

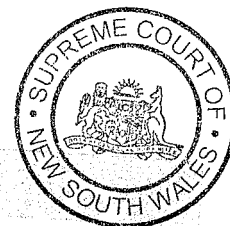
## DEFENCE

### COURT DETAILS

Court Supreme Court of New South Wales  
Division Equity Division  
List Corporations List  
Registry Sydney Registry  
Case number 2015/306222

FILED

12 AUG 2016



### TITLE OF PROCEEDINGS

Plaintiff **Innes John Creighton**  
Defendant **Australian Executor Trustees Limited**

### FILING DETAILS

Filed for **Australian Executor Trustees, Plaintiff**  
Filed in relation to **Plaintiff's 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**

### HEARING DETAILS

The proceeding is listed for directions before Justice Ball on 16 August 2016.

### PLEADINGS AND PARTICULARS

#### A. REPRESENTATIVE PROCEEDING

- 1 The Defendant (**AET**) admits the allegations in paragraph 1 of the Further Amended Statement of Claim (**SOC**).
- 2 In answer to paragraph 2 of the SOC, AET:
  - (a) says that on or about 16 November 2011, Provident Capital Limited (**Provident**) issued the Plaintiff with Investment Certificate D112165501 in the amount of \$100,000; and
  - (b) otherwise does not admit the allegations in paragraph 2 of the FASOC.

3 In answer to 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 titled Debenture Trust Deed (**Debenture Trust Deed**);
- (b) says that on 15 September 2000, IOOF changed its name to Tower Trust (NSW) Limited (**Tower (NSW)**);
- (c) 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;
- (d) 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**);
- (e) relies on the terms of the Debenture Trust Deed (as amended from time-to-time) for their full force and effect;
- (f) otherwise does not admit the allegations in paragraph 3 of the SOC.

4 In answer to paragraph 4 of the SOC, AET:

- (a) says that it does not know the identity and circumstances of the group members; and
- (b) therefore does not admit the allegations in paragraph 4 of the SOC.

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

5 In answer to paragraph 5 of the SOC, AET:

- (a) admits that Provident carried on the business of fixed rate mortgage lending and was an issuer of debentures pursuant to Chapter 2L of the Corps Act;
- (b) admits that, at all material times, Provident had the duties pleaded in paragraphs 5.2.1, 5.2.2 and 5.2.3 of the SOC pursuant to Chapter 2L of the Corps Act;
- (c) admits that, at all material times, Provident had a duty imposed on it by Chapter 2L 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;
- (d) says that, pursuant to the Debenture Trust Deed:
- (i) Provident covenanted that it would strive to carry on and conduct its business in a proper and efficient manner;
  - (ii) Provident covenanted to make the whole of its financial or other records available for inspection by AET, or a registered company auditor appointed by AET; and give them such information as they require with respect to all matters relating to those records;
  - (iii) Provident, as beneficial owner, charged in favour of AET all of Provident's past and future right, title and interest in and to Provident's assets to secure the due and punctual payment of the secured money (**Charge**);
- (e) admits paragraphs 5.4, 5.5 and 5.6;
  - (f) relies on the terms of the Corps Act and the Debenture Trust Deed for their full force and effect; and
  - (g) otherwise does not admit the allegations in paragraph 5 of the SOC.

**C. AET, ITS ALLEGED DUTIES AND POWERS**

6 AET admits the allegations in paragraph 6 of the SOC.

7 In answer to paragraph 7 of the SOC:

- (a) admits paragraphs 7.1, 7.2 and 7.5;
- (b) admits paragraph 7.3 in so far as it is alleged that the pleaded duty arose pursuant to s 283DA(a) of the Corps Act;
- (c) admits that, pursuant to s 283EB(1) of the Corps Act in the event Provident failed to remedy any breach of the provisions of the Debenture Trust Deed or Chapter 2L of the Corps Act when required by AET, AET could:

- (i) call a meeting of debenture holders; and
  - (ii) inform the debenture holders of the failure at the meeting; and
  - (iii) submit proposals for protection of the debenture holders' interests to the meeting; and
  - (iv) ask for directions from the debenture holders in relation to the matter;
- (d) admits that, in the event of an "event of default" as defined in clause 11.1 of the Debenture Trust Deed (which included if Provident defaulted in the performance of any obligation under the Debenture Trust Deed and, where reasonably capable of remedy, that default was not remedied within 21 days after Provident had received notice of or otherwise became aware of such default), pursuant to clause 11.2 of the Debenture Trust Deed, it could:
- (i) declare that all money owing (actually or contingently) on any current debentures was immediately due and payable; or
  - (ii) take action to enforce the Charge either itself or by the appointment of a receiver; or
  - (iii) apply to wind up Provident; or
  - (iv) take proceedings for a judgment against Provident for the payment of money or damages; or
  - (v) do any combination of the things set out in paragraphs 7(d)(i) to (iv) above; and
- (e) says that, pursuant to s 283HA of the Corps Act, AET could make an application to the Court for a direction in relation to the performance of its functions or to determine any question in relation to the interests of debenture holders;
- (f) says further that in discharging its duties under s 283DA of the Corps Act, or under the Debenture Trust Deed, or as fiduciary, it was entitled to rely on the accuracy of:
- (i) any information or reports issued by Provident to AET pursuant to Chapter 2L of the Corps Act, the Debenture Trust Deed or otherwise; and
  - (ii) any report, certificate or other document and accompanying document provided to AET by Provident's auditor pursuant to s 313 of the Corps Act;
- (g) relies on the terms of the Corps Act and the Debenture Trust Deed for their full force and effect; and

(h) otherwise does not admit 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 s 283BB 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 clause 6.0.10 of the Debenture Trust Deed, Provident covenanted to obtain AET's prior consent for any prospectus or supplementary or replacement prospectus in respect of debentures to be issued or already issued;
- (c) says that, pursuant to s 283HA 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;
- (d) says that, pursuant to s 283HB(1) of the Corps Act, on application by a trustee, the Court may make orders specified in paragraphs (a) - (f) of that section, or any other order the Court considers appropriate to protect the interests of existing or prospective debenture holders;
- (e) says that, from 24 November 2005, pursuant to clause 1A.2 of the Debenture Trust Deed, it held in trust for the benefit of debenture holders:
- (i) the right to enforce Provident's duties to repay the debenture funds;
  - (ii) the Charge; and
  - (iii) the right to enforce any other duties of Provident under the terms of the debentures, the Debenture Trust Deed or the Corps Act;
- (f) relies on the terms of the Corps Act and the Debenture Trust Deed for their full force and effect; and
- (g) otherwise does not admit the allegations in paragraph 8 of the SOC.

9 AET admits paragraph 9 of the SOC.

**D. TRUST DEED**

10 In answer to paragraph 10 of the SOC, AET:

- (a) admits paragraphs 10.1 and 10.3;
- (b) says, in relation to paragraph 10.2 that:
  - (i) pursuant to clause 2.9 of the Debenture Trust Deed, Provident held each application amount in trust for the applicant until the debenture certificate was issued for the application amount or the application amount was returned to the applicant at the request of the applicant;
  - (ii) clause 5.1 of the Debenture Trust Deed provided that Provident would use the debenture funds principally to provide finance facilities to other people, including any related corporation, on the security and terms permitted under the Debenture Trust Deed;
  - (iii) clauses 5.7 and 1.1.3-1.1.12 of the Debenture Trust Deed provided that, pending draw down in finance facility transactions, Provident could invest the debenture funds in any one or more or a combination of authorised investments as it determined appropriate, such investments being:
    - (A) any debenture bonds, stock or securities issued by or guaranteed by the government of Australia or any of the States or Territories of Australia;
    - (B) interest-bearing deposits at call or for a term with any bank authorised to carry on the business of banking anywhere in Australia;
    - (C) investment with any dealer in the short-term money market, approved by the Reserve Bank of Australia as an authorised dealer, that has established lines of credit with that bank as a lender of last resort;
    - (D) commercial bills of exchange issued by any corporation, including any related corporation;
    - (E) debentures and promissory notes of any corporation, including any related corporation;
    - (F) negotiable or convertible certificates of deposit issued by an Australian trading bank;
    - (G) land and buildings acquired by way of foreclosure under any security;

- (iv) from 24 November 2005, clause 5.8 of the Debenture Trust Deed provided that Provident may use debenture funds to pay expenses in connection with the exercise of any of Provident's rights under any of the facility securities or for the protection of any of these facility securities and the money secured by them, including work of a capital nature to property the subject of the facility security, or fees for services in managing the property the subject of the facility security;
- (c) relies on the terms of the Debenture Trust Deed for their full force and effect; and
- (d) otherwise does not admit paragraph 10 of the SOC.

**E. PROVIDENT'S BUSINESS AND AET'S ALLEGED KNOWLEDGE**

11 In answer to the allegations in paragraph 11 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 11 of the SOC.

12 In answer to paragraph 12 of the SOC, AET:

- (a) says that on about 15 August 2007, Provident entered into deeds and agreements entitled:
  - (i) Sale Deed (**Sale Deed**), with ABL Nominees Pty Ltd (**ABL Nominees**);
  - (ii) Servicing Agreement (**Servicing Agreement**), with ABL Nominees and Adelaide Bank Limited (**ABL**);
  - (iii) Subscription Agreement Provident Warehouse Trust (**Subscription Agreement**), with ABL Nominees, ABL and AB Management Pty Ltd;
  - (iv) Fixed Charge (**Fixed Charge**), with ABL Nominees; and
  - (v) Provident Warehouse Trust Issue Supplement (**Issue Supplement**), with ABL Nominees, ABL, ABL Management Pty Ltd and ABL Custodian Services Pty Ltd;
- (b) says that the Sale Deed provided, amongst other things, that:
  - (i) Provident could make an offer to sell to ABL Nominees (**Offer to Sell**) "Mortgage Loans" and "Related Securities" (as those terms are defined in the Sale Deed);

- (ii) ABL Nominees could accept an Offer to Sell by paying the "Current Value" (as that term is defined in the Sale Deed) of the Mortgage Loan and Related Security identified in Provident's Offer to Sell;
  - (iii) ABL Nominees' acceptance of an Offer to Sell would constitute an immediate assignment in equity of Provident's entire right, title and interest to (inter alia) the Mortgage Loan and Related Security;
- (c) says that, pursuant to the Fixed Charge, Provident granted a fixed charge to ABL Nominees over Provident's residual right, title and interest in connection with the Mortgage Loans and Related Securities purchased by ABL Nominees;
- (d) says that, pursuant to the Servicing Agreement:
  - (i) ABL Nominees appointed Provident to service and administer the Mortgage Loans and Related Securities purchased by ABL Nominees;
  - (ii) Provident undertook to arrange for the collection of (amongst other things) interest received in respect of Mortgage Loans and Related Securities purchased by ABL Nominees, to pay the amounts collected into the "Trust Collection Account" (as that term is defined in the Servicing Agreement); and
  - (iii) Provident agreed to hold the amounts in the Trust Collection Account on trust for ABL Nominees
- (e) says that the Sale Deed also provided that:
  - (i) ABL Nominees could require, when a Mortgage Loan purchased by ABL Nominees was 270 or more days in arrears, Provident to pay to it the Current Value of the Mortgage Loan and Related Security;
  - (ii) ABL Nominees could not require Provident to make the payment referred to in sub-paragraph (i) above if Provident had made payments of such amounts in respect of that loan or certain other loans, and such payments exceeded 5% of the "Outstanding Principal Balance" (as that term is defined in the Sale Deed) of the Mortgage Loans and Related Securities purchased by ABL Nominees;
  - (iii) on payment of the amount referred to in sub-paragraph (i) above, ABL Nominees' right, title and interest in the Mortgage Loan and Related Security would be extinguished;
- (f) says that pursuant to the Issue Supplement:
  - (i) Provident was required to fund a Collateral Account;



- (ii) the required balance of the Collateral Account was:
  - (A) \$7.5 million, where the aggregate value of the Mortgage Loans purchased by ABL Nominees was \$50,000,001 to \$75,000,000;
  - (B) \$10 million, where the aggregate value of the Mortgage Loans purchased by ABL Nominees was \$75,000,001 to \$100,000,000;
- (iii) allocations could be made from the Collateral Account when the amount of "Available Income" (as that term is defined in the Issue Supplement) was insufficient to meet the "Required Payments" (as that term is defined in the Issue Supplement); and
- (g) says that from about August 2007, it knew of the matters in sub-paragraphs (a) to (f) above;
- (h) relies on the terms of the deeds and agreements referred to in sub-paragraph (a) above for their full force and effect; and
- (i) otherwise does not admit the allegations 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 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) 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) says that in the period 2008 to 2010, the major assets 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 14 of the SOC.
- 15 In answer to the allegations in paragraph 15 of the SOC, AET:
- (a) repeats the matters in paragraphs 14(a) and 14(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, as well as amounts received from ABL and/or ABL Nominees under the deeds and agreements pleaded in paragraph 12(a) above;
  - (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 15 of the SOC.
- 16 In answer to the allegations in paragraph 16 of the SOC, AET:
- (a) repeats the matters in paragraphs 12 to 15 above; and
  - (b) 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 says:
- (a) Provident's loan default levels in the period until 2010 were higher than traditional lenders (historically at 20% - 30% of the loan portfolio), and Provident's credit losses as reported in its audited annual financial reports had been historically low, between 0.1% (in 2008) to 0.6% (in 2010) of all loans written;
  - (b) Provident asserted that this had been achieved through a proactive management of loans in arrears, coupled with prudent credit policies;
  - (c) that in the period 2008 to 2010, AET knew of the matters in the two preceding subparagraphs; and
  - (d) otherwise does not admit the allegations in paragraph 17 of the SOC.
- 18 In answer to the allegations in paragraph 18 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 s 283BF of the Corps Act **(Quarterly Reports)**;
  - (v) Monthly reports supplied by Provident to AET **(Monthly Reports)**;
  - (vi) Provident's Debenture Prospectus 11 dated 24 December 2008 **(DP 11)**; and
  - (vii) 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 result in a loss to Provident equal to the net equity as at 30 June of each year;
  - (v) disclosed the five largest loans and their percentage of the total loans and advances;
  - (vi) disclosed impairment losses expensed and impairment provisions made in respect of loans and advances;
  - (vii) contained a directors' declaration stating (inter alia) that the Annual Report gave a true and fair view of Provident's financial position as at 30 June of the year and of its performance for the year ended on that date and that there were reasonable grounds to believe that Provident will be able to pay the debts as and when they became due and payable;
  - (viii) contained an auditor's opinion that the Annual Report gave a true and fair view of Provident's financial position as at 30 June and its performance for the year ended on that day and complied with the

Corps Act, the *Corporations Regulations 2001* (Cth) (**Corps Regs**), and Australian Accounting Standards.

