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Defence

No. VID790 of 2014

Federal Court of Australia
District Registry: Victoria

Innes Creighton

Applicant

Australian Executor Trustees Limited (ACN 007 869 794)

Respondent

A. REPRESENTATIVE PROCEEDINGS

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

Filed on behalf of (name & role of party)	Australian Executor Trustees Limited (ACN 007 869 794), Respondent		
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NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 13/03/2015 2:59:25 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

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

Registrar

Important Information

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

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

- (B) the accommodation is not greater than the following proportions of the value of the accommodation security (LVR): residential land – 85% LVR; commercial land – 75% LVR; industrial land – 75% LVR; rural land – 70% LVR; construction and development – 70% LVR of projected value of the development;
 - (C) be repaid after 10 years after the first draw down;
 - (iv) Provident charged in favour of IOOF all its present and future right, title and interest in and to its assets to secure the due and punctual payment of the amounts payable to debenture holders;
 - (v) Provident covenanted (inter alia) that:
 - (A) if requested by IOOF it would provide monthly reports setting out (inter alia) particulars of mortgage arrears at the end of the month and action taken by Provident to recover those arrears;
 - (B) it would give to IOOF copies of the accounts and reports required to be lodged with the Australian Securities and Investments Commission (ASIC);
 - (C) it would promptly give IOOF written notice as soon as it became aware of any potential default or event of default or anything which might result or has resulted in a material adverse change in the financial position of Provident or the ability of Provident to perform its obligations under the Debenture Trust Deed;
 - (c) says that on 15 September 2000 IOOF changed its name to Tower Trust (NSW) Limited (**Tower (NSW)**);
 - (d) says that on or about 7 December 2004 Tower (NSW) retired as trustee of the Debenture Trust Deed and was replaced by AET, then known as Tower Trust Limited;
 - (e) says that, at all material times, the Debenture Trust Deed was a Trust Deed governed by Chapter 2L of the *Corporations Act 2001* (Cth) (**Corps Act**);
 - (f) otherwise does not admit the allegations in paragraph 3 of the SoC.
4. In answer to the allegations in paragraph 4 of the SoC, AET:
- (a) says that it does not know the identity and circumstances of the group members;
 - (b) therefore, does not admit the allegations in paragraph 4.1 and 4.2 of the SoC; and
 - (c) denies that any group member has suffered loss or damage as a result of the contraventions of s283DA of the Corps Act alleged against AET in the SoC.
- B. PROVIDENT AND ITS DUTIES**
5. In answer to the allegations in paragraph 5 of the SoC, AET:
- (a) admits the allegations in paragraph 5.1 of the SoC;

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

C. AETL, ITS DUTIES AND POWERS

6. AET admits the allegations in paragraph 6 of the SoC.
7. AET admits the allegations in paragraph 7 of the SoC.
8. In answer to the allegations in paragraph 8 of the SoC, AET:
- (a) says that, pursuant to s283BB of the Corps Act, Provident had an obligation to make available for inspection by AET, or an officer or employee of AET authorised to carry out the inspection, or a registered company auditor appointed by AET to carry out the inspection, all of its financial or other records and give any information, explanation or other assistance they require about matters relating to those records;
 - (b) says that, pursuant to s283HA of the Corps Act, on application by a trustee for any direction in relation to the performance of its functions or to determine any question in relation to the interests of debenture holders, the Court may give any direction and make any declaration or determination in relation to the matter that it considers appropriate and may make ancillary or consequential orders;
 - (c) says that, pursuant to s283HB(1) of the Corps Act, in addition to the orders specified in paragraphs (a) – (f) of that section, the Court may make any order it considers appropriate to protect the interests of existing or prospective debenture holders; and
 - (d) otherwise does not admit paragraph 8 of the SoC.
9. AET admits the allegations in paragraph 9 of the SoC.

D. PROVIDENT'S BUSINESS AND THE VALUE OF ITS ASSETS

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

- (a) says that in the period 2008 to 2010, Provident's principal business activities involved fixed rate mortgage lending and the issuing of fixed rate debentures;
- (b) says that it knew of the matters in the previous sub-paragraph; and
- (c) otherwise does not admit the allegations in paragraph 10 of the SoC.

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

- (a) says that in about August 2007 Provident entered into a Wholesale Funding Facility with Adelaide Bank Limited (**ABL** and **ABL Facility**) which involved the following features:
 - (i) Provident would make or refinance loans which loan and its security interest would be assigned to a trust controlled by ABL (**ABL Trust**);
 - (ii) the loan would be funded by the ABL Trust and not by Provident;
 - (iii) interest on the loans would be received by Provident and then transferred to ABL;
 - (iv) Provident would manage the loan for ABL;
 - (v) Provident was required to pay a cash deposit which was available to be used to repay any losses or operating fees resulting in non-payment of the loans made to borrowers;
 - (vi) Provident was required to refinance loans more than 270 days past due up to a maximum aggregate of 5% of all loans funded using the ABL Facility upon which the loan and security was transferred back to ABL;
- (b) says that from about August 2007, it knew of the matters in the previous sub-paragraph;
- (c) says that the cash deposit referred to in sub-paragraph (a)(v) above was \$7.5 million as at 30 June 2008 and \$10 million as at 30 September 2008 and thereafter; and
- (d) otherwise does not admit the allegations in paragraph 11 of the SoC.

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

- (a) says that in the period 2008 to 2010 Provident's lending service was designed to meet the need of borrowers who did not fit the lending criteria of Australia's traditional financial institutions;
- (b) says that Provident stated that its typical borrowers included business owners, self employed, property investors raising funds to purchase a property, the credit impaired and borrowers wishing to consolidate debt;
- (c) says that in the period 2008 to 2010 AET knew of the matters in the two preceding sub-paragraphs; and

(d) does not admit any other allegation in paragraph 12 of the SoC.

