

**PARTICULARS OF THE CONTENTIONS
OF THE FIRST, FOURTH & FIFTH CROSS-CLAIM**

COURT DETAILS

Court	Supreme Court
Division	Equity
List	Commercial List
Registry	Sydney
Case number	2017 / 00081927

TITLE OF PROCEEDINGS

Plaintiff	DSHE Holdings Ltd (ACN 166 237 841) (receivers and managers appointed) (in liquidation)
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First defendant	Nicholas Abboud
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Number of defendants (if more than two)	8
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TITLE OF THIS CROSS-CLAIM

Cross-claimants	Robert Murray (First cross-claimant / Fourth defendant)
	Lorna Kathleen Raine (Second cross-claimant / Sixth defendant)
	Robert Ishak (Third cross-claimant / Seventh defendant)
	Jamie Clifford Tomlinson (Fourth cross-claimant / Eighth defendant)
	William Paul Renton Wavish (Seventh cross-claimant / Fifth defendant)
	Phillip John Cave (Eighth cross-claimant / Third defendant)

First cross-defendant	David Robert White and others trading as Deloitte Touche Tohmatsu (ABN 74 490 121 060)
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Number of defendants (if more than two)	454
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FILING DETAILS

Filed for

Robert Murray, Lorna Kathleen Raine, Robert Ishak, Jamie Clifford Tomlinson, First to Fourth cross-claimants**William Paul Renton Wavish, Seventh cross-claimant****Phillip John Cave, Eighth cross-claimant****First to Fourth cross-claimants**

Legal representative

Jonathan Milner, Arnold Bloch Liebler

Legal representative reference

JOM:021893310

Contact name and telephone

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Legal representative

Reay McGuinness, Webb Henderson

Legal representative reference

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Legal representative

Guy Hamilton Foster, Allens

Legal representative reference

11724

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Unless otherwise indicated, terms defined in the First, Fourth and Fifth Amended Commercial List Cross-Claim Statement (**NED Cross-Claim**) or the third amended commercial list statement filed by DSH on 19 March 2018 (**TACLS**) have the same meaning in this document.

All references to paragraphs are references to paragraphs in the NED Cross-Claim unless the context indicates otherwise.

These particulars are provided solely for the purpose of this cross-claim and without admission. For the avoidance of doubt, where the NED Cross-Claimants provide particulars based on allegations made by the plaintiff or evidence served by the plaintiff, or refer to and rely on that evidence, the NED Cross-Claimants do so only for the purpose of this cross-claim and do not thereby admit those allegations or accept the accuracy of the evidence.

I. THE PARTIES

DSH

Paragraph 9.

9.1 TACLS, paragraph 1.

9.2 Refer to and repeat the Consolidated Particulars of Plaintiff's Contentions served 20 April 2018 (**CPPC**), paragraph 1

Paragraph 10.

10.1 TACLS, paragraph 2.

Paragraph 11.

11.1 TACLS, paragraph 4.

Deloitte

Paragraph 14.

14.1 Paragraphs 87 to 94 and 482 to 486 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 15.

15.1 Paragraphs 87 to 94 and 482 to 486 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 17.

- 17.1 In respect of FY14, see Deloitte work paper entitled "13400.T01 Selection of engagement team members and confirmation of independence".¹
- 17.2 In respect of HY15, see Deloitte work paper entitled "11010a Selection of engagement team members and confirmation of independence"²
- 17.3 In respect of FY15, see Deloitte work paper entitled "13401 Selection of engagement team members and confirmation of independence".³

II. DSH'S CONTENTIONS**Paragraph 19.**

- 19.1 TACLS, paragraph 30.
- 19.2 Refer to and repeat CPPC, paragraphs 3-6 (including any documents referred to).

Paragraph 20.

- 20.1 Refer to and repeat CPPC, paragraphs 4 and 13 (including any documents referred to).
- 20.2 Paragraph 101(a) and the particulars to that paragraph (including any documents referred to) are repeated. As at January 2014, Deloitte was aware that rebates formed "*a significant part of Dick Smith's business*".⁴
- 20.3 Paragraph 113 and the particulars to that paragraph (including any documents referred to) are repeated. It is alleged by the plaintiff that the existence and implementation of the Rebate Maximisation Policy was recorded in a paper prepared by Paul Backo of DSH (**Backo**) in May 2014 and sent to Potts on 4 June 2014.⁵ Potts provided that paper to Deloitte, by email, on 6 June 2014.
- 20.4 Paragraph 116 and the particulars to that paragraph (including any documents referred to) are repeated. In Deloitte's written report to the FAC dated 6 August 2014 entitled "*Dick Smith Holdings Limited Report to the Finance and Audit Committee for the year ended 29 June 2014*" in respect of the FY14 (**FY14 FAC Report**)⁶, Deloitte stated (inter alia):
- (a) "*Management has undertaken a program of maximising the vendor rebates obtained, either through price protection, advertising subsidies or over & above rebates*";

¹DEL.001.001.2423

²DEL.001.002.9666

³DEL.001.001.9572

⁴DEL.001.015.5593 at 5603

⁵CPPC, paragraph 3; DSE.010.065.5849; DSE.010.065.5850

⁶DSE.003.047.3597. DSE.003.047.3598

(b) *“Management have undertaken a program of maximising the vendor rebates obtained, either through price protection, advertising subsidies or over & above rebates. The increase in rebate receivables at 29 June 2014 is also due to the increased amount of rebates obtained from vendors, as well as the timing of claims, as the set-off of the accrued rebate and the creditor occurs only when the claim is made.”*⁷

20.5 Paragraph 118(d) and the particulars to that paragraph (including any documents referred to) are repeated. The minutes of the FAC Meeting held on 12 August 2014 record that White noted that DSH management had *“undertaken a program of maximising the vendor rebates obtained, either through price protection, advertising subsidies or over and above rebates”*⁸.

20.6 Paragraph 501 and the particulars to that paragraph (including any documents referred to) are repeated. In Deloitte’s written report to the FAC dated 11 February 2015 entitled *“Dick Smith Holdings Limited Report to the Finance and Audit Committee for the half year ended 28 December 2014”* in respect of the HY15 (**HY15 FAC Report**),⁹ Deloitte stated (inter alia):

- (a) *“Management continues to seek to maximise its vendor rebates either through price protection, advertising subsidies or over & above rebates”*;
- (b) *“Vendor receivables remain a key element of Dick Smith’s strategy for growth in gross margin and overall profitability ...”*; and
- (c) *“Since FY14, management have undertaken a program of maximising the vendor rebates obtained, either through price protection, advertising subsidies or over & above rebates (‘O&A Rebates’)”*.¹⁰

20.7 Paragraph 888 and the particulars to that paragraph (including any documents referred to) are repeated. In Deloitte’s written report to the FAC dated 6 August 2015 entitled *“Dick Smith Holdings Limited Report to the Finance and Audit Committee for the year ended 28 June 2015 – 6 August 2015”* in respect of FY15 (**FY15 FAC Report**),¹¹ Deloitte stated (inter alia):

- (a) *“Management continues to seek to maximise its vendor rebates either through price protection, advertising subsidies or over & above rebates”*; and
- (b) *“Vendor receivables remain a key element of Dick Smith’s strategy for growth in gross margin and overall profitability”*.

20.8 Further particulars may be provided after the service of evidence.

Paragraph 21.

21.1 TACLS, paragraph 32.

⁷ See section 1 *“Executive Summary”*, sub-heading *“Rebates – Section 3.3”*, page 5; section 3 *“Key Areas of Focus and Audit Response”*, sub-section 3.3 *“Rebates and Vendor Receivables”*, page 11 DSE.003.047.3598 at 3602 & 3608

⁸ DSE.003.047.0973 at 0975; see also DSE.003.043.8880 at 8882

⁹ DSE.003.040.2917; See also POT.001.017.0001

¹⁰ section 1 *“Executive Summary”*, sub-heading *“Vendor Receivables – Section 3.2”*, page 5; section 3 *“Key Areas of Focus and Review Response”*, sub-section 3.2a *“Rebates and Vendor Receivables”*, page 8 DSE.003.040.2917 at 2921 & 2924

¹¹ DSE.003.035.7799; See also POT.001.014.0001

21.2 Refer to and repeat CPPC, paragraphs 17-21 (including any documents referred to).

Paragraph 22.

22.1 TACLS, paragraph 33.

Paragraph 23.

23.1 TACLS, paragraph 34.

23.2 Refer to and repeat CPPC, paragraphs 24-33 (including any documents referred to).

Paragraph 24.

24.1 TACLS, paragraph 35.

24.2 Refer to and repeat CPPC, paragraphs 34-43 (including any documents referred to).

Paragraph 25.

25.1 TACLS, paragraph 36 & 84.

Paragraph 26.

26.1 TACLS, paragraph 37.

26.2 Refer to and repeat CPPC, paragraphs 44-48 (including any documents referred to).

Paragraph 27.

27.1 TACLS, paragraph 38-39.

27.2 Refer to and repeat CPPC, paragraphs 49-52 (including any documents referred to).

Paragraph 28.

28.1 TACLS, paragraph 40.

28.2 Refer to and repeat CPPC, paragraphs 53-57 (including any documents referred to).

Paragraph 29.

29.1 TACLS, paragraph 41.

29.2 Refer to and repeat CPPC, paragraphs 58-59 (including any documents referred to).

Paragraph 30.

30.1 TACLS, paragraph 42.

30.2 Refer to and repeat CPPC, paragraphs 60-62 (including any documents referred to).

Paragraph 31.

31.1 TACLS, paragraph 43.

31.2 Refer to and repeat CPPC, paragraphs 63-64 (including any documents referred to).

Paragraph 32.

- 32.1 TACLS, paragraph 44
- 32.2 Refer to and repeat CPPC, paragraphs 65-68 (including any documents referred to).
- 32.3 In relation to paragraph 32(e), see:
- (a) paragraphs 56-59, 77-80 and 81-87 of the affidavit of Christopher David Borg sworn on 4 December 2017 (**Borg Affidavit**) (including any documents referred to); and
 - (b) paragraphs 184-190 and 198-225 of the affidavit of Nigel Rodney Mills sworn on 30 November 2017 (**First Mills Affidavit**) (including any documents referred to).

Paragraph 33.

- 33.1 TACLS, paragraph 45.
- 33.2 Refer to and repeat CPPC, paragraphs 69-71 (including any documents referred to).

Paragraph 34.

- 34.1 TACLS, paragraph 46.
- 34.2 Refer to and repeat CPPC, paragraphs 72-75 (including any documents referred to).

Paragraph 35.

- 35.1 TACLS, paragraph 47.
- 35.2 Refer to and repeat CPPC, paragraphs 76-78 (including any documents referred to).

Paragraph 36.

- 36.1 Paragraph 20 and the particulars to that paragraph (including any documents referred to) are repeated in relation to Deloitte's knowledge of the Rebate Maximisation Policy.
- 36.2 Deloitte had actual knowledge of the Rebate Driven Buying Practices by reason of:
- (a) the fact Deloitte was aware of the Rebate Maximisation Policy, in respect of which see the particulars to paragraph 20 (including any documents referred to);
 - (b) the facts, matters and circumstances pleaded in paragraphs 19 to 23 and the particulars to those paragraphs (including any documents referred to);
 - (c) the fact Deloitte received the papers for the FAC Meetings (**FAC Papers**) and Board Papers in respect of the period to 16 February 2014 and was aware of the increasing level of O&A rebates obtained by the business and was aware of the fact that O&A rebates were being transferred from CODB to COGS without any analysis of whether the goods had in fact been sold;
 - (d) paragraphs 107 to 115 and the particulars to those paragraphs (including any documents referred to) are repeated;
 - (e) the matters documented in the Deloitte work papers entitled:

- (i) *"The posting of accounting (O&A rebate) journals by the category buyers – Other Finding"*;¹²
- (ii) *"There is no oversight or approval from management over the recognition and recording of rebates – Other Finding"*;¹³
- (iii) *"There are no proper records or support for the posted rebate accruals – Other Finding"*;¹⁴
- (iv) *"Determine whether, on the basis of the audit work – Procedure"*;¹⁵
- (v) *"External Audit Strategy for the financial year ending 29 June 2014"*;¹⁶
- (vi) *"12206 Design Factors for major business cycles"*;¹⁷
- (vii) *"22310 Rebates Management Business Cycle – D&I Testing"*;¹⁸
- (viii) *"23302AU Trade Accounts Receivable Testing"*;¹⁹
- (ix) *"23302AU Trade Accounts Receivable Testing"*;²⁰
- (x) *"23303 Memo – Vendor receivables and disputed claims"*;²¹
- (xi) *"24102AU Trade accounts payable Testing"*;²²
- (xii) *"26302AU Operating Expenses Testing 2014"*;²³
- (xiii) *"29101 Concluding Analytical Review – Group"*;²⁴
- (xiv) *"29101 Concluding Analytical Review – Group"*;²⁵
- (xv) *"30101 FY15 PL PHASED (PBC)"*;²⁶
- (xvi) *"All_Findings and Observations Summary.xlsx"*;²⁷
- (xvii) *"Insufficient support for rebate – Other Finding"*;²⁸
- (xviii) *"Agree AASB 102 calculations for rebates and stock – Procedure"*;²⁹

¹² DEL.001.001.0559

¹³ DEL.001.001.0562

¹⁴ DEL.001.001.0565

¹⁵ DEL.001.001.1091

¹⁶ DEL.001.001.1970

¹⁷ DEL.001.001.2187

¹⁸ DEL.001.001.3870

¹⁹ DEL.001.001.3952

²⁰ DEL.001.001.3953

²¹ DEL.001.001.3973

²² DEL.001.001.4303

²³ DEL.001.001.5120

²⁴ DEL.001.001.6482

²⁵ DEL.001.001.6483

²⁶ DEL.001.001.6532

²⁷ DEL.001.001.7383

²⁸ DEL.001.002.8929

²⁹ DEL.001.002.9535

- (xix) 'External audit strategy for the year ending 28 June 2015';³⁰
 - (xx) '11183 Preliminary Analytical Review';³¹
 - (xxi) '13201 Review of interim financial information planning memorandum';³²
 - (xxii) '23320 Trade and other receivables Workpaper';³³
 - (xxiii) '23320 Trade and other receivables Workpaper_Detail View';³⁴
 - (xxiv) '23330 Memo – Vendor receivables and disputed claims';³⁵
 - (xxv) '25220.03 FY15 Forecast';³⁶
 - (xxvi) '26330 Operating Expenses Workpaper';³⁷
 - (xxvii) '26330 Operating Expenses Workpaper_Detail View';³⁸
 - (xxviii) 'Review of interim financial information summary memorandum';³⁹
 - (xxix) '30101a Dick Smith – HY FA Committee Report RELEASE';⁴⁰
- (f) in the above circumstances, an auditor acting with reasonable care, skill and diligence would have known of the reliance on O&A rebates to achieve the reported profit; and
- (g) actual knowledge of Deloitte is to be inferred from the facts, matters and circumstances referred to above.

36.3 In the alternative, and in the event that Deloitte is found not to have actual knowledge, Deloitte ought to have known of the Rebate Driven Buying Practices by reason of:

- (a) the same facts, matters and circumstances referred to in paragraph 36.2, together with the facts, matters and circumstances referred to in the particulars to paragraph 20 (including any documents referred to);
- (b) the fact that the Rebate Driven Buying Practices were the obvious or probable consequence of the implementation of the Rebate Maximisation Policy;
- (c) the fact that an auditor acting with reasonable care, skill and diligence would have obtained actual knowledge of the Rebate Driven Buying Practices because, particularly in the light of the Rebate Maximisation Policy, it would have ensured that the information provided to it included information about the buying practices of DSH and the DSE Group, including but not limited to product mix and allocation of OTB,

³⁰ DEL.001.002.9857 at .9864

³¹ DEL.001.002.9880

³² DEL.001.003.0095

³³ DEL.001.003.1473

³⁴ DEL.001.003.1474

³⁵ DEL.001.001.1480

³⁶ DEL.001.003.1719

³⁷ DEL.001.003.1798

³⁸ DEL.001.003.1799

³⁹ DEL.001.003.2062

⁴⁰ DEL.001.003.2170

and if such information was not provided, would have enquired about these matters. If Deloitte had performed its role in this way, it would have obtained actual knowledge of the Rebate Driven Buying Practices. Further a reasonable auditor would have made those enquiries and ascertained that information after becoming aware of the overstocked position of DSH after Christmas 2014;

- (d) further or in the alternative, paragraphs 288 to 299 and 627 to 640 are repeated and the particulars to those paragraphs (including any documents referred to); and
- (e) in the above circumstances, an auditor acting with reasonable care, skill and diligence would have known of the risk of the Rebate Driven Buying Practices.

36.4 Deloitte had actual knowledge of the matters at paragraph 24(a) to (c) by reason of:

- (a) the facts, matters and circumstances pleaded in paragraphs 20, 23 and 24 and the particulars to those paragraphs (including any documents referred to) as well as the particulars of Deloitte's knowledge of the facts, matters and circumstances pleaded in paragraphs 19 and 23 as alleged in the particulars to paragraph 20 and paragraphs 36.2 and 36.3 (including any documents referred to);
- (b) the fact Deloitte received the FAC Papers⁴¹ and the Board Papers⁴² for the period to 16 February 2015, and was aware that in January 2015 inventory levels remained at levels in excess of the December 2014 levels of inventory reported to the Board of DSH (and approximately \$142 million higher than the forecast provided to the Board of DSH in November 2014) and that by comparison, in January 2014, the inventory levels of the DSE Group reduced by \$67 million from the level held in December 2013, that the business had negative operating cashflow in September 2014, October 2014, November 2014 and January 2015 and that payables increased through that period (reaching a spike of \$338.932 million in December);
- (c) the fact a \$60 million impairment, as pleaded in paragraph 74 was communicated to the market in an ASX announcement dated 30 November 2015⁴³.
- (d) the matters documented in its work papers entitled:
 - (i) *'External Audit Strategy for the financial year ending 29 June 2014'*⁴⁴

⁴¹ FAC Minutes and FAC Papers for the FAC Meeting on 12 August 2014 (DSE.003.043.8880, DSE.003.047.7147, DSE.003.047.7148, DSE.003.047.7149, DSE.003.047.7151, DSE.003.047.7165, DSE.003.047.7169, DSE.003.047.7218, DSE.003.047.7247), 25 November 2014 (DSE.003.040.3461, DSE.003.043.8879, DSE.003.043.8880) and 12 February 2015 (DSE.003.037.7161, DSE.003.040.3460, DSE.003.040.3461, DSE.003.040.3465, DSE.003.040.3467, DSE.003.040.3490, DSE.003.040.3511)

⁴² Trading updates and Board Minutes for the Board Meeting on 18 August 2014 (COO.001.003.0001; DSE.003.046.2325, DSE.003.046.2326), 15 October 2014 (DSE.003.046.2326, DSE.600.002.8557), 25 November 2014 (DSE.600.002.8557, DSE.600.002.8827), 16 February 2015 (DSE.600.002.8827, DSE.600.002.8963).

⁴³ DSE.003.033.0974

⁴⁴ DEL.001.001.1970

- (ii) '23401AU Inventories – Leadsheet and testing – Australia';⁴⁵
- (iii) '23401AU - Inventories - Leadsheet and testing - Australia - Working Paper';⁴⁶
- (iv) '23403 Inventory Obsolescence Memo';⁴⁷
- (v) '24102AU Trade accounts payable Testing';⁴⁸
- (vi) '26900a Evaluation of audit scope memo';⁴⁹
- (vii) '29101 Concluding Analytical Review – Group';⁵⁰
- (viii) '29101 Concluding Analytical Review – Group';⁵¹
- (ix) '30300 Audit summary memorandum';⁵²
- (x) 'All_Findings and Observations Summary.xlsx';⁵³
- (xi) 'Inventory – Other Finding';⁵⁴
- (xii) 'Inquire about the basis used in valuing each categ – Procedure';⁵⁵
- (xiii) 'Inquire about the method used for identifying slow – Procedure';⁵⁶
- (xiv) 'External audit strategy for the year ending 28 June 2015';⁵⁷
- (xv) '11183 Preliminary Analytical Review';⁵⁸
- (xvi) '13201 Review of interim financial information planning memorandum';⁵⁹
- (xvii) '23410 Inventories Leadsheet';⁶⁰
- (xviii) '23410 Inventories Leadsheet_Detail View';⁶¹
- (xix) '23411 DS Obsolescence Calc by Item FY2015';⁶²
- (xx) 'Review of interim financial information summary memorandum';⁶³
- (xxi) '30101a Dick Smith - HY FA Committee Report RELEASE';⁶⁴

⁴⁵ DEL.001.001.3985

⁴⁶ DEL.001.001.3986

⁴⁷ DEL.001.001.4003

⁴⁸ DEL.001.001.4303

⁴⁹ DEL.001.001.5656

⁵⁰ DEL.001.001.6482

⁵¹ DEL.001.001.6483

⁵² DEL.001.001.6564

⁵³ DEL.001.001.7383

⁵⁴ DEL.001.002.8925

⁵⁵ DEL.001.002.9145

⁵⁶ DEL.001.002.9149

⁵⁷ DEL.001.002.9857 at .9864

⁵⁸ DEL.001.002.9880

⁵⁹ DEL.001.003.0095

⁶⁰ DEL.001.003.1488

⁶¹ DEL.001.003.1489

⁶² DEL.001.003.1493

⁶³ DEL.001.003.2062

⁶⁴ DEL.001.003.2170

- (e) an auditor acting with reasonable care, skill and diligence, would have known that the DSE Group was acquiring and accumulating Bad Stock by at least 16 February 2015; and
- (f) the actual knowledge of Deloitte is to be inferred from those facts, matters and circumstances.

36.5 In the alternative, and in the event that Deloitte is found not to have actual knowledge, Deloitte ought to have known of the matters alleged in paragraph 24(a) to (c) by reason of:

- (a) those same facts, matters and circumstances, together with the facts, matters and circumstances referred to in the particulars to paragraph 36.4 (including any documents referred to), to contend that Deloitte ought to have known about those matters;
- (b) the fact that the acquisition and accumulation of Bad Stock was the obvious or probable consequence of the implementation of the Rebate Maximisation Policy or alternatively, if the acquisition and accumulation of Bad Stock was not the obvious or probable consequence of the implementation of the Rebate Maximisation Policy before December 2014, the overstocked position of DSH that Deloitte was informed of after Christmas 2014 would have indicated to a reasonable auditor that the acquisition and accumulation of Bad Stock was the obvious or probable consequence of the implementation of the Rebate Maximisation Policy;
- (c) further, an auditor performing its role and the duties required of it with reasonable care, skill and diligence would have ensured, particularly in the light of the Rebate Maximisation Policy, that the reports provided to it included information about the acquisition and accumulation of stock, the quality, ageing and stock turns of the stock acquired and held, the daily or weekly cash flow position of the DSE Group and, if such information was not provided, would have enquired about these matters;
- (d) the fact an auditor performing its role and the duties required of it with the degree of care, skill and diligence that a reasonable person would have exercised in that role would have spoken directly with the staff at DSH responsible for the acquisition of stock from time to time;
- (e) the fact that, if Deloitte had performed its role in this way, it would have obtained actual knowledge of the matters in 24(a) to (c);
- (f) the fact a \$60 million impairment, as pleaded in paragraph 74 was communicated to the market in an ASX announcement dated 30 November 2015⁶⁵;
- (g) further or in the alternative, paragraphs 288 to 299 and 627 to 640 are repeated and the particulars to those paragraphs (including any documents referred to);

⁶⁵ DSE.003.033.0974

- (h) in the above circumstances, an auditor acting with reasonable care, skill and diligence, would have known by at least 16 February 2015 that the DSE Group was acquiring and accumulating Bad Stock.