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

- (viii) the number and value of loans secured by first registered mortgages;
  - (ix) Provident's policies for valuation of securities given for loans; namely that loans be supported by valuations of security made within 3 months of the loan based on the current market value of the property on an "as is" basis and, in the case of construction and development loans, on an "as if complete" basis;
  - (x) details of any valuations of security for loans which represented more than 5% of the total value of the loan portfolio;
  - (xi) Provident's policies in respect of LVRs of security property and the average LVRs across the whole of its loan portfolio and in respect of the loans secured by residential, commercial / industrial, rural and development property respectively;
- (e) says that the Quarterly Reports addressed the matters required by s 283BF of the Corps Act and referred to in paragraph 5(c) above;
- (f) says that the Monthly Reports:
- (i) provided cash flow projections for Provident for the three months following the date of the report;
  - (ii) provided a report in relation to loans made by Provident which were in excess of 90 days past due (**Arrears Report**);
- (g) says the Arrears Reports from time to time:
- (i) identified the loans which were in arrears for 90 days or more;
  - (ii) identified the total value of loans in arrears and their percentage of the value of all loans made by Provident;
  - (iii) identified the principal balance, the net arrears, days in arrears and any impairment provision made in respect of each loan;
  - (iv) stated the valuation of the security property and the relevant LVR for each loan;
  - (v) stated whether legal proceedings had been commenced in relation to the loan, or whether the security property was being sold by the borrower, or whether the security property was being sold by Provident, or whether the security property had been sold and was awaiting exchange or exchanged and awaiting settlement;
  - (vi) identified an estimated discharge date;

- (vii) gave comments on the status of the loan and/or identified a strategy in relation to Provident's recovery of the amount of the loan;
- (h) says that DP 11 and DP 12 reported Provident's status against the eight benchmarks in RG 69, including the information referred to in sub-paragraph (d) above;
- (i) says that DP 11 was the subject of an Auditor's Benchmark Assurance Report dated 10 December 2009 (**DP 11 Auditor's Benchmark Assurance Report**) and DP 12 was the subject of an Auditor's Benchmark Assurance Report dated 14 April 2010 (**DP 12 Auditor's Benchmark Assurance Report**);
- (j) says that AET knew the matters disclosed in the documents described subparagraph (a) as provided to it from time to time; and
- (k) otherwise does not admit the allegations in paragraph 18 of the SOC.

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

- (a) says that it maintained hard and soft copy files of documents relating to its role as trustee under the Debenture Trust Deed (**File**);
- (b) says that the File contained (inter alia) the documents described in paragraph 18 above as provided to it from time to time;
- (c) repeats paragraph 18(j) above; and
- (d) otherwise denies the allegations in paragraph 19 of the SOC.

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

- (a) repeats the matters in paragraph 18 above;
- (b) says that the reports in paragraph 18 above wholly or substantially covered the matters referred to in paragraph 18 of the SOC; and
- (c) denies the allegations in paragraph 20 of the SOC.

21 In answer to the allegations in paragraph 21 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;
- (h) says that it knew of the matters in sub-paragraphs (a) to (g) above; and
- (i) otherwise denies the allegations in paragraph 21 of the SOC.

22 In answer to paragraph 22 of the SOC, AET:

- (a) repeats paragraphs 10(b) and 18 above;
- (b) 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 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 in the 2008 Annual Report, impairment expenses of loans and receivables of \$1,531,383 were recognised, being \$656,383 in recognised losses and \$875,000 in individually assessed impairments;
- (d) says that in the 2008 Annual Report, Provident recorded net assets of \$14,476,010;
- (e) says that it knew of the matters in the four preceding sub-paragraphs; and
- (f) otherwise denies the allegations in paragraph 23 of the SOC.

24 AET admits the allegations in paragraph 24 of the SOC.

25 In answer to the allegations in paragraph 25 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 25 of the SOC.



26 In answer to the allegations in paragraph 26 of the SOC, AET:

- (a) says that the 2008 Annual Report reported, as non-current assets as at 30 June 2008, deferred tax assets of \$1,077,155;
- (b) says that the 2008 Annual Report reported, as current assets as at 30 June 2008, current tax assets of \$179,828;
- (c) says that the 2008 Annual Report stated that deferred tax assets were recognised for deductible temporary differences and unused tax losses only if it was probable that the future taxable amounts will be available to utilise those temporary differences and losses; and
- (d) otherwise does not admit the allegations in paragraph 26 of the SOC.

27 In answer to the allegations in paragraph 27 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 it knew the matters referred to in sub-paragraphs (a) – (d) above; and
- (f) otherwise denies the allegations in paragraph 27 of the SOC.

28 In answer to paragraph 28 of the SOC, AET:

- (a) admits it knew the matters pleaded in paragraph 28 of the SOC from about 5 November 2008; and
- (b) otherwise does not admit paragraph 28 of the SOC.

29 AET denies the allegations in paragraph 29 of the SOC.

30 In answer to paragraph 30 of the SOC, AET:

- (a) says that in DP 11, Provident reported that:
  - (i) the economic slowdown potentially increased the risk of credit loss because of changes to borrowers' circumstances increasing the risk of loan default, changes to property values, and reduced availability of credit generally;

(ii) Provident had modified its lending policy to reduce the potential risk of credit loss on a particular loan and the impact of any actual loss on the whole portfolio; and

(b) says that it knew the matters referred to in the preceding sub-paragraph from about 24 December 2008; and

(c) otherwise does not admit paragraph 30 of the SOC.

31 In answer to paragraph 31, AET:

(a) says that on about 5 December 2008, it received an email from Provident that attached a draft of DP 11 and relies on the content of that email for its full force and effect; and

(b) otherwise does not admit paragraph 31 of the SOC.

32 In answer to paragraph 32 of the SOC, AET:

(a) says that on or about 1 December 2008, it received the Arrears Report for October 2008 (**October 2008 Arrears Report**), which reported that there were 28 loans in the FTI Portfolio that were in arrears for greater than 90 days, and in respect of those 28 loans:

(i) that the principal balance was \$51,822,624.89 and the net arrears was \$9,010,516.66;

(ii) the names and account numbers;

(iii) included comments identifying whether:

(A) the security property had been sold by the borrower or by Provident, and the sale was awaiting settlement;

(B) legal proceedings had been commenced to recover the amount of the loan; or

(C) negotiations with the borrower had taken place for repayment of the loan, and the status of those negotiations;

(iv) the average LVR was 86.96%

(b) says that those 28 loans in arrears for greater than 90 days represented 23.16% of the total loans made by Provident; and

(c) otherwise does not admit paragraph 32 of the SOC.

33 In answer to paragraph 33 of the SOC, AET:

(a) admits that on or about 9 January 2009 it received an Arrears Report for November 2008 (**November 2008 Arrears Report**); and

(b) otherwise does not admit the matters alleged therein.

34 In answer to paragraph 34 of the SOC, AET:

(a) says that the November 2008 Arrears Report reported that there were 30 loans in the FTI Portfolio that were in arrears for greater than 90 days, and in respect of those 30 loans:

(i) that the principal balance was \$51,353,519.38 and the net arrears was \$14,156,372.48;

(ii) that the loans represented 23.13% of the total loans made by Provident;

(iii) included comments identifying whether:

(A) the security property had been sold by the borrower or by Provident, and the sale was awaiting settlement;

(B) legal proceedings had been commenced to recover the amount of the loan; or

(C) negotiations with the borrower had taken place for repayment of the loan, and the status of those negotiations;

(b) repeats paragraphs 32(a)(i) and 32(a)(iv) above;

(c) says that for the 28 loans in the FTI Portfolio that the October 2008 Arrears Report reported were in arrears for greater than 90 days, the average LVR was 73.54%;

(d) admits paragraphs 34.3 and 34.4;

(e) admits that, for the Loans of Concern (as that term is defined in the SOC), the principal balance, net arrears and LVR reported in the October 2008 Arrears Report and November 2008 Arrears Report is as set out in the particulars to paragraph 34 of the SOC;

(f) says that the average LVR of the Loans of Concern, as reported in the November 2008 Arrears Report, was 105.80%;

(g) otherwise does not admit paragraph 34 of the SOC.

35 In answer to paragraph 35 of the SOC, AET:

(a) says that it sent an email to Provident on about 27 January 2006 inquiring why the level of the interest in arrears increased from \$9 million in October to \$14 million in November 2008, and relies on the content of that email for its full force and effect; and

(b) otherwise does not admit paragraph 35 of the SOC.

36 In answer to paragraph 36 of the SOC, AET:

- (a) says that it received an email from Provident on about 28 January 2009, which:
  - (i) stated that the November 2008 Arrears Report had reported "Gross arrears", whereas previously Provident had reported "net arrears";
  - (ii) stated that there was no large variance when comparing monthly net arrears;
  - (iii) attached a revised November 2008 Arrears Report (**Amended November 2008 Arrears Report**); and
- (b) otherwise does not admit paragraph 36 of the SOC.

37 In answer to paragraph 37 of the SOC, AET:

- (a) admits paragraph 37.1;
- (b) says that the Amended November 2008 Arrears Report:
  - (i) reported net arrears of \$9,232,826.06;
  - (ii) reported that there were 10 loans with an LVR greater than 100%; and
  - (iii) included comments identifying whether:
    - (A) the security property had been sold by the borrower or by Provident, and the sale was awaiting settlement;
    - (B) legal proceedings had been commenced to recover the amount of the loan; or
    - (C) negotiations with the borrower had taken place for repayment of the loan, and the status of those negotiations;
- (c) says that the email referred to in paragraph 36 above recorded that the net arrears excluded "the non-accrual of interest provision against certain loans";
- (d) repeats paragraph 34(a)(i) above;
- (e) otherwise does not admit paragraph 37 of the SOC.

38 In answer to paragraph 38 of the SOC, AET:

- (a) repeats paragraphs 36 and 37 above; and
- (b) otherwise denies paragraph 38 of the SOC.

**F. THE EXERCISE OF REASONABLE DUE DILIGENCE PURSUANT TO S 283DA(a) & (b)**

39 AET denies the allegations in paragraph 39 of the SOC.

- 40 In answer to paragraph 40 of the SOC, AET:
- (a) repeats paragraph 39 above;
  - (b) denies that Provident would have provided AET with the complete files referred to by in or around mid to late January 2009, or by early February 2009, or at all; and
  - (c) otherwise denies the allegations in paragraph 40 of the SOC.
- 41 In answer to paragraph 41 of the SOC, AET:
- (a) admits that, on 2 February 2009, it received a report from Provident which purported to list the loans made by Provident which were in arrears for greater than 90 days, as at 31 December 2008 (**December 2008 Arrears Report**); and
  - (b) otherwise denies the allegations in paragraph 41 of the SOC.
- 42 In answer to paragraph 42 of the SOC, AET:
- (a) repeats paragraphs 39 to 41 above; and
  - (b) otherwise denies paragraph 42 of the SOC.
- F.1 Burleigh Views loan**
- 43 In answer to paragraph 43 of the SOC, AET:
- (a) repeats the matters in paragraphs 23 to 41 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 RG 69 Report for the quarter ended 30 September 2008 (**30 September 2008 RG 69 Report**), Provident stated to the effect that:
    - (i) the loan amount for a 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 that loan was 70% or less;
  - (d) says that the 30 September 2008 RG 69 Report did not otherwise refer to the Burleigh Views loan;

- (e) says that it knew of the matters in subparagraphs (a) and (c) above as at 1 December 2008;
- (f) says that the Burleigh Views loan appears in Arrears Reports issued by Provident to AET for the months ended 31 December 2006, 31 January 2007, 28 February 2007 and 31 March 2007;
- (g) says that in the Arrears Report for the month ended 31 January 2007, the Burleigh Views loan was recorded as having been 27.59 months in arrears;
- (h) says that in the Arrears Report for the month ended 28 February 2007, the Burleigh Views loan was recorded as having been 28.49 months in arrears;
- (i) says that in the Arrears Reports for the months ended 31 January 2007 and 28 February 2007, the LVR for the Burleigh Views loan is recorded as 51.62% and the comment recorded is "Refinance underway";
- (j) says that the Burleigh Views loan did not, after the Arrears Report for 31 March 2007, appear in any Arrears Report issued by Provident;
- (k) says that the Burleigh Views loan did not appear as a loan in arrears in the 2008 Annual Report;
- (l) says that it knew of the matters referred to in sub-paragraphs (f)-(k) above as at 1 December 2008; and
- (m) otherwise denies the allegations in paragraph 43 of the SOC.

