or the attempted carrying out or exercise by the trustee of any duty or power express or implied by law;
  - (B) in connection with any breach by Provident of the deed; and
  - (C) charged to the trustee by the trustee's auditor in connection with any function performed by the trustee's auditor concerning the trust deed: Consolidated Trust Deed, cl 8.2;
- (b) say that by reason of the matters pleaded in paragraph 128(a) above, the trustee for debenture holders, had an obligation, and/or the legal and practical ability, to satisfy itself of the accuracy of Provident's financial report for FY07 and any other aspect of Provident's financial affairs, including through the appointment by the trustee of a registered company auditor, to inspect the records of Provident at the trustee's request;
- (c) say, in respect of paragraph 128(e) of the SOCC, at the time PwC issued the FY04 Audit Report, it was reasonably foreseeable by PwC that a failure by PwC to exercise reasonable care and skill in the conduct of its audit might result in PwC not becoming aware of matters that it would otherwise have been required to report pursuant to s.313(2) of the Corporations Act;

- (d) say further that, if (which is denied) the risk of harm pleaded in paragraph 128 of the SOCC existed, the trustee for debenture holders, had an obligation, and/or the legal and practical ability, to protect itself from the risk of harm; and

**Particulars**

*Paragraph 128(a) above*

- (e) otherwise deny the paragraph.
- 129 As to paragraph 129 of the SOCC, PwC:
- (a) repeat their answer to paragraph 128 above;
- (b) deny the paragraph; and
- (c) say further that, if (which is denied) the risk of harm pleaded in paragraph 128 of the SOCC existed and was not insignificant:
- (i) the risk of harm was obvious, within the meaning of section 5F of the *CLA*;
- (ii) AET is presumed to have been aware of the risk of harm, by reason of section 5G of the *CLA*;
- (iii) the risk of harm was inherent, within the meaning of section 5I of the *CLA*;

**Particulars**

*Paragraph 8 above*

- 130 As to paragraph 130 of the SOCC, PwC:
- (a) do not admit subparagraph 130(a)
- (b) repeat their answer to paragraph 128 above; and
- (c) say that:
- (i) PwC were required to conduct the audit of Provident's financial report for FY07 and issue the 2007 Audit Report, in accordance with the Australian Auditing Standards including relevant ethical requirements, which include an independence requirement; and
- (ii) in accordance with those requirements, PwC as auditor could not allow the trustee for debenture holders, or any other person, to direct, control or unduly influence the conduct of PwC's audit or the contents of the 2007 Audit Report.

**Particulars**

*Auditing Standard ASA 220 Quality Control for Audits of Historical Financial Information (April 2006) at 15 to 16*

*Auditing Standard ASA 200 (Objectives and General Principles Governing an Audit of a Financial Report) (April 2006) at 8 and 22*

*APES 110 Code of Ethics for Professional Accountants (June 2006) at 120, 200 and 290*

*CPA Australia, The Institute of Chartered Accountants in Australia and the Institute of Public Accountants - Independence Guide*

(d) otherwise deny the paragraph.

131 As to paragraph 131 of the SOCC, PwC:

(a) repeat their answers to paragraphs 8 and 126 to 130 above; and

(b) deny the paragraph; and

(c) say that recognition of a duty of care in the terms pleaded is inconsistent with the regime for the performance of audit services provided for in the *Corporations Act*.

132 As to paragraph 132 of the SOCC, PwC:

(a) repeat its answers to paragraphs 8, 17A, and 126 to 131 above; and

(b) otherwise deny the paragraph.

132A As to paragraph 132A of the SOCC, PwC:

(a) refer to and repeat paragraphs 8, 17A, and 126 to 132 above;

(b) rely upon the terms of the documents referred to in paragraph 132A of the SOCC for their full force and effect; and

(c) otherwise deny the paragraph.

132B As to paragraph 132B:

(a) refer to and repeat paragraphs 8, 17A, and 126 to 132A above; and

(b) deny the paragraph.

132C As to paragraph 132C:

(a) refer to and repeat paragraphs 8, 17A, and 126 to 132B above; and

(b) deny the paragraph.

133 As to paragraph 133 of the SOCC, PwC:

(a) refer to and repeat paragraphs 8, 17A, and 126 to 132C above; and

(b) deny the paragraph.

133AA PwC do not know and cannot admit paragraph 133AA.

133A As to paragraph 133A of the SOCC, PwC:

- (a) refer to and repeat paragraphs 8, 17A, and 126 to 133AA above; and
- (b) deny the paragraph.

133B As to paragraph 133B:

- (a) refer to and repeat paragraphs 8, 17A, and 126 to 133A above;
- (b) deny the paragraph;
- (c) say that no claim is made against AET by the Plaintiff for conduct by AET in respect of FY07 and, in the circumstances, the SOCC is incompetent insofar as it purports to assert a claim for damages in respect of FY07; and
- (c) say further that if (which is denied) AET has suffered loss:
  - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) of the *CLA*;
  - (ii) in respect of that claim, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) of the *CLA*;
  - (iii) further, and in the alternative, the true cause of the loss was:
    - (A) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
    - (B) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;
    - (C) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
    - (D) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
    - (E) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.



**Alleged statutory damages for misleading and deceptive conduct**

- 134 As to paragraph 134 of the SOCC, PwC:
- (a) repeat their answer to paragraph 125 above; and
  - (b) deny the paragraph.
- 135 PwC do not admit paragraph 135 of the SOCC.
- 135A As to paragraph 135A of the SOCC, PwC:
- (a) repeat their answer to paragraph 135 above; and
  - (b) deny the paragraph.
- 135B PwC deny paragraph 135B of the SOCC.
- 136 As to paragraph 136 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 125 and 128 above;
  - (b) deny the paragraph; and
  - (c) say that if, (which is denied) any of the representations were made as alleged, the representations were statements of opinion and Mr Laithwaite had reasonable grounds for those opinions:

**Particulars**

*The matters giving rise to those reasonable grounds included:*

- (A) *the audit planning and audit work undertaken by Mr Laithwaite and PwC audit staff with respect to the 2007 Audit Report;*
- (B) *on or about 28 September 2007, Provident represented to PwC and Mr Laithwaite that there had not arisen in the interval following 30 June 2007 any matter or circumstance that had significantly affected or might significantly affect (except as otherwise referred to in the financial statements or Directors' Report):*
  - (aa) *Provident's operations in future financial years; or*
  - (ab) *the results of those operations in future financial years; or*
  - (ac) *Provident's state of affairs in future financial years*
- (C) *by its management representation letter dated 28 September 2007, Provident represented to PwC and Mr Laithwaite that, inter alia:*

- (aa) *Provident's directors and management were responsible for, and acknowledged their responsibility for, ensuring, inter alia, the accuracy of Provident's financial records and the financial reports prepared from them and that Provident's financial report was drawn up to give a true and fair view of the company's financial position as at 30 June 2007 and of its performance, as represented by the results of its operations and cash flows, for the financial year ended on that date, in accordance with the Corporations Act and to comply with the Accounting Standards, the Corporations Regulations and other mandatory professional reporting requirements;*
- (ab) *Mr O'Sullivan was not aware of any material transactions that had not been properly recorded in the accounting records underlying Provident's financial report;*
- (ac) *All financial records had been made available for the purpose of the audit, and all the transactions undertaken had been properly reflected and recorded in the financial records. All records and related information that might affect the truth and fairness of, or necessary disclosure in, the financial report, including minutes of directors' and shareholders' meetings (and of all relevant management meetings) had been made available to PwC and no such information had been withheld;*
- (ad) *The financial report as at 30 June 2007 included all cash and bank accounts and all other assets of the company required to be included therein in accordance with generally accepted accounting principles. The company had satisfactory title to all recorded assets;*
- (ae) *Loans and advances totalling \$212,250,616 were owing to the company and represented bona fide claims against debtors and were not subject to discounts except for normal cash discounts. The directors were of the opinion that these debts would be realised in full;*
- (af) *The directors of Provident had taken reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provision for*

*doubtful debts, and had taken reasonable steps to cause all known bad debts to be written off and to make adequate provision for doubtful debts;*

*(ag) The directors had considered the requirements of AASB 136 when assessing the impairment of assets and ensuring that no assets were stated in excess of their recoverable amount. The directors reviewed the impairment of the loans included on the loans watch list and believed the security was adequate such that they did not need to carry a provision against those loans; and*

*(ah) No matters or occurrences had come to the attention of Mr O'Sullivan which would materially affect the financial report or disclosures therein, or which were likely to materially affect the future results or operations of Provident other than as disclosed to Mr Laithwaite and audit staff.*

*(D) Mr Laithwaite was entitled to believe and did believe that the information provided to him and to audit staff by Provident (including the representations particularised above) was not false or misleading in a material particular and did not omit any matter or thing the omission of which rendered that information misleading in a material respect; and*

*(E) Mr Laithwaite was entitled to believe and did believe that:*

*(aa) the information provided to him by his audit staff was not false or misleading in a material particular;*

*(ab) the information provided to him by his audit staff did not omit any matter or thing the omission of which rendered that information misleading in a material respect; and*

*(ac) his staff exercised reasonable skill and care in preparing the audit plan and conducting the audit.*

137 As to paragraph 137 of the SOCC, PwC:

(d) repeats their answers to paragraphs 132A, 132B, 133, 133A and 136 above;

(e) deny the paragraph; and

- (f) say that if, (which is denied) any of the representations in paragraph 136 of the SOCC were made as alleged, the representations were statements of opinion and Mr Laithwaite had reasonable grounds for those opinions:

**Particulars**

*PwC repeat the particulars to paragraph 136*

- 138 Not used.
- 139 As to paragraph 139 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 134 to 137 above; and
  - (b) deny the paragraph.
- 139A As to paragraph 139A of the SOCC, PwC:
- (a) repeat their answers to paragraphs 125 and 134 to 139 above; and
  - (b) deny the paragraph.
- 140 As to paragraph 140 of the SOCC, PwC:
- (a) repeat their answers to paragraph 134 to 139A above;
  - (b) deny the paragraph; and
  - (c) say that if (which is denied) AET has suffered loss:
    - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) of the *CLA*;
    - (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of former sections 42 and 68 of the *FTA*, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) of the *CLA*; and
    - (iii) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 139 and 141 of the SOCC, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed;
  - (d) say further, and in the alternative, the true cause of the loss was:
    - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
    - (ii) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;

- (iii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
- (iv) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
- (v) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

141 As to paragraph 141 of the SOCC, PwC:

- (a) repeat their answer to paragraph 140 above; and
- (b) deny the paragraph.

