

# SECOND CROSS-CLAIM AMENDED STATEMENT OF CROSS-CLAIM

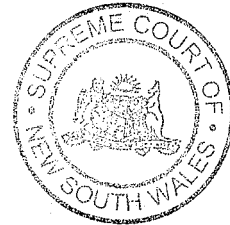
Filed pursuant to leave granted by Justice Ball on 5 March 2018.

## COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2015 / 171592

FILED

6 MAR 2018



## TITLE OF PROCEEDINGS

First Plaintiff	<b>John SMITH</b>
Second Plaintiff	Rosemary SMITH
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>Australia Executor Trustees Limited, Cross-Claimant</b>
Filed in relation to	Cross-claim
Legal representative	Brad Woodhouse, Corrs Chambers Westgarth
Legal representative reference	9116109
Contact name and telephone	Brad Woodhouse, (02) 9210 6859
Contact email	brad.woodhouse@corrs.com.au

**RELIEF CLAIMED**

- 1 Damages.
- 2 Damages pursuant to:
  - (a) s. 82 of the former *Trade Practices Act 1974*;
  - (b) s. 1041I of the *Corporations Act 2001*;
  - (c) s. 12GM of the *Australian Securities and Investments Commission Act 2001*; or
  - (d) former s. 68 of the *Fair Trading Act 1987* (NSW).
- 3 Contribution pursuant to s. 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) or s. 23B of the *Wrongs Act 1958* (Vic.), or in equity.
- 4 Interest.
- 5 Costs.

**PLEADINGS AND PARTICULARS**

The Cross-claimant is the Defendant to the Second Further Amended Statement of Claim filed by the Plaintiffs on 30 January 2017 (**Statement of Claim**). If, which is denied, the Cross-claimant is liable to the Plaintiffs or Group Members in the manner pleaded in the Statement of Claim, then, solely for the purpose of this Cross-claim, the Cross-claimant pleads as follows:

**Parties**

- 1 The cross-claimant, Australian Executor Trustees Limited (**AET**), is and was at all material times:
  - (a) a corporation duly incorporated in accordance with the laws of Australia; and
  - (b) entitled to sue and be sued in its corporate name and style.
- 2 From 7 December 2004 onwards, AET was the trustee for holders of debentures issued by Provident Capital Limited (**Provident**).

- 3 At all material times, PricewaterhouseCoopers (**PwC**) was a partnership who carried on business as a professional services firm that provided, amongst other things, audit services.
- 4 PwC was the auditor of Provident in the period from 21 October 1998 to 3 January 2008.
- 5 The cross-defendants were partners of PwC in the period from 21 October 1998 to 3 January 2008.
- 6 PwC audited the financial report of Provident for each of the financial years ended 30 June 2004 (**FY04**), 30 June 2005 (**FY05**), 30 June 2006 (**FY06**) and 30 June 2007 (**FY07**).
- 7 PwC reviewed the financial report of Provident for each of the half-years ended 31 December 2004 (**1H05**), 31 December 2005 (**1H06**) and 31 December 2006 (**1H07**).
- 8 Throughout the period from 29 September 2004 to 28 September 2007:
- (a) Provident had on issue debentures that were ED securities pursuant to s. 111A1 of the Corporations Act.
  - (b) Provident was a disclosing entity pursuant to s. 111AC of the Corporations Act.
  - (c) Provident was required by s. 292 of the Corporations Act to prepare a financial report for each financial year.
  - (d) Provident was required by s. 301 of the Corporations Act to have its financial report for each financial year audited and to obtain an auditor's report.
  - (e) PwC, as the auditor who audited Provident's financial report for each of FY04, FY05, FY06 and FY07, was required by s. 308(1) of the Corporations Act to report to Provident's members on whether PwC was of the opinion that Provident's financial report was in accordance with the Corporations Act, including whether it complied with the accounting standards and whether it gave a true and fair view of Provident's financial position and performance.

- (f) Pursuant to s. 313(1) of the Corporations Act, PwC was required to provide a copy of its audit report for each of FY04, FY05, FY06 and FY07 to the trustee for the holders of debentures issued by Provident.
- (g) Pursuant to s. 318(1) of the Corporations Act, Provident was required to provide a copy of PwC's audit report for each of FY04, FY05, FY06 and FY07 to the trustee for the holders of debentures issued by Provident.
- (h) Pursuant to s. 318(2) of the Corporations Act, the holder of a debenture issued by Provident was entitled to require Provident to provide the holder with a copy of PwC's audit report for the last financial year.
- (i) Provident was required by s. 302(a) of the Corporations Act to prepare a financial report for each half-year.
- (j) Provident was required by s. 302(b) of the Corporations Act to have its financial report for each half-year either audited or reviewed and (in either case) to obtain an auditor's report.
- (k) PwC, as the auditor who reviewed Provident's financial report for each of 1H05, 1H06 and 1H07, was required by s. 309(4) of the Corporations Act to report to Provident's members on whether PwC became aware of any matter in the course of the review that made PwC believe that the financial report did not comply with the accounting standards or did not give a true and fair view of Provident's financial position and performance.
- (l) Pursuant to s. 313(1) of the Corporations Act, PwC was required to provide a copy of its review report for each of 1H05, 1H06 and 1H07 to the trustee for the holders of debentures issued by Provident.
- (m) Pursuant to s. 318(4) of the Corporations Act, Provident was required to provide a copy of PwC's review report for each of 1H05, 1H06 and 1H07 to the trustee for the holders of debentures issued by Provident.
- (n) Pursuant to s. 313(2) of the Corporations Act, throughout the period from 21 October 1998 to 3 January 2008, PwC was required to give Provident a written report about any matter that:

- (A) PwC became aware of in conducting an audit or review of Provident's financial report for a financial year or half-year;
  - (B) in PwC's opinion was or was likely to be prejudicial to the interests of holders of debentures issued by Provident; and
  - (C) in PwC's opinion was relevant to the exercise of the powers of the trustee for holders of debentures issued by Provident, or the performance of the trustee's duties, under the Corporations Act or under the debenture trust deed.
- (o) Pursuant to s. 313(2) of the Corporations Act, PwC was required to give the trustee for holders of debentures issued by Provident a copy of any report referred to in sub-paragraph (n) above.

#### **FY04 audit**

##### Damages in negligence at common law

- 9 On 29 September 2004, Provident issued its financial report for FY04.
- 10 Provident's financial report for FY04 stated:
- (a) that Provident's assets, as at 30 June 2004, included loans and advances with a recoverable value of \$187,576,802;
  - (b) that, as at 30 June 2004, the face value of loans held by Provident that had not operated within their key terms for at least 90 days (**2004 Past Due Loans**) was \$45,319,313;
  - (c) no specific provision had been made in respect of any of the 2004 Past Due Loans as at 30 June 2004 because 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;
  - (d) that Provident's total assets as at 30 June 2004 were \$202,703,562;
  - (e) that, as at 30 June 2004, Provident had on issue debentures with a principal of \$188,435,954; and
  - (f) that Provident's net assets as at 30 June 2004 were \$6,215,848.
- 11 After auditing Provident's financial report for FY04, PwC issued an audit report (**FY04 Audit Report**) in which PwC expressed the opinion that Provident's financial report for FY04:

- (a) gave a true and fair view of the financial position of Provident as at 30 June 2004 and of its performance for the year ended on that date; and
- (b) was presented in accordance with, amongst other things, the *Corporations Act 2001* and Australian Accounting Standards.

12 It was a term of the contract (between Provident and PwC) under which PwC was retained to audit Provident's financial report for FY04 that PwC would exercise reasonable care and skill in auditing the financial report and issuing its audit report.

**Particulars**

The term was implied by law

13 At the time PwC audited Provident's financial report for FY04 and issued PwC's audit report, PwC knew or ought reasonably to have known:

- (a) that Provident had on issue debentures the subject of Chapter 2L of the *Corporations Act*;
- (b) that there was a trustee for the holders of those debentures which trustee owed the duties set out in s. 283DA of the *Corporations Act*;
- (c) that the trustee for debenture holders could be replaced with a new trustee.

14 At the time PwC audited Provident's financial report for FY04 and issued the FY04 Audit Report, it was reasonably foreseeable by PwC:

- (a) that the trustee for debenture holders, or a replacement trustee for debenture holders, would rely upon PwC having conducted its audit, and prepared its audit report, with reasonable care and skill;
- (b) that the trustee for debenture holders, or a replacement trustee for debenture holders, would consider, and rely upon, any audit report provided by PwC in respect of Provident's financial report for FY04;

**Particulars**

Clause 7.4.2 of the Trust Deed

- (c) that the trustee for debenture holders, or a replacement trustee for debenture holders, would rely upon PwC's audit report in discharging

- the trustee's duties under s. 283DA of the Corporations Act, the Trust Deed (as that term is defined in the Statement of Claim) and at law;
- (d) that the trustee for debenture holders, or a replacement trustee for debenture holders, would rely upon any report issued by PwC pursuant to s. 313(2) of the Corporations Act in the event that PwC, in the course of conducting its audit, became aware of any matters that were, in its opinion:
    - (i) likely to be prejudicial to the interests of debenture holders; and
    - (ii) relevant to the exercise of the powers of the trustee for debenture holders, or the performance of the trustee's duties, under the Corporations Act or the Trust Deed;
  - (e) 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 to the debenture trustee pursuant to s. 313(2) of the Corporations Act;
  - (f) that the trustee for debenture holders, or a replacement trustee for debenture holders, being uninformed or unaware of matters that ought to have been reported under s. 313(2) of the Corporations Act would affect its assessment of what powers it ought exercise, or what steps it ought take, in discharging its role as trustee;
  - (g) that a failure by PwC to exercise reasonable care and skill in conducting its audit and preparing its audit report might result in the trustee for debenture holders, or a replacement trustee for debenture holders, being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;
  - (h) that a failure by PwC to exercise reasonable care and skill in opining whether or not Provident's financial report for FY04 presented a true and fair view of Provident's financial position and performance, might result in the trustee for debenture holders, or a replacement trustee for debenture holders, being uninformed or unaware of matters that, if

known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;

- (i) that the failures pleaded above might cause the trustee for debenture holders, or a replacement trustee for debenture holders, to fail to exercise powers available to it, to discharge its duties under s. 283DA, and result in its being liable to debenture holders under s. 283F of the Corporations Act; and
- (j) that, were that to occur, the trustee for debenture holders, or the replacement trustee for debenture holders, would suffer harm in the form of economic loss.

15 The risk of harm pleaded in paragraph 14 was not insignificant.

16 At the time PwC audited Provident's financial report for FY04 and issued the FY04 Audit Report (and at all material times up to the issue of PwC's audit report for FY05):

- (a) replacement trustees for debenture holders had no right or power to conduct or commission an audit (or an investigation in the nature of an audit) of a debenture issuer prior to accepting an appointment as trustee;
- (b) it was not the general practice of trustees for debenture holders to routinely conduct or commission an audit (or an investigation in the nature of an audit) of debenture issuers on an annual basis;
- (c) for a trustee for debenture holders to conduct or commission an audit (or an investigation in the nature of an audit) in circumstances where PwC was already performing an audit would involve unreasonable duplication of effort and unjustifiable expense;
- (d) by reason of the matters in subparagraphs (b) and (c), absent some special circumstances known to the trustee justifying departure from ordinary practice, it was not reasonably practicable for a trustee for debenture holders to conduct or commission an audit (or an investigation in the nature of an audit);



- (e) the trustee for debenture holders, or a replacement trustee for debenture holders, had no practical ability to protect itself from the risk of harm pleaded in paragraph 14;
- (f) the trustee for debenture holders, or a replacement trustee for debenture holders, could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report;
- (g) the trustee for debenture holders, and any replacement trustee for debenture holders, were dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 14; and
- (h) the trustee for debenture holders, and any replacement trustee for debenture holders, were vulnerable to harm resulting from a failure by PwC to exercise reasonable care and skill in performing its audit and preparing its audit report.

17 By reason of the matters pleaded in paragraphs 8 and 12 to 16 above, in auditing Provident's financial report for FY04 and in issuing the FY04 Audit Report, PwC owed a duty to AET (as a future trustee for debenture holders) to take reasonable care:

- (a) in the conduct of its audit; and
- (b) in the preparation of its audit report,

to avoid the risk of harm pleaded in paragraph 14 above.

17A 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:

- (a) conducted investigations to obtain an understanding of Provident's business and used this understanding to:
  - (i) identify areas of audit focus, being the material risks to the financial health and performance of Provident; and
  - (ii) appropriately design and perform audit procedures to test those areas of audit focus to ensure those risks are reduced to an acceptably low level;

#### **Particulars**

Auditing Standard AUS 304 [.02]

## Auditing Standard AUS 514 [.18] and [.22]

- (b) as a result of the investigations in subparagraph (a), become aware that:
- (i) all of the issued shares in Provident were owned and controlled by its Managing Director, Michael O'Sullivan, or entities in which Mr O'Sullivan had an interest;
  - (ii) Mr O'Sullivan had authority over Provident's decision making process in respect of loans including the extension of loans, the identification of impaired loans and the making of provision in respect of impaired loans;
  - (iii) the reported net assets of Provident as at 30 June 2004 were \$6,215,848;
  - (iv) the reported total amount of loans made by Provident as at 30 June 2004 was \$188,182,162, of which \$45,319,313 were reported as past due;
  - (v) the making of provision for impaired loans could have a significant effect on the net assets of Provident; and
  - (vi) Mr O'Sullivan's position as Managing Director of Provident and his ownership interest gave rise to a conflict of interest, including in relation to the making of provisions for impaired loans;
- (c) upon becoming aware of the matters in subparagraph (b), exercised a heightened degree of scepticism including by not relying upon, or alternatively not solely relying upon, systems and process for the identification of impaired loans, and the making of provision against impaired loans, which depended upon the decisions of Mr O'Sullivan;
- (d) investigated and tested all material loans, and a selection of other loans, made by Provident to determine:
- (i) whether a substantial proportion of Provident's loan book was collectable; and
  - (ii) whether the provision (if any) made against each loan was adequate;

**Particulars**

As to the issue of selection or sampling of loans, see Auditing Standard AUS 514 [.22], [.25]-[.27], [.31], [.40], and [.41] and Appendix 1.

- (e) determined that loans of \$3,000,000 or greater, or alternatively approximately \$3,000,000 or greater, were material for the purpose of the investigation and testing referred to in subparagraph (d);
- (f) when investigating and testing each material and other selected loan:
  - (i) reviewed the books and records of Provident relevant to each loan;
  - (ii) determined whether Provident's processes for the granting or renewing of the loan had been followed;
  - (iii) analysed Provident's ledger accounts to determine whether the principal and interest payment obligations in respect of the loan were being met;
  - (iv) in the case of loans obtained for the purpose of development, determined whether the borrower was undertaking the works for which the loan was granted and whether loan advances to the borrower were being made in accordance with the loan agreement and were supported by evidence of work done;
  - (v) obtained the latest valuation of the property securing the loan, noting the valuation date and any terms or caveats of the valuation relevant to the recoverability of the loan and whether the valuation was prepared on an "as is" or on an "as if complete" basis; and
  - (vi) identified circumstances where Provident's Loan Policies and Procedures Manual had not been followed;
- (g) where investigation and testing of a particular loan disclosed that principal and interest repayments were not being made in accordance with the terms of the loan:
  - (i) determined the reasons for the delays;

- (ii) except in the case of minor delays, assessed what steps Provident had taken to either achieve future timely repayments or otherwise achieve recovery of principal and interest;
- (iii) where repayment was to be achieved by foreclosure and sale of a property securing the loan, obtained documents to support a confirmed sale, or if a sale was not underway, appropriate written evidence to substantiate the amount that might be recovered from the proposed sale;
- (iv) where repayment was to be achieved by refinancing, obtained all correspondence setting out the offer or offers to refinance, supported by a recent independent valuation of the property to be used as security for the refinancing; and
- (v) where a proposal other than foreclosure and sale or refinancing was proposed, analysed any assumptions or calculations involved in the proposal and, if necessary, obtained expert advice in relation to the proposal;
- (h) increased the number of loans selected for investigation and testing if the investigation and testing of the initial sample of loans demonstrated inaccuracies with Provident's determination of impairment or material departures from Provident's Loan Policy and Procedures Manual;
- (i) determined whether it had been given all information, explanation and assistance necessary for the conduct of the audit; and

**Particulars**

s. 307(b), Corporations Act

- (j) determined whether Provident had kept financial records sufficient to enable a financial report to be prepared and audited.

**Particulars**

s. 307(c), Corporations Act

17B In performing the tasks pleaded in the previous paragraph, a reasonably competent auditor in the position of PwC exercising reasonable care and skill

would have, in the course of conducting the audit of Provident's financial report for FY04 and in preparing its audit report:

- (a) Not used
- (b) Not used
- (c) in relation to the loan to Chrysalis Holdings Pty Ltd (**Chrysalis loan**), become aware that:
  - (i) the loan was due for repayment of principal and interest on 6 March 2004 but that the repayment had not been made on that day;

**Particulars**

Loan agreement (SMI.203.001.0124)

Account ledger (SMI.203.001.0001)

- (ii) the new offers of loan facilities issued by Provident to the borrower dated 8 July 2004 and 12 July 2004 did not constitute an "alternative financial arrangement" within the meaning of paragraph 6.4 of Provident's Loan Policy and Procedures Manual as there was no involvement of a third party financier and there was no evidence the borrower was better placed to meet the commitments under these offers than it was to meet the previous loan agreement;

**Particulars**

Letter of offer (SMI.203.001.0116)

Letter of offer (SMI.203.001.0110)

- (iii) the loan balance for the Chrysalis loan as at 30 June 2004 was approximately \$4,692,000;

**Particulars**

June 2004 loans (PwC working paper 3200-100)

Loan interest owing (PwC working papers 3210)

- (iv) the most recent valuation of the property securing the Chrysalis loan expressed a value based on a direct comparison basis of \$6,815,000;

**Particulars**

Valuation (SMI.203.001.0454)

- (d) by reason of the matters in subparagraph (c):
- (i) determined that the Chrysalis loan was impaired, or alternatively showed signs of impairment; and

**Particulars**

Competent professional practice, which was later reflected in AASB 139 at [59]

- (ii) taken into account the new offers of loan facilities issued by Provident to the borrower dated 8 July 2004 and 12 July 2004 as matters occurring after the balance sheet date;

**Particulars**

Auditing Standard AUS 706 at [.04] and [.09]

- (e) Not used
- (f) Not used
- (g) in relation to the loan to George Tahatos Holdings Pty Ltd (**Tahatos loan**), become aware that:
- (i) the Tahatos loan was due for repayment of principal on 30 September 2003 but that the repayment had not been made on that day;

**Particulars**

Variation of loan agreement (SMI.214.001.0037)

Interest statement (PRV.501.015.4349)

- (ii) the loan agreement provided for interest to be paid monthly in arrears;

**Particulars**

Variation of loan agreement (SMI.214.001.0037)

- (iii) in the period up to 30 June 2004 interest repayments were not always paid on their due date and the amounts of those repayments were less than the amount of interest accruing;

**Particulars**

Interest statement (PRV.501.015.4349)

- (iv) there was no evidence in the books and records of Provident relating to the loan as to what steps were being, or to be taken to remedy the default or obtain alternative financing arrangements;
- (v) the loan balance for the Tahatos loan as at 30 June 2004 was approximately \$7,545,000;

**Particulars**

June 2004 loans (PwC working paper 3200-100)

Loan interest owing (PwC working papers 3210)

- (vi) the most recent "as if complete" valuation of the property securing the Tahatos loan expressed a value of \$8,300,000;

**Particulars**

Valuation (PRV.501.008.5974)

- (vii) there was no current valuation of the property prepared on an "as is" basis;
- (h) by reason of the matters in subparagraph (g) determined that the Tahatos loan was impaired, or alternatively showed signs of impairment;

**Particulars**

Competent professional practice, which was later reflected in AASB 139 at [59]

- (i) Not used
- (j) Not used
- (k) Not used
- (l) Not used

17C Upon becoming aware of the matters and reaching the determinations pleaded in paragraph 17B, a reasonably competent auditor in the position of PwC

exercising reasonable care and skill would have, in the course of conducting the audit of Provident's financial report for FY04 and in preparing its audit report:

- (a) requested Provident to explain why, in relation to the Chrysalis, and Tahatos loans, foreclosure and sale had not taken place as prescribed in Provident's Loans Policies and Procedures Manual;
- (b) requested Provident to provide information about, or otherwise sought expert assistance to determine, the value of the properties securing the Chrysalis, and Tahatos loans calculated on an "as is" basis as at 30 June 2004; and

**Particulars**

Competent professional practice, which was later reflected in AASB 139 at [63]

Auditing Standard AUS 606 at [.07] and [.08]

- (c) requested Provident to explain why its management had concluded that renewing the facilities or allowing the facilities to continue was going to achieve full repayment of the Chrysalis and Tahatos loans.