44 In answer to paragraph 44 of the SOC, AET:

- (a) repeats the matters in paragraph 43 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Burleigh Views loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 43 above
- (c) otherwise denies the allegations in paragraph 44 of the SOC.

## F.2 Ovchinnikov loan

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

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Mihail Ovchinnikov as a loan in arrears (**Ovchinnikov loan**);

- (c) says that the October 2008 Arrears Report recorded the Ovchinnikov loan as having a principal balance of \$3,918,942, net arrears of \$1,251,966.87 and months in arrears of 46.51;
- (d) says that the October 2008 Arrears Report recorded the Ovchinnikov loan as having an LVR of 71% and made the comment "Contracts issued awaiting exchange";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
- (f) says that the November 2008 Arrears Report identified the Ovchinnikov loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Ovchinnikov loan as having a principal balance of \$3,935,759.91, arrears of \$1,832,282.25 and days in arrears of 1,395;
- (h) says that the November 2008 Arrears Report recorded the Ovchinnikov loan as having an LVR of 104.87% and made the comment "Contracts issued awaiting exchange";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Ovchinnikov loan as having a principal balance of \$3,935,759.91, net arrears of \$1,254,531.94 and days in arrears of 1,395;
- (k) says that the Amended November 2008 Arrears Report recorded the Ovchinnikov loan as having an LVR of 104.87% and made the comment "Contracts issued awaiting exchange";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Ovchinnikov loan as having a principal balance of \$3,942,535.91 and net arrears of \$1,253,223.82;
- (n) says that the December 2008 Arrears Report recorded the Ovchinnikov loan as having an LVR of 166.09% and made the comment "Contracts issued awaiting exchange";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise 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 45 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Ovchinnikov loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 45 above; and
- (c) denies the allegations in paragraph 46 of the SOC.

### F.3 Unique Castle loan

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

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Unique Castle Developments Pty Ltd as a loan in arrears (**Unique Castle loan**);
- (c) says that the October 2008 Arrears Report recorded the Unique Castle loan as having a principal balance of \$3,844,688, net arrears of \$1,150,272.90 and months in arrears of 21.35;
- (d) says that the October 2008 Arrears Report recorded the Unique Castle loan as having an LVR of 95% and made the comment "Under offer negotiating on price";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
- (f) says that the November 2008 Arrears Report identified the Unique Castle loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Unique Castle loan as having a principal balance of \$3,844,688.36, arrears of \$1,202,413.19 and days in arrears of 679;
- (h) says that the November 2008 Arrears Report recorded the Unique Castle loan as having an LVR of 124.61% and made the comment "Under offer negotiating on price";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Unique Castle loan as having a principal balance of \$3,844,688.36, net arrears of \$1,202,413.19 and days in arrears of 679;



- (k) says that the Amended November 2008 Arrears Report recorded the Unique Castle loan as having an LVR of 124.61% and made the comment "Under offer negotiating on price";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Unique Castle loan as having a principal balance of \$3,851,153.36 and net arrears of \$935,566.07;
- (n) says that the December 2008 Arrears Report recorded the Unique Castle loan as having an LVR of 64.25% and made the comment "Under offer negotiating on price";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 47 of the SOC.

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

- (a) repeats the matters in paragraphs 47 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Unique Castle loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 47 above; and
- (c) denies the allegations in paragraph 48 of the SOC.

#### F.4 Ozer loan

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

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Hasan Ozer as a loan in arrears (**Ozer loan**);
- (c) says that the October 2008 Arrears Report recorded the Ozer loan as having a principal balance of \$1,877,856, net arrears of \$188,942.40 and months in arrears of 24.94;
- (d) says that the October 2008 Arrears Report recorded the Ozer loan as having an LVR of 81% and made the comment "Title dispute with neighbour proceedings commenced to clarify";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;

- (f) says that the November 2008 Arrears Report identified the Ozer loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Ozer loan as having a principal balance of \$1,877,855.60, arrears of \$743,651.59 and days in arrears of 790;
- (h) says that the November 2008 Arrears Report recorded the Ozer loan as having an LVR of 147.27% and made the comment "Title dispute with neighbour proceedings commenced to clarify";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Ozer loan as having a principal balance of \$1,877,855.60, net arrears of \$189,868.47 and days in arrears of 790;
- (k) says that the Amended November 2008 Arrears Report recorded the Ozer loan as having an LVR of 147.27% and made the comment "Title dispute with neighbour proceedings commenced to clarify";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Ozer loan as having a principal balance of \$1,877,855.60 and net arrears of \$189,868.47;
- (n) says that the December 2008 Arrears Report recorded the Ozer loan as having an LVR of 148.88% and made the comment "Title dispute with neighbour proceedings";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 49 of the SOC.

50 In answer to the allegations in paragraph 50 of the SOC, AET:

- (a) repeats the matters in paragraphs 49 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Ozer loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 49 above; and
- (c) denies the allegations in paragraph 50 of the SOC.

## F.5 Tembelli loan

- 51 In answer to the allegations in paragraph 51 of the SOC, AET:
- (a) repeats the matters in paragraphs 23 to 41 above;
  - (b) says that the October 2008 Arrears Report identified a loan to Tembelli Pty Ltd as a loan in arrears (**Tembelli loan**);
  - (c) says that the October 2008 Arrears Report recorded the Tembelli loan as having a principal balance of \$3,874,080, net arrears of \$1,020,101.33 and months in arrears of 30.38;
  - (d) says that the October 2008 Arrears Report recorded the Tembelli loan as having an LVR of 81% and made the comment "Arrangements agreed for repayment by end of November 2008";
  - (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
  - (f) says that the November 2008 Arrears Report identified the Tembelli loan as a loan in arrears;
  - (g) says that the November 2008 Arrears Report recorded the Tembelli loan as having a principal balance of \$3,898,288.65, arrears of \$1,760,523.80 and days in arrears of 960;
  - (h) says that the November 2008 Arrears Report recorded the Tembelli loan as having an LVR of 118.50% and made the comment "Arrangements agreed for repayment by end of November 2008";
  - (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
  - (j) says that the Amended November 2008 Arrears Report recorded the Tembelli loan as having a principal balance of \$3,898,288.65, net arrears of \$1,022,023.36 and days in arrears of 960;
  - (k) says that the Amended November 2008 Arrears Report recorded the Tembelli loan as having an LVR of 118.50% and made the comment "Arrangements agreed for repayment by end of November 2008";
  - (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
  - (m) says that the December 2008 Arrears Report recorded the Tembelli loan as having a principal balance of \$3,898,288.65 and net arrears of \$1,022,049.49;

- (n) says that the December 2008 Arrears Report recorded the Tembelli loan as having an LVR of 119.68% and made the comment "Arrangements agreed for repayment by end";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 51 of the SOC.

52 In answer to the allegations in paragraph 52 of the SOC, AET:

- (a) repeats the matters in paragraphs 51 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Tembelli loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 51 above; and
- (c) denies the allegations in paragraph 52 of the SOC.

#### **F.6 Chrysalis loan**

53 In answer to the allegations in paragraph 53 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Chrysalis Holdings Pty Ltd as a loan in arrears (**Chrysalis loan**);
- (c) says that the October 2008 Arrears Report recorded the Chrysalis loan as having a principal balance of \$5,644,596, net arrears of \$660,937.12 and months in arrears of 24.86;
- (d) says that the October 2008 Arrears Report recorded the Chrysalis loan as having an LVR of 67% and made the comment "Contracts for sale being prepared – 2 interested parties";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
- (f) says that the November 2008 Arrears Report identified the Chrysalis loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Chrysalis loan as having a principal balance of \$5,664,820.32, arrears of \$1,987,254.65 and days in arrears of 788;

- (h) says that the November 2008 Arrears Report recorded the Chrysallis loan as having an LVR of 90.69% and made the comment "Contracts for sale being prepared – 2 interested parties";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Chrysallis loan as having a principal balance of \$5,664,820.32, net arrears of \$663,421.34 and days in arrears of 788;
- (k) says that the Amended November 2008 Arrears Report recorded the Chrysallis loan as having an LVR of 90.69% and made the comment "Contracts for sale being prepared – 2 interested parties";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Chrysallis loan as having a principal balance of \$5,664,820.32 and net arrears of \$663,421.33;
- (n) says that the December 2008 Arrears Report recorded the Chrysallis loan as having an LVR of 91.60% and made the comment "Contracts for sale being prepared – 2 interested";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 53 of the SOC.

54 In answer to the allegations in paragraph 54 of the SOC, AET:

- (a) repeats the matters in paragraphs 53 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Chrysallis loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 53 above; and
- (c) denies the allegations in paragraph 54 of the SOC.

#### F.7 Kooindah loan

55 In answer to the allegations in paragraph 53 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Kooindah Lifestyle Pty Limited as a loan in arrears (**Kooindah loan**);

- (c) says that the October 2008 Arrears Report recorded the Kooindah loan as having a principal balance of \$1,047,895, net arrears of \$180,958.14 and months in arrears of 11.97;
- (d) says that the October 2008 Arrears Report recorded the Kooindah loan as having an LVR of 116% and made the comment "Property for sale by auction in December 2008";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
- (f) says that the November 2008 Arrears Report identified the Kooindah loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Kooindah loan as having a principal balance of \$1,053,262.03, arrears of \$196,071.60 and days in arrears of 365;
- (h) says that the November 2008 Arrears Report recorded the Kooindah loan as having an LVR of 138.81% and made the comment "Property for sale by auction in December 2008";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Kooindah loan as having a principal balance of \$1,053,262.03, net arrears of \$196,071.60 and days in arrears of 365;
- (k) says that the Amended November 2008 Arrears Report recorded the Kooindah loan as having an LVR of 138.81% and made the comment "Property for sale by auction in December 2008";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Kooindah loan as having a principal balance of \$1,053,262.03 and net arrears of \$210,745.13;
- (n) says that the December 2008 Arrears Report recorded the Kooindah loan as having an LVR of 140.45% and made the comment "Property for sale by auction in December 2008";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 55 of the SOC.

56 In answer to the allegations in paragraph 56 of the SOC, AET:

- (a) repeats the matters in paragraphs 55 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Kooindah loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 55 above; and
- (c) denies the allegations in paragraph 56 of the SOC.

#### F.8 Gardiner loan

57 In answer to the allegations in paragraph 57 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Victor and Verner Gardiner as a loan in arrears (**Gardiner loan**);
- (c) says that the October 2008 Arrears Report recorded the Gardiner loan as having a principal balance of \$1,127,945, net arrears of \$182,023.61 and months in arrears of 29.63;
- (d) says that the October 2008 Arrears Report recorded the Gardiner loan as having an LVR of 71% and made the comment "Property for sale by private treaty";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
- (f) says that the November 2008 Arrears Report identified the Gardiner loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Gardiner loan as having a principal balance of \$1,136,183.82, arrears of \$497,333.69 and days in arrears of 904;
- (h) says that the November 2008 Arrears Report recorded the Gardiner loan as having an LVR of 108.53% and made the comment "Property for sale by private treaty";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Gardiner loan as having a principal balance of \$1,136,183.82, net arrears of \$182,526.04 and days in arrears of 904;

- (k) says that the Amended November 2008 Arrears Report recorded the Gardiner loan as having an LVR of 108.53% and made the comment "Property for sale by private treaty";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Gardiner loan as having a principal balance of \$1,136,234.86 and net arrears of \$181,904.63;
- (n) says that the December 2008 Arrears Report recorded the Gardiner loan as having an LVR of 109.50% and made the comment "Property for sale by private treaty";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 57 of the SOC.

58 In answer to the allegations in paragraph 58 of the SOC, AET:

- (a) repeats the matters in paragraphs 57 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Gardiner loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 57 above; and
- (c) denies the allegations in paragraph 58 of the SOC.

#### F.9 Leach loan

59 In answer to the allegations in paragraph 59 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Philip Leslie Leach as a loan in arrears (**Leach loan**);
- (c) says that the October 2008 Arrears Report recorded the Leach loan as having a principal balance of \$1,951,805.34, net arrears of \$481,176.56 and months in arrears of 17.08;
- (d) says that the October 2008 Arrears Report recorded the Leach loan as having an LVR of 84% and made the comment "Under offer negotiating on price";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;



- (f) says that the November 2008 Arrears Report identified the Leach loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Leach loan as having a principal balance of \$1,952,481.09, arrears of \$508,381.45 and days in arrears of 544;
- (h) says that the November 2008 Arrears Report recorded the Leach loan as having an LVR of 106.99 % and made the comment "Under offer negotiating price";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Leach loan as having a principal balance of \$1,952,481.09, net arrears of \$508,381.45 and days in arrears of 544;
- (k) says that the Amended November 2008 Arrears Report recorded the Leach loan as having an LVR of 106.99% and made the comment "Under offer negotiating price";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Leach loan as having a principal balance of \$1,973,965.91 and net arrears of \$536,767.41;
- (n) says that the December 2008 Arrears Report recorded the Leach loan as having an LVR of 109.16% and made the comment "Under offer negotiating price";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 59 of the SOC.

60 In answer to the allegations in paragraph 60 of the SOC, AET:

- (a) repeats the matters in paragraphs 59 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Leach loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 59 above; and
- (c) denies the allegations in paragraph 60 of the SOC.

**F.10 Morell loan**

61 In answer to the allegations in paragraph 61 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Ms Maureen Kaye Morell as a loan in arrears (**Morell loan**);
- (c) says that the October 2008 Arrears Report recorded the Morell loan as having a principal balance of \$1,043,343, net arrears of \$185,698.03 and months in arrears of 43.48;
- (d) says that the October 2008 Arrears Report recorded the Morell loan as having an LVR of 75% and made the comment "Contracts issued awaiting exchange";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
- (f) says that the November 2008 Arrears Report identified the Morell loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Morell loan as having a principal balance of \$1,045,737.36, arrears of \$650,140.01 and days in arrears of 1,362;
- (h) says that the November 2008 Arrears Report recorded the Leach loan as having an LVR of 105.99% and made the comment "Contracts issued awaiting exchange";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Morell loan as having a principal balance of \$1,045,737.36, net arrears of \$186,185.84 and days in arrears of 1,362;
- (k) says that the Amended November 2008 Arrears Report recorded the Morell loan as having an LVR of 105.99% and made the comment "Contracts issued awaiting exchange";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Morell loan as having a principal balance of \$1,049,565.36 and net arrears of \$186,162.32;

- (n) says that the December 2008 Arrears Report recorded the Morell loan as having an LVR of 107.14% and made the comment "Contracts issued awaiting exchange";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 61 of the SOC.

62 In answer to the allegations in paragraph 62 of the SOC, AET:

- (a) repeats the matters in paragraphs 61 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Morell loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 61 above; and
- (c) denies the allegations in paragraph 62 of the SOC.

#### F.11 Naumovska loan

63 In answer to the allegations in paragraph 63 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Dimitar and Milicia Naumovska as a loan in arrears (**Naumovska loan**);
- (c) says that the October 2008 Arrears Report recorded the Naumovska loan as having a principal balance of \$465,972, net arrears of \$71,493.28 and months in arrears of 13.26;
- (d) says that the October 2008 Arrears Report recorded the Naumovska loan as having an LVR of 93% and made the comment "Subject to litigation";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
- (f) says that the November 2008 Arrears Report identified the Naumovska loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Naumovska loan as having a principal balance of \$488,715.51, arrears of \$97,682.58 and days in arrears of 415;
- (h) says that the November 2008 Arrears Report recorded the Naumovska loan as having an LVR of 117.27% and made the comment "Subject to litigation";

- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Naumovska loan as having a principal balance of \$488,715.51, net arrears of \$71,612.89 and days in arrears of 415;
- (k) says that the Amended November 2008 Arrears Report recorded the Naumovska loan as having an LVR of 117.27% and made the comment "Subject to litigation";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Naumovska loan as having a principal balance of \$494,408.01 and net arrears of \$71,907.12;
- (n) says that the December 2008 Arrears Report recorded the Naumovska loan as having an LVR of 119.89% and made the comment "Subject to litigation";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 63 of the SOC.

64 In answer to the allegations in paragraph 64 of the SOC, AET:

- (a) repeats the matters in paragraphs 63 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Naumovska loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 63 above; and
- (c) denies the allegations in paragraph 64 of the SOC.

#### F.12 Hanna loan

65 In answer to the allegations in paragraph 63 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Paul Vincent Hanna as a loan in arrears (**Hanna loan**);
- (c) says that the October 2008 Arrears Report recorded the Hanna loan as having a principal balance of \$5,004,150, net arrears of \$614,735.78 and months in arrears of 8.53;

- (d) says that the October 2008 Arrears Report recorded the Hanna loan as having an LVR of 86% and made the comment "Borrower refinancing awaiting discharge";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
- (f) says that the November 2008 Arrears Report identified the Hanna loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Hanna loan as having a principal balance of \$5,043,649.91, arrears of \$685,460.00 and days in arrears of 274;
- (h) says that the November 2008 Arrears Report recorded the Hanna loan as having an LVR of 97.93% and made the comment "Borrower refinancing awaiting discharge";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Hanna loan as having a principal balance of \$5,043,649.91, net arrears of \$685,460.00 and days in arrears of 274;
- (k) says that the Amended November 2008 Arrears Report recorded the Naumovska loan as having an LVR of 97.93% and made the comment "Borrower refinancing awaiting discharge";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Hanna loan as having a principal balance of \$5,046,148.03 and net arrears of \$758,109.59;
- (n) says that the December 2008 Arrears Report recorded the Hanna loan as having an LVR of 96.74% and made the comment "Borrower refinancing awaiting discharge";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 65 of the SOC.

66 In answer to the allegations in paragraph 66 of the SOC, AET:

- (a) repeats the matters in paragraphs 65 above;

- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Hanna loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 65 above; and
- (c) denies the allegations in paragraph 66 of the SOC.

**F.13 Carlsund loan**

67 In answer to the allegations in paragraph 67 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Carl Andrew and Elizabeth Gai Carlsund as a loan in arrears (**Carlsund loan**);
- (c) says that the October 2008 Arrears Report recorded the Carlsund loan as having a principal balance of \$834,458, net arrears of \$222,700.95 and months in arrears of 19.44;
- (d) says that the October 2008 Arrears Report recorded the Carlsund loan as having an LVR of 32% and made the comment "2 lots under contract settlement November";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
- (f) says that the November 2008 Arrears Report identified the Carlsund loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Carlsund loan as having a principal balance of \$847,206.45, arrears of \$244,762.03 and days in arrears of 599;
- (h) says that the November 2008 Arrears Report recorded the Carlsund loan as having an LVR of 41.44% and made the comment "2 lots under contract 1 unit under offer – 3 lots sufficient to discharge PCL (awaiting registration of plan)";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Carlsund loan as having a principal balance of \$847,206.45, net arrears of \$244,762.03 and days in arrears of 599;
- (k) says that the Amended November 2008 Arrears Report recorded the Carlsund loan as having an LVR of 41.44% and made the comment "2 lots under

contract 1 unit under offer – 3 lots sufficient to discharge PCL (awaiting registration of plan)”;

- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Carlsund loan as having a principal balance of \$864,102.45 and net arrears of \$257,211.88;
- (n) says that the December 2008 Arrears Report recorded the Carlsund loan as having an LVR of 69.86% and made the comment “2 lots under contract 1 unit under offer – 3 lots sufficient to discharge PCL (awaiting registration of plan)”;
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 67 of the SOC.

68 In answer to the allegations in paragraph 68 of the SOC, AET:

- (a) repeats the matters in paragraphs 67 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Carlsund loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 67 above; and
- (c) denies the allegations in paragraph 68 of the SOC.

#### F.14 Smith & Arnott loan

69 In answer to the allegations in paragraph 69 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Smith and Arnott as a loan in arrears (**Smith & Arnott loan**);
- (c) says that the October 2008 Arrears Report recorded the Smith & Arnott loan as having a principal balance of \$245,374, net arrears of \$57,217.77 and months in arrears of 16.20;
- (d) says that the October 2008 Arrears Report recorded the Smith & Arnott loan as having an LVR of 85% and made the comment “Property for sale by auction December 2008”;
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;

- (f) says that the November 2008 Arrears Report identified the Smith & Arnott loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Smith & Arnott loan as having a principal balance of \$247,879.11, arrears of \$60,675.75 and days in arrears of 512;
- (h) says that the November 2008 Arrears Report recorded the Smith & Arnott loan as having an LVR of 106.39% and made the comment "Property for sale by auction December 2008";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Smith & Arnott loan as having a principal balance of \$247,879.11, net arrears of \$60,675.75 and days in arrears of 512;
- (k) says that the Amended November 2008 Arrears Report recorded the Smith & Arnott loan as having an LVR of 106.39% and made the comment "Property for sale by auction December 2008";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Smith & Arnott loan as having a principal balance of \$247,879.11 and net arrears of \$64,244.19;
- (n) says that the December 2008 Arrears Report recorded the Smith & Arnott loan as having an LVR of 107.63% and made the comment "Property for sale by auction December 2008";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 69 of the SOC.

70 In answer to the allegations in paragraph 70 of the SOC, AET:

- (a) repeats the matters in paragraphs 69 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Smith & Arnott loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 69 above; and
- (c) denies the allegations in paragraph 70 of the SOC.



**F.15 DS loan**

71 In answer to the allegations in paragraph 71 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to DS Investments Pty Ltd as a loan in arrears (**DS loan**);
- (c) says that the October 2008 Arrears Report recorded the DS loan as having a principal balance of \$288,995, net arrears of \$54,045.88 and months in arrears of 13.35;
- (d) says that the October 2008 Arrears Report recorded the DS loan as having an LVR of 83% and made the comment "Borrower now meeting interest payment arrangements";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
- (f) says that the November 2008 Arrears Report identified the DS loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the DS loan as having a principal balance of \$292,201.99, arrears of \$55,448.58 and days in arrears of 413;
- (h) says that the November 2008 Arrears Report recorded the DS loan as having an LVR of 99.32% and made the comment "Borrower now meeting interest payment arrangements";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the DS loan as having a principal balance of \$292,201.99, net arrears of \$55,448.58 and days in arrears of 413;
- (k) says that the Amended November 2008 Arrears Report recorded the DS loan as having an LVR of 99.32% and made the comment "Borrower now meeting interest payment arrangements";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the DS loan as having a principal balance of \$292,685.99 and net arrears of \$56,990.85;

- (n) says that the December 2008 Arrears Report recorded the DS loan as having an LVR of 99.90% and made the comment "Borrower now meeting interest payment";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 71 of the SOC.

72 In answer to the allegations in paragraph 72 of the SOC, AET:

- (a) repeats the matters in paragraphs 71 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the DS loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 71 above; and
- (c) denies the allegations in paragraph 72 of the SOC.

#### **F.16 Good Life loan**

73 In answer to the allegations in paragraph 73 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 41 above;
- (b) says that the October 2008 Arrears Report identified a loan to Good Life Retirement Systems Limited as a loan in arrears (**Good Life loan**);
- (c) says that the October 2008 Arrears Report recorded the Good Life loan as having a principal balance of \$1,210,727, net arrears of \$293,811.16 and months in arrears of 16.33;
- (d) says that the October 2008 Arrears Report recorded the Good Life loan as having an LVR of 67% and made the comment "sold by 2nd mortgagee settling November 2008";
- (e) says that on and from 1 December 2008, it knew of the matters referred to in subparagraphs (b) to (d) above;
- (f) says that the November 2008 Arrears Report identified the Good Life loan as a loan in arrears;
- (g) says that the November 2008 Arrears Report recorded the Good Life loan as having a principal balance of \$1,210,727.20, arrears of \$311,225.73 and days in arrears of 523;

- (h) says that the November 2008 Arrears Report recorded the Good Life loan as having an LVR of 84.55% and made the comment "sold by 2nd mortgagee settling November 2008";
- (i) says that on and from 9 January 2009 it knew of the matters referred to in subparagraphs (f) to (h) above;
- (j) says that the Amended November 2008 Arrears Report recorded the Good Life loan as having a principal balance of \$1,210,727.20, net arrears of \$294,391.66 and days in arrears of 523;
- (k) says that the Amended November 2008 Arrears Report recorded the Good Life loan as having an LVR of 84.55% and made the comment "sold by 2nd mortgagee settling November 2008";
- (l) says that on and from 28 January 2009 it knew of the matters referred to in subparagraphs (j) to (k) above;
- (m) says that the December 2008 Arrears Report recorded the Good Life loan as having a principal balance of \$1,212,043.21 and net arrears of \$215,490.00;
- (n) says that the December 2008 Arrears Report recorded the Good Life loan as having an LVR of 85.62% and made the comment "sold by 2nd mortgagee settling November 2008";
- (o) says that on and from 2 February 2009 it knew of the matters referred to in subparagraphs (m) to (n) above;
- (p) otherwise denies the allegations in paragraph 73 of the SOC.

74 In answer to the allegations in paragraph 74 of the SOC, AET:

- (a) repeats the matters in paragraphs 73 above;
- (b) says that in forming any view as at mid to late January 2009 or early February 2009 as to whether any provisions for credit losses should be made in respect of the Good Life loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41 and 73 above; and
- (c) denies the allegations in paragraph 74 of the SOC.

#### **F.17 Residual loans**

75 In answer to the allegations in paragraph 75 of the SOC, AET:

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

- (b) says that under the heading "Other Receivables - Audit is yet to receive any formally documented impairment testing conducted on this balance", the Walter Turnbull document:
- (i) identified a receivable in the amount of \$730,531.81 in respect of the Clucor loan and contained the comment "They are chasing the remainder of the principal plus legals";
  - (ii) identified a receivable in the amount of \$775,363.84 in respect of the Agara/MMT loan and contained the comment "Security has been sold but they are in a court case to recover the GST";
- (c) denies that by mid to late January 2009 or early February 2009, AET knew, or ought to have known, of the matters referred to in sub paragraphs (a) to (b) above;
- (d) says that the 2008 Annual Report was audited by Walter Turnbull and contained the impairment expenses and provisions referred to in paragraph 23(c) above; and
- (e) denies the allegations in paragraph 75 of the SOC.

76 In answer to the allegations in paragraph 76 of the SOC, AET:

- (a) repeats the matters in paragraphs 23 to 42 and 75 above;
- (b) says that in forming any view, as at December 2008, or as at mid to late January 2009 or early February 2009, as to whether any impairments on account of the residuals for the Clucor loan and the Agara/MMT loan, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 42 and 75(d) above; and
- (c) denies the allegations in paragraph 76 of the SOC.

#### **F.18 Systems and Processes**

77 In answer to the allegations in paragraph 77 of the SOC, AET:

- (a) repeats the matters in paragraphs 40 and 43 to 76 above; and
- (b) denies the allegations in paragraph 77 of the SOC.

#### **G. ALLEGED OBLIGATIONS AND CONTRAVENTIONS – DECEMBER 2008**

78 AET denies the allegations in paragraph 78 of the SOC, and says further that:

- (a) even if it was necessary or appropriate for AET to reach any one or more of the conclusions alleged in paragraph 78 of the SOC, AET would not and should

not have reached the other conclusions alleged in paragraph 78 of the SOC;  
and

- (b) in the alternative to sub-paragraph (a) above, even if it was necessary or appropriate for AET to reach any one or more of the conclusions alleged in paragraphs 78.1, 78.2, 78.3 and 78.6 of the SOC, AET would not and should not have reached the conclusions alleged in paragraphs 78.4 and 78.5 of the SOC.

79 In answer to the allegations in paragraph 79 of the SOC, AET:

- (a) repeats the matters in paragraph 29 above; and
- (b) denies the allegations in paragraph 79 of the SOC.

80 In answer to the allegations in paragraph 80 of the SOC, AET:

- (a) repeats the matters in paragraphs 78 and 79 above;
- (b) says that had AET made any application of the kind alleged in paragraph 80 of the SOC in mid to late January 2009 or early February 2009 it would not have been able to adduce any evidence demonstrating that it was necessary or appropriate to make orders of the kind alleged in paragraph 80 of the SOC;  
and
- (c) says that had AET made any application of the kind alleged in paragraph 80 of the SOC in mid to late January 2009 or early February 2009 it would not have been able to adduce any evidence demonstrating that the property of Provident would be insufficient to pay the amount due on the debentures when they became due and payable; and
- (d) denies the allegations in paragraph 80 of the SOC.

81 In answer to the allegations in paragraph 81 of the SOC, AET:

- (a) repeats the matters in paragraph 80 above;
- (b) says that any application of the kind alleged in paragraph 80 of the SOC made in mid to late January 2009 or early February 2009 would have been opposed by Provident, which opposition would have been supported by evidence purporting to demonstrate that its property would be sufficient to pay the amount due on the debentures when they became due and payable, including evidence:
  - (i) of the 2008 Annual Report and the unqualified audit opinions provided in connection with the 2008 Annual Report;
  - (ii) of the 30 September 2008 RG 69 Report;

- (iii) of Provident's Quarterly Report for the 3 months ended 30 September 2008 (**30 September 2008 Quarterly Report**);
- (iv) of Provident's completed Issuer Quarterly Reporting Checklist for the quarter ending 30 September 2008 (**30 September 2008 Checklist**);
- (v) of Provident's Quarterly Report for the quarter ended 31 December 2008 (**31 December 2008 Quarterly Report**);
- (vi) to the effect of the matters contained in in Provident's letter to AET dated 22 December 2008 regarding DP 11;
- (vii) to the effect of the matters contained in the Provident's Interim Financial Report for the half year ended 31 December 2008 (**December 2008 Interim Report**);
- (viii) to the effect of the DP 11 Auditor's Benchmark Assurance Report:
  - (A) referred to in paragraphs 21(f) above; and
  - (B) 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); and
- (c) denies the allegations in paragraph 81 of the SOC.

82 In answer to the allegations in paragraph 82 of the SOC, AET:

- (a) repeats the matters in paragraphs 80 and 81 above;
- (b) says that any notification to ASIC of the kind alleged in paragraph 82 of the SOC in mid to late January 2009 or early February 2009 would have been unsupported by evidence which AET was capable of providing to ASIC which would have justified reaching the conclusions alleged in paragraphs 78 and 79 of the SOC;
- (c) says that any notification to ASIC of the kind alleged in paragraph 82 of the SOC in mid to late January 2009 or early February 2009 would have been unsupported by evidence which AET was capable of providing to ASIC which would have demonstrated that property of Provident would be insufficient to pay the amount due on the debentures when they became due and payable; and
- (d) denies the allegations in paragraph 82 of the SOC.

83 In answer to the allegations in paragraph 83 of the SOC, AET:

- (a) repeats the matters in paragraph 82 above;
- (b) says that any notification of the kind alleged in paragraph 82 of the SOC made in mid to late January 2009 or early February 2009 would have been answered by Provident, which answer would have been supported by evidence purporting to demonstrate that its property would be sufficient to pay the amount due on the debentures when they became due and payable, including the evidence referred to in paragraph 81(b) above, and
- (c) denies the allegations in paragraph 83 of the SOC.

84 In answer to paragraph 84 of the SOC, AET:

- (a) repeats the matters in paragraphs 78 and 79 above;
- (b) says that any notice of an "event of default" of the kind alleged in paragraph 84 of the SOC in mid to late January 2009 or early February 2009 would have been unsupported by evidence which AET was capable of providing to substantiate that there had been breaches of the Debenture Trust Deed;
- (c) says that, any action of the kind alleged in paragraphs 84.1, 84.2 and 84.3 of the SOC taken in mid to late January 2009 or early February 2009 would have been opposed by Provident, which opposition would have been supported by evidence purporting to demonstrate that its property would be sufficient to pay the amount due on the debentures when they became due and payable, including the evidence referred to in paragraph 81(b) above;
- (d) denies the allegations in paragraph 84 of the SOC.

## **G.2 Contravention and causation**

85 In answer to the allegations in paragraph 85 of the SOC, AET:

- (a) repeats the matters in paragraphs 18 and 23 to 79 above; and
- (b) denies the allegations in paragraph 85 of the SOC.

86 In answer to the allegations in paragraph 86 of the SOC, AET:

- (a) repeats the matters in paragraphs 18 and 23 to 84 above; and
- (b) denies the allegations in paragraph 86 of the SOC.

87 In answer to the allegations in paragraph 87 of the SOC, AET:

- (a) repeats the matters in paragraphs 18 and 23 to 82 above; and
- (b) denies the allegations in paragraph 87 of the SOC.

- 88 In answer to the allegations in paragraph 88 of the SOC, AET:
- (a) repeats the matters in paragraphs 85 to 87 above; and
  - (b) otherwise denies the allegations in paragraph 88 of the SOC.
- 89 In answer to the allegations in paragraph 89 of the SOC. AET:
- (a) denies the plaintiff and group members have suffered any loss and damage by reason of any contravention by AET of s 283DA of the Corps Act or any breach by AET of a fiduciary duty;
  - (b) says that if, which is denied, AET contravened s 283DA of the Corps Act or breached a fiduciary duty, and if, which is denied, the plaintiff and group members suffered loss and damage, the cause of that loss and damage are the actions and omissions of Provident and not the contravention of AET;
  - (c) says that, in the premises of the previous sub-paragraph, if AET contravened s 283DA of the Corps Act or breached a fiduciary duty, and if the plaintiff and group members suffered loss and damage, no compensation is recoverable by the plaintiff and group members pursuant to s 283F of the Corps Act or under the general law;
  - (d) says that if, which is denied, AET contravened s 283DA of the Corps Act or breached a fiduciary duty, and if, which is denied, the plaintiff and group members are entitled to recover compensation from AET pursuant to s 283F of the Corps Act or under the general law, that compensation must be reduced to account for any amounts recovered or to be recovered by the plaintiff and group members pursuant to the receivership of Provident, including the proceedings commenced by the Receivers of Provident against the directors of Provident in the Supreme Court of New South Wales (proceedings no 2014/63700); and
  - (e) otherwise denies the allegations in paragraph 89 of the SOC.
- 89A In further answer to the whole of the cause of action pleaded in paragraphs 29 to 89 of the SOC, AET:
- (a) says that pursuant to order 1 of the orders made on 26 June 2015 by Middleton J in Federal Court of Australia proceeding VID 790/2014, and order 2 of the orders made on 20 May 2016, the amendments to the SOC introduced by the documents dated 26 June 2015 and 27 June 2016, should be ordered to take effect from 26 June 2015 and 27 June 2016 respectively, and not from the date of the commencement of the proceeding;



- (b) says that pursuant to s 283F(2) of the Corps Act the limitation period applicable to a cause of action created by that section is six years from the day on which the cause of action arose;
- (c) says that if (which is denied) AET contravened s 283DA of the Corps Act by failing to form the opinions and take the steps pleaded in paragraphs 28 to 89 of the SOC by (at the latest) early February 2009, any cause of action under s 283F of a group member within the class identified in particular (f) of paragraph 89 of the SOC in respect of that contravention arose (at the latest) in February 2009;
- (d) says that, in the premises, the limitation period applicable to any cause of action under s 283F of a group member within the class identified in particular (f) of paragraph 89 of the SOC expired no later than early February 2015;
- (e) says that if (which is denied) AET contravened s 283DA of the Corps Act by failing to form the opinions and take the steps pleaded in paragraphs 28 to 89 of the SOC by (at the latest) early February 2009, any cause of action under s 283F of a group member within the class identified in particular (g) of paragraph 89 of the SOC in respect of that contravention arose (at the latest) on the date on which that group member was first issued with a debenture by Provident;
- (f) says that, in the premises, the limitation period applicable to any cause of action under s 283F of a group member within the class identified in particular (g) of paragraph 89 of the SOC expired no later than six years from the date on which that group member was first issued with a debenture by Provident;
- (g) says that pursuant to s 48 and s 63 of the *Limitation Act 1925* (NSW) the limitation period applicable to a cause of action for breach of duty by a trustee is, relevantly, six years from the date on which the cause of action first accrues;
- (h) further and in the alternative, says that the limitation period in s 283F(2) of the Corps Act applies by analogy to the claims made by the plaintiff and group members for breach of fiduciary duty;
- (i) says that if (which is denied) AET breached a fiduciary duty by failing to form the opinions and take the steps pleaded in paragraphs 28 to 89 of the SOC by (at the latest) early February 2009, any cause of action of a group member within the class identified in particular (f) of paragraph 89 of the SOC in respect of that breach accrued no later than February 2009;
- (j) says that, in the premises, the limitation period applicable to any cause of action of a group member within the class identified in particular (f) of

paragraph 89 of the SOC for breach of fiduciary duty expired no later than early February 2015;

- (k) says that if (which is denied) AET breached a fiduciary duty by failing to form the opinions and take the steps pleaded in paragraphs 28 to 89 of the SOC by (at the latest) early February 2009, the fiduciary duty or duties in question were not owed to group members within the class identified in particular (g) of paragraph 89 of the SOC in circumstances where such group members had not been issued with debentures by Provident as at the date of the alleged breaches and, for this reason, any claim for breach of fiduciary duty by those group members is misconceived;
- (l) further and in the alternative to subparagraph (k), says that if (which is denied) AET breached a fiduciary duty by failing to form the opinions and take the steps pleaded in paragraphs 28 to 89 of the SOC by (at the latest) early February 2009, any cause of action of a group member within the class identified in particular (g) of paragraph 89 of the SOC in respect of that breach accrued no later than February 2009;
- (m) says that, in the premises, the limitation period applicable to any cause of action of a group member within the class identified in particular (g) of paragraph 89 of the SOC for breach of fiduciary duty expired no later than early February 2015;
- (n) says that, by reason of the matters pleaded in the previous sub-paragraphs:
  - (i) the causes of action of group members within the class identified in particular (f) of paragraph 89 of the SOC under s 283F are statute barred and ought be dismissed;
  - (ii) the causes of action of group members within the class identified in particular (f) of paragraph 89 of the SOC for breach of fiduciary duty are statute barred and ought be dismissed;
  - (iii) depending on the date of issue of each group members' first debenture, the causes of action of group members within the class identified in particular (g) of paragraph 89 of the SOC under s 283F are statute barred and ought be dismissed; and
  - (iv) the causes of action of group members within the class identified in particular (g) of paragraph 89 of the SOC for breach of fiduciary duty is either misconceived or statute barred and, for either reason, ought be dismissed.

**H. FINANCIAL POSITION AND PERFORMANCE OF PROVIDENT – AT 30 JUNE 2009**

90 In answer to the allegations in paragraph 90 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;
  - (vi) the loans in respect of which Provident was in possession of mortgaged property pending sale were to a value of \$28,316,087;
  - (vii) 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;
- (b) repeats the matters in paragraph 25(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 90 of the SOC.