142 As to paragraph 142 of the SOCC, PwC:

- (a) admit that the 2007 Audit Report included a statement to the effect that Mr Laithwaite and PwC had conducted the audit in accordance with Australian Auditing Standards, in order to provide reasonable assurance as to whether the financial report is free of material misstatement;
- (b) say that the paragraph is embarrassing insofar as it fails to identify to whom PwC made the alleged representation; and
- (c) otherwise deny the paragraph.

143 PwC deny paragraph 143 of the SOCC.

144 As to paragraph 144 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 8, 125 and 126 above;
- (b) admit that, as at 28 September 2007, the Australian Auditing Standards provided that an audit in accordance with the Australian Auditing Standards is designed to provide reasonable assurance that the financial report taken as a whole is free from material misstatement; and
- (c) otherwise deny the paragraph.

145 As to paragraph 145 of the SOCC, PwC:

- (a) repeat paragraphs 133 and 133A above; and
- (b) deny the paragraph.

146 As to paragraph 146 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 142 and 145 above;
- (b) deny the paragraph; and
- (c) say that, if the representation in paragraph 142 was made as alleged (which is denied) it was a statement of opinion and Mr Laithwaite had reasonable grounds for the opinion.

**Particulars**

*PwC repeat the particulars to paragraph 137 above.*

146A As to paragraph 146A of the SOCC, PwC:

- (a) repeat their answer to paragraph 139A above; and
- (b) deny the paragraph.

147 As to paragraph 147 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 133B and 142 to 146A above;
- (b) deny the paragraph;
- (c) say that if (which is denied) AET has suffered loss:
  - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) of the *CLA*;
  - (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of former sections 44(b) and 68 of the *FTA*, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) of the *CLA*; and
  - (iii) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 146 and 148 of the SOCC, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed;
  - (iv) say further, and in the alternative, the true cause of the loss was:
  - (v) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (vi) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;
  - (vii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;

(viii) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and

(ix) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

148 As to paragraph 148 of the SOCC, PwC:

- (a) repeat their answer to paragraph 147 above; and
- (b) deny the paragraph.

**2007 Section 313(2) Corporations Act – Alleged Representation**

148A PwC admit paragraph 148A of the SOCC.

148B As to paragraph 148B of the SOCC, PwC:

- (a) repeat their answer to paragraph 8 above;
- (b) deny the paragraph; and
- (c) say that if (which is denied) by not issuing a report of the kind pleaded in paragraph 148A, PwC made the implied "2007 313(2) Representation", it was a representation of opinion and Mr Laithwaite had reasonable grounds for that opinion;

**Particulars**

*PwC repeats the particulars to paragraph 137 above.*

148C As to paragraph 148C of the SOCC PwC:

- (a) admit subparagraphs 148C(a) and (b);
- (b) say that, as to subparagraph 148C(c):
  - (i) the 2007 Provident Capital Limited 2007 Audit Plan presented to the Provident board in May 2007 identified as one of six key audit considerations "loans & advances", then listed four relevant "considerations" of which two were that loans and advances may not be recoverable and that provision for bad and doubtful debts may be inappropriate; and
  - (ii) deny the subparagraph;

**Particulars**

## Audit plan attached to PwC audit step 1900

- (c) deny subparagraphs 148C(d) to 148C(g);
- (d) say that, as to subparagraph 148C(h):
  - (i) PwC knew that Provident prepared a schedule titled "Loan Arrears Details" on a monthly basis, to be provided to AET; and
  - (ii) otherwise deny the sub-paragraph;
- (e) say that, as to subparagraphs 148C(i), (j) and (k):
  - (i) the monthly arrears reports were not required to comply with accounting standards; and
  - (ii) deny the subparagraphs;
- (f) say that, as to subparagraphs 148C(l):
  - (i) it may not be possible, in each and every case, to determine from a monthly arrears report whether or not a particular loan would be recoverable; and
  - (ii) otherwise deny the subparagraph;
- (g) deny subparagraph 148C(m);
- (h) say that, as to subparagraph 148C(n):
  - (i) the unsigned Management Letter dated 16 November 2007 provided to Provident stated that an implication of a lack of documented analysis of loan impairment may be that "*loan advances and interest receivable amounts in the financial statements may be materially misstated*", and allocated this a "medium" risk rating; and

**Particulars**

*Email sent by Marcus Laithwaite to John Fulker dated 16 November 2007 and attachments contained in PwC Audit Step 8600.*

- (ii) deny the subparagraph;
- (i) deny subparagraphs 148C(o) to 148C(r);
- (j) say that, as to subparagraph 148C(s):
  - (i) the unsigned Management Letter dated 16 November 2007 provided to Provident recommended that "*A formal review should be performed on the loan book at reporting dates to assess whether impairment indicators exist,*



*either individually or in aggregate, and where such indicators exist, investigate whether an impairment loss is required in relation to the loan. This should be formally documented along with the evidence obtained to support the conclusions reached. PCL may consider the benefit of including such a document on the loan file"; and*

**Particulars**

*Email sent by Marcus Laithwaite to John Fulker dated 16 November 2007 and attachments contained in PwC Audit Step 8600.*

- (ii) deny the subparagraph;
  - (k) deny subparagraphs 148C(t) to 148C(u);
  - (l) say in further answer to paragraph 148C of the SOCC that the allegations as particularised do not provide a basis for the attribution of knowledge to PwC, and PwC will hold AET to the allegations as confined by their particulars.
- 148D As to paragraph 148D of the SOCC, PwC:
- (a) repeat their answer to paragraph 148C above; and
  - (b) deny the paragraph.
- 148E As to paragraph 148E of the SOCC, PwC:
- (a) repeat their answer to paragraph 148C above; and
  - (b) deny the paragraph.
- 148F As to paragraph 148F of the SOCC, PwC:
- (a) repeat their answer to paragraphs 148B to 148E above;
  - (b) deny the paragraph; and
  - (c) say that if (which is denied) the representation alleged in paragraph 148B of the SOCC was made, it was a representation of opinion and Mr Laithwaite had reasonable grounds for the opinion:

**Particulars**

*PwC repeat the particulars to paragraph 137 above.*

- 148G As to paragraph 148G of the SOCC, PwC:
- (a) repeat their answers to paragraphs 148A to 148F above; and
  - (b) deny the paragraph.

148H PwC deny paragraph 148H of the SOCC.

148I As to paragraph 148I of the SOCC, PwC:

- (a) deny the paragraph; and
- (b) say that if (which is denied) AET has suffered loss:
  - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of section 5D(1) of the *CLA*;
  - (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of former sections 42 and 68 of the *FTA*, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of section 5D(1) of the *CLA*; and
  - (iii) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 148G of the SOCC, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed;
- (c) say further, and in the alternative, the true cause of any loss was:
  - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (ii) AET's failure to exercise its duties in the manner contended for by the Plaintiff in the Statement of Claim;
  - (iii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
  - (iv) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (v) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

148J As to paragraph 148J of the SOCC, PwC:

- (a) repeat their answer to paragraph 148I above; and
- (b) deny the paragraph.

### **Contribution**

149 As to paragraph 149 of the SOCC, PwC:

- (a) admit paragraph 149(b);
- (b) repeat their answer to paragraph 128 above; and
- (c) otherwise deny the paragraph.

150 As to paragraph 150 of the SOCC, PwC:

- (a) repeat their answer to paragraph 149 above;
- (b) deny the paragraph; and
- (c) say further that if (which is denied) the risk of harm pleaded in paragraphs 149(a), (c) and(d) of the SOCC existed and was not insignificant:
  - (i) the risk of harm was obvious within the meaning of:
    - (A) section 5F of the *CLA*; and
    - (B) section 53 of the *Wrongs Act 1958* (Vic);
  - (ii) the holders of debentures issued by Provident are presumed to have been aware of the risk of harm, by reason of section 5G of the *CLA*; and
  - (iii) the risk of harm was inherent, within the meaning of:
    - (A) section 5I of the *CLA*; and
    - (B) section 55 of the *Wrongs Act 1958* (Vic).