36.6 Deloitte had actual knowledge of the matters alleged in paragraph 27 by reason of:

- (a) the facts, matters and circumstances pleaded in paragraphs 20, 23 and 24 and the particulars to those paragraphs (including any documents referred to) as well as the particulars of Deloitte's knowledge of the fact, matters and circumstances pleaded in paragraphs 19, 23 and 24 as alleged in the particulars to paragraph 20 and paragraphs 36.2, 36.3, 36.4 and 36.5 (including any documents referred to);
- (b) the fact that Deloitte was aware of the Rebate Maximisation Policy, in respect of which see the particulars to paragraph 20 above (including any documents referred to);
- (c) the fact Deloitte received the FAC Papers⁶⁶ and the Board Papers⁶⁷ in relation to the period to 16 February 2015, and was aware of the way O&A rebates were accounted for within the business and specifically the fact that O&A rebates were being initially accounted for as a CODB and then, at least in part, transferred to CODB without any analysis of whether or not the goods had been sold;
- (d) the fact that Deloitte reported in the FY14 FAC Report⁶⁸ that O&A rebates were, in contrast to the position adopted in the HY14 financial statements, to be recognised within COS;
- (e) the matters documented in Deloitte's work papers entitled:
- (i) *'The over-accrual of O&A Rebates (Known difference) – Other Finding'*⁶⁹;
 - (ii) *'The posting of accounting (O&A rebate) journals by the category buyers – Other Finding'*⁷⁰;
 - (iii) *'Incorrect classification of rebates – Other Finding'*⁷¹
 - (iv) *'Determine whether, on the basis of the audit work – Procedure'*⁷²
 - (v) *'External Audit Strategy for the financial year ending 29 June 2014'*⁷³

⁶⁶ FAC Minutes and FAC Papers for the FAC Meeting on 12 August 2014 (DSE.003.043.8880, DSE.003.047.7147, DSE.003.047.7148, DSE.003.047.7149, DSE.003.047.7151, DSE.003.047.7165, DSE.003.047.7169, DSE.003.047.7218, DSE.003.047.7247), 25 November 2014 (DSE.003.040.3461, DSE.003.043.8879, DSE.003.043.8880) and 12 February 2015 (DSE.003.037.7161, DSE.003.040.3460, DSE.003.040.3461, DSE.003.040.3465, DSE.003.040.3467, DSE.003.040.3490, DSE.003.040.3511)

⁶⁷ Trading updates and Board Minutes for the Board Meeting on 18 August 2014 (COO.001.003.0001; DSE.003.046.2325, DSE.003.046.2326), 15 October 2014 (DSE.003.046.2326, DSE.600.002.8557), 25 November 2014 (DSE.600.002.8557, DSE.600.002.8827), 16 February 2015 (DSE.600.002.8827, DSE.600.002.8963).

⁶⁸ DSE.003.047.3597, DSE.003.047.3598

⁶⁹ DEL.001.001.0528

⁷⁰ DEL.001.001.0559

⁷¹ DEL.001.001.0568

⁷² DEL.001.001.1091

⁷³ DEL.001.001.1970

- (vi) '12206 Design Factors for major business cycles'⁷⁴
- (vii) '22310 Rebates Management Business Cycle – D&I Testing'⁷⁵
- (viii) '26201AU Cost of sales Combined Leadsheet AUS Final'⁷⁶
- (ix) FY14 FAC Report⁷⁷
- (x) 'Position Paper-Vendor Rebates – Profit/Loss and Balance Sheet Recognition'⁷⁸ dated 28 May 2014
- (xi) Deloitte document detailing meeting on 12 May 2014⁷⁹
- (xii) '21303 JET memo'⁸⁰
- (xiii) '21306 JET Australia'⁸¹
- (xiv) '23302AU Trade Accounts Receivable Testing'⁸²
- (xv) '23302AU Trade Accounts Receivable Testing'⁸³
- (xvi) '23303 Memo – Vendor receivables and disputed claims'⁸⁴
- (xvii) '26150 Over and Above Vendor Rebate'⁸⁵
- (xviii) '26900a Evaluation of audit scope memo'⁸⁶
- (xix) '30101 FY15 PL PHASED (PBC)'⁸⁷
- (xx) 'All_Findings and Observations Summary.xlsx'⁸⁸
- (xxi) 'External audit strategy for the year ending 28 June 2015'⁸⁹
- (xxii) '11183 Preliminary Analytical Review'⁹⁰
- (xxiii) '13201 Review of interim financial information planning memorandum'⁹¹
- (xxiv) '26170 Over and Above Vendor Rebate'⁹²

⁷⁴ DEL.001.001.2187

⁷⁵ DEL.001.001.3870

⁷⁶ DEL.001.001.5105

⁷⁷ DEL.001.001.6953

⁷⁸ DSE.003.054.0826

⁷⁹ DEL.001.001.2649

⁸⁰ DEL.001.001.3686

⁸¹ DEL.001.001.3697

⁸² DEL.001.001.3952

⁸³ DEL.001.001.3953

⁸⁴ DEL.001.001.3973

⁸⁵ DEL.001.001.5099

⁸⁶ DEL.001.001.5656

⁸⁷ DEL.001.001.6532

⁸⁸ DEL.001.001.7383

⁸⁹ DEL.001.002.9857 at .9864

⁹⁰ DEL.001.002.9880

⁹¹ DEL.001.003.0095

⁹² DEL.001.003.1786

(xxv) '26330 Operating Expenses Workpaper'⁹³

(xxvi) '26330 Operating Expenses Workpaper_Detail View'⁹⁴

(xxvii) '28100.2c HY Review TB updated with Startrack adjustment'⁹⁵

(xxviii) '30101a Dick Smith – HY FA Committee Report RELEASE'⁹⁶; and

- (f) the actual knowledge of Deloitte is to be inferred from those facts, matters and circumstances.

36.7 In the alternative, and in the event that Deloitte is found not to have actual knowledge, Deloitte ought to have known of the matters alleged in paragraph 36.6 by reason of:

- (a) those same facts, matters and circumstances to contend that Deloitte ought to have known about those matters;
- (b) the fact that an auditor performing its role and the duties required of it with reasonable care, skill and diligence would have ensured that it was provided information about all significant accounting approaches before providing its opinions in relation to the FY14 Financial Report and HY15 Financial Report, including whether the payment of any interim or final dividend was appropriate. In particular, in light of the Rebate Maximisation Policy, a reasonable auditor would have paid particular attention to the manner in which rebates were accounted for by DSH and reported in FY14 Financial Report and HY15 Financial Report;
- (c) the fact that the Rebate Accounting Approach was a significant accounting approach because it had the capacity to and did affect significantly the content of the FY14 Financial Report and HY15 Financial Report of DSH and key components of that report, including the balance sheet and profit and loss statement; and
- (d) in the above circumstances, an auditor acting with reasonable care, skill and diligence would have known that O&A rebates were recognised in the accounts immediately upon being negotiated with suppliers and directly so as to increase gross profit, EBITDA and net profit.

36.8 Deloitte ought to have known of the matters alleged in paragraph 28 by reason of:

- (a) the facts, matters and circumstances pleaded in paragraph 27 and the particulars to that paragraph as well as the particulars of Deloitte's knowledge of those matters as alleged in paragraphs 36.6 and 36.7 (including any documents referred to);

⁹³ DEL.001.003.1798

⁹⁴ DEL.001.003.1799

⁹⁵ DEL.001.003.1842

⁹⁶ DEL.001.003.2170

- (b) the facts, matters and circumstances pleaded in paragraphs 174 to 270 and 549 to 613 and the particulars to those paragraphs (including any documents referred to) are repeated;
- (c) the facts, matters and circumstances pleaded in paragraphs 107 to 115 and the particulars to those paragraphs (including any documents referred to) as well as the particulars of Deloitte's knowledge of those matters (including any documents referred to);
- (d) the fact that the FY14 FAC Report⁹⁷ recorded Deloitte's agreement with the recognition of O&A rebates within COS that O&A rebates were essentially a contribution to the selling cost of the inventory being cleared;
- (e) the fact that Deloitte was not aware of any testing undertaken by management to determine that O&A rebates were essentially a contribution to the selling cost of the inventory being cleared or to determine whether deferral of O&A rebates income was required;
- (f) the fact that an auditor acting with the reasonable care, skill and diligence would have ensured that it was provided information about all significant accounting approaches before providing its opinions in relation to the FY14 Financial Report or HY15 Financial Report including whether the payment of any interim or final dividend was appropriate;
- (g) the fact that the Rebate Accounting Approach was a significant accounting approach because it had the capacity to, and did, affect significantly the content of the financial reports of DSH;
- (h) the fact that a reasonable auditor of DSH, on becoming aware of the actual cash flow position of DSH, would have questioned and given greater scrutiny to the content of the financial reports of DSH;
- (i) the matters in paragraph 28(a) would have been apparent to an auditor performing its role and the duties required of it with reasonable care, skill and diligence by reference to the content of AASB 102 and a comparison to the content and effect of the Rebate Accounting Approach; and
- (j) the matters in paragraph 28(b) would have been apparent to an auditor performing its role and the duties required of it with reasonable care, skill and diligence on becoming aware of the matters in paragraph 28(a).

36.9 Deloitte had actual knowledge of the Inadequate Inventory Management alleged in paragraph 29 by reason of:

⁹⁷ DSE.003.047.3597. DSE.003.047.3598

- (a) the facts, matters and circumstances pleaded in paragraph 4 of the CPPC (including any documents referred to);
- (b) the fact that Deloitte was aware that inventory levels and the age of inventory was increasing and that the situation continued to worsen in circumstances where it should have been evident that material impairments would have to be taken if the position was not adequately managed over time and it was necessary to have in place systems for the proper classification and writing down of inventory;⁹⁸
- (c) the fact that Deloitte received the FAC Papers⁹⁹ and the Board Papers¹⁰⁰ for the period to 16 February 2015, and was aware that inventory levels were substantially higher than projections, that only a very small proportion of the stock was classified other than as Active Stock and that in respect of inventory which was discontinued or no-reorder, only a 20% provision was applied;
- (d) the fact that, in the case of DSH and the DSE Group, increases in inventory levels and inventory days, combined with unpopular changes in the product mix over time, would necessarily lead to material impairments if not managed effectively;
- (e) the fact that Deloitte was aware of the inventory system used by the DSE Group and that it did not allow for accurate ageing of inventory as the ageing was based on the last activity date for a SKU rather than the individual date of purchase;
- (f) the fact that Deloitte was aware of the methodology used by DSH for calculating inventory obsolescence and shrinkage provisions (see paragraphs 130, 131 and 630 and the particulars to those paragraphs including any documents referred to); and
- (g) the actual knowledge of Deloitte is to be inferred from those facts, matters and circumstances.

36.10 In the alternative, and in the event that Deloitte is found not to have actual knowledge, Deloitte ought to have known of the Inadequate Inventory Management by reason of:

- (a) those same facts, matters and circumstances to contend that Deloitte ought to have known about the matters in paragraph 36.9;

⁹⁸ DEL.001.001.1970, DEL.001.001.3826, DEL.001.001.3985, DEL.001.001.3986, DEL.001.001.4003, DEL.001.001.4303, DEL.001.001.5656, DEL.001.001.6482, DEL.001.001.6483, DEL.001.001.6564, DEL.001.001.7383, DEL.001.002.8925, DEL.001.002.9145, DEL.001.002.9149, DEL.001.002.9535, DEL.001.002.9857 at .9864, DEL.001.002.9880, DEL.001.003.0095, DEL.001.003.1488, DEL.001.003.1489, DEL.001.003.1493, DEL.001.003.2062, DEL.001.003.2170

⁹⁹ FAC Minutes and FAC Papers for the FAC Meeting on 12 August 2014 (DSE.003.043.8880, DSE.003.047.7147, DSE.003.047.7148, DSE.003.047.7149, DSE.003.047.7151, DSE.003.047.7165, DSE.003.047.7169, DSE.003.047.7218, DSE.003.047.7247), 25 November 2014 (DSE.003.040.3461, DSE.003.043.8879, DSE.003.043.8880) and 12 February 2015 (DSE.003.037.7161, DSE.003.040.3460, DSE.003.040.3461, DSE.003.040.3465, DSE.003.040.3467, DSE.003.040.3490, DSE.003.040.3511)

¹⁰⁰ Trading updates and Board Minutes for the Board Meeting on 18 August 2014 (COO.001.003.0001; DSE.003.046.2325, DSE.003.046.2326), 15 October 2014 (DSE.003.046.2326, DSE.600.002.8557), 25 November 2014 (DSE.600.002.8557, DSE.600.002.8827), 16 February 2015 (DSE.600.002.8827, DSE.600.002.8963).

- (b) the fact that an auditor performing its role and the duties required of it with reasonable care, skill and diligence would have ensured that it was provided information about the procedures, practices or systems in place in relation to inventory management;
- (c) the matters in paragraph 36.9 would have been apparent to an auditor performing its role and the duties required of it with reasonable care, skill and diligence by examining the procedures, practices or systems in place in relation to inventory management and considering whether they were adequate or sufficient. Such an examination and consideration would have revealed that the procedures, practices or systems in place in relation to inventory management were deficient;
- (d) the fact a \$60 million impairment, as pleaded in paragraph 74 was communicated to the market in an ASX announcement dated 30 November 2015¹⁰¹;
- (e) further or in the alternative, paragraphs 288 to 299 and 627 to 640 and the particulars to those paragraphs (including any documents referred to) are repeated; and
- (f) in the above circumstances, an auditor acting with reasonable care, skill and diligence, ought to have known by at least 16 February 2015 that the DSE Group had Inadequate Inventory Management.

36.11 Deloitte had actual knowledge of the matters alleged in paragraph 30 by reason of the facts, matters and circumstances pleaded in paragraphs 21, 23, 24, 27, 28 and 29 and the particulars to those paragraphs (including any documents referred to).

36.12 In the alternative, and in the event that Deloitte is found not to have actual knowledge, Deloitte ought to have known of the matters alleged in paragraph 30 by reason of:

- (a) the fact that, if Deloitte was not aware of the decline in like-for-like retail sales particularised in paragraph 30, as auditor of DSH, Deloitte ought to have known the comparative sales by division and particularly in relation to retail given the majority of sales were budgeted to be "bricks and mortar" retail sales;
- (b) the fact an auditor performing its role and the duties required of it with reasonable care, skill and diligence would have ensured that it was provided information about the number of stocktakes performed by DSH over time, and, if not, enquired about those matters;
- (c) the fact that an auditor performing its role and the duties required of it with reasonable care, skill and diligence would have ensured that it was provided information about like for like sales on a division by division level, and, if not, enquired about those matters;
- (d) the fact that an auditor performing its role and the duties required of it with reasonable care, skill and diligence would have ensured that it was provided information about

¹⁰¹ DSE.003.033.0974

how the business was being funded and using borrowings it was drawing down on and, if not, enquired about those matters; and

- (e) further or in the alternative, paragraphs 288 to 299 and 627 to 640 and the particulars to those paragraphs (including any documents referred to) are repeated.

36.13 Deloitte ought to have known of the matters alleged in paragraph 31 by reason of:

- (a) the facts, matters and circumstances pleaded in paragraphs 288 to 299 and 627 to 640 and the particulars to those paragraphs (including any documents referred to);
- (b) the matters documented in Deloitte's work papers entitled:
- (i) *'External Audit Strategy for the financial year ending 29 June 2014'*;¹⁰²
 - (ii) *'22201 Expenditure & Inventory Management Business Cycle – D&I Testing'*;¹⁰³
 - (iii) *'23401AU Inventories – Leadsheet and testing – Australia'*;¹⁰⁴
 - (iv) *'23401AU – Inventories – Leadsheet and testing – Australia – Working Paper'*;¹⁰⁵
 - (v) *'23403 Inventory Obsolescence Memo'*;¹⁰⁶
 - (vi) *'26900a Evaluation of audit scope memo'*;¹⁰⁷
 - (vii) *'29101 Concluding Analytical Review – Group'*;¹⁰⁸
 - (viii) *29101 Concluding Analytical Review – Group'*;¹⁰⁹
 - (ix) *'30300 Audit summary memorandum'*;¹¹⁰
 - (x) *'All_Findings and Observations Summary.xlsx'*;¹¹¹
 - (xi) *'Inventory – Other Finding'*;¹¹²
 - (xii) *'Inquire about the basis used in valuing each categ – Procedure'*;¹¹³
 - (xiii) *'Inquire about the method used for identifying slow – Procedure'*;¹¹⁴

¹⁰² DEL.001.001.1970

¹⁰³ DEL.001.001.3826

¹⁰⁴ DEL.001.001.3985

¹⁰⁵ DEL.001.001.3986

¹⁰⁶ DEL.001.001.4003

¹⁰⁷ DEL.001.001.5656

¹⁰⁸ DEL.001.001.6482

¹⁰⁹ DEL.001.001.6483

¹¹⁰ DEL.001.001.6564

¹¹¹ DEL.001.001.7383

¹¹² DEL.001.002.8925

¹¹³ DEL.001.002.9145

¹¹⁴ DEL.001.002.9149

- (xiv) *'Agree AASB 102 calculations for rebates and stock – Procedure'*;¹¹⁵
- (xv) *'External audit strategy for the year ending 28 June 2015'*;¹¹⁶
- (xvi) *'11183 Preliminary Analytical Review'*;¹¹⁷
- (xvii) *'13201 Review of interim financial information planning memorandum'*;¹¹⁸
- (xviii) *'23410 Inventories Leadsheet'*;¹¹⁹
- (xix) *'23410 Inventories Leadsheet_Detail View'*;¹²⁰
- (xx) *'23411 DS Obsolescence Calc by Item FY2015'*;¹²¹
- (xxi) *'Review of interim financial information summary memorandum'*;¹²² and
- (xxii) *'30101a Dick Smith - HY FA Committee Report RELEASE'*.¹²³

36.14 Deloitte had actual knowledge of the matters alleged in paragraph 32(a), (b) and (e) by reason of:

- (a) the facts, matters and circumstances pleaded in paragraph 29 and the particulars to that paragraph (including any documents referred to);
- (b) the fact Deloitte, having received the Board Papers for 26 May 2014, was aware that DSH was to seek an increase in the facility limit from \$75 million to \$82 million¹²⁴;
- (c) the fact that as auditor of DSH, Deloitte was aware that daily cash flow analysis of DSH was not provided to the FAC or the Board after 26 May 2014;
- (d) the fact Deloitte received the FAC Papers¹²⁵ and the Board Papers¹²⁶ for the six months to 16 February 2015, and was aware of the business' negative operating cashflow in September 2014, October 2014, November 2014 and January 2015 and increasing payable levels in that period (reaching a spike of \$338.932 million in December), that the inventory level had increased from December 2014 to January 2015 notwithstanding the fact that sales for the month of January were \$100.377 million as against a budget of \$89.814 million;

¹¹⁵ DEL.001.002.9535

¹¹⁶ DEL.001.002.9857 at .9864

¹¹⁷ DEL.001.002.9880

¹¹⁸ DEL.001.003.0095

¹¹⁹ DEL.001.003.1488

¹²⁰ DEL.001.003.1489

¹²¹ DEL.001.003.1493

¹²² DEL.001.003.2062

¹²³ DEL.001.003.2170

¹²⁴ DSE.010.065.3713

¹²⁵ FAC Minutes and FAC Papers for the FAC Meeting on 12 August 2014 (DSE.003.043.8880, DSE.003.047.7147, DSE.003.047.7148, DSE.003.047.7149, DSE.003.047.7151, DSE.003.047.7165, DSE.003.047.7169, DSE.003.047.7218, DSE.003.047.7247), 25 November 2014 (DSE.003.040.3461, DSE.003.043.8879, DSE.003.043.8880) and 12 February 2015 (DSE.003.037.7161, DSE.003.040.3460, DSE.003.040.3461, DSE.003.040.3465, DSE.003.040.3467, DSE.003.040.3490, DSE.003.040.3511)

¹²⁶ Trading updates and Board Minutes for the Board Meeting on 18 August 2014 (COO.001.003.0001; DSE.003.046.2325, DSE.003.046.2326), 15 October 2014 (DSE.003.046.2326, DSE.600.002.8557), 25 November 2014 (DSE.600.002.8557, DSE.600.002.8827), 16 February 2015 (DSE.600.002.8827, DSE.600.002.8963).

- (e) by reason of Deloitte's knowledge of DSH's cashflow issues, Deloitte knew, or ought to have known of matters which would have suggested to a reasonable person in its position that it was the case that, DSH was delaying the payment of invoices and seeking extensions of time from suppliers for payment; and
- (f) the actual knowledge of Deloitte is to be inferred from those facts, matters and circumstances.

36.15 In the alternative, and in the event that Deloitte is found not to have actual knowledge, Deloitte ought to have known of the matters alleged in paragraph 32 by reason of:

- (a) the same facts, matters and circumstances to contend that Deloitte ought to have known about all of the matters in paragraph 36.14; and
- (b) the fact that an auditor performing its role and the duties required of it with reasonable care, skill and diligence would have ensured that it was provided information about the topics referred to in paragraph 32 (being DSH's status under its finance facilities and any actions taken to address cash flow issues) and, if not, asked questions about those matters.

36.16 Deloitte had actual knowledge of the matters alleged in paragraph 33 by reason of:

- (a) the facts, matters and circumstances pleaded in paragraph 33 and the particulars to that paragraph (including any documents referred to); and
- (b) the fact that Deloitte was aware of the projections for inventory contained within the Board Papers for 25 November 2014¹²⁷ and the actual inventory levels as reported in the Board Papers for 16 February 2015¹²⁸; and
- (c) the actual knowledge of Deloitte is to be inferred from those facts, matters and circumstances.

36.17 In the alternative, and in the event that Deloitte is found not to have actual knowledge, Deloitte ought to have known of the matters alleged in paragraph 33, as an auditor performing its role and the duties required of it with reasonable care, skill and diligence would have read the Board Papers and FAC Papers and realised this fact.

36.18 Deloitte had actual knowledge of the matters alleged in paragraph 34 by reason of:

- (a) the projections for payables, net operating cashflow and cash at end of period contained within the Board Papers for 25 November 2014¹²⁹ and the actual payables, net operating cashflow and cash at end of period figures as in the Board Papers for 16 February 2015,¹³⁰ and

¹²⁷ Trading updates for the 25 November 2014 Board Meeting (DSE.600.002.8557)

¹²⁸ Trading updates for the 16 February 2015 Board Meeting (DSE.600.002.8827)..

¹²⁹ Trading updates for the 25 November 2014 Board Meeting (DSE.600.002.8557)

¹³⁰ Trading updates for the 16 February 2015 Board Meeting (DSE.600.002.8827).

- (b) the actual knowledge of Deloitte is to be inferred from those facts, matters and circumstances.

36.19 In the alternative, and in the event that Deloitte is found not to have actual knowledge, Deloitte ought to have known of the matters alleged in paragraph 34 by reason of:

- (a) the same facts, matters and circumstances to contend that Deloitte ought to have known about all of the matters in paragraph 36.18.
- (b) the fact that an auditor performing its role and the duties required of it with reasonable care, skill and diligence would have read the Board Papers and FAC Papers and realised this fact.