17D Upon taking the steps in paragraph 17C, unless Provident provided sufficient appropriate audit evidence as to the recoverability of the Chrysalis and Tahatos loans, a reasonably competent auditor in the position of PwC exercising reasonable care and skill, in the course of conducting the audit of Provident's financial report for FY04 and in preparing its audit report, would have:

**Particulars of sufficient appropriate audit evidence**

Auditing Standard AUS 502 at [.07] – [.09]

As to the recoverability of loans, such evidence is a current written valuation by an independent qualified valuer estimating the value of the property securing each loan on an "as is" basis.

- (a) formed an opinion that he or she had not been given all information, explanation and assistance necessary for the conduct of the audit;

**Particulars**

s. 307(b), Corporations Act



- (b) formed an opinion that Provident had not kept financial records sufficient to enable a financial report to be prepared and audited;

**Particulars**

s. 307(c), Corporations Act

- (c) concluded that he or she had insufficient evidence to determine whether or not a provision was required against those loans;
- (d) formed an opinion that Provident's financial statements did not give a true and fair view of Provident's financial position and performance;

**Particulars**

ss. 297 and 308, Corporations Act

- (e) qualified its audit report of Provident's financial statements by a scope limitation, and either an "except for" opinion or expressing an inability to form an opinion;

**Particulars**

Auditing Standard AUS 702 at [.27], [.30], [.53] to [.56]

s. 308(3), Corporations Act

- (f) provided a report to Provident's management that the lack of evidence as to the recoverability of the Chrysalis, and Tahatos loans resulted in:
- (i) circumstances where the auditor concluded that there were risks that an item in the financial report might not be accurate;
  - (ii) accounting estimates based on management's judgment incorporating assumptions as to future events;
  - (iii) depending on the outcome of discussions between the auditor and management, disagreement between the auditor and management;

**Particulars**

Auditing Standard AUS 710 at [.15]

- (g) provided to the trustee for debenture holders, at that time IOOF Australia Trustees (NSW) Limited, a:
- (i) copy of the audit report of Provident's financial statements;

**Particulars**

s. 313(1), Corporations Act

- (ii) report pursuant to s 313(2) of the Corporations Act recording that:
  - (A) the records of Provident did not contain sufficient information to determine the amount that might be recovered in respect of loans in arrears including the Chrysalis and Tahatos loans;
  - (B) the auditor could not determine whether or to what extent a provision was required against the Chrysalis and Tahatos loans; and
  - (C) the auditor either intended to or had qualified his or her audit report accordingly.

18 In breach of the duty pleaded in 17 above, PwC failed to exercise reasonable care and skill in the course of conducting the audit of Provident's financial report for FY04 and in preparing its audit report because it:

- (a) relied upon systems and processes for the monitoring of loans arrears, identification of impaired loans, and the making of provisions against impaired loans, which depended upon the decisions of Mr O'Sullivan;
- (b) failed to review all material loans and a selection of other loans in order to test Provident's systems and processes;

**Particulars of material loans**

AET repeats paragraph 17A(e), and refers to the loans referred to in paragraph 17B and the loans to Burleigh Views Pty Ltd, Mihail Ovchinnikov, Neo East No 1 Pty Ltd, Silvera Pty Ltd, Yarraman Estate Pty Ltd, Delta Dawn Pty Ltd, The Empress Development Pty Ltd, Clucor Pty Ltd, 115 Constitution Road Pty Ltd, RL Double D Holdings Pty Ltd, The Estate of the Late JK Waterhouse, Owston Nominees No 2 Pty Ltd, Tipperary Developments Pty Ltd and G L & S E (Service Station) Pty Ltd

- (c) failed to conduct any review of Provident's systems and processes for the monitoring of loan arrears;
- (d) Not used;
- (e) failed to investigate and test in the manner pleaded in subparagraphs 17A(d)-(h) above for all material loans to determine whether:
  - (i) each material loan was impaired or demonstrated indicators of impairment;
  - (ii) each material loan was recoverable;
  - (iii) the provision (if any) made against each loan was adequate; and
  - (iv) a substantial proportion of Provident's loan book was recoverable;
- (f) failed to become aware of the matters and failed to make the determinations pleaded in paragraph 17B, apart from the matters pleaded in subparagraphs 17B(c)(iii), and (g)(v);
- (g) failed to take the steps pleaded in paragraph 17C;
- (h) failed to take the steps pleaded in paragraph 17D in circumstances where Provident:
  - (i) Not used
  - (ii) would have been unable to provide sufficient appropriate audit evidence as to the recoverability of the Chrysalis and Tahatos loans.

18AA In performing its duties under the trust deed and under s. 283DA of the Corporations Act, IOOF Australia Trustees (NSW) Limited and, upon appointment, AET relied on the audit of Provident's financial report for FY04 and the FY04 Audit Report.

18A If PwC had not breached its duty in the manner pleaded in paragraph 18:

- (a) PwC would have taken the steps pleaded in paragraph 17D, including the provision of information to IOOF Australia Trustees (NSW) Limited as pleaded in paragraph 17D(g);

- (b) updated valuations of the properties securing the loans referred to in paragraph 18(h)(ii) would have been obtained by Provident or PwC which would have disclosed that:
- (i) the "as is" value of the property securing the Chrysalis loan as at 30 June 2004 was approximately \$4,500,000;
  - (ii) in circumstances where the total amount owing under the Chrysalis loan as at 30 June 2004 was approximately \$4,692,000, Provident's financial statements should have but did not account for a loss of approximately \$192,000;
  - (iii) the "as is" value of the property securing the Tahatos loan as at 30 June 2004 was approximately \$6,815,000;
  - (iv) in circumstances where the total amount owing under the Tahatos loan as at 30 June 2004 was approximately \$7,545,000, Provident's financial statements should have but did not account for a loss of approximately \$730,000;
  - (v) by reason of the matters in subparagraphs (i)-(iv):
    - (A) the total net assets of Provident were approximately \$5,294,000 rather than approximately \$6,216,000 as disclosed in Provident's financial statements; and
    - (B) Provident's profit before tax for FY04 was approximately \$4,950,000 rather than approximately \$5,872,000 as disclosed in Provident's financial statements;
- (c) informed of the matters in subparagraphs (a) and (b) above, prior to AET becoming trustee for debenture holders, IOOF Australia Trustees (NSW) Ltd would have:
- (i) undertaken inquiries and investigations with each of PwC and Provident to determine whether:
    - (A) Provident was complying with the terms of the debentures, the Trust Deed and the Corporations Act; and

- (B) Provident was able to repay all debentures on issue as and when they fell due;
  - (ii) in the event that Provident was in breach of the terms of the debentures, the Trust Deed or the Corporations Act, taken all available steps to cause Provident to remedy any such breach;
  - (iii) appointed an investigating account to further investigate the matters above if it was not satisfied, based on its inquiries and investigations, that Provident:
    - (A) was not, or did not remain, in breach of the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) was able to repay all debentures on issue as and when they fell due;
  - (iv) taken legal advice and advice from the appointed investigating accountant as to the appropriate steps to address any matters identified by that investigating accountant;
  - (v) sought orders appointing a receiver to the assets of Provident and/or otherwise exercised its powers under Chapter 2L of the Corporations Act or the Trust Deed so as to require Provident to repay debenture holders and prevent it from borrowing further monies from the public;
  - (vi) further and in the alternative to subparagraph (v), IOOF Australia Trustees (NSW) Ltd would not have consented to being named in any further debenture prospectus issued by Provident and, as a result, either:
    - (A) Provident would not have issued further debentures; or
    - (B) IOOF Australia Trustees (NSW) Ltd would have been replaced as trustee for debenture holders by a trustee other than AET;
- (d) in the alternative to subparagraph (c), AET would have become aware of the matters in subparagraphs (a) and (b) prior to or upon becoming

trustee for debenture holders and, upon becoming trustee, AET would have taken such of the steps pleaded in subparagraph (c) which had not already been taken by IOOF Australia Trustees (NSW) Ltd;

- (e) if the steps pleaded in subparagraphs (c) or (d) had been taken, AET would not be liable to the Plaintiffs or Group Members (or would be liable in a lesser amount).

19 By reason of the matters pleaded in paragraph 18A:

- (a) PwC's breach of duty pleaded in paragraph 18 was a necessary condition of AET's loss;
- (b) it is appropriate that PwC's liability extend to AET's loss; and
- (c) by reason of subparagraphs (a) and (b), the breach of duty pleaded in paragraph 18 caused AET's loss.

Statutory damages for misleading and deceptive conduct

20 PwC's conduct in issuing the FY04 Audit Report was:

- (a) conduct in trade or commerce;
- (b) conduct in relation to financial products, namely, the debentures issued by Provident.

21 Not used

22 By issuing the FY04 Audit Report, PwC impliedly represented that:

- (a) it had conducted its audit in respect of Provident's financial report for FY04 with reasonable care and skill (**2004 Care and Skill Representation**);
- (b) it had reasonable grounds for its opinion that:
  - (i) it had been given all information, explanation and assistance necessary for the conduct of the audit (**2004 307(b) Representation**);
  - (ii) Provident had kept records sufficient to enable a financial report to be prepared and audited (**2004 307(c) Representation**); and
  - (iii) Provident's financial report for FY04 gave a true and fair view of the financial position of Provident as at 30 June 2004 and of

its performance for the year ended on that date (**2004 TAFV Representation**).

**Particulars**

The 2004 Care and Skill Representation, the 2004 307(b) Representation, the 2004 307(c) Representation and the 2004 TAFV Representation were made to Provident, its members and IOOF Australia Trustees (NSW) Ltd.

23 Contrary to the:

- (a) 2004 Care and Skill Representation, PwC had not conducted its audit in respect of Provident's financial report for FY04 with reasonable care and skill;

**Particulars**

AET relies on the matters pleaded in paragraph 18 above.

- (b) 2004 307(b) Representation, PwC did not have reasonable grounds for its opinion that it had been given all information, explanation and assistance necessary for the conduct of the audit;

**Particulars**

AET relies on the matters pleaded in subparagraphs 17B(c), and (g) and paragraph 17C above.

- (c) 2004 307(c) Representation, did not have reasonable grounds for its opinion that Provident had kept sufficient records to enable a financial report to be prepared and audited;

**Particulars**

AET relies on the matters pleaded in subparagraphs 17B(c), and (g) and paragraph 17C above.

- (d) 2004 TAFV Representation, PwC did not have reasonable grounds for its opinion that Provident's financial report for FY04 gave a true and fair view of the financial position of Provident as at 30 June 2004 and of its performance for the year ended on that date.

### Particulars

AET relies on the matters pleaded in paragraphs 18 and 18A(b) above.

- 24 By virtue of the matters pleaded in paragraphs 20 to 23 above, by issuing the FY04 Audit Report, PwC engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of:
- (a) s. 1041H of the Corporations Act;
  - (b) s. 12DA of the Australian Securities and Investments Commission Act 2001 (**ASIC Act**); and
  - (c) former s. 42 of the Fair Trading Act 1987 (NSW).
- 25 If PwC had not made each of the 2004 Care and Skill Representation, the 2004 307(b) Representation, the 2004 307(c) Representation and the 2004 TAFV Representation:
- (a) each of IOOF Australia Trustees (NSW) Ltd and AET would have become aware that:
    - (i) Provident's financial reports for the period ending 30 June 2004 as they were presented did not present a true and fair view of Provident's actual financial position and actual financial performance for the year ending 30 June 2004; or
    - (ii) alternatively, PwC was not of the opinion that Provident's financial reports for the period ending 30 June 2004 presented a true and fair view of Provident's actual financial position and financial performance for the year ending 30 June 2004;
    - (iii) alternatively, PwC was unable to form the opinion that Provident's financial reports for the period ending 30 June 2004 presented a true and fair view of Provident's actual financial position and financial performance for the year ended 30 June 2004;
  - (b) informed of the matters in subparagraph (a) above, prior to AET becoming trustee for debenture holders, IOOF Australia Trustees (NSW) Ltd would have:



- (i) undertaken inquiries and investigations with each of PwC and Provident to determine whether:
  - (A) Provident was complying with the terms of the debentures, the Trust Deed and the Corporations Act; and
  - (B) Provident was able to repay all debentures on issue as and when they fell due;
- (ii) in the event that Provident was in breach of the terms of the debentures, the Trust Deed or the Corporations Act, taken all available steps to cause Provident to remedy any such breach;
- (iii) appointed an investigating accountant to further investigate the matters above if it was not satisfied, based on its inquiries and investigations, that Provident:
  - (A) was not, or did not remain, in breach of the terms of the debentures, the Trust Deed and the Corporations Act; and
  - (B) was able to repay all debentures on issue as and when they fell due;
- (iv) taken legal advice and advice from the appointed investigating accountant as to the appropriate steps to address any matters identified by that investigating accountant;
- (v) sought orders appointing a receiver to the assets of Provident and/or otherwise exercised its powers under Chapter 2L of the Corporations Act or the Trust Deed so as to require Provident to repay debenture holders and prevent it from borrowing further monies from the public;
- (vi) further and in the alternative to subparagraph (v), IOOF Australia Trustees (NSW) Ltd would not have consented to being named in any further debenture prospectus issued by Provident and, as a result, either:
  - (A) Provident would not have issued further debentures;
  - or

- (B) IOOF Australia Trustees (NSW) Ltd would have been replaced as trustee for debenture holders by a trustee other than AET;
- (c) in the alternative to subparagraph (b), AET would have become aware of the matters in subparagraph (a) prior to or upon becoming trustee for debenture holders and, upon becoming trustee, AET would have taken such of the steps pleaded in subparagraph (b) which had not already been taken by IOOF Australia Trustees (NSW) Ltd; and
- (d) if the steps pleaded in subparagraph (b) or (c) had been taken, AET would not be liable to the Plaintiffs or Group Members (or would be liable in a lesser amount).
- 26 By reason of the matters pleaded in 25 above, AET has suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraph 24 above.
- 27 AET is entitled to recover that loss from PwC as damages under:
- (a) s. 1041I of the Corporations Act;
- (b) s. 12GM of the ASIC Act; and
- (c) former s. 68 of the *Fair Trading Act 1987* (NSW).
- 28 In the FY04 Audit Report, PwC represented that its audit services were of a particular standard, namely, that they accorded with the Australian Auditing Standards (**2004 Audit Standard Representation**).
- 29 The 2004 Audit Standard Representation was made in:
- (a) in trade or commerce; and
- (b) in connexion with the supply of PwC's audit services.
- 30 At the time PwC issued the FY04 Audit Report, the Australian Auditing Standards required:
- (a) that an audit be conducted with professional competence and due care; and
- (b) that an audit be conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

**Particulars**

Auditing Standards AUS 202 at [.04(d)] and [.08].

- 31 By reason of the matters pleaded at paragraphs 18 and 18A(a) and (b) above, the FY04 Audit Report:
- (a) had not been conducted with professional competence and due care; and
  - (b) had not been conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.
- 32 By virtue of the matters pleaded in the previous paragraph:
- (a) the 2004 Audit Standard Representation was false;
  - (b) the making of the 2004 Audit Representation was conduct engaged in by PwC that was misleading or deceptive or likely to mislead or deceive; and
  - (c) by issuing the FY04 Audit Report, PwC contravened former s. 44(b) of the Fair Trading Act 1987 (NSW).
- 32A If PwC had not made the 2004 Audit Standard Representation, IOOF Australia Trustees (NSW) Ltd and AET would have become aware of the matters and taken the steps detailed in paragraph 25 above.
- 33 By reason of the matters pleaded in the previous paragraph, AET has suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraph 32 above.
- 34 AET is entitled to recover that loss from PwC as damages under former s. 68 of the Fair Trading Act 1987 (NSW).

**Contribution**

- 35 At the time PwC audited Provident's financial report for FY04 and issued PwC's audit report, it was reasonably foreseeable by PwC:
- (a) that holders of debentures issued by Provident would rely on PwC to conduct its audit and prepare its audit report with reasonable care and skill;

- (b) that holders of debentures issued by Provident would rely on the trustee for debenture holders performing its duties under the trust deed and under s. 283DA of the Corporations Act;
- (c) that the trustee for debenture holders would rely on PwC to conduct its audit and prepare its audit report with reasonable care and skill for the reasons pleaded at paragraph 14 above;
- (d) that, if PwC failed to conduct its audit and prepare its audit report with reasonable care and skill, then the trustee for debenture holders might, in reliance on PwC's audit report, fail to take steps (such as appointing a receiver) to protect the interests of debenture holders;
- (e) that, were that to occur, debenture holders might suffer harm in the form of economic loss, including loss incurred by those debenture holders as a result of rolling over their debentures.

36 The risk of harm pleaded in paragraph 35 was not insignificant.

37 At the time PwC audited Provident's financial report for FY04 and issued PwC's audit report:

- (a) debenture holders had no practical ability to protect themselves from the risk of harm pleaded in paragraph 35;
- (b) debenture holders could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report;
- (c) debenture holders were dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 35;
- (d) debenture holders were vulnerable to harm resulting from a failure by PwC to exercise reasonable care in performing its audit and preparing its audit report.

38 By reason of the matters pleaded in paragraphs 8, 12, 13, 14 and 35 to 37 above, in auditing Provident's financial report for FY04 and in issuing PwC's audit report, PwC owed a duty to holders of debentures issued by Provident to take reasonable care:

- (a) in the conduct of its audit; and
- (b) in the preparation of its audit report,

to avoid the risk of harm pleaded in paragraph 35 above.