**Particulars**

*Paragraph 8 above*

151 As to paragraph 151 of the SOCC, PwC:

- (a) repeat their answer to paragraph 149 above;
- (b) say that debenture holders enjoyed the benefit of a trustee who was obliged to act on their behalf, and for their benefit, in the manner provided for by section 283DA of the *Corporations Act*, the Trust Deed, the Deed of Amendment and at law;

**Particulars**

*Paragraph 14 above*

- (c) say that PwC were required to conduct the audit of Provident's financial report for FY07, and issue the 2007 Audit Report, in accordance with the Australian Auditing Standards including relevant ethical requirements;
- (d) say that in accordance with those requirements, PwC as auditor could not allow the trustee for debenture holders, or any replacement trustee, or any other person,

to direct, control or unduly influence the conduct of PwC's audit or the contents of the 2004 Audit Report; and

- (e) otherwise deny the paragraph.
- 152 As to paragraph 152 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 8, 126 to 128 and 149 to 151 above;
  - (b) deny the paragraph; and
  - (c) say that the posited duty of care is:
    - (i) unknown to Australian law;
    - (ii) inconsistent with the regime for the performance of audit services provided for in the *Corporations Act*; and
    - (iii) indeterminate, unworkable, incompatible with PwC's duties to Provident and would impose an unreasonable burden on the autonomy of PwC in providing audit services.
- 152A As to paragraph 152A of the SOCC, PwC repeats their answers to paragraphs 132 to 133 above.
- 153 As to paragraph 153 of the SOCC, PwC:
- (a) repeat their answer to paragraphs 132 to 133 and 152 above; and
  - (b) deny the paragraph.
- 153A As to paragraph 153A of the SOCC, PwC repeat their answer to paragraphs 133AA and 133A above.
- 153B As to paragraph 153B of the SOCC, PwC:
- (a) do not know and cannot admit the paragraph; and
  - (b) say that the claim set out in paragraph 133A is hypothetical in that the Plaintiff are not persons of the kind referred to in paragraph 153B of the SOCC and cannot be determined in the current proceedings.
- 154 As to paragraph 154 of the SOCC, PwC:
- (a) repeat their answer to paragraphs 133 to 133B, and 153A to 153B above, and refer to paragraph 175 below;
  - (b) deny that any breach of duty by PwC (which is denied) was a necessary condition of any loss suffered by the Group Members in paragraph 153B of the SOCC;
  - (c) say that if (which is denied) the Group Members referred to in paragraph 153B of the SOCC have suffered loss:

- (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of:
  - (A) section 5D(1) of the *CLA*; and
  - (B) section 51(1) of the *Wrongs Act 1958* (Vic);
- (ii) in respect of that claim, it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of:
  - (A) section 5D(1) of the *CLA*; and
  - (B) section 51(1) of the *Wrongs Act 1958* (Vic);
- (d) further, and in the alternative, the true cause of any loss suffered by the Group Members referred to in paragraph 153B of the SOCC was:
  - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (ii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
  - (iii) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (iv) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed; and

- (e) otherwise deny the paragraph.

154A As to paragraph 154A of the SOCC, PwC:

- (a) repeat their answer to paragraph 154 above; and
- (b) deny the paragraph.

154B As to paragraph 154B of the SOCC, PwC repeat their answers to paragraphs 134 to 140, 142 to 147 and 148A to 148I above.

155 As to paragraph 155 of the SOCC, PwC:

- (a) repeat their answers to paragraphs 139A, 153B and 154 above; and
- (b) otherwise do not know and cannot admit the paragraph.

155A As to paragraph 155A, PwC:

- (a) repeat their answer to paragraphs 139, 141, 146, 148, 148G, 154B and 155 above;
- (b) deny the paragraph;
- (c) say that if (which is denied) the Plaintiff and Group Members have suffered loss:
  - (i) the claim in respect of which loss is alleged is a claim for harm resulting from negligence, within the meaning of:
    - (A) section 5D(1) of the *CLA*; and
    - (B) section 51(1) of the *Wrongs Act 1958* (Vic);
  - (ii) in respect of that claim, and having regard to the subject-matter, scope and purpose of:
    - (A) former sections 42, 44(b) and 68 of the *FTA*; and
    - (B) sections 9, 12(b) and 159 of the former *Fair Trading Act 1999* (Vic);
  - (iii) it is not appropriate for the scope of PwC's liability to extend to the loss claimed, within the meaning of:
    - (A) section 5D(1) of the *CLA*; and
    - (B) section 51(1) of the *Wrongs Act 1958* (Vic);
- (d) say further that, insofar as AET relies upon the Commonwealth statutory provisions pleaded in paragraphs 139, 148, and 148J of the SOCC, having regard to their subject-matter, scope and purpose, it is not appropriate for the scope of PwC's liability to extend to the loss claimed; and
- (e) say further, and in the alternative, the true cause of any loss suffered by the Plaintiff and Group Members was:
  - (i) IOOF's failure to exercise its duties in the manner particularised in paragraph 172 below;
  - (ii) Provident's acts or omissions as referred to in paragraph 170 below and paragraph 41 of AET's Defence to the Statement of Claim;
  - (iii) Walter Turnbull's conduct in respect of the audit of Provident in FY08 and FY09 as referred to in paragraph 173 below; and
  - (iv) HLB's conduct in respect of the audit of Provident in FY10 and FY11 as alleged in the Third Cross-Claim,

which included misconduct post-dating that alleged to have been engaged in by PwC and which constituted new intervening acts that broke any chain of causation that might otherwise have existed.

- 156 As to paragraph 156 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 154B to 155A above; and
  - (b) deny the paragraph.
- 156A As to paragraph 156A of the SOCC, PwC:
- (a) repeat their answers to paragraphs 154B to 155A above;
  - (b) do not know and cannot admit subparagraphs (a) and (b); and
  - (c) otherwise deny the paragraph.
- 156B As to paragraph 156B of the SOCC, PwC:
- (a) repeat their answers to paragraphs 140, 147 and 148I and 156A above; and
  - (b) deny the paragraph.
- 156C As to paragraph 156C of the SOCC, PwC:
- (a) repeat their answers to paragraphs 156 to 156B above; and
  - (b) deny the paragraph.
- 157 As to paragraph 157 of the SOCC, PwC repeat their answer to paragraph 43 above.
- 158 As to paragraph 158 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 149 to 157 above;
  - (b) deny the paragraph.
- 159 PwC deny paragraph 159 of the SOCC.
- 160 As to paragraph 160 of the SOCC, PwC:
- (a) repeat their answers to paragraphs 149 to 157 and 159 above; and
  - (b) deny the paragraph.

## **F. Other Defences**

### **Time bar – negligence and misleading or deceptive conduct claims**

- 161 In further answer to paragraphs 18 to 19, 26 to 27, 33 to 34, 57 to 57B, 64 to 65, 71 to 72, 95 to 95B, 102 to 103, 109 to 110, 133 to 133B, 140 to 141, 147 to 148 and 148I and 148J of the SOCC, PwC say that if the causes of action arose prior to 21 December 2010, the claim is statute-barred and should be dismissed.

**Particulars**

*Section 82(2) of the former Trade Practice Act 1974 ("TPA")*

*Section 1041I(2) of the Corporations Act*

*Section 12GM(5) of the Australian Securities and Investments Commission Act 2001 (Cth) ("ASIC Act")*

*Section 14 of the Limitation Act 1969 (NSW)*

*Former section 68(2) of the FTA*

**Time bar – statutory and equitable contribution**

162 In further answer to the claims in paragraphs 35 to 44, 73 to 82, 111 to 120 and 149 to 158 of the SOCC, PwC say that the claims for statutory contribution made pursuant to the law of New South Wales and Victoria there pleaded are statute-barred and should be dismissed.

**Particulars**

- (i) *Each of the claims made in paragraphs 35 to 44, 73 to 82 and 111 to 120 of the SOCC and pursuant to the laws of NSW, arose before 21 December 2006.*

*Section 26 of the Limitation Act 1969 (NSW);*

- (ii) *The Statement of Claim dated 23 December 2014 was served on AET on or about 23 December 2014. Each of the claims made pursuant to the laws of Victoria, arose on or about 23 December 2014, and were required to be issued one year from the date after service of the claim on AET.*

*Section 24(4) of the Wrongs Act 1958 (Vic).*

163 In further answer to the claims in paragraphs 45 to 46, 83 to 84, 121 to 122 and 159 to 160 of the SOCC, PwC say that the claims for equitable contribution are out of time.

**Particulars**

*The limitation period applicable to each claim is that arising by analogy to the limitation period that applies to a statutory claim for contribution in the applicable jurisdiction.*

*PwC otherwise repeat the particulars to paragraph 162 above.*



164 In further answer to the claims in paragraphs 45 to 46, 83 to 84, 121 to 122 and 159 to 160 of the SOCC, PwC say that:

- (a) AET ought not be permitted to bring the claims by reason of laches; and

**Particulars**

*PwC repeat paragraphs 14, 52, 90 and 128 above. The alleged misconduct by PwC occurred in the period 2004 to 2007. If (which is denied) PwC engaged in the misconduct alleged by AET, it was within AET's power to identify that misconduct shortly after it occurred.*

- (b) AET ought not be permitted to bring the claims by reason of acquiescence.

**Limitation of liability – Accountants' Scheme**

165 In further answer to paragraphs 18 to 19, 24(c), 27(c), 57 to 57B, 63(d), 65(d), 95 to 95B, 101(d), 103(d), 133 to 133B, 139(d), 141(d), 148G(c), 148I and 148J(c) of the SOCC, if (which is denied) PwC is liable for any of the loss alleged in the SOCC in respect of the claims for negligence and contraventions of section 42 of the *FTA*, that liability is limited in accordance with the Accountants' Scheme approved under the *Professional Standards Act 1994* (NSW).