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

(a) says that in the period 2008 to 2010, the major asset on Provident's balance sheet were loans and advances;

(b) says that a primary risk Provident was exposed to was credit risk, being the risk that a counterparty will fail to perform their contractual obligations either in whole or part under the loan or mortgage documents and that the proceeds available from the sale of the property mortgaged to Provident as security for the loan are less than the amount owed under the loan;

(c) says that in the period 2008 to 2010 AET knew of the matters in the two preceding sub-paragraphs; and

(d) otherwise does not admit the allegations in paragraph 13 of the SoC.

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

(a) repeats the matters in paragraph 13(a) and (b) above;

(b) says that in the period 2008 to 2010 the principal assets of Provident that were or would be available to repay the amounts payable under debentures issued pursuant to the Debenture Trust Deed were loans and advances made by Provident and accompanying security for those loans and advances;

(c) says that in the period 2008 to 2010 AET knew of the matters in the two preceding sub-paragraphs; and

(d) otherwise does not admit the allegations in paragraph 14 of the SoC.

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

A) GENERAL MATTERS

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

(a) repeats the matters in paragraph 11 above;

(b) repeats the matters in paragraph 13 above; and

(c) otherwise does not admit the allegations in paragraph 15 of the SoC.

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

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

(b) Provident asserted that this had been achieved through a proactive management of loans in arrears, coupled with prudent credit policies;

- (c) that in the period 2008 to 2010 AET knew of the matters in the two preceding sub-paragraphs; and
 - (d) otherwise does not admit the allegations in paragraph 16 of the SoC.
17. In answer to the allegations in paragraph 17 of the SoC, AET:
- (a) says that in the period 2008 to 2010, it obtained information concerning Provident's portfolio of loans from the following sources:
 - (i) the audited annual financial reports issued by Provident (**Annual Reports**);
 - (ii) the audited interim annual financial reports issued by Provident (**Interim Reports**);
 - (iii) from October 2008 bi-annual reports titled "ASIC Regulatory Guide 69 Benchmark Disclosure Report" issued by Provident (**RG 69 Reports**);
 - (iv) Quarterly Reports supplied by Provident to AET addressing the matters in s283BF of the Corps Act (**Quarterly Reports**);
 - (v) monthly reports supplied by Provident to AET (**Monthly Reports**); and
 - (vi) Provident's Debenture Prospectus 11 dated 24 December 2008 (**DP 11**) and Debenture Prospectus 12 dated 23 December 2009 (**DP 12**).
 - (b) says that the Annual Reports from time to time (inter alia):
 - (i) disclosed the number and net fair value of loans made by Provident as at 30 June of each financial year;
 - (ii) disclosed the number and value of loans by security types, (i.e., residential, commercial rural, construction, other) and by location as at 30 June of each financial year;
 - (iii) disclosed the number and value of loans past due as at 30 June of each financial year;
 - (iv) conducted an analysis showing the percentage property price reduction and loan default level necessary to a result in a loss to Provident equal to the net equity as at 30 June of each year;
 - (v) disclosed the five largest loans and their percentage of the total loans and advances;
 - (vi) disclosed impairment losses expensed and impairment provisions made in respect of loans and advances;
 - (vii) contained a directors' declaration stating (inter alia) that the Annual Report gave a true and fair view of Provident's financial position as at 30 June of the year and of its performance for the year ended on that date and that there were reasonable grounds to believe that Provident will be able to pay the debts as and when they became due and payable;
 - (viii) contained an auditor's opinion that the Annual Report gave a true and fair view of Provident's financial position as at 30 June and its performance for the year

ended on that day and complied with the Corps Act, the *Corporations Regulations 2001* (Cth) (**Corps Regs**), and Australian Accounting Standards.

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

by residential, commercial / industrial, rural and development property respectively;

- (e) says that the Quarterly Reports addressed the matters required by s283BF of the Corps Act and referred to in paragraph 5(b) above;
 - (f) says that the Monthly Reports:
 - (i) provided cash flow projections for Provident for the three months following the date of the report;
 - (ii) provided a report in relation to loans made by Provident which were in excess of 90 days past due (**Arrears Report**);
 - (g) says the Arrears Reports from time to time:
 - (i) identified the loans which were in arrears for 90 days or more;
 - (ii) identified the total value of loans in arrears and their percentage of the value of all loans made by Provident;
 - (iii) identified the principal balance, the net arrears, days in arrears and any impairment provision made in respect of each loan;
 - (iv) stated the valuation of the security property and the relevant LVR for each loan;
 - (v) stated whether legal proceedings had been commenced in relation to the loan, or whether the security property was being sold by the borrower, or whether the security property was being sold by Provident, or whether the security property had been sold and was awaiting exchange or exchanged and awaiting settlement;
 - (vi) identified an estimated discharge date;
 - (vii) gave comments on the status of the loan and/or identified a strategy in relation to Provident's recovery of the amount of the loan;
 - (h) says that DP 11 and DP 12 reported Provident's status against the eight benchmarks in RG 69, including the information referred to in sub-paragraph (d) above:
 - (i) says that DP 11 was the subject of an Auditor's Benchmark Assurance Report dated 10 December 2009 (**DP 11 Auditor's Benchmark Assurance Report**) and DP 12 was the subject of an Auditor's Benchmark Assurance Report dated 14 April 2010 (**DP 12 Auditor's Benchmark Assurance Report**); and
 - (j) otherwise does not admit the allegations in paragraph 17 of the SoC.
18. In answer to the allegations in paragraph 18 of the SoC, AET:
- (a) repeats the matters in paragraph 17 above;
 - (b) says that the reports in paragraph 17 above wholly or substantially covered the matters referred to in paragraph 18 of the SoC; and

(c) denies the allegations in paragraph 18 of the SoC.