36.20 As auditor of DSH and the DSE Group, Deloitte ought to have known of the matters alleged in paragraph 35.

36.21 Deloitte ought to have known of the matters alleged in paragraph 40 by reason of the facts, matters and circumstances pleaded in paragraphs 549 to 676 and the particulars to those paragraphs (including any documents referred to).

36.22 Further particulars may be provided following the service of evidence.

Paragraph 37.

37.1 TACLS, paragraph 49.

37.2 Refer to and repeat CPPC, paragraphs 169-170 (including any documents referred to).

Paragraph 38.

38.1 TACLS, paragraph 50.

38.2 Refer to and repeat CPPC, paragraphs 171-173 (including any documents referred to).

Paragraph 39.

39.1 TACLS, paragraph 51.

Paragraph 40.

40.1 TACLS, paragraph 51A

40.2 The alleged deficiencies in the HY15 Financial Report alleged in paragraph 40 are explained, and their effects on the 2015 Half Year Financial Report are identified (and where possible) quantified in the expert report of Wayne Basford dated 1 December 2007 (**Basford**).

Paragraph 41.

41.1 Paragraphs 19 to 40 are repeated.

41.2 The existence of the Rebate Maximisation Policy, Rebate Accounting Approach and the matters alleged in paragraphs 19, 20, 23, 24(a) to (c), 27, 28 and 29 to 35 and 40 (and the particulars to those paragraphs including any documents referred to) meant that no auditor

acting with due care and skill could conclude that the HY15 Financial Report did not contain material misstatements, particularly in relation to the value of inventory, provisions and the stated amounts for net profit before and after tax.

41.3 The existence of the Rebate Maximisation Policy, Rebate Accounting Approach and the matters alleged in paragraphs 19, 20, 23, 24(a) to (c), 27, 28 and 29 to 35 (and the particulars to those paragraphs including any documents referred to) meant that an auditor acting with due care and skill would not have provided an unqualified review report in respect of the HY15 Financial Report.

41.4 Further, or in the alternative, paragraphs 549 to 676 and the particulars to those paragraphs (including any documents referred to) are repeated.

41.5 Refer to and repeat CPPC, paragraphs 174-179 (including any documents referred to).

Paragraph 42. Intentionally blank

Paragraph 43.

43.1 TACLS, paragraph 54.

43.2 Refer to and repeat CPPC, paragraphs 180-181 (including any documents referred to).

Paragraph 44.

44.1 TACLS, paragraph 55.

Paragraph 45. Intentionally blank

Paragraph 46.

46.1 TACLS, paragraph 57.

46.2 Refer to and repeat CPPC, paragraphs 185-188 (including any documents referred to).

Paragraph 47.

47.1 TACLS, paragraph 58.

47.2 Refer to and repeat CPPC, paragraphs 189-190 (including any documents referred to).

Paragraph 48.

48.1 TACLS, paragraph 59.

48.2 Refer to and repeat CPPC, paragraphs 191-192 (including any documents referred to).

Paragraph 49.

49.1 TACLS, paragraph 60.

49.2 Refer to and repeat CPPC, paragraphs 193 (including any documents referred to).

Paragraph 50.

50.1 TACLS, paragraph 61.

50.2 Refer to and repeat CPPC, paragraphs 194-195 (including any documents referred to).

Paragraph 51.

51.1 TACLS, paragraph 62.

51.2 Refer to and repeat CPPC, paragraphs 196-198 (including any documents referred to).

Paragraph 52.

52.1 In relation to Deloitte's knowledge of the matters at paragraphs 19, 23, 24(a) to (d), 38 and 40, the NED Cross-Claimants refer to and repeat the particulars to paragraphs 20 and 36 (including any documents referred to), but say further that to the extent that those paragraphs refer to Deloitte's knowledge of:

- (a) inventory levels of the DSE Group, by 17 August 2015, Deloitte was aware (or ought to have been aware), by virtue of receiving the FAC Papers¹³¹ and the Board Papers¹³² that inventory levels had not reduced in accordance with projections;¹³³
- (b) inventory obsolescence and inventory management, by 17 August 2015:
 - (i) Deloitte was aware (or ought to have been aware), by virtue of receiving the FAC Papers¹³⁴ and the Board Papers¹³⁵ that stock with more than 12 months cover could still be classified as Active stock, the fact that only a very small proportion of stock continued to be classified other than as active stock and that notwithstanding the increasing inventory levels, the inventory provision had reduced;
 - (ii) by reference to the FY15 FAC Report¹³⁶, Deloitte was aware (or ought to have been aware) of the decline in the number of stocktakes from 228 stocktakes completed in FY14, to 62 stocktakes completed in FY15; and
 - (iii) further, or in the alternative, Deloitte was aware (or ought to have been aware) that stock with more than 12 months cover could still be classified as Active stock, the fact that only a very small proportion of stock continued to be

¹³¹ FAC Minutes and FAC Papers for 19 May 2015 (DSE.600.003.3462, DSE.003.037.7160, DSE.003.037.7161) and 11 August 2015 (DSE.003.033.3812, DSE.600.003.3462)

¹³² Trading Updates and Board Minutes for 17 March 2015 (DSE.600.002.9223, DSE.600.002.9219), 20 April 2015 (DSE.001.006.5198, DSE.600.002.9572), 19 May 2015 (DSE.600.003.0001, DSE.600.002.9965), 16 June 2015 (DSE.600.003.0724, DSE.600.003.0711), 20 July 2015 (DSE.600.003.1097, DSE.010.004.5464) 17 August 2015 (DSE.600.003.1464, DSE.600.003.2095).

¹³³ See also DEL.001.001.7716, DEL.001.001.8100, DEL.001.001.8778, DEL.001.001.9340, DEL.001.001.9472, DEL.001.001.9510, DEL.001.001.9522, DEL.001.002.1494, DEL.001.002.1495, DEL.001.002.1498, DEL.001.002.1509, DEL.001.002.1510, DEL.001.002.3789, DEL.001.002.3790

¹³⁴ Minutes and FAC Papers for FAC Meeting on 19 May 2015 (DSE.600.003.3462, DSE.003.037.7160, DSE.003.037.7161) and 11 August 2015 (DSE.003.033.3812, DSE.600.003.3462)

¹³⁵ Trading Updates and Board Minutes for 17 March 2015 (DSE.600.002.9223, DSE.600.002.9219), 20 April 2015 (DSE.001.006.5198, DSE.600.002.9572), 19 May 2015 (DSE.600.003.0001, DSE.600.002.9965), 16 June 2015 (DSE.600.003.0724, DSE.600.003.0711), 20 July 2015 (DSE.600.003.1097, DSE.010.004.5464) and 17 August 2015 (DSE.600.003.1464, DSE.600.003.2095).

¹³⁶ POT.001.014.0001

classified other than as active stock and that notwithstanding the increasing inventory levels, the inventory provision had reduced having made the statements alleged in paragraphs 888(k) to (r) and/or by virtue of the matters alleged in paragraphs 1015 to 1026 (and the particulars to those paragraphs including any documents referred to);¹³⁷

- (c) like-for-like retail sales, by 17 August 2015, Deloitte was aware (or ought to have been aware) from Board Papers for the Board Meeting on 20 July 2015¹³⁸ that comparative retail sales for "bricks and mortar" stores were approximately -7% (with retail comprising 77.8% of the business);
- (d) cash flow, by 17 August 2015, Deloitte was aware (or ought to have been aware), by virtue of receiving the FAC Papers¹³⁹ and Board Papers¹⁴⁰ held prior to 17 August 2015, of the substantial level of net debt (which at least prior to 22 June 2015 was in excess of the Westpac facility limit as reported to the Board) and the business' negative operating cashflow; and
- (e) rebates, by 17 August 2015, Deloitte was aware (or ought to have been aware) of the Rebate Maximisation Policy, Rebate Driven Buying Practices and Rebate Accounting Approach.¹⁴¹

52.2 Deloitte knew or ought to have known of the matters alleged in paragraph 46 by reason of:

- (a) the fact that as auditor of DSH, Deloitte was or should have been aware of the cashflow position of DSH and that DSH had from time to time exceeded its finance facility and failed to comply with its required clean down;
- (b) by receiving the FAC Papers and Board Papers for the period from 16 February 2015 to 30 April 2015¹⁴², Deloitte was aware:
 - (i) of the business' negative operating cashflow in January 2015 and February 2015 and that cash at end of period for March, February and May 2015 were

¹³⁷ See also DEL.001.001.7716, DEL.001.001.8100, DEL.001.001.8778, DEL.001.001.9340, DEL.001.001.9472, DEL.001.001.9510, DEL.001.001.9522, DEL.001.002.1494, DEL.001.002.1498, DEL.001.002.1509, DEL.001.002.1510, DEL.001.002.3789, DEL.001.002.3790, DEL.001.002.4198

¹³⁸ DSE.600.003.1097

¹³⁹ FAC Minutes and FAC Papers for 19 May 2015 (DSE.600.003.3462, DSE.003.037.7160, DSE.003.037.7161) and 11 August 2015 (DSE.003.033.3812, DSE.600.003.3462)

¹⁴⁰ Trading Updates and Board Minutes for 17 March 2015 (DSE.600.002.9223, DSE.600.002.9219), 20 April 2015 (DSE.001.006.5198, DSE.600.002.9572), 19 May 2015 (DSE.600.003.0001, DSE.600.002.9965), 16 June 2015 (DSE.600.003.0724, DSE.600.003.0711), 20 July 2015 (DSE.600.003.1097, DSE.010.004.5464) and 17 August 2015 (DSE.600.003.1464, DSE.600.003.2095).

¹⁴¹ DEL.001.001.7732, DEL.001.001.7905, DEL.001.001.8272, DEL.001.001.8861, DEL.001.001.9340, DEL.001.001.9510, DEL.001.001.9522, DEL.001.002.1085, DEL.001.002.1093, DEL.001.002.1226, DEL.001.002.1449, DEL.001.002.1462, DEL.001.002.1463, DEL.001.002.1509, DEL.001.002.1510, DEL.001.002.2522, DEL.001.002.2587, DEL.001.002.2592, DEL.001.002.2598, DEL.001.002.2629, DEL.001.002.2630, DEL.001.002.3789, DEL.001.002.3790, DEL.001.002.3881,

¹⁴² Trading updates and Board Minutes for 16 February 2015 (DSE.600.002.8827, DSE.003.037.7161), 17 March 2015 (DSE.600.002.9223, DSE.600.002.9219) and 20 April 2015 (DSE.001.006.5198, DSE.600.002.9572).

- all projected to be in excess of what it understood to be the Westpac Facility limit;
- (ii) that the actual payables figures for the months of January, February and March 2015 (recorded in the trading updates provided to the board in meetings held on 16 February 2015, 17 March 2015 and 20 April 2015 respectively¹⁴³) exceeded the projections which had been provided;
 - (iii) as at April 2015, net debt was at least \$101.4 million in circumstances where the Westpac facility was \$82 million, and management was suggesting "increasing the debt facility from \$82m to 135m";
 - (iv) changes in relation to payable levels suggested payments to suppliers were being pushed out;
 - (v) cash flow projections provided to the FAC and Board were invariably missed and substantial revisions to those projections were made each month; and
- (c) in the above circumstances, an auditor acting with reasonable care, skill and diligence ought to have become aware of the matters alleged in paragraph 46.
- 52.3 Deloitte knew or ought to have known of the matters alleged in paragraph 49 by reason of the fact that Deloitte received the Board Papers for June and July 2015.
- 52.4 Deloitte knew or ought to have known of the matters alleged in paragraph 50 by reason of:
- (a) the above particulars in so far as they relate to the ordering and/or acquisition of Bad Stock prior to June 2015 and Inadequate Inventory Management and further that:
 - (i) Deloitte received the FAC Papers¹⁴⁴ and Board Papers¹⁴⁵ for the meetings held prior to 28 June 2015, and was aware that although inventory levels were increasing, the amount of the provision had reduced, stock with more than 12 months cover could still be classified as Active stock, only a 5% provision was applied to active stock with 13-24 months cover, only a 10% provision was applied to active stock with over 24 months cover, the maximum provision applied to End of Life stock which wasn't to be reordered was 25% for stock which had more than 24 months cover and the maximum provision applied to

¹⁴³ Trading updates for the Board Meeting on 16 February 2015 (DSE.600.002.8827), 17 March 2015 (DSE.600.002.9223) and 20 April 2015 (DSE.001.006.5198).

¹⁴⁴ FAC Minutes and FAC Papers for the FAC Meetings on 12 August 2014 (DSE.003.043.8880, DSE.003.047.7147, DSE.003.047.7148, DSE.003.047.7149, DSE.003.047.7151, DSE.003.047.7165, DSE.003.047.7169, DSE.003.047.7218, DSE.003.047.7247), 25 November 2014 (DSE.003.040.3461, DSE.003.043.8879, DSE.003.043.8880) 12 February 2015 (DSE.003.037.7161, DSE.003.040.3460, DSE.003.040.3461, DSE.003.040.3465, DSE.003.040.3467, DSE.003.040.3490, DSE.003.040.3511) 19 May 2015 (DSE.600.003.3462, DSE.003.037.7160, DSE.003.037.7161)

¹⁴⁵ Trading updates and Board Minutes for the Board Meetings on 18 August 2014 (COO.001.003.0001; DSE.003.046.2325, DSE.003.046.2326), 15 October 2014 (DSE.003.046.2326, DSE.600.002.8557), 25 November 2014 (DSE.600.002.8557, DSE.600.002.8827), 16 February 2015 (DSE.600.002.8827, DSE.600.002.8963), 17 March 2015 (DSE.600.002.9223, DSE.600.002.9219), 20 April 2015 (DSE.001.006.5198, DSE.600.002.9572), 19 May 2015 (DSE.600.003.0001, DSE.600.002.9965) and 16 June 2015 (DSE.600.003.0724, DSE.600.003.0711).

No Re-order/discontinued stock was 50% for stock which had in excess of 24 months cover;

- (ii) a \$60 million impairment, as pleaded in paragraphs 73 and 74 was communicated to the market in an ASX announcement dated 30 November 2015;¹⁴⁶ and
- (iii) in the above circumstances, an auditor acting with reasonable care, skill and diligence, ought to have known that provisions and write offs should have been, but were not, made as at 28 June 2015.

52.5 Deloitte knew or ought to have known of the matters alleged in paragraph 51 by reason of:

- (a) the above particulars in so far as they relate to Deloitte's knowledge of the cash flow position of DSH, the unreliability of cashflow projections; the payables position of DSH and the failure to reduce inventory in accordance with projections; and
- (b) by reason of the fact that Deloitte received the FAC Papers¹⁴⁷ and Board Papers¹⁴⁸ for the period to 22 June 2015, Deloitte was aware that the debt levels at the end of month were prior to 22 June 2015 in excess of the \$82 million Westpac facility.

52.6 Deloitte knew or ought to have known of the matters alleged in paragraph 55 by reason of the facts, matters and circumstances pleaded in paragraphs 934 to 1064 and the particulars to those paragraphs (including any documents referred to).

52.7 Further particulars may be provided following the service of evidence.

Paragraph 53.

53.1 TACLS, paragraph 64.

53.2 Refer to and repeat CPPC, paragraphs 246-248 (including any documents referred to).

Paragraph 54.

54.1 TACLS, paragraph 65.

Paragraph 55.

55.1 TACLS, paragraph 65A.

55.2 The alleged deficiencies in the FY15 Financial Report alleged in paragraph 55 are explained, and their effects on the FY15 Financial Report are identified and (where possible) quantified, in Basford.

¹⁴⁶ DSE.003.033.0974

¹⁴⁷ FAC Minutes and FAC Papers for 19 May 2015 (DSE.600.003.3462, DSE.003.037.7160, DSE.003.037.7161)

¹⁴⁸ Trading updates and Board Minutes for 19 May 2015 (DSE.600.003.0001, DSE.600.002.9965) and 16 June 2015 (DSE.600.003.0724, DSE.600.003.0711).

Paragraph 56.

56.1 TACLS, paragraph 66.

56.2 Refer to and repeat CPPC, paragraph 249 (including any documents referred to).

Paragraph 57.

57.1 TACLS, paragraph 67.

57.2 The existence of the Rebate Maximisation Policy, Rebate Accounting Approach and the matters alleged in paragraphs 19, 20, 23, 24(a) to (d), 27, 28, 29 to 35, 46, 49, 50 and 51 (and the particulars to those paragraphs including any documents referred to) meant that no auditor acting with due care and skill could conclude that the FY15 Financial Report did not contain material misstatements, particularly in relation to the value of inventory, provisions and the stated amounts for net profit before and after tax.

57.3 The existence of the Rebate Maximisation Policy, Rebate Accounting Approach and the matters alleged in paragraphs 19, 20, 23, 24(a) to (d), 27, 28, 29 to 35, 46, 49, 50 and 51 (and the particulars to those paragraphs including any documents referred to) meant that an auditor acting with due care and skill would not have provided an unqualified audit report in respect of the FY15 Financial Report.

57.4 Further, or in the alternative, paragraphs 934 to 1064 and the particulars to those paragraphs (including any documents referred to) are repeated.

57.5 Refer to and repeat CPPC, paragraphs 250-255 (including any documents referred to).

Paragraph 58. Intentionally blank

Paragraph 59.

59.1 TACLS, paragraph 69.

59.2 Refer to and repeat CPPC, paragraph 256 (including any documents referred to).

Paragraph 60.

60.1 TACLS, paragraph 70.

Paragraph 61. Intentionally blank

Paragraph 62.

62.1 TACLS, paragraph 72

62.2 Refer to and repeat CPPC, paragraphs 261-262 (including any documents referred to).

Paragraph 63.

63.1 TACLS, paragraph 73.

63.2 Refer to and repeat CPPC, paragraphs 263-264 (including any documents referred to).

Paragraph 64.

64.1 TACLS, paragraph 74.

64.2 Refer to and repeat CPPC, paragraphs 265-266 (including any documents referred to).

Paragraph 65.

65.1 TACLS, paragraph 75.

65.2 Refer to and repeat CPPC, paragraphs 267-268 (including any documents referred to).

Paragraph 66.

66.1 TACLS, paragraph 76.

66.2 Refer to and repeat CPPC, paragraphs 269-271 (including any documents referred to).

Paragraph 67.

67.1 TACLS, paragraph 77.

67.2 Refer to and repeat CPPC, paragraph 272 (including any documents referred to).

Paragraph 68.

68.1 TACLS, paragraph 78.

68.2 Refer to and repeat CPPC, paragraph 273 (including any documents referred to).

Paragraph 69.

69.1 TACLS, paragraph 79.

69.2 Refer to and repeat CPPC, paragraphs 274-276 (including any documents referred to).

Paragraph 70.

70.1 TACLS, paragraph 80.

70.2 Refer to and repeat CPPC, paragraphs 277-279 (including any documents referred to).

Paragraph 71.

71.1 TACLS, paragraph 81.

71.2 Refer to and repeat CPPC, paragraphs 280-282 (including any documents referred to).

Paragraph 72.

72.1 TACLS, paragraph 82.

72.2 Refer to and repeat CPPC, paragraphs 283-284 (including any documents referred to).

Paragraph 73.

73.1 TACLS, paragraph 83.

73.2 Refer to and repeat CPPC, paragraphs 283-285 (including any documents referred to).

Paragraph 74.

74.1 TACLS, paragraph 84.

74.2 Refer to and repeat CPPC, paragraph 285 (including any documents referred to).

Paragraph 75.

75.1 TACLS, paragraph 85.

75.2 Refer to and repeat CPPC, paragraphs 286-287 (including any documents referred to).

Paragraph 76.

76.1 TACLS, paragraph 86.

76.2 Refer to and repeat CPPC, paragraphs 288-290 (including any documents referred to).

Paragraph 77.

77.1 TACLS, paragraph 87.

77.2 Refer to and repeat CPPC, paragraphs 291-292 (including any documents referred to).

Paragraph 78.

78.1 TACLS, paragraph 88.

78.2 Refer to and repeat CPPC, paragraphs 293-294 (including any documents referred to).

Paragraph 79.

79.1 TACLS, paragraph 89.

79.2 Refer to and repeat CPPC, paragraphs 295-297 (including any documents referred to).

Paragraph 80.

80.1 TACLS, paragraph 90.

80.2 Refer to and repeat CPPC, paragraphs 298-301 (including any documents referred to).

FY14 AUDIT

III. FY14 AUDIT OBLIGATIONS

DSH's FY14 Statutory Obligations

Paragraph 81. Intentionally blank

Paragraph 82. Intentionally blank

Paragraph 83. Intentionally blank

Paragraph 84.

- 84.1 The NED Cross-Claimants rely upon the whole of the Full Year Accounting Standards for their full force and effect.

Deloitte's FY14 Statutory Auditing Obligations

Paragraph 85.

- 85.1 The applicable auditing standards for the audit of the FY14 Financial Report are the Full Year Auditing Standards identified at paragraph 86.
- 85.2 Further particulars may be provided after the service of evidence.

Paragraph 86.

- 86.1 The NED Cross-Claimants rely upon the whole of the Full Year Auditing Standards (as in force at the relevant time) for their full force and effect.
- 86.2 The Full Year Auditing Standards in force during the FY14 Audit included:
- (a) ASA 200 (27 October 2009);
 - (b) ASA 230 (27 October 2009);
 - (c) ASA 240 (27 June 2011);
 - (d) ASA 260 (27 June 2011);
 - (e) ASA 265 (27 October 2009);
 - (f) ASA 300 (27 June 2011);
 - (g) ASA 315 (27 June 2011);
 - (h) ASA 330 (27 October 2009);
 - (i) ASA 500 (27 June 2011);
 - (j) ASA 501 (27 June 2011);
 - (k) ASA 520 (27 October 2009);
 - (l) ASA 530 (27 October 2009);

- (m) ASA 540 (27 June 2011);
- (n) ASA 570 (1 July 2013);
- (o) ASA 580 (1 July 2013);
- (p) ASA 600 (27 October 2009);
- (q) ASA 700 (1 July 2013);
- (r) ASA 701 (27 June 2007).

86.3 Further particulars may be provided following the service of evidence.

FY14 Deloitte Retainer

Paragraph 87.

- 87.1 The terms of the FY14 Deloitte Retainer are contained in:
- (a) a letter from Deloitte to "Mr Bill Wavish, Chairman - Finance and Audit Committee" of DSH dated 13 December 2013;¹⁴⁹
 - (b) the document entitled "*Deloitte Standard Terms and Conditions*" effective from 21 March 2013 which was enclosed with that letter¹⁵⁰

(FY14 Engagement Letter).

Paragraph 88.

- 88.1 The term was express and appeared under the heading "*Audit*" coupled with Appendix A to the FY14 Engagement Letter.¹⁵¹

Paragraph 89.

- 89.1 The term was express and contained in clause 3.1 of the "*Deloitte Standard Terms and Conditions*" enclosed with the FY14 Engagement Letter.¹⁵²

Paragraph 90.

- 90.1 The term was implied by law.

Paragraph 91.

- 91.1 The term was express and appeared under the heading "*Audit*" coupled with Appendix A to the FY14 Engagement Letter.¹⁵³
- 91.2 The relevant Australian Auditing Standards are the Full Year Auditing Standards.
- 91.3 Further particulars may be provided after the service of evidence.

¹⁴⁹ DSE.001.015.5610

¹⁵⁰ DSE.300.001.2024

¹⁵¹ DSE.001.015.5610

¹⁵² DSE.300.001.2024

¹⁵³ DSE.001.015.5610

Paragraph 92.

92.1 The term was express and contained on page 2 of the FY14 Engagement Letter.

Paragraph 93.