**Particulars**

*Accountants' Scheme under the Professional Standards Act 1994 (NSW) commencing on 8 October 2001.*

**Peer professional opinion**

166 In further answer to paragraphs 18 to 19, 57 to 57B, 95 to 95B and 133 to 133B of the SOCC, PwC say:

- (a) the audit services provided to Provident by PwC as pleaded in the SOCC were provided by partners and staff of PwC, being "professionals" within the meaning of section 50 of the *CLA*;
- (b) in providing audit services to Provident as pleaded in the SOCC, the partners and staff of PwC acted in a manner (at the time the services were provided) that was widely accepted in Australia by peer professional opinion as competent professional practice.

**Contributory negligence and mitigation**

167 In further answer to paragraphs 18 to 19, 57 to 57B, 95 to 95B and 133 to 133B of the SOCC, if (which is denied) AET suffered any of the loss or damage as so alleged, that loss or damage was caused, in whole or in part, by AET's failure to take reasonable care.

**Particulars**

- (A) *PwC repeat, for the purposes of this contributory negligence defence only, the allegations in the Statement of Claim.*
- (B) *PwC also repeat paragraphs 14, 52, 90 and 128 above.*
- (C) *AET has failed to take reasonable care in satisfying itself that Provident and the former trustee, IOOF, complied with their obligations owed to debenture holders before accepting its appointment as trustee and consenting to be named in prospectuses issued by Provident.*
- (D) *Relevant statutory provisions are sections 5R and 5S of the CLA.*

168 In further answer to paragraphs 24 to 27, 63 to 65, 101 to 103, 139 to 141 and 148G to 148J of the SOCC, if (which is denied) AET is entitled to recover damages under section 82 of the *TPA* and/or section 1041I of the *Corporations Act*, and/or section 12GM of the *ASIC Act*, for any loss or damage suffered by reason of the alleged contravention by PwC of section 52 of the *TPA*, section 1041H of the *Corporations Act*, and/or section 12DA of the *ASIC Act*, then:

- (a) such a claim is a claim for economic loss allegedly caused by the conduct of PwC, within the meaning of section 82(1B) of the *TPA*, 1041I(1B) of the *Corporations Act* and section 12GF(1B) of the *ASIC Act*;
- (b) any such loss or damage was suffered wholly or partly as a result of AET's failure to take reasonable care;

**Particulars**

*PwC repeat, for the purposes of this contributory negligence defence only, the allegations in the Statement of Claim. PwC also repeat paragraphs 14, 52, 90 and 128 above.*

- (c) PwC did not intend to cause such loss or damage;
- (d) the damages (if any) recoverable by AET from PwC in relation to the alleged loss or damage should be reduced pursuant to section 82(1B) of the *TPA* and section 1041I(1B) of the *Corporations Act*, to the extent which the Court thinks just and equitable having regard to AET's share in the responsibility for the loss or damage; and

- (e) the Court should exercise its discretion to reduce the damages (if any) recoverable by AET from PwC under section 12GM of the *ASIC Act* to the extent which the Court thinks just and equitable having regard to AET's share in the responsibility for the loss or damage.

169 In further answer to the whole of the SOCC, if (which is denied) AET suffered loss or damage as alleged, AET failed to take reasonable steps to mitigate that loss or damage.

**Particulars**

*PwC repeat, for the purposes of this mitigation defence only, the allegations in the Statement of Claim. PwC also repeat paragraphs 14, 52, 90 and 128 above.*

**Proportionate liability - Provident**

170 In further answer to paragraphs 9 to 27, 47 to 65, 85 to 103, 123 to 141 and 148A to 148J of the SOCC, PwC say that if they are liable to AET (which is denied), then, for the purpose of this Defence only:

- (a) AET's claims are each an "apportionable claim" within the meaning of section 87CB(1) of the *TPA*, section 1041L of the *Corporations Act*, section 12GP of the *ASIC Act* and section 34 of the *CLA*;
- (b) Provident is a "concurrent wrongdoer" within the meaning of section 87CB(3) of the *TPA*, section 1041L of the *Corporations Act*, section 12GP of the *ASIC Act* and section 34 of the *CLA*;

**Particulars**

(A) *Pursuant to section 283BB of the Corporations Act, Provident was required to carry on and conduct its business in a proper and efficient manner.*

(B) *Pursuant to section 283BF of the Corporations Act, Provident was required to report quarterly to the trustee, including, inter alia:*

(aa) *any circumstances that have occurred during the quarter that materially prejudice the borrower;*

(ab) *any security interest included in or created by the debentures or the trust deed; and*

- (ac) *any other matters that may materially prejudice any security interests or other interests of debenture holders.*
- (C) *Provident owed obligations to the trustee as set out in the Trust Deed and the Deed of Amendment, including, pursuant to clause 6 of the Trust Deed, to:*
- (aa) *strive to carry on and conduct its business in a proper and efficient manner;*
  - (ab) *keep or cause to be kept, proper books of account and enter in those books of account full particulars of all dealings and transactions in relation to the company's business;*
  - (ac) *duly and punctually, perform and comply with all covenants and other obligations imposed on the Company under the trust deed or under the condition of issue of any debentures or under the Corporations Law; and*
  - (ad) *give written notice to the trustee as soon as it becomes aware of, amongst other things:*
    - (i) *any potential event of default or event of default under the trust deed;*
    - (ii) *anything which might result or has resulted, in a material adverse change in the;*
    - (iii) *financial condition or operations of the company;*  
*or*
    - (iv) *the ability of the Company to perform its obligations under the trust deed.*
- (D) *Pursuant to clause 6.09 of the Trust Deed, Provident was required to have given to the Trustee a copy of the accounts and reports lodged with ASIC at the same time as those accounts and reports were lodged with ASIC.*
- (E) *Clause 5.2 of the Trust Deed required Provident to comply with LVR requirements set out in the deed.*
- (F) *Provident prepared financial reports for the years ending 30 June 2004 – 30 June 2011 (“FY04 – FY11 Financial Reports”).*

- (G) Mr O'Sullivan signed directors' reports and declarations for Provident for the FY04 – FY11 Financial Reports ("**Directors' Reports**"), which stated that, in the directors' opinion, the financial statement and notes were in accordance with the requirements of the Corporations Act, including section 296 (compliance with accounting standards) and section 297 (true and fair view).
- (H) Provident provided copies of each of Provident's Annual Reports for FY04 – FY11, containing the FY04 – FY11 Financial Reports, and the FY04 – FY11 Directors' Reports, to IOOF and/or AET.
- (I) By providing the Annual Reports for FY04 – FY11 to IOOF and/or AET, Provident represented that the Financial Reports for FY04 – FY11 were prepared in accordance with the requirements of the Corporations Act, including section 296 (compliance with accounting standards) and section 297 (true and fair view) ("**Financial Report Representations**").
- (J) The financial reports for FY04 – FY11 were not prepared in accordance with Accounting Standards, or the Corporations Act.

**Sub-Particulars**

In respect of FY04 – FY07, PwC rely upon:

- 1 Paragraphs 17B, 18A, 56A, 57A, 92A, 93A, 132A and 133A of the SOCC; and
- 2 the report of Chris Westworth dated 16 October 2017 served by AET in relation to the Second Cross Claim ("**Westworth PwC Report**").

In respect of FY08 – FY11, PwC rely upon:

1. Paragraphs 17B and 56A of the Third Cross-Claim; and
2. the report of Chris Westworth dated 25 October 2017 served by AET in relation to the Third Cross-Claim ("**Westworth HLB Report**").

- (K) By reason of the matters in (A) to (J) above, the Financial Report Representations had no reasonable basis and were misleading or deceptive or were likely to mislead or deceive in contravention of:
- (i) section 52 of the TPA;

- (ii) *section 1041H of the Corporations Act;*
- (iii) *section 12DA(1) of the ASIC Act; and*
- (iv) *former section 42 of the FTA;*
- (L) *Provident negligently breached its obligations under section 283BB and section 283BF of the Corporations Act and under clauses 5.2 and 6 of the Trust Deed.*

#### **Sub-Particulars**

*PwC repeats the particulars at (J) above.*

- (M) *Provident's misleading or deceptive conduct and breaches caused or contributed to AET's loss and damage, being the liability to the Plaintiff or Group Members claimed by AET against PwC in the SOCC.*
- (c) PwC's liability (if any) to AET is, by that reason, limited by section 87CD(1) of the *TPA*, section 1041N of the *Corporations Act*, section 12GR of the *ASIC Act* and section 35 of the *CLA*, to an amount reflecting that proportion of the damage or loss claimed by AET that the Court considers is just having regard to the extent of PwC's responsibility for that damage or loss; and
- (d) insofar as AET seeks relief under section 12GM of the *ASIC Act*, the Court should exercise its discretion to reduce the damages or compensation (if any) recoverable from PwC to the extent which the Court thinks just and equitable having regard to PwC's share of the responsibility for the loss or damage.

#### **Proportionate liability – Mr O'Sullivan**

- 171 As to paragraphs 9 to 27, 47 to 65, 85 to 103, 123 to 141 and 148A to 148J of the SOCC, PwC say that if they are liable to AET (which is denied), then, for the purpose of this Defence only:
- (a) AET's claims are each an "apportionable claim" within the meaning of section 87CB(1) of the *TPA*, section 1041L of the *Corporations Act*, section 12GP of the *ASIC Act* and section 34 of the *CLA*;
  - (b) Mr O'Sullivan is a "concurrent wrongdoer" within the meaning of section 87CB(3) of the *TPA*, section 1041L of the *Corporations Act*, section 12GP of the *ASIC Act*, and section 34 of the *CLA*;

#### **Particulars**

- (A) *Mr O'Sullivan was:*
- (aa) *an executive director of Provident since its incorporation on 25 May 1998;*
  - (ab) *the Managing Director of Provident from 25 May 1998;*
  - (ac) *a member of the board of directors of Provident at all material times; and*
  - (ad) *along with other members of Provident's senior management, responsible for:*
    - i. *preparing and/or settling all disclosure documents issued by Provident*
    - ii. *supervising credit control and loan approval process;*
    - iii. *advising the board of directors of Provident in relation to the status of the loans advanced to borrowers;*
    - iv. *settling and approving all board pack documentation and material for provision to the Board, including, but not limited to, loan arrears reports;*
    - v. *making provisioning recommendations to the Board in relation to impaired loans;*
    - vi. *managing enforcement action in respect of certain defaulting loans;*
    - vii. *as a member of the Board, approving all reports to the trustee, ASIC and all financial reports and prospectuses issued by Provident.*
- (B) *Provident prepared the FY04 – FY11 Financial Reports.*
- (C) *Mr O'Sullivan signed the Directors' Reports, which represented that, in the directors' opinion, the financial statement and notes were in accordance with the requirements of the Corporations Act, including section 296 (compliance with accounting standards) and section 297 (true and fair view)("Directors' Reports Representation").*

- (D) *Provident provided copies of each of Provident's Annual Reports for FY04 – FY11, containing the FY04 – FY11 Financial Reports, and the FY04-FY11 Directors' Reports, to IOOF and/or AET.*
- (E) *The FY04 – FY11 Financial Reports were not prepared in accordance with Accounting Standards, or the Corporations Act.*

**Sub-Particulars**

*In respect of FY04 – FY07, PwC rely upon:*

- 1 Paragraphs 17B, 18A, 56A, 57A, 92A, 93A, 132A and 133A of the SOCC; and*
- 2 the Westworth PwC Report.*

*In respect of FY08 – FY11, PwC rely upon:*

- 1. Paragraphs 17B and 56A of the Third Cross-Claim; and*
- 3 the Westworth HLB Report.*

- (F) *By reason of the matters in (A) to (E) above, the Directors' Reports Representations had no reasonable basis and were misleading or deceptive or were likely to mislead or deceive in contravention of:*

*Section 1041H of the Corporations Act;*

*Section 12DA(1) of the ASIC Act; and*

*Former section 42 of the FTA;*

- (G) *Mr O'Sullivan's misleading or deceptive conduct caused or contributed to AET's loss and damage, being the liability to the Plaintiff or Group Members claimed by AET against PwC in the SOCC.*

- (c) PwC's liability (if any) to AET is, by that reason, limited by section 87CD(1) of the TPA, section 1041N of the Corporations Act, section 12GR of the ASIC Act and section 35 of the CLA, to an amount reflecting that proportion of the damage or loss claimed by AET that the Court considers is just having regard to the extent of PwC's responsibility for that damage or loss; and
- (d) insofar as AET seeks relief under section 12GM of the ASIC Act, the Court should exercise its discretion to reduce the damages or compensation (if any) recoverable from PwC to the extent which the Court thinks just and equitable having regard to PwC's share of the responsibility for the loss or damage.



**Proportionate liability - IOOF**

172 In further answer to paragraphs 9 to 27, 47 to 65, 85 to 103, 123 to 141 and 148A to 148J of the SOCC, PwC say that if they are liable to AET (which is denied), then, for the purpose of this Defence only:

- (a) AET's claims are each an "apportionable claim" within the meaning of section 87CB(1) of the *TPA*, section 1041L of the *Corporations Act*, section 12GP of the *ASIC Act* and section 34 of the *CLA*;
- (b) IOOF is a "concurrent wrongdoer" within the meaning of section 87CB(3) of the *TPA*, section 1041L of the *Corporations Act*, section 12GP of the *ASIC Act* and section 34 of the *CLA*;

**Particulars**

- (A) *PwC repeat the allegations made in the Statement of Claim.*
- (B) *PwC repeat paragraph 14 above.*
- (C) *As at the date of appointment of AET as trustee for the debenture holders, it may be inferred that IOOF had failed to take reasonable steps in the exercise of its powers, and in compliance with its duties, so as to satisfy itself that Provident had complied with the obligations owed by it to debenture holders.*
- (c) PwC's liability (if any) to AET is, by that reason, limited by section 87CD(1) of the *TPA*, section 1041N of the *Corporations Act*, section 12GR of the *ASIC Act*, and section 35 of the *CLA*, to an amount reflecting that proportion of the damage or loss claimed by AET that the Court considers is just having regard to the extent of PwC's responsibility for that damage or loss; and
- (d) insofar as AET seeks relief under section 12GM of the *ASIC Act*, the Court should exercise its discretion to reduce the damages or compensation (if any) recoverable from PwC to the extent which the Court thinks just and equitable having regard to PwC's share of the responsibility for the loss or damage.

**Proportionate liability - Walter Turnbull**

173 Further, as to sections 9 to 27, 47 to 65, 85 to 103, 123 to 141 and 148A to 148J of the SOCC, PwC say that if they are liable to AET (which is denied), then, for the purpose of this Defence only:

- (a) AET's claim is an "apportionable claim" within the meaning of section 87CB(1) of the TPA, section 1041L of the Corporations Act, section 12GP of the ASIC Act, and section 34 of the CLA;
- (b) the partners of the firm trading as Walter Turnbull in the period 3 January 2008 to 26 July 2010 ("**Walter Turnbull**") are "concurrent wrongdoers" within the meaning of section 87CB(3) of the TPA, section 1041L of the Corporations Act, section 12GP of the ASIC Act and section 34 of the CLA;

**Particulars**

- (A) *Walter Turnbull were the auditors of Provident in the period 3 January 2008 to 26 July 2010.*

**2008 Financial Year**

- (B) *On 30 September 2008, Mr Walter, on behalf of Walter Turnbull, signed the audit opinion in relation to Provident's Financial Report for the year ended 30 June 2008 ("FY08 Audit Opinion").*
- (C) *In respect of the FY08 Audit Opinion, Walter Turnbull owed AET a duty of care on the same basis that is alleged against PwC in paragraph 131 of the SOCC.*
- (D) *in providing the FY08 Audit Opinion, Walter Turnbull breached their duty of care to AET in the same manner that is alleged against PwC in paragraphs 132 to 133B of the SOCC having regard to the following:*
  - (aa) *PwC repeats paragraphs 132A to 133A of the SOCC insofar those paragraphs make allegations relating to the loans to Burleigh Views Pty Ltd ("**Burleigh Views Loan**") and Chrysalis Holdings Pty Ltd ("**Chrysalis Loan**"):*
    - (ab) *as at 30 June 2007:*
      - (i) *impairment losses should have been disclosed in the financial statements of Provident in respect of the Burleigh Views Loan and the Chrysalis Loan (Westworth PwC Report – paragraph 515); and*
      - (ii) *taking into account the impairment losses in respect of the Burleigh Views Loan, the Chrysalis Loan, and other factors, net assets should have been reported in the financial statements as*

*\$1,257,000 instead of \$13,740,000 (Westworth PwC Report – paragraph 24);*

*(ac) PwC repeats paragraphs 17 to 18A of the Third Cross-Claim insofar as those paragraphs make allegations relating to the Burleigh Views Loan and the Chrysalis Loan;*

*(ad) as at 30 June 2010:*

*(i) impairment losses should have been disclosed in the financial statements of Provident in respect of the Burleigh Views Loan and the Chrysalis Loan (Westworth HLB Report - paragraph 571); and*

*(ii) taking into account the impairment losses in respect of the Burleigh Views Loan, the Chrysalis Loan, and other factors, a net liability of - \$6,368,000 should have been disclosed in the financial statements instead of net assets of \$14,021,000 (Westworth HLB Report – paragraph 24);*

*(ae) in light of the matters set out in subparticulars (D)(aa) to (ad) above, in the circumstances it may be inferred that the Burleigh Views Loan and the Chrysalis Loan were impaired in FY08; and*

*(af) further, in light of the matters set out in particulars (D)(aa) to (ad) above, Provident's financial statements for FY08 should have included provisions for the Burleigh Views Loan and the Chrysalis Loan and were therefore materially misstated.*

*(E) If the matters set out in (D) are accepted then having regard to:*

*(aa) what was stated in Provident's financial report for FY08;*

*(ab) the opinion expressed by Walter Turnbull in the FY08 Audit Opinion;*

*it may be inferred that Walter Turnbull did not conduct the audit with reasonable care and skill.*