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

- (a) says that in DP 11, Provident stated to the effect that it did not satisfy Benchmark 1 in RG 69 because its equity ratio at 30 June 2008 was 6% and not 8%;
- (b) says that in DP 11 Provident stated to the effect that it had not sought a credit rating for its debentures from a credit rating agency recognised by ASIC as required by ASIC Benchmark 4;
- (c) says that compliance with the eight benchmarks in RG 69 was not mandatory and failure to meet one or more of them did not mean that a particular note was a poor investment, but required additional disclosure to investors to address the benchmarks on an "if not, why not" basis so that investors could assess its impact on their investment decision;
- (d) says that in DP 11 in relation to Benchmark 1 in RG 69 Provident stated to the effect that it considered that despite the general market economic slowdown since 30 June 2008, its level of equity capital was appropriate to operate the business and cover any losses that may arise, particularly in the light of Provident's record of low credit losses, management of past loans due, loan to valuation restrictions, business parameters and risks and limited liability under the wholesale funding facility;
- (e) says that in DP 11 in relation to Benchmark 4 in RG 69 Provident stated to the effect that it was continuing to assess a credit rating for its debentures and, as at the date of DP 11, was not satisfied that the potential benefits outweighed the costs of obtaining and maintaining such a rating, particularly in the light of Provident's record of low credit losses, management of past loans due, loan to valuation restrictions, business parameters and risks and limited liability under the wholesale funding facility;
- (f) says that the DP 11 Auditor's Benchmark Assurance Report stated to the effect that in the opinion of the auditors, in all material respects, the internal controls of Provident were adequately designed and operated effectively during the period from 30 June 2008 to 24 December 2008 to achieve the control objective of (inter alia) the equity ratio of Provident being appropriately monitored and instances where the ratio was less than 8% being identified and reported to the directors;
- (g) says that the DP 12 Auditor's Benchmark Assurance Report stated to the effect that the internal controls of Provident were adequately designed and operated effectively during the period from 1 July 2008 to 30 June 2009 to achieve the control objective of (inter alia) the equity ratio of Provident being appropriately monitored and instances where the ratio was less than 8% being identified and reported to the directors; and
- (h) says that it knew of the matters in sub-paragraphs (a) – (g) above;
- (i) otherwise denies the allegations in paragraph 19 of the SoC.

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

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

- (a) says that in its Annual Report for the year ended 30 June 2008 (**2008 Annual Report**), Provident's total assets were stated to be \$239,834,246;
 - (b) says that in the 2008 Annual Report, Provident's current assets included loans and advances of \$177,505,337 and its non-current assets included loans and advances of \$15,315,257;
 - (c) says that it knew of the matters in the two preceding sub-paragraphs; and
 - (d) otherwise denies the allegations in paragraph 20 of the SoC.
- 21 AET admits the allegations in paragraph 21 of the SoC.
22. In answer to the allegations in paragraph 22 of the SoC, AET:
- (a) says that the 2008 Annual Report stated to the effect that:
 - (i) the total value of debentures issued by Provident as at 30 June 2008 was \$154,822,573;
 - (ii) the value of debentures issued by Provident as at 30 June 2008 which matured not longer than three months was \$30,017,474;
 - (iii) the value of debentures issued by Provident as at 30 June 2008 which matured longer than three months and not longer than 12 months was \$67,987,141;
 - (iv) the value of debentures issued by Provident as at 30 June 2008 which matured longer than one and not longer than five years was \$56,817,958;
 - (v) the value of debentures issued by Provident as at 30 June 2008 which matured longer than five years was nil;
 - (b) says some debentures issued by Provident contained terms enabling Provident to defer repayment and payment of interest for up to one year, others for 180 days and others for 90 days;
 - (c) says that by about 5 November 2008, it knew of the matters in sub-paragraph (a) and (b) above; and
 - (d) otherwise denies the allegations in paragraph 22 of the SoC.
23. In answer to the allegations in paragraph 23 of the SoC, AET:
- (a) says that in the 2008 Annual Report, Provident reported as a current asset loan interest receivables of \$7,949,366;
 - (b) says that in the 2008 Annual Report, Provident reported that it had 44 loans greater than 30 days plus due with a total outstanding balance of \$70,832,895;
 - (c) says that in the 2008 Annual Report, Provident reported that it had 36 loans past due greater than 90 days with a total outstanding balance of \$52,817,247;
 - (d) says that in the 2008 Annual Report, Provident reported that of the loans past due greater than 90 days it was in possession of mortgaged property pending sale in respect of those loans to the value of \$28,316,087;

- (e) says that in the 2008 Annual Report, Provident stated that whilst its loan default levels were higher than traditional lenders (historically at 20%-30% of the loan portfolio), its credit losses had been historically low at less than 0.1% of all loans issued;
- (f) says that in the 2008 Annual Report, Provident stated to the effect that in order for it to incur a loss equal to its net equity it would need to suffer one of the following combinations of events: a property price reduction of 35% and a loan default level of 60%; a property price reduction of 40% and a loan default level of 42%; a property price reduction of 45% and a loan default level of 32%;
- (g) says that the 2008 Annual Report contained a directors' declaration stating (inter alia) that it gave a true and fair view of Provident's financial position as at 30 June 2008 and of its performance for the year ended on that date and that there were reasonable grounds to believe that Provident will be able to pay the debts as and when they became due and payable;
- (h) says that the 2008 Annual Report contained an auditor's opinion that the 2008 Annual Report gave a true and fair view of Provident's financial position as at 30 June 2008 and its performance for the year ended on that day and complied with the Corps Act, Corps Regs, and Australian Accounting Standards;
- (i) says that Provident knew the matters referred to in sub-paragraphs (a) – (h) above; and
- (j) otherwise denies the allegations in paragraph 23 of the SoC.