93.1 The term was express and contained on page 2 of the FY14 Engagement Letter.

Paragraph 94.

94.1 The term was express and contained on page 2 of the FY14 Engagement Letter.

IV. DELOITTE'S CONDUCT OF THE FY14 AUDIT**FY14 Audit Strategy****Paragraph 95.**

95.1 The FY14 Audit Strategy is set out in the document entitled "*Audit Strategy Dick Smith Holdings Limited External Audit Strategy for the financial year ending 29 June 2014 – January 2014*" provided to DSH under cover letter attentioned to Wavish dated 16 January 2014 (**FY14 Audit Strategy Presentation**).¹⁵⁴

95.2 The NED Cross-Claimants rely upon the whole of the FY14 Audit Strategy Presentation for its full force and effect.

Paragraph 96.

96.1 In respect of paragraph 96(a): FY14 Audit Strategy Presentation, section 1 "*Introduction*", sub-heading "*Audit Strategy, Risk Assessment & Responses*", page 4.¹⁵⁵

96.2 In respect of paragraph 96(b): FY14 Audit Strategy Presentation, section 1 "*Introduction*", sub-heading "*Audit Strategy, Risk Assessment & Responses*", page 4.¹⁵⁶

96.3 In respect of paragraph 96(c): FY14 Audit Strategy Presentation, section 2 "*Overview of Audit Strategy*", page 5.¹⁵⁷

Paragraph 97.

97.1 FY14 Audit Strategy Presentation, cover letter, page 2.¹⁵⁸

¹⁵⁴ DSE.001.015.5593; DEL.001.001.1970

¹⁵⁵ DSE.001.015.5593 at 5596

¹⁵⁶ DSE.001.015.5593 at 5596

¹⁵⁷ DSE.001.015.5593 at 5597

¹⁵⁸ DSE.001.015.5593 at 5594

Paragraph 98.

98.1 FY14 Audit Strategy Presentation, section 3 "*Risk Assessment & Audit Responses*", pages 8, 9 and 11.¹⁵⁹

Paragraph 99.

99.1 FY14 Audit Strategy Presentation, section 1 "*Introduction*", page 4; section 3 "*Risk Assessment & Audit Responses*", pages 8, 9 and 11; section 4 "*Summary of Key Deliverables*", page 14.¹⁶⁰

FY14 AASB 102 costing audit procedures**Paragraph 100.**

100.1 FY14 Audit Strategy Presentation, section 3 "*Risk Assessment & Audit Responses*", page 9.¹⁶¹

FY14 rebate audit procedures**Paragraph 101.**

101.1 FY14 Audit Strategy Presentation, section 3 "*Risk Assessment & Audit Responses*", page 11.¹⁶²

FY14 inventory provision audit procedures**Paragraph 102.**

102.1 FY14 Audit Strategy Presentation, section 3 "*Risk Assessment & Audit Responses*", page 8.¹⁶³

FY14 other inventory provisions audit procedures**Paragraph 103.**

103.1 FY14 Audit Strategy Presentation, section 3 "*Risk Assessment & Audit Responses*", page 9.¹⁶⁴

Internal control and system procedure reporting**Paragraph 104.**

104.1 FY14 Audit Strategy Presentation, section 4 "*Summary of Key Deliverables*", page 14.¹⁶⁵

¹⁵⁹ DSE.001.015.5593 at 5600, 5601 and 5603

¹⁶⁰ DSE.001.015.5593 at 5596, 5600, 5601, 5603 and 5606

¹⁶¹ DSE.001.015.5593 at 5601

¹⁶² DSE.001.015.5593 at 5603

¹⁶³ DSE.001.015.5593 at 5600

¹⁶⁴ DSE.001.015.5593 at 5601

¹⁶⁵ DSE.001.015.5593 at 5606

Performance of the FY14 Audit

Paragraph 105.

105.1 FY14 Audit Strategy Presentation, Part 6 "Appendix B - FY14 Timetable", page 16.¹⁶⁶

Paragraph 106.

106.1 In respect of paragraph 106(b): see the following Deloitte work papers:

- (a) "23404 Inventory Count Attendance - Approach for FY14 YE Audit.docx" and "23404 Inventory Count Attendance - Approach for FY14 YE Audit_Detail View.docx";¹⁶⁷
- (b) in relation to the Perth stock take: "23412 Stocktake instructions - Perth.docx"; "23412 Stocktake instructions - Perth_Detail View.docx"; "23413 Dick Smith Stocktake count sheet (Perth).xlsx"; "23413 Dick Smith Stocktake count sheet (Perth)_Detail View.docx"; "23414 Checklist for Attendance at Inventory Count - Dicksmith (Perth).docx"; "23414 Checklist for Attendance at Inventory Count - Dicksmith (Perth)_Detail View.docx"; "23415 Stock-take memo - Perth.docx" and "23415 Stock-take memo - Perth_Detail View.docx";¹⁶⁸
- (c) in relation to the Randwick stocktake: "23422 Stocktake instructions - Randwick NSW.docx"; "23422 Stocktake instructions - Randwick NSW_Detail View.docx"; "23423 Dick Smith Stocktake count sheet - Randwick NSW.xlsx"; "23423 Dick Smith Stocktake count sheet - Randwick NSW_Detail View.docx"; "23424 Checklist for Attendance at Inventory Count - Dicksmith Randwick NSW.docx"; "23424 Checklist for Attendance at Inventory Count - Dicksmith Randwick NSW_Detail View.docx"; "23425 Stocktake Memo- Dicksmith Randwick NSW.docx" and "23425 Stocktake Memo- Dicksmith Randwick NSW_Detail View.docx";¹⁶⁹
- (d) in relation to the Ipswich stocktake: "23431 Stocktake instructions - Ipswich QLD.docx"; "23431 Stocktake instructions - Ipswich QLD_Detail View.docx"; "23432 Dick Smith Stocktake count sheet - Ipswich QLD.xlsx"; "23432 Dick Smith Stocktake count sheet - Ipswich QLD_Detail View.docx"; "23433 Checklist for Attendance at Inventory Count - Dicksmith Ipswich QLD.docx"; "23433 Checklist for Attendance at Inventory Count - Dicksmith Ipswich QLD_Detail View.docx"; "23434 Stocktake Memo-

¹⁶⁶ DSE.001.015.5593 at 5608

¹⁶⁷ DEL.001.001.4009; DEL.001.001.4012

¹⁶⁸ DEL.001.001.4020; DEL.001.001.4022; DEL.001.001.4024; DEL.001.001.4025; DEL.001.001.4027; DEL.001.001.4029; DEL.001.001.4031; DEL.001.001.4033

¹⁶⁹ DEL.001.001.4038; DEL.001.001.4040; DEL.001.001.4042; DEL.001.001.4043; DEL.001.001.4045; DEL.001.001.4047; DEL.001.001.4049; DEL.001.001.4050

Dicksmith Ipswich QLD.docx and "23434 Stocktake Memo- Dicksmith Ipswich QLD_Detail View.docx";¹⁷⁰

- (e) in relation to the Chullora stocktake: "23440 Dick Smith Stocktake count sheet.xlsx"; "23440 Dick Smith Stocktake count sheet_Detail View.docx"; "23441 Checklist for Attendance at Inventory Count - Dicksmith (Chullora).docx"; "23441 Checklist for Attendance at Inventory Count - Dicksmith (Chullora)_Detail View.docx"; "23443 Stocktake Memo- Dicksmith.docx" and "23443 Stocktake Memo- Dicksmith_Detail View.docx";¹⁷¹
- (f) in relation to the Wellington stocktake: "23452 Stocktake instructions - Wellington NZ.docx"; "23452 Stocktake instructions - Wellington NZ_Detail View.docx"; "23453 Dick Smith Stocktake count sheet - Wellington NZ.xlsx"; "23453 Dick Smith Stocktake count sheet - Wellington NZ_Detail View.docx"; "23454 Checklist for Attendance at Inventory Count - Wellington NZ.docx"; "23454 Checklist for Attendance at Inventory Count - Wellington NZ_Detail View.docx"; "23455 Stocktake Memo- Dicksmith Wellington NZ.docx" and "23455 Stocktake Memo- Dicksmith Wellington NZ_Detail View.docx";¹⁷²
- (g) in relation to the Botany stocktake: "23462 Stocktake instructions - Botany NZ.docx"; "23462 Stocktake instructions - Botany NZ_Detail View.docx"; "23463 Dick Smith Stocktake count sheet - Botany NZ.xlsx"; "23463 Dick Smith Stocktake count sheet - Botany NZ_Detail View.docx"; "23464 Checklist for Attendance at Inventory Count - Botany NZ.docx"; "23464 Checklist for Attendance at Inventory Count - Botany NZ_Detail View.docx"; "23465 Stocktake Memo- Dicksmith Botany NZ.docx" and "23465 Stocktake Memo- Dicksmith Botany NZ_Detail View.docx".¹⁷³

106.2 In respect of paragraph 106(d): see for example

- (a) Email dated 18 July 2014 from Shelton Jacob of DSH to Tony Akkari of DSH, copied to Paul Backo of DSH and Park with subject "Re: April'14 Board Report".¹⁷⁴
- (b) Document attached to 18 July 2014 email entitled "Board Papers 23rd May 2014".¹⁷⁵
- (c) Deloitte work papers entitled:

¹⁷⁰ DEL.001.001.4055; DEL.001.001.4057; DEL.001.001.4059; DEL.001.001.4060; DEL.001.001.4062; DEL.001.001.4064; DEL.001.001.4066; DEL.001.001.4068

¹⁷¹ DEL.001.001.4073; DEL.001.001.4074; DEL.001.001.4076; DEL.001.001.4078; DEL.001.001.4080; DEL.001.001.4082

¹⁷² DEL.001.001.4084; DEL.001.001.4086; DEL.001.001.4088; DEL.001.001.4089; DEL.001.001.4091; DEL.001.001.4093; DEL.001.001.4095; DEL.001.001.4097

¹⁷³ DEL.001.001.4102; DEL.001.001.4104; DEL.001.001.4106; DEL.001.001.4107; DEL.001.001.4109; DEL.001.001.4111; DEL.001.001.4113; DEL.001.001.4115

¹⁷⁴ DSE.010.065.3711

¹⁷⁵ DSE.010.065.3713

- (i) "21011 Review of Board Minutes.docx" and "21011 Review of Board Minutes_Detail View.docx";¹⁷⁶
- (ii) "21011a Dick Smith Board Report - July.pdf" and "21011a Dick Smith Board Report - July_Detail View.docx";¹⁷⁷
- (iii) "21011b Dick Smith Board Report - August(13-05-2014 5.30.56 PM).pdf" and "21011b Dick Smith Board Report - August(13-05-2014 5.30.56 PM)_Detail View.docx";¹⁷⁸
- (iv) "21011c Dick Smith Board Report - September(13-05-2014 5.30.56 PM).pdf" and "21011c Dick Smith Board Report - September(13-05-2014 5.30.56 PM)_Detail View.docx";¹⁷⁹
- (i) "21011d Dick Smith Board Report - October(13-05-2014 5.30.56 PM).pdf" and "21011d Dick Smith Board Report - October(13-05-2014 5.30.56 PM)_Detail View.docx";¹⁸⁰
- (v) "21011e Dick Smith Trading Update - November(13-05-2014 5.30.56 PM).pptx" and "21011e Dick Smith Trading Update - November(13-05-2014 5.30.56 PM)_Detail View.docx";¹⁸¹
- (vi) "21011f Board Report - Dec 2013.pdf" and "21011f Board Report - Dec 2013_Detail View.docx";¹⁸²
- (vii) "21011g Board Minutes - Feb 2014.pdf" and "21011g Board Minutes - Feb 2014_Detail View.docx";¹⁸³
- (viii) "21011h Board Minutes - March 2014.pdf" and "21011h Board Minutes - March 2014_Detail View.docx";¹⁸⁴
- (ix) "21011i Board Minutes - April 2014.pdf" and "21011i Board Minutes - April 2014_Detail View.docx";¹⁸⁵
- (x) "21011j Board Minutes - May 2014.pdf" and "21011j Board Minutes - May 2014_Detail View.docx";¹⁸⁶

¹⁷⁶ DEL.001.001.3287; DEL.001.001.3293

¹⁷⁷ DEL.001.001.3297; DEL.001.001.3317

¹⁷⁸ DEL.001.001.3319; DEL.001.001.3342

¹⁷⁹ DEL.001.001.3344; DEL.001.001.3361

¹⁸⁰ DEL.001.001.3363; DEL.001.001.3382

¹⁸¹ DEL.001.001.3384; DEL.001.001.3417

¹⁸² DEL.001.001.3419; DEL.001.001.3424

¹⁸³ DEL.001.001.3426; DEL.001.001.3456

¹⁸⁴ DEL.001.001.3458; DEL.001.001.3510

¹⁸⁵ DEL.001.001.3512; DEL.001.001.3582

¹⁸⁶ DEL.001.001.3584; DEL.001.001.3622

- (xi) "21011k Board Minutes - June 2014.pdf" and "21011k Board Minutes - June 2014_Detail View.docx";¹⁸⁷
- (xii) "21047 DICK SMITH BOARD MINUTES 16 OCT 13(13-05-2014 5.30.56 PM).pdf" and "21047 DICK SMITH BOARD MINUTES 16 OCT 13(13-05-2014 5.30.56 PM)_Detail View.docx";¹⁸⁸
- (xiii) "30603a PSR docket - DSH board report.pdf" and "30603a PSR docket - DSH board report_Detail View.docx".¹⁸⁹

106.3 In respect of paragraph 106(e): in relation to rebates see for example Deloitte work papers entitled:

- (a) "22310 Rebates Management Business Cycle - D&I Testing";¹⁹⁰
- (b) "22310 Rebates Management Business Cycle - D&I Testing_Detail View".¹⁹¹

Discussion between Deloitte and DSH in relation to the accounting treatment of O&A rebates

Paragraph 107. Intentionally blank

Paragraph 108.

108.1 Email sent on 26 May 2014 from Cork to Potts (copied to Mills and White) with subject "*Dick Smith: O&A Rebates*" (26 May 2014 Email).¹⁹²

108.2 Further particulars may be provided following the service of evidence.

Paragraph 109.

109.1 26 May 2014 Email.¹⁹³

109.2 See also Deloitte work papers entitled:

- (a) "22310 Rebates Management Business Cycle - D&I Testing";¹⁹⁴
- (b) "22310 Rebates Management Business Cycle - D&I Testing_Detail View";¹⁹⁵ and
- (c) "13201 Determine Material ABCTD - Group Scoping 29 June 2014_Detail View".¹⁹⁶

109.3 Further particulars may be provided following the service of evidence.

¹⁸⁷ DEL.001.001.3624; DEL.001.001.3652

¹⁸⁸ DEL.001.001.3654; DEL.001.001.3656

¹⁸⁹ DEL.001.001.6984; DEL.001.001.6986

¹⁹⁰ DEL.001.001.3870

¹⁹¹ DEL.001.001.3871

¹⁹² DSE.003.054.4114

¹⁹³ DSE.003.054.4114

¹⁹⁴ DEL.001.001.3870

¹⁹⁵ DEL.001.001.3871

¹⁹⁶ DEL.001.001.2400

Paragraph 110.

110.1 26 May 2014 Email.¹⁹⁷

Paragraph 111.

111.1 Email sent on 6 June 2014 from Potts to White with subject "**RE: O&A**" (6 June 2014 Email).¹⁹⁸

111.2 Document attached to 6 June 2014 email entitled "Position Paper – Vendor Rebates – Profit/Loss and Balance Sheet Recognition, dated 28 May 2014 and prepared by Nigel Mills of DSH" (**Rebate Position Paper**).¹⁹⁹

111.3 See also First Mills Affidavit at [124]-[129] (including any documents referred to).²⁰⁰

Paragraph 112.

112.1 Rebate Position Paper.²⁰¹

Paragraph 113.

113.1 6 June 2014.²⁰²

113.2 Document attached to 6 June 2014 email entitled "*Vendor Rebates – O&A*".²⁰³

113.3 See also First Mills Affidavit at [128] (including any documents referred to).

Paragraph 114.

114.1 Email dated 10 June 2014 from Cork to Potts, copied to White and Mills with subject "**RE:O&A**" (10 June 2014 Email).²⁰⁴

114.2 See also First Mills Affidavit at [129] (including any documents referred to).

Paragraph 115.

115.1 Email dated 9 July 2014 from Potts to Abboud with subject "*Bill update*".²⁰⁵

115.2 See also the FY14 FAC Report which states:²⁰⁶

"In the HY14 financial statements, the over and above rebates were recognised as a recovery of marketing and sales expenses. This resulted in a net marketing and sales income being recognised of \$1.7 million in the income statement. During the second half of the year, management undertook a review of the appropriateness of the classification of the over and above rebates. As these amounts are essentially a

¹⁹⁷ DSE.003.054.4114

¹⁹⁸ DSE.003.054.0824

¹⁹⁹ DSE.003.054.0826

²⁰⁰ DSE.010.065.6026; DRM.028.001.0001

²⁰¹ DSE.003.054.0826 at 0827

²⁰² DSE.003.054.0824

²⁰³ DSE.003.054.0828

²⁰⁴ DSE.003.053.9575

²⁰⁵ DSE.003.047.9622

²⁰⁶ See section 3 "*Key Areas of Focus and Audit Response*", section 3.3 "*Rebate and Vendor Receivables*", page 11 under the heading "*Disclosure*": DSE.003.047.3598 at 3608

contribution to the selling costs of the inventory being cleared, it was determined that they should instead be recognised within cost of sales. We concur with this treatment and note that the reclassification does not have a material impact on the comparatives reported."

FY14 FAC Report

Paragraph 116.

116.1 The NED Cross-Claimants rely upon the whole of the FY14 FAC Report for its full force and effect.

General

116.2 In respect of paragraph 116(a): FY14 FAC Report, cover letter dated 6 August 2014 addressed to Wavish, page 2; section 1 "*Executive Summary*", sub-heading "*Status of audit and outstanding matters*", page 4.²⁰⁷

116.3 In respect of paragraph 116(b): FY14 FAC Report, section 1 "*Executive Summary*", sub-heading "*Assessment of internal controls*", page 4. See also section 4 "*Assessment of Internal Controls*", page 16.²⁰⁸

116.4 In respect of paragraph 116(c): FY14 FAC Report, section 4 "*Assessment of Internal Controls*", page 15.²⁰⁹

Inventory provision

116.5 In respect of paragraph 116(d) and (e): FY14 FAC Report, section 3 "*Key Areas of Focus and Audit Response*", sub-section 3.2 "*Inventory – Provisions*", page 10.²¹⁰

116.6 In respect of paragraph 116(f) and (h): FY14 FAC Report, section 1 "*Executive Summary*", sub-heading "*Inventory Section 3.2*", page 5; section 3 "*Key Areas of Focus and Audit Response*", sub-section 3.2 "*Inventory – Provisions*", page 10.²¹¹

116.7 In respect of paragraph 116(g): FY14 FAC Report, section 1 "*Executive Summary*", sub-heading "*Inventory Section 3.2*", page 5.²¹²

116.8 In respect of paragraph 116(i): FY14 FAC Report, section 3 "*Key Areas of Focus and Audit Response*", sub-section 3.2 "*Inventory – Costing Adjustments*", page 9; sub-section 3.2 "*Inventory – Provisions*", page 10.²¹³

²⁰⁷ DSE.003.047.3598 at 3599 & 3601; See also DEL..001.001.6953

²⁰⁸ DSE.003.047.3598 at 3601 & 3613

²⁰⁹ DSE.003.047.3598 at 3612

²¹⁰ DSE.003.047.3598 at 3607

²¹¹ DSE.003.047.3598 at 3602 & 3607

²¹² DSE.003.047.3598 at 3602

²¹³ DSE.003.047.3598 at 3606 & 3607

Inventory costing

116.9 In respect of paragraphs 116(j) and (k): FY14 FAC Report, section 3 "Key Areas of Focus and Audit Response", sub-section 3.2 "Inventory – Costing Adjustments", page 9.²¹⁴

Rebates

116.10 In respect of paragraphs 116(l), (n), (o), (p) & (q): FY14 FAC Report, section 3 "Key Areas of Focus and Audit Response", sub-section 3.3 "Rebates and Vendor Receivables", page 11.²¹⁵

116.11 In respect of paragraph 116(m): FY14 FAC Report, section 1 "Executive Summary", sub-heading "Rebates Section 3.3", page 5.²¹⁶

Asset impairment testing

116.12 In respect of paragraphs 116(r), (s), (t) & (u): FY14 FAC Report, section 3 "Key Areas of Focus and Audit Response", sub-section 3.5 "Impairment", page 13.²¹⁷

FAC Meeting on 12 August 2014Paragraph 117.

117.1 FAC Minutes for the FAC Meeting held on 12 August 2014.²¹⁸

Paragraph 118.

118.1 FAC Minutes for the FAC Meeting held on 12 August 2014.²¹⁹

Board Meeting on 18 August 2014Paragraph 119.

119.1 Board Minutes for the Board Meeting held on 18 August 2014.²²⁰

Paragraph 120.

120.1 Board Minutes for the Board Meeting held on 18 August 2014.²²¹

Paragraph 121.

121.1 Board Minutes for the Board Meeting held on 18 August 2014.²²²

²¹⁴ DSE.003.047.3598 at 3606

²¹⁵ DSE.003.047.3598 at 3608

²¹⁶ DSE.003.047.3598 at 3602

²¹⁷ DSE.003.047.3598 at 3610

²¹⁸ DSE.003.047.0973

²¹⁹ DSE.003.047.0973

²²⁰ DSE.003.046.2328

²²¹ DSE.003.046.2328

²²² DSE.003.046.2328

FY14 Audit Report

Paragraph 122.

122.1 FY14 Audit Report appears at pages 45 to 46 of the DSH Annual Report 2014.²²³

Paragraph 123.

123.1 FY14 Audit Report appears at pages 45 to 46 of the DSH Annual Report 2014.²²⁴

FY14 Financial Report

Paragraph 124.

124.1 FY14 Annual Report.²²⁵

Paragraph 125.

125.1 FY14 Financial Report, "Consolidated Statement of Profit or Loss and Other Comprehensive Income", page 49.²²⁶

Paragraph 126.

126.1 FY14 Financial Report, "Consolidated Statement of Financial Position", page 50.²²⁷

Paragraph 127.

127.1 FY14 Financial Report, Note 4 "Segment Information", page 64.²²⁸

FY14 Inventories

Paragraph 128.

128.1 FY14 Financial Report, Note 4 "Segment Information", page 64.²²⁹

128.2 Deloitte work paper entitled "13201 Determine Material ABCTD – Group Scoping 29 June 2014.xlsm".²³⁰

128.3 Basford at [76].

Paragraph 129.

129.1 AASB 102 [9] provides that inventories shall be measured at the lower of cost and net realisable value.

²²³ DSE.003.046.5445 at 5491-5492

²²⁴ DSE.003.046.5445 at 5491-5492

²²⁵ DSE.003.046.5445

²²⁶ DSE.003.046.5445 at 5495

²²⁷ DSE.003.046.5445 at 5496

²²⁸ DSE.003.046.5445 at 5510

²²⁹ DSE.003.046.5445 at 5510

²³⁰ DEL.001.001.2399

Paragraph 130.

130.1 The Obsolescence Methodology is summarised in:

- (a) Deloitte's work paper entitled "23401AU Inventories – Leadsheet and testing – Australia";²³¹
- (b) DSH's Stock Obsolescence Provision calculation spreadsheet for December 2014, tab entitled "Provision by Status";²³²
- (c) The First Mills Affidavit at [228] (including any documents referred to).