- (F) *Walter Turnbull's conduct in issuing the FY08 Audit Opinion was in trade or commerce and conduct in relation to financial products, namely the debentures issued by Provident.*
- (G) *By issuing the FY08 Audit Opinion Walter Turnbull impliedly represented that they had conducted an audit with reasonable care and they had reasonable grounds for the opinion that the 2009 financial report gave a true and fair value of the financial position of Provident (the "**Walter Turnbull FY08 Representations**").*
- (H) *By reason of the matters in (A) to (G) above, contrary to the Walter FY08 Turnbull Representations, Walter Turnbull did not conduct the audit with reasonable care and did not have a reasonable basis for the opinion set out in the FY08 Audit Opinion.*
- (I) *By virtue of the matters in paragraphs (F) to (H) above, Walter Turnbull engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of ("**Walter Turnbull's FY08 Misleading or Deceptive Conduct**"):*
- (aa) *Section 1041H of the Corporations Act;*
- (ab) *Section 12DA(1) of the ASIC Act; and*
- (ac) *Former section 42 of the FTA;*
- (J) *Walter Turnbull's breach of duty and Walter Turnbull's FY08 Misleading or Deceptive Conduct have caused AET loss.*

#### **2009 Financial Year**

- (K) *On 24 September 2009, Mr Walter, on behalf of Walter Turnbull, signed the audit opinion in relation to Provident's Financial Report for the year ended 30 June 2009 ("**FY09 Audit Opinion**").*
- (L) *In respect of the FY09 Audit Opinion, Walter Turnbull owed AET a duty of care on the same basis that is alleged against PwC in paragraph 131 of the SOCC.*
- (M) *In providing the FY09 Audit Opinion, Walter Turnbull breached their duty of care to AET in the same manner that is alleged against PwC in paragraphs 132 to 133B of the SOCC having regard to the following:*

- (aa) *PwC repeats paragraphs 132A to 133A of the SOCC insofar those paragraphs make allegations relating to the Burleigh Views Loan and the Chrysalis Loan;*
- (ab) *as at 30 June 2007:*
- (i) *impairment losses should have been disclosed in the financial statements of Provident in respect of the Burleigh Views Loan and the Chrysalis Loan (Westworth PwC Report - paragraph 515);*
  - (ii) *taking into account the impairment losses in respect of the Burleigh Views Loan, the Chrysalis Loan, and other factors, net assets should have been reported in the financial statements as \$1,257,000 instead of \$13,740,000 (Westworth PwC Report – paragraph 24);*
- (ac) *PwC repeats paragraphs 17 to 18A of the Third Cross-Claim insofar as those paragraphs make allegations relating to the Burleigh Views Loan and the Chrysalis Loan;*
- (ad) *as at 30 June 2010:*
- (i) *impairment losses should have been disclosed in the financial statements of Provident in respect of the Burleigh Views Loan and the Chrysalis Loan (Westworth HLB Report – paragraph 571); and*
  - (ii) *taking into account the impairment losses in respect of the Burleigh Views Loan, the Chrysalis Loan, and other factors, a net liability of - \$6,368,000 should have been disclosed in the financial statements instead of net assets of \$14,021,000 (Westworth HLB Report – paragraph 24);*
- (ae) *in light of the matters set out in particulars (M)(aa) to (ad) above, in the circumstances it may be inferred that the Burleigh Views Loan and the Chrysalis Loan were impaired inFY09;*

- (af) further, in light of the matters set out in particulars (M)(aa) to (ad) above, Provident's financial statements for FY09 should have included provisions for the Burleigh Views Loan and the Chrysalis Loan and were therefore materially misstated.
- (N) If the matters set out in (M) are accepted then having regard to:
- (aa) what was stated in Provident's financial report for FY09;
- (ab) the opinion expressed by Walter Turnbull in the FY09 Audit Opinion;
- it may be inferred that Walter Turnbull did not conduct the audit with reasonable care and skill.
- (O) Walter Turnbull's conduct in issuing the FY09 Audit Opinion was in trade or commerce and conduct in relation to financial products, namely the debentures issued by Provident.
- (P) By issuing the FY09 Audit Opinion Walter Turnbull impliedly represented that they had conducted an audit with reasonable care and they had reasonable grounds for the opinion that the 2009 financial report gave a true and fair value of the financial position of Provident (**"the "Walter Turnbull FY09 Representations"**).
- (Q) By reason of the matters set out in (A) and (K) to (P) above, contrary to the Walter Turnbull FY09 Representations, Walter Turnbull did not conduct the audit with reasonable care and did not have a reasonable basis for the opinion set out in the FY09 Audit Opinion.
- (R) By virtue of the matters in paragraphs (O) to (Q) above, Walter Turnbull engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of ("Walter Turnbull's FY09 Misleading or Deceptive Conduct"):
- (aa) Section 1041H of the Corporations Act;
- (ab) Section 12DA(1) of the ASIC Act; and
- (ac) Former section 42 of the FTA;
- (S) Walter Turnbull's breach of duty and Walter Turnbull's FY09 Misleading or Deceptive Conduct have caused AET loss.

- (c) PwC's liability (if any) to AET is, by that reason, limited by section 87CD(1) of the *TPA*, section 1041N of the *Corporations Act*, section 12GR of the *ASIC Act*, and section 35 of the *CLA*, to an amount reflecting that proportion of the damage or loss claimed by AET that the Court considers is just having regard to the extent of PwC's responsibility for that damage or loss; and
- (d) insofar as AET seeks relief under section 12GM of the *ASIC Act*, the Court should exercise its discretion to reduce the damages or compensation (if any) recoverable from PwC to the extent which the Court thinks just and equitable having regard to PwC's share of the responsibility for the loss or damage.

**Proportionate liability – HLB Mann Judd (NSW Partnership)**

- 174 Further, as to paragraphs 9 to 27, 47 to 65, 85 to 103, 123 to 141 and 148A to 148J of the SOCC, PwC say that if they are liable to AET (which is denied), then, for the purpose of this Defence only:
- (a) plead by incorporation the Third Cross Claim against HLB;
  - (b) AET's claim is an "apportionable claim" within the meaning of section 87CB(1) of the *TPA*, section 1041L of the *Corporations Act*, section 12GP of the *ASIC Act*, and section 34 of the *CLA*;
  - (c) HLB are a "concurrent wrongdoer" within the meaning of section 87CB(3) of the *TPA*, section 1041L of the *Corporations Act*, section 12GP of the *ASIC Act* and section 34 of the *CLA*;
  - (d) PwC's liability (if any) to AET is, by that reason, limited by section 87CD(1) of the *TPA*, section 1041N of the *Corporations Act*, section 12GR of the *ASIC Act* and section 35 of the *CLA*, to an amount reflecting that proportion of the damage or loss claimed by AET that the Court considers is just and equitable having regard to the extent of PwC's responsibility for that damage or loss; and
  - (e) insofar as AET seeks relief under section 12GM of the *ASIC Act*, the Court should exercise its discretion to reduce the damages (if any) recoverable by AET from PwC to the extent which the Court thinks just and equitable having regard to PwC's share of the responsibility for the loss or damage.

**Liability to AET in respect of the Statement of Claim**

- 175 In the alternative, as to the whole of the SOCC, PwC say that:
- (a) the allegations made in the SOCC are made solely for the purposes of the Cross-Claim and on the assumption (which is denied) that AET is liable to the Plaintiff or Group Members in the manner pleaded in the Statement of Claim;

- (b) the Group Members are persons who were the holders of debentures issued by Provident as at 29 June 2012;
- (c) the Plaintiff only acquired debentures issued by Provident in 2010;
- (d) debentures were issued by Provident for specified terms, at the conclusion of which the debentures matured and holders of debentures had the option of either receiving payment of principal and any outstanding interest or of electing to rollover their investment;
- (e) any rollover of an investment involved the creation of a new debenture for a new principal amount, with a new specified term and a new specified interest rate and payment frequency;
- (f) in the premises, any loss suffered by the Plaintiff and Group Members (which is denied) is confined to loss suffered by them in respect of the last extant debenture held by each Plaintiff and Group Member as at 29 June 2012;
- (g) further and in the alternative, if (which is denied) AET suffered loss by reason of the conduct of PwC pleaded in the SOCC, PwC's conduct was too remote to render PwC liable for such loss; and
- (h) further and in the alternative, say that no claim is made against AET by the Plaintiffs for conduct by AET in respect of FY04 to FY07 and, in the circumstances, the SOCC is incompetent.

**Relief from liability – Section 1318 of the Corporations Act**

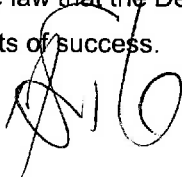
176 Further, or in the alternative, as to the whole of the SOCC, PwC say that if they are liable to AET by reason of the facts and matters alleged in the SOCC (which is denied), then PwC acted honestly and having regard to all the circumstances of the case, ought fairly to be excused from any such liability (in whole, or in the alternative, in part) pursuant to section 1318 of the *Corporations Act*.

177 PwC deny AET's entitlement to the relief claimed in the SOCC, or at all.

**SIGNATURE OF LEGAL REPRESENTATIVE**

I certify under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the Defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature





Capacity

Moira Saville, Solicitor on record

Date of signature

18 March 2018

**AFFIDAVIT VERIFYING**

Name Meredith Beattie  
 Address One International Towers Sydney, Watermans Quay,  
 Barangaroo NSW 2000  
 Occupation Solicitor  
 Date

I say on oath:

- 1 I am a Cross-Defendant and General Counsel of PwC and I am authorised to make this affidavit on behalf of PwC.
- 2 I have made reasonable inquiries as to the accuracy of the statements contained in this Defence. Based on those inquiries:
  - (a) I believe that the allegations of fact contained in the Defence are true;
  - (b) I believe that the allegations of fact that are denied in the Defence are untrue; and
  - (c) I do not know whether or not the allegations of fact that are not admitted in the Defence are true.

SWORN at Sydney

Signature of deponent



Name of witness

KATHRYN BOYD

Address of witness

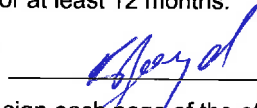
KING & WOOD MALLETSONS  
 Level 01, Loretta Phillip Tower  
 1 Farrer Place, SYDNEY NSW 2000

Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

**SCHEDULE 1****The Cross Defendants are as follows:**

LAITHWAITE, MARCUS JONATHON ANDERSON  
ABBEY, PAUL JOSEPH  
AGNOLETTO, JASON  
ALLMAN, TIMOTHY JOHN  
AMPHERLAW, NIGEL IAN  
ANDREWS, GRAHAM KEITH  
ANDREWS, WAYNE JEFFREY  
ARMSTRONG, DAVID HUGH  
BAARTZ, DONALD GERARD  
BAKER, ROBERT ANTHONY  
BANNATYNE, SUSAN CAROL  
BARLOW, ANDREW  
BARRIO, ANGEL  
BARRON, EWAN ALASDAIR  
BASSILI, ASH  
BAXTER, ANTONY JOHN  
BEATTIE, MEREDITH KIM  
BECK, BRADLEY JOHN  
BENDALL, PAUL ANTHONY  
BENNET, CHRISTOPHER PAUL  
BENNETT, JOHN WILLIAM  
BERESFORD, BRIAN  
BERSTEN, MICHAEL CHARLES  
BEST, CORINNE GERALDINE  
BILLINGHAM, STEPHEN DENNIS  
BILLINGS, GRAEME  
BILLINGTON, CHRISTOPHER  
BIRKENSLEIGH, SANDRA CHRISTINE  
BLOM, WILHELMUS MARIUS  
BLUMOR, ROBERT WILLIAM  
BOSILJEVAC, STEVEN JOHN  
BOURKE, STEPHEN JAMES  
BOWLES, STEPHEN JAMES  
BRADGATE, RICHARD JOHN FINDLAY  
BRASHER, PAUL VINCENT  
BRASSIL, PAUL VINCENT

BRENT, NOEL ASHLEY  
BRIDGE, MICHAEL ANDREW  
BRINDLE, PAUL OWEN  
BROWNE, MICHAEL HOLGATE  
BRUNNER, PAUL FRANZ JOSEF  
BRYANT, NICOLE MAREE  
BRYANT, SCOTT DUNCAN  
BUCHHOLZ, PETER LLOYD  
BURT, CHRISTOPHER JOHN  
CALLEJA, PETER DAMIAN  
CAMPBELL, WILLIAM PATRICK  
CAMPION, JOHN ANDREW  
CANNINGS, JOHN WILLIAM  
CARLIN, NADIA CHERIE  
CARLSTEIN, BRUCE ROY  
CARNEY, PATRICIA JOSEPHINE  
CARROLL, JOHN ANTHONY  
CARROLL, JUSTIN MARK  
CARROZZI, JOSEPH  
CARTER, PHILIP PATRICK  
CHEATER, KIM ANDREW  
CHIANG, MICHELLE WEILING  
CHIPMAN, NICHOLAS JOHN  
CHOWDRY, RAHOUL  
CHRISTIE, CHARLES DOUGLAS  
CLARK, DEREK RONALD  
CLARK, IAN DAVID  
CLARKE, PHILIP JOHN  
CLARKE, VICTOR JOSEPH  
CLEMENS, ANTHONY EDWARD  
CLIFFORD, VALERIE ANNA MARGARET  
COATES, JULIE SANDRA  
CODLING, MICHAEL JOHN  
COLDERICK, MALCOLM STUART  
COLLINS, PETER JOHN  
COLLINSON, GEOFFREY MICHAEL  
CONROY, DELLA  
COOGAN, DAVID NICHOLAS  
COOPER, CHRISTOPHER PATRICK

COOPER, FRANK CHARLES  
COTTON, DANIEL CHARLES  
COTTRELL, GEOFFREY MORLEY  
COUGLE, STEPHEN JOHN  
COX, TIMOTHY WYNAND  
CRAIG, DOUGLAS DONALD ANTHONY  
CRAMPTON, GRAEME LINDSAY  
CRAWFORD, KAREN ANNE  
CRETHAR, ERIC HARRY  
CROKER, MICHAEL JOHN JAMES  
CROSLAND, VANESSA LOUISE  
CUMING, TIMOTHY JAMES  
CUMMINS, CRAIG JAMES  
CUTAJAR, CLARA ANGELA  
CUTHBERT, CHRISTOPHER MARK  
DANIEL, MICHAEL FRANCIS PAUL  
DANIELS, JASON  
DAVIDSON, MICHAEL  
DAVIS, ADAM GLENN  
DAWSON, JENNIFER MERRAN  
DE SILVA, NIKHIL  
DELANEY, BRETT STEPHEN  
D'ELIA, MARIO ROSARIO  
DELMENICO-GRAY, TRUDY  
DENNY, DAVID ANDREW  
DEUTSCH, RICHARD DAVID  
DEVALIA, PRADIP KUMAR KANJI  
DIAMOND, BARRY  
DIAMOND, GREG JOHN  
DICK, WARREN JAMES  
DODD, CHRISTOPHER JAMES  
DOVASTON, JOHN ALEXANDER  
DOW, MARK GREIG  
DOWD, NOREEN  
DOY, JONATHAN WILLIAM  
DREYER, PIERRE  
DRING, RODNEY DOUGLAS  
DUNN, COLIN WALTER  
DUNNING, JAMES ALEXANDER

ECKERSLEY, DEBRA MAREE  
EDGE, WILLIAM RODNEY  
EDWARDS, HUGH ANDREW JOHN  
EDWARDS, STUART JAMES  
ELLIS, BRUCE ANTHONY  
ELSWORTH, ANDREW DAVID  
EMPSON, MICHAEL JOHN  
ENTWISTLE, BRETT WILLIAM  
EVANS, MURRAY DAVID  
FARMER, IAN MICHAEL  
FARRELL, PATRICK JOHN  
FAUVET, JOHN FRANCIS  
FAZZINO, HELEN  
FEELY, JOHN WILLIAM  
FEHILY, KENNETH LEWIS  
FEKETE, PETER JOHN  
FELTRIN, MARCO ALBERTO  
FENTON, THOMAS GEORGE  
FERGUSON, SCOTT KIRWAN  
FEROS, PETER  
FEYER, ANNE-MARIE  
FIKKERS, REGINA FRANCES  
FINN, DENNIS JOSEPH  
FITZALAN, KELVIN  
FORD, SIMON GRAHAM  
FORMAN, ANDREW GEORGE  
FORSICK, MICHAEL JAMES  
FRAZER, MICHAEL ANDREW  
FRIZZELL, STEVEN JOHN  
FROST, GLEN EDWARD  
FULTON, ANTHONY RICHARD  
FURBY, ROBERT STANLEY  
GALLACHER, KENNETH THOMAS WILSON  
GARDE, JAMES CHARLES FREDERICK  
GAVIN, ROSS LINDSAY  
GEDDES, ROHAN GORDON  
GILBRAITH, MARK JON  
GILLEN, ROBERT NEIL  
GILLESPIE, BRIAN MALCOLM

GODDARD, MARK ROBERT  
GOLDSMITH, TIMOTHY  
GORDON, ANDREW NICHOLAS  
GORDON, JOHN  
GRAHAM, MATTHEW KEVIN  
GRAPSAS, CON  
GRAY, SIMON ANTHONY JOHN  
GREEN, ADRIAN JOHN  
GREENHILL, KATHERINE ANN  
GREGORY, SEAN MICHAEL  
GRIFFITHS, JONATHAN MARK  
GRIFFITHS, KEVIN ALUN  
GROUIOS, JOHN  
HAAS, MEGAN LOUISE  
HABAK, JASON  
HABERLIN, MARK  
HADFIELD, SCOTT JAMES  
HADLOW, GLEN JAMES  
HALL, GREGORY WINFIELD  
HALL, IAN RICHARD  
HAMER, CRAIG DERRICK  
HAMMOND, IAN LESLIE  
HANDO, LISA ANNE  
HANSON, ANDREW DONALD  
HAPPELL, MICHAEL JOHN  
HARKER, LISA JANE  
HARKER, STUARTJOHN  
HARRINGTON, ANTHONY PATRICK DAVID  
HASTIE, BARRY NORMAN EDWARD  
HAYES, JASON AUSTIN  
HAYWARD, KENNETH WILLIAM  
HEALY, NIALL  
HENRY, NICHOLAS MICHAEL  
HIGGINS, MARK JONATHAN  
HINE, JULIAN DAVID  
HOCKINGS, IAN CHRISTOPHER  
HODSON, GREGORYJOHN  
HOGAN, LEONARD WAYNE  
HOGAN, PETER NEVILLE