91 In answer to the allegations in paragraph 91 of the SOC, AET:

- (a) says that in its Annual Report for the year ended 30 June 2009 (**2009 Annual Report**), Provident reported as a current asset loan interest receivable of \$10,469,931;
- (b) says that in the 2009 Annual Report, Provident:
- (i) reported in its income statement gross interest income of \$31,346,411;
  - (ii) reported in its cash flow statement interest received of \$26,369,171;

- (c) says that the 2009 Annual Report reported that Provident had net assets and equity of \$14,567,368, being total assets of \$226,626,209 and total liabilities of \$212,058,841;
- (d) says that in the 2009 Annual Report, Provident:
  - (i) expensed impairment losses of \$4,877,308;
  - (ii) made impairment provisions in the amount of \$3,454,952;
  - (iii) stated that the net fair value of its loans and advances (taking into account impairment provisions) as at 30 June 2009 was \$192,599,346;
- (e) says that in the 2009 Annual Report, Provident reported that it had 60 loans in excess of 30 days past due with a total outstanding balance of \$88,951,683;
- (f) says that in the 2009 Annual Report, Provident reported that it had 41 loans in excess of 90 days past due with a total outstanding balance of \$62,758,593;
- (g) says that the September 2009 RG 69 Report stated that its loans in excess of 90 days past due represented 32.6% by value and 23.2% by number of Provident's total loan portfolio;
- (h) says that in the 2009 Annual Report and the 30 September 2009 RG 69 Report, Provident 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;
- (i) says that it knew the matters referred to in sub-paragraphs (a) to (h) above on and from about 30 October 2009;
- (j) otherwise denies the allegations in paragraph 91 of the SOC.

92 In answer to the allegations in paragraph 92 of the SOC, AET:

- (a) says that the 30 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 30 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 30 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 30 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) to (d) above on and from about 30 October 2009; and
- (f) denies any other allegation in paragraph 92 of the SOC.

#### I. FINANCIAL POSITION AND PERFORMANCE OF PROVIDENT - AT 30 JUNE 2010

93 In answer to the allegations in paragraph 93 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**) were \$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 sub-paragraphs from about 28 September 2010; and
- (d) otherwise denies the allegations in paragraph 28 of the SOC,

94 AET admits the allegations in paragraph 94 of the SOC.

95 In answer to the allegations in paragraph 95 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 25(b) above;
- (c) says that from about 28 September 2010 it knew of the matters referred to in subparagraphs (a) and (b) above; and
- (d) otherwise denies the allegations in paragraph 95 of the SOC.

96 In answer to the allegations in paragraph 96 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 96 of the SOC.

97 In answer to the allegations in paragraph 97 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 matters in the sub-paragraphs (a) to (d) above from about 28 September 2010; and
- (f) otherwise denies the allegations in paragraph 97 of the SOC.

98 In answer to the allegations in paragraph 98 of the SOC, AET:

- (a) says that Provident's RG 69 Report for the quarter ended 30 September 2010 dated 22 October 2010 (**30 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 the 30 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 30 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) to (d) above on and from about 22 October 2010; and
- (f) otherwise denies the allegations in paragraph 98 of the SOC.

99 In answer to the allegations in paragraph 99 of the SOC, AET:

- (a) says that in the 2010 Annual Report, Provident reported as a current asset of Provident interest receivable of \$13,105,946;
- (b) says that in the 2010 Annual Report, Provident:
  - (i) reported in its statement of comprehensive income as at 30 June 2010 interest income of \$26,652,106; and
  - (ii) reported in its statement of cash flows as at 30 June 2010 interest received of \$24,767,422;
- (c) says that in the 2010 Annual Report, Provident:
  - (i) expensed impairment losses of \$2,612,904; and
  - (ii) made impairment provisions in the amount of \$1,466,932;
  - (iii) stated that the net fair value of its loans and advances (taking into account impairment provisions) as at 30 June 2010 was \$178,306,246;
- (d) says that in the 2010 Annual Report, Provident reported that as at 30 June 2010 it had 44 loans in excess of 30 days past due with a total outstanding balance of \$88,710,332;
- (e) says that in the 2010 Annual Report, Provident stated that of the loans past due \$54,890,105 had been assessed as not impaired;
- (f) says that in the 2010 Annual Report Provident reported that as at 30 June 2010 it had 25 loans in excess of 90 days past due with a total outstanding balance of \$57,295,183;

- (g) says that in the 30 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 it knew the matters referred to in sub-paragraphs (a) to (f) above above on and from about 28 September 2010, and of the matters in sub-paragraph (g) above on and from about 22 October 2010; and
- (i) otherwise denies the allegations in paragraph 99 of the SOC.

100 In answer to the allegations in paragraph 100 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) otherwise denies the allegations in paragraph 100 of the SOC.

**J. THE EXERCISE OF REASONABLE DILIGENCE PURSUANT TO S 283DA(a) & (b)(ii)**

101 AET denies the allegations in paragraph 101 of the SOC.

102 In answer to paragraph 102 of the SOC, AET:

- (a) repeats paragraph 101 above;
- (b) denies that Provident would have provided AET with the complete files referred to by in or around November 2010, or early December 2010, or at all; and
- (c) otherwise denies the allegations in paragraph 102 of the SOC.

103 In answer to paragraph 103 of the SOC, AET:

- (a) says that on 1 December 2010, it received a report from Provident which purported to list the loans made by Provident which were in arrears for greater than 90 days, as at 31 October 2010 (**October 2010 Arrears Report**); and
- (b) otherwise denies the allegations in paragraph 103 of the SOC.

104 In answer to paragraph 104 of the SOC, AET:

- (a) repeats paragraphs 101 to 103 above; and
- (b) otherwise denies paragraph 104 of the SOC.



**J.1 Burleigh Views loan**

105 In answer to the allegations in paragraph 105 of the SOC, AET:

- (a) repeats the matters in paragraphs 43 to 44 and 102 to 104 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 the Burleigh Views loan was not disclosed as a loan in arrears in the 2009 Annual Report or the 2010 Annual Report;
- (d) says that in the 31 March 2009 RG 69 Report, Provident stated to the effect that:
  - (i) the loan amount for a 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 that loan was less 70% or less;
- (e) says that the 31 March 2009 RG 69 Report did not otherwise refer to the Burleigh Views loan;
- (f) says that in the 30 September 2009 RG 69 Report, Provident stated to the effect that:
  - (i) the loan amount for a 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 that loan on a costs to complete basis was 78.3%;
- (g) says that the 30 September 2009 RG 69 Report did not otherwise refer to the Burleigh Views loan;

- (h) in DP 12 Provident stated to the effect that:
  - (i) the loan amount for a loan as at 30 June 2009 was \$15,101,887;
  - (ii) the latest valuation of the development in December 2009 assessed the "as if complete" value at \$26,680,000;
  - (iii) the security property was located in south east Queensland; and
  - (iv) the LVR on a cost to complete basis using the December 2009 valuation was 56.6%;
- (i) says that DP 12 did not otherwise refer to the Burleigh Views loan;
- (j) says that in the 31 March 2010 RG 69 Report Provident stated to the effect that:
  - (i) the loan amount for a 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 that loan on a costs to complete basis using the December 2009 valuation was 59.9%;
- (k) says that the 31 March 2010 RG 69 Report did not otherwise refer to the Burleigh Views loan;
- (l) says that in the 30 September 2010 RG 69 Report, Provident stated to the effect that:
  - (i) the loan amount for a 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 that loan on a costs to complete basis using the September 2010 valuation was 65.7%;
- (m) says that the 30 September 2010 RG 69 Report did not otherwise refer to the Burleigh Views loan;
- (n) says that despite making the statements concerning the Burleigh Views loan referred to in sub-paragraphs (d) to (m) 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

- (o) denies the allegations in paragraph 105 of the SOC.

106 In answer to paragraph 106 of the SOC, AET:

- (a) repeats the matters in paragraph 105 above; and
- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Burleigh Views loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 43 to 44 and 93 to 105 above;
- (c) denies the allegations in paragraph 106 of the SOC.

## J.2 Chrysalis loan

107 In answer to the allegations in paragraph 107 of the SOC, AET:

- (a) repeats the matters in paragraphs 53 to 54 and 102 to 104 above;
- (b) says that in the Arrears Report for the month of April 2010, Provident stated:
- (i) the principal balance of the Chrysalis loan was \$6,295,344, the net arrears were \$667,178 and the days in arrears were 1,194;
  - (ii) Provident was selling the security property and the total valuation was \$8,437,300;
  - (iii) the estimated discharge date was December 2010;
  - (iv) Provident's strategy in relation to the Chrysalis loan was as follows:
    - (A) in order to preserve the development application (DA), Provident had undertaken the works required to preserve the DA which involved the demolition of the structure, including basement, shoring and other works to the site;
    - (B) substantial commencement of the works prior to the expiry of the DA ensured that Provident had a valid DA;
    - (C) it was envisaged that the works would be completed by early 2010, but due to various delays this was now estimated to be late May 2010, which was confirmed by advice received from the architect;
    - (D) once the works were complete, Provident would commence a sales and marketing campaign which, depending on the

success of the auction / tender process, would take 4 - 6 months;

(E) Provident was receiving good interest from developers who owned sites on both sides of the security;

(F) the likely settlement date was September 2010-December 2010;

(c) in the Arrears Report for the month of May 2010, Provident stated:

(i) the principal balance of the Chrysalis loan was \$6,296,489, the net arrears were \$667,295 and the days in arrears were 1,225;

(ii) Provident was selling the security property and the total valuation was \$8,437,300;

(iii) the matters in sub-paragraphs (b)(iii) and (b)(iv) above;

(d) in the Arrears Report for the month of June 2010, Provident stated:

(i) the principal balance of the Chrysalis loan was \$6,296,489, the net arrears were \$667,295 and the days in arrears were 1,254;

(ii) Provident was selling the security property and the total valuation was \$8,437,300;

(iii) the matters in sub-paragraphs (b)(iii) and (b)(iv) above;

(e) in the Arrears Report for the month of July 2010, Provident stated:

(i) the principal balance of the Chrysalis loan was \$6,322,496, the net arrears \$667,181 and the days in arrears were 1,280;

(ii) Provident was selling the security property and the total valuation was \$7,300,000;

(iii) that no impairment provision was made in respect of the Chrysalis loan;

(iv) the matters in sub-paragraphs (b)(iii) and (b)(iv) above;

(f) in the Arrears Report for the month of August 2010, Provident stated:

(i) the principal balance of the Chrysalis loan was \$6,351,434, the net arrears were \$667,378 and the days in arrears were 1,305;

(ii) Provident was selling the security property and the total valuation was \$7,300,000;

(iii) that no impairment provision was made in respect of the Chrysalis loan; .

- (iv) the matters in sub-paragraphs (b)(iii) and (b)(iv) above;
- (g) in the Arrears Report for the month of September 2010, Provident stated:
  - (i) the principal balance of the Chrysalis loan was \$6,351,434, the net arrears were \$667,632 and the days in arrears were 1,335;
  - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
  - (iii) that no impairment provision was made in respect of the Chrysalis loan;
  - (iv) the matters in sub-paragraphs (b)(iii) and (b)(iv) above;
- (h) in the Arrears Report for the month of October 2010, Provident stated:
  - (i) the principal balance of the Chrysalis loan was \$6,354,554, the net arrears were \$667,617 and the days in arrears were 1,365;
  - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
  - (iii) that no impairment provision was made in respect of the Chrysalis loan;
  - (iv) the matters in sub-paragraphs (b)(iii) and (b)(iv) above;
- (i) in the Arrears Report for the month of November 2010, Provident stated:
  - (i) the principal balance of the Chrysalis loan was \$6,354,604, the net arrears were \$667,651 and the days in arrears were 1395;
  - (ii) Provident was selling the security property and the total valuation was \$7,300,000;
  - (iii) Provident's strategy in relation to the Chrysalis loan was as follows:
    - (A) the property was a large commercial site in Newcastle with a DA for 44 units;
    - (B) in order to ensure the added value provided by the DA, Provident had recently completed the DA process and obtained the construction certificate;
    - (C) demolition works were now complete and awaiting final certification;
    - (D) interest in the site remained with the owners of adjoining properties who needed the site to maximise the potential of

their own property and had sought an option to purchase the site for \$7 million plus GST;

- (iv) the estimated discharge date was June 2011;
  - (v) that no impairment provision was made in respect of the Chrysalis loan; and
  - (j) denies the allegations in paragraph 107 of the SOC.
- 108 In answer to the allegations in paragraph 108 of the SOC, AET:
- (a) repeats the matters in paragraph 107 above;
  - (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Chrysalis loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 41, 53 to 54, 93 to 104 and 107 above; and
  - (c) denies the allegations in paragraph 108 of the SOC.