- 38A AET repeats paragraphs 17A-18 above.
- 39 By reason of the matters pleaded in the previous paragraph, and in breach of the duty pleaded in paragraph 38 above, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY04 and in the preparation of PwC's audit report.
- 39A AET repeats paragraphs 18AA and 18A.
- 39B If IOOF Australia Trustees (NSW) Ltd had taken the steps pleaded in paragraph 18A(c) above, or alternatively, AET had taken the steps pleaded in paragraph 18A18(d) above, those Group Members who (a) held debentures as at 29 September 2004 (when PwC issued the FY04 audit report) and (b) were debenture holders as at 29 June 2012 as a result of having rolled over those debentures, would not have rolled over their debentures and their debentures would instead have been repaid either in full or in an amount greater than that actually recovered by those Group Members.
- 40 By reason of the matters pleaded in paragraphs 39A and 39B:
- (a) PwC's breach of duty pleaded in paragraph 39 above was a necessary condition of the loss suffered by the subclass of Group Members pleaded in paragraph 39B;
  - (b) it is appropriate that PwC's liability extend to those Group Members' loss; and
  - (c) by reason of subparagraphs (a) and (b), the breach of duty pleaded in paragraph 18 caused those Group Members' loss.
- 40A The loss suffered by the Group Members pleaded in paragraph 40 above is the same loss in respect of which those Group Members seek to recover damages in this proceeding from AET.
- 40B AET repeats paragraphs 20-26 and paragraphs 29-33 above.
- 41 If IOOF Australia Trustees (NSW) Ltd had taken the steps pleaded in paragraph 25(b) above, or alternatively, AET had taken the steps pleaded in paragraph 25(b) above, then:
- (a) the Plaintiffs and Group Members would not have acquired the debentures they held as at 29 June 2012 and would not have suffered the loss claimed by them in this proceeding; and

- (b) further and in the alternative, those Group Members who held debentures as at 29 September 2004 would not have rolled over those debentures and would not have suffered the loss claimed by them in this proceeding.
- 41A By reason of the matters pleaded in paragraphs 40B and 41 above, the Plaintiff and Group Members have suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraphs 24 and 32 above.
- 42 The Plaintiffs and Group Members are entitled to recover that loss from PwC as damages under:
  - (a) s. 1041I of the Corporations Act;
  - (b) s. 12GM of the ASIC Act;
  - (c) former s. 68 of the Fair Trading Act 1987 (NSW).
- 42A Some but not all Group Members:
  - (a) were resident in Victoria as at 29 September 2004;
  - (b) have become residents of Victoria since 29 September 2004; and/or
  - (c) suffered the loss pleaded in paragraph 41A above in Victoria.
- 42B By reason of the matters pleaded in the previous paragraph the contraventions pleaded in paragraphs 26 and 33 above also constitute a contravention of the former s. 9 of the Fair Trading Act 1999 (Vic).
- 42C By reason of the matters pleaded in the previous paragraph, any Group Member falling within one or more of subparagraphs 42A(a)-(c) above, in addition to the relief pleaded in paragraph 42 above, are entitled to recover the loss pleaded in paragraph 42 above from PwC as damages under s. 159 of the Fair Trading Act 1999 (Vic).
- 43 If, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then:
  - (a) AET, upon becoming trustee for debenture holders, owed debenture holders a duty to exercise reasonable care and skill to:
    - (i) ascertain whether the property of Provident that was or should have been available (whether by way of security or otherwise)

would be sufficient to repay debenture holders when the debentures fell due; and

- (ii) ascertain whether the borrower or any guarantor has committed any breach of the terms of the debentures, the provisions of the Trust Deed or Chapter 2L of the Corporations Act;
- (b) for the reasons pleaded in the Statement of Claim alleging that AET breached its statutory duties under s 283DA of the Corporations Act, AET also breached its duty of care pleaded in the previous subparagraph;
- (c) for the reasons pleaded in the Statement of Claim alleging that the Plaintiffs and Group Members suffered loss and damage because AET contravened s. 283DA of the Corporations Act, the Plaintiffs and Group Members suffered loss by reason of the breach of duty pleaded in the previous subparagraph;
- (d) in the premises, AET's liability to the Plaintiff and Group Members could have been established in tort.

44 By reason of the matters pleaded in paragraphs 35 to 43 above, if, which is denied, AET is liable to the Plaintiffs and Group Members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to:

- (a) s. 5(1)(c) of the Law Reform (Miscellaneous Provisions) Act 1946 (NSW); and
- (b) s. 23B of the Wrongs Act 1958 (Vic.).

45 Further or alternatively, if, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then its liabilities are coordinate with those of PwC pleaded above.

46 By reason of the matters pleaded in paragraphs 35 to 43 and 45 above, if, which is denied, AET is liable to the Plaintiffs and Group Members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to the doctrine of equitable contribution.

**FY05 audit**Damages in negligence at common law

- 47 On 28 September 2005, Provident issued its financial report for FY05.
- 48 Provident's financial report for FY05 stated:
- (a) that Provident's assets, as at 30 June 2005, included loans and advances with a recoverable value of \$212,597,297;
  - (b) that, as at 30 June 2005, the face value of loans held by Provident that had not operated within their key terms for at least 90 days (**2005 Past Due Loans**) was \$54,246,551;
  - (c) that no specific provision had been made for the 2005 Past Due Loans as at 30 June 2005 because 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 the security held was adequate to cover the 2005 Past Due Loans;
  - (d) that Provident's total assets as at 30 June 2005 were \$244,685,998;
  - (e) that, as at 30 June 2005, Provident had on issue debentures with a principal of \$221,469,015;
  - (f) that Provident's net assets as at 30 June 2005 were \$9,049,596.
- 49 After auditing Provident's financial report for FY05, PwC issued an audit report (**FY05 Audit Report**) in which PwC expressed the opinion that Provident's financial report for FY05:
- (a) gave a true and fair view of the financial position of Provident as at 30 June 2005 and of its performance for the year ended on that date; and
  - (b) was presented in accordance with, amongst other things, the Corporations Act and Australian Accounting Standards.
- 50 It was a term of the contract (between Provident and PwC) under which PwC was retained to audit Provident's financial report for FY05 that PwC would exercise reasonable care and skill in auditing the financial report and issuing its audit report.

**Particulars**

The term was implied by law.



- 51 At the time PwC audited Provident's financial report for FY05 and issued the FY05 Audit Report, PwC knew or ought reasonably to have known:
- (a) that Provident had on issue debentures the subject of Chapter 2L of the Corporations Act;
  - (b) that AET was the trustee for the holders of those debentures and owed the duties set out in s. 283DA of the Corporations Act.
- 52 At the time PwC audited Provident's financial report for FY05 and issued the FY05 Audit Report, it was reasonably foreseeable by PwC:
- (a) that AET would rely upon PwC having conducted its audit, and prepared its audit report, with reasonable care and skill;
  - (b) that AET would consider, and rely upon, any audit report provided by PwC in respect of Provident's financial report for FY05;

**Particulars**

Clause 7.4.2 of the Trust Deed

- (c) that AET would rely upon PwC's audit report in discharging its duties under s. 283DA of the Corporations Act, the Trust Deed and at law;
- (d) that AET would rely upon any report issued by PwC pursuant to s. 313(2) of the Corporations Act in the event that PwC, in the course of conducting its audit, became aware of any matters that were in its opinion:
  - (i) likely to be prejudicial to the interests of debenture holders; and
  - (ii) relevant to the exercise of the powers of the trustee for debenture holders, or the performance of the trustee's duties under the Corporations Act or the Trust Deed;
- (e) 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 to the debenture trustee pursuant to s. 313(2) of the Corporations Act;
- (f) that AET, being uninformed or unaware of matters that ought to have been reported to it under s. 313(2) of the Corporations Act would affect

its assessment of what powers it ought exercise, or what steps it ought take, in discharging its role as trustee;

- (g) that a failure by PwC to exercise reasonable care and skill in conducting its audit and preparing its audit report might result in AET being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;
- (h) that a failure by PwC to exercise reasonable care and skill in opining whether or not Provident's financial report for FY05 presented a true and fair view of Provident's financial position and performance might result in AET being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;
- (i) that the failures pleaded above might cause AET to fail to exercise the powers available to it, to discharge its duties under s. 283DA, and result in its being liable to debenture holders under s. 283F of the Corporations Act; and
- (j) that, were that to occur, AET would suffer harm in the form of economic loss.

53 The risk of harm pleaded in paragraph 52 was not insignificant.

54 At the time PwC audited Provident's financial report for FY05 and issued the FY05 Audit Report (and at all material times up to the issue of PwC's audit report for FY06):

- (a) it was not the general practice of trustees for debenture holders to routinely conduct or commission an audit (or an investigation in the nature of an audit) of debenture issuers on an annual basis;
- (b) for a trustee for debenture holders to conduct or commission an audit (or an investigation in the nature of an audit) in circumstances where PwC was already performing an audit would involve unreasonable duplication of effort and unjustifiable expense;

- (c) by reason of the matters in subparagraphs (a)-(b), absent some special circumstances known to the trustee justifying departure from ordinary practice, it was not reasonably practicable for a trustee for debenture holders to conduct or commission an audit (or an investigation in the nature of an audit);
- (d) AET had no practical ability to protect itself from the risk of harm pleaded in paragraph 52;
- (e) AET could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report;
- (f) AET was dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 52; and
- (g) AET was vulnerable to harm resulting from a failure by PwC to exercise reasonable care in performing its audit and preparing its audit report.

55 By reason of the matters pleaded in paragraphs 8 and 50 to 54 above, in auditing Provident's financial report for FY05 and in issuing the FY05 Audit Report, PwC owed a duty to AET to take reasonable care:

- (a) in the conduct of its audit; and
- (b) in the preparation of its audit report,

to avoid the risk of harm pleaded in paragraph 52 above.

56 AET repeats paragraph 17A above, save that:

- (a) the reference in the chapeau to FY04 should be read as a reference to FY05;
- (b) subparagraph 17A(b)(iii) should be read as if it pleaded that the reported net assets of Provident as at 30 June 2005 were \$9,049,596; and
- (c) subparagraph 17A(b)(iv) should be read as if it pleaded that the total amount of loans made by Provident as at 30 June 2005 was \$213,680,514, of which \$54,246,551 were reported as past due.

56A In performing the tasks pleaded in the previous paragraph, a reasonably competent auditor in the position of PwC exercising reasonable care and skill

would have, in the course of conducting the audit of Provident's financial report for FY05 and in preparing its audit report:

(a) in relation to the loan to Burleigh Views Pty Ltd (**Burleigh Views loan**), become aware that:

(i) under the terms of the loan agreement dated 24 April 2004, interest was to be paid monthly but provided the development progressed satisfactorily, interest up to \$375,000 could be capitalised;

**Particulars**

Deed of variation (PCL.501.004.0045)

(ii) on 11 October 2004, the loan agreement was varied to defer repayment to 31 December 2004;

**Particulars**

Facsimile (SMI.202.001.0149)

(iii) neither principal nor interest was repaid on 31 December 2004;

**Particulars**

Account ledger (SMI.202.001.0001)

(iv) interest continued not to be paid and loan advances continued to be made after 31 December 2004 without any evidence that the loan had been further renewed;

**Particulars**

Account ledger (SMI.202.001.0001)

(v) correspondence in the books and records of Provident relating to the loan indicated that building work continued to be done on the property securing the Burleigh Views loan; and

**Particulars**

By way of example, Facsimile from Simon Hanau & Associates Pty Ltd to Provident dated 22 December 2004 (SMI.202.001.0450)

- (vi) the only "as is" valuation of the property securing the loan in the year to 30 June 2005 was the valuation of 23 December 2003 giving an "as is" value of \$5,900,000;

**Particulars**

Valuation report (PCL.250.001.0095)

- (vii) as at 30 June 2005, the loan balance including interest was approximately \$10,966,000;

**Particulars**

Loan interest receivable (PwC working paper 3210(A))

Listing of loan advances (PwC working paper 3200(A))

- (b) by reason of the matters in subparagraph (a), determined that the Burleigh Views loan was impaired, or alternatively showed signs of impairment;

**Particulars**

Competent professional practice, which was later reflected in AASB 139 at [59]

- (c) in relation to the Chrysalis loan, become aware that:

- (i) the Chrysalis loan had been due for repayment of principal and interest on 6 March 2004;

**Particulars**

Loan agreement (SMI.203.001.0124)

- (ii) neither interest nor principal had been repaid on 6 March 2004;

**Particulars**

Account ledger (SMI.203.001.0001)

- (iii) a replacement agreement involving the advance of \$5,020,000 was entered between Provident and the borrower on 20 October 2004;

**Particulars**

Deed of variation and collateralisation  
(SMI.203.001.0102)

- (iv) the terms of the replacement agreement incorporated the terms of the previous agreement, save that there was no date specified for the repayment or principal;
- (v) since entry into the replacement agreement, small amounts of principal had been repaid and irregular payments of interest had been made, although these payments were less than the total amount of interest accruing; and

**Particulars**

Account ledger (SMI.203.001.0001)

- (vi) the books and records of Provident relating to the loan contained a valuation dated 10 October 2004 indicating that the property securing the loan had an "as is" value of \$6,815,000 and a valuation dated 17 August 2005 indicating the property securing the loan had an "as is" value of \$6,850,000;

**Particulars**

SMI.203.001.0454 and PRV.501.030.0159

- (d) by reason of the matters in subparagraph (c) determined that the Chrysalis loan was impaired, or alternatively showed signs of impairment;

**Particulars**

Competent professional practice, which was later reflected in AASB 139 at [59]

- (e) Not used
- (f) Not used
- (g) in relation to the Tahatos loan, become aware that:
  - (i) it was likely that the principal had not been repaid on the date it was due, 30 September 2003;

**Particulars**

Variation of Loan Agreement (SMI.214.001.0037)

Interest statement (PRV.501.015.4349)

- (ii) it was likely that interest had not been paid on the dates due;
- (iii) there was no "as is" valuation of the property securing the loan as at 30 June 2005;
- (iv) the loan balance for the Tahatos loan as at 30 June 2005 was approximately \$8,144,000; and

**Particulars**

Loan interest receivable (PwC working paper 3210(A))

Listing of loan advances (PwC working paper 3200(A))

- (v) the most recent "as if complete" valuation of the property securing the loan expressed a value of \$8,300,000;

**Particulars**

Valuation Report (PRV.501.008.5974)

- (h) by reason of the matters in subparagraph (g) determined that the Tahatos loan was impaired, or alternatively showed signs of impairment;

**Particulars**

Competent professional practice, which was later reflected in AASB 139 at [59]

- (i) Not used
- (j) Not used
- (k) Not used
- (l) Not used
- (m) in relation to the loan to Yarraman Estate Pty Ltd (**Yarraman loan**), become aware that interest was in arrears in relation to this loan;

**Particulars**

Loan Interest Receivable (PwC Working Papers 3210)

- (n) by reason of the matter in subparagraph (m) determined that the Yarraman loan was impaired, or alternatively showed signs of impairment;

**Particulars**

Competent professional practice, which was later reflected in AASB 139 at [59]

- (o) in relation to the loan to Delta Dawn Pty Ltd (**Delta Dawn loan**), become aware that interest was in arrears in relation to this loan;

**Particulars**

Loan interest receivable (PwC working paper 3210(A))

- (p) by reason of the matter in subparagraph (o), determined that the Delta Dawn loan was impaired, or alternatively showed signs of impairment;

**Particulars**

Competent professional practice, which was later reflected in AASB 139 at [59]

- (q) Not used  
 (r) Not used  
 (s) Not used  
 (t) Not used  
 (u) Not used  
 (v) Not used

56B Upon becoming aware of the matters and reaching the determinations pleaded in paragraph 56A, a reasonably competent auditor in the position of PwC exercising reasonable care and skill would have, in the course of conducting the audit of Provident's financial report for FY05 and in preparing its audit report:

- (a) requested Provident to explain why, in relation to the Burleigh Views, Chrysalis, Tahatos, Yarraman and Delta Dawn loans, foreclosure and sale had not taken place as prescribed in Provident's Loans Policies and Procedures Manual;



- (b) requested Provident to provide information about the value of properties securing the Burleigh Views, Chrysalis, Tahatos, Yarraman and Delta Dawn loans calculated on an “as is” basis as at 30 June 2005; and

**Particulars**

Competent professional practice, which was later reflected in AASB 139 at [63]

Auditing Standard AUS 606 at [.07] and [.08]

- (c) requested Provident to explain why its management had concluded that renewing the facilities or allowing the facilities to continue was going to achieve full repayment of the Burleigh Views, Chrysalis, Tahatos, , Yarraman and Delta Dawn loans.

56C Upon taking the steps in 56B, unless Provident provided sufficient appropriate audit evidence as to the recoverability of the Burleigh Views, Chrysalis, Tahatos, Yarraman, and Delta Dawn loans, a reasonably competent auditor in the position of PwC exercising reasonable care and skill would have, in the course of conducting the audit of Provident’s financial report for FY05 and in preparing its audit report:

**Particulars of sufficient appropriate audit evidence**

Auditing Standard AUS 502 at [.07] – [.09]

As to the recoverability of loans, such evidence is a current written valuation by an independent qualified valuer estimating the value of the property securing each loan on an “as is” basis.

- (a) formed an opinion that he or she had not been given all information, explanation and assistance necessary for the conduct of the audit;

**Particulars**

s. 307(b), Corporations Act

- (b) formed an opinion that Provident had not kept financial records sufficient to enable a financial report to be prepared and audited;

**Particulars**

s. 307(c), Corporations Act

- (c) concluded that he or she had insufficient evidence to determine whether or not a provision was required against those loans;
- (d) formed an opinion that Provident's financial statements did not give a true and fair view of Provident's financial position and performance;

**Particulars**

ss. 297 and 308, Corporations Act

- (e) modified its audit report of Provident's financial statements by a scope limitation, and either an "except for" opinion or expressing an inability to form an opinion;

**Particulars**

Auditing Standard AUS 702 at [.27], [.30], [.53] to [.56]

s. 308(3), Corporations Act

- (f) provided a report to Provident's management that the lack of evidence as to the recoverability of the Burleigh Views, Chrysalis, Tahatos, Yarraman and Delta Dawn loans resulted in:

- (i) circumstances where the auditor concluded that there were risks that an item in the financial report might not be accurate;
- (ii) accounting estimates based on management's judgment incorporating assumptions as to future events; and
- (iii) depending on the outcome of discussions between the auditor and management, disagreement between the auditor and management;

**Particulars**

Auditing Standard AUS 710 at [.15]

- (g) provided to AET, a:
  - (i) copy of the audit report of Provident's financial statements;
 

**Particulars**

s 313(1), Corporations Act
  - (ii) report pursuant to s 313(2) of the Corporations Act recording that:

- (A) the records of Provident did not contain sufficient information to determine the amount that might be recovered in respect of loans in arrears including the Burleigh Views, Chrysalis, Tahatos, Yarraman and Delta Dawn loans;
- (B) the auditor could not determine whether or to what extent a provision was required against the Burleigh Views, Chrysalis, Tahatos, Yarraman and Delta Dawn loans; and
- (C) the auditor either intended to or had modified his or her audit report accordingly.

57 In breach of the duty pleaded in paragraph 55 above, PwC failed to exercise reasonable care and skill in the course of conducting the audit of Provident's financial report for FY05 and in preparing the FY05 Audit Report because it:

- (a) relied upon systems and processes for the monitoring of loan arrears, identification of impaired loans, and the making of provisions against impaired loans, which depended upon the decisions of Mr O'Sullivan;
- (b) failed to review all material loans and a selection of other loans in order to test Provident's systems and processes;

**Particulars of material loans**

AET repeats paragraph 17A(e), and refers to the loans referred to in paragraph 56A and the loans to Mihail Ovchinnikov, Neo East No 1 Pty Ltd, Alex G Grivas Pty Ltd, Tembelli Pty Ltd, Silvera Pty Ltd, MMT Investment Services Pty Ltd, AJV Constructions Pty Ltd, RP Developments (Aust) Pty Ltd, Clucor Pty Ltd, M & C Pty Ltd, Owston Nominees No 2 Pty Ltd, Tipperary Developments Pty Ltd, HTT Huntley Heritage Pty Ltd, Scorpion Securities Pty Ltd and G L & S E (Service Station) Pty Ltd

- (c) failed to conduct any review of Provident's systems and processes for the monitoring of loans arrears;
- (d) Not used;

- (e) failed to investigate and test in the manner pleaded in subparagraphs 17A(d)-(h) above for all material loans to determine whether:
  - (i) each material loan was impaired or demonstrated indicators of impairment;
  - (ii) each material loan was recoverable;
  - (iii) the provision (if any) made against each loan was adequate; and
  - (iv) a substantial proportion of Provident's loan book was recoverable
- (f) failed to become aware of the matters and failed to make the determinations pleaded in 56A, apart from the matters pleaded in subparagraphs 56A(a)(vii), (g)(iv), (m) and (o);
- (g) failed to take the steps pleaded in 56B;
- (h) failed to take the steps pleaded in 56C in circumstances where Provident:
  - (i) Not used
  - (ii) would have been unable to provide sufficient appropriate audit evidence as to the recoverability of the Burleigh Views, Chrysalis, Tahatos, Yarraman and Delta Dawn loans.

57AA In performing its duties under the trust deed and under s. 283DA of the Corporations Act; AET relied on the audit of Provident's financial report for FY05 and the FY05 Audit Report.