Paragraph 131.

131.1 The Revised Obsolescence Methodology is recorded in Deloitte work paper entitled "23401AU Inventories - Leadsheet and testing – Australia" at Tab 7²³³ which states that the Revised Obsolescence Methodology:

- (a) required management to assess all stock items on hand for ageing and obsolescence, through discussions with the sales team;
- (b) involved the application of percentage-based provisions to certain categories of stock (SKUs) based upon the highest of three alternate provision calculations, being the "Negative Margin Provision", the "Active/EOL Stock Provision", and the "Aged Stock Provision", as defined below;
- (c) the "Negative Margin Provision" was a variable provision, calculated as the difference between the NRV of a stock item and its "negative margin", where "negative margin" was determined:
 - (i) if the item was not on promotion, by the mark-up between the cost of the item, and the current sales price of that item plus any rebate income (**2nd Sales Margin**);
 - (ii) if the item was on promotion, the 2nd Sales Margin calculated only by reference to a 13-week period; or
 - (iii) if the item was on promotion but 13-weeks' cost and sales data was not available, the current 2nd Sales Margin;
- (d) the Active/EOL Stock Provision was a fixed provision applied to inventory net of rebates for SKU's with excess of six months' cover and 2 months of age in the categories "Active" or "End of Life", applying a defined percentage depending upon the quantity of stock held, namely:
 - (i) for inventory with "Active" status:

²³¹ DEL.001.001.3985

²³² DSE.607.001.3471

²³³ DEL.001.001.3985

- (A) a provision of 2% was applied to net stock in excess of six months' cover and 2 months of age, where DSH held from 6 to 12 months' cover;
 - (B) a provision of 5% was applied to net stock in excess of six months' cover and 2 months of age, where DSH held from 13 to 24 months' cover;
 - (C) a provision of 10% was applied to net stock in excess of six months' cover and 2 months of age, where DSH held more than 24 months cover, and
- (ii) for inventory with "End of Life" status:
 - (A) a provision of 2% was applied to net stock in excess of six months' cover and 2 months of age, where DSH held from 6 to 12 months' cover;
 - (B) a provision of 10% was applied to net stock in excess of six months' cover and 2 months of age, where DSH held from 13 to 24 months' cover;
 - (C) a provision of 25% was applied to net stock in excess of six months' cover and 2 months of age, where DSH held more than 24 months cover, and
- (e) the Aged Stock Provision was a fixed provision applied to all inventory net of rebates in the categories "No Reorder", "Discontinue" and "Quit", applying a defined percentage depending upon the age of the stock, as follows:
 - (i) for inventory with "No Reorder" or "Discontinue" status:
 - (A) a provision of 10% was applied to stock aged up to 12 months;
 - (B) a provision of 25% was applied to stock aged from 13 to 24 months;
 - (C) a provision of 50% was applied to stock aged greater than 24 months;
 - (ii) for inventory with "Quit" status:
 - (A) a provision of 50% was applied to stock aged up to 12 months;
 - (B) a provision of 75% was applied to stock aged from 13 to 24 months; and
 - (C) a provision of 100% was applied to stock aged greater than 24 months.

FY14 Rebates

O&A rebates recognised as assets in the FY14 Balance Sheet

Paragraph 132.

- 132.1 Basford at [49]-[60].
- 132.2 AASB 101 [7] provides that omissions or misstatements of items are material if they could, individually or collectively, influence the economic decisions that users make on the basis of the financial statements. Materiality depends on the size and nature of the omission or misstatement judged in the surrounding circumstances. The size or nature of the item, or a combination of both, could be the determining factor. Assessing whether an omission or misstatement could influence economic decisions of users, and so be material, requires consideration of the characteristics of those users. The Framework states that 'users are assumed to have a reasonable knowledge of business and economic activities and accounting and a willingness to study the information with reasonable diligence'. Therefore, the assessment needs to take into account how users with such attributes could reasonably be expected to be influenced in making economic decisions.
- 132.3 AASB 101 [15] provides that financial statements shall present fairly the financial position, financial performance and cash flows of an entity. Fair presentation requires the faithful representation of the effects of transactions, other events and conditions in accordance with the definitions and recognition criteria for assets, liabilities, income and expenses set out in the Framework. The application of Australian Accounting Standards, with additional disclosure when necessary, is presumed to result in financial statements that achieve a fair presentation.
- 132.4 AASB 101 [18] provides that an entity cannot rectify inappropriate accounting policies either by disclosure of the accounting policies used or by notes or explanatory material.
- 132.5 AASB 101 [27] provides that an entity shall prepare its financial statements, except for cash flow information, using the accrual basis of accounting.
- 132.6 AASB 101 [28] provides that when the accrual basis of accounting is used, an entity recognises items as assets, liabilities, equity, income and expenses (the elements of financial statements) when they satisfy the definitions and recognition criteria for those elements in the Framework.
- 132.7 The Framework [49(a)] provides that an asset is a resource controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity.
- 132.8 The Framework [50] provides that the definitions of an asset and a liability identify their essential features but do not attempt to specify the criteria that need to be met before they are recognised in the balance sheet. Thus, the definitions embrace items that are not recognised as assets or liabilities in the balance sheet because they do not satisfy the criteria for recognition discussed in paragraphs 82 to 98. In particular, the expectation that future

economic benefits will flow to or from an entity must be sufficiently certain to meet the probability criterion in paragraph 83 before an asset or liability is recognised.

132.9 The Framework [51] provides *inter alia* that in assessing whether an item meets the definition of an asset, liability or equity, attention needs to be given to its underlying substance and economic reality and not merely its legal form.

132.10 The Framework [83] provides that an item that meets the definition of an element should be recognised if it is probable that any future economic benefit associated with the item will flow to or from the entity and the item has a cost or value that can be measured with reliability (being when it is complete, neutral and free from error).

Paragraph 133.

133.1 Deloitte work papers entitled:

- (a) '23320 Trade and other receivables Workpaper'²³⁴; and
- (b) "23302AU Trade Accounts Receivable Testing".²³⁵

133.2 Basford at [78]-[80].

133.3 First Mills Affidavit at [158] (including any documents referred to).

Paragraph 134.

134.1 Deloitte work papers entitled:

- (a) '23320 Trade and other receivables Workpaper'²³⁶; and
- (b) "23302AU Trade Accounts Receivable Testing".²³⁷

134.2 Basford at [78]-[80].

Paragraph 135.

135.1 Basford at [82].

135.2 Deloitte work papers entitled:

- (a) "22310 Rebates Management Business Cycle - D&I Testing (25-07-2016 6.09.04 PM)"²³⁸, in particular, Tab 3 entitled "System description – Rebates within Vendor Trading Agreement", Tab 5 entitled "[22310-5] System Description – Rebates Process" and Tab 6 entitled "[22310-6] Testing of Controls"; and
- (b) "22310 – Rebates Management Business Cycle – D&I Testing Working Paper"²³⁹.

²³⁴ DEL.001.003.1473

²³⁵ DEL.001.001.3952

²³⁶ DEL.001.003.1473

²³⁷ DEL.001.001.3952

²³⁸ DEL.001.001.3870

²³⁹ DEL.001.001.3872

Paragraph 136.

136.1 First Mills Affidavit at [62] to [63] (including any documents referred to).

136.2 Deloitte work papers entitled:

- (a) "23303 Memo - Vendor receivables and disputed claims";²⁴⁰
- (b) "<22201> Expenditure & Inventory Management Business Cycle – D&I Testing";²⁴¹
and
- (c) "22201 Expenditure & Inventory Management Business Cycle - D&I Testing_Detail".²⁴²

Paragraph 137.

137.1 Basford at [83].

137.2 Deloitte work paper entitled "23302AU Trade Accounts Receivable Testing"²⁴³.

Paragraph 138.

138.1 Deloitte work papers entitled:

- (a) "23303 Memo - Vendor receivables and disputed claims";²⁴⁴ and
- (b) "23302AU Trade Accounts Receivable Testing".²⁴⁵

O&A rebates recognised in the FY14 P&L**Paragraph 139.**

139.1 Deloitte work papers entitled:

- (a) "26201AU Cost of sales Combined Leadsheet AUS Final";²⁴⁶ and
- (b) "26302AU Operating Expenses Testing 2014".²⁴⁷

139.2 Paragraphs 143, 144 and 147 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 140.

140.1 Corporation Act, Part 2M.3 and section 34.

140.2 AASB 1057 "Application of Australian Accounting Standards"

²⁴⁰ DEL.001.001.3973

²⁴¹ DEL.001.001.3826

²⁴² DEL.001.001.3827

²⁴³ DEL.001.001.3952

²⁴⁴ DEL.001.001.3973

²⁴⁵ DEL.001.001.3952

²⁴⁶ DEL.001.001.5105

²⁴⁷ DEL.001.001.5120

Paragraph 141.

141.1 AASB 102 [10] provides that the cost of inventories shall comprise all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.

141.2 AASB 102 [11] provides that the costs of purchase of inventories comprise the purchase price, import duties and other taxes (other than those subsequently recoverable by the entity from the taxing authorities), and transport, handling and other costs directly attributable to the acquisition of finished goods, materials and services. Trade discounts, rebates and other similar items are deducted in determining the costs of purchase.

Paragraph 142.

142.1 Paragraph 132 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 143.

143.1 Deloitte work papers entitled:

- (a) "26201AU Cost of sales Combined Leadsheet AUS Final",²⁴⁸ and
- (b) "26302AU Operating Expenses Testing 2014".²⁴⁹

Paragraph 144.

144.1 Deloitte work paper entitled "26201AU Cost of sales Combined Leadsheet AUS Final"²⁵⁰.

Paragraph 145.

145.1 Deloitte work paper entitled "26201AU Cost of sales Combined Leadsheet AUS Final"²⁵¹.

Paragraph 146.

146.1 Deloitte work paper entitled "23302AU Trade Accounts Receivable Testing".²⁵²

Paragraph 147.

147.1 Deloitte work papers entitled:

- (a) "26302AU Operating Expenses Testing 2014",²⁵³ and
- (b) "26150 Over and Above Vendor Rebate.docx"²⁵⁴.

²⁴⁸ DEL.001.001.5105

²⁴⁹ DEL.001.001.5120

²⁵⁰ DEL.001.001.5105

²⁵¹ DEL.001.001.5105

²⁵² DEL.001.001.3952

²⁵³ DEL.001.001.5120

²⁵⁴ DEL.001.001.5099

Paragraph 148.

148.1 Deloitte work paper entitled "26302AU Operating Expenses Testing 2014".²⁵⁵

Paragraph 149.

149.1 Deloitte work paper entitled "26302AU Operating Expenses Testing 2014".²⁵⁶

Paragraph 150.

150.1 Deloitte work paper entitled "26302AU Operating Expenses Testing 2014".²⁵⁷

Transfer from CODB to COS**Paragraph 151.**

151.1 Deloitte work paper entitled "30603 Signed BAC Report 6 Aug 2014".²⁵⁸

Paragraph 152.

152.1 Paragraph 27 and 28 and the particulars to those paragraphs (including any documents referred to) are repeated.

V. FY14 RISKS OF HARM**FY14 risks relating to rebates****Paragraph 153.**

153.1 Basford at [11] to [14], [60] and [86] to [87].

153.2 Paragraphs 19, 20, 22, 23, 24 and 36 and the particulars to those paragraphs (including any documents referred to) are repeated.

153.3 Paragraphs 98(b) and 101(a) and the particulars to those paragraphs (including any documents referred to) are repeated.

153.4 Deloitte work papers entitled:

- (a) "23000_23300_RSV_Plan Control Testing"²⁵⁹;
- (b) "23000_23300_RSV_Plan Substantive Testing";²⁶⁰ and
- (c) "Rebates receivable at YE".²⁶¹

²⁵⁵ DEL.001.001.5120

²⁵⁶ DEL.001.001.5120

²⁵⁷ DEL.001.001.5120

²⁵⁸ DEL.001.001.6953

²⁵⁹ DEL.001.001.7118

²⁶⁰ DEL.001.001.7119

²⁶¹ DEL.001.001.0955

Paragraph 154.

154.1 Paragraphs 20, 27, 28, 98(b), 99, 101(a), 101(b), 107 to 115, 116(l) to (q) and 132 to 152 and the particulars to those paragraphs (including any documents referred to) are repeated.

154.2 Deloitte's knowledge of the risks relating to rebates is also recorded in its work papers entitled:

- (a) *"The over-accrual of O&A Rebates (Known difference) – Other Finding"*;²⁶²
- (b) *"2300_23300 – Receivables – Process Review > Engagement Procedures – Procedures to Address Risk View"*;²⁶³
- (c) *"2300_23300 – ROMM (Assertion Level) – RSV_Conclude on Control Testing"*;²⁶⁴
- (d) *"2600_26200 – Cost of Sales – Process View > Engagement Procedures – Procedures to Address Risk View"*;²⁶⁵
- (e) *"22310-1 Rebates Management Business Lifecycle – Testing the design and Implementation of Controls"*;²⁶⁶
- (f) *'The posting of accounting (O&A rebate) journals by the category buyers – Other Finding'*²⁶⁷;
- (g) *'Incorrect classification of rebates – Other Finding'*;²⁶⁸
- (h) *'Determine whether, on the basis of the audit work – Procedure'*;²⁶⁹
- (i) *'External Audit Strategy for the financial year ending 29 June 2014'*;²⁷⁰
- (j) *'12206 Design Factors for major business cycles'*;²⁷¹
- (k) *'22310 Rebates Management Business Cycle – D&I Testing'*;²⁷²
- (l) *'26201AU Cost of sales Combined Leadsheet AUS Final'*;²⁷³
- (m) FY14 FAC Report;²⁷⁴
- (n) *'Position Paper-Vendor Rebates – Profit/Loss and Balance Sheet Recognition'*²⁷⁵ dated 28 May 2014;

²⁶² DEL.001.001.0528

²⁶³ DEL.001.001.7231

²⁶⁴ DEL.001.001.7232

²⁶⁵ DEL.001.001.7239

²⁶⁶ DEL.001.001.3870

²⁶⁷ DEL.001.001.0559

²⁶⁸ DEL.001.001.0568

²⁶⁹ DEL.001.001.1091

²⁷⁰ DEL.001.001.1970

²⁷¹ DEL.001.001.2187

²⁷² DEL.001.001.3870

²⁷³ DEL.001.001.5105

²⁷⁴ DEL.001.001.6953

²⁷⁵ DSE.003.054.0826

- (o) Deloitte document detailing meeting on 12 May 2014;²⁷⁶
- (p) '21303 JET memo';²⁷⁷
- (q) '21306 JET Australia';²⁷⁸
- (r) '23302AU Trade Accounts Receivable Testing';²⁷⁹
- (s) '23302AU Trade Accounts Receivable Testing';²⁸⁰
- (t) '23303 Memo – Vendor receivables and disputed claims';²⁸¹
- (u) '26150 Over and Above Vendor Rebate';²⁸²
- (v) '26900a Evaluation of audit scope memo';²⁸³
- (w) '30101 FY15 PL PHASED (PBC)'.²⁸⁴

Paragraph 155.

155.1 Paragraphs 133 to 142, 151 to 152 and 153 to 154 and the particulars to those paragraphs (including any documents referred to) are repeated.

Recognition of O&A rebates as receivables

Paragraph 156.

156.1 First Mills Affidavit at [80] (including any documents referred to).

156.2 Deloitte work papers entitled:

- (a) "23303 Memo - Vendor receivables and disputed claims";²⁸⁵
- (b) "23302AU Trade Accounts Receivable Testing";²⁸⁶ and
- (c) "Testing approach for standard transactions"²⁸⁷.

Paragraph 157.

157.1 First Mills Affidavit at [62]-[64], [84] and [88]-[89] (including any documents referred to).

Paragraph 158.

158.1 Basford at [87].

²⁷⁶ DEL.001.001.2649
²⁷⁷ DEL.001.001.3686
²⁷⁸ DEL.001.001.3697
²⁷⁹ DEL.001.001.3952
²⁸⁰ DEL.001.001.3953
²⁸¹ DEL.001.001.3973
²⁸² DEL.001.001.5099
²⁸³ DEL.001.001.5656
²⁸⁴ DEL.001.001.6532
²⁸⁵ DEL.001.001.3973
²⁸⁶ DEL.001.001.3952
²⁸⁷ DEL.00.001.0728

158.2 Paragraphs 153 to 154 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 159.

159.1 Paragraphs 153 to 154 and 156 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 160.

160.1 Paragraphs 133 to 142, 153 to 154 and 156 to 159 and the particulars to those paragraphs (including any documents referred to) are repeated.

Rebate treatment risks

Paragraph 161.

161.1 Paragraphs 153 to 154 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 162.

162.1 Paragraphs 153 to 154 and 161 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 163.

163.1 Paragraphs 133 to 152 and 153 to 154 and 161 to 162 and the particulars to those paragraphs (including any documents referred to) are repeated.

FY14 risks relating to COS

Paragraph 164.

164.1 Deloitte work papers entitled:

- (a) "*Scoping of Material Classes of Transactions, Account Balances and Disclosures*";²⁸⁸
- (b) "*2600_26200 – Cost of Sales – Process View > Engagement Procedures – Procedures to Address Risk View*";²⁸⁹

Paragraph 165.

165.1 Paragraph 164 and the particulars to that paragraph (including any documents referred to) are repeated.

²⁸⁸ DEL.001.001.2399

²⁸⁹ DEL.001.001.7239

Paragraph 166.

166.1 Paragraphs 164 to 165 and the particulars to those paragraphs (including any documents referred to) are repeated.

FY14 risks relating to inventory**Paragraph 167.**

167.1 FY14 FAC Report, page 10.²⁹⁰

Paragraph 168.

168.1 Paragraphs 23, 24, 25, 29, 30, 98(c), 98(d), 99, 102, 103, 116(d) to (k) and 128 to 131 and the particulars to those paragraphs (including any documents referred to) are repeated.

168.2 Deloitte work papers entitled:

- (a) *"INV/NR03- Inventory is not being correctly valued (i.e. adjustments and related cost of sales adjustments are not correctly recorded or recorded at all) due to the following: - lower of NRV or cost is not used – ROMM (Assertion Leve)"*;²⁹¹
- (b) *"2300_23400 – Inventory – Process View > Engagement Procedures – Procedures to Address Risk View"*;²⁹²
- (c) *"<22201> Expenditure & Inventory Management Business Cycle – D&I Testing"*;²⁹³
- (d) *"23401AU Inventories - Leadsheet and testing - Australia.xlsx"*;²⁹⁴ and
- (e) *"23000_23400_RSV_Identify Risks."*²⁹⁵
- (f) *'External Audit Strategy for the financial year ending 29 June 2014'*;²⁹⁶
- (g) *'23401AU - Inventories - Leadsheet and testing - Australia - Working Paper'*;²⁹⁷
- (h) *'23403 Inventory Obsolescence Memo'*;²⁹⁸
- (i) *'24102AU Trade accounts payable Testing'*;²⁹⁹
- (j) *'26900a Evaluation of audit scope memo'*;³⁰⁰
- (k) *'29101 Concluding Analytical Review – Group'*;³⁰¹

²⁹⁰ DSE.003.047.3598 at 3607

²⁹¹ DEL.001.001.1458

²⁹² DEL.001.001.7122

²⁹³ DEL.001.001.3826

²⁹⁴ DEL 001.001.3985

²⁹⁵ DEL.001.001.7126

²⁹⁶ DEL.001.001.1970

²⁹⁷ DEL.001.001.3986

²⁹⁸ DEL.001.001.4003

²⁹⁹ DEL.001.001.4303

³⁰⁰ DEL.001.001.5656

³⁰¹ DEL.001.001.6482

- (l) '29101 Concluding Analytical Review – Group';³⁰²
- (m) '30300 Audit summary memorandum'.³⁰³

Paragraph 169.

169.1 Paragraphs 167 to 168 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 170.

170.1 Paragraphs 167 to 168 and the particulars to those paragraphs (including any documents referred to) are repeated.

FY14 risks relating to journal entries

Paragraph 171.

171.1 Deloitte work paper entitled "<21305-1 Journal Entry Testing".³⁰⁴

Paragraph 172.

172.1 Paragraph 171 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 173.

173.1 Paragraphs 171 and 172 and the particulars to those paragraphs (including any documents referred to) are repeated.

VI. FY14 AUDIT DEFICIENCIES

FY14 recognition of unclaimed FY14 O&A Rebates as an asset

Paragraph 174. Intentionally blank

Paragraph 175.

175.1 Deloitte's testing of Account 1392 for the purpose of the FY14 Audit was documented in its work papers entitled:

- (a) "23302AU Trade Account Receivable Testing", Tab 3 "<2302AU-3> Receivables - O & A Rebates #1392";³⁰⁵
- (b) "23302AU Trade Accounts Receivable Testing_Detail View";³⁰⁶ and

³⁰² DEL.001.001.6483

³⁰³ DEL.001.001.6564

³⁰⁴ DEL.001.001.3693

³⁰⁵ DEL.001.001.3952

³⁰⁶ DEL.001.001.3953

- (c) "23303 Memo - Vendor receivables and disputed claims".³⁰⁷

Paragraph 176.

176.1 The particulars to paragraph 175 (including any documents referred to) are repeated.

Paragraph 177.

177.1 ASA 200 [17] provides that the auditor shall not represent compliance with Australian Auditing Standards in the auditor's report unless the auditor has complied with the requirements of all Australian Auditing Standards relevant to the audit.

Paragraph 178.

178.1 ASA 500 [7] provides that when designing and performing audit procedures, the auditor shall consider the relevance and reliability of the information to be used as audit evidence.

Paragraph 179.

179.1 ASA 500 [9] provides that when using information produced by the entity, the auditor shall evaluate whether the information is sufficiently reliable for the auditor's purposes, including as necessary in the circumstances:

- (a) obtaining audit evidence about the accuracy and completeness of the information; and
- (b) evaluating whether the information is sufficiently precise and detailed for the auditor's purpose.

Paragraph 180. Intentionally blank

Paragraph 181.

181.1 Basford at [87(a)].

181.2 Basford at [87(b)] which states:

"The appropriate accounting approach was that a receivable should only have been recognised when a valid invoice or debit note was raised by DS. If DS were validly able to raise an invoice or debit note against a supplier that action should have occurred immediately i.e. when DS were entitled to do so."

Paragraph 182. Intentionally blank

Paragraph 183. Intentionally blank

Paragraph 184.

184.1 Paragraphs 132 and 181 and the particulars to those paragraphs (including any documents referred to) are repeated.

³⁰⁷ DEL.001.001.3973

Paragraph 185.

185.1 Paragraphs 175 to 184 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 186. Intentionally blank

Paragraph 187.

187.1 Basford at [12] to [14] and [104(a)].

187.2 Paragraphs 255 to 260 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 188.

188.1 Paragraph 550 and the particulars to that paragraph (including any documents referred to) are repeated.

FY14 inadequate testing of Account 1392

Paragraph 189. Intentionally blank

Paragraph 190.

190.1 ASA 315 [25] provides that the auditor shall identify and assess the risks of material misstatement at:

- (a) the financial report level; and
- (b) the assertion level for classes of transactions, account balances, and disclosures
- (c) to provide a basis for designing and performing further audit procedures.

Paragraph 191. Intentionally blank

Paragraph 192.

192.1 Paragraphs 199, 211, 220, 223, 224 and 229 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 193.

193.1 Paragraphs 175 and 176 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 194. Intentionally blank

Paragraph 195.