### **J.3 FTI Portfolio**

- 109 In answer to the allegations in paragraph 109 of the SOC, AET:
- (a) repeats the matters in paragraphs 11 to 101 above;
  - (b) says that in the 30 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 31 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 30 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 31 March 2010 RG 69 Report, Provident stated that:
- (i) the loans in respect of which Provident was in possession of mortgaged property pending sale were to a value of \$30,368,858;
  - (ii) the directors of Provident considered that the recovery of the amounts of principal on the loans past due as at 31 December 2009 was reasonably certain and the security held was adequate to cover them;
- (f) says that in the Arrears Report for the month of October 2010, Provident disclosed to the effect that:
- (i) the total value of the loans in respect of which Provident was in possession of the security property and was in the course selling that property (**PBSBP loans**) was approximately \$31 million;
  - (ii) the total value of the security in respect of PBSBP loans was approximately \$37 million;
  - (iii) the aggregate LVR of PBSBP loans was around 88.5%;
- (g) says that the Arrears Reports for the period July 2010 to December 2010:
- (i) made provisions in respect of the loans appearing in those Arrears Reports in the total amounts of \$1,581,632 for July 2010, \$1,939,482 for August 2010, \$1,964,482 for September 2010, \$2,078,332 for October 2010, \$7,130,673 for November 2010 and \$2,566,382 for December 2010;
  - (ii) in respect of the loans appearing in those Arrears Reports, stated Provident's strategy in respect of the recovery of the loan, including where appropriate realisation of the security; and
  - (iii) indicated that Provident had net positive assets;
- (h) says that the Interim Report for the half year ended 31 December 2010 (**December 2010 Interim Report**):
- (i) made impairment provisions as at 31 December 2010 in the amount of \$1,702,932;
  - (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 December 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 would 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 they had not become aware of any matter which made them believe that the December 2010 Interim Report did not give a true and fair view of Provident's financial position as at 31 December 2010 and of its performance for the half-year ended on that date;
- (i) says that in the Provident Capital Debenture Prospectus 2011 (**2011 Prospectus**) Provident stated:
- (i) its total loan Portfolio consisted of 158 loans to a total value of \$178.3 million;
  - (ii) as at 30 June 2010, the provisions for impairment of its loans and advances made by Provident were \$1,466,932;
  - (iii) the net value of loans and advances made by Provident (after providing for impairment) was \$178,306,246 and the total value of Provident's assets was \$222,011,825;
  - (iv) Provident had net equity of \$14,020,695;
  - (v) a total of 44 loans with combined outstanding principal and interest equal to \$100,726.191 were more than 30 days past due at 30 June 2010;
  - (vi) the level of loans more than 30 days past due at 30 June 2010 was consistent with the monthly balance throughout the 12 months ended 30 June 2010 and the subsequent 5 months to 30 November 2010, and was considered by Provident to be acceptable for the type of loans in the portfolio;
  - (vii) as at the date of the prospectus, the directors of Provident considered the amount of loans more than 30 days past due as at 30 June 2010 to be recoverable;
  - (viii) Provident did not consider this aspect of the loan portfolio to be a material indicator of possible credit losses in the portfolio, as in the majority of these loans the default was rectified or the loan was repaid;



- (j) says that on 17 December 2010 Provident wrote to AET (**17 December 2010 letter**) stating to the effect:
- (i) the 2011 Prospectus had been prepared in accordance with all laws, including the Corps Act and the Corps Regs;
  - (ii) no material statement that is false or misleading had been made in the 2011 Prospectus and there is no material omission from the 2011 Prospectus;
  - (iii) the assets of Provident that are, or should be, available will be sufficient to repay the principal amount lent to Provident as a result of the offer in the 2011 Prospectus as and when they become due for repayment in accordance with the terms of that offer; and
  - (iv) Provident acknowledged that AET was relying on the confirmations and acknowledgements contained in the 17 December 2010 letter;
- (k) says that the Auditor's Benchmark Assurance Report dated 31 January 2011 relating to the September 2010 RG 69 Report and the 2011 Prospectus (**January 2011 Auditor's Benchmark Assurance Report**) stated to the effect that the internal controls of Provident were adequately designed and operated effectively during the period 1 July 2009 to 22 December 2010 to achieve (inter alia) the control objective of maximum loan to valuation ratios of 70% of the latest complying valuation where the loan relates to development property and 80% of the latest complying market valuation for other loans being met;
- (l) says that in forming any view in or around November or December 2010 as to whether any provisions for credit losses should be made in respect of the balance of the FTI Portfolio, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 23 to 39, 93 to 101 and 103 above and sub-paragraphs (b) to (g) and (i) to (j) above
- (m) denies the allegations in paragraph 109 of the SOC.

#### J.4 Unique Castle loan

110 In answer to paragraph 110 of the SOC, AET:

- (a) repeats the matters in paragraphs 47 to 48, 102 to 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified the Unique Castle loan as a loan in arrears and recorded that:
  - (i) the Unique Castle loan had a principal balance of \$3,969,503, had net arrears of \$960,877 and was 1,345 days in arrears;
  - (ii) the LVR for the Unique Castle loan was 103.79%;

- (iii) the secured property in relation to the Unique Castle loan was being sold by Provident, and had a total valuation of \$4,750,000; and
- (iv) the Unique Castle loan had an estimated discharge date of December 2010;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
- (d) otherwise denies the allegations in paragraph 110 of the SOC.

111 In answer to the allegations in paragraph 111 of the SOC, AET:

- (a) repeats the matters in paragraph 110 above;
- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Unique Castle loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 47, 48, 103, 104, 109 and 110 above; and
- (c) denies the allegations in paragraph 111 of the SOC.

#### **J.5 Kooindah loan**

112 In answer to paragraph 112 of the SOC, AET:

- (a) repeats the matters in paragraphs 55, 56, 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified the Kooindah loan as a loan in arrears and recorded that:
  - (i) the Kooindah loan had a principal balance of \$472,665, had net arrears of \$210,538 and was 1,053 days in arrears;
  - (ii) the LVR for the Kooindah loan was 66.65%;
  - (iii) the secured property in relation to the Kooindah loan had been sold and was awaiting exchange, and had a total valuation of \$1,025,000; and
  - (iv) the Kooindah loan had an estimated discharge date of April 2011;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
- (d) otherwise denies the allegations in paragraph 112 of the SOC.

**J.6 Morell loan**

113 In answer to paragraph 113 of the SOC, AET:

- (a) repeats the matters in paragraphs 61, 62, 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified the Morell loan as a loan in arrears and recorded that:
  - (i) the Morell loan had a principal balance of \$665,953, had net arrears of \$186,468 and was 1,989 days in arrears;
  - (ii) the LVR for the Morell loan was 53.27%;
  - (iii) the secured property in relation to the Morell loan had been sold and was awaiting exchange, and had a total valuation of \$1,600,000;
  - (iv) the Morell loan had an estimated discharge date of December 2010;
  - (v) contracts for the sale of the secured property in relation to the Morell loan had previously been issued at \$1.2 million;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
- (d) otherwise denies the allegations in paragraph 113 of the SOC.

114 In answer to the allegations in paragraph 114 of the SOC, AET:

- (a) repeats the matters in paragraph 113 above;
- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Morell loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 61, 62, 103, 104, 109 and 113 above; and
- (c) denies the allegations in paragraph 114 of the SOC.

**J.7 Naumovska loan**

115 In answer to paragraph 115 of the SOC, AET:

- (a) repeats the matters in paragraphs 63, 64, 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified the Naumovska loan as a loan in arrears and recorded that:
  - (i) the Naumovska loan had a principal balance of \$630,388, had net arrears of \$73,445 and was 840 days in arrears;
  - (ii) Provident had made a provision for the Naumovska loan of \$75,000;

- (iii) the LVR for the Naumovska loan was 140.76%;
  - (iv) legal proceedings had been commenced in relation to the Naumovska loan;
  - (v) the secured property in relation to the Naumovska loan had a total valuation of \$500,000;
  - (vi) the Naumovska loan had an estimated discharge date of February 2011;
  - (vii) the strategy in respect of the Naumovska loan was to conclude the legal process with a payout from a mortgagee sale or insurance from the borrowers' solicitor, with a hearing set for 17 February 2011;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
  - (d) otherwise denies the allegations in paragraph 115 of the SOC.

116 In answer to the allegations in paragraph 116 of the SOC, AET:

- (a) repeats the matters in paragraph 115 above;
- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Naumovska loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 63, 64, 103, 104, 109 and 115 above; and
- (c) denies the allegations in paragraph 116 of the SOC.

#### **J.8 Hanna loan**

117 In answer to paragraph 117 of the SOC, AET:

- (a) repeats the matters in paragraphs 65, 66, 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified the Hanna loan as a loan in arrears and recorded that:
  - (i) the Hanna loan had a principal balance of \$5,063,531, had net arrears of \$831,379 and was 962 days in arrears;
  - (ii) Provident had made a provision for the Hanna loan of \$50,000;
  - (iii) the LVR for the Hanna loan was 98.24%;
  - (iv) the secured property in relation to the Hanna loan was being sold by Provident, and had a total valuation of \$6,000,000; and
  - (v) the Hanna loan had an estimated discharge date of December 2010;

- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
- (d) otherwise denies the allegations in paragraph 117 of the SOC.

118 In answer to the allegations in paragraph 118 of the SOC, AET:

- (a) repeats the matters in paragraph 117 above;
- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Hanna loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 65, 66, 103, 104, 109 and 117 above; and
- (c) denies the allegations in paragraph 118 of the SOC.

#### **J.9 DS loan**

119 In answer to paragraph 119 of the SOC, AET:

- (a) repeats the matters in paragraphs 71, 72, 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified the DS loan as a loan in arrears and recorded that:
  - (i) the DS loan had a principal balance of \$345,660, had net arrears of \$21,323 and was 205 days in arrears;
  - (ii) Provident had made a provision for the DS loan of \$25,000;
  - (iii) the LVR for the DS loan was 104.25%;
  - (iv) the secured property in relation to the DS loan was being sold by Provident, and had a total valuation of \$352,000;
  - (v) the DS loan had an estimated discharge date of February 2011;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
- (d) otherwise denies the allegations in paragraph 119 of the SOC.

120 In answer to the allegations in paragraph 120 of the SOC, AET:

- (a) repeats the matters in paragraph 119 above;
- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the DS loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 71, 72, 103, 104, 109 and 119 above; and

- (c) denies the allegations in paragraph 120 of the SOC.

**J.10 Good Life loan**

121 In answer to paragraph 121 of the SOC, AET:

- (a) repeats the matters in paragraphs 73, 74, 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified the Good Life loan as a loan in arrears and recorded that:
- (i) the Good Life loan had a principal balance of \$1,122,925, had net arrears of \$216,925 and was 1,212 days in arrears;
  - (ii) the LVR for the Good Life loan was 74.43%;
  - (iii) the secured property in relation to the Good Life loan had been sold and was awaiting exchange, which would hopefully take place on 10 December 2010;
  - (iv) the contract issued with respect to the sale of the secured property in relation to the Good Life loan was for an amount of \$1.35 million (plus GST);
  - (v) the Good Life loan had an estimated discharge date of February 2011;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
- (d) otherwise denies the allegations in paragraph 121 of the SOC.

**J.11 Sinclair loans**

122 In answer to paragraph 122 of the SOC, AET:

- (a) repeats the matters in paragraphs 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified two loans to Angus Wilson Sinclair as loans in arrears (**Sinclair loans**) and recorded that:
- (i) the Sinclair loans had a combined principal balance of \$1,566,030 and had combined net arrears of \$468,252;
  - (ii) one of the Sinclair loans and was 835 days in arrears, and had an LVR of 120.79%;
  - (iii) the other of the Sinclair loans was 706 days in arrears, and had an LVR of 132.32%;

- (iv) Provident had made a combined provision for the Sinclair loans of \$394,000;
- (v) the secured properties in relation to the Sinclair loans were being sold by Provident, and had a combined total valuation of \$1,600,000;
- (vi) the Sinclair loans had an estimated discharge date of February 2011;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
- (d) otherwise denies the allegations in paragraph 122 of the SOC.

123 In answer to the allegations in paragraph 123 of the SOC, AET:

- (a) repeats the matters in paragraph 122 above;
- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Sinclair loans, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 103, 104, 109 and 122 above; and
- (c) denies the allegations in paragraph 123 of the SOC.

#### J.12 Jarule loan

124 In answer to paragraph 124 of the SOC, AET:

- (a) repeats the matters in paragraphs 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified a loan to Jarule Pty Ltd as a loan in arrears (**Jarule loan**) and recorded that:
  - (i) the Jarule loan had a principal balance of \$2,732,871, net arrears of \$503,543 and was 365 days in arrears;
  - (ii) the LVR for the Jarule loan was 119.86%;
  - (iii) legal proceedings had been commenced in relation to the Jarule loan;
  - (iv) the secured property in relation to the Jarule loan had a total valuation of \$2,700,000;
  - (v) the Jarule loan had an estimated discharge date of February 2011;
  - (vi) the borrower had commenced payment(s) against interest arrears, and was finalising a campaign for the sale of the secured property, in relation to the Jarule loan;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and

(d) otherwise denies the allegations in paragraph 124 of the SOC.

125 In answer to the allegations in paragraph 125 of the SOC, AET:

- (a) repeats the matters in paragraph 124 above;
- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Jarule loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 103, 104, 109 and 124 above; and
- (c) denies the allegations in paragraph 125 of the SOC.

### J.13 Owston loan

126 In answer to paragraph 126 of the SOC, AET:

- (a) repeats the matters in paragraphs 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified a loan to Owston Nominees No 2 Pty Ltd as trustee for the Warren Anderson Trust as a loan in arrears (**Owston loan**) and recorded that:
  - (i) the Owston loan had a principal balance of \$5,186,061, net arrears of \$1,215,252 and was 489 days in arrears;
  - (ii) the LVR for the Owston loan was 112.30%;
  - (iii) the secured property in relation to the Owston loan was being sold by Provident, and had a total valuation of \$5,700,000;
  - (iv) the Jarule loan had an estimated discharge date of December 2010;
  - (v) Provident was working with the second mortgagee with respect to the sale of the secured property in relation to the Owston loan, and that contractors had been instructed in August 2010 to complete relatively minor refurbishment works so that the property could be marketed;
  - (vi) Provident's strategy with respect to the Owston loan was to complete those renovation works and sell the property, and for the discharge of the Owston loan to come from that sale or the sale of other assets owned by the borrower;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
- (d) otherwise denies the allegations in paragraph 126 of the SOC.

127 In answer to the allegations in paragraph 127 of the SOC, AET:



- (a) repeats the matters in paragraph 126 above;
- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Owston loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 103, 104, 109 and 126 above; and
- (c) denies the allegations in paragraph 127 of the SOC.

#### J.14 **Eastridge Investments loan**

128 In answer to paragraph 128 of the SOC, AET:

- (a) repeats the matters in paragraphs 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified a loan to Eastridge Investments Pty Ltd as a loan in arrears (**Eastridge Investments loan**) and recorded that:
  - (i) the Eastridge Investments loan had a principal balance of \$2,513,415, net arrears of \$618,676 and was 516 days in arrears;
  - (ii) Provident had made a provision for the Eastridge Investments loan of \$100,000;
  - (iii) the LVR for the Eastridge Investments loan was 115.17%;
  - (iv) the secured property in relation to the Eastridge Investments loan was being sold by Provident, and had a total valuation of \$2,750,000;
  - (v) the Eastridge Investments loan had an estimated discharge date of February 2011;
  - (vi) Provident was continuing with the mortgagee sale process and had received increased level of enquiry and further offers in respect of the secured property in relation to the Eastridge Investments loan, but it felt the market would be stronger in the period December 2010 to February 2011;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
- (d) otherwise denies the allegations in paragraph 128 of the SOC.

129 In answer to the allegations in paragraph 129 of the SOC, AET:

- (a) repeats the matters in paragraph 128 above;

- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Eastridge Investments loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 103, 104, 109 and 128 above; and
- (c) denies the allegations in paragraph 131 of the SOC.

**J.15 Bortolin Papa loan**

130 In answer to paragraph 130 of the SOC, AET:

- (a) repeats the matters in paragraphs 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified a loan to Gina Giovanna Bortolin Papa as a loan in arrears (**Bortolin Papa loan**) and recorded that:
  - (i) the Bortolin Papa loan had a principal balance of \$882,531, net arrears of \$209,474 and was 742 days in arrears;
  - (ii) Provident had made a provision for the Bortolin Papa loan of \$50,000;
  - (iii) the LVR for the Bortolin Papa loan was 99.27%;
  - (iv) the secured property in relation to the Bortolin Papa loan had a total valuation of \$1,100,000;
  - (v) the Bortolin Papa loan had an estimated discharge date of December 2010;
  - (vi) legal proceedings had been commenced in relation to the Bortolin Papa loan;
  - (vii) there had been an unsuccessful mediation in those legal proceedings, but that during the mediation the insurer for the borrower's solicitor had offered to contribute an amount to settle the proceedings and the mediator expressed the opinion that for Provident to be unsuccessful in the proceedings would require a substantial shift in the law;
  - (viii) it was estimated that a trial in those legal proceedings would take place in November 2010;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
- (d) otherwise denies the allegations in paragraph 130 of the SOC.

131 In answer to the allegations in paragraph 131 of the SOC, AET:

- (a) repeats the matters in paragraph 130 above;

- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Bortolin Papa loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 103, 104, 109 and 130 above; and
- (c) denies the allegations in paragraph 131 of the SOC.

**J.16 Tahatos loan**

132 In answer to paragraph 132 of the SOC, AET:

- (a) repeats the matters in paragraphs 102, 103, 104 and 109 above;
- (b) says that the October 2010 Arrears Report identified a loan to George Tahatos Holdings Pty Ltd as a loan in arrears (**Tahatos loan**) and recorded that:
  - (i) the Tahatos loan had a principal balance of \$4,486,625, net arrears of \$687,624 and was 310 days in arrears;
  - (ii) the LVR for the Tahatos loan was 95.64%;
  - (iii) the secured property in relation to the Tahatos loan had a total valuation of \$5,410,000;
  - (iv) the Tahatos loan had an estimated discharge date of February 2011;
  - (v) legal proceedings had been commenced in relation to the Tahatos loan;
  - (vi) the borrower had advised that he had an offer of \$5.9 million, that had been accepted, and that (subject to exchange) settlement should be in January or February 2011;
- (c) says that on and from 1 December 2010 it knew of the matters referred to in paragraph (b) above; and
- (d) otherwise denies the allegations in paragraph 132 of the SOC.

133 In answer to the allegations in paragraph 133 of the SOC, AET:

- (a) repeats the matters in paragraph 132 above;
- (b) says that in forming any view by around November or December 2010 as to whether any provisions for credit losses should be made in respect of the Tahatos Investments loan, and if so what provisions should be made, it was entitled to rely on the accuracy of the material referred to in paragraphs 103, 104, 109 and 132 above; and
- (c) denies the allegations in paragraph 133 of the SOC.

**J.17 Systems and Processes**

- 134 In answer to the allegations in paragraph 134 of the SOC, AET:
- (a) repeats the matters in paragraphs 93 to 133 above; and
  - (b) denies the allegations in paragraph 134 of the SOC.

**K. OBLIGATIONS AND CONTRAVENTIONS – DECEMBER 2010****K.1 Proper conclusions and response**

- 135 AET denies the allegations in paragraph 135 of the SOC, and says further that:
- (a) even if it was necessary or appropriate for AET to reach any one or more of the conclusions alleged in paragraph 135 of the SOC, AET would not and should not have reached the other conclusions alleged in paragraph 135 of the SOC; and
  - (b) in the alternative to sub-paragraph (a) above, even if it was necessary or appropriate for AET to reach any one or more of the conclusions alleged in paragraphs 135.1, 135.2, 135.3 and 135.6 of the SOC, AET would not and should not have reached the conclusions alleged in paragraphs 135.4 and 135.5 of the SOC.

- 136 In answer to the allegations in paragraph 136 of the SOC, AET:
- (a) repeats the matters in paragraph 29 above; and
  - (b) denies the allegations in paragraph 136 of the SOC.

- 137 In answer to the allegations in paragraph 137 of the SOC, AET:
- (a) repeats the matters in paragraphs 11 to 22 and 90 to 136 above;
  - (b) says that had AET made any application of the kind alleged in paragraph 80 of the SOC in or about November or December 2010 it would not have been able to adduce evidence demonstrating that it was necessary or appropriate to make orders of the kind alleged in paragraph 137 of the SOC; and
  - (c) says that had AET made any application of the kind alleged in paragraph 137 of the SOC made in or about November or December 2010 it would not have been able to adduce evidence demonstrating that the property of Provident would be insufficient to pay the amount due on the debentures when they became due and payable; and
  - (d) denies the allegations in paragraph 137 of the SOC.

- 138 In answer to the allegations in paragraph 138 of the SOC, AET:
- (a) repeats the matters in paragraph 137 above; and

- (b) says that any application of the kind alleged in paragraph 137 of the SOC made in or about November or 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 when they became due and payable, including evidence:
- (i) of the unqualified audit opinions expressed in relation to the 2009 Annual Report and the 2010 Annual Report;
  - (ii) of the opinions expressed in the DP 12 Auditor's Benchmark Assurance Report; and
  - (iii) of the Quarterly Reports for the quarters ended 31 March 2009 (dated 29 April 2009), 30 September 2009 (dated 30 October 2009), 31 March 2010 (dated 21 April 2010) and 30 September 2010 (dated 22 October 2010);
  - (iv) of the Arrears Reports referred to in paragraph 109(g) above;
  - (v) to the effect of the unqualified audit opinions expressed in relation to the December 2010 Interim Report;
  - (vi) to the effect of the opinions expressed in the January 2011 Auditor's Benchmark Assurance Report;
  - (vii) to the effect of the statements contained in the 2011 Prospectus and the 17 December 2010 letter referred to in paragraph 109 above;
- (c) denies the allegations in paragraph 138 of the SOC.

139 In answer to the allegations in paragraph 139 of the SOC, AET:

- (a) repeats the matters in paragraphs 11 to 39 and 90 to 133 above;
- (b) says that had AET made any notification to ASIC of the kind alleged in paragraph 139 of the SOC in mid to late January 2009 or early February 2009, it not would have been able to provide ASIC with evidence that would have justified reaching the conclusions alleged in paragraphs 135 and 136 of the SOC;
- (c) says that had AET made any notification to ASIC of the kind alleged in paragraph 139 of the SOC in November or December 2010, it would not have been able to provide ASIC with evidence demonstrating that the property of Provident would be sufficient to pay the amount due on the debentures; and
- (d) denies the allegations in paragraph 139 of the SOC.

140 In answer to the allegations in paragraph 140 of the SOC, AET:

- (a) repeats the matters in paragraph 139 above; and
- (b) says that any notification of the kind alleged in paragraph 139 of the SOC made in November or 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 when they became due and payable, including evidence of the kind referred to in paragraph 138(b) above; and
- (c) denies the allegations in paragraph 140 of the SOC.

141 In answer to paragraph 141 of the SOC, AET:

- (a) repeats the matters in paragraphs 137 and 138 above;
- (b) says that any notice of an "event of default" of the kind alleged in paragraph 141 of the SOC in November or December would have been unsupported by evidence which AET was capable of providing to substantiate that there had been breaches of the Debenture Trust Deed;
- (c) says that, any action of the kind alleged in paragraphs 141.1.1, 141.1.2 and 141.1.3 of the SOC taken in November or 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 when they became due and payable, including the evidence referred to in paragraph 138(b) above;
- (d) denies the allegations in paragraph 141 of the SOC.

## **K.2 Alleged contraventions and causation**

142 In answer to the allegations in paragraph 142 of the SOC, AET:

- (a) repeats the matters in paragraphs 18 and 93 to 134 above; and
- (b) denies the allegations in paragraph 142 of the SOC.

143 In answer to the allegations in paragraph 143 of the SOC, AET:

- (a) repeats the matters in paragraphs 18 and 93 to 134 above; and
- (b) denies the allegations in paragraph 143 of the SOC.

144 In answer to the allegations in paragraph 144 of the SOC, AET:

- (a) repeats the matters in paragraphs 18 and 93 to 141 above; and
- (b) denies the allegations in paragraph 144 of the SOC.

145 In answer to the allegations in paragraph 145 of the SOC, AET:

- (a) repeats the matters in paragraphs 142 to 144 above; and

(b) denies the allegations in paragraph 145 of the SOC.

146 In answer to the allegations in paragraph 146 of the SOC, AET:

- (a) denies the plaintiff and group members have suffered any loss and damage by reason of any contravention by AET of s 283DA of the Corps Act or any breach by AET of a fiduciary duty;
- (b) says that if, which is denied, AET contravened s 283DA of the Corps Act or breached a fiduciary duty, and if, which is denied, the plaintiff and group members suffered loss and damage, the cause of that loss and damage are the actions and omissions of Provident and not the contravention of AET;
- (c) says that, in the premises of the previous sub-paragraph, if AET contravened s 283DA of the Corps Act or breached a fiduciary duty, and if the plaintiff and group members suffered loss and damage, no compensation is recoverable by the plaintiff and group members pursuant to s 283F of the Corps Act or under the general law;
- (d) says that if, which is denied, AET contravened s 283DA of the Corps Act or breached a fiduciary duty, and if, which is denied, the plaintiff and group members are entitled to recover compensation from AET pursuant to s 283F of the Corps Act or under the general law, that compensation must be reduced to account for any amounts recovered or to be recovered by the plaintiff and group members pursuant to the receivership of Provident, including the proceedings commenced by the Receivers of Provident against the directors of Provident in the Supreme Court of New South Wales (proceedings no 2014/63700);
- (e) says that if (which is denied) AET breached a fiduciary duty in the manner alleged, the fiduciary duty or duties in question were not owed to group members within the class identified in particular (d) [sic read (g)] of paragraph 146 of the SOC in circumstances where such group members had not been issued with debentures by Provident as at the date of the alleged breaches and, for this reason, any claim for breach of fiduciary duty by those group members is misconceived; and
- (f) otherwise denies the allegations in paragraph 146 of the SOC.

147 In answer to the allegations in paragraph 147 of the SOC, AET denies that the plaintiff and group members are entitled to the relief sought, or any relief.

**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 these proceedings has reasonable prospects of success.

Signature

A handwritten signature in black ink, appearing to be 'Z. H. [unclear]', written over a horizontal dotted line.

Capacity

Solicitor on the record

Date of signature

12 August 2016



[on separate page]

[Do not include the affidavit verifying in Local Court proceedings. See Guide for preparing documents for other circumstances where Affidavit not required.]

**AFFIDAVIT VERIFYING**

Name Yvonne Maree Kelaher  
 Address Level 22, 207 Kent Street, Sydney, NSW  
 Occupation Senior Manager  
 Date 12 August 2016

I say on oath:

- 1 I am the Senior Manager - Relationship and Transaction Management for the Defendant.
- 2 I have checked the accuracy of the statements contained within this Defence.
- 3 I believe that the allegations of fact contained in the defence are true.
- 4 I believe that the allegations of fact that are denied in the defence are untrue.
- 5 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

SWORN at Sydney

Signature of deponent



Name of witness

Mark Joseph Gessario

Address of witness

8 Chifley, 8-12 Chifley Square, Sydney, NSW

Capacity of witness

Solicitor

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

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

NSWDL # 121 07 062

Identification document relied on

Signature of witness