57A If PwC had not breached its duty in the manner pleaded in paragraph 57:

- (a) PwC would have taken the steps pleaded in paragraph 56C, including the provision of information to AET as pleaded in paragraph 56C(g);
- (b) updated valuations of the properties securing the loans referred to in paragraph 57(h)(ii) would have been obtained by Provident or PwC which would have disclosed that:
  - (i) the "as is" value of the property securing the Burleigh Views loan as at 30 June 2005 was approximately \$5,525,000;

- (ii) in circumstances where the total amount owing under the Burleigh Views loan as at 30 June 2005 was approximately \$10,398,000 Provident's financial statements should have but did not account for a loss of approximately \$4,873,000;
- (iii) the "as is" value of the property securing the Chrysalis loan as at 30 June 2005 was approximately \$3,400,000;
- (iv) in circumstances where the total amount owing under the Chrysalis loan as at 30 June 2005 was approximately \$4,746,000, Provident's financial statements should have but did not account for a loss of approximately \$1,346,000;
- (v) the "as is" value of the property securing the Tahatos loan as at 30 June 2005 was approximately \$6,815,000;
- (vi) in circumstances where the total amount owing under the Tahatos loan as at 30 June 2005 was approximately \$8,144,000, Provident's financial statements should have but did not account for a loss of approximately \$1,329,000;
- (vii) the "as is" value of the property securing the Yarraman and Delta Dawn loans as at 30 June 2005 was approximately \$7,550,000;
- (viii) in circumstances where the total amount owing under the Yarraman and Delta Dawn loans as at 30 June 2005 was approximately \$10,575,000, Provident's financial statements should have but did not account for a loss of approximately \$3,025,000;
- (ix) by reason of the matters in subparagraphs (i) to (viii):
  - (A) Provident had a net asset deficiency of approximately \$1,523,000 rather than net assets of approximately \$9,050,000 as disclosed in Provident's financial statements;
  - (B) Provident made a loss before tax for FY05 of approximately \$3,311,000, rather than a profit before tax of approximately \$7,262,000 as disclosed in Provident's financial statements;

- (c) informed of the matters in subparagraphs (a) and (b) above, AET would have:
- (i) undertaken inquiries and investigations with each of PwC and Provident to determine whether:
    - (A) Provident was complying with the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) Provident was able to repay all debentures on issue as and when they fell due;
  - (ii) in the event that Provident was in breach of the terms of the debentures, the Trust Deed or the Corporations Act, taken all available steps to cause Provident to remedy any such breach;
  - (iii) appointed an investigating accountant to further investigate the matters above if it was not satisfied, based on its inquiries and investigations, that Provident:
    - (A) was not, or did not remain, in breach of the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) was able to repay all debentures on issue as and when they fell due;
  - (iv) taken legal advice and advice from the appointed investigating accountant as to the appropriate steps to address any matters identified by that investigating accountant;
  - (v) sought orders appointing a receiver to the assets of Provident and/or otherwise exercised its powers under Chapter 2L of the Corporations Act or the Trust Deed so as to require Provident to repay debenture holders and prevent it from borrowing further monies from the public; and
  - (vi) further and in the alternative to subparagraph (v), AET would not have consented to being named in any further debenture prospectus issued by Provident and, as a result, either:

- (A) Provident would not have issued further debentures;  
or
- (B) AET would have been replaced as trustee for  
debenture holders; and
- (d) if the steps pleaded in subparagraph (c) had been taken, AET would  
not be liable to the Plaintiffs or Group Members (or would be liable in a  
lesser amount).

57B By reason of the matters pleaded in paragraph 57A:

- (a) PwC's breach of duty pleaded in paragraph 57 was a necessary  
condition of AET loss;
- (b) it is appropriate that PwC's liability extend to AET's loss; and
- (c) by reason of (a) and (b), the breach of duty pleaded in 57 caused  
AET's loss.

Statutory damages for misleading and deceptive conduct

58 PwC's conduct in issuing the FY05 Audit Report was:

- (a) conduct in trade or commerce; and
- (b) conduct in relation to financial products, namely, the debentures issued  
by Provident.

59 The FY05 Audit Report was published and made available on the website of  
Provident.

59A PwC was aware that Provident intended to publish and make available on the  
website of Provident the FY05 Audit Report.

**Particulars**

PwC's procedures required that, where the PwC's client  
intended to publish PwC's audit report on the client's  
website, appropriate wording be included in the  
management representation letter (PwC working paper  
8700)

Provident's management representation letter dated 28  
September 2005 referred to the presentation of the  
FY05 Audit on Provident's website (PWC.101.006.0044)

- 59B By reason of the matters pleaded in paragraph 59, PwC's conduct pleaded in paragraph 60 involved the use of telegraphic or telephonic services.
- 60 By issuing the FY05 Audit Report, and by making the FY05 Audit Report available on the website of Provident, PwC impliedly represented that:
- (a) it had conducted its audit in respect of Provident's financial report for FY05 with reasonable care and skills (**2005 Care and Skill Representation**);
  - (b) it had reasonable grounds for its opinion that:
    - (i) it had been given all information, explanation and assistance necessary for the conduct of the audit (**2005 307(b) Representation**);
    - (ii) Provident had kept records sufficient to enable a financial report to be prepared and audited (**2005 307(c) Representation**); and
    - (iii) Provident's financial report for FY05 gave a true and fair view of the financial position of Provident as at 30 June 2005 and of its performance for the year ended on that date (**2005 TAFV Representation**).

**Particulars**

The 2005 Care and Skill Representation, the 2005 307(b) Representation, the 2005 307(c) Representation and the 2005 TAFV Representation were made to Provident, its members and AET.

- 61 Contrary to the:
- (a) 2005 Care and Skill Representation, PwC had not conducted its audit in respect of Provident's financial report for FY05 with reasonable care and skill;

**Particulars**

AET relies on the matters pleaded in paragraph 57 above.



- (b) 2005 307(b) Representation, PwC did not have reasonable grounds for its opinion that it had not been given all information, explanation and assistance necessary for the conduct of the audit;

**Particulars**

AET relies on the matters pleaded in subparagraphs 56A(a), (c), and (g) and paragraph 56B above.

- (c) 2005 307(c) Representation, PwC did not have reasonable grounds for its opinion that it Provident had kept sufficient records to enable a financial report to be prepared and audited; and

**Particulars**

AET relies on the matters pleaded in subparagraphs 56A(a), (c), and (g) and paragraph 56B above.

- (d) 2005 TAFV Representation, PwC did not have reasonable grounds for its opinion that Provident's financial report for FY05 gave a true and fair view of the financial position of Provident as at 30 June 2005 and of its performance for the year ended on that date.

**Particulars**

AET relies on the matters pleaded in paragraphs 57 and 57A(b) above

62 Not used.

63 By virtue of the matters pleaded in paragraphs 58 to 61 above, by issuing the FY05 Audit Report, PwC engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of:

- (a) former s. 52 of the former Trade Practices Act 1974;
- (b) s. 1041H of the Corporations Act;
- (c) s. 12DA of the ASIC Act 2001; and
- (d) former s. 42 of the Fair Trading Act 1987 (NSW).

63A If PwC had not made each of the 2005 Care and Skill Representation, the 2005 307(b) Representation, the 2005 307(c) Representation and the 2005 TAFV Representation, AET would have:

- (a) become aware that:

- (i) Provident's financial reports for the period ending 30 June 2005 as they were presented did not present a true and fair view of Provident's actual financial position and actual financial performance for the year ending 30 June 2005;
  - (ii) alternatively, PwC was not of the opinion that Provident's financial reports for the period ending 30 June 2005 presented a true and fair view of Provident's actual financial position and financial performance for the year ending 30 June 2005;
  - (iii) alternatively, PwC was unable to form the opinion that Provident's financial reports for the period ending 30 June 2005 presented a true and fair view of Provident's actual financial position and financial performance for the year ended 30 June 2005;
- (b) informed of the matters in subparagraph (a) above, AET would have:
- (i) undertaken inquiries and investigations with each of PwC and Provident to determine whether:
    - (A) Provident was complying with the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) Provident was able to repay all debentures on issue as and when they fell due;
  - (ii) in the event that Provident was in breach of the terms of the debentures, the Trust Deed or the Corporations Act, taken all available steps to cause Provident to remedy any such breach;
  - (iii) appointed an investigating accountant to further investigate the matters above if it was not satisfied, based on its inquiries and investigations, that Provident:
    - (A) was not, or did not remain, in breach of the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) was able to repay all debentures on issue as and when they fell due;

- (iv) taken legal advice and advice from the appointed investigating accountant as to the appropriate steps to address any matters identified by that investigating accountant;
- (v) sought orders appointing a receiver to the assets of Provident and/or otherwise exercised its powers under Chapter 2L of the Corporations Act or the Trust Deed so as to require Provident to repay debenture holders and prevent it from borrowing further monies from the public; and
- (vi) further and in the alternative to subparagraph (v), AET would not have consented to being named in any further debenture prospectus issued by Provident and, as a result, either:
  - (A) Provident would not have issued further debentures; or
  - (B) AET would have been replaced as trustee for debenture holders; and
- (c) if the steps pleaded in subparagraph (b) had been taken, AET would not be liable to the Plaintiffs or Group Members (or would be liable in a lesser amount).

64 By reason of the matters pleaded in 63A above, AET has suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraph 63 above.

65 AET is entitled to recover that loss from PwC as damages under:

- (a) s. 82 of the former Trade Practices Act;
- (b) s. 1041I of the Corporations Act;
- (c) s. 12GM of the ASIC Act; and
- (d) former s. 68 of the Fair Trading Act 1987 (NSW).

66 In the FY05 Audit Report, PwC represented that its audit services were of a particular standard, namely, that they accorded with the Australian Auditing Standards (**2005 Audit Standard Representation**).

67 The 2005 Audit Standard Representation was made:

- (a) in trade or commerce; and
- (b) in connexion with the supply of PwC's audit services.

- 68 At the time PwC issued the FY05 Audit Report, the Australian Auditing Standards required:
- (a) that an audit be conducted with professional competence and due care; and
  - (b) that an audit be conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

**Particulars**

Auditing Standards AUS 202 at [.04(d)] and [.08].

- 69 By reason of the matters pleaded in paragraphs 57 and 57A above, the FY05 Audit Report:
- (a) had not been conducted with professional competence and due care; and
  - (b) had not been conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.
- 70 By virtue of the matters pleaded in the previous paragraph:
- (a) the 2005 Audit Standard Representation was false;
  - (b) the making of the 2005 Audit Standard Representation was conduct engaged in by PwC that was misleading or deceptive or likely to mislead or deceive; and
  - (c) by issuing the FY05 Audit Report, PwC contravened:
    - (i) former s. 53(aa) of the former *Trade Practices Act* 1974; and
    - (ii) former s. 44(b) of the *Fair Trading Act* 1987 (NSW).

- 70A AET repeats the matters in paragraph 63A save that the references to each of the 2005 Care and Skill Representation, the 2005 307(b) Representation, the 2005 307(c) Representation and the 2005 Opinion Representation in the chapeau should be read as a reference to the 2005 Audit Standard Representation.
- 71 By reason of the matters pleaded in the previous paragraph, AET has suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraph 70 above.
- 72 AET is entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former Trade Practices Act; and
  - (b) former s. 68 of the Fair Trading Act 1987 (NSW).

#### Contribution

- 73 At the time PwC audited Provident's financial report for FY05 and issued PwC's audit report, it was reasonably foreseeable by PwC:
- (a) that holders of debentures issued by Provident would rely on PwC to conduct its audit and prepare its audit report with reasonable care and skill;
  - (b) that holders of debentures issued by Provident would rely on AET performing its duties under the Trust Deed and under s. 283DA of the Corporations Act;
  - (c) that AET would rely on PwC to conduct its audit and prepare its audit report with reasonable care and skill for the reasons pleaded at paragraph 52 above;
  - (d) that, if PwC failed to conduct its audit and prepare its audit report with reasonable care and skill, then the trustee for debenture holders might, in reliance on PwC's audit report, fail to take steps (such as appointing a receiver) to protect the interests of debenture holders; and
  - (e) that, were that to occur, debenture holders might suffer harm in the form of economic loss, including loss incurred by those debenture holders as a result of rolling over their debentures.
- 74 The risk of harm pleaded in paragraph 73 was not insignificant.

- 75 At the time PwC audited Provident's financial report for FY05 and issued PwC's audit report:
- (a) debenture holders had no practical ability to protect themselves from the risk of harm pleaded in paragraph 73;
  - (b) debenture holders could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report;
  - (c) debenture holders were dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 73; and
  - (d) debenture holders were vulnerable to harm resulting from a failure by PwC to exercise reasonable care in the performing its audit and preparing its audit report.
- 76 By reason of the matters pleaded in paragraphs 8, 50, 51 and 73 to 75 above, in auditing Provident's financial report for FY05 and in issuing PwC's audit report, PwC owed a duty to holders of debentures issued by Provident to take reasonable care:
- (a) in the conduct of its audit; and
  - (b) in the preparation of its audit report,
- to avoid the risk of harm pleaded in paragraph 73 above.
- 76A AET repeats paragraphs 56-57 above.
- 77 By reason of the matters pleaded in the previous paragraph, and in breach of the duty pleaded in paragraph 76 above, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY05 and in the preparation of PwC's audit report.
- 77A AET repeats paragraphs 57AA and 57A.
- 77B If AET had taken the steps pleaded in paragraph 57A(c) above those Group Members who (a) held debentures as at 28 September 2005 (when PwC issued the FY05 Audit Report) and (b) were debenture holders as at 29 June 2012 as a result of having rolled over those debentures, would not have rolled over their debentures and their debentures would instead have been repaid either in full or in an amount greater than that actually recovered by those Group Members.
- 78 By reason of the matters pleaded in paragraphs 77A and 77B above:

- (a) PwC's breach of duty pleaded in paragraph 77 above was a necessary condition of the loss suffered by the subclass of Group Members pleaded in paragraph 77B;
  - (b) it is appropriate that PwC's liability extend to those Group Members' loss; and
  - (c) by reason of paragraphs (a) and (b), the breach of duty pleaded in 57 caused those Group Members' loss.
- 78A The loss suffered by the Group Members pleaded in paragraph 78 above is the same loss in respect of which those Group Members seek to recover damages in this proceeding from AET.
- 78B AET repeats paragraphs 58 to 64 and 66 to 71 above.
- 79 If AET had taken the steps pleaded had taken the steps pleaded in paragraph 63A(b) above then:
- (a) the Plaintiffs and Group Members would not have acquired the debentures they held as at 29 June 2012 and would not have suffered the loss claimed by them in this proceeding; and
  - (b) further and in the alternative, those Group Members who held debentures as at 28 September 2005 would not have rolled over those debentures and would not have suffered the loss claimed by them in this proceeding.
- 79A By reason of the matters pleaded in paragraphs 78B and 79 above, the Plaintiff and Group Members have suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraphs 63 and 70 above.
- 80 The Plaintiffs and Group Members are entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former Trade Practices Act;
  - (b) s. 1041I of the Corporations Act;
  - (c) s. 12GM of the ASIC Act; and
  - (d) former s. 68 of the *Fair Trading Act* 1987 (NSW).
- 80A Some but not all Group Members :
- (a) were resident in Victoria as at 28 September 2005;

- (b) have become residents of Victoria since 28 September 2005; and/or
  - (c) suffered the loss pleaded in paragraph 79A above in Victoria.
- 80B By reason of the matters pleaded in the previous paragraph the contraventions pleaded in paragraphs 64 and 71 above also constitute a contravention of the former s. 9 of the Fair Trading Act 1999 (Vic).
- 80C By reason of the matters pleaded in the previous paragraph, any Group Member falling within one or more of subparagraphs 80A(a)-(c) above, in addition to the relief pleaded in paragraph 80 above, is entitled to recover the loss pleaded in paragraph 80 above from PwC as damages under s. 159 of the Fair Trading Act 1999 (Vic).
- 81 AET repeats paragraph 43.
- 82 By reason of the matters pleaded in paragraphs 73 to 81 above, if, which is denied, AET is liable to the Plaintiffs and Group Members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to:
- (a) s. 5(1)(c) of the Law Reform (Miscellaneous Provisions) Act 1946 (NSW); and
  - (b) s. 23B of the Wrongs Act 1958 (Vic.).
- 83 Further or alternatively, if, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then its liabilities are coordinate with those of PwC pleaded above.
- 84 By reason of the matters pleaded in paragraphs 73 to 81 and 83 above, if, which is denied, AET is liable to the Plaintiffs and Group Members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to the doctrine of equitable contribution.

**FY06 audit**Damages in negligence at common law

- 85 On 18 October 2006, Provident issued its financial report for FY06.
- 86 Provident's financial report for FY06 stated:
- (a) that Provident's assets, as at 30 June 2006, included loans and advances with a recoverable value of \$186,368,972;



- (b) that, as at 30 June 2006, the face value of loans held by Provident that had not operated within their key terms for at least 90 days (**2006 Past Due Loans**) was \$42,504,014;
- (c) that, with the exception of one 2006 Past Due Loan (for which a provision of \$1 million had been made), 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 the security held was adequate to cover the 2006 Past Due Loans;
- (d) that, aside from the specific provision in respect of the one 2006 Past Due Loan referred to in (c) above, as at 30 June 2006 no other provision or impairment, whether specific or general, had been made to allow for the possibility that loans and advances made by Provident would not be recovered in full;
- (e) that Provident's total assets as at 30 June 2006 were \$243,824,866;
- (f) that Provident, as at 30 June 2006, had on issue debentures with a principal of \$222,500,877;
- (g) that Provident's net assets as at 30 June 2006 were \$12,635,793.

87 After auditing Provident's financial report for FY06, PwC issued an audit report (**FY06 Audit Report**) in which PwC expressed the opinion that Provident's financial report for FY06:

- (a) gave a true and fair view of the financial position of Provident as at 30 June 2006 and of its performance for the year ended on that date; and
- (b) was presented in accordance with, amongst other things, the Corporations Act and Australian Accounting Standards.

88 It was a term of the contract (between Provident and PwC) under which PwC was retained to audit Provident's financial report for FY06 that PwC would exercise reasonable care and skill in auditing the financial report and issuing its audit report.

#### **Particulars**

The term was implied by law

- 89 At the time PwC audited Provident's financial report for FY06 and issued the FY06 Audit Report, PwC knew or ought reasonably to have known the matters pleaded in paragraph 51 above.
- 90 At the time PwC audited Provident's financial report for FY06 and issued the FY06 Audit Report, it was reasonably foreseeable by PwC:
- (a) that AET would rely upon PwC having conducted its audit, and prepared its audit report, with reasonable care and skill;
  - (b) that AET would consider, and rely upon, any audit report provided by PwC in respect of Provident's financial report for FY06;

**Particulars**

Clause 7.4.2 of the Trust Deed

- (c) that AET would rely upon PwC's audit report in discharging its duties under s. 283DA of the Corporations Act;
- (d) that AET would rely upon any report issued by PwC pursuant to s. 313(2) of the Corporations Act in the event that PwC, in the course of conducting its audit, became aware of any matters that were in its opinion:
  - (i) likely to be prejudicial to the interests of debenture holders; and
  - (ii) relevant to the exercise of the powers of the trustee for debenture holders, or the performance of the trustee's duties under the Corporations Act or the Trust Deed;
- (e) that a failure by PwC to exercise reasonable care and skill in the conduct of their audit might result in PwC not becoming aware of matters that it would otherwise have been required to report to the debenture trustee pursuant to s. 313(2) of the Corporations Act
- (f) that AET, being uninformed or unaware of matters that ought to have been reported to it under s. 313(2) of the Corporations Act would affect its assessment of what powers it ought exercise, or what steps it ought take, in discharging its role as trustee;
- (g) that a failure by PwC to exercise reasonable care and skill in conducting its audit and preparing its audit report might result in AET

being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;

- (h) that a failure by PwC to exercise reasonable care and skill in opining whether or not Provident's financial report for FY06 presented a true and fair view of Provident's financial position and performance might result in AET being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;
- (i) that the failures pleaded above might cause AET to fail to exercise the powers available to it, to discharge its duties under s. 283DA, and result in its being liable to debenture holders under s. 283F of the Corporations Act; and
- (j) that, were that to occur, AET would suffer harm in the form of economic loss.