195.1 Paragraphs 24, 27, 28, 29, 30, 199, 211, 220, 223, 224 and 229 and the particulars to those paragraphs (including any documents referred to) are repeated.

FY14 inadequate testing of Account 4232

Paragraph 196. Intentionally blank

Paragraph 197. Intentionally blank

Paragraph 198. Intentionally blank

Paragraph 199.

- 199.1 Paragraphs 192, 211, 220, 223, 224 and 229 and the particulars to those paragraphs (including any documents referred to) are repeated.
- 199.2 In accordance with ASA 530 [5(b)], Deloitte was required to identify a population which represented items which make up a class of transactions or account balance (or a stratum within a population) which represented "*the entire set of data from which a sample is selected and about from which the auditor wishes to draw conclusions*". The population defined by the auditor will depend on the auditor's response to the risk assessment of the account balance.
- 199.3 ASA 500 [10] provides that when designing tests of controls and tests of details, the auditor shall determine means of selecting items for testing that are effective in meeting the purpose of the audit procedure.
- 199.4 ASA 530 [4] provides that the objective of the auditor, when using audit sampling, is to provide a reasonable basis for the auditor to draw conclusions about the population from which the sample is selected.
- 199.5 ASA 530 [8] provides that the auditor shall select items for the sample in such a way that each sampling unit in the population has a chance of selection.
- 199.6 ASA 530 [15(b)] provides that the auditor shall evaluate whether the use of audit sampling has provided a reasonable basis for conclusions about the population that has been tested.
- 199.7 ASA 530 [A12] provides that with statistical sampling, sample items are selected in a way that each sampling unit has a known probability of being selected. With non-statistical sampling, judgement is used to select sample items. Because the purpose of sampling is to provide a reasonable basis for the auditor to draw conclusions about the population from which the sample is selected, it is important that the auditor selects a representative sample, so that bias is avoided, by choosing sample items which have characteristics typical of the population.
- 199.8 ASA 530 [A13] provides that the principal methods of selecting samples are the use of random selection, systematic selection and haphazard selection.
- 199.9 As such, Deloitte was required to determine which of the three means³⁰⁸ available to test the population to adopt, that is

³⁰⁸ ASA 500 A53.

- (a) select all items;
- (b) select specific items; or
- (c) audit sampling.

199.10 If Deloitte selected audit sampling to test the population, it was necessary for Deloitte to consider the:

- (a) basis for determining the sample size³⁰⁹;
- (b) sample selection approach³¹⁰;
- (c) sample selection method.³¹¹

Paragraph 200.

200.1 Deloitte work papers entitled:

- (a) "26302AU Operating Expenses Testing 2014" (Tab 5)³¹²; and
- (b) "26302AU Operating Expenses Testing 2014_Detail View".³¹³

200.2 In respect of FY14, Deloitte defined the population to be accounts recording marketing support received from vendors³¹⁴ totaling \$45.727m³¹⁵; represented primarily by the following account balances

- (a) Account 4219: "Private Label Adv Rebate - 5%" \$1.535m (FY13: NIL);
- (b) Account 4232: "O&A Collect" \$19.125m (FY13: 7 months: \$5.95m);
- (c) Account 4234: "Product Subsid Support Collect" \$2.011m (FY13: 7 months: \$7.858m);
- (d) Account 4235: "Adv. Rebates - Brochures VRA" \$18.308m (FY13 7 months: \$.0324m);
- (e) Account 4296: "O&A Dick Live" \$2.3m (FY13 7 months: NIL); and
- (f) Account 4297: "O&A All Stars" \$2.105m (FY 7 months 13: NIL).

200.3 Other than all of the above accounts relating to rebate income, the basis for Deloitte defining the Population to be tested to be the total of the above accounts is not apparent in circumstances where:

- (a) the nature of the transactions recorded in each of the rebate income accounts differs, that is transactions in Account 4232 were not subject to vendor trading agreements

³⁰⁹ ASA 530 A11.

³¹⁰ ASA 530 A9.

³¹¹ ASA 530 Appendix 4.

³¹² DEL.001.001.5120

³¹³ DEL.001.001.5121

³¹⁴ DEL.001.001.5099

³¹⁵ DEL.001.001.5120 Tab 1 and Tab 3

(VTA) and were for “ad hoc” arrangements, Account 4235 were subject to VTA agreements and Account 4296 and 4297 were one off arrangements;

- (b) the risks associated with each account balance differ e.g. the balance of Account 4232 of \$19.125m comprised transactions totalling \$15.94 million which represented the credit side of Account 1392, of which these transactions related to transaction in January 2014 to the value of \$95,025.46, transactions in February 2014 to the value of \$150,790.74, transactions in March 2014 to the value of \$243,656, transactions in April 2014 to the value of \$2,226,259.97, transactions in May 2014 to the value of (\$341,692.02) and transactions in June 2014 to the value of \$13,561,067.88.³¹⁶ Where transactions totalling \$13.56 million were recognised in Account 1392 (and therefore Account 4232) in the month June 2014 there was a higher risk in recognising this rebate income in the incorrect period than the risks associated with accounts which recorded transactions which were one off arrangements which had been completed.

- 200.4 Deloitte applied professional judgment and elected to adopt a non-statistical sampling approach.
- 200.5 The non-statistical sampling method adopted by Deloitte purports to be haphazard.
- 200.6 Deloitte determined that the sample size for the rebate income accounts referred to in paragraph 200.2 to be 20, of which Deloitte sampled 6 transactions from Account 4232.³¹⁷
- 200.7 Based on the sample size calculation recorded on the Deloitte work paper, Deloitte determined the sample size of 20 by applying a statistical based formula. However, it is not apparent how Deloitte allocated 6 samples to Account 4232.

Paragraph 201.

- 201.1 The particulars to paragraphs 199 and 200 (including any documents referred to) are repeated.

Paragraph 202.

- 202.1 The particulars to paragraphs 199, 200 and 203 (including any documents referred to) are repeated.

Paragraph 203.

- 203.1 The particulars to paragraphs 199 and 200 (including any documents referred to) are repeated.
- 203.2 In accordance with ASA 530 [A12], an auditor’s objective is to obtain a representative sample.

³¹⁶ DEL.001.001.3952 – Provision for Doubtful Debts – Tab 3 and Hidden Sheet “Sheet 5”

³¹⁷ DEL.001.001.5120, Tab 3.

203.3 Two things cause a sample to be non-representative:

- (a) sampling risk³¹⁸ – the risk that the auditor's conclusion based on the sample may be different from the conclusion if the entire population were subjected to the same audit procedure. Two ways to reduce sampling risk is to:
 - (i) increase the sample size; and
 - (ii) use an appropriate method of selecting sample items from the Population such as a Statistical Sampling approach ; and
- (b) non-sampling risk³¹⁹: the risk an auditor reaches an erroneous conclusion for any reason not related to sampling risk. That is, the audit test does not uncover existing exceptions caused by³²⁰:
 - (i) the auditor's failure to recognise exceptions due to exhaustion, boredom or lack of understanding of what to look for; and
 - (ii) inappropriate or ineffective audit procedures.

203.4 A representative sample is one where the sample selected has characteristics typical of the population.

203.5 Deloitte's population was \$45.727 million which represented transactions for the period 1 July 2013 to 29 June 2014.

203.6 The 20 samples selected by Deloitte in respect of the population were dated prior to 22 March 2014 (being transactions dated between 14 August 2013 to 21 March 2014, with no samples selected for the period April to June 2014).³²¹ As such the sample selected was not a representative sample of the population being tested.

203.7 The 6 samples comprising the FY14 4232 Sample were dated prior to 21 January 2014. Therefore, no transactions were tested in respect of the months of February to June 2014. As such the sample selected was not a representative sample of the population being tested.

203.8 Furthermore, ASA 330 [22] states that if substantive procedures are performed at an interim date, the auditor shall cover the remaining period by performing:

- (a) substantive procedures, combined with test of controls for the intervening period; or
- (b) if the auditor determines that it is sufficient, further substantive procedures only.

203.9 The failure to test transactions for the period April to June 2014 was not in accordance with ASA 330 [22].

³¹⁸ ASA 530 5(c).

³¹⁹ ASA 530 5(d)

³²⁰ "Auditing In Australia – An Integrated Approach", Second Edition by Alvin Arens, James Loebbecke, Peter Best, Gregory Shailer.

³²¹ DEL.001.001.5120, Tab 3.

Paragraph 204. Intentionally blank

Paragraph 205.

205.1 The particulars to paragraphs 177 to 179 and 200 are repeated (including any documents referred to).

Paragraph 206.

206.1 Paragraphs 177, 190 and 205 and the particulars to those paragraphs (including any documents referred to) are repeated.

206.2 Basford at [88] to [97].

Paragraph 207. Intentionally blank

Paragraph 208.

208.1 Paragraph 177 and the particulars to that paragraph (including any documents referred to) are repeated.

208.2 A reasonable auditor having selected 6 transactions on a haphazard basis, which excluded the month of June and with the knowledge that rebate income transactions totalling \$13.56 million was recognised in the month of June 2014, would have concluded that the sample tested was not a representative sample.

208.3 A reasonable auditor would then apply professional judgement to either increase the sample size in order to reduce the sampling risk error so that the transactions ultimately selected were a representative sample.

Paragraph 209.

209.1 Paragraphs 200 to 203 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 210. Intentionally blank

Paragraph 211.

211.1 Paragraphs 198 to 199 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 212.

212.1 Paragraphs 200 to 203 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 213. Intentionally blank

FY14 inadequate testing of COS

Paragraph 214. Intentionally blank

Paragraph 215.

215.1 The particulars to paragraph 190 (including any documents referred to) are repeated.

Paragraph 216. Intentionally blank

Paragraph 217.

217.1 Deloitte work paper entitled "26201AU Cost of sales Combined Leadsheet AUS Final.xlsx".³²²

Paragraph 218.

218.1 Paragraph 217 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 219.

219.1 Deloitte's testing of accounts comprising COS was contained within the work paper entitled "26201AU Cost of sales Combined Leadsheet AUS Final".³²³

Paragraph 220.

220.1 Paragraph 219 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 221.

221.1 Paragraph 219 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 222. Intentionally blank

Paragraph 223.

223.1 The particulars to paragraphs 208 and 217 and the particulars to those paragraphs (including any documents referred to) are repeated.

223.2 Basford at [88] to [97].

Paragraph 224.

224.1 Paragraph 223 and the particulars to those paragraphs (including any documents referred to) are repeated.

³²² DEL.001.001.5105

³²³ DEL.001.001.5105

Paragraph 225.

225.1 Paragraphs 217 to 221 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 226. Intentionally blank

Paragraph 227.

227.1 First Mills Affidavit at [140] (including any documents referred to).

227.2 Print screen of the AS400 journal entry No 390865.³²⁴

Paragraph 228.

228.1 Paragraphs 218 to 220 and 227 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 229.

229.1 Paragraphs 217 to 221, 223, 227, 228 and 255 to 260 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 230.

230.1 Paragraph 550 and the particulars to that paragraph (including any documents referred to) are repeated.

FY14 inadequate testing of FY14 Account 3324

Paragraph 231. Intentionally blank

Paragraph 232.

232.1 The particulars to paragraph 190 (including any documents referred to) are repeated.

Paragraph 233. Intentionally blank

Paragraph 234. Intentionally blank

Paragraph 235. Intentionally blank

Paragraph 236.

236.1 Paragraphs 223, 224 and 229 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 237.

237.1 Paragraphs 219 and 221 and the particulars to those paragraphs (including any documents referred to) are repeated.

³²⁴ DRM.025.001.0028

Paragraph 238. Intentionally blank

Paragraph 239.

239.1 Paragraph 229 and the particulars to that paragraph (including any documents referred to) are repeated.

FY14 inadequate journal testing

Paragraph 240. Intentionally blank

Paragraph 241.

241.1 ASA 240 [32] provides that irrespective of the auditor's assessment of the risks of management override of controls, the auditor shall design and perform audit procedures to:

- (a) test the appropriateness of journal entries recorded in the general ledger and other adjustments made in the preparation of the financial report. In designing and performing audit procedures for such tests, the auditor shall:
 - (i) make enquiries of individuals involved in the financial reporting process about inappropriate or unusual activity relating to the processing of journal entries and other adjustments;
 - (ii) select journal entries and other adjustments made at the end of a reporting period; and
 - (iii) consider the need to test journal entries and other adjustments throughout the period;
- (b) review accounting estimates for biases and evaluate whether the circumstances producing the bias, if any, represent a risk of material misstatement due to fraud. In performing this review, the auditor shall:
 - (i) evaluate whether the judgements and decisions made by management in making the accounting estimates included in the financial report, even if they are individually reasonable, indicate a possible bias on the part of the entity's management that may represent a risk of material misstatement due to fraud. If so, the auditor shall re-evaluate the accounting estimates taken as a whole; and
 - (ii) perform a retrospective review of management judgements and assumptions related to significant accounting estimates reflected in the financial report of the prior year;
- (c) for significant transactions that are outside the normal course of business for the entity, or that otherwise appear to be unusual given the auditor's understanding of the entity and its environment and other information obtained during the audit, evaluate whether the business rationale (or the lack thereof) of the transactions suggests that

they may have been entered into to engage in fraudulent financial reporting or to conceal misappropriation of assets.

Paragraph 242.

242.1 The particulars to paragraph 241 (including any documents referred to) are repeated.

Paragraph 243.

243.1 ASA 240 [A43] provides that when identifying and selecting journal entries and other adjustments for testing and determining the appropriate method of examining the underlying support for the items selected, the following matters are of relevance:

- (a) the assessment of the risks of material misstatement due to fraud – the presence of fraud risk factors and other information obtained during the auditor's assessment of the risks of material misstatement due to fraud may assist the auditor to identify specific classes of journal entries and other adjustments for testing;
- (b) controls that have been implemented over journal entries and other adjustments – effective controls over the preparation and posting of journal entries and other adjustments may reduce the extent of substantive testing necessary, provided that the auditor has tested the operating effectiveness of the controls;
- (c) the entity's financial reporting process and the nature of evidence that can be obtained – for many entities routine processing of transactions involves a combination of manual and automated steps and procedures. Similarly, the processing of journal entries and other adjustments may involve both manual and automated procedures and controls. When information technology is used in the financial reporting process, journal entries and other adjustments may exist only in electronic form;
- (d) the characteristics of fraudulent journal entries or other adjustments – inappropriate journal entries or other adjustments often have unique identifying characteristics. Such characteristics may include entries (a) made to unrelated, unusual, or seldom-used accounts, (b) made by individuals who typically do not make journal entries, (c) recorded at the end of the period or as post-closing entries that have little or no explanation or description, (d) made either before or during the preparation of the financial report that do not have account numbers, or (e) containing round numbers or consistent ending numbers;
- (e) the nature and complexity of the accounts – inappropriate journal entries or adjustments may be applied to accounts that (a) contain transactions that are complex or unusual in nature, (b) contain significant estimates and period-end adjustments, (c) have been prone to misstatements in the past, (d) have not been reconciled on a timely basis or contain unreconciled differences, (e) contain inter-company transactions, or (f) are otherwise associated with an identified risk of material misstatement due to fraud. In audits of entities that have several locations or

components, consideration is given to the need to select journal entries from multiple locations;

- (f) journal entries or other adjustments processed outside the normal course of business – non-standard journal entries may not be subject to the same level of internal control as those journal entries used on a recurring basis to record transactions such as monthly sales, purchases and cash disbursements.

Paragraph 244.

244.1 Deloitte work paper entitled “21303 Journal Entry Testing (JET) memo”.³²⁵

Paragraph 245.

245.1 Deloitte’s approach to journal entry testing was as documented in a memorandum from Komlos to the Dick Smith Group 2014 Audit File dated 25 July 2014 entitled “21303 Journal Entry Testing (JET) memo”.³²⁶

Paragraph 246.

246.1 Paragraph 245 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 247. Intentionally blank

Paragraph 248.

248.1 Paragraphs 241 to 243 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 249.

249.1 Paragraph 245 is repeated.

249.2 Deloitte work papers entitled:

- (a) “21303 JET memo”³²⁷; and
- (b) “Management override of controls - ROMM (Financial Statement Level)”³²⁸; and
- (c) “21306 JET Australia”³²⁹.

Paragraph 250. Intentionally blank

Paragraph 251.

251.1 Paragraph 246 and the particulars to that paragraph (including any documents referred to) are repeated.

³²⁵ DEL.001.001.3686

³²⁶ DEL.001.001.3686

³²⁷ DEL.001.001.3686

³²⁸ DEL.001.001.1622

³²⁹ DEL.001.001.3697

251.2 Journal No 390865 would have been selected for testing because they met Deloitte's criteria for selection which was:

- (a) a large numerical value, i.e. \$20.5 million;
- (b) a round and absolute number;
- (c) concerned an area of significant risk, namely rebates; and
- (d) of unusual appearance, being such a large, round number occurring after the end of the financial period and relating to an area of significant risk.³³⁰

Paragraph 252.

252.1 Paragraph 245 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 253. Intentionally blank

Paragraph 254.

254.1 Paragraph 229 and the particulars to that paragraph (including any documents referred to) are repeated.

FY14 failure to inform those charged with governance

Paragraph 255.

255.1 Deloitte work papers entitled "23303 Memo - Vendor receivables and disputed claims".³³¹

255.2 See also the Deloitte work papers entitled:

- (a) "There is no oversight or approval from management over the recognition and recording of rebates – Other Finding",³³²
- (b) "Incorrect classification of rebates – Other Finding",³³³
- (c) "There are no proper records or support for the posted rebate accruals – Other Finding",³³⁴ and
- (d) "The over-accrual of O&A Rebates (Known difference) – Other Finding".³³⁵

Paragraph 256.

256.1 ASA 265 [2] provides that the auditor is required to obtain an understanding of internal control relevant to the audit when identifying and assessing the risks of material misstatement. In making those risk assessments, the auditor considers internal control in order to design audit

³³⁰ DEL.001.001.3686

³³¹ DEL.001.001.3973

³³² DEL.001.001.0562

³³³ DEL.001.001.0568

³³⁴ DEL.001.001.0565

³³⁵ DEL.001.001.0528

procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control. The auditor may identify deficiencies in internal control not only during this risk assessment process but also at any other stage of the audit. This Auditing Standard specifies which identified deficiencies the auditor is required to communicate to those charged with governance and management.

- 256.2 ASA 265 [5] provides that the objective of the auditor is to communicate appropriately to those charged with governance and management, deficiencies in internal control that the auditor has identified during the audit and that, in the auditor's professional judgement, are of sufficient importance to merit their respective attentions.
- 256.3 ASA 265 [7] provides that the auditor shall determine whether, on the basis of the audit work performed, the auditor has identified one or more deficiencies in internal control.
- 256.4 ASA 265 [8] provides that if the auditor has identified one or more deficiencies in internal control, the auditor shall determine, on the basis of the audit work performed, whether, individually or in combination, they constitute significant deficiencies.
- 256.5 ASA 265 [9] provides that the auditor shall communicate in writing significant deficiencies in internal control identified during the audit to those charged with governance on a timely basis.
- 256.6 ASA 265 [A6] provides that examples of matters that the auditor may consider in determining whether a deficiency or combination of deficiencies in internal control constitutes a significant deficiency include:
- (a) the likelihood of the deficiencies leading to material misstatements in the financial report in the future;
 - (b) the susceptibility to loss or fraud of the related asset or liability;
 - (c) the subjectivity and complexity of determining estimated amounts, such as fair value accounting estimates;
 - (d) the financial report amounts exposed to the deficiencies;
 - (e) the volume of activity that has occurred or could occur in the account balance or class of transactions exposed to the deficiency or deficiencies;
 - (f) the importance of the controls to the financial reporting process: for example: general monitoring controls (such as oversight of management); controls over the prevention and detection of fraud; controls over the selection and application of significant accounting policies; controls over significant transactions with related parties; controls over significant transactions outside the entity's normal course of business; controls over the period-end financial reporting process (such as controls over non-recurring journal entries);
 - (g) the cause and frequency of the exceptions detected as a result of the deficiencies in the controls;

(h) the interaction of the deficiency with other deficiencies in internal control.

256.7 ASA 265 [A7] provides that indicators of significant deficiencies in internal control include, for example:

- (a) evidence of ineffective aspects of the control environment, such as:
 - (i) indications that significant transactions in which management is financially interested are not being appropriately scrutinised by those charged with governance;
 - (ii) identification of management fraud, whether or not material, that was not prevented by the entity's internal control;
 - (iii) management's failure to implement appropriate remedial action on significant deficiencies previously communicated;
- (b) absence of risk assessment process within the entity where such a process would ordinarily be expected to have been established;
- (c) evidence of an ineffective entity risk assessment process, such as management's failure to identify a risk of material misstatement that the auditor would expect the entity's risk assessment process to have identified;
- (d) evidence of an ineffective response to identified significant risks (for example, absence of controls over such a risk);
- (e) misstatements detected by the auditor's procedures that were not prevented, or detected and corrected, by the entity's internal control;
- (f) restatement of a previously issued financial report to reflect the correction of a material misstatement due to error or fraud;
- (g) evidence of management's inability to oversee the preparation of the financial reports.

256.8 ASA 265 [A11] provides that the requirements of this Auditing Standard remain applicable notwithstanding that law or regulation may require the auditor to use specific terms or definitions.

Paragraph 257.

257.1 Paragraph 256 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 258. Intentionally blank

Paragraph 259.

259.1 Deloitte work paper entitled "12103 General Matters"³³⁶.

³³⁶ DEL.001.001.2034

Paragraph 260.

260.1 Paragraph 104 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 261.

261.1 The FY14 FAC Report reported on internal controls, however, it did not include Deloitte's findings from performance of internal control and system procedures in respect of O&A rebates and stated "*there has been significant improvement in the accounting records and financial reporting processes over the past 12 months... In performing our audit we have not identified any significant deficiencies in internal controls.*"³³⁷

Paragraph 262. Intentionally blank

Paragraph 263. Intentionally blank

Paragraph 264.

264.1 Paragraphs 255 to 260 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 265.

265.1 Paragraphs 261 to 262 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 266. Intentionally blank

Paragraph 267.

267.1 Paragraphs 81 to 94 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 268.

268.1 Paragraph 550 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 269.

269.1 Paragraph 560 and the particulars to that paragraph (including any documents referred to) are repeated.

³³⁷ See DEL.001.001.1992, at .1995 and DEL.001.001.6953 at .6956 and.6968

Paragraph 270. Intentionally blank

FY14 failure to understand and test controls surrounding the Revised Obsolescence Methodology

Paragraph 271. Intentionally blank

Paragraph 272.

272.1 ASA 315 [18] provides that the auditor shall obtain an understanding of the information system, including the related business processes, relevant to financial reporting, including the following areas:

- (a) the classes of transactions in the entity's operations that are significant to the financial report;
- (b) the procedures, within both information technology (IT) and manual systems, by which those transactions are initiated, recorded, processed, corrected as necessary, transferred to the general ledger and reported in the financial report;
- (c) the related accounting records, supporting information and specific accounts in the financial report that are used to initiate, record, process and report transactions; this includes the correction of incorrect information and how information is transferred to the general ledger. The records may be in either manual or electronic form;
- (d) how the information system captures events and conditions, other than transactions, that are significant to the financial report;
- (e) the financial reporting process used to prepare the entity's financial report, including significant accounting estimates and disclosures; and
- (f) controls surrounding journal entries, including non-standard journal entries used to record non-recurring, unusual transactions or adjustments.

Paragraph 273.