HOLLE, CHRISTIAN ALFRED  
HORLIN, SUSAN GAI  
HOUSEMAN, NICHOLAS PAUL  
HOWARD, CATHERINE MICHELLE  
HUBBARD, JONATHAN GARTH  
HUBBARD,ROBERT  
HUMPHREY, CHARLES HAROLD  
HUMPHRIES, STEPHEN JAMES DONALD  
HUNTER, BRIAN KENNEDY  
INGHAM, MARK WARWICK  
INGRAM, STEVEN GLEN  
IRELAND, DAVID BRUCE  
IVERS, DEREK GRAHAM  
JAMES, JOHN LYNDON  
JEFFREY, IAN MCGREGOR  
JERAJ, SANJIV LILADHER  
JOHNSON, CHRISTOPHER  
JOHNSON, MARK GRAHAM  
JONES, CAMERON NAPIER  
JORDAAN, WILEM GABRIEL  
JULIUS, KATHERINE ANNE  
KEATING, CLAIRE MAJELLA  
KEESING, VICTORIA ANNE  
KELLY, DAVID NOEL  
KENNEDY, MILES THOMAS PITT  
KENNEDY, PETER VINCENT  
KEYS,GREGORYJOHN  
KIDLEY, DEREK  
KINSELLA, CHRISTOPHER JOHN  
KIRK, PAUL WILLIAM  
KLEIN, ANTHONY DARREN  
KOENIG, PAUL GUSTAV  
KONIDARIS, PETER  
KOOPMANS,HANSBERNARDUS  
KRAEVA, GALINA  
KRANES, STEVEN ROBERT  
KUMAR, SAMEER  
KUS, ROBERT MATIJA  
LAST, DEBBIE



LATHAM, CHRISTOPHER ROBERT JOHN  
LAURIE, MARK JOSEPH  
LAWN, CRAIG STANTON  
LAWRENCE, BRIAN PAUL  
LAWSON, DAVID BRUCE  
LAYTON, LUCIENNE PRISCILLA  
LAZAR, ANDREW LOUIS  
LAZARUS, GREGORY LEE  
LE HURAY, PETER GRANT  
LENNON, SCOTT DOYLE  
LEWIS, DAVID REGINALD  
LEWIS, PAUL RAYMOND  
LIJESKI, JAMES PAUL  
LILLEY, CAROLYN JEAN  
LINDSTROM, PAUL WILLIAM  
LINSCHOTEN, ANTON JOHAN  
LINZ, MARTIN THOMAS  
LOCKE, MARTIN STUART  
LONGLEY, STEPHEN GRAHAM  
LOUREY, GREGORY STEPHEN  
LOVERIDGE, ANNE JOAN  
LOW, ROBIN JANE  
LOWE, CHRISTOPHER HAROLD  
LUNN, MATTHEW THOMAS  
MADDEN, JANE FRANCESCA  
MAGUIRE, FRANCES ANN  
MAHER, SHANNON TRENT  
MAHONY, TREVOR ANTHONY  
MAKAS, EMMANUEL  
MANGION, MAUREEN  
MARJORAM, GAVIN JOHN  
MARJORIBANKS, CHRISTA JANE  
MARTIN, MARIA ANNE  
MASON, SANDRA CLARE  
MASTERS, JOHN  
MASTOS, PETER MATHEW  
MAY, JEFFREY IAN  
MCCAHEY, JAN ELIZABETH  
MCCLUSKEY, WILLIAM DOUGLAS

MCCOLL, ROSS ALEXANDER  
MCCOMISKIE, ROGER JOHN  
MCCONNELL, NIALL RUARI  
MCDERMOTT, GARY JAMES  
MCDONALD, BRUCE  
MCELVOGUE, JAMES SHERIDAN  
MCEVOY, DAVID LAURENCE  
MCGRATH, MICHAEL PATRICK  
MCILVEEN, CRAIG BERNARD  
MCKEE, DALE ANTHONY  
MCKEERING, DAVID PETER RICHARD  
MCLEAN, ALASTAIR HENRY  
MCMAHEN, PAUL ANDREW  
MCMILLAN, JAMES FRANCIS  
MCNAB, PAUL JOSEPH  
MCPHERSON, ANDREW COLIN  
MELICK, ANGELA ANN  
MERREIT, PETER KENNETH  
MESTON, WILLIAM PAUL ROSS  
MICHIE, CASSANDRA ANDRE'E  
MILL, ANDREW JAMES  
MILLEN, RICHARD JOHN  
MIRABELLO, RICHARD  
MITCHELL, MARTYN JOHN  
MITCHELL, ROBERT BRADLEY  
MORGAN, BRUCE WILLIAM DISTIN  
MORRIS, CHRISTOPHER JOHN  
MORRIS, GRAHAME  
MOSS, GAVIN JOHN  
MUNRO, DONALD FRASER  
MURPHY, DAVID VICTOR  
MURRAY, JOANNE  
MURRAY, PATRICK THOMAS  
MUYSKEN, JAN COENRAAD  
MYERS, JULIAN DUNCAN  
NAGLAN, PAUL FRANCIS  
NANCE, CATHERINE ANNE  
NAPPER, NEIL  
NEASMITH, ROBYN

NEILSEN, ALLAN RAYMOND  
NICOLAOU, ANDREW  
NOONAN, GLEN ANDREW  
O'BRIEN, PAUL FRANCIS  
O'BRIEN, STEPHEN JOHN  
O'CALLAGHAN, JOCK  
O'CONNOR, JOHN PETER  
O'DONOGHUE, JOHN  
O'DOWD, CONOR JAMES  
O'PREY, PHILIP GORDON  
O'REILLY, MARK OWEN  
O'ROURKE, KEVIN JOHN  
OSMOND, MATTHEW GARY DAVID  
PALLIER, DAVID JOHN  
PAPAGEORGIOU, VOULA VICTORIA  
PARKER, ANDREW JAMES  
PAROISSIEN, IAN DAVID  
PEAKE, ANTHONY WILLIAM  
PEARSON, ALASTAIR  
PEEL, DANTE MICHAEL RODERICK  
PETERSEN, ANDREW IAN ROBERT  
PETERSON, ROWLAND ROY  
PLAYFORD, MICHAEL JAMES  
PLUMMER, WAYNE STEPHEN  
PORT, ROGER MAITLAND  
PORTER, TROY ANDREW  
PORVAZNIK, ANDREW  
POULOS, KEIRON  
POWER, CLARE MARY  
POWER, JAMES FRANCIS  
PRAKASH, SUMANTH  
PRATT, DAVID CLEMENT  
PREVITERA, ANN MARIE  
PROSSER, ROBERT EDWARD  
PROTHERO, DAVID ANTHONY  
PUNIA, RAGHUVINDER SINGH  
RADLEY, ROBERT  
RAY, MONOJIT ANDREW  
READING, MARK CHRISTOPHER

REARDON, CHRISTOPHER MARK  
REES, CLIFFORD DAVID  
REEVES, KEVIN DAVID  
REID, KEVIN RICHARD  
REILLY, JANE LOUISE  
RIDEHALGH, DAVID NICHOLAS  
RIDLEY, MARK  
RITCHIE, ZARA HELEN  
RIXON, KYLIE ELIZABETH  
ROCHE, ROBERT JOHNSON  
ROCHE, JOHANNA BRIDGET  
ROCKMAN, ASHLEY BRETT  
ROMANS, DAVID CHARLES  
ROOKE, SIMON CARL  
ROSENBERG, DANIEL HAIM MARK  
RUSSELL, WAYNE MURRAY  
RYLEY, DERRICK JOHN  
SANTIAGO, MANOJ JOSEPH  
SARGENT, OLIVER CHARLES  
SAYERS, LUKE FREDERICK  
SCALISE, CESARE HANNY  
SCANLON, NIAMH  
SCHOFIELD, WILLIAM FREDERICK  
SCHREUDER, JOHANNES DANIEL PETRUS  
SCOULAR, STUART ALEXANDER  
SCULLY, MARTIN PATRICK  
SEATON, WILLIAM HENRY BROWN  
SEDDON, NORAH ANNE  
SEYMOUR, TOM RICHARD  
SHACKELL, MALCOLM ROSS  
SHANNON, PAULA JANE  
SHEPPARD, KEITH DAVID  
SHEWAN, MICHAEL  
SHIM, JOHN  
SIMPSON, LISA NICOLE  
SLADE, JASON ROGER  
SMITH, DARREN ANDREW  
SMITH, DAVID JAMES  
SMITH, DEBBIE GAI

SMITH, KIM GERARD  
SMITH, STEPHANIE JANE  
SNOOK, STEPHEN RICHARD  
SORENSEN, GRAHAM KEITH  
SOULOS, MARK CONSTANTINE  
STAFFORD, CRAIG JAMES  
STEPHEN, ANTHONY WILLIAM  
STEVENSON, KEVIN MICHAEL  
STEWART, GRANT CHARLES THOMAS  
STEWART, RICHARD JOHN  
STUBBINS, KRISTIN  
STUDLEY, JOHN WILLIAM  
SULLIVAN, JOHN WILLIAM  
SUTTON, LOUISE JENNIFER  
SUTTON, RUSSELL STEPHEN  
SWAN, MARK JAMES  
TARRANT, WAYNE LINDSAY  
TESS, DANIEL  
TESTA, BIAGIO  
THOMASON, CRAIG SCYLD  
THORPE, JEREMY GUY  
THORPE, ROSS JUSTIN  
TREMAIN, MICHELLE ANN  
TURNER, DARREN ANTHONY  
UPCROFT, MARC DAVID JUSTIN  
UYS, DANIEL PETRUS  
VAN DONGEN, PETER WARWICK  
VEXLER, RONEN  
WALDRON, MARY BRIGID  
WALSH, JOHN ERNEST  
WARD, ROBERT  
WATSON, ALLAN JOHN  
WATSON, TIMOTHY ROBERT  
WAUGH, GARRY LEONARD  
WELLINGTON, ANDREW JOHN  
WHALE, DAVID JOHN  
WHEATON, BENJAMIN ERIC  
WHEELER, ANDREW ARNOTT