91 The risk of harm pleaded in paragraph 90 was not insignificant.

92 At the time PwC audited Provident's financial report for FY06 and issued the FY06 Audit Report (and at all material times up to the issue of PwC's audit report for FY07):

- (a) it was not the general practice of trustees for debenture holders to routinely conduct or commission an audit (or an investigation in the nature of an audit) of debenture issuers on an annual basis;
- (b) for a trustee for debenture holders to conduct or commission an audit (or an investigation in the nature of an audit) in circumstances where PwC was already performing an audit would involve unreasonable duplication of effort and unjustifiable expense;
- (c) by reason of the matters in subparagraphs (a)-(b), absent some special circumstances known to the trustee justifying departure from ordinary practice, it was not reasonably practicable for a trustee for debenture holders to conduct or commission an audit (or an investigation in the nature of an audit);

- (d) AET had no practical ability to protect itself from the risk of harm pleaded in paragraph 90;
- (e) AET could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report;
- (f) AET was dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 90; and
- (g) AET was vulnerable to harm resulting from a failure by PwC to exercise reasonable care in performing its audit and preparing its audit report.

93 By reason of the matters pleaded in paragraphs 8 and 88 to 92 above, in auditing Provident's financial report for FY06 and in issuing the FY06 Audit Report, PwC owed a duty to AET to take reasonable care:

- (a) in the conduct of its audit; and
- (b) in the preparation of its audit report,

to avoid the risk of harm pleaded in paragraph 90 above.

94 AET repeats paragraph 17A above, save that:

- (a) the reference in the chapeau to FY04 should be read as a reference to FY06;
- (b) subparagraph 17A(b)(iii) should be read as if it pleaded that the reported net assets of Provident as at 30 June 2006 were \$12,635,793; and
- (c) subparagraph 17A(b)(iv) should be read as if it pleaded that the total amount of loans made by Provident as at 30 June 2006 was \$187,368,972, of which \$42,504,014 were reported as past due.

94A In performing the tasks pleaded in paragraph 94, a reasonably competent auditor in the position of PwC exercising reasonable care and skill would have, in the course of conducting the audit of Provident's financial report for FY06 and in preparing its audit report:

- (a) in relation to the Burleigh Views loan, become aware that:
  - (i) under the terms of the loan agreement dated 24 April 2004, interest was to be paid monthly but provided the development

progressed satisfactorily, interest up to \$375,000 could be capitalised;

**Particulars**

Deed of variation (PCL.501.004.0045)

- (ii) on 11 October 2004, the loan agreement was varied to defer repayment to 31 December 2004;

**Particulars**

Facsimile (SMI.202.001.0149)

- (iii) neither principal nor interest was repaid on 31 December 2004;

**Particulars**

Account ledger (SMI.202.001.0001)

- (iv) interest continued not to be paid and loan advances continued to be made after 31 December 2004 without any evidence that the loan had been further renewed;

**Particulars**

Account ledger (SMI.202.001.0001)

- (v) Provident's solicitors had sent to Burleigh Views a document titled Notice of Exercise of Power of Sale;

**Particulars**

Letter (SMI.202.001.1081)

- (vi) Provident's records in respect of the Burleigh Views loan included a statement of claim filed by a builder; and

**Particulars**

Letter (SMI.202.001.1048)

- (vii) Provident had corresponded with the borrower in relation to the refinancing of the loan or the sale of the securing the loan;

**Particulars**

Facsimile (SMI.202.001.1009 and SMI.202.001.1008)

- (b) by reason of the matters in subparagraph (a), determined that the Burleigh Views loan was impaired, or alternatively showed signs of impairment;

**Particulars**

AASB 139 at [59]

- (c) in relation to the Chrysalis loan, become aware that:

- (i) the Chrysalis loan had been due for repayment of principal and interest on 6 March 2004;

**Particulars**

Loan agreement (SMI.203.001.0124)

- (ii) a replacement agreement involving the advance of \$5,020,000 was entered into between Provident and the borrower on 20 October 2004;

**Particulars**

Deed of variation and collateralisation  
(SMI.203.001.0102)

- (iii) the terms of the replacement agreement incorporated the terms of the previous agreement save that there was no date specified for the repayment of principal;
- (iv) during FY06 neither interest nor principal was being repaid on a regular basis;

**Particulars**

Account ledger (SMI.203.001.0001)

- (v) on 15 June 2006 two amounts were advanced for the purpose of making a prepayment of interest, with the effect that the interest was capitalised;

**Particulars**

Account ledger (SMI.203.001.0001)

- (vi) on 15 June 2006, an agreement was entered into increasing the amount advanced to \$5,530,000 with repayment of principal due on 31 July 2007;

**Particulars**

Loan agreement (PCL.501.007.0042)

- (vii) under the agreement of 15 June 2006, interest was payable monthly in advance, however in fact Provident acknowledged receipt of interest in advance;

**Particulars**

Loan agreement, clauses 4.1 and 4.3  
(PCL.501.007.0042)

- (viii) there was no evidence that the borrower was in a better position to meet the terms of the new agreement when compared with the terms of the previous agreement;
- (ix) the books and records of Provident relating to the loan contained no evidence of alternative financial arrangements within the meaning of paragraph 6.4 of Provident's Loan Policy and Procedures Manual required as a reason for not taking action for recovery against the borrower;
- (d) by reason of the matters in subparagraph (c), determined that the Chrysalis loan was impaired, or alternatively showed signs of impairment;

**Particulars**

AASB 139 at [59]

- (e) Not used
- (f) Not used
- (g) Not used
- (h) Not used
- (i) Not used
- (j) Not used
- (k) in relation to the Yarraman loan, become aware that interest was in arrears in the sum of approximately \$66,000;

**Particulars**

Interest Receivable (PwC Working Papers 3210(A))

- (l) by reason of the matter in subparagraph (k) determined that the Yarraman loan was impaired, or alternatively showed signs of impairment.

**Particulars**

AASB 139 at [59]

- (m) in relation to the Delta Dawn loan, become aware that:
- (i) under a loan agreement dated on or about 21 December 2005, an advance of \$5,000,000 was made to the borrower with interest payable monthly and principal to be repaid on 30 June 2006;

**Particulars**

Loan agreement (SMI.205.001.0025)

- (ii) as at 30 June 2006 interest was in arrears and principal had not been repaid; and

**Particulars**

Account ledger (SMI.205.001.0001)

- (iii) the books and records of Provident relating to the loan contained no evidence of alternative financial arrangements within the meaning of paragraph 6.4 of Provident's Loan Policy and Procedures Manual required as a reason for not taking action for recovery against the borrower;
- (n) by reason of the matters in subparagraph (m), determined that the Delta Dawn loan was impaired, or alternatively showed signs of impairment;

**Particulars**

AASB 139 at [59]

- (o) Not used



- (p) Not used
- (q) Not used
- (r) Not used
- (s) in relation to the loan to MMT Investment Services Pty Ltd (**MMT loan**), become aware that:

- (i) the loan had been extended from 19 June 2005 to 17 September 2005;

**Particulars**

Loan agreement (SMI.209.001.0064)

Interest statement (SMI.209.001.0506)

- (ii) the NSW Crime Commission had demanded documents in relation to the borrowers;

**Particulars**

Letter (SMI.209.001.0537)

- (iii) Provident had corresponded with its solicitors in relation to such demands; and

**Particulars**

SMI.209.001.0470 and SMI.209.001.0472

- (iv) Provident obtained a valuation on or about 16 October 2005 which included a valuation on a "forced sale" basis;

**Particulars**

Valuation (SMI.209.001.0097)

- (t) by reason of the matters in subparagraph (s), determined that the MMT loan showed signs of impairment as at 30 June 2006;

**Particulars**

AASB 139 at [59]

- (u) Not used
- (v) Not used
- (w) Not used

94B Upon becoming aware of the matters and reaching the determinations pleaded in paragraph 94A, a reasonably competent auditor in the position of PwC exercising reasonable care and skill would have, in the course of conducting the audit of Provident's financial report for FY06 and in preparing its audit report:

- (a) requested Provident to explain why, in relation to the Burleigh Views, Chrysalis, Yarraman, Delta Dawn and MMT loans, foreclosure and sale had not taken place as prescribed in Provident's Loans Policies and Procedures Manual;
- (b) requested Provident to provide information about the value of properties securing the Burleigh Views, Chrysalis, Yarraman, Delta Dawn and MMT loans calculated on an "as is" basis as at 30 June 2006; and

**Particulars**

AASB 139 at [63]

Auditing Standard AUS 606 at [.07] and [.08]

- (c) requested Provident to explain why its management had concluded that renewing the facilities or allowing the facilities to continue was going to achieve full repayment of the Burleigh Views, Chrysalis, Yarraman, Delta Dawn and MMT loans.

94C Upon taking the steps in paragraph 94B, unless Provident provided sufficient appropriate audit evidence as to the recoverability of the Burleigh Views, Chrysalis, Yarraman, Delta Dawn and MMT loans, a reasonably competent auditor in the position of PwC exercising reasonable care and skill would have, in the course of conducting the audit of Provident's financial report for FY06 and in preparing its audit report:

**Particulars of sufficient appropriate audit evidence**

Auditing Standard AUS 502 at [.07] – [.09]

As to the recoverability of loans, such evidence is a current written valuation by an independent qualified valuer estimating the value of the property securing each loan on an "as is" basis.

- (a) concluded that he or she had insufficient evidence to determine whether or not a provision was required against those loans;

- (b) modified its audit report of Provident's financial statements by a scope limitation, and either an "except for" opinion or expressing an inability to form an opinion;

**Particulars**

Auditing Standard AUS 702 at [.27], [.30], [.53] to [.56]  
s 308(3), Corporations Act

- (c) provided a report to Provident's management that the lack of evidence as to the recoverability of the Burleigh Views, Chrysalis, Yarraman, Delta Dawn and MMT loans resulted in:

- (i) circumstances where the auditor concluded that there were risks that an item in the financial report might not be accurate;
- (ii) accounting estimates based on management's judgment incorporating assumptions as to future events; and
- (iii) depending on the outcome of discussions between the auditor and management, disagreement between the auditor and management.

**Particulars**

Auditing Standard AUS 710 at [.15]

- (d) provided to AET, a:

- (i) copy of the audit report of Provident's financial statement;

**Particulars**

s 313(1), Corporations Act

- (ii) report to AET pursuant to s 313(2) of the Corporations Act recording that:

- (A) the records of Provident did not contain sufficient information to determine the amount that might be recovered in respect of loans in arrears including Burleigh Views, Chrysalis, Yarraman, Delta Dawn and MMT loans;
- (B) the auditor could not determine whether or to what extent a provision was required against the Burleigh

Views, Chrysalis, Yarraman, Delta Dawn and MMT loans;

- (C) the auditor either intended to or had modified his or her audit report accordingly; and
- (D) the policy for the treatment of loans in arrears set out in the Loans Procedures and Policy Manual was not being followed.

95 In breach of the duty pleaded in paragraph 93 above, PwC failed to exercise reasonable care and skill in the course of conducting the audit of Provident's financial report for FY06 and in preparing the FY06 Audit Report because it:

- (a) relied upon systems and processes for the monitoring of loan arrears, identification of impaired loans, and the making of provisions against impaired loans, which depended upon the decisions of Mr O'Sullivan;
- (b) failed to review all material loans and a selection of other loans in order to test Provident's systems and processes;

**Particulars of material loans**

AET repeats paragraph 17A(e), and refers to the loans referred to in paragraph 94A and the loans to George Tahatos Holdings Pty Ltd, Mihail Ovchinnikov, Neo East No 1 Pty Ltd, Alex G Grivas Pty Ltd, Tembelli Pty Ltd, AJV Constructions Pty Ltd, Property Development Enterprises No 91 Pty Ltd, M& C Pty Ltd, Owston Nominees No 2 Pty Ltd, HTT Huntley Heritage Pty Ltd, G L & S E (Service Station) Pty Ltd, Willow Breeze Pty Ltd, Orchard Holdings (NSW) Pty Ltd, Charles John Lupica and Susan Valentina Lupica, Agara Holdings Pty Ltd and Unique Castle Development Pty Ltd.

- (c) failed to conduct any review of Provident's systems and processes for the monitoring of loans arrears;
- (d) Not used;
- (e) except in relation to the loan to Mihail Ovchinnikov, failed to conduct an analysis, or alternatively adequately analyse, to verify Provident's

assertions as to the steps being taken to recover material loans in arrears;

- (f) failed to investigate and test in the manner pleaded in subparagraphs 17A(d)-(h) above for all material loans to determine whether:
  - (A) each material loan was impaired or demonstrated indicators of impairment;
  - (B) each material loan was recoverable;
  - (C) the provision (if any) made against each loan was adequate; and
  - (D) a substantial proportion of Provident's loan book was recoverable;
- (g) failed to become aware of the matters and failed to make the determinations pleaded in 94A apart from the matter pleaded in subparagraph 94A(k);
- (h) failed to take the steps pleaded in 94B;
- (i) failed to take the steps pleaded in 94C in circumstances where Provident:
  - (i) Not used
  - (ii) would have been unable to provide sufficient appropriate audit evidence as to the recoverability of the Burleigh Views, Chrysalis, Yarraman, Delta Dawn, and MMT loans.

95AA In performing its duties under the trust deed and under s. 283DA of the Corporations Act, AET relied on the audit of Provident's financial report for FY06 and the FY06 Audit Report.

95A If PwC had not breached its duty in the manner pleaded in paragraph 95:

- (a) PwC would have taken the steps pleaded in paragraph 94C, including the provision of information to AET as pleaded in paragraph 94C(d);
- (b) updated valuations of the properties securing the loans referred to in subparagraphs 95(i) (ii) would have been obtained by Provident or PwC which would have disclosed that:

- (i) the "as is" value of the property securing the Burleigh Views loan as at 30 June 2006 was approximately \$5,705,000;
- (ii) in circumstances where the total amount owing under the Burleigh Views loan as at 30 June 2006 was approximately \$11,364,000 Provident's financial statements should have but did not account for a loss of approximately \$5,659,000;
- (iii) the "as is" value of the property securing the Chrysalis loan as at 30 June 2006 was approximately \$3,400,000;
- (iv) in circumstances where the total amount owing under the Chrysalis loan as at 30 June 2006 was approximately \$5,568,000, Provident's financial statements should have but did not account for a loss of approximately \$2,168,000;
- (v) the "as is" value of the property securing the Yarraman and Delta Dawn loans as at 30 June 2006 was approximately \$7,550,000;
- (vi) in circumstances where the total amount owing under the Yarraman and Delta Dawn loans as at 30 June 2006 was approximately \$10,679,000, Provident's financial statements should have but did not account for a loss of approximately \$3,129,000;
- (vii) the "as is" value of the property securing the MMT loan as at 30 June 2006 was approximately \$6,250,000;
- (viii) in circumstances where the total amount owing under the MMT loan as at 30 June 2006 was approximately \$9,396,000, Provident's financial statements should have but did not account for a loss of approximately \$3,146,000;
- (ix) by reason of the matters in subparagraphs (i)-(viii):
  - (A) Provident had a net asset deficiency of approximately \$1,467,000, rather than net assets of approximately \$12,635,000 as disclosed in Provident's financial statements;
  - (B) Provident made a loss before tax for FY06 of approximately \$5,751,000, rather than a profit before

tax of approximately \$8,351,000 as disclosed in  
Provident's financial statements;

- (c) informed of the matters in subparagraphs (a) and (b) above, AET would have:
- (i) undertaken inquiries and investigations with each of PwC and Provident to determine whether:
    - (A) Provident was complying with the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) Provident was able to repay all debentures on issue as and when they fell due;
  - (ii) in the event that Provident was in breach of the terms of the debentures, the Trust Deed or the Corporations Act, taken all available steps to cause Provident to remedy any such breach;
  - (iii) appointed an investigating accountant to further investigate the matters above if it was not satisfied, based on its inquiries and investigations, that Provident:
    - (A) was not, or did not remain, in breach of the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) was able to repay all debentures on issue as and when they fell due;
  - (iv) taken legal advice and advice from the appointed investigating accountant as to the appropriate steps to address any matters identified by that investigating accountant;
  - (v) sought orders appointing a receiver to the assets of Provident and/or otherwise exercised its powers under Chapter 2L of the Corporations Act or the Trust Deed so as to require Provident to repay debenture holders and prevent it from borrowing further monies from the public;

- (vi) further and in the alternative to subparagraph (v), AET would not have consented to being named in any further debenture prospectus issued by Provident and, as a result, either:
  - (A) Provident would not have issued further debentures; or
  - (B) AET would have been replaced as trustee for debenture holders; and
- (d) if the steps pleaded in subparagraph (c) had been taken, AET would not be liable to the Plaintiffs or Group Members (or would be liable in a lesser amount).

95B By reason of the matters pleaded in paragraph 95A:

- (a) PwC's breach of duty pleaded in paragraph 95 was a necessary condition of AET loss;
- (b) it is appropriate that PwC's liability extend to AET's loss; and
- (c) by reason of (a) and (b), the breach of duty pleaded in 95 caused AET's loss.

Statutory damages for misleading and deceptive conduct

96 PwC's conduct in issuing the FY06 Audit Report was:

- (a) conduct in trade or commerce;
- (b) conduct in relation to financial products, namely, the debentures issued by Provident.

97 The FY06 Audit Report was published and made available on the website of Provident.

97A PwC authorised and consented to the FY06 Audit Report being published and made available on the website of Provident.

**Particulars**

PWC.101.025.0206

97B By reason of the matters pleaded in paragraphs 97 and 97A, PwC's conduct pleaded in paragraph 98 involved the use of telegraphic or telephone services.



- 98 By issuing the FY06 Audit Report, and by authorising and consenting to the FY06 Audit Report available on the website of Provident, PwC impliedly represented that:
- (a) it had conducted its audit in respect of Provident's financial report for FY06 with reasonable care and skill (**2006 Care and Skill Representation**);
  - (b) it had reasonable grounds for its opinion that:
    - (i) it had been given all information, explanation and assistance necessary for the conduct of the audit (**2006 307(b) Representation**);
    - (ii) Provident had kept records sufficient to enable a financial report to be prepared and audited (**2006 307(c) Representation**); and
    - (iii) Provident's financial report for FY06 gave a true and fair view of the financial position of Provident as at 30 June 2006 and of its performance for the year ended on that date (**2006 TAFV Representation**).

**Particulars**

The 2006 Care and Skill Representation, the 2006 307(b) Representation, the 2006 307(c) Representation and the 2006 TAFV Representation were made to Provident, its members, AET, holders of debentures issued by Provident and prospective holders of debentures issued by Provident.

- 99 Contrary to the:
- (a) 2006 Care and Skill Representation, PwC had not conducted its audit in respect of Provident's financial report for FY06 with reasonable care and skill;

**Particulars**

AET relies on the matters pleaded in paragraph 95 above.

- (b) 2006 307(b) Representation, PwC did not have reasonable grounds for its opinion that it had been given all information, explanation and assistance necessary for the conduct of the audit;

**Particulars**

AET relies on the matters pleaded in subparagraphs 94A(a), (c), (k), (m) and (s) and paragraph 94B above.

- (c) 2006 307(c) Representation, PwC did not have reasonable grounds for its opinion that it Provident had kept sufficient records to enable a financial report to be prepared and audited; and

**Particulars**

AET relies on the matters pleaded in subparagraphs 94A(a), (c), (k), (m), and (s) and paragraph 94B above.

- (d) 2006 TAFV Representation, PwC did not have reasonable grounds for its opinion that Provident's financial report for FY06 gave a true and fair view of the financial position of Provident as at 30 June 2006 and of its performance for the year ended on that date.