273.1 ASA 500 [4] provides that the objective of the auditor is to design and perform audit procedures in such a way as to enable the auditor to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor's opinion.

273.2 ASA 500 [6] provides that the auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence.

Paragraph 274.

274.1 Paragraphs 131 and 272 and the particulars to those paragraphs (including any documents referred to) are repeated.

274.2 Deloitte work papers entitled:

- (a) "23401AU Inventories - Leadsheet and teting – Australia"³³⁸; and
- (b) "23403 Inventory Obsolescence Memo"³³⁹.

Paragraph 275.

275.1 Deloitte work papers entitled:

- (a) "<23401AU> DSH – Inventory obsolescence", Tabs 6 and 7³⁴⁰; and
- (b) "Inventory Management Business Cycle - Testing Design & Implementation of Controls"³⁴¹.

Paragraph 276.

276.1 The particulars to paragraph 178 (including any documents referred to) are repeated.

Paragraph 277.

277.1 Paragraph 272 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 278.

- 278.1 Paragraph 275 and the particulars to that paragraph (including any documents referred to) are repeated.
- 278.2 ASA 315 [13] provides that when obtaining an understanding of controls that are relevant to the audit, the auditor shall evaluate the design of those controls and determine whether they have been implemented, by performing procedures in addition to enquiry of the entity's personnel.
- 278.3 ASA 315 [A73] provides that evaluating the design of a control involves considering whether the control, individually or in combination with other controls, is capable of effectively preventing, or detecting and correcting, material misstatements. Implementation of a control means that the control exists and that the entity is using it. There is little point in assessing the implementation of a control that is not effective, and so the design of a control is considered first. An improperly designed control may represent a significant deficiency in internal control.

Paragraph 279. Intentionally blank

Paragraph 280.

- 280.1 Deloitte work paper entitled "Inventory Management Business Cycle - Testing Design & Implementation of Controls" at Tab 6.³⁴²
- 280.2 Borg Affidavit at [74] (including any documents referred to).

³³⁸ DEL.001.001.3985

³³⁹ DEL.001.001.4003

³⁴⁰ DEL.001.001.3985

³⁴¹ DEL.001.001.3826

³⁴² DEL.001.001.3826

Paragraph 281. Intentionally blank

Paragraph 282.

282.1 Paragraphs 272 to 275 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 283.

283.1 Paragraph 280 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 284. Intentionally blank

Paragraph 285.

285.1 Basford at [130].

Paragraph 286.

286.1 Paragraphs 81 to 94 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 287.

287.1 Paragraph 550 and the particulars to that paragraph (including any documents referred to) are repeated.

FY14 inadequate testing of the Revised Obsolescence Methodology

Paragraph 288. Intentionally blank

Paragraph 289.

289.1 ASA 240 [5] provides that an auditor conducting an audit in accordance with Australian Auditing Standards is responsible for obtaining reasonable assurance that the financial report taken as a whole is free from material misstatement, whether caused by fraud or error. Owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements of the financial report may not be detected, even though the audit is properly planned and performed in accordance with Australian Auditing Standards..

Paragraph 290.

290.1 ASA 500 [4] provides that the objective of the auditor is to design and perform audit procedures in such a way as to enable the auditor to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor's opinion.

290.2 ASA 500 [6] provides that the auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence.

Paragraph 291.

- 291.1 ASA 540 [6] provides that the objective of the auditor is to obtain sufficient appropriate audit evidence about whether:
- (a) accounting estimates, including fair value accounting estimates, in the financial report, whether recognised or disclosed, are reasonable; and
 - (b) related disclosures in the financial report are adequate, in the context of the applicable financial reporting framework.
- 291.2 ASA 540 [7(a)] provides that for purposes of the Australian Auditing Standards, “accounting estimate” means an approximation of a monetary amount in the absence of a precise means of measurement. This term is used for an amount measured at fair value where there is estimation uncertainty, as well as for other amounts that require estimation. Where this Auditing Standard addresses only accounting estimates involving measurement at fair value, the term “fair value accounting estimates” is used.
- 291.3 ASA 540 [8] provides that when performing risk assessment procedures and related activities to obtain an understanding of the entity and its environment, including the entity’s internal control, as required by ASA 315, the auditor shall obtain an understanding of the following in order to provide a basis for the identification and assessment of the risks of material misstatement for accounting estimates:
- (a) the requirements of the applicable financial reporting framework relevant to accounting estimates, including related disclosures;
 - (b) how management identifies those transactions, events and conditions that may give rise to the need for accounting estimates to be recognised or disclosed in the financial report. In obtaining this understanding, the auditor shall make enquiries of management about changes in circumstances that may give rise to new, or the need to revise existing, accounting estimates;
 - (c) how management makes the accounting estimates, and an understanding of the data on which they are based, including:
 - (i) the method, including where applicable the model, used in making the accounting estimate;
 - (ii) relevant controls;
 - (iii) whether management has used an expert;
 - (iv) the assumptions underlying the accounting estimates;
 - (v) whether there has been or ought to have been a change from the prior period in the methods for making the accounting estimates, and if so, why; and
 - (vi) whether and, if so, how management has assessed the effect of estimation uncertainty.

- 291.4 ASA 540 [11] provides that the auditor shall determine whether, in the auditor's judgement, any of those accounting estimates that have been identified as having high estimation uncertainty give rise to significant risks.
- 291.5 ASA 540 [12] provides that based on the assessed risks of material misstatement, the auditor shall determine:
- (a) whether management has appropriately applied the requirements of the applicable financial reporting framework relevant to the accounting estimate; and
 - (b) whether the methods for making the accounting estimates are appropriate and have been applied consistently, and whether changes, if any, in accounting estimates or in the method for making them from the prior period are appropriate in the circumstances.
- 291.6 ASA 540 [13(b)] provides that in responding to the assessed risks of material misstatement, as required by ASA 330, the auditor shall, taking account of the nature of the accounting estimate, undertake (inter alia) testing how management made the accounting estimate and the data on which it is based. In doing so, the auditor shall evaluate whether:
- (a) the method of measurement used is appropriate in the circumstances; and
 - (b) the assumptions used by management are reasonable in light of the measurement objectives of the applicable financial reporting framework.
- 291.7 ASA 540 [15(a)] provides that for accounting estimates that give rise to significant risks, in addition to other substantive procedures performed to meet the requirements of ASA 330, the auditor shall evaluate (inter alia) how management has considered alternative assumptions or outcomes, and why it has rejected them, or how management has otherwise addressed estimation uncertainty in making the accounting estimate.
- 291.8 ASA 540 [18] provides that the auditor shall evaluate, based on the audit evidence, whether the accounting estimates in the financial report are either reasonable in the context of the applicable financial reporting framework, or are misstated.
- 291.9 ASA 540 [A3] provides that for some accounting estimates, however, there may be relatively high estimation uncertainty, particularly where they are based on significant assumptions, for example:
- (a) accounting estimates relating to the outcome of litigation.
 - (b) fair value accounting estimates for derivative financial instruments not publicly traded.
 - (c) fair value accounting estimates for which a highly specialised entity-developed model is used or for which there are assumptions or inputs that cannot be observed in the marketplace.
- 291.10 ASA 540[A6] provides that additional examples of situations where accounting estimates, other than fair value accounting estimates, may be required include:

- (a) allowance for doubtful accounts;
- (b) inventory obsolescence;
- (c) warranty obligations;
- (d) depreciation method or asset useful life;
- (e) provision against the carrying amount of an investment where there is uncertainty regarding its recoverability;
- (f) outcome of long term contracts; and
- (g) costs arising from litigation settlements and judgements.

291.11 ASA 540 [A7] provides that additional examples of situations where fair value accounting estimates may be required include:

- (a) complex financial instruments, which are not traded in an active and open market;
- (b) share-based payments;
- (c) property or equipment held for disposal;
- (d) certain assets or liabilities acquired in a business combination, including goodwill and intangible assets; and
- (e) transactions involving the exchange of assets or liabilities between independent parties without monetary consideration, for example, a non-monetary exchange of plant facilities in different lines of business.

291.12 ASA 540 [A19] provides that enquiries of management about changes in circumstances may include, for example, enquiries about whether:

- (a) the entity has engaged in new types of transactions that may give rise to accounting estimates;
- (b) terms of transactions that gave rise to accounting estimates have changed;
- (c) accounting policies relating to accounting estimates have changed, as a result of changes to the requirements of the applicable financial reporting framework or otherwise;
- (d) regulatory or other changes outside the control of management have occurred that may require management to revise, or make new, accounting estimates; and
- (e) new conditions or events have occurred that may give rise to the need for new or revised accounting estimates.

291.13 ASA 540 [A31] provides that assumptions are integral components of accounting estimates. Matters that the auditor may consider in obtaining an understanding of the assumptions underlying the accounting estimates include, for example:

- (a) the nature of the assumptions, including which of the assumptions are likely to be significant assumptions;
- (b) how management assesses whether the assumptions are relevant and complete (that is, that all relevant variables have been taken into account);
- (c) where applicable, how management determines that the assumptions used are internally consistent;
- (d) whether the assumptions relate to matters within the control of management (for example, assumptions about the maintenance programs that may affect the estimation of an asset's useful life), and how they conform to the entity's business plans and the external environment, or to matters that are outside its control (for example, assumptions about interest rates, mortality rates, potential judicial or regulatory actions, or the variability and the timing of future cash flows); and
- (e) the nature and extent of documentation, if any, supporting the assumptions.

Assumptions may be made or identified by an expert to assist management in making the accounting estimates. Such assumptions, when used by management, become management's assumptions.

291.14 ASA 540 [A78] provides that matters that the auditor may consider in evaluating the reasonableness of the assumptions used by management include, for example:

- (a) whether individual assumptions appear reasonable;
- (b) whether the assumptions are interdependent and internally consistent;
- (c) whether the assumptions appear reasonable when considered collectively or in conjunction with other assumptions, either for that accounting estimate or for other accounting estimates; and
- (d) in the case of fair value accounting estimates, whether the assumptions appropriately reflect observable marketplace assumptions.

291.15 ASA 540 [A79] provides that the assumptions on which accounting estimates are based may reflect what management expects will be the outcome of specific objectives and strategies. In such cases, the auditor may perform audit procedures to evaluate the reasonableness of such assumptions by considering, for example, whether the assumptions are consistent with:

- (a) the general economic environment and the entity's economic circumstances;
- (b) the plans of the entity;
- (c) assumptions made in prior periods, if relevant;
- (d) experience of, or previous conditions experienced by, the entity, to the extent this historical information may be considered representative of future conditions or events; and

- (e) other assumptions used by management relating to the financial report.

291.16 ASA 540 [A80] provides that the reasonableness of the assumptions used may depend on management's intent and ability to carry out certain courses of action. Management often documents plans and intentions relevant to specific assets or liabilities and the financial reporting framework may require it to do so. Although the extent of audit evidence to be obtained about management's intent and ability is a matter of professional judgement, the auditor's procedures may include the following:

- (a) review of management's history of carrying out its stated intentions;
- (b) review of written plans and other documentation, including, where applicable, formally approved budgets, authorisations or minutes;
- (c) enquiry of management about its reasons for a particular course of action;
- (d) review of events occurring subsequent to the date of the financial report and up to the date of the auditor's report; and
- (e) evaluation of the entity's ability to carry out a particular course of action given the entity's economic circumstances, including the implications of its existing commitments.

Certain financial reporting frameworks, however, may not permit management's intentions or plans to be taken into account when making an accounting estimate. This is often the case for fair value accounting estimates because their measurement objective requires that assumptions reflect those used by marketplace participants.

Paragraph 292.

292.1 The Stock Testing Work Papers are the Deloitte work papers entitled:

- (a) "<23401> DSH – Inventory Obsolescence", tab 7 entitled "23401AU Inventories - Leadsheet and testing – Australia",³⁴³
- (b) "23401AU Inventories - Leadsheet and teting - Australia_Detail View",³⁴⁴ and
- (c) "23403 Inventory Obsolescence Memo".³⁴⁵

Paragraph 293.

293.1 Paragraph 292 and the particulars to that paragraph (including any documents referred to) are repeated.

³⁴³ DEL.001.001.3985

³⁴⁴ DEL.001.001.3986

³⁴⁵ DEL.001.001.4003

293.2 The description of the assumptions is contained in the tick marks to row 41 of tab 7 of the Stock Testing Work Paper.³⁴⁶

293.3 The testing of the ageing stock is recorded in the Stock Testing Work Paper, tab 12 "Stock Ageing Testing".³⁴⁷

293.4 See also Stock Testing Work Paper, tab 11 and tab 7b.³⁴⁸

Paragraph 294. Intentionally blank

Paragraph 295.

295.1 Paragraphs 289 and 290 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 296.

296.1 Paragraphs 292 and 293 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 297. Intentionally blank

Paragraph 298.

298.1 Paragraphs 116(j) and 116(k) and the particulars to those paragraphs (including any documents referred to) are repeated.

298.2 Basford at [130].

298.3 Borg Affidavit at [74] (including any documents referred to).

298.4 Deloitte's failure to conduct sufficient audit testing in respect of the provision of stock obsolescence calculation constituted a breach of ASA 200, ASA 500, ASA 540.

298.5 Deloitte's failure to obtain sufficient and appropriate audit evidence concerning the Revised Obsolescence Methodology constituted a breach of ASA 500 [6] and [9].

298.6 Deloitte's inappropriate reliance upon data produced from unaudited assumptions constituted a breach of ASA 520 [5(a) and (b)].

Paragraph 299.

299.1 Paragraph 550 and the particulars to that paragraph (including any documents referred to) are repeated.

³⁴⁶ DEL.001.001.3985

³⁴⁷ DEL.001.001.3985

³⁴⁸ DEL.001.001.3985

FY14 failure to advise in relation to improper capitalisation of overhead costs into inventory

Paragraph 300. Intentionally blank

Paragraph 301.

301.1 Paragraph 141 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 302.

302.1 AASB 102 [16] provides that examples of costs excluded from the cost of inventories and recognised as expenses in the period in which they are incurred are:

- (a) abnormal amounts of wasted materials, labour or other production costs;
- (b) storage costs, unless those costs are necessary in the production process before a further production stage;
- (c) administrative overheads that do not contribute to bringing inventories to their present location and condition; and
- (d) selling costs.

Paragraph 303. Intentionally blank

Paragraph 304.

304.1 Basford at [124].

304.2 See also Deloitte work papers entitled:

- (a) "23402 AASB 102 Inventory Capitalisations Costs (Aust & NZL)",³⁴⁹ and
- (b) "23402 AASB 102 Inventory Capitalisations Costs (Aust & NZL)_Detail View",³⁵⁰

Paragraph 305.

305.1 Paragraph 304 and the particulars to that paragraph (including any documents referred to) are repeated.

Paragraph 306.

306.1 Basford at [124] to [127].

Paragraph 307.

307.1 ASA 315 [11] provides that the auditor shall obtain an understanding of the following:

³⁴⁹ DEL.001.001.3999

³⁵⁰ DEL.001.001.4000

- (a) relevant industry, regulatory, and other external factors and the applicable financial reporting framework;
- (b) the nature of the entity, including its operations, ownership and governance structure, the types of investments that the entity is making and plans to make, including investments in special-purpose entities, and the way that the entity is structured and how it is financed, to enable the auditor to understand the classes of transactions, account balances, and disclosures to be expected in the financial report;
- (c) the entity's selection and application of accounting policies, including the reasons for changes thereto. The auditor shall evaluate whether the entity's accounting policies are appropriate for its business and consistent with the applicable financial reporting framework and accounting policies used in the relevant industry;
- (d) the entity's objectives and strategies, and those related business risks that may result in risks of material misstatement;
- (e) the measurement and review of the entity's financial performance.

Paragraph 308. Intentionally blank

Paragraph 309. Intentionally blank

Paragraph 310.

310.1 Basford at [124] to [127].

Paragraph 311.

311.1 Paragraphs 305 and 307 are repeated.

Paragraph 312. Intentionally blank

VII. FY14 MISREPRESENTATIONS & MISLEADING CONDUCT

FY14 representations, opinions and conduct

First FY14 inventory representations, opinions and conduct

Paragraph 313.

313.1 The representations in sub-paragraphs 313(a) to (d) and (g) were express:

- (a) the representations were made by Deloitte, in writing, in the FY14 FAC Report as alleged in sub-paragraphs 116(d) to (k),³⁵¹
- (b) the representations were made to Wavish, Raine, Ishak and Cave on 6 August 2014 when Potts emailed the FY14 FAC Report to (inter alia) Wavish, Raine, Ishak and

³⁵¹ DSE.003.047.3598 at 3602, 3606 & 3607

Cave by email dated 6 August 2014 1:03PM with subject "*Finance and Audit Committee meeting*" (6 August 2014 FAC Email); and

- (c) the representations were made to Murray after he joined the Board on 12 August 2014 when he was provided with a copy of the FY14 FAC Report.

313.2 The representations in sub-paragraphs 313(e), (f) and (h) were implied by reason of:

- (a) the express representations in sub-paragraphs 313(a) to (d) and (g);
- (b) the absence of any qualification or reservation in respect of the express representations in sub-paragraphs 313(a) to (d) and (g);
- (c) the context in which the representations were made;
- (d) the matters alleged in paragraph 14;
- (e) Deloitte's expertise in auditing and accounting matters;
- (f) the FY14 Statutory Auditing Obligations alleged in paragraph 85;
- (g) the terms of the FY14 Deloitte Retainer;
- (h) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (i) the FY14 Audit Strategy, including the matters alleged in paragraphs 98(c), 98(d), 99, 102 and 103; and
- (j) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(d) to (k).

313.3 Further particulars may be provided following evidence.

Paragraph 314.

314.1 The representations were implied by reason of:

- (a) the express representations in sub-paragraphs 313(a) to (d) and (g);
- (b) the implied representations in sub-paragraphs 313(e), (f) and (h);
- (c) the absence of any qualification or reservation in respect of the representations in paragraph 313;
- (d) the context in which the representations were made;
- (e) the matters alleged in paragraph 14;
- (f) Deloitte's expertise in auditing and accounting matters;
- (g) the FY14 Statutory Auditing Obligations referred to in paragraph 85;
- (h) the terms of the FY14 Deloitte Retainer;
- (i) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;

- (j) the FY14 Audit Strategy, including the matters alleged in paragraphs 98(c), 98(d), 99, 102 and 103; and
- (k) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(a) to (k).

314.2 Further particulars may be provided following evidence.

Paragraph 315.

315.1 The particulars to paragraphs 313 and/or 314 are repeated (including any documents referred to).

First FY14 rebate representations, opinions and conduct

Paragraph 316.

316.1 The representations in sub-paragraphs 316(a) and (c) were express:

- (a) the representations were made by Deloitte, in writing, in the FY14 FAC Report as alleged in sub-paragraphs 116(o) and (p);³⁵²
- (b) the representations were made to Wavish, Raine, Ishak and Cave on 6 August 2014 when Potts sent the 6 August 2014 FAC Email; and
- (c) the representations were made to Murray after he joined the Board on 12 August 2014 when he was provided with a copy of the FY14 FAC Report.

316.2 The representations in sub-paragraphs 316(b) and 316(d) were implied by reason of:

- (a) the express representations in sub-paragraphs 316(a) and (c);
- (b) the absence of any qualification or reservation in respect of the express representations in sub-paragraphs 313(a) and (c);
- (c) the context in which the representations were made;
- (d) the matters alleged in paragraph 14;
- (e) Deloitte's expertise in auditing and accounting matters;
- (f) the FY14 Statutory Auditing Obligations alleged in paragraph 85;
- (g) the terms of the FY14 Deloitte Retainer;
- (h) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (i) the FY14 Audit Strategy, including the matters alleged in paragraphs 98(b), 99 and 101; and
- (j) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(l) to (q).

³⁵² DSE.003.047.3598 at 3602 & 3608

316.3 Further particulars may be provided following evidence.

Paragraph 317.

317.1 The representations were implied by reason of:

- (a) the express representations in sub-paragraphs 316(a) and (c);
- (b) the implied representations in sub-paragraphs 316(b) and 316(d);
- (c) the absence of any qualification or reservation in respect of the representations in paragraph 316;
- (d) the context in which the representations were made;
- (e) the matters alleged in paragraph 14;
- (f) Deloitte's expertise in auditing and accounting matters;
- (g) the FY14 Statutory Auditing Obligations referred to in paragraph 85;
- (h) the terms of the FY14 Deloitte Retainer;
- (i) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (j) the FY14 Audit Strategy, including the matters alleged in paragraphs 98(b), 99 and 101; and
- (k) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(l) to (q).

317.2 Further particulars may be provided following evidence.

Paragraph 318.

318.1 The particulars to paragraphs 316 and/or 317 are repeated (including any documents referred to).

FY14 internal control deficiencies representation and non-disclosure

Paragraph 319.

319.1 The representation in paragraph 319 was express:

- (a) the representation was made by Deloitte, in writing, in the FY14 FAC Report as alleged in sub-paragraph 116(c);³⁵³
- (b) the representation was made to Wavish, Raine, Ishak and Cave on 6 August 2014 when Potts sent the 6 August 2014 FAC Email; and
- (c) the representation was made to Murray after he joined the Board on 12 August 2014 when he was provided with a copy of the FY14 FAC Report.

³⁵³ DSE.003.047.3598 at 3607

319.2 Further particulars may be provided following evidence.

Paragraph 320.

320.1 The particulars to paragraph 319 (including any documents referred to) are repeated.

320.2 At no time did Deloitte give any qualification or reservation in respect of the representation alleged in paragraph 319.

320.3 Further particulars may be provided following evidence.

Paragraph 321.

321.1 The expectation was reasonable by reason of the following circumstances:

- (a) the terms of the FY14 Deloitte Retainer, and in particular, the terms alleged in paragraphs 88, 89, 90, 91 and 94;
- (b) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (c) the context in which the representations were made;
- (d) the matters alleged in paragraph 14;
- (e) the FY14 Statutory Auditing Obligations referred to in paragraph 85;
- (f) Deloitte's expertise in auditing and accounting matters;
- (g) the FY14 Audit Strategy, including the matters alleged in paragraph 104;
- (h) the express representation in sub-paragraph 319 and the absence of any qualification or reservation in respect of that representation;
- (i) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(a) to (c) and the absence of any qualification or reservation in respect of those statements;
- (j) the statements made by Deloitte at the FY14 FAC Meeting referred to in sub-paragraphs 118(a) and (b) and the absence of any qualification or reservation in respect of those statements;
- (k) the matters alleged in paragraphs 256, 259, 260 and 264.

321.2 Further particulars may be provided following evidence.

Paragraph 322. Intentionally blank

Second FY14 inventory representations, opinions and conduct

Paragraph 323.

323.1 The representations in sub-paragraphs 323(a) and (c) to (g) were express:

- (a) the representations were made orally by White, on behalf of Deloitte, to Wavish, Raine and Ishak at the FAC Meeting held on 12 August 2014 as alleged in sub-paragraph 118(c); and
- (b) the representations were documented in the FAC Minutes for the FAC Meeting on 12 August 2014.³⁵⁴

323.2 The representations in sub-paragraphs 323(b), (h) and (i) were implied by reason of:

- (a) the express representations in sub-paragraphs 323(a) and (c) to (g);
- (b) the absence of any qualification or reservation in respect of the express representations in sub-paragraphs 323(a) and (c) to (g);
- (c) the context in which the representations were made;
- (d) the matters alleged in paragraph 14;
- (e) Deloitte's expertise in auditing and accounting matters;
- (f) the FY14 Statutory Auditing Obligations alleged in paragraph 85;
- (g) the terms of the FY14 Deloitte Retainer;
- (h) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (i) the FY14 Audit Strategy, including the matters alleged in paragraphs 98(c), 98(d), 99, 102 and 103; and
- (j) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(d) to (k).