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

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

C) THE FINANCIAL POSITION AND PERFORMANCE OF PROVIDENT AS AT 30 JUNE 2009

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

- (a) says that Provident's RG 69 Report for the quarter ended 30 September 2009 (**30 September 2009 RG 69 Report**) stated to the effect that:
 - (i) the total value of debentures issued by Provident as at 30 June 2009 was \$116,542,499;
 - (ii) the value of debentures issued by Provident as at 30 June 2009 which matured within three months was \$20,262,417;

- (iii) the value of debentures issued by Provident as at 30 June 2009 which matured within three months and one year was \$52,075,529;
 - (iv) the value of debentures issued by Provident as at 30 June 2009 which matured within one year and five years was \$44,204,553;
 - (v) the value of debentures issued by Provident as at 30 June 2009 which matured greater than five years was nil;
- (b) repeats the matters in paragraph 22(b) above;
 - (c) says that it knew of the matters referred to in sub-paragraphs (a) and (b) above by 30 October 2009; and
 - (d) otherwise denies the allegations in paragraph 25 of the SoC.
26. In answer to the allegations in paragraph 26 of the SoC, AET:
- (a) says that in its Annual Report for the year ended 30 June 2009 (**2009 Annual Report**), Provident reported as a current asset loan interest receivable of \$10,469,931;
 - (b) says that in the 2009 Annual Report, Provident:
 - (i) reported in its income statement gross interest income of \$31,346,411;
 - (ii) reported in its cash flow statement interest received of \$26,369,171;
 - (c) says that in the 2009 Annual Report, Provident:
 - (i) expensed impairment losses of \$4,877,308;
 - (ii) made impairment provisions in the amount of \$3,454,952;
 - (d) says that in the 2009 Annual Report, Provident reported that it had 60 loans in excess of 30 days past due with a total outstanding balance of \$88,951,683;
 - (e) says that in the 2009 Annual Report, Provident reported that it had 41 loans in excess of 90 days past due with a total outstanding balance of \$62,758,593;
 - (f) says that the September 2009 RG 69 Report stated that its loans in excess of 90 days past due represented 32.6% by value and 23.2% by number of Provident's total loan portfolio;
 - (g) says that in the 2009 Annual Report Provident and the September 2009 RG 69 Report reported that as at 21 September 2009, of the loans past due greater than 90 days it was in possession of mortgaged property pending sale in respect of those loans to the value of \$28,703,656;
 - (k) says that in the 2009 Annual Report, Provident stated that whilst its loan default levels were higher than traditional lenders (historically at 20%-30% of the loan portfolio), its credit losses had been historically low at less than 0.4% of all loans issued;
 - (l) says that in the 2009 Annual Report, Provident stated to the effect that in order for it to incur a loss equal to its net equity it would need to suffer one of the following

combinations of events: a property price reduction of 35% and a loan default level of 45%; a property price reduction of 40% and a loan default level of 43%; a property price reduction of 45% and a loan default level of 41%;

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

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

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

- (a) admits that Provident's total assets as reported in its Annual Report for the year ended 30 June 2010 (**2010 Annual Report**) was \$222,011,825;
- (b) says that the 2010 Annual Report reported loans and advances as current assets of \$165,354,556 and loans and advances as non-current assets of \$12,951,690;

- (c) says that it knew of the matters in the two preceding paragraphs from about 28 September 2010; and
 - (d) otherwise denies the allegations in paragraph 28 of the SoC.
- 29. AET admits the allegations in paragraph 29 of the SoC.
- 30. In answer to the allegations in paragraph 30 of the SoC, AET:
 - (a) says that the 2010 Annual Report stated to the effect that:
 - (i) the total value of the debentures issued by Provident as at 30 June 2010 was \$116,977,143;
 - (ii) the value of debentures issued by Provident as at 30 June 2010 which matured not longer than three months was \$20,028,181;
 - (iii) the value of debentures issued by Provident as at 30 June 2010 which matured longer than three and not longer than 12 months was \$60,476,907;
 - (iv) the value of debentures issued by Provident as at 30 June 2010 which matured longer than one and not longer than five years was \$36,472,055;
 - (v) the value of debentures issued by Provident as at 30 June 2010 which matured longer than five years was nil;
 - (b) repeats the matters in paragraph 22(b) above;
 - (c) says that from about 28 September 2008 it knew of the matters referred to in sub-paragraphs (a) and (b) above; and
 - (d) otherwise denies the allegations in paragraph 30 of the SoC.
- 31. In answer to the allegations in paragraph 31 of the SoC, AET:
 - (a) says that the 2010 Annual Report disclosed as non-current assets of Provident deferred tax assets of \$1,153,988;
 - (b) says that it knew of the matter in the previous sub-paragraph from about 28 September 2010; and
 - (c) otherwise denies the allegations in paragraph 31 of the SoC.
- 32. In answer to the allegations in paragraph 32 of the SoC, AET:
 - (a) says that the 2010 Annual Report reported that the total value of Provident's loans as at 30 June 2010 was \$178,306,246 and the total number of loans was 158;
 - (b) says that the 2010 Annual Report reported that 114 of Provident's loans to a total value of \$105.7 million had a security type "residential";
 - (c) says that the 2010 Annual Report reported that 23 of Provident's loans to a total value of \$16.8 million had a security type "commercial";

- (d) says that the 2010 Annual Report reported that one of Provident's loans to a total value of \$17.5 million had a security type "construction";
 - (e) says that it knew of the matter in the sub-paragraphs (a) to (d) above from about 28 September 2010; and
 - (f) denies any other allegation in paragraph 32 of the SoC.
33. In answer to the allegations in paragraph 33 of the SoC, AET:
- (a) says that Provident's RG 69 Report for the quarter ended 30 September 2010 dated 22 October 2010 (**September 2010 RG 69 Report**) stated that Provident had made one loan for which the type of security property was "construction" to a value of \$17.5 million;
 - (b) says that September 2010 RG 69 Report identified the loan referred to in the previous sub-paragraph as being 9.8% by value and 0.6% by number of Provident's loan portfolio;
 - (c) says that the September 2010 RG 69 Report stated to the effect that in respect of Benchmark 1 in RG 69, the ASIC ratio applicable to Provident was 8% as Provident was not engaged in property development and lending funds directly or indirectly for property development was only a minor part of Provident's activities;
 - (d) says that the September 2010 RG 69 Report stated to the effect that Provident's equity ratio as at 30 June 2010 was 6.32% (\$14 million) which was considered appropriate to operate the business and cover any losses that may arise particularly in light of Provident's record of low credit losses management of past loans due, loan to valuation ratio restrictions, business parameters and risks and limited liability under the wholesale funding facility;
 - (e) says that it knew the matters referred to in sub-paragraphs (a) – (d) above on and from about 22 October 2010; and
 - (f) denies any other allegation in paragraph 33 of the SoC.
34. In answer to the allegations in paragraph 34 of the SoC, AET:
- (a) says that in the 2010 Annual Report, Provident reported as a current asset of Provident interest receivable of \$13,105,946;
 - (b) says that in the 2010 Annual Report, Provident:
 - (i) reported in its statement of comprehensive income as at 30 June 2010 interest income of \$26,652,106; and
 - (ii) reported in its statement of cash flows as at 30 June 2010 interest received of \$24,767,422;
 - (c) says that in the 2010 Annual Report, Provident:
 - (i) expensed impairment losses of \$2,612,904; and
 - (ii) made impairment provisions in the amount of \$1,466,932;

- (d) says that in the 2010 Annual Report Provident reported that as at 30 June 2010 it had 44 loans in excess of 30 days past due with a total outstanding balance of \$88,710,332;
 - (e) says that in the 2010 Annual Report, Provident stated that of the loans past due \$54,890,105 had been assessed as not impaired;
 - (f) says that in the 2010 Annual Report Provident reported that as at 30 June 2010 it had 25 loans in excess of 90 days past due with a total outstanding balance of \$57,295,183;
 - (g) says that in the September 2010 RG 69 Report, Provident stated that it had commenced legal proceedings in respect of 6 loans with an aggregate principal of \$15,019,535, being 8.4% by value and 3.8% by number of the loan portfolio;
 - (h) says that in the 2010 Annual Report, Provident stated that whilst its loan default levels were higher than traditional lenders (historically at 20%-30% of the loan portfolio), its credit losses had been historically low at less than 0.6% of all loans issued;
 - (p) says that the 2010 Annual Report Provident stated to the effect that in order for it to incur a loss equal to its net equity it would need to suffer one of the following combinations of events: a property price reduction of 35% and a loan default level of 60%; a property price reduction of 40% and a loan default level of 43%; a property price reduction of 45% and a loan default level of 33%;
 - (q) says that the 2010 Annual Report contained a directors' declaration stating (inter alia) that it gave a true and fair view of Provident's financial position as at 30 June 2010 and of its performance for the year ended on that date and that there were reasonable grounds to believe that Provident will be able to pay the debts as and when they became due and payable; and
 - (r) says that the 2010 Annual Report contained an auditor's opinion that the 2010 Annual Report gave a true and fair view of Provident's financial position as at 30 June 2010 and its performance for the year ended on that day and complied with the Corps Act, Corps Regs, and Australian Accounting Standards; and
 - (s) says that it knew the matters referred to in sub-paragraphs (a) – (r) above on and from about 28 September 2010; and
 - (t) denies any other allegation in paragraph 34 of the SoC.
35. In answer to the allegations in paragraph 35 of the SoC, AET:
- (a) says that in the 2010 Annual Report, Provident reported in its statement of cash flows:
 - (i) proceeds from the issue of debentures of \$20,419,532; and
 - (ii) repayments of debentures redeemed of \$19,984,888;
 - (b) says that it knew the matters referred to in the previous sub-paragraph on and from about 28 September 2010; and
 - (c) denies any other allegation in paragraph 35 of the SoC.

36. In answer to the allegations in paragraph 36 of the SoC, AET:

- (a) repeats the matters in paragraphs 10 to 35 above;
- (b) says that in:
 - (i) DP 11 (as at 30 June 2008);
 - (ii) the RG 69 Report for the quarter ended 30 September 2008 (**September 2008 RG 69 Report**);
 - (iii) the RG 69 Report for the quarter ended 31 March 2009 (**March 2009 RG 69 Report**);
 - (iv) DP 12 (as at 21 September 2009)
 - (v) the 30 September 2009 RG 69 Report; and
 - (vi) the RG 69 Report for the quarter ended 31 March 2010 (**March 2010 RG 69 Report**);

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

- (c) says that the September 2010 RG 69 Report stated to the effect that:
 - (i) 98.8% by value and 99.3% by number of Provident's loans were secured by registered first mortgages;
 - (ii) the details of loans more than 30 days past due set out in the September 2010 RG 69 Report were consistent with previous analysis of the loan portfolio and with the nature of the loan transactions made by Provident;
 - (iii) as at 30 June 2010, the average LVR across Provident's whole portfolio was 65% and for each of residential use, commercial / industrial use and rural use property was 66.3%, 60.2% and 60.7% respectively;
- (d) says that the DP 11 Auditor's Benchmark Assurance Report stated to the effect that the internal controls of Provident were adequately designed and operated effectively during the period 30 June 2008 to 24 December 2008 to achieve (inter alia) the control objective of maximum loan to valuation ratios of 70% of the latest "as if complete" valuation where the loan relates to development property and 80% of the latest market valuation for other loans being met (or disclosed otherwise);
- (e) says that the DP 12 Auditor's Benchmark Assurance Report stated to the effect that the internal controls of Provident were adequately designed and operated effectively during the period 1 July 2008 to 30 June 2009 to achieve (inter alia) the control objective of maximum loan to valuation ratios of 70% of the latest "as if complete" valuation where the loan relates to development property and 80% of the latest market valuation for other loans being met (or disclosed otherwise);
- (f) says that the Arrears Reports for the period 2008 to October 2010:

- (i) reported the value of Provident's loans in arrears as between a low of about \$51 million (in November 2008) and a high of about \$71 million (in May 2009) and, as at October 2010, as about \$57 million;
 - (ii) reported the percentage of Provident's loans in arrears as between a low of about 23% (in August 2008) and a high of about 36% (in January 2010) and, as at October 2010, as about 31%;
 - (iii) reported the number of Provident's loans in arrears as between a low of 22 in August 2010 and a high of 38 in April 2009 and, as at October 2010, as 24;
 - (iv) disclosed Provident's loans in arrears, measured by value, number and percentage, in the period January 2010 to October 2010 as steady or declining;
- (g) repeats the matters in paragraphs 16(a), 23(e), 26(k) and 34(h) above and says that the Arrears Reports in the period 2008 to 2010 disclosed Provident's loan default rates as generally within its reported historical experience; and
 - (h) denies the allegations in paragraph 36 of the SoC.

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

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

- (a) repeats the matters in paragraph 10 to 35 above;
- (b) says that the matters referred to in paragraph 37 of the SoC were wholly or substantially disclosed in the reports referred to in paragraph 17 above;
- (c) says that it was entitled to rely in the discharge of its duties under s283DA of the Corps Act on the accuracy of the reports referred to in paragraph 17 above and the audit assurances provided in relation to them; and
- (d) denies the allegations in paragraph 37 of the SoC.

A) ALLEGED INQUIRIES ABOUT DEVELOPMENT AT BURLEIGH HEADS, QUEENSLAND

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

- (a) repeats the matters in paragraph 37 above;
- (b) says that the Burleigh Views loan was not disclosed in any Arrears Report provided by Provident in the period 2008 to 2010;
- (c) says that in the September 2008 RG 69 Report, Provident stated to the effect that:
 - (i) the loan amount for the Burleigh Views loan as at 30 June 2008 was \$13,500,429 based on an initial valuation made as at 23 December 2003 for construction funding purposes and which assessed the "as if complete" value at \$17,222,000;
 - (ii) the work was nearing completion and the borrower had supplied a valuation report dated September 2007 assessing the "as if complete" value at \$26,000,000 (exclusive of GST);

- (iii) the security property was located on the Gold Coast in Queensland;
 - (iv) the LVR in relation to the Burleigh Views loan was 70% or less;
- (d) says that in DP 11 Provident stated to the effect:
- (i) the matters in sub-paragraph (c) above; and
 - (ii) that the LVR of the Burleigh Views loan on a cost to complete basis was 54.6%;
- (e) says that in the March 2009 RG 69 Report, Provident stated to the effect that:
- (i) the loan amount for the Burleigh Views loan as at 31 December 2008 was \$14,320,559 based on an initial valuation made as at 23 December 2003 for construction funding purposes and which assessed the "as if complete" value at \$17,222,000;
 - (ii) the work was nearing completion and the borrower had supplied a valuation report dated September 2007 assessing the "as if complete" value at \$26,000,000 (exclusive of GST);
 - (iii) the security property was located on the Gold Coast in Queensland;
 - (iv) the LVR in relation to the Burleigh Views loan was less 70% or less;
- (f) says that in the September 2009 RG 69 Report, Provident stated to the effect that:
- (i) the loan amount for the Burleigh Views loan as at 30 June 2009 was \$15,101,887 based on an initial valuation made as at 23 December 2003 for construction funding purposes and which assessed the "as if complete" value at \$17,222,000;
 - (ii) the work was nearing completion and the borrower had supplied a valuation report dated September 2007 assessing the "as if complete" value at \$26,000,000 (exclusive of GST);
 - (iii) the security property was located on the Gold Coast in Queensland;
 - (iv) the LVR in relation to the Burleigh Views loan on a costs to complete basis was 78.3%;
- (g) in DP 12 Provident stated to the effect that:
- (i) the loan amount for the Burleigh Views loan as at 30 June 2009 was \$15,101,887;
 - (ii) the latest valuation of the development in December 2009 assessed the "as if complete" value at \$26,680,000;
 - (iii) the security property was located in south east Queensland; and
 - (iv) the LVR on a cost to complete basis using the December 2009 valuation was 56.6%;

- (h) says that in the March 2010 RG 69 Report Provident stated to the effect that:
- (i) the loan amount for the Burleigh Views loan as at 31 December 2009 was \$15,977,139;
 - (ii) the latest valuation of the development in December 2009 assessed the "as if complete" valuation at \$26,680,000 (exclusive of GST);
 - (iii) the security property was located on the Gold Coast in Queensland;
 - (iv) the LVR in relation to the Burleigh Views loan on a costs to complete basis using the December 2009 valuation was 59.9%;
- (i) says that in the September 2010 RG 69 Report, Provident stated to the effect that:
- (i) the loan amount for the Burleigh Views loan as at 30 June 2010 was \$17,518,058;
 - (ii) the latest valuation of the development in September 2010 assessed the "as if complete" valuation at \$26,680,000 (exclusive of GST);
 - (iii) the security property was located on the Gold Coast in Queensland;
 - (iv) the LVR in relation to the Burleigh Views loan on a costs to complete basis using the September 2010 valuation was 65.7%;
- (j) says that despite making the statements concerning the Burleigh Views loan referred to in sub-paragraphs (c) to (i) above, Provident did not disclose in any RG 69 Report or in any other report or otherwise to AET from 2008 to 2010 that the Burleigh Views loan was in default or in arrears, that the borrower had entered into liquidation, that Provident had entered into possession or that the development approval for the site had lapsed; and
- (k) denies the allegations in paragraph 38 of the SoC.

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

- (a) repeats the matters in paragraph 38 above; and
- (b) denies the allegations in paragraph 39 of the SoC.

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

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

- (a) says that in the Arrears Report for the month of April 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,295,344, the net arrears were \$667,178 and the days in arrears were 1194;
 - (ii) Provident was selling the security property and the total valuation was \$8,437,300;
 - (iii) the estimated discharge date was December 2010;

- (iv) Provident's strategy in relation to the Chrysalis loan was as follows:
 - (A) in order to preserve the development application (DA), Provident had undertaken the works required to preserve the DA which involved the demolition of the structure, including basement, shoring and other works to the site;
 - (B) substantial commencement of the works prior to the expiry of the DA ensured that Provident had a valid DA;
 - (C) it was envisaged that the works would be completed by early 2010, but due to various delays this was now estimated to be late May 2010, which was confirmed by advice received from the architect;
 - (D) once the works were complete, Provident would commence a sales and marketing campaign which, depending on the success of the auction / tender process, would take 4 – 6 months;
 - (E) Provident was receiving good interest from developers who owned sites on both sides of the security;
 - (F) the likely settlement date was September 2010– December 2010;
- (b) in the Arrears Report for the month of May 2010, Provident stated:
 - (i) the principal balance of the Chrysalis loan was \$6,296,489, the net arrears were \$667,295 and the days in arrears were 1225;
 - (ii) Provident was selling the security property and the total valuation was \$8,437,300;
 - (iii) the matters in sub-paragraphs (a)(iii) and (a)(iv) above;
- (c) in the Arrears Report for the month of June 2010, Provident stated:
 - (i) the principal balance of the Chrysalis loan was \$6,296,489, the net arrears were \$667,295 and the days in arrears were 1254;
 - (ii) Provident was selling the security property and the total valuation was \$8,437,300;
 - (iii) the matters in sub-paragraphs (a)(iii) and (a)(iv) above;
- (d) in the Arrears Report for the month of July 2010, Provident stated:
 - (i) the principal balance of the Chrysalis loan was \$6,322,496, the net arrears \$667,181 and the days in arrears were 1280;
 - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
 - (iii) the matters in sub-paragraphs (a)(iii) and (a)(iv) above;
- (e) in the Arrears Report for the month of August 2010, Provident stated:

- (i) the principal balance of the Chrysalis loan was \$6,351,434, the net arrears were \$667,378 and the days in arrears were 1305;
 - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
 - (iii) the matters in sub-paragraphs (a)(iii) and (a)(iv) above;
- (f) in the Arrears Report for the month of September 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,351,434, the net arrears were \$667,632 and the days in arrears were 1335;
 - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
 - (iii) the matters in sub-paragraphs (a)(iii) and (a)(iv) above;
- (g) in the Arrears Report for the month of October 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,354,554, the net arrears were \$667,617 and the days in arrears were 1365;
 - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
 - (iii) the matters in sub-paragraphs (a)(iii) and (a)(iv) above; and
- (h) in the Arrears Report for the month of November 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,354,604, the net arrears were \$667,651 and the days in arrears were 1395;
 - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
 - (iii) Provident's strategy in relation to the Chrysalis loan was as follows:
 - (A) the property was a large commercial site in Newcastle with a DA for 44 units;
 - (B) in order to ensure the added value provided by the DA, Provident had recently completed the DA process and obtained the construction certificate;
 - (C) demolition works were now complete and awaiting final certification;
 - (D) interest in the site remained with the owners of adjoining properties who needed the site to maximise the potential of their own property and had sought an option to purchase the site for \$7 million plus GST;
 - (iv) the estimated discharge date was June 2011; and
- (i) denies the allegations in paragraph 40 of the SoC.
41. In answer to the allegations in paragraph 41 of the SoC, AET.

- (a) repeats the matters in paragraph 40 above; and
- (b) denies the allegations in paragraph 41 of the SoC.

C) THE BALANCE OF THE FTI PORTFOLIO

42. In answer to the allegations in paragraph 42 of the SoC, AET:

- (a) repeats the matters in paragraphs 10 to 36 above;
- (b) says that in the September 2008 RG 69 Report, Provident stated that:
 - (i) the loans in respect of which Provident was in possession of mortgaged property pending sale were to a value of \$28,316,087;
 - (ii) the directors of Provident considered that the recovery of the amounts of principal on the loans past due as at 30 June 2008 was reasonably certain and the security held was adequate to cover them;
- (c) says that in the March 2009 RG 69 Report, Provident stated that:
 - (i) the loans in respect of which Provident was in possession of mortgaged property pending sale were to a value of \$31,667,572;
 - (ii) the directors of Provident considered that the recovery of the amounts of principal on the loans past due as at 31 December 2008 was reasonably certain and the security held was adequate to cover them;
- (d) says that in the September 2009 RG 69 Report, Provident stated that:
 - (i) the loans in respect of which Provident was in possession of mortgaged property pending sale were to a value of \$28,703,656;
 - (ii) the directors of Provident considered that the recovery of the amounts of principal on the loans past due as at 30 June 2009 was reasonably certain and the security held was adequate to cover them;
- (e) says that in the March 2010 RG 69 Report, Provident stated that:
 - (i) the loans in respect of which Provident was in possession of mortgaged property pending sale were to a value of \$30,368,858;
 - (ii) the directors of Provident considered that the recovery of the amounts of principal on the loans past due as at 31 December 2009 was reasonably certain and the security held was adequate to cover them;
- (f) says that in the Arrears Report for the month of October 2010, Provident disclosed to the effect that:
 - (i) the total value of the loans in respect of which Provident was in possession of the security property and was in the course selling that property (**PBSBP loans**) was approximately \$31 million;
 - (ii) the total value of the security in respect of PBSBP loans was approximately \$37 million;

- (iii) the aggregate LVR of PBSBP loans was around 88.5%;
- (g) says that the Interim Report for the half year ended 31 December 2010 (**December 2010 Interim Report**):
 - (i) made impairment provisions as at 31 December 2010 in the amount of \$1,792,932;
 - (ii) recorded impairment losses of \$312,343, including recognised losses of \$76,343 and individually assessed impairment losses of \$236,000;
 - (iii) reported total equity of \$14,817,421;
 - (iv) contained a directors' declaration stating (inter alia) that the 2010 Interim Report gave a true and fair view of Provident's financial position as at 31 December 2010 and of its performance for the half-year ended on that date and that there were reasonable grounds to believe that the company will be able to pay the debts as and when they became due and payable;
 - (v) contained an auditor's opinion that based on their review that had not become aware of any matter which made them believe that the 2010 Interim Report did not give a true and fair view of Provident's financial position as at 31 December 2010 and of its performance for the half-year ended on that date;
- (h) says that in the Provident Capital Debenture Prospectus 2011 (**the 2011 Prospectus**) Provident stated:
 - (i) the level of loans more than 30 days past due at 30 June 2010 was consistent with the monthly balance throughout the 12 months ended 30 June 2010 and the subsequent 5 months to 30 November 2010, and was considered by Provident to be acceptable for the type of loans in the portfolio;
 - (ii) as at the date of the prospectus, the directors of Provident considered the amount of loans more than 30 days past due as at 30 June 2010 to be recoverable;
 - (iii) Provident did not consider this aspect of the loan portfolio to be a material indicator of possible credit losses in the portfolio, as in the majority of these loans the default was rectified or the loan was repaid; and
- (i) says that the Auditor's Benchmark Assurance Report dated 31 January 2011 relating to the September 2010 RG 69 Report and the 2011 Prospectus (**January 2011 Auditor's Benchmark Assurance Report**) stated to the effect that the internal controls of Provident were adequately designed and operated effectively during the period 1 July 2009 to 22 December 2010 to achieve (inter alia) the control objective of maximum loan to valuation ratios of 70% of the latest complying valuation where the loan relates to development property and 80% of the latest complying market valuation for other loans being met; and
- (j) denies the allegations in paragraph 42 of the SoC.

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

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

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

H. ALLEGED CESSATION OF FUND-RAISING

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

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

45. In answer to the allegations in paragraph 45 of the SoC, AET:

- (a) repeats the matters in paragraph 44 above; and
- (b) denies the allegations in paragraph 45 of the SoC.

46. In answer to the allegations in paragraph 46 of the SoC, AET:

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

would be sufficient to pay the amount due on the debentures including evidence of the kind referred to in paragraph 44(c) above; and

(d) denies the allegations in paragraph 45 of the SoC.

47. In answer to the allegations in paragraph 47 of the SoC, AET:

(a) repeats the matters in paragraph 46 above; and

(b) denies the allegations in paragraph 47 of the SoC.

I. ALLEGED CONTRAVENTION BY AET OF SECTION 283DA

48. In answer to the allegations in paragraph 48 of the SoC, AET:

(a) repeats the matters in paragraph 36 to 46 above;

(b) denies the allegations in paragraph 48 of the SoC.

49. In answer to the allegations in paragraph 49 of the SoC, AET:

(a) repeats the matters in paragraph 48 above;

(b) denies the allegations in paragraph 49 of the SoC.

50. AET denies the allegations in paragraph 50 of the SoC.

51. AET denies the allegations in paragraph 51 of the SoC.

52. In answer to the allegations in paragraph 52 of the SoC, AET denies that the applicant and group members are entitled to the relief sought in the application, or any relief.

Date: 13 March 2015



Signed by Stephen Cornell
Lawyer for the Respondent

This pleading was prepared by Michael O'Meara and settled by Robert Hollo SC of counsel

Certificate of lawyer

I, Stephen Connell, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 13 March 2015



Signed by Stephen Connell
Lawyer for the Respondent