**Particulars**

AET relies on the matters pleaded in paragraphs 95 and 95A(b) above.

100 Not used.

101 By virtue of the matters pleaded in paragraphs 96 to 99 above, by issuing the FY06 Audit Report, PwC engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of:

- (a) former s. 52 of the former Trade Practices Act 1974;
- (b) s. 1041H of the Corporations Act;
- (c) s. 12DA of the ASIC Act 2001; and
- (d) former s. 42 of the Fair Trading Act 1987 (NSW).

101A If PwC had not made each of the 2006 Care and Skill Representation, the 2006 307(b) Representation, the 2006 307(c) Representation and the 2006 TAFV Representation, AET would have:

- (a) become aware that:

- (i) Provident's financial reports for the period ending 30 June 2006 as they were presented did not present a true and fair view of Provident's actual financial position and actual financial performance for the year ending 30 June 2006; or
  - (ii) alternatively, PwC was not of the opinion that Provident's financial reports for the period ending 30 June 2006 presented a true and fair view of Provident's actual financial position and financial performance for the year ending 30 June 2006;
  - (iii) alternatively, PwC was unable to form the opinion that Provident's financial reports for the period ending 30 June 2006 presented a true and fair view of Provident's actual financial position and financial performance for the year ending 30 June 2006;
- (b) informed of the matters in subparagraph (a) above, AET would have:
- (i) undertaken inquiries and investigations with each of PwC and Provident to determine whether:
    - (A) Provident was complying with the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) Provident was able to repay all debentures on issue as and when they fell due;
  - (ii) in the event that Provident was in breach of the terms of the debentures, the Trust Deed or the Corporations Act, taken all available steps to cause Provident to remedy any such breach;
  - (iii) appointed an investigating account to further investigate the matters above if it was not satisfied, based on its inquiries and investigations, that Provident:
    - (A) was not, or did not remain, in breach of the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) was able to repay all debentures on issue as and when they fell due;

- (iv) taken legal advice and advice from the appointed investigating accountant as to the appropriate steps to address any matters identified by that investigating accountant;
- (v) sought orders appointing a receiver to the assets of Provident and/or otherwise exercised its powers under Chapter 2L of the Corporations Act or the trust Deed so as to require Provident to repay debenture holders and prevent it from borrowing further monies from the public;
- (vi) further and in the alternative to subparagraph (v), AET would not have consented to being named in any further debenture prospectus issued by Provident and, as a result, either:
  - (A) Provident would not have issued further debentures; or
  - (B) AET would have been replaced as trustee for debenture holders;
- (c) if the steps pleaded in subparagraph (b) had been taken, AET would not be liable to the Plaintiffs or Group Members (or would be liable in a lesser amount).

102 By reason of the matters pleaded in 101A above, AET has suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraph 101 above.

103 AET is entitled to recover that loss from PwC as damages under:

- (a) s. 82 of the former Trade Practices Act;
- (b) s. 1041I of the Corporations Act;
- (c) s. 12GM of the ASIC Act; and
- (d) former s. 68 of the Fair Trading Act 1987 (NSW).

104 In the FY06 Audit Report, PwC represented that its audit services were of a particular standard, namely, that they accorded with the Australian Auditing Standards (**2006 Audit Standard Representation**).

105 The 2006 Audit Standard Representation was made in:

- (a) in trade or commerce; and
- (b) in connexion with the supply of PwC's audit services.

- 106 At the time PwC issued the FY06 Audit Report, the Australian Auditing Standards required:
- (a) that an audit be conducted with professional competence and due care; and
  - (b) that an audit be conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

**Particulars**

AUS 202.04 and AUS 202.08

APES 110, section 130

- 107 By reason of the matters pleaded in paragraphs 95 and 95A, the FY06 Audit Report:
- (a) had not been conducted with professional competence and due care; and
  - (b) had not been conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.
- 108 By virtue of the matters pleaded in the previous paragraph:
- (a) the 2006 Audit Standard Representation was false;
  - (b) the making of the 2006 Audit Standard Representation was conduct engaged in by PwC that was misleading or deceptive or likely to mislead or deceive;
  - (c) by issuing the FY06 Audit Report, PwC contravened:
    - (i) former s. 53(aa) of the former Trade Practices Act 1974; and
    - (ii) former s. 44(b) of the Fair Trading Act 1987 (NSW).

- 108A AET repeats paragraph 101A save that the references to each of the 2006 Care and Skill Representation, the 2006 307(b) Representation, the 2006 307(c) Representation and the 2006 Opinion Representation in the chapeau should be read as a reference to the 2006 Audit Standard Representation.

109 By reason of the matters pleaded in the previous paragraph, AET has suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraph 108 above.

110 AET is entitled to recover that loss from PwC as damages under:

- (a) s. 82 of the former Trade Practices Act; and
- (b) former s. 68 of the Fair Trading Act 1987 (NSW).

#### Contribution

111 At the time PwC audited Provident's financial report for FY06 and issued the FY06 Audit Report, it was reasonably foreseeable by PwC:

- (a) that holders of debentures issued by Provident would rely on PwC to conduct its audit and prepare its audit report with reasonable care and skill;
- (b) that holders of debentures issued by Provident would rely on AET performing its duties under the Trust Deed and under s. 283DA of the Corporations Act;
- (c) that AET would rely on PwC to conduct its audit and prepare its audit report with reasonable care and skill for the reasons pleaded at paragraph 90 above;
- (d) that, if PwC failed to conduct its audit and prepare its audit report with reasonable care and skill, then AET might, in reliance on PwC's audit report, fail to take steps (such as appointing a receiver) to protect the interests of debenture holders;
- (e) that, were that to occur, debenture holders might suffer harm in the form of economic loss, including loss incurred by those debenture holders as a result of rolling over their debentures.

112 The risk of harm pleaded in paragraph 111 was not insignificant.

113 At the time PwC audited Provident's financial report for FY06 and issued PwC's audit report:

- (a) debenture holders had no practical ability to protect themselves from the risk of harm pleaded in paragraph 111;

- (b) debenture holders could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report;
  - (c) debenture holders were dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 111; and
  - (d) debenture holders were vulnerable to harm resulting from a failure by PwC to exercise reasonable care in the performing its audit and preparing its audit report.
- 114 By reason of the matters pleaded in paragraphs 8, 88, 89 and 111 to 113 above, in auditing Provident's financial report for FY06 and in issuing the FY06 Audit Report, PwC owed a duty to holders of debentures issued by Provident to take reasonable care:
- (a) in the conduct of its audit; and
  - (b) in the preparation of its audit report,
- to avoid the risk of harm pleaded in paragraph 111 above.
- 114A AET repeats paragraphs 94-95 above.
- 115 By reason of the matters pleaded in the previous paragraph, and in breach of the duty pleaded in paragraph 114, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY06 and in the preparation of PwC's audit report.
- 115A AET repeats paragraphs 95AA and 95A.
- 115B If AET had taken the steps pleaded in paragraph 95A(c) above those Group Members who (a) held debentures as at 18 October 2006 (when PwC issued the FY06 Audit Report) and (b) were debenture holders as at 29 June 2012 as a result of having rolled over those debentures, would not have rolled over their debentures and their debentures would instead have been repaid either in full or in an amount greater than that actually recovered by those Group Members.
- 116 By reason of the matters pleaded in paragraphs 115A and 115B above:
- (a) PwC's breach of duty pleaded in paragraph 115 above was a necessary condition of the loss suffered by the subclass of Group Members pleaded in paragraph 115B;
  - (b) it is appropriate that PwC's liability extend to those Group Members' loss; and

- (c) by reason of subparagraphs (a) and (b), the breach of duty pleaded in 95 caused those Group Members' loss.
- 116A The loss suffered by the Group Members pleaded in paragraph 116 above is the same loss in respect of which those Group Members seek to recover damages in this proceeding from AET.
- 116B AET repeats paragraphs 96 to 102 and 104 to 109.
- 117 If AET had taken the steps pleaded in paragraph 101A(b) above then:
- (a) the Plaintiffs and Group Members would not have acquired the debentures they held as at 29 June 2012 and would not have suffered the loss claimed by them in this proceeding; and
- (b) further and in the alternative, those Group Members who held debentures as at 18 October 2006 would not have rolled over those debentures and would not have suffered the loss claimed by them in this proceeding.
- 117A By reason of the matters pleaded in paragraphs 116B and 117 above, the Plaintiff and Group Members have suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraphs 101 and 108 above.
- 118 The Plaintiffs and Group Members are entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former Trade Practices Act;
- (b) s. 1041I of the Corporations Act;
- (c) s. 12GM of the ASIC Act; and
- (d) former s. 68 of the Fair Trading Act 1987 (NSW).
- 118A Some but not all Group Members :
- (a) were resident in Victoria as at 18 October 2006;
- (b) have become residents of Victoria since 18 October 2006; and/or
- (c) suffered the loss pleaded in paragraph 117A above in Victoria.
- 118B By reason of the matters pleaded in previous paragraph the contraventions pleaded in paragraphs 102 and 109 above also constitute a contravention of the former s. 9 of the Fair Trading Act 1999 (Vic).



- 118C By reason of the matters pleaded in the previous paragraph, any Group Member falling within one or more of subparagraphs 118A(a)-(c) above, in addition to the relief pleaded in paragraph 118 above, is entitled to recover the loss pleaded in paragraph 118 above from PwC as damages under s. 159 of the Fair Trading Act 1999 (Vic).
- 119 AET repeats paragraph 43.
- 120 By reason of the matters pleaded in paragraphs 111 to 119 above, if, which is denied, AET is liable to the Plaintiffs and Group Members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to:
- (a) s. 5(1)(c) of the Law Reform (Miscellaneous Provisions) Act 1946 (NSW); and
  - (b) s. 23B of the Wrongs Act 1958 (Vic.).
- 121 Further or alternatively, if, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then its liabilities are coordinate with those of PwC pleaded above.
- 122 By reason of the matters pleaded in paragraphs 111 to 119 and 121 above, if, which is denied, AET is liable to the Plaintiffs and Group Members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to the doctrine of equitable contribution.

#### **FY07 audit**

##### Damages in negligence at common law

- 123 On 28 September 2007, Provident issued its financial report for FY07.
- 124 Provident's financial report for FY07 stated:
- (a) that Provident's assets, as at 30 June 2007, included loans and advances with a recoverable value of \$212,250,616;
  - (b) that, as at 30 June 2007, the face value of loans held by Provident that had not operated within their key terms for at least 90 days (**2007 Past Due Loans**) was \$41,636,821;
  - (c) that no provision or impairment had been made in respect of any of the 2007 Past Due Loans;

- (d) that the directors regarded the recovery of the amounts of principal and interest accrued under the 2007 Past Due Loans as reasonably certain and the security held was adequate to cover the 2007 Past Due Loans;
- (e) that Provident's total assets as at 30 June 2007 were \$231,534,933;
- (f) that, as at 30 June 2007, Provident had on issue debentures with a principal of \$208,925,120; and
- (g) that Provident's net assets as at 30 June 2007 were \$13,740,260.

125 After auditing Provident's financial report for FY07, PwC issued an audit report (**FY07 Audit Report**) in which PwC expressed the opinion that Provident's financial report for FY07:

- (a) gave a true and fair view of the financial position of Provident as at 30 June 2007 and of its performance for the year ended on that date; and
- (b) was presented in accordance with, amongst other things, the Corporations Act and Australian Accounting Standards.

126 It was a term of the contract (between Provident and PwC) under which PwC was retained to audit Provident's financial report for FY07 that PwC would exercise reasonable care and skill in auditing the financial report and issuing its audit report.

#### **Particulars**

The term was implied by law.

127 At the time PwC audited Provident's financial report for FY07 and issued the FY07 Audit Report, PwC knew or ought reasonably to have known the matters pleaded in paragraph 51 above.

128 At the time PwC audited Provident's financial report for FY07 and issued the FY07 Audit Report, it was reasonably foreseeable by PwC:

- (a) that AET would rely upon PwC having conducted its audit, and prepared its audit report, with reasonable care and skill;
- (b) that AET would consider, and rely upon, any audit report provided by PwC in respect of Provident's financial report for FY07;

#### **Particulars**

Clause 7.4.2 of the Trust Deed

- (c) that AET would rely upon PwC's audit report in discharging its duties under s. 283DA of the Corporations Act, the Trust Deed and at law;
- (d) that AET would rely upon any report issued by PwC pursuant to s. 313(2) of the Corporations Act in the event that PwC, in the course of conducting its audit, became aware of any matters that were in its opinion:
  - (i) likely to be prejudicial to the interests of debenture holders; and
  - (ii) relevant to the exercise of the powers of the trustee for debenture holders, or the performance of the trustee's duties under the Corporations Act or the Trust Deed;
- (e) 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 to the debenture trustee pursuant to s 313(2) of the Corporations Act;
- (f) that AET, being uninformed or unaware of matters that ought to have been reported to it under s 313(2) of the Corporations Act, would affect its assessment of what powers it ought exercise, or what steps it ought take, in discharging its role as trustee;
- (g) that a failure by PwC properly to exercise reasonable care and skill in conducting its audit and preparing its audit report might result in AET being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;
- (h) that a failure by PwC to exercise reasonable care and skill in opining whether or not Provident's financial report for FY07 presented a true and fair view of Provident's financial position and performance might result in AET being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;

- (i) that the failures pleaded above might cause AET to fail to exercise the powers available to it, to discharge its duties under s. 283DA and result in its being liable to debenture holders under s. 283F of the Corporations Act; and
- (j) that, were that to occur, AET would suffer harm in the form of economic loss.

129 The risk of harm pleaded in paragraph 128 was not insignificant.

130 At the time PwC audited Provident's financial report for FY07 and issued the FY07 Audit Report (and at all material times up to the issue of Provident's financial report for the financial year ended 30 June 2008):

- (a) it was not the general practice of trustees for debenture holders to routinely conduct or commission an audit (or an investigation in the nature of an audit) of debenture issuers on an annual basis;
- (b) for a trustee for debenture holders to conduct or commission an audit (or an investigation in the nature of an audit) in circumstances where PwC was already performing an audit would involve unreasonable duplication of effort and unjustifiable expense;
- (c) by reason of the matters in subparagraphs (a)-(b), absent some special circumstances known to the trustee justifying departure from ordinary practice, it was not reasonably practicable for a trustee for debenture holders to conduct or commission an audit (or an investigation in the nature of an audit);
- (d) AET had no practical ability to protect itself from the risk of harm pleaded in paragraph 128;
- (e) AET could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report;
- (f) AET was dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 128; and
- (g) AET was vulnerable to harm resulting from a failure by PwC to exercise reasonable care in performing its audit and preparing its audit report.

- 131 By reason of the matters pleaded in paragraphs 8 and 126 to 130 above, in auditing Provident's financial report for FY07 and in issuing the FY07 Audit Report, PwC owed a duty to AET to take reasonable care:
- (a) in the conduct of its audit; and
  - (b) in the preparation of its audit report,
- to avoid the risk of harm pleaded in paragraph 128 above.
- 132 AET repeats paragraph 17A above, save that:
- (a) the reference in the chapeau to FY04 should be read as a reference to FY07;
  - (b) the particulars to subparagraph (a) should read as a reference to Auditing Standard ASA 315 at [5] and ASA 330 at [6] and [8];
  - (c) subparagraph 17A(b)(iii) should be read as if it pleaded that the reported net assets of Provident as at 30 June 2007 were \$13,740,260;
  - (d) subparagraph 17A(b)(iv) should be read as if it pleaded that the total amount of loans made by Provident as at 30 June 2007 was \$212,250,616, of which \$41,636,821 were reported as past due; and
  - (e) the particulars to subparagraph (d) should read as a reference to Auditing Standard ASA 330 at [5], [12]-[14], [29]-[31], [35] and [45].
- 132A In performing the tasks pleaded in the previous paragraph, a reasonably competent auditor in the position of PwC exercising reasonable care and skill would have, in the course of conducting the audit of Provident's financial report for FY07 and in preparing its audit report:
- (a) in relation to the Burleigh Views loan, become aware that:
    - (i) interest was being capitalised under the terms of a letter of offer dated 4 May 2007 and signed on or about 23 August 2007;
 

**Particulars**

Letter (SMI.202.001.0130)
    - (ii) under the terms of a previous loan agreement dated 11 October 2004, the principal was due to be repaid on 31 December 2004;

**Particulars**

Facsimile (SMI.202.001.0149)

- (iii) interest continued not to be paid and loan advances continued to be made after 31 December 2004 without further renewal until the letter of offer dated 4 May 2007;

**Particulars**

Account ledger (SMI.202.001.0001)

- (iv) ledger accounts recorded a series of advances of funding for the payment of interest;

**Particulars**

Account ledger (SMI.202.001.0001)

- (v) Provident's solicitors had sent to Provident a document titled Notice of Exercise of Power of Sale;

**Particulars**

Letter (SMI.202.001.1081)

- (vi) Provident's records in respect of the Burleigh Views loan included a statement of claim filed by a builder;

**Particulars**

Letter (SMI.202.001.1048)

- (vii) Provident had corresponded with the borrower in relation to the refinancing of the loan or the sale of the property securing the loan;

**Particulars**

Facsimiles (SMI.202.001.1009 and SMI.202.001.1008)

- (viii) the loan was renewed pursuant to the terms of the letter of offer dated 4 May 2007, and signed on or about 23 August 2007, on the basis that the amount advanced, \$13,500,000, represented 70% of the "as if complete" value of the property securing the loan;

**Particulars**

Loan Agreement, clause 12 (SMI.202.001.0096)

- (ix) there was no evidence available to Provident to suggest that the borrower could make repayments in accordance with the terms of the letter of offer dated 4 May 2007 and signed on or about 23 August 2007; and
  - (x) the books and records of Provident relating to the loan contained no evidence of alternative financial arrangements within the meaning of paragraph 6.4 of Provident's Loan Policy and Procedures Manual required as a reason for not taking action for recovery against the borrower;
- (b) by reason of the matters in subparagraph (a), determined that the Burleigh Views loan was impaired, or alternatively showed signs of impairment as at 30 June 2007;

**Particulars**

AASB 139 at [59]

- (c) in relation to the Chrysalis loan, become aware that:
- (i) the Chrysalis loan had been due for repayment of principal and interest on 6 March 2004;

**Particulars**

Loan Agreement (SMI.203.001.0124)

- (ii) a replacement agreement involving the advance of \$5,020,000 was entered between Provident and the borrower on or about 20 October 2004;

**Particulars**

Deed of variation and collateralisation  
(SMI.203.001.0102)

- (iii) the terms of the replacement agreement incorporated the terms of the previous agreement save that there was no date specified for the repayment of principal;

- (iv) on 15 June 2006 two amounts were advanced for the purpose of making a prepayment of interest, with the effect that the interest was capitalised;

**Particulars**

Account ledger (SMI.203.001.0001)

- (v) on 15 June 2006 an agreement was entered into increasing the amount advanced to \$5,530,000 with repayment of principal due on 31 July 2007;

**Particulars**

Account ledger (SMI.203.001.0001)

- (vi) under the agreement of 15 June 2006 interest was payable monthly in advance, however, in fact, Provident acknowledged receipt of interest in advance;
- (vii) there was no evidence that the borrower was in a better position to meet the terms of the new agreement when compared with the terms of the previous agreement;
- (viii) principal and interest were not repaid on the due date of 31 July 2007; and

**Particulars**

Account ledger (SMI.203.001.0001)

- (ix) the books and records of Provident relating to the loan contained no evidence of alternative financial arrangements within the meaning of paragraph 6.4 of Provident's Loan Policy and Procedures Manual required as a reason for not taking action for recovery against the borrower;

- (d) by reason of the matters in subparagraph (c) determined that the Chrysalis loan was impaired, or alternatively showed signs of impairment as at 30 June 2007;

**Particulars**

AASB 139 at [59]

- (e) Not used



- (f) Not used
- (g) Not used
- (h) Not used
- (i) in relation to the Yarraman loan, become aware that:
  - (i) the loan had not been repaid upon the due date of 22 December 2006; and
  - (ii) interest was in arrears in the sum of approximately \$131,000;

**Particulars**

Interest Receivable (PwC Working Papers 3210)

- (j) by reason of the matter in subparagraph (i), determined that the Yarraman loan was impaired, or alternatively showed signs of impairment as at 30 June 2007;

**Particulars**

AASB 139 at [59]

- (k) in relation to the Delta Dawn loan, become aware that:
  - (i) under a loan agreement dated on or about 21 December 2005, an advance of \$5,000,000 was made to the borrower with interest payable monthly and principal to be repaid on 20 June 2006;

**Particulars**

Loan agreement (SMI.205.001.0025)

- (ii) as at 30 June 2007 interest was in arrears and principal had not been repaid;

**Particulars**

Account ledger (SMI.205.001.0001)

- (iii) the books and records of Provident relating to the loan contained no evidence of alternative financial arrangements within the meaning of paragraph 6.4 of Provident's Loan Policy and Procedures Manual required as a reason for not taking action for recovery against the borrower;

- (l) by reason of the matter in subparagraph (k), determined that the Delta Dawn loan was impaired, or alternatively showed signs of impairment as at 30 June 2007;

**Particulars**

AASB 139 at [59]

- (m) Not used  
 (n) Not used  
 (o) Not used  
 (p) Not used  
 (q) Not used  
 (r) Not used  
 (s) Not used  
 (t) Not used  
 (u) Not used  
 (v) Not used

- (w) in relation to the loan to MJ Server Pty Ltd (**MJ Server loan**), become aware that:

- (i) neither interest nor principal was repaid in accordance with the loan's terms;

**Particulars**

Account ledger (SMI.217.001.0125)

- (ii) Provident's books and records included internal communications setting out proposed steps to be taken in response to that default;

**Particulars**

Memo (SMI.217.001.0221)

- (x) by reason of the matters in subparagraph (w), determined that the MJ Server loan was impaired, or alternatively showed signs of impairment as at 30 June 2007;

**Particulars**

AASB 139 at [59]

AASB 110 at [8]-[9]

132B Upon becoming aware of the matters and reaching the determinations pleaded in paragraph 132A, a reasonably competent auditor in the position of PwC exercising reasonable care and skill would have, in the course of conducting the audit of Provident's financial report for FY07 and in preparing its audit report:

- (a) requested Provident to explain why, in relation to the Burleigh Views, Chrysalis, Yarraman, Delta Dawn and MJ Server loans, foreclosure and sale had not taken place as prescribed in Provident's Loans Policies and Procedures Manual;
- (b) requested Provident to provide information about the value of properties securing the Burleigh Views, Chrysalis, Yarraman, Delta Dawn, and MJ Server loans calculated on an "as is" basis as at 30 June 2007; and

**Particulars**

AASB 139 at [63]

Auditing Standard ASA 620 at [10] and [11]

- (c) requested Provident to explain why its management had concluded that renewing the facilities or allowing the facilities to continue was going to achieve full repayment of the Burleigh Views, Chrysalis, Yarraman, Delta Dawn and MJ Server loans.

132C Upon taking the steps in paragraph 132B, unless Provident provided sufficient appropriate audit evidence as to the recoverability of the Burleigh Views, Chrysalis, Yarraman, Delta Dawn and MJ Server loans, a reasonably competent auditor in the position of PwC exercising reasonable care and skill would have, in the course of conducting the audit of Provident's financial report for FY07 and in preparing its audit report:

**Particulars of sufficient appropriate audit evidence**

Auditing Standard ASA 500 at [10] – [13]

As to the recoverability of loans, such evidence is a current written valuation by an independent valuer

estimating the value of the property securing each loan on an "as is" basis.

- (a) concluded that he or she had insufficient evidence to determine whether or not a provision was required against those loans;
- (b) modified its audit report of Provident's financial statements by a scope limitation, and either an "except for" opinion or expressing an inability to form an opinion;

**Particulars**

s. 308(3), Corporations Act

Auditing Standard ASA 701 at [22], [23], [29-31]

- (c) provided a report to Provident's management that the lack of evidence as to the recoverability of the Burleigh Views, Chrysalis, Yarraman, Delta Dawn and MJ Server loans resulted in:
  - (i) circumstances where the auditor concluded that there were risks that an item in the financial report might not be accurate;
  - (ii) accounting estimates based on management's judgment incorporating assumptions as to future events; and
  - (iii) depending on the outcome of discussions between the auditor and management, disagreement between the auditor and management;

**Particulars**

Auditing Standard ASA 260 at [15]

- (d) provided to AET, a:
  - (i) copy of the audit report of Provident's financial statements, and the report to Provident's management referred to in the previous subparagraph;

**Particulars**

ss 307A and 313(1) Corporations Act

Auditing Standard ASA 260 at [15]

- (ii) report pursuant to s 313(2) of the Corporations Act recording that:
  - (A) the records of Provident did not contain sufficient information to determine the amount that might be recovered in respect of loans in arrears including Burleigh Views, Chrysalis, Yarraman, Delta Dawn, and MJ Server loans
  - (B) the auditor could not determine whether or to what extent a provision was required against the Burleigh Views, Chrysalis, Yarraman, Delta Dawn, and MJ Server loans;
  - (C) the auditor either intended to or had modified his or her audit report accordingly.

133 In breach of the duty pleaded in paragraph 131, PwC failed to take reasonable care and skill in the course of conducting the audit of Provident's financial report for FY07 and in the preparation of PwC's audit report because:

- (a) it relied upon systems and processes for the monitoring of loan arrears, identification of impaired loans, and the making of provisions against impaired loans, which depended upon the decisions of Mr O'Sullivan;
- (b) failed to review all material loans and a selection of other loans in order to test Provident's systems and processes;

#### **Particulars of material loans**

AET repeats paragraph 17A(e), and refers to the loans referred to in paragraph 132A and the loans to Mihail Ovchinnikov, George Tahatos Holdings Pty Ltd, Alex G Grivas Pty Ltd, Tembelli Pty Ltd, MMT Investment Services Pty Ltd, Unique Castle Development Pty Ltd, AJV Constructions Pty Ltd, Mickle Investments Pty Ltd, Owston Nominees Pty Ltd, GL & SE (Service Station) Pty Ltd, Willow Breeze Pty Ltd, Orchard Holdings (NSW) Pty Ltd, Agara Holdings Pty Ltd, Betta By Design Pty Ltd, MPG (77MR.MAYFIELD) Pty Limited, Cleveland Pty

Ltd, Kilmory Developments Pty Ltd, Ian Maxwell  
Anderson and Paul Vincent Hanna

- (c) failed to conduct any review of Provident's systems and processes for the monitoring of loans arrears;
- (d) Not used;
- (e) in relation to the Burleigh Views, Yarraman, Delta Dawn, and MJ Server loans, failed to conduct analysis, or alternatively adequate analysis, to verify Provident's assertions as to the steps being taken to recover material loans in arrears;
- (f) in relation to the Chrysalis loan:
  - (i) failed to conduct adequate analysis to verify Provident's assertions as to the likelihood of recovery of the loan;
  - (ii) accepted without further investigation, or alternatively adequate investigation, the assertion of Mr O'Sullivan that the LVR of the loan was 66%;
  - (iii) accepted without further investigation, or alternatively adequate investigation, the assertion of Mr O'Sullivan that there was a willing buyer available for the purchase of the property held securing the loan;
  - (iv) failed to obtain, or alternatively request Provident to obtain, an up to date valuation of the property securing the loan;
  - (v) failed to recognise the impairment, or the risk of impairment, in respect of the loan;
  - (vi) failed to recognise the need for a provision in respect of the loan;
- (g) Not used
- (h) Not used
- (i) failed to investigate and test in the manner pleaded in paragraph 17A(d)-(h) above all material loans to determine whether:
  - (i) each material loan was impaired or demonstrated indicators of impairment;

- (ii) each material loan was recoverable;
  - (iii) the provision (if any) made against each material loan was adequate; and
  - (iv) a substantial proportion of Provident's loan book was recoverable;
- (j) failed to become aware of the matters and failed to make the determinations pleaded in subparagraphs 132A(a), (b), (d), (i)-(l) and (w), apart from the matters pleaded in subparagraphs 132A(i)(ii);
  - (k) failed to take the steps pleaded in 132B;
  - (l) failed to take the steps pleaded in 132C in circumstances where Provident
    - (i) Not used
    - (ii) would have been unable to provide sufficient appropriate audit evidence as to the recoverability of the Burleigh Views, Chrysalis, Yarraman, Delta Dawn, and MJ Server loans.

133AA In performing its duties under the trust deed and under s. 283DA of the Corporations Act, AET relied on the audit of Provident's financial report for FY07 and the FY07 Audit Report.

133A If PwC had not breached its duty in the manner pleaded in paragraph 133:

- (a) PwC would have taken the steps pleaded in paragraph 132C, including the provision of information to AET as pleaded in paragraph 132C(d);
- (b) updated valuations of the properties securing the loans referred to in paragraphs 133(l)(ii) would have been obtained by Provident or PwC which would have disclosed that:
  - (i) the "as is" value of the property securing the Burleigh Views loan as at 30 June 2007 was approximately \$6,180,000;
  - (ii) in circumstances where the total amount owing under the Burleigh Views loan as at 30 June 2006 was approximately \$12,082,000, Provident's financial statements should have but did not account for a loss of approximately \$5,902,000;

- (iii) the "as is" value of the property securing the Chrysalis loan as at 30 June 2007 was approximately \$3,300,000;
  - (iv) in circumstances where the total amount owing under the Chrysalis loan as at 30 June 2007 was approximately \$6,261,000, Provident's financial statements should have but did not account for a loss of approximately \$2,961,000;
  - (v) the "as is" value of the property securing the Yarraman and Delta Dawn loans as at 30 June 2007 was approximately \$7,550,000;
  - (vi) in circumstances where the total amount owing under the Yarraman and Delta Dawn loans as at 30 June 2007 was approximately \$10,810,000, Provident's financial statements should have but did not account for a loss of approximately \$3,260,000;
  - (vii) the "as is" value of the property securing the MJ Server as at 30 June 2007 was approximately \$3,490,000;
  - (viii) in circumstances where the total amount owing under the MMT loan as at 30 June 2007 was approximately \$3,850,00, Provident's financial statements should have but did not account for a loss of approximately \$360,000;
  - (ix) by reason of the matters in subparagraphs (i)-(viii):
    - (A) the total net assets of Provident were approximately \$1,257,000, rather than approximately \$13,740,000 as disclosed in Provident's financial statements;
    - (B) Provident made a loss before tax for FY07 of approximately \$7,683,000 rather than a profit before tax of approximately \$4,800,000, as disclosed in Provident's financial statements;
- (c) informed of the matters in subparagraphs (a) and (b) above, AET would have:
- (i) undertaken inquiries and investigations with each of PwC and Provident to determine whether:



- (A) Provident was complying with the terms of the debentures, the Trust Deed or the Corporations Act; and
  - (B) Provident was able to repay all debentures on issue as and when they fell due;
- (ii) in the event that Provident was in breach of the terms of the debentures, the Trust Deed or the Corporations Act, taken all available steps to cause Provident to remedy any such breach;
- (iii) appointed an investigating account to further investigate the matters above if it was not satisfied, based on its inquiries and investigations, that Provident:
  - (A) was not, or did not remain, in breach of the terms of the debentures, the Trust Deed and the Corporations Act; and
  - (B) was able to repay all debentures on issue as and when they fell due;
- (iv) taken legal advice and advice from the appointed investigating accountant as to the appropriate steps to address any matters identified by that investigating accountant;
- (v) sought orders appointing a receiver to the assets of Provident and/or otherwise exercised its powers under Chapter 2L of the Corporations Act or the debenture trust deed so as to require Provident to repay debenture holders and prevent it from borrowing further monies from the public;
- (vi) further and in the alternative to subparagraph (v), AET would not have consented to being named in any further debenture prospectus issued by Provident and, as a result, either:
  - (A) Provident would not have issued further debentures; or
  - (B) AET would have been replaced as trustee for debenture holders;

- (d) if the steps pleaded in subparagraph (c) had been taken, AET would not be liable to the Plaintiffs or Group Members (or would be liable in a lesser amount).

133B By reason of the matters pleaded in paragraph 133A:

- (a) PwC's breach of duty pleaded in paragraph 133 was a necessary condition of AET loss;
- (b) it is appropriate that PwC's liability extend to AET's loss; and
- (c) by reason of (a) and (b), the breach of duty pleaded in 133 caused AET's loss.

Statutory damages for misleading and deceptive conduct

134 PwC's conduct in issuing the FY07 Audit Report was:

- (a) conduct in trade or commerce; and
- (b) conduct in relation to financial products, namely, the debentures issued by Provident.

135 The FY07 Audit Report was published and made available on the website of Provident.

135A PwC authorised and consented to the FY07 Audit Report being published and made available on the website of Provident.

**Particulars**

AET.500.003.0338

135B By reason of the matters pleaded in paragraphs 135 and 135A, PwC's conduct pleaded in paragraph 136 involved the use of telegraphic or telephone services.

136 By issuing the FY07 Audit Report, and by authorising and consenting to the FY07 Audit Report available on the website of Provident, PwC impliedly represented that

- (a) it had conducted its audit in respect of Provident's financial report for FY07 with reasonable care and skill (**2007 Care and Skill Representation**);
- (b) it had reasonable grounds for its opinion that:

- (i) it had been given all information, explanation and assistance necessary for the conduct of the audit (**2007 307(b) Representation**); and
- (ii) Provident had kept records sufficient to enable a financial report to be prepared and audited (**2007 307(c) Representation**); and
- (iii) Provident's financial report for FY07 gave a true and fair view of the financial position of Provident as at 30 June 2007 and of its performance for the year ended on that date (**2007 TAFV Representation**).

**Particulars**

The 2007 Care and Skill Representation, the 2007 307(b) Representation, the 2007 307(c) Representation and the 2007 TAFV Representation were made to Provident, its members, AET, holders of debentures issues by Provident and prospective holders of debentures issued by Provident.

137 Contrary to the:

- (a) 2007 Care and Skill Representation, PwC had not conducted its audit in respect of Provident's financial report for FY07 with reasonable care and skill;

**Particulars**

AET relies on the matters pleaded in paragraph 133 above.

- (b) 2007 307(b) Representation, PwC did not have reasonable grounds for its opinion that it had not been given all information, explanation and assistance necessary for the conduct of the audit;

**Particulars**

AET relies on the matters pleaded in subparagraphs 132A(a), (c), (i), (k) and (w) and paragraph 132B above.

- (c) 2007 307(c) Representation, PwC did not have reasonable grounds for its opinion that Provident had kept sufficient records to enable a financial report to be prepared and audited; and

**Particulars**

AET relies on the matters pleaded in subparagraphs 132A(a), (c), (i), (k) and (w) and paragraph 132B above.

- (d) 2007 TAFV Representation, PwC did not have reasonable grounds for its opinion that Provident's financial report for FY07 gave a true and fair view of the financial position of Provident as at 30 June 2007 and of its performance for the year ended on that date.

**Particulars**

AET relies on the matters pleaded in paragraphs 133 and 133A(b) above.

138 Not used

139 By virtue of the matters pleaded in paragraphs 134 to 137 above, by issuing the FY07 Audit Report, PwC engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of:

- (a) former s. 52 of the former Trade Practices Act 1974;
- (b) s. 1041H of the Corporations Act;
- (c) s. 12DA of the Australian Securities and Investments Commission Act 2001;
- (d) former s. 42 of the Fair Trading Act 1987 (NSW).

139A If PwC had not made each of the 2007 Care and Skill Representation, the 2007 307(b) Representation, the 2007 307(c) Representation and the 2007 TAFV Representation, AET would have:

- (a) become aware that:
- (i) Provident's financial reports for the period ending 30 June 2007 as they were presented did not present a true and fair view of Provident's actual financial position and actual financial performance for the year ending 30 June 2007; or

- (ii) alternatively, PwC was not of the opinion that Provident's financial reports for the period ending 30 June 2007 presented a true and fair view of Provident's actual financial position and financial performance for the year ending 30 June 2007;
  - (iii) alternatively, PwC was unable to form the opinion that Provident's financial reports for the period ending 30 June 2007 presented a true and fair view of Provident's actual financial position and financial performance for the year ended 30 June 2007;
- (b) informed of the matters in subparagraph (a) above, AET would have:
- (i) undertaken inquiries and investigations with each of PwC and Provident to determine whether:
    - (A) Provident was complying with the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) Provident was able to repay all debentures on issue as and when they fell due;
  - (ii) in the event that Provident was in breach of the terms of the debentures, the Trust Deed or the Corporations Act, taken all available steps to cause Provident to remedy any such breach;
  - (iii) appointed an investigating accountant to further investigate the matters above if it was not satisfied, based on its inquiries and investigations, that Provident:
    - (A) was not, or did not remain, in breach of the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) was able to repay all debentures on issue as and when they fell due;
  - (iv) taken legal advice and advice from the appointed investigating accountant as to the appropriate steps to address any matters identified by that investigating accountant;

- (v) sought orders appointing a receiver to the assets of Provident and/or otherwise exercised its powers under Chapter 2L of the Corporations Act or the Trust Deed so as to require Provident to repay debenture holders and prevent it from borrowing further monies from the public; and
  - (vi) further and in the alternative to subparagraph (v), AET would not have consented to being named in any further debenture prospectus issued by Provident and, as a result, either:
    - (A) Provident would not have issued further debentures; or
    - (B) AET would have been replaced as trustee for debenture holders; and
  - (c) if the steps pleaded in subparagraph (b) had been taken, AET would not be liable to the Plaintiffs or Group Members (or would be liable in a lesser amount).
- 140 By reason of the matters pleaded in paragraph 139A, AET has suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraph 139 above.
- 141 AET is entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former Trade Practices Act;
  - (b) s. 1041I of the Corporations Act;
  - (c) s. 12GM of the ASIC Act; and
  - (d) former s. 68 of the Fair Trading Act 1987 (NSW).
- 142 In the FY07 Audit Report, PwC represented that its audit services were of a particular standard, namely, that they accorded with the Australian Auditing Standards (**2007 Audit Standard Representation**).
- 143 The 2007 Audit Standard Representation was made in:
- (a) in trade or commerce; and
  - (b) in connexion with the supply of PwC's audit services.
- 144 At the time PwC issued its audit report for Provident's FY07 financial report, the Australian Auditing Standards required that an audit be conducted so as to

provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

**Particulars**

ASA 200, [24]

- 145 By reason of the matters pleaded in paragraphs 133 and 133A(b), the FY07 Audit Report had not been conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.
- 146 By virtue of the matters pleaded in the previous paragraph:
- (a) the 2007 Audit Standard Representation was false;
  - (b) the making of the 2007 Audit Standard Representation was conduct engaged in by PwC that was misleading or deceptive or likely to mislead or deceive;
  - (c) by issuing the FY07 Audit Report, PwC contravened:
    - (i) former s. 53(aa) of the former Trade Practices Act 1974; and
    - (ii) former s. 44(b) of the Fair Trading Act 1987 (NSW).
- 146A If PwC had not made the 2007 Audit Standard Representation, AET would have become aware of the matters and taken the steps set out in paragraph 139A.
- 147 By reason of the matters pleaded in the previous paragraph, AET has suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraph 146 above.
- 148 AET is entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former Trade Practices Act; and
  - (b) former s. 68 of the *Fair Trading Act* 1987 (NSW).
- 148A PwC did not issue a report pursuant to s 313(2) of the Corporations Act in the period from 30 June 2007 to 31 December 2007.
- 148B By not issuing a report of the kind pleaded in the previous paragraph in the period from 30 June 2007 to 31 December 2007, PwC impliedly represented **(2007 313(2) Representation)** that, having exercised reasonable care and skill in conducting its audit:

- (a) there were no matters of which it was aware that, in its opinion, were likely to be or were:
  - (i) prejudicial to the interests of debenture holders; and
  - (ii) relevant to the exercise of the powers of the trustee for debenture holders, or the performance of the trustee's duties, under this Act or the trust deed; and
- (b) it had a reasonable basis for that opinion.

148C By at least the time it issued the FY07 Audit Report, PwC knew:

- (a) that Provident had on issue debentures the subject of Chapter 2L of the *Corporations Act*;
- (b) there was a trustee for debenture holders, which trustee owed the duties set out in s 283DA of the *Corporations Act*;
- (c) there was a risk that loans made by Provident may not be recoverable and that provision for bad and doubtful debts may be inappropriate;

**Particulars**

2007 Draft Audit Plan (PWC.505.002.0527)

- (d) Provident did not maintain adequate financial records to support the matters expressed in its financial statements;

**Particulars**

Email (PWC.509.001.1224)

- (e) in the course of performing the audit pleaded in paragraph 125 above Provident did not make available to PwC documents recording any analysis by Provident for the identification of impaired loans;

**Particulars**

Letter (PWC.509.001.3608)

- (f) PwC's opinion that further provisioning against past due loans was not necessary was based on discussions between PwC and Provident's management;

**Particulars**

Email (PWC.509.001.1224)



Letter (PWC.509.001.3608)

Half Yearly Report to Audit Committee  
(PWC.508.001.1177 at [2.3])

- (g) the discussions referred to in the previous subparagraph may not have provided a sufficient basis for the opinion that further provisioning against past due loans was not necessary in circumstances where Mr O'Sullivan was responsible for loan origination, the identification of impaired loans and the provisioning for such impairments, in circumstances where Mr O'Sullivan (and entities related to Mr O'Sullivan) was the ultimate owner of the issued shares in Provident;

**Particulars**

Email (PWC.509.001.3557)

Provident financial statements for FY07, page 4  
(AET.500.003.0338)

- (h) Provident prepared a loan arrears report on a monthly basis and provided that report to AET;

**Particulars**

Email attachment (PWC.509.001.3559 at 3561)

Email attachment (PWC.509.001.3113 at 3118)

- (i) the monthly arrears reports did not comply with accounting standards;

**Particulars**

Email attachment (PWC.509.001.3559 at 3561)

Email attachment (PWC.509.001.3113 at 3118)

AASB 139 at [58]

- (j) the monthly arrears report did not specifically consider indicators of loan impairment;

**Particulars**

Email attachment (PWC.509.001.3559 at 3561)

Email attachment (PWC.509.001.3113 at 3118)

- (k) the monthly arrears report did not consider all loans issued by Provident;

**Particulars**

Email attachment (PWC.509.001.3559 at 3561)

Email attachment (PWC.509.001.3113 at 3118)

- (l) it was difficult to determine from the monthly arrears report whether or not a particular loan would be recoverable;

**Particulars**

Email attachment (PWC.509.001.3113 at 3118)

- (m) in assessing the recoverability of a loan, Provident considered only the recoverability of principal and did not consider the recoverability of interest;

**Particulars**

Email attachment (PWC.509.001.3113 at 3118)

- (n) loan advances made by Provident and interest repayments received by Provident may be materially misstated in Provident's accounts;

**Particulars**

Email attachment (PWC.509.001.3113 at 3118)

- (o) apart from the preparation of the monthly arrears report, the management of Provident performed no further analysis of whether loans were impaired;

**Particulars**

Email attachment (PWC.509.001.3559 at 3561)

Email attachment (PWC.509.001.3113 at 3118)

- (p) by reason of the matters pleaded in subparagraphs (h)-(o) above, it was difficult for PwC to assess whether any loans were impaired or showed indications of impairment;

**Particulars**

Email attachment (PWC.509.001.3559 at 3561)

Email attachment (PWC.509.001.3113 at 3118)

- (q) by reason of the matters pleaded in subparagraphs (h)-(p), there was a significant risk that Provident's accounts and the monthly arrears reports did not identify loans which were in fact impaired or which showed signs of impairment and did not make provision for such impairment where such provision should have been made;

**Particulars**

Email attachment (PWC.509.001.3559 at 3561)

Email attachment (PWC.509.001.3113 at 3118)

- (r) the matters pleaded in the previous subparagraph may affect decisions of Provident and third parties who rely on Provident's financial information including the monthly arrears report provided to AET;

**Particulars**

Email attachment (PWC.509.001.3559 at 3561)

- (s) it was desirable that Provident conduct a formal review of all loans on a regular basis to assess whether loans were impaired or showed signs of impairment and whether provision should be made in respect of impaired loans and this formal review should be documented;

**Particulars**

Email attachment (PWC.509.001.3559 at 3561)

- (t) PwC considered that the matters pleaded in subparagraphs (h)-(s) presented a significant weakness which could compromise Provident's internal controls; and

**Particulars**

Email attachment (PWC.509.001.3559 at 3561)

Email attachment (PWC.509.001.3113 at 3118)

Letter (PWC.506.001.0027)

- (u) PwC considered that Provident should address the matters pleaded in subparagraphs (h)-(s) as a matter of urgency.

**Particulars**

Email attachment (PWC.509.001.3559 at 3561)

Email attachment (PWC.509.001.3113 at 3118)

- 148D Upon becoming aware of the matters in paragraph 148C, an auditor exercising reasonable care and skill in the position of PwC would have formed the opinion that those matters:
- (a) were or were likely to be prejudicial to the interests of debenture holders; and
  - (b) relevant to the exercise of AET's powers, and the exercise of AET's duties, under the Corporations Act or the Trust Deed.
- 148E Upon becoming aware of the matters in paragraph 148C, an auditor exercising reasonable care and skill in the position of PwC could not have formed the opinion that those matters:
- (a) were not or were not likely to be prejudicial to the interests of debenture holders; and/or
  - (b) irrelevant to the exercise of AET's powers, and the exercise of AET's duties, under the Corporations Act or the Trust Deed.
- 148F Contrary to the 2007 313(2) Representation, and by reason of the matters pleaded in paragraphs 148D and 148E, there was no reasonable basis for PwC to form the opinion that the matters pleaded in paragraph 148C above (which were known to PwC) were not likely to be or were not:
- (a) prejudicial to the interests of debenture holders; and
  - (b) relevant to the exercise of the powers of the trustee for debenture holders, or the performance of the trustee's duties, under the Corporations Act or the Trust Deed.
- 148G By reason of the matters pleaded in paragraphs 148A to 148F above, in making the 2007 313(2) representation PwC engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of:
- (a) s. 1041H of the Corporations Act;
  - (b) s. 12DA of the ASIC Act 2001; and
  - (c) former s. 42 of the Fair Trading Act 1987 (NSW).
- 148H If PwC had not made the 2007 313(2) Representation, AET would have:
- (a) become aware of the matters in paragraph 148C;

- (b) informed of the matters in subparagraph (a), AET would have
- (i) undertaken inquiries and investigations with each of PwC and Provident to determine whether:
    - (A) Provident was complying with the terms of the debentures, the Trust Deed or the Corporations Act; and
    - (B) Provident was able to repay all debentures on issue as and when they fell due;
  - (ii) in the event that Provident was in breach of the terms of the debentures, the Trust Deed or the Corporations Act, taken all available steps to cause Provident to remedy any such breach;
  - (iii) appointed an investigating accountant to further investigate the matters above if it was not satisfied, based on its inquiries and investigations, that Provident:
    - (A) was not, or did not remain, in breach of the terms of the debentures, the Trust Deed and the Corporations Act; and
    - (B) was able to repay all debentures on issue as and when they fell due;
  - (iv) taken legal advice and advice from the appointed investigating accountant as to the appropriate steps to address any matters identified by that investigating accountant;
  - (v) sought orders appointing a receiver to the assets of Provident and/or otherwise exercised its powers under Chapter 2L of the Corporations Act or the debenture trust deed so as to require Provident to repay debenture holders and prevent it from borrowing further monies from the public;
  - (vi) further and in the alternative to subparagraph (v), AET would not have consented to being named in any further debenture prospectus issued by Provident and, as a result, either:

- (A) Provident would not have issued further debentures;  
or
  - (B) AET would have been replaced as trustee for  
debenture holders;
- (c) if the steps pleaded in subparagraph (b) had been taken, AET would not be liable to the Plaintiffs or Group Members (or would be liable in a lesser amount).

148I By reason of the matters pleaded in paragraph 148H above, AET has suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraph 148G above.

148J AET is entitled to recover that loss from PwC as damages under:

- (a) s. 1041I of the Corporations Act;
- (b) s. 12GM of the ASIC Act; and
- (c) former s. 68 of the Fair Trading Act 1987 (NSW).

#### Contribution

149 At the time PwC audited Provident's financial report for FY07 and issued the FY07 Audit Report, it was reasonably foreseeable by PwC:

- (a) that holders of debentures issued by Provident would rely on PwC to conduct its audit and prepare its audit report with reasonable care and skill;
- (b) that holders of debentures issued by Provident would rely on AET performing its duties under the Trust Deed and under s. 283DA of the Corporations Act;
- (c) that AET would rely on PwC to conduct its audit and prepare its audit report with reasonable care and skill for the reasons pleaded at paragraph 128 above;
- (d) that, if PwC failed to conduct its audit and prepare its audit report with reasonable care and skill, then AET might, in reliance on PwC's audit report, fail to take steps (such as appointing a receiver) to protect the interests of debenture holders; and

- (e) that, were that to occur, debenture holders might suffer harm in the form of economic loss, including loss incurred by those debenture holders as a result of rolling over their debentures.
- 150 The risk of harm pleaded in paragraph 149 was not insignificant.
- 151 At the time PwC audited Provident's financial report for FY07 and issued the FY07 Audit Report:
- (a) debenture holders had no practical ability to protect themselves from the risk of harm pleaded in paragraph 149;
  - (b) debenture holders could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report;
  - (c) debenture holders were dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 149; and
  - (d) debenture holders were vulnerable to harm resulting from a failure by PwC to exercise reasonable care and skill in the performing its audit and preparing its audit report.
- 152 By reason of the matters pleaded in paragraphs 8, 126, 127 and 149 to 151 above, in auditing Provident's financial report for FY07 and in issuing the FY07 Audit Report, PwC owed a duty to holders of debentures issued by Provident to take reasonable care:
- (a) in the conduct of its audit; and
  - (b) in the preparation of its audit report,
- to avoid the risk of harm pleaded in paragraph 149 above.
- 152A AET repeats paragraphs 132-133 above.
- 153 By reason of the matters pleaded in the previous paragraph, and in breach of the duty pleaded in paragraph 152, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY07 and in the preparation of the FY07 Audit Report.
- 153A AET repeats paragraphs 133AA and 133A.
- 153B If AET had taken the steps pleaded in paragraph 133A(c) above those Group Members who

- (a) as at 29 June 2012, held debentures that had been issued before 28 September 2007 (when PwC issued the FY07 Audit Report), would have been repaid in full or in an amount greater than that actually recovered by Group Members; and
- (b) held debentures as at 28 September 2007, and were debenture holders as at 29 June 2012 as a result of having rolled over those debentures, would not have rolled over their debentures and their debentures would instead have been repaid either in full or in an amount greater than that actually recovered by those Group Members.

154 By reason of the matters pleaded in paragraphs 153A and 153B above:

- (a) PwC's breach of duty pleaded in paragraph 153 above was a necessary condition of the loss suffered by the subclass of Group Members pleaded in paragraph 153B;
- (b) it is appropriate that PwC's liability extend to those Group Members' loss; and
- (c) by reason of (a) and (b), the breach of duty pleaded in paragraph 153 caused those Group Members' loss.

154A The loss suffered by the Group Members pleaded in paragraph 154 above is the same loss in respect of which those Group Members seek to recover damages in this proceeding from AET.

154B AET repeats paragraphs 134 to 140, 142 to 147, 148A to 148I above.

155 If AET had taken the steps pleaded in paragraph 139A above then:

- (a) the Plaintiffs and Group Members would not have acquired the debentures they held as at 29 June 2012 and would not have suffered the loss claimed by them in this proceeding; and
- (b) further and in the alternative, those Group Members who were debenture holders as at 29 June 2012 as a result of having rolled over those debentures, would not have rolled over their debentures and their debentures would have instead been repaid either in full or in an amount greater than that actually received by those Group Members;
- (c) further and in the alternative, those Group Members who held debentures as at 28 September 2007 and continued to hold them until



29 June 2012 would have either been repaid in full or would have received a greater amount than that actually recovered by them.

- 155A By reason of the matters pleaded in paragraphs 154B and 155 above, the Plaintiff and Group Members have suffered loss by the acts of PwC giving rise to the contraventions pleaded in paragraphs 139, 146 and 148G above
- 156 The Plaintiffs and Group Members are entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former Trade Practices Act;
  - (b) s. 1041I of the Corporations Act;
  - (c) s. 12GM of the ASIC Act;
  - (d) former s. 68 of the *Fair Trading Act 1987* (NSW).
- 156A Some but not all Group Members :
- (a) were resident in Victoria as at 28 September 2007;
  - (b) have been resident in Victoria since 28 September 2007; and/or
  - (c) suffered the loss pleaded in paragraph 155A above in Victoria.
- 156B By reason of the matters pleaded in previous paragraph the contraventions pleaded in in paragraphs 140, 147 and 148I above also constitute a contravention of the former s. 9 of the *Fair Trading Act 1999* (Vic).
- 156C By reason of the matters pleaded in the previous paragraph, any Group Member falling within one or more of subparagraphs 156A(a)-(c) above, in addition to the relief pleaded in paragraph 156 above, is entitled to recover the loss pleaded in paragraph 156 above from PwC as damages under s. 159 of the *Fair Trading Act 1999* (Vic).
- 157 AET repeats paragraph 43.
- 158 By reason of the matters pleaded in paragraphs 149 to 157 above, if, which is denied, AET is liable to the Plaintiffs and Group Members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to:
- (a) s. 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW); or
  - (b) s. 23B of the *Wrongs Act 1958* (Vic.);

159 Further or alternatively, if, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then its liabilities are coordinate with those of PwC pleaded above.

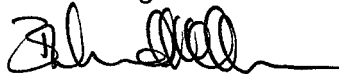
160 By reason of the matters pleaded in paragraphs 149 to 157 and 159 above, if, which is denied, AET is liable to the Plaintiffs and Group Members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to the doctrine of equitable contribution.

### 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 claim for damages in this statement of cross-claim has reasonable prospects of success.

I have advised the cross-claimant that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Bradley Woodhouse

Date of signature

22 FEBRUARY 2018

### NOTICE TO CROSS-DEFENDANT

If you do not file a defence you will be bound by any judgment or order in the proceedings so far as it is relevant to this cross-claim.

### HOW TO RESPOND

**Please read this statement of cross-claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the cross-claim you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

You can respond in one of the following ways:

**1 If you intend to dispute the cross-claim or part of the cross-claim, by filing a defence and/or making a cross-claim.**

**2 If money is claimed, and you believe you owe the money claimed, by:**

- Paying the cross-claimant all of the money and interest claimed.
- Filing an acknowledgement of the claim.
- Applying to the court for further time to pay the claim.

**3 If money is claimed, and you believe you owe part of the money claimed, by:**

- Paying the cross-claimant that part of the money that is claimed.
- Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at <http://www.ucprforms.justice.nsw.gov.au/> or at any NSW court registry.

**REGISTRY ADDRESS**

Street address	184 Phillip Street, Sydney
Postal address	Supreme Court of NSW, GPO Box 3, Sydney, 2001
Telephone	(02) 9230 8628

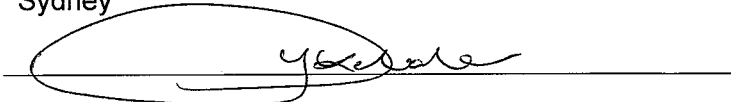
[on separate page]

**AFFIDAVIT VERIFYING**

Name Yvonne Maree Kelaher  
 Address Level 3, 30 Hickson Road, Millers Point, NSW  
 Occupation Senior Manager  
 Date 22 FEBRUARY 2018

I say on oath :

- 1 I am the Senior Manager – Relationship and Transaction Management for the Cross Claimant and am authorised to make this affidavit on their behalf.
- 2 I believe that the allegations of fact in the statement of cross-claim are true.

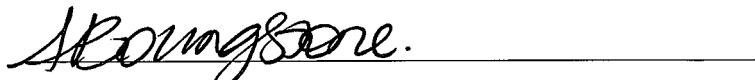
SWORN at Sydney  
 Signature of deponent   
 Name of witness  
 Address of witness 8 Chifley, 8-12 Chifley Square, Sydney, NSW  
 Capacity of witness Justice of the Peace / Solicitor

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 confirmed the deponent's identity using the following identification document:

DRIVERS LICENCE 12107062

Identification document relied on (may be original or certified copy) †

Signature of witness 

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

[\* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

**PARTY DETAILS**

A list of parties must be filed and served with this statement of cross-claim.

**PARTIES TO THIS CROSS-CLAIM**

**Cross-claimant**

**Australian Executor Trustees Limited,**  
Cross-claimant

**Cross-defendants**

**Marcus Jonathon Anderson Laithwaite**  
and the others listed in Schedule 1, First  
cross-defendant

**DETAILS ABOUT CROSS-DEFENDANTS THAT ARE NEW PARTIES**

**First cross-defendant**

Name

**Marcus Jonathon Anderson Laithwaite** and the others  
listed in Schedule 1

Address

201 Sussex Street  
Sydney NSW 2000

**SCHEDULE ONE****The partners of PwC, who so far as known to the Cross-claimant were:**

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

BEATIE, MEREDITH JOHN

BECK, BRADLEY JOHN

BENDALL, PAUL ANTHONY

BENNETT, CHRISTOPHER PAUL

BENNETT, JOHN WILLIAM

BERESFORD, BRIAN

BERSTEN, MICHAEL CHARLES

BEST, CORINNE GERALDINE

BILLINGHAM, STEPHEN DENNIS

BILLINGS, GRAEME AMBERV

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, NOELASHLEY  
BRIDGE, MICHAEL ANDREW  
BRINDLE, PAUL OWEN  
BROWNE, MICHAEL HOLGATE  
BRUNNER, PAULFRANZJOSEF  
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, PRADIPKUMAR 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 JON  
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, KEVIN  
FORD, SIMON GRAHAM  
FORMAN, ANDREW GEORGE  
FORSDICK, 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, STUART JOHN  
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, GREGORY JOHN  
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, GREGORY JOHN  
KIDLEY, DEREK  
KINSELLA, CHRISTOPHER JOHN  
KIRK, PAUL WILLIAM  
KLEIN, ANTHONY DARREN  
KOENIG, PAUL GUSTAV  
KONIDARIS, PETER  
KOOPMANS, HANS BERNARDUS  
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  
LINSCHOTTEN, 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, JOHN FINTAN  
O'CONNOR, JOHN PETER  
O'DONOGHUE, JOHN  
O'DOWD, CONOR JAMES  
O'PREY, PHILIP GORDON  
O'REILLY, MARK OWEN  
O'ROURKE, KEVIN JOHN  
OSMOND, MATIHEW GARY DAVID

PALLIER, DAVID JOHN  
PAPAGEORGIOU, VOULA VICTORIA  
PARKER, ANDREW JAMES  
PAROISSIEN, IAN DAVID  
PEAKE, ANTHONY WILLIAM  
PEARSON, ALISTAIR  
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  
PRATI, 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, MICHAEL 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, MAN OJ JOSEPH  
SARGENT, OLIVER CHARLES  
SAYERS, LUKE FREDERICK  
SCALISE, CESARE HANNY  
SCANLON, CATHERINE NORA 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, RUSSEL LSTEPHEN  
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 AM, ROBERT  
WATSON, ALLAN JOHN  
WATSON, TIMOTHY ROBERT  
WAUGH, GARRY LEONARD  
WELLINGTON, ANDREW JOHN  
WHALE, DAVID JOHN  
WHEATON, BENJAMIN ERIC  
WHEELER, ANDREW ARNOTT