323.3 Further particulars may be provided following evidence.

Paragraph 324.

324.1 The representations were implied by reason of:

- (a) the express representations in sub-paragraphs 323(a) and (c) to (g);
- (b) the implied representations in sub-paragraphs 323(b), (h) and (i);
- (c) the absence of any qualification or reservation in respect of the representations in paragraph 323;
- (d) the context in which the representations were made;
- (e) the matters alleged in paragraph 14;
- (f) Deloitte's expertise in auditing and accounting matters;
- (g) the FY14 Statutory Auditing Obligations referred to in paragraph 85;

³⁵⁴ DSE.003.047.0973

- (h) the terms of the FY14 Deloitte Retainer;
- (i) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (j) the FY14 Audit Strategy, including the matters alleged in paragraphs 98(c), 98(d), 99, 102 and 103; and
- (k) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(d) to (k).

324.2 Further particulars may be provided following evidence.

Paragraph 325.

325.1 The particulars to paragraphs 323 and/or 324 are repeated (including any documents referred to).

Second FY14 rebate representations, opinions and conduct

Paragraph 326.

326.1 The representations in sub-paragraphs 326(a) and (b) were express:

- (a) the representations were made orally by White, on behalf of Deloitte, to Wavish, Raine and Ishak at the FAC Meeting held on 12 August 2014 as alleged in sub-paragraph 118(d); and
- (b) the representations were documented in the FAC Minutes for 12 August 2014.³⁵⁵

326.2 The representations in sub-paragraphs 326(c) and (d) were implied by reason of:

- (a) the express representations in sub-paragraphs 326(a) and (b);
- (b) the absence of any qualification or reservation in respect of the express representations in sub-paragraphs 326(a) and (b);
- (c) the context in which the representations were made;
- (d) the matters alleged in paragraph 14;
- (e) Deloitte's expertise in auditing and accounting matters;
- (f) the FY14 Statutory Auditing Obligations alleged in paragraph 85;
- (g) the terms of the FY14 Deloitte Retainer;
- (h) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (i) the FY14 Audit Strategy, including the matters alleged in paragraphs 98(b), 99 and 101; and

³⁵⁵ DSE.003.047.0973

- (j) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(l) to (q).

326.3 Further particulars may be provided following evidence.

Paragraph 327.

327.1 The representations were implied by reason of:

- (a) the express representations in sub-paragraphs 326(a) and (b);
- (b) the implied representations in sub-paragraphs 326(c) and (d);
- (c) the absence of any qualification or reservation in respect of the representations in paragraph 326;
- (d) the context in which the representations were made;
- (e) the matters alleged in paragraph 14;
- (f) Deloitte's expertise in auditing and accounting matters;
- (g) the FY14 Statutory Auditing Obligations referred to in paragraph 85;
- (h) the terms of the FY14 Deloitte Retainer;
- (i) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (j) the FY14 Audit Strategy, including the matters alleged in paragraphs 98(b), 99 and 101; and
- (k) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(l) to (q).

327.2 Further particulars may be provided following evidence.

Paragraph 328.

328.1 The particulars to paragraphs 326 and/or 327 are repeated (including any documents referred to).

FY14 anticipated unqualified audit report representations and conduct

Paragraph 329.

329.1 The representations in sub-paragraphs 329(a) and (b) were express:

- (a) the representations were made orally by White, on behalf of Deloitte, to Wavish, Raine and Ishak at the FAC Meeting held on 12 August 2014 as alleged in sub-paragraph 118(a); and
- (b) the representations were documented in the FAC Minutes for 12 August 2014.³⁵⁶

³⁵⁶ DSE.003.047.0973

329.2 The representation in sub-paragraph 329(c) was implied by reason of:

- (a) the express representations in sub-paragraphs 329(a) and (b);
- (b) the absence of any qualification or reservation in respect of the express representations in sub-paragraphs 329(a) and (b);
- (c) the context in which the representations were made;
- (d) the matters alleged in paragraph 14;
- (e) Deloitte's expertise in auditing and accounting matters;
- (f) the FY14 Statutory Auditing Obligations alleged in paragraph 85;
- (g) the terms of the FY14 Deloitte Retainer;
- (h) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (i) the FY14 Audit Strategy, including the matters alleged in paragraphs 97 to 99; and
- (j) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(a) to (c).

329.3 Further particulars may be provided following evidence.

Paragraph 330.

330.1 The representations were implied by reason of:

- (a) the express representations in sub-paragraphs 329(a) and (b);
- (b) the implied representation in sub-paragraph 329(c);
- (c) the absence of any qualification or reservation in respect of the representations in paragraph 329;
- (d) the context in which the representations were made;
- (e) the matters alleged in paragraph 14;
- (f) Deloitte's expertise in auditing and accounting matters;
- (g) the FY14 Statutory Auditing Obligations referred to in paragraph 85;
- (h) the terms of the FY14 Deloitte Retainer;
- (i) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (j) the FY14 Audit Strategy, including the matters alleged in paragraphs 97 to 99; and
- (k) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(a) to (c).

330.2 Further particulars may be provided following evidence.

FY14 clearance representations, opinions and conduct

Paragraph 331.

331.1 The representation in sub-paragraph 331(a) was express:

- (a) the representation was made orally by White, on behalf of Deloitte, to the DSH Directors at the Board Meeting on 18 August 2014 as alleged in paragraph 120;
- (b) the representation was documented in the Board Minutes for 18 August 2014.³⁵⁷

331.2 The representations in sub-paragraphs 331(b) to (e) were implied by reason of:

- (a) the express representation in sub-paragraph 331(a);
- (b) the absence of any qualification or reservation in respect of the express representation in sub-paragraph 331(a);
- (c) the context in which the representations were made;
- (d) the matters alleged in paragraph 14;
- (e) Deloitte's expertise in auditing and accounting matters;
- (f) the FY14 Statutory Auditing Obligations alleged in paragraph 85;
- (g) the terms of the FY14 Deloitte Retainer;
- (h) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (i) the FY14 Audit Strategy, including the matters alleged in paragraphs 97 to 99; and
- (j) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(a) to (c).

331.3 Further particulars may be provided following evidence.

Paragraph 332.

332.1 The representations were implied by reason of:

- (a) the express representation in sub-paragraph 331(a);
- (b) the implied representations in sub-paragraphs 331(b) to (e);
- (c) the absence of any qualification or reservation in respect of the representations in paragraph 331;
- (d) the context in which the representations were made;
- (e) the matters alleged in paragraph 14;
- (f) Deloitte's expertise in auditing and accounting matters;

³⁵⁷ DSE.003.046.2328

- (g) the FY14 Statutory Auditing Obligations referred to in paragraph 85;
- (h) the terms of the FY14 Deloitte Retainer;
- (i) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (j) the FY14 Audit Strategy, including the matters alleged in paragraphs 97 to 99; and
- (k) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(a) to (c).

332.2 Further particulars may be provided following evidence.

Paragraph 333.

333.1 The particulars to paragraphs 331 and/or 332 are repeated (including any documents referred to).

FY14 Corporations Act compliance representation, opinion and conduct

Paragraph 334.

334.1 The representations in paragraph 334 were express and were made by Deloitte to (inter alia) the NED Cross-Claimants and DSH, in writing, in the FY14 Audit Report as alleged in paragraph 123(d).³⁵⁸

334.2 Further, or in the alternative, the representations in paragraph 334 were implied by reason of:

- (a) the express representation in paragraph 334;
- (b) the absence of any qualification or reservation in respect of the express representations in paragraph 334;
- (c) the context in which the representations were made;
- (d) the matters alleged in paragraph 14;
- (e) Deloitte's expertise in auditing and accounting matters;
- (f) the FY14 Statutory Auditing Obligations alleged in paragraph 85;
- (g) the terms of the FY14 Deloitte Retainer;
- (h) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (i) the FY14 Audit Strategy, including the matters alleged in paragraphs 97 to 99; and
- (j) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(a) to (c).

334.3 Further particulars may be provided following evidence.

³⁵⁸ DSE.003.046.5445 at 5491-5492

Paragraph 335.

335.1 The representations were implied by reason of:

- (a) the representation in paragraph 334;
- (b) the absence of any qualification or reservation in respect of the representations in paragraph 334;
- (c) the context in which the representations were made;
- (d) the matters alleged in paragraph 14;
- (e) Deloitte's expertise in auditing and accounting matters;
- (f) the FY14 Statutory Auditing Obligations referred to in paragraph 85;
- (g) the terms of the FY14 Deloitte Retainer;
- (h) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (i) the FY14 Audit Strategy, including the matters alleged in paragraphs 97 to 99; and
- (j) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(a) to (c).

335.2 Further particulars may be provided following evidence.

Paragraph 336.

336.1 The particulars to paragraphs 334 and/or 335 are repeated (including any documents referred to).

FY14 audit compliance representation, opinion and conduct**Paragraph 337.**

337.1 The representation in sub-paragraphs 337 was express and was made by Deloitte to (inter alia) the NED Cross-Claimants and DSH, in writing, in the FY14 Audit Report as alleged in sub-paragraph 123(b).³⁵⁹

337.2 Further particulars may be provided following evidence.

Paragraph 338.

338.1 The representations were implied by reason of:

- (a) the express representation in sub-paragraph 337;
- (b) the absence of any qualification or reservation in respect of the representation in paragraph 337;

³⁵⁹ DSE.003.046.5445 at 5491-5492

- (c) the context in which the representations were made;
- (d) the matters alleged in paragraph 14;
- (e) Deloitte's expertise in auditing and accounting matters;
- (f) the FY14 Statutory Auditing Obligations referred to in paragraph 85;
- (g) the terms of the FY14 Deloitte Retainer;
- (h) Deloitte's obligation to exercise due skill and care in the provision of services relating to the FY14 Audit;
- (i) the FY14 Audit Strategy, including the matters alleged in paragraphs 97 to 99; and
- (j) the statements in the FY14 FAC Report referred to in sub-paragraphs 116(a) to (c).

338.2 Further particulars may be provided following evidence.

Paragraph 339.

339.1 The particulars to paragraphs 337 and/or 338 are repeated (including any documents referred to).

FY14 trade/commerce, financial product and financial services

Paragraph 340. Intentionally blank

FY14 misleading or deceptive conduct

First FY14 inventory representations, opinions and conduct

Paragraph 341.

341.1 Contrary to the First FY14 Inventory Representations:

- (a) the quality and ageing of inventory had not improved;
- (b) the reduction in the inventory provision was not the result of an improvement in the quality and ageing of inventory;
- (c) the Revised Obsolescence Methodology did not take into account the improved quality and ageing of inventory because the quality and ageing of inventory had not improved;
- (d) Deloitte had not reviewed and audited the assumptions and methodology applied in the Revised Obsolescence Methodology;
- (e) the Revised Obsolescence Methodology was not appropriate for adoption by DSH to determine its inventory provision in accordance with AASB 102;
- (f) the inclusion of warehouse costs and the costs of the buying team in the cost of inventory was not appropriate and did not comply with AASB 102;

- (g) inventory balances had increased from FY13 as a result, in part, of Rebate Driven Buying Practices; and
- (h) the manner in which DSH accounted for inventory (including the value of inventory and level of provisioning) was not appropriate and did not comply with Australian Accounting Standards, including AASB 102.

341.2 Paragraphs 2, 18, 19, 20, 23, 24(a) to (b), 25, 29 and 30 and the particulars to those paragraphs (including any documents referred to) are repeated.

341.3 Further, or in the alternative, the NED Cross-Claimants refer to and rely on Basford at [10], [15] to [17], [19] to [21], [25] to [27], [31], [107] to [117], [119] to [123], [124] to [127], [128] to [136], [149] to [150], [160] to [161].

341.4 Further, or in the alternative, paragraphs 271 to 286, 288 to 298 and 300 to 312 and the particulars to those paragraphs (including any documents referred to) are repeated.

341.5 Further particulars may be provided following the service of evidence.

Paragraph 342.

342.1 The particulars to paragraph 341 (including any documents referred to) are repeated.

342.2 Contrary to the First FY14 Inventory Opinion Representations, Deloitte:

- (a) had not acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care in reaching the opinions; and
- (b) (further or alternatively) did not have reasonable grounds for reaching the opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards.

342.3 Paragraphs 271 to 286, 288 to 298 and 300 to 312 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 343.

343.1 The particulars to paragraph 341 and 342 (including any documents referred to) are repeated.

First FY14 rebate representations, opinions and conduct

Paragraph 344.

344.1 Contrary to the First FY14 Rebate Representations:

- (a) management's revised treatment of O&A rebates within COS rather than as a recovery of marketing and sales expenses was not appropriate and did not comply with Australian Accounting Standards, including AASB 102;
- (b) the reclassification from CODB to COS did have a material impact on the comparatives reported (in particular in relation to gross profit); and

- (c) the manner in which DSH accounted for rebates (including the reclassification from CODB to COS and the value of rebates recognised by DSH) was not appropriate and did not comply with Australian Accounting Standards, including AASB 102.
- 344.2 Paragraphs 2, 18, 19, 20, 21, 22, 23, 27, 28 and 30 and the particulars to those paragraphs (including any documents referred to) are repeated.
- 344.3 Further, or in the alternative, the NED Cross-Claimants refer to and rely on Basford at [10], [11] to [14], [45] to [74] and [75] to [105].
- 344.4 Further, or in the alternative, paragraphs 174 to 187, 189 to 195, 196 to 213, 214 to 229, 231 to 239, 240 to 254, 255 to 267 and 269 to 270 and the particulars to those paragraphs (including any documents referred to) are repeated.
- 344.5 Further particulars may be provided following the service of evidence.

Paragraph 345.

- 345.1 The particulars to paragraph 344 (including any documents referred to) are repeated.
- 345.2 Contrary to the First FY14 Rebate Opinion Representations, Deloitte:
 - (a) had not acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care in reaching the opinions; and
 - (b) (further or alternatively) did not have reasonable grounds for reaching the opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards.
- 345.3 Paragraphs 174 to 187, 189 to 195, 196 to 213, 214 to 229, 231 to 239, 240 to 254, 255 to 267 and 269 to 270 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 346.

- 346.1 The particulars to paragraph 344 and 345 (including any documents referred to) are repeated.

FY14 internal control deficiencies representation and non-disclosure

Paragraph 347.

- 347.1 Contrary to the FY14 No Internal Control Deficiencies Representation, Deloitte had identified significant deficiencies in internal controls relating to the prevention and detection of fraud and error which would impact on Deloitte's ability to provide its opinion on the FY14 Financial Report
- 347.2 Paragraphs 255 to 267 and 269 to 270 and the particulars to those paragraphs (including any documents referred to) are repeated.
- 347.3 Further particulars may be provided following the service of evidence.

Paragraph 348.

348.1 The particulars to paragraph 347 (including any documents referred to) are repeated.

348.2 Paragraphs 255 to 267 and 269 to 270 and the particulars to those paragraphs (including any documents referred to) are repeated.

Second FY14 inventory representations, opinions and conduct**Paragraph 349.**

349.1 Contrary to the Second FY14 Inventory Representations:

- (a) the inclusion of supply chain costs was not in accordance with AASB 102;
- (b) the quality and ageing of inventory had not improved;
- (c) the Revised Obsolescence Methodology did not take into account the improved quality and ageing of inventory;
- (d) Deloitte had not audited the assumptions underlying both the Old Obsolescence Methodology and the Revised Obsolescence Methodology;
- (e) the Revised Obsolescence Methodology was not appropriate for adoption by DSH to determine its inventory provision in accordance with AASB 102; and
- (f) the manner in which DSH accounted for inventory (including the value of inventory and level of provisioning, was not appropriate and did not comply with Australian Accounting Standards, including AASB 102.

349.2 Paragraphs 2, 18, 19, 22, 23, 24(a) to (b), 25, 29, 30 and the particulars to those paragraphs (including any documents referred to) are repeated.

349.3 Further, or in the alternative, the NED Cross-Claimants refer to and rely on Basford at [10], [15] to [17], [19] to [21], [25] to [27], [31], [107] to [117], [119] to [123], [124] to [127], [128] to [136], [149] to [150] and [160] to [161].

349.4 Further, or in the alternative, paragraphs 271 to 286, 288 to 298 and 300 to 312 and the particulars to those paragraphs (including any documents referred to) are repeated.

349.5 Further particulars may be provided following the service of evidence.

Paragraph 350.

350.1 The particulars to paragraph 349 (including any documents referred to) are repeated.

350.2 Contrary to the Second FY14 Inventory Opinion Representations, Deloitte:

- (a) had not acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care in reaching the opinions; and

- (b) further or alternatively, Deloitte did not have reasonable grounds for reaching the opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards.

350.3 Paragraphs 271 to 286, 288 to 298 and 300 to 312 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 351.

351.1 The particulars to paragraphs 349 and 350 (including any documents referred to) are repeated.

Second FY14 rebate representations, opinions and conduct

Paragraph 352.

352.1 Contrary to the Second FY14 Rebate Representations:

- (a) there was more than \$1.1 million worth of rebates recognised in the FY14 Financial Report that should have been deferred into FY15; and
- (b) the manner in which DSH accounted for rebates (including the value of rebates recognised by DSH) was not appropriate and did not comply with Australian Accounting Standards, including AASB 102.

352.2 Paragraphs 2, 18, 19, 20, 21, 22, 23, 27, 28 and 30 and the particulars to those paragraphs (including any documents referred to) are repeated.

352.3 Further, or in the alternative, the NED Cross-Claimants refer to and rely on Basford at paragraphs [10], [11] to [14], [45] to [74] and [75] to [105].

352.4 Further, or in the alternative, paragraphs 174 to 187, 189 to 195, 196 to 213, 214 to 229, 231 to 239, 240 to 254, 255 to 267 and 269 to 270 and the particulars to those paragraphs (including any documents referred to) are repeated.

352.5 Further particulars may be provided following the service of evidence.

Paragraph 353. Paragraph 353

353.1 Contrary to the Second FY14 Rebate Opinion Representations, Deloitte:

- (a) had not acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care in reaching the opinions; and
- (b) (further or alternatively) did not have reasonable grounds for reaching the opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards.

353.2 Paragraphs 174 to 187, 189 to 195, 196 to 213, 214 to 229, 231 to 239, 240 to 254, 255 to 267 and 269 to 270 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 354. Paragraph 354

354.1 The particulars to paragraph 352 and 353 (including any documents referred to) are repeated.

FY14 anticipated unqualified audit report representations and conduct

Paragraph 355.

355.1 Contrary to the FY14 Anticipated Unqualified Audit Report Representations, in reaching the conclusion that (subject to the matters specified) it would issue an unqualified audit report, Deloitte:

- (a) had not acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care; and
- (b) (further or alternatively) did not have reasonable grounds for reaching that conclusion based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

355.2 Paragraphs 174 to 187, 189 to 195, 196 to 213, 214 to 229, 231 to 239, 240, 255 to 267, 269 to 270, 271 to 286, 288 to 298 and 300 to 312 and the particulars to those paragraphs (including any documents referred to) are repeated.

355.3 Further particulars may be provided following the service of evidence.

Paragraph 356.

356.1 The particulars to paragraph 355 (including any documents referred to) are repeated.

FY14 clearance representations, opinion and conduct

Paragraph 357.

357.1 Contrary to the FY14 Clearance Representations:

- (a) the FY14 Financial Report was not appropriate for adoption by DSH;
- (b) the FY14 Financial Report was not in accordance with the Corporations Act, and did not:
 - (i) give a true and fair view of the consolidated entity's financial position as at 29 June 2014 and of its performance for the year ended that date;
 - (ii) comply with Australian Accounting Standards and the Corporations Regulations 2001;

- (c) the manner in which DSH accounted for rebates (including the value of rebates recognised by DSH) was not appropriate and did not comply with Australian Accounting Standards, including AASB 102; and
- (d) the manner in which DSH accounted for inventory (including the value of inventory and level of provisioning) was not appropriate and did not comply with Australian Accounting Standards, including AASB 102.

357.2 Paragraphs 2, 18, 19, 20, 21, 22, 23, 24(a) to (b), 25, 27, 28, 29 and 30 and the particulars to those paragraphs (including any documents referred to) are repeated.

357.3 Further, or in the alternative, the NED Cross-Claimants refer to and rely on Basford at [10], [11] to [14], [15] to [17], [19] to [21], [25] to [27], [31], [45] to [74], [75] to [105], [107] to [117], [119] to [123], [124] to [127], [128] to [136], [149] to [150] and [160] to [161].

357.4 Further, or in the alternative, paragraphs 174 to 187, 189 to 195, 196 to 213, 214 to 229, 231 to 239, 240 to 254, 255 to 267, 269 to 270, 271 to 286, 288 to 298 and 300 to 312 and the particulars to those paragraphs (including any documents referred to) are repeated.

357.5 Further particulars may be provided following the service of evidence.

Paragraph 358.

358.1 Paragraphs 174 to 187, 189 to 195, 196 to 213, 214 to 229, 231 to 239, 240 to 254, 255 to 267, 269 to 270, 271 to 286, 288 to 298 and 300 to 312 and the particulars to those paragraphs (including any documents referred to) are repeated.

Paragraph 359.

359.1 The particulars to paragraphs 357 and 358 (including any documents referred to) are repeated.

FY14 Corporations Act compliance representation, opinion and conduct

Paragraph 360.

360.1 Contrary to the FY14 Corporations Act Compliance Representation, the FY14 Financial Report was not in accordance with the Corporations Act, and did not:

- (a) give a true and fair view of the consolidated entity's financial position as at 29 June 2014 and of its performance for the year ended that date; and
- (b) comply with Australian Accounting Standards and the Corporations Regulations 2001.

360.2 The particulars to paragraph 357 (including any documents referred to) are repeated.

360.3 Further particulars may be provided following the service of evidence.

Paragraph 361.

361.1 Contrary to the FY14 Corporations Act Compliance Opinion Representation Deloitte:

- (a) had not acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care; and
- (b) (further or alternatively) did not have reasonable grounds for reaching that conclusion based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

361.2 The particulars to paragraph 358 (including any documents referred to) are repeated.

Paragraph 362.

362.1 The particulars to paragraphs 360 and 361 (including any documents referred to) are repeated.

FY14 audit compliance representation, opinion and conduct

Paragraph 363.

363.1 Contrary to the FY14 Audit Compliance Representation, Deloitte did not conduct its audit of the FY14 Financial Report in accordance with Australian Auditing Standards.

363.2 Paragraphs 174 to 187, 189 to 195, 196 to 213, 214 to 229, 231 to 239, 240 to 254, 255 to 267, 269 to 270, 271 to 286, 288 to 298 and, 300 to 312 and the particulars to those paragraphs (including any documents referred to) are repeated.

363.3 Further particulars may be provided following the service of evidence.

Paragraph 364.

364.1 Contrary to the FY14 Audit Compliance Opinion Representation, Deloitte:

- (a) had not acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care; and
- (b) (further or alternatively) did not have reasonable grounds for reaching that conclusion based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

364.2 The particulars to paragraph 363 (including any documents referred to) are repeated.

Paragraph 365.

365.1 The particulars to paragraph 363 (including any documents referred to) are repeated.

FY14 reliance

First FY14 inventory representations, opinions and conduct

Paragraph 366.

366.1 Each of Wavish, Raine, Cave, Ishak, Murray and DSH relied on the First FY14 Inventory Representations: