

FEDERAL COURT OF AUSTRALIA

Fisher (trustee for the Tramik Super Fund Trust) v Vocus Group Limited [2019]

FCA 712

File number: VID 419 of 2019

Judge: **MOSHINSKY J**

Date of judgment: 21 May 2019

Catchwords: **PRACTICE AND PROCEDURE** – representative proceeding – orders in aid of mediation – where parties jointly proposed that group members have option to opt out of the proceeding or to register their claim – where parties proposed that a group member who did not opt out and did not register would not be entitled to receive any benefit or monetary compensation from any settlement (to be approved by the Court) of the proceeding agreed at the mediation or within six months after the conclusion of the mediation, but would be bound by any such settlement including any releases given to the respondent – whether power to make proposed orders – whether orders appropriate in the circumstances

Legislation: *Civil Dispute Resolution Act 2011* (Cth)
Corporations Act 2001 (Cth), s 674
Federal Court of Australia Act 1976 (Cth), ss 33ZF, 37M

Cases cited: *Bradgate (Trustee) v Ashley Services Group Limited* [2017] FCA 1591
Melbourne City Investments Pty Ltd v Treasury Wine Estates Ltd (2017) 252 FCR 1

Date of hearing: 15 May 2019

Date of last submissions: 20 May 2019

Registry: Victoria

Division: General Division

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Category: Catchwords

Number of paragraphs: 21

Counsel for the Applicants: Mr WAD Edwards with Mr DJ Fahey

Solicitor for the Applicants: Slater and Gordon Lawyers

Counsel for the Respondent: Mr MC Garner with Mr K Loxley

Solicitor for the Respondent: Herbert Smith Freehills

ORDERS

VID 419 of 2019

BETWEEN: **MICHAEL FISHER AND TRACY FISHER AS TRUSTEES
FOR THE TRAMIK SUPER FUND TRUST**
Applicants

AND: **VOCUS GROUP LIMITED**
Respondent

JUDGE: **MOSHINSKY J**

DATE OF ORDER: **21 MAY 2019**

THE COURT ORDERS BY CONSENT THAT:

Defence

1. The respondent not be required to file a defence until further order.

Discovery

2. By 4.00 pm on 29 July 2019, the respondent provide to the applicants the categories of documents listed in **Annexure A** to these orders by way of discovery. Discovery may be made in tranches.

Mediation

3. Pursuant to s 53A(1) of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**), the Court refers these proceedings to mediation which is to occur by no later than 23 October 2019.
4. The mediation is to be conducted by a mediator agreed between the parties, with such agreement to occur by no later than 2 October 2019. If the parties cannot agree to a mediator by this date, the mediator is to be National Operations Registrar Lagos or another registrar nominated by her.

Opt Out and Registration Deadline

5. Pursuant to ss 33J and 3ZF of the FCAA, 4.00 pm on 13 August 2019 be fixed as the date before which:
 - (a) a Group Member may opt out of the proceeding;

- (b) a Group Member who wishes to participate in the proceeds of any settlement of this proceeding must register their claim by doing so in the manner set out in these orders,

(the **Deadline**).

Notice

- 6. Subject to Order 16, pursuant to s 33X of the FCAA, notice (**Notice**) be given to Group Members of:
 - (a) the commencement of the proceeding and their right to opt out of the proceeding;
 - (b) the requirement that they register their claim in order to participate in any distribution of any amount agreed in a settlement of the proceeding; and
 - (c) the consequence that if they do not opt out of the proceeding and do not register their claim they will not be entitled to participate in (or receive any benefit or monetary compensation from) any settlement (to be approved by the Court) of the proceeding agreed at the Mediation or within six months after the conclusion of the Mediation.
- 7. Subject to Order 16, pursuant to s 33Y(2) of the FCAA, the form and content of the Notice set out in Annexure B to these Orders is approved.
- 8. The Notice may be amended by the parties before it is emailed, posted, displayed or published in accordance with Order 9, in order to correct any website or email address or telephone number or other non-substantive error.

Distribution of the Notice

- 9. Pursuant to s 33Y(3) of the FCAA, the Notice is to be given to Group Members on or before 13 June 2019 according to the following procedure:
 - (a) the Respondent shall cause its share registry service provider, Computershare Limited (**Computershare**), to send the Notice to all persons who acquired a legal interest in ordinary shares in Vocus Group Limited (**Vocus**) (**VOC shares**) during the period from 29 November 2016 to the close of trade on 2 May 2017 (inclusive) as identified in respondent's register of shareholders. The respondent shall do so in accordance with the requirements set out in the

protocol in **Annexure C (Computershare Protocol)**, with the distribution to occur on 11 June 2019;

- (b) by 3 June 2019, the respondent shall provide a copy of this Order 9 including the Computershare Protocol to Computershare;
- (c) should the respondent become aware of any actual or potential noncompliance with the Computershare Protocol, the respondent is to notify the applicants within two (2) business days of so becoming aware. The applicants and the respondent are directed to advise the Court of such non-compliance by email to the Associate of Justice Moshinsky;
- (d) the applicants shall cause a copy of the Notice to be sent by email or prepaid ordinary post to each Group Member who has, at the date of this order, entered into a Funding Agreement with Investor Claim Partner Pty Ltd or ICP Capital Pty Ltd (together, **ICP**) or Woodsford Litigation Funding Limited (**Woodsford**) or identified herself, himself or itself to the applicants' solicitors as a potential Group Member (even if they have not entered into a Funding Agreement with ICP or Woodsford), and for whom the applicants' solicitors hold a current email address or postal address (jointly **Existing Registered Group Members**); and
- (e) the applicants shall cause a copy of the Notice, together with copies of the most current version of the originating application, the pleadings, these orders, and any application for a common fund order, to be displayed on the website of the applicants' solicitors, <https://www.slatergordon.com.au/classactions/current-class-actions/Vocus> and at www.vocusclassaction.com.au, and to remain continuously so displayed up to and including the Deadline.

Opt out

- 10. Pursuant to s 33ZF of the FCAA, and subject to any further order of the Court, any Group Member who wishes to opt out of this proceeding must, before the Deadline, send an opt out notice, in the form of Schedule B to the Notice to the Victorian District Registry of the Federal Court of Australia at the email address vicreg@fedcourt.gov.au (with the subject line 'Opt Out Notice VID419/2019') or postal address: Federal Court of Australia Registry, Level 7, 305 William St, Melbourne, Victoria 3000.
- 11. The applicants' solicitors and the respondent's solicitors have leave to inspect and make copies of any opt-out notices on the Court file sent pursuant to Order 10.

12. If, on or before the Deadline, the solicitors for any party or ICP or Woodsford receive a notice purporting to be an opt out notice referable to this proceeding, the solicitors must file the notice in the Victorian District Registry of the Federal Court of Australia within two (2) business days after receipt, with a notation as to the date of receipt, and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors or ICP or Woodsford.

Registration

13. Subject to Order 16, pursuant to s 33ZF of the FCAA, any Group Member who wishes to participate in any distribution of any amount agreed in a settlement of this proceeding is obliged, before the Deadline, to register their claim, by:

- (a) if that Group Member has as at the date of these orders already signed a funding agreement with ICP or Woodsford – providing to Slater and Gordon, or taking reasonable steps to provide to Slater and Gordon, the information set out in Order 14(a) to (f) below, before the Deadline to the extent it has not already been provided;
- (b) if that Group Member has not as at the date of these orders already signed a funding agreement with ICP or Woodsford –
 - (i) executing a funding agreement with ICP or Woodsford, and providing to Slater and Gordon, or taking reasonable steps to provide to Slater and Gordon, the information set out in Order 14(a)-(f) below before the Deadline; or
 - (ii) completing, or taking reasonable steps to complete, a registration form either:
 - (A) online, which is substantially in the form of Schedule A to the Notice, and made available at web address: www.vocusclassaction.com.au, before the Deadline; or
 - (B) in hard-copy form, which is Schedule A to the Notice, and returning that hard copy form to Slater and Gordon before the Deadline.

(New Registered Group Member).

14. In order to register for the purpose of Order 13(a) or (b) a Group Member shall provide or take reasonable steps to provide:

- (a) the Group Member's name and address and/or email address;
- (b) any relevant and available account number, Holder Identification Number (**HIN**) or Securityholder Reference Number (**SRN**);
- (c) the number of Vocus securities held by that Group Member as at close of trade on 28 November 2016;
- (d) all transactional information (date of acquisition, quantity of Vocus securities acquired, price per security, brokerage paid) regarding Vocus securities acquired from 29 November 2016 to 2 November 2017;
- (e) all transactional information (date of sale, quantity of securities sold, price per security, brokerage paid) regarding Vocus securities sold from 29 November 2016 to 2 November 2017; and
- (f) documentary evidence (e.g. transaction receipts) in support of each of the matters the subject of items 14(b)-(e), above.

Failure to provide such information will not render the Group Member's registration invalid.

15. By 26 August 2019, the Respondent and Applicants must each file in a sealed envelope marked '*Confidential List of Group Members – Not to be opened without leave of the Court or a Judge*', a list of Group Members to whom the Notice was sent in accordance with Orders 6 and 9, in the form contemplated by Section 4(a) of the Computershare Protocol, which list shall contain for each Group Member:

- (a) name, postal address and email address;
- (b) the method by which the Notice was sent;
- (c) the date on which the Notice was sent;
- (d) whether and which distribution attempts failed; and
- (e) the form of the evidence by which the failed distribution attempt was identified, including, but not limited to, by way of receipt of an email delivery failure notification, or receipt of a prepaid ordinary post envelope marked 'return to sender' (or similar).

Other orders in aid of mediation

16. Pursuant to s 33ZF of the Act, and subject to any further order of the Court, any Group Member who neither opts out nor registers as a Group Member on or before the Deadline in accordance with the manner provided for in these Orders:
 - (a) shall remain a Group Member for all purposes of this proceeding, including for the purpose of being bound by any judgment in this proceeding and being entitled to participate in any award of damages by the Court if this proceeding does not settle; but
 - (b) will not, without leave of the Court, be entitled to seek any benefit pursuant to (or monetary compensation from) any settlement (to be approved by the Court) of this proceeding agreed at, or within 6 months after the conclusion of, the mediation to occur pursuant to Order 3, but will be bound by the terms of any settlement agreement approved by the Court in respect of such settlement.
17. Any Group Member wishing to challenge or seek a variation of Order 16 must deliver to the applicants' solicitors, by no later than the Deadline, written notice of the challenge or variation sought and a statement of the reasons for the challenge or for seeking the variation (as the case may be), and the solicitors shall forthwith notify the respondent and the Court of the notice and the reasons.
18. Nothing in Order 16 precludes any Group Member who does not opt-out pursuant to Order 10 from having their claims considered at any mediation or settlement that takes place at some future time, if no settlement (to be approved by the Court) of this proceeding is agreed at, or within 6 months after the conclusion of, the mediation to occur pursuant to Order 3.
19. Pursuant to s 33ZF of the FCAA, by 9 September 2019, the applicants shall:
 - (a) deliver to the solicitors for the respondent a list of Existing Registered Group Members and New Registered Group Members (on a de-identified basis) (**Confidential De-Identified List**) which list shall contain:
 - (i) a unique identification number for each Existing Registered Group Member and New Registered Group Member;
 - (ii) the information referred to in Order 14(c)-(e) for each Existing Registered Group Member and New Registered Group Member to the extent that information is known to ICP, Woodsford or the applicants'

solicitors at that date and confirmation of whether or not the evidence required by Order 14(f) has been received; and

- (iii) any amendments to the information as notified to Slater and Gordon by that date.
- (b) file, in a sealed envelope marked '*Confidential List of Class Members – Not to be opened without leave of the Court or a Judge*', a list of Existing Registered Group Members and New Registered Group Members, which list shall contain:
 - (i) a unique identification number for each Existing Registered Group Member and New Registered Group Member;
 - (ii) the information referred to in Order 14(a)-(f) for each Existing Registered Group Member and New Registered Group Member; and
 - (iii) any amendments to the information as notified to Slater and Gordon by that date.
- 20. The costs of and incidental to the procedure set out in Orders 3 to 19 above are costs in the proceeding. For the avoidance of doubt, answering enquiries by Group Members and members of the public in relation to the Notice is work incidental to Orders 3 to 19 above.
- 21. The Confidential De-Identified List, and any information contained therein, is to be kept confidential to:
 - (a) the respondent's legal advisers and any insurer and their legal advisers;
 - (b) those officers and employees of the respondent who have the conduct of this proceeding on behalf of the respondent and/or are involved in providing instructions for the purposes of settlement discussions; and
 - (c) experts retained by the respondent in the proceeding.
- 22. The website at address www.vocusclassaction.com.au at which the online versions of any schedules to the Notice are to be available will be administered by Slater and Gordon Lawyers.

Case Management

- 23. The matter be listed for a case management hearing on 30 October 2019 at 9.30 am.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

Annexure A

Pursuant to the orders made on 21 May 2019, by 29 July 2019 (the **Discovery Date**), the Respondent, Vocus Group Limited (**Vocus**), is to provide the following categories of documents (each a **Category**), to the extent that Vocus is able to identify and locate such documents by the Discovery Date using its best endeavours to do so.

The following definitions apply to the categories of documents below:

1. **ASX Announcements** means Vocus' announcements on the following dates:
 - a) 29 November 2016, titled "2016 AGM – Chairman and CEO Speeches and Presentations"
 - b) 22 February 2017, titled "Appendix 4D and Half Year FY17 Result"
 - c) 2 May 2017, titled "Revision of FY17 Guidance"
2. **Conference Calls** means conference calls held between representatives of Vocus and various analysts and investors occurring on the following dates:
 - a) 22 February 2017, with subject "Vocus Group Ltd FY17 Interim Results"
 - b) 3 May 2017, with subject "Vocus Group Ltd Preliminary 2017 Guidance Revision Call"
 - c) 14 June 2017, with subject "Vocus Group Ltd Investor Day"
3. **Relevant Period** means, for the purpose of this discovery proposal only, 1 July 2016 until 2 May 2017 (inclusive).
4. **Senior Management** means, for the purpose of this discovery proposal only, Vocus' Chief Executive Officer, Chief Financial Officer, Chief Executive – Enterprise and Wholesale, Chief Executive – Consumer, Chief Executive – New Zealand, Chief Technology Officer, General Counsel and Company Secretary during the Relevant Period.

Categories

1. **Board of Directors (Board) packs**

Board packs provided to Vocus' Board for meetings of Vocus' Board held during the Relevant Period.
2. **Board and Committee Related Documents**
 - a) Final minutes of meetings of Vocus' Board held during the Relevant Period.
 - b) Any documents tabled at the meetings of Vocus' Board referred to at Category 2(a) not otherwise forming part of the Board packs referred to at Category 1.
 - c) To the extent not already captured by Category 2(a)–(b), contemporaneous hard copy notes or records produced for or by the participants in Board meetings, in relation to Board meetings held during the Relevant Period.

d) With respect to the Board's Audit Committee and Technology and Transformation Committee (**Relevant Committees**):

- (1) Relevant Committee packs provided to the Relevant Committees for meetings of the Relevant Committees held during the Relevant Period.
- (2) Final minutes of meetings of the Relevant Committees held during the Relevant Period.
- (3) To the extent not already captured, contemporaneous hard copy notes or records produced for or by the participants in meetings of the Relevant Committees, in relation to meetings of the Relevant Committees held during the Relevant Period.
- (4) Any documents tabled at meetings of the Relevant Committees during the Relevant Period not otherwise forming part of the Relevant Committee packs referred to at d)(1) above.

3. ASX Announcements

Any drafts of ASX Announcements received by Senior Management during the Relevant Period.

4. Presentation Notes

- a) All relevant notes prepared by or received by Senior Management during the Relevant Period in respect of the Conference Calls.
- b) All relevant notes prepared by or received by Senior Management in relation to the 2016 AGM Presentation (as defined in the Statement of Claim).
- c) All relevant notes prepared by or received by Senior Management in relation to the FY17 Interim Results Presentation (as defined in the Statement of Claim).

5. Audit and Other Reports

Final audit reports provided to Senior Management by Deloitte during the Relevant Period relating to issues pleaded in the Statement of Claim.

6. Policy Documents

Internal policy documents, manuals or guideline documents in place during the Relevant Period relating to recognition of revenue and assessment of materiality of information for the purpose of complying with the ASX Listing Rules and/or the *Corporations Act 2001* (Cth).

7. Accounting review

Documents produced by or received by Senior Management during the Relevant Period relating to a review of the recognition of revenue from large long-term corporate services contracts included in the 2H17 forecast.

8. Mr Geoff Horth emails

Emails between Mr Horth and Board members in the Relevant Period, which relate to the issues pleaded in the Statement of Claim, to be identified using the following search parameters:

- a) Meet*
- b) Mtg
- c) Manag*
- d) "Catch up" OR "catch-up"
- e) Committee
- f) Visib*
- g) Plan*
- h) Guid*
- i) Forecast*
- j) Grow*
- k) Cash*
- l) Revenue
- m) FY17
- n) Analys*
- o) EBITDA
- p) Sale*
- q) Run rates
- r) Financial w/10 performance
- s) Financial w/10 systems
- t) Finan*
- u) Resourc*
- v) Technolog*
- w) Acquis*
- x) Integ*
- y) Plan*
- z) Provision*
- aa) Synerg*
- bb) Phillippo OR philippo OR phillipo
- cc) Amcom
- dd) M2
- ee) Nextgen
- ff) Downgrade OR "down grade"
- gg) Announc*
- hh) Draft*
- ii) Transform*
- jj) Report*
- kk) Disclos*

9. Mark Wratten Briefing Pack

Relevant emails sent to Mark Wratten from any member of the Board or any member of Senior Management during the first month of Mr Wratten's commencement in the

role of Chief Financial Officer for the purpose of briefing Mr Wratten as part of his transition into his role as Vocus' Chief Financial Officer.

10. Phillippo Review

Documents comprising Ms Phillippo's final report in relation to the Phillippo Review (as defined in the Statement of Claim), and any relevant documents relied upon in producing that final report.

11. Integration strategy

Relevant documents prepared by Senior Management in the Relevant Period relating to difficulties integrating Amcom, M2 or Nextgen Group (as defined in the Statement of Claim) into Vocus' business, with such documents to be identified using the following search parameters:

- a) Integra* AND "Amcom"
- b) Plan* AND "Amcom"
- c) Integra* AND "M2"
- d) Plan* AND "M2"
- e) Integra* AND "Nextgen"
- f) Plan* AND "Nextgen"

12. Management documents

- a) Documents comprising the model used for the FY17 Guidance (as defined in the Statement of Claim).
- b) Reports prepared by or received by Senior Management in the Relevant Period concerning delays or difficulties with provisioning.

Annexure B

Notice

NOTICE TO GROUP MEMBERS

Federal Court of Australia

*Michael Fisher and Tracy Fisher as trustees for the Tramik Super Fund Trust v
Vocus Group Limited (VID 419 of 2019)
("Vocus Class Action")*

NOTICE TO REGISTER TO PARTICPATE IN ANY SETTLEMENT REACHED DURING
MEDIATION OF THE VOCUS CLASS ACTION

SECTION 1

IMPORTANT INFORMATION

This notice is important. It relates to your right to register your claim as part of this class action and participate in any settlement reached at or within six months of the upcoming mediation or, alternatively, your right to right to opt out of this class action.

If you do nothing you will not be entitled to participate in (or receive any benefit or monetary compensation from) any settlement (to be approved by the Court) of the proceeding agreed at the Mediation referred to in paragraph 3 below or within six months after the conclusion of that Mediation, but will be bound by the terms of any settlement approved by the Court, which may include releases of Vocus and its related entities and its officers and former officers, as described in paragraph 12 below.

Why have you received this Notice?

1. A class action has been commenced in the Federal Court of Australia by the Applicants on behalf of all persons who acquired an interest in ordinary shares in Vocus Group Limited (ACN 084 115 499) (**Vocus**) between 29 November 2016 and 2 May 2017 (inclusive) (the **claim period**).

2. The class action alleges that Vocus engaged in misleading conduct and failed to comply with its continuous disclosure obligations, which caused loss and damage to Vocus shareholders who acquired Vocus shares during the claim period.
3. The Federal Court has referred this class action to mediation which is to occur by no later than 23 October 2019 (the **Mediation**) and has ordered that this Notice be published for the information of Group Members.
4. You are a "Group Member" if you meet the following criteria:
 - (a) you acquired Vocus securities during the period from 29 November 2016 to the close of trade on 2 May 2017 (inclusive);
 - (b) you are not a director or officer, a close associate, a related party, a related body corporate, or an associated entity of Vocus (as defined by the *Corporations Act*) or a Chief Justice, Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; and
 - (c) you have suffered loss and damage by reason of the conduct alleged against Vocus in the Applicants' Statement of Claim.
5. You have been sent this Notice because, based on information contained in Vocus' share registry, you have been identified as someone who may be a Group Member in the Vocus Class Action.
6. If you are unsure whether you are a Group Member, you should access the Vocus Class Action Website at www.vocusclassaction.com.au, call the Vocus Class Action Hotline on 1800 071 827, or seek your own legal advice.
7. If you fit the description in paragraph 4 above, you should read this Notice carefully as it will affect your rights. Any questions you have concerning the matters contained in this Notice should not be directed to the court. If there is anything in it that you do not understand, you should contact Slater and Gordon Lawyers (contact details are set out at paragraph 6 above) or seek your own legal advice.
8. If you have received this Notice in your capacity as a custodian of Vocus securities and do not have legal authority to make decisions in relation to the securities, please forward this Notice to the individual securities owners at your earliest convenience, and ideally within five (5) business days of receipt of this Notice. If you anticipate any difficulties with this request, you should contact the Vocus Class Action Hotline on 1800 071 827 or access the Vocus Class Action Website at www.vocusclassaction.com.au.

9. This Notice provides important information about:

- (a) what you need to do to participate in the Vocus Class Action and share in any benefit or monetary compensation that might be obtained in any settlement (to be approved by the Court) of the proceeding agreed at the Mediation or within six months of the Mediation (**register**);
- (b) what you need to do to if you want to remove yourself from participating in the Vocus Class Action (**opt out**); and
- (c) how your rights are affected if you neither register to participate in the Vocus Class Action nor opt out (**do nothing**).

What is a class action?

- 10. A class action is an action that is brought by one party (**Applicant**) on his/her or its own behalf and on behalf of a class of people (**Group Members**) against another person (**Respondent**) where the Applicants and the Group Members have similar claims against the Respondent.
- 11. The Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf or to identify a specific Group Member. However, Group Members can cease to be Group Members by opting out of the class action.
- 12. Group Members are “bound” by the outcome in the class action, unless they have opted out of the proceeding. A binding outcome can happen in one of two ways: a *judgment* following a trial, or a *settlement* at any time that is approved by the Court. If there is a judgment or a settlement of a class action, Group Members will not be able to pursue the same claims and may not be able to pursue similar or related claims against the Respondent in other legal proceedings. Group Members should note that:
 - (a) in a *settlement* of a class action, where the settlement provides for compensation to Group Members, the settlement is likely to extinguish all rights to compensation which a Group Member might have against the Respondent which arise in any way out of the events or transactions which are the subject-matter of the class action. Any settlement of the Vocus Class Action may include releases that are commonly sought in relation to the settlements of

class actions, which include releases of the Respondent and its related entities (including officers and former officers) in respect of:

- i. all claims made by Group Members against Vocus in the class action; and
- ii. any claims Group Members may have against Vocus and its related entities:
 1. which are raised in the Vocus Class Action;
 2. which were at any time the subject of the Vocus Class Action or any part of the class action; or
 3. which relate to the matters or issues the subject of the Vocus Class Action or any part of the class action,

whether arising at common law, equity or under statute; and

- (b) in a *judgment* following trial, the Court will decide various common factual and legal issues in respect of the claims made by the Applicants and Group Members. Group Members are bound by those findings, whether or not they are favourable to them (unless they are successfully appealed). Importantly, if there are other proceedings between a Group Member and Vocus, neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the trial of common issues in the class action. This means that if the issues are decided against the Applicants, Group Members will be unable to pursue claims they have which are the same as the Applicants' claims, and will not be able to pursue other claims which are dependent upon common issues which have been decided against the Applicants.

13. If you consider you have claims against Vocus which are based on your individual circumstances or are otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out (see below).

What is the Vocus Class Action?

14. The Vocus Class Action was filed on 24 April 2019 and alleges that:
- (a) on and from 29 November 2016 until the close of trade on 2 May 2017 (that is, the **claim period**), Vocus engaged in misleading or deceptive conduct by providing guidance for the 2017 financial year with respect to the company's revenue, earnings before interest, taxes, depreciation and amortisation (**EBITDA**), net profit after tax (**NPAT**), and achievement of acquisition synergies, when it did not have reasonable grounds for doing so;
 - (b) in the claim period, Vocus breached its obligations of continuous disclosure, in contravention of section 674(2) of the *Corporations Act 2001* (Cth) (**Act**) and the *ASX Listing Rules*, by failing to disclose various information that would have revealed and disclosed that the guidance provided for the 2017 financial year would not be achieved and did not have reasonable grounds; and consequently
 - (c) persons who acquired an interest in ordinary shares in Vocus during the claim period have suffered loss and should be compensated.
15. The Respondent to the class action is Vocus.
16. The detailed allegations made by the Applicant against Vocus are set out in the Applicants' Statement of Claim, a copy of which is available to be viewed at www.vocusclassaction.com.au.
17. On 21 May 2019, the Court made orders referring the Vocus Class Action to a mediation to be conducted by 23 October 2019 (the **Mediation**). As part of this process, the Court also made orders (the **Registration and Opt Out Orders**) requiring Group Members to register if they wish to receive any benefit or monetary compensation from any settlement (to be approved by the Court) of the Vocus Class Action agreed at the Mediation or within six months after the conclusion of the Mediation, or alternatively giving Group Members the right to opt out of the Vocus Class Action. Any settlement agreed at the Mediation will be subject to Court approval.

What do Group Members need to do?

18. At this stage, Group Members have **four options**:
- (a) **register**;
 - (b) **do nothing**;

- (c) **opt out**; or
- (d) apply to the Federal Court of Australia to challenge or vary the Registration and Opt Out Orders.

19. **If you wish to register, opt out, or apply to the Federal Court to challenge or vary the Registration and Opt Out Orders, you must do so by 13 August 2019 (the Deadline).**

20. There are different consequences depending on which option you choose:

- (a) for Group Members who **register** to participate in the Vocus Class Action:
 - i. if the parties agree to **settle** the class action at the Mediation or within six months after the conclusion of the Mediation and the settlement agreement is approved by the court: you will be entitled to participate in that settlement, and will be bound by the settlement (including any releases given to Vocus, its related entities and/or its past and present directors in the settlement agreement, which may include the releases described in paragraph 12 above).
 - ii. if the parties **do not agree to settle** the class action at the Mediation or within six months after the conclusion of the Mediation: the class action will proceed as usual. You will remain a registered Group Member. You will be entitled to participate in any subsequent settlement or judgment.

If you wish to register, you will need to follow the steps outlined in Section 2, Option 1, below.

- (b) for Group Members who **do nothing** (i.e. neither register to participate in the Vocus Class Action nor opt out of the proceeding):
 - i. you will be bound by any judgment or settlement of the class action, but will not be entitled to receive any benefit or monetary compensation from any settlement (to be approved by the Court) of the class action agreed at the Mediation or within six months after the conclusion of the Mediation. Being bound by any settlement approved by the court means that you will be bound by any releases provided to Vocus, its related entities and its officers and

former officers in the settlement agreement, which may include the releases described in paragraph 12 above.

- ii. if the parties **do not agree to settle** the class action at the Mediation or within six months after the conclusion of the Mediation: you will remain a Group Member. You may have your claim considered at any further mediation or as part of any settlement that takes place at some later time, or, if the matter does not settle but proceeds to trial and a successful judgment is obtained, you may be entitled to share in any monetary compensation that is obtained.
- (c) for Group Members who **opt out** of the proceeding: you will not be bound by any judgment in, or settlement of, the class action, and will be excluded from receiving any monetary compensation that results from the class action, either by way of judgment or settlement. If you wish to opt out, you need to follow the steps outlined below in Section 2, Option 3;
- (d) a fourth option is for you to apply to the Federal Court of Australia to challenge or vary the Registration and Opt Out Orders. If you wish to take this fourth option, you need to follow the steps outlined below in Section 2, Option 4.

Further information about each of the four options set out above is contained in Section 2 below.

Will Group Members be liable for legal costs?

- 21. **Group Members ARE NOT liable for legal costs.**
- 22. The Vocus Class Action includes persons who have signed a litigation funding agreement (**Funding Agreement**) with Investor Claim Partner Pty Ltd and ICP Capital Pty Ltd (together, **ICP**) or with Woodsford Litigation Funding Limited (**Woodsford**) (together, **Client Group Members**) and also those who have not done so (**Non-Client Group Members**).
- 23. In the Vocus Class Action, the Applicants and Client Group Members have each entered into a Funding Agreement with ICP or Woodsford. The Applicants and Client Group Members have also retained Slater and Gordon to act as their lawyers pursuant to a Conditional Legal Costs Agreement (**CLCA**).

24. Under the operation of the Funding Agreement, Woodsford will:
- (a) pay the Applicants' legal costs of the action, including:
 - i. part of Slater and Gordon Lawyers' fees, with the remainder charged by Slater and Gordon Lawyers on a "*no win no fee*" basis; and
 - ii. out of pocket expenses (**disbursements**); and
 - (b) provide any security for costs that the Court may order; and
 - (c) indemnify the Applicants against any "adverse costs order" made against them.
25. In litigation, an "adverse costs order" will typically be made by the Court requiring the losing party to pay a portion of the legal costs of the successful party. In a class action, it is only the Applicant who faces the risk of an adverse costs order if the action fails. As a Group Member, an adverse costs order will not be made against you.
26. If the class action is unsuccessful, the costs described at paragraphs 24 and 25 above will be paid by Woodsford.
27. If the class action is successful, the Applicants will seek an order that ICP and Woodsford be reimbursed for these legal costs and disbursements out of the *total* amount recovered for *all* Group Members (a **costs reimbursement order**).
28. The Federal Court will assess the legal costs and disbursements incurred in the proceeding and only make a reimbursement order for an amount the Court determines is reasonable.
29. As noted above, the Vocus Class Action is being funded by Woodsford with the claims management assistance of Investor Claim Partner Pty Ltd. This means that if you have entered into a Funding Agreement with ICP or Woodsford (and are therefore a Client Group Member) you have agreed to pay a funding commission to ICP or Woodsford from any compensation you receive.
30. Client and Non-Client Group Members will be treated no differently in terms of how their claims are advanced in the class action, and you do not have to sign a Funding Agreement to participate in the class action.
31. The Applicants intend to apply to the Court at a later date for orders (the **common fund orders**) that any settlement or judgment sum recovered for group members (not just Client Group Members) will be used to pay ICP and Woodsford a

commission. The maximum commission that would be sought is 25% of the settlement or judgment sum or three times the expenses incurred by ICP and Woodsford (whichever is greater). This commission would be paid in addition to a costs reimbursement order.

Where can you obtain copies of relevant documents or additional information?

32. Copies of the relevant documents, including the most recent version of the pleadings, may be obtained by:
 - (a) accessing the Vocus Class Action Website at www.vocusclassaction.com.au;
 - (b) contacting the Vocus Class Action Hotline on 1800 071 827; or
 - (c) inspecting them at the Federal Court by visiting a District Registry of the Federal Court in Sydney, Canberra, Melbourne, Brisbane, Adelaide, Perth, Hobart or Darwin. The addresses for these registries are available at www.fedcourt.gov.au or by calling the Victoria District Registry on (03) 8600 3333.
33. Please consider the above matters, and the further information in Section 2, below, carefully.
34. If there is anything you are unsure about, you should access the Vocus Class Action Website at www.vocusclassaction.com.au, call the Vocus Class Action Hotline on 1800 071 827, or seek your own legal advice. **Any questions you have concerning the matters contained in this notice should not be directed to the Court.**
35. Information concerning Slater and Gordon Lawyers' policies regarding the identification and handling of potential conflicts in class actions is available on its website.

SECTION 2

YOUR OPTIONS

Option 1: register for the Vocus Class Action

36. If you wish to participate in the class action and receive a share of any benefit or monetary compensation resulting from any settlement (to be approved by the Court) agreed at the Mediation or within six months after the conclusion of the Mediation, you must:

- (a) if you have already signed a Funding Agreement with ICP or Woodsford, provide (or take reasonable steps to provide) to Slater and Gordon the information requested in the "Group Member Registration" form attached as Schedule A to this Notice (the **Registration Form**) before the Deadline. You may complete the Registration Form:
 - i. **online**, at the web address www.vocusclassaction.com.au, by the Deadline; **OR**
 - ii. in **hard-copy form**, in the form of the "Group Member Registration" attached as Schedule A to this Notice and returning that hard copy form to Slater and Gordon Lawyers before the Deadline.
- (b) if you have not already signed a Funding Agreement:

EITHER:

- i. sign a Funding Agreement with ICP or Woodsford and execute Slater and Gordon Lawyers' Conditional Legal Costs Agreement, which is available from Slater and Gordon Lawyers upon request and accessible at www.vocusclassaction.com.au, by the Deadline; and
- ii. provide (or take reasonable steps to provide) to Slater and Gordon Lawyers the information requested in the Registration Form before the Deadline. You may complete the Registration Form:

- 1. **online**, at the web address www.vocusclassaction.com.au, by the Deadline; **OR**

2. in **hard-copy form**, in the form of the "Group Member Registration" attached as Schedule A to this Notice and returning that hard copy form to Slater and Gordon Lawyers before the Deadline.

OR

i. complete the Registration Form either:

1. **online**, at the web address www.vocusclassaction.com.au, by the Deadline; **OR**
 2. in **hard-copy form**, in the form of the "Group Member Registration" attached as Schedule A to this Notice and returning that hard copy form to Slater and Gordon Lawyers before the Deadline.
37. Please note, you are under no obligation to enter into a Funding Agreement, and will have validly registered as long as you complete the Registration Form.
38. **You must provide (or take reasonable steps to provide) the information requested in the Registration Form by the Deadline. The Deadline is 13 August 2019.** Registrations received after the Deadline will not be accepted, with the result that you will be treated as having not responded to this Notice unless you have completed and submitted an Opt Out Notice in accordance with Option 3 below.

Option 2: do nothing

39. If you do nothing (i.e. neither register to participate in the Vocus Class Action nor opt out of it), you will remain a Group Member in the Vocus Class Action and will be bound by any judgment or settlement of the class action. However, if the parties agree to settle the class action at the Mediation or within six months after the conclusion of the Mediation, and the settlement agreement is approved by the Court, you will not be entitled to make a claim for part of any benefit or monetary compensation without the leave of the Court, and you will be bound by the terms of the settlement, which may include the releases of Vocus and its related entities (including its officers and former officers) described in paragraph 12 above.

Option 3: opt out

40. If you do not wish to remain a Group Member in the Vocus Class Action, you must opt out of the proceeding by:

- (a) completing an "Opt Out Notice" which is attached as Schedule B to this Notice and available at www.vocusclassaction.com.au; **and**
 - (b) submitting it to the Victorian District Registry of the Federal Court of Australia by post or email through the following addresses:
 - (A) Federal Court of Australia Registry, Level 7, 305 William Street, Melbourne, Victoria, 3000; or
 - (B) vicreg@fedcourt.gov.au, with the email subject line: 'Opt Out Notice VID419/2019',
- by the Deadline.

- 41. If you opt out of the Vocus Class Action, you:
 - (a) will not be affected by any orders made in the Vocus Class Action;
 - (b) will not be permitted to receive any distribution from any damages award or settlement sum arising from the Vocus Class Action; and
 - (c) will be able to commence separate proceedings against Vocus on your own behalf if you so wish.
- 42. Opt out notices must be submitted to the Victorian District Registry of the Federal Court of Australia by post or by email at the addresses set out at paragraph 40 above before the Deadline. **The Deadline is 13 August 2019.**
- 43. Opt out notices received after this time will not be accepted, and you will remain a Group Member in the Vocus Class Action but will not be permitted to make a claim for part of any settlement (see Option 2 above).

Option 4: apply to challenge or vary the registration and opt out orders

- 44. If you wish to apply to the Federal Court of Australia to challenge or vary the Registration and Opt Out Orders, you must send a written notice to Slater and Gordon Lawyers setting out the challenge or variation you wish to make and the reasons for that challenge or variation. You may then be required to attend the Victorian District Registry of the Federal Court of Australia at a later date to have your application to challenge or vary the Registration and Opt Out Orders heard. Depending on the outcome of that application, you may be given a further opportunity to register to participate in the Vocus Class Action or opt out of the proceeding.
- 45. Any notice applying to challenge or vary the Registration and Opt Out Orders must be delivered to Slater and Gordon Lawyers before the Deadline. **The Deadline is**

13 August 2019. Any notice applying to challenge or vary the Registration and Opt Out Orders received after this time will not be accepted.

SCHEDULE A

GROUP MEMBER REGISTRATION FORM

VOCUS CLASS ACTION

No VID 419 of 2019

COMPLETE THIS FORM IF YOU WISH TO REGISTER TO PARTICIPATE IN THE CLASS ACTION

If you do not complete this form you will not be entitled to participate in (or receive any benefit or monetary compensation from) any settlement (to be approved by the Court) agreed at the Mediation or within six months after the conclusion of the Mediation, but will be bound by the terms of any settlement approved by the Court, which may include releases of Vocus and its related entities and its officers and former officers as described in paragraph 12 of the Notice to Group Members

Federal Court of Australia

District Registry: Victoria

Division: Corporations

Michael Fisher and Tracy Fisher as trustees for the Tramik Super Fund Trust

Applicants

Vocus Group Limited (ACN 084 115 499)

Respondent

To: Slater and Gordon Lawyers
VocusClassAction@slatergordon.com.au

OR

Slater and Gordon Lawyers
Vocus Class Action
485 La Trobe Street
Melbourne, Victoria 3000

The Group Member named below *registers* to participate in the class action and to be bound by, and share in the benefit of any judgment or settlement of the class action.

1. FORM COMPLETION	
<i>In order to be an eligible group member in the Vocus Group Limited class action, you must have purchased Vocus Group Limited (ASX: VOC) securities during the period 29 November 2016 and 2 May 2017 (inclusive).</i>	
The person completing this form is	☐ An eligible group member – skip to 2. ☐ Someone else, completing on behalf of an eligible group member – please complete below.
<i>Personal details of person completing this form</i>	
Title	
First name/s	
Last name	
Email address	
2. GROUP MEMBER DETAILS	
Is the group member an individual or a company?	☐ Individual ☐ Company
<i>If company: company name</i>	
<i>If company: ACN / ABN or registration number (if overseas)</i>	
<i>Personal details of individual or company office bearer</i>	
Title	
First name/s	
Last name	
Email address	
Phone number	
Alternative phone number	
Street address	
Suburb/town	
State	
Postcode / ZIP	
Country	
3. INVESTMENT DETAILS	
<i>Note: If your Vocus securities were or are held under different registered names, or the holdings have different SRN/HIN/Account Numbers, please copy and complete this page for each holding.</i>	
Full name of registered owner/s:	
Securityholder Reference Number (SRN) or Holder Identification Number (HIN) or Account Number	

4. TRADING DETAILS			
Number of Vocus securities held as at close of trade on 28 November 2016			
List all acquisitions of Vocus securities from 29 November 2016 to 2 November 2017 inclusive			
Date of acquisition	Quantity of securities acquired	Price per security	Brokerage paid
List all disposals (sales) of Vocus securities from 29 November 2016 to 2 November 2017 inclusive			
Date of disposal	Quantity of securities disposed of	Price per security	Brokerage paid
<i>Note: if the space above is insufficient, please provide the required information on separate pages with this form</i>			
5. DOCUMENTARY EVIDENCE			
<i>You are required to take reasonable steps to provide documentary evidence (e.g. transaction receipts) in support of each of the matters in sections 3 and 4 above, however, failure to do so will not invalidate your registration.</i>			
I have attached documentary evidence in support of the information herein	☐ Yes ☐ No		
6. EXECUTION			
Dated			
Signed by, or on behalf of and with the authority of, the Group Member (as specified above)			
Print name			

Please return this form to:

VocusClassAction@slatergordon.com.au **OR** Slater and Gordon – Vocus Class Action
485 La Trobe Street, Melbourne, Victoria 3000

You should keep a copy for your records

SCHEDULE B

OPT OUT NOTICE

VOCUS CLASS ACTION

No VID 419 of 2019

IF YOU DO NOT WISH TO OPT OUT OF THE CLASS ACTION – DO NOT FILL OUT THIS FORM

DO NOT COMPLETE THIS FORM IF YOU WISH TO PARTICIPATE IN THE CLASS ACTION

ONLY COMPLETE THIS FORM IF YOU WISH TO OPT OUT OF THE CLASS ACTION

Federal Court of Australia

District Registry: Victoria

Division: Corporations

Michael Fisher and Tracy Fisher as trustees for the Tramik Super Fund Trust
Applicants

VOCUS GROUP LIMITED (ACN 084 115 499)
Respondent

To: Federal Court of Australia Registry
Level 7, 305 William Street
Melbourne, Victoria, 3000
vicreg@fedcourt.gov.au

The person named below as a Class member in this class action gives notice under section 33J of the *Federal Court of Australia Act 1976* that the Class member is opting out of the class action.

Name of Class member:	
Postal address of Class member:	
Telephone number/mobile:	
Email address:	
ACN/ABN: (if a company or trustee)	
HIN/SRN/Account Number:	
If the shares were acquired on behalf of another person/entity, name of that person/entity:	

If you are signing as the solicitor or representative of the Class member:

Name of Class member (print):	
Authority of person completing this form (e.g. company director, lawyer)	
Postal address of person completing this form:	
Telephone number/mobile:	
Email address:	

Date:

Signature:

Print name:

Annexure C
Computershare Protocol

1. Scope and definitions

- (a) Computershare Limited (**Computershare**) will send the Notice contained in Annexure B to the Orders of 21 May 2019 to Listed Security Holders (as defined in paragraph 2(a) below).

2. Data requirements

- (a) Listed Security Holders is defined as all persons who acquired a legal interest in ordinary shares in Vocus Group Limited (**Vocus**) (**VOC shares**) during the period from 29 November 2016 to the close of trade on 2 May 2017 inclusive as identified in Vocus' share register.
- (b) Listed Security Holders includes all persons who acquired VOC shares, whether or not they also sold any or all of their VOC shares.
- (c) The term:
 - (i) 'acquired' means acquisitions via Issuer or CHESS, allotments, escrow conversions or escrow releases; and
 - (ii) 'person' includes natural persons and entities.
- (d) For the purposes of paragraph 2(a) and (b) above, the register will be "cut" in accordance with the ASX T+2 settlement cycle relevant at that time. Accordingly, the register will be "cut" to include all trades registered on and from 29 November 2016 to the close of trade on 2 May 2017 inclusive.

3. Communication

3.1. Multiple interest holders

- (a) Where the register appears to disclose that a custodian or adviser represents more than one Listed Security Holder, Computershare will send a single Notice to that custodian or adviser.

3.2. Email

- (a) The Notice will be sent by email to all Listed Security Holders who have provided an email address to Computershare. The content of:
 - (i) the subject line of the email shall read: "IMPORTANT: Class Action against Vocus Group Limited"; and
 - (ii) the body of the email shall read as set out in Annexure D to the Orders of 21 May 2019.
- (b) The Notice will be sent as a link to a PDF attachment to the email.
- (c) The Notice will be emailed to the Listed Security Holders on 13 June 2019.
- (d) Computershare's email server will be programmed to make a total of three (3) delivery attempts (if required) over two (2) business days.
- (e) If Computershare receives notification that an email was, or may not have been, delivered after two (2) business days, then on 17 June 2019, it will:
 - (i) provide Herbert Smith Freehills with an email delivery failure report identifying the email failures or potential failures; and
 - (ii) send the Notice by prepaid ordinary post in accordance with Section 3.3. below to all Listed Security Holders identified in the delivery failure report.
- (f) On 17 June 2019, Computershare will confirm to Herbert Smith Freehills the number of Notices sent by email. Herbert Smith Freehills will provide to Slater and Gordon Lawyers this number (without any information that would reveal the identification details of the Listed Security Holder).

3.3. Post

- (a) The Notice will be sent by prepaid ordinary post to all Listed Security Holders:
 - (i) who do not have an email address recorded on the share register, or who otherwise have not provided an email address to Computershare on or before 12 June 2019;

- (ii) for whom Computershare receives notification that an email sent in accordance with paragraph 3.2 (a) - (d) above was or may not have been delivered.
- (b) The Notice will be attached to a cover letter, the content of which shall read as set out in Annexure D to the Orders of 21 May 2019.
- (c) On 17 June 2019, Computershare will confirm to Herbert Smith Freehills the number of Notices sent by prepaid ordinary post. Herbert Smith Freehills will provide Slater and Gordon Lawyers with this number (without any information that would reveal the identification details of the Notice Recipient).

4. Record of communications

- (a) On 20 June 2019, Computershare is to provide to Herbert Smith Freehills a document which lists all the Listed Security Holders to whom the Notice has been sent in accordance with sections 3.2. and 3.3. above, and which identifies in relation to each Listed Security Holder:
 - (i) the method by which the Notice was sent to the Listed Security Holder;
 - (ii) the date on which the Notice was sent to the Listed Security Holder;
 - (iii) whether and which distribution attempts failed to the Listed Security Holder; and
 - (iv) the form of the evidence by which the failed distribution attempt was identified by Computershare, including, but not limited to, by way of receipt of an email delivery failure notification, or receipt of a prepaid ordinary post envelope marked 'return to sender' (or similar).
- (b) To the extent that it would not already do so in the ordinary course of its business, Computershare is to retain records for the duration of this proceeding of all communications sent and received in the course of executing this Protocol, including:
 - (i) the emails sent, and any delivery failure notifications received, in accordance with section 3.2. above;

- (ii) postal records or receipts or similar, of the Notices sent by prepaid ordinary post in accordance with section 3.3. above; and
- (iii) any prepaid ordinary post envelopes received by Computershare marked 'return to sender' (or similar), in accordance with section 3.3. above.

5. General Compliance with this Protocol

- (a) In the event that Computershare becomes aware that they are unable to comply with any requirements under this Protocol, they are to notify Herbert Smith Freehills in writing within 24 hours of so becoming aware.
- (b) In the event that Computershare becomes aware that they have failed to comply with any requirements under this Protocol, they are to notify Herbert Smith Freehills in writing within 24 hours of so becoming aware.

Annexure D

Cover email or letter

[INSERT DATE]

Dear Claimant,

RE: Class Action against Vocus Group Limited (Vocus)

You are receiving this correspondence because, based on the information available, you may have acquired an interest in ordinary shares in Vocus during the period of 29 November 2016 to the close of trade on 2 May 2017 inclusive.

If you did, you may be a class member in the Vocus class action.

The Federal Court has referred this class action to mediation, which is to occur by no later than 23 October 2019.

THE DOCUMENT ENCLOSED WITH THIS CORRESPONDENCE (NOTICE) PROVIDES YOU WITH INFORMATION CONCERNING YOUR RIGHTS TO:

(1) REGISTER TO PARTICIPATE IN SETTLEMENT OF THIS CLASS ACTION

OR

(2) OPT OUT OF THE CLASS ACTION

It is therefore very important that you read the enclosed Notice carefully and if you have any questions, please visit the Vocus Class Action Website or call the Vocus Class Action Hotline:

(a) Vocus Class Action Website: www.vocusclassaction.com.au or

(b) Vocus Class Action Hotline: 1800 071 827.

Alternatively, you may wish to seek your own legal advice regarding the Notice.

REASONS FOR JUDGMENT

MOSHINSKY J:

Introduction

- 1 This proceeding is a representative proceeding under Pt IVA of the *Federal Court of Australia Act 1976* (Cth). In early May 2019, the applicants and the respondent (**Vocus**) jointly proposed a series of interlocutory orders designed to facilitate an early mediation. The parties subsequently provided a joint submission in support of the proposed orders. As I had a number of questions relating to the proposed orders, I listed the matter for a case management hearing. This took place on 15 May 2019. Subsequently, the parties prepared a revised form of the proposed orders (the **Revised Proposed Orders**), reflecting the matters discussed at the case management hearing.
- 2 It is proposed that the matter be referred to a mediation, to take place by a specified date, and that discovery orders be made to facilitate the mediation. Further, it is proposed that Group Members will have the option, exercisable before a nominated deadline, to opt out of the proceeding or to register its claim. If a Group Member does not do either of these things (that is, adopting the language used in the annexures to the Revised Proposed Orders, the Group Member “does nothing”), certain consequences are proposed to follow (described below). Thus, there are, in effect, three alternative scenarios: the Group Member opts out of the proceeding; the Group Member registers its claim; or the Group Member does nothing.
- 3 The proposed consequences in relation to each of the three scenarios may be summarised as follows:
 - (a) *The Group Member opts out of the proceeding.* In this case, the person ceases to be a Group Member in the proceeding. This means that they will not be bound by any judgment in, or settlement of, the proceeding, and will be excluded from receiving any monetary compensation that results from the proceeding (whether by way of judgment or settlement).
 - (b) *The Group Member registers its claim.* In this case, if the parties agree to settle the proceeding at the mediation or within six months after the conclusion of the mediation and the settlement is approved by the Court, the Group Member will be entitled to participate in that settlement, and will be bound by the settlement (including any releases given to Vocus, its related entities and/or its past and present directors in the

settlement agreement). If the parties do not agree to settle the proceeding at the mediation or within six months after the conclusion of the mediation, the proceeding will proceed as usual – the person will remain a Group Member and be entitled to participate in any subsequent settlement or judgment.

- (c) *The Group Member does nothing.* In this case, the Group Member will not be entitled to receive any benefit or monetary compensation from any settlement (to be approved by the Court) of the proceeding agreed at the mediation or within six months after the conclusion of the mediation, *but will be bound by the terms of any settlement agreement approved by the Court.* Being bound by any settlement approved by the Court means that the Group Member will be bound by any releases provided to Vocus, its related entities and its officers and former officers in the settlement agreement. If the parties do not agree to settle the proceeding at the mediation or within six months after the conclusion of the mediation, the person will remain a Group Member. This means that the person may have its claim considered at any further mediation or as part of any settlement that takes place at some later time or, if the matter does not settle but proceeds to trial and a successful outcome is obtained, the person may be entitled to share in any monetary compensation that is obtained.

4 For the reasons set out below, I am prepared to make orders substantially in the terms of the Revised Proposed Orders.

Background to the application

5 In the proceeding, the applicants make allegations against Vocus including that:

- (a) on and from 29 November 2016 until the close of trade on 2 May 2017 (the **Relevant Period**), Vocus engaged in misleading or deceptive conduct by providing guidance for the 2017 financial year with respect to its revenue, earnings before interest, taxes, depreciation and amortisation, net profit after tax, and achievement of acquisition synergies, when it did not have reasonable grounds for doing so;
- (b) in the Relevant Period, Vocus breached its obligations of continuous disclosure, in contravention of s 674(2) of the *Corporations Act 2001* (Cth) and the ASX Listing Rules, by failing to disclose various information that would have revealed that the guidance provided for the 2017 financial year would not be achieved and did not have reasonable grounds; and

(c) consequently, persons who acquired an interest in ordinary shares in Vocus during the Relevant Period have suffered loss and should be compensated.

6 Vocus intends to defend the proceeding and to deny any liability.

7 According to the parties' joint submission, prior to the filing of the originating application and statement of claim, the parties engaged in extensive genuine steps within the meaning of the *Civil Dispute Resolution Act 2011* (Cth). As part of these steps, Vocus's solicitors were provided with a copy of the originating application and statement of claim in a form that were in all material respects identical to the versions that were filed by the applicants on 24 April 2019. Following the provision of those documents and prior to the formal commencement of this proceeding, the solicitors acting for the applicants (Slater and Gordon Lawyers) and the solicitors acting for Vocus (Herbert Smith Freehills) engaged in extensive discussions to explore ways in which the proceeding could be conducted in a just, efficient, and cost effective manner.

8 The discussions between the parties resulted in the parties agreeing to jointly put forward to the Court the original proposed orders. As explained above, those proposed orders have been adjusted in light of the discussion at the case management hearing.

The Revised Proposed Orders

9 The Revised Proposed Orders (omitting the annexures) are in the following terms:

Defence

1. The respondent not be required to file a defence until further order.

Discovery

2. By 4.00 pm on 29 July 2019, the respondent provide to the applicants the categories of documents listed in **Annexure A** to these orders by way of discovery. Discovery may be made in tranches.

Mediation

3. Pursuant to s 53A(1) of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**), the Court refers these proceedings to mediation which is to occur by no later than 23 October 2019.
4. The mediation is to be conducted by a mediator agreed between the parties, with such agreement to occur by no later than 2 October 2019. If the parties cannot agree to a mediator by this date, the mediator is to be National Operations Registrar Lagos or another registrar nominated by her.

Opt Out and Registration Deadline

5. Pursuant to ss 33J and 3ZF of the FCAA, 4.00 pm on 13 August 2019 be fixed

as the date before which:

- (a) a Group Member may opt out of the proceeding;
- (b) a Group Member who wishes to participate in the proceeds of any settlement of this proceeding must register their claim by doing so in the manner set out in these orders,

(the **Deadline**).

Notice

- 6. Subject to Order 16, pursuant to s 33X of the FCAA, notice (**Notice**) be given to Group Members of:
 - (a) the commencement of the proceeding and their right to opt out of the proceeding;
 - (b) the requirement that they register their claim in order to participate in any distribution of any amount agreed in a settlement of the proceeding; and
 - (c) the consequence that if they do not opt out of the proceeding and do not register their claim they will not be entitled to participate in (or receive any benefit or monetary compensation from) any settlement (to be approved by the Court) of the proceeding agreed at the Mediation or within six months after the conclusion of the Mediation.
- 7. Subject to Order 16, pursuant to s 33Y(2) of the FCAA, the form and content of the Notice set out in Annexure B to these Orders is approved.
- 8. The Notice may be amended by the parties before it is emailed, posted, displayed or published in accordance with Order 9, in order to correct any website or email address or telephone number or other non-substantive error.

Distribution of the Notice

- 9. Pursuant to s 33Y(3) of the FCAA, the Notice is to be given to Group Members on or before 13 June 2019 according to the following procedure:
 - (a) the Respondent shall cause its share registry service provider, Computershare Limited (**Computershare**), to send the Notice to all persons who acquired a legal interest in ordinary shares in Vocus Group Limited (**Vocus**) (**VOC shares**) during the period from 29 November 2016 to the close of trade on 2 May 2017 (inclusive) as identified in respondent's register of shareholders. The respondent shall do so in accordance with the requirements set out in the protocol in **Annexure C (Computershare Protocol)**, with the distribution to occur on 11 June 2019;
 - (b) by 3 June 2019, the respondent shall provide a copy of this Order 9 including the Computershare Protocol to Computershare;
 - (c) should the respondent become aware of any actual or potential noncompliance with the Computershare Protocol, the respondent is to notify the applicants within two (2) business days of so becoming aware. The applicants and the respondent are directed to advise the Court of such non-compliance by email to the Associate of Justice Moshinsky;

- (d) the applicants shall cause a copy of the Notice to be sent by email or prepaid ordinary post to each Group Member who has, at the date of this order, entered into a Funding Agreement with Investor Claim Partner Pty Ltd or ICP Capital Pty Ltd (together, **ICP**) or Woodsford Litigation Funding Limited (**Woodsford**) or identified herself, himself or itself to the applicants' solicitors as a potential Group Member (even if they have not entered into a Funding Agreement with ICP or Woodsford), and for whom the applicants' solicitors hold a current email address or postal address (jointly **Existing Registered Group Members**); and
- (e) the applicants shall cause a copy of the Notice, together with copies of the most current version of the originating application, the pleadings, these orders, and any application for a common fund order, to be displayed on the website of the applicants' solicitors, <https://www.slatergordon.com.au/classactions/current-class-actions/Vocus> and at www.vocusclassaction.com.au, and to remain continuously so displayed up to and including the Deadline.

Opt out

- 10. Pursuant to s 33ZF of the FCAA, and subject to any further order of the Court, any Group Member who wishes to opt out of this proceeding must, before the Deadline, send an opt out notice, in the form of Schedule B to the Notice to the Victorian District Registry of the Federal Court of Australia at the email address vicreg@fedcourt.gov.au (with the subject line 'Opt Out Notice VID419/2019') or postal address: Federal Court of Australia Registry, Level 7, 305 William St, Melbourne, Victoria 3000.
- 11. The applicants' solicitors and the respondent's solicitors have leave to inspect and make copies of any opt-out notices on the Court file sent pursuant to Order 10.
- 12. If, on or before the Deadline, the solicitors for any party or ICP or Woodsford receive a notice purporting to be an opt out notice referable to this proceeding, the solicitors must file the notice in the Victorian District Registry of the Federal Court of Australia within two (2) business days after receipt, with a notation as to the date of receipt, and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors or ICP or Woodsford.

Registration

- 13. Subject to Order 16, pursuant to s 33ZF of the FCAA, any Group Member who wishes to participate in any distribution of any amount agreed in a settlement of this proceeding is obliged, before the Deadline, to register their claim, by:
 - (a) if that Group Member has as at the date of these orders already signed a funding agreement with ICP or Woodsford – providing to Slater and Gordon, or taking reasonable steps to provide to Slater and Gordon, the information set out in Order 14(a) to (f) below, before the Deadline to the extent it has not already been provided;
 - (b) if that Group Member has not as at the date of these orders already signed a funding agreement with ICP or Woodsford –
 - (i) executing a funding agreement with ICP or Woodsford, and providing to Slater and Gordon, or taking reasonable steps to

provide to Slater and Gordon, the information set out in Order 14(a)-(f) below before the Deadline; or

- (ii) completing, or taking reasonable steps to complete, a registration form either:
 - (A) online, which is substantially in the form of Schedule A to the Notice, and made available at web address: www.vocusclassaction.com.au, before the Deadline; or
 - (B) in hard-copy form, which is Schedule A to the Notice, and returning that hard copy form to Slater and Gordon before the Deadline.

(New Registered Group Member).

14. In order to register for the purpose of Order 13(a) or (b) a Group Member shall provide or take reasonable steps to provide:

- (a) the Group Member's name and address and/or email address;
- (b) any relevant and available account number, Holder Identification Number (**HIN**) or Securityholder Reference Number (**SRN**);
- (c) the number of Vocus securities held by that Group Member as at close of trade on 28 November 2016;
- (d) all transactional information (date of acquisition, quantity of Vocus securities acquired, price per security, brokerage paid) regarding Vocus securities acquired from 29 November 2016 to 2 November 2017;
- (e) all transactional information (date of sale, quantity of securities sold, price per security, brokerage paid) regarding Vocus securities sold from 29 November 2016 to 2 November 2017; and
- (f) documentary evidence (e.g. transaction receipts) in support of each of the matters the subject of items 14(b)-(e), above.

Failure to provide such information will not render the Group Member's registration invalid.

15. By 26 August 2019, the Respondent and Applicants must each file in a sealed envelope marked '*Confidential List of Group Members – Not to be opened without leave of the Court or a Judge*', a list of Group Members to whom the Notice was sent in accordance with Orders 6 and 9, in the form contemplated by Section 4(a) of the Computershare Protocol, which list shall contain for each Group Member:

- (a) name, postal address and email address;
- (b) the method by which the Notice was sent;
- (c) the date on which the Notice was sent;
- (d) whether and which distribution attempts failed; and
- (e) the form of the evidence by which the failed distribution attempt was identified, including, but not limited to, by way of receipt of an email

delivery failure notification, or receipt of a prepaid ordinary post envelope marked 'return to sender' (or similar).

Other orders in aid of mediation

16. Pursuant to s 33ZF of the Act, and subject to any further order of the Court, any Group Member who neither opts out nor registers as a Group Member on or before the Deadline in accordance with the manner provided for in these Orders:
 - (a) shall remain a Group Member for all purposes of this proceeding, including for the purpose of being bound by any judgment in this proceeding and being entitled to participate in any award of damages by the Court if this proceeding does not settle; but
 - (b) will not, without leave of the Court, be entitled to seek any benefit pursuant to (or monetary compensation from) any settlement (to be approved by the Court) of this proceeding agreed at, or within 6 months after the conclusion of, the mediation to occur pursuant to Order 3, but will be bound by the terms of any settlement agreement approved by the Court in respect of such settlement.
17. Any Group Member wishing to challenge or seek a variation of Order 16 must deliver to the applicants' solicitors, by no later than the Deadline, written notice of the challenge or variation sought and a statement of the reasons for the challenge or for seeking the variation (as the case may be), and the solicitors shall forthwith notify the respondent and the Court of the notice and the reasons.
18. Nothing in Order 16 precludes any Group Member who does not opt-out pursuant to Order 10 from having their claims considered at any mediation or settlement that takes place at some future time, if no settlement (to be approved by the Court) of this proceeding is agreed at, or within 6 months after the conclusion of, the mediation to occur pursuant to Order 3.
19. Pursuant to s 33ZF of the FCAA, by 9 September 2019, the applicants shall:
 - (a) deliver to the solicitors for the respondent a list of Existing Registered Group Members and New Registered Group Members (on a de-identified basis) (**Confidential De-Identified List**) which list shall contain:
 - (i) a unique identification number for each Existing Registered Group Member and New Registered Group Member;
 - (ii) the information referred to in Order 14(c)-(e) for each Existing Registered Group Member and New Registered Group Member to the extent that information is known to ICP, Woodsford or the applicants' solicitors at that date and confirmation of whether or not the evidence required by Order 14(f) has been received; and
 - (iii) any amendments to the information as notified to Slater and Gordon by that date.
 - (b) file, in a sealed envelope marked '*Confidential List of Class Members – Not to be opened without leave of the Court or a Judge*', a list of Existing Registered Group Members and New Registered Group

Members, which list shall contain:

- (i) a unique identification number for each Existing Registered Group Member and New Registered Group Member;
 - (ii) the information referred to in Order 14(a)-(f) for each Existing Registered Group Member and New Registered Group Member; and
 - (iii) any amendments to the information as notified to Slater and Gordon by that date.
20. The costs of and incidental to the procedure set out in Orders 3 to 19 above are costs in the proceeding. For the avoidance of doubt, answering enquiries by Group Members and members of the public in relation to the Notice is work incidental to Orders 3 to 19 above.
21. The Confidential De-Identified List, and any information contained therein, is to be kept confidential to:
- (a) the respondent's legal advisers and any insurer and their legal advisers;
 - (b) those officers and employees of the respondent who have the conduct of this proceeding on behalf of the respondent and/or are involved in providing instructions for the purposes of settlement discussions; and
 - (c) experts retained by the respondent in the proceeding.
22. The website at address www.vocusclassaction.com.au at which the online versions of any schedules to the Notice are to be available will be administered by Slater and Gordon Lawyers.

Case Management

23. The matter be listed for a case management hearing on 30 October 2019 at 9.30 am.

Consideration

- 10 The topic of class closure was discussed by the Full Court of this Court (Jagot, Yates and Murphy JJ) in *Melbourne City Investments Pty Ltd v Treasury Wine Estates Ltd* (2017) 252 FCR 1 (***Treasury Wine***) at [70]-[80].
- 11 At [72], the Full Court acknowledged that the requirement for class members to take active steps to "register" in order to share in a settlement of a class action "undercuts to some extent the opt-out rationale underpinning the Pt IVA regime". Nevertheless, the Full Court expressed the following views at [74]-[79]:
- 74 Having said this, **if a class closure order operates to facilitate the desirable end of settlement, it may be reasonably adapted to the purpose of seeking or obtaining justice in the proceeding and therefore appropriate under s 33ZF of the Act. The courts have accepted on numerous occasions that, in order to facilitate settlement, it is appropriate to make orders to require**

class members to come forward and register in order to indicate a willingness to participate in a future settlement, and to make orders that class members be bound into the settlement but barred from sharing in its proceeds unless they register: see for example, *Matthews v SPI Electricity Pty Ltd (No 13)* (2013) 39 VR 255 at [22]-[80] (*Matthews v SPI No 13*) (J Forrest J) and the authorities there referred to; *Farey v National Australia Bank Ltd* [2014] FCA 1242 at [11]-[16] (Jacobson J); *Inabu Pty Ltd v Leighton Holdings Ltd* [2014] FCA 622 at [17]-[22] (Jacobson J); *Newstart 123 Pty Ltd v Billabong International Ltd* (2016) 343 ALR 662 at [67]-[68] (Beach J). An important aspect of the utility of a class proceeding is that they may achieve finality not only for class members but also for the respondent.

- 75 The rationale behind such class closure orders is that a requirement for class members to register their claims will facilitate settlement, because it allows both sides to have a better understanding of the total quantum of class members' claims, permits the settlement amount to be capped by reference to the number of class members, and assists in achieving finality (to the extent the Pt IVA regime permits): see Grave D, Adams K and Betts J, *Class Actions in Australia* (2nd ed, Lawbook Co, 2012) at [14.410]. A class closure order that precludes class members, who neither opt out nor register, from sharing in a subsequent settlement may facilitate settlement, and therefore be reasonably adapted to the purpose of seeking or obtaining justice in the proceeding.
- 76 However, we share the views expressed by the primary judge in relation to a class closure order that also precludes class members from sharing in a subsequent judgment. In our view the Court should be cautious before making a class closure order that, in the event settlement is not achieved, operates to lock class members out of their entitlement to make a claim and share in a judgment. That is, the facilitation of settlement is a good reason for a class closure order but, if settlement is not achieved, an order to shut out class members who do not respond to an arbitrary deadline is not.
- 77 Caution should also be exercised in relation to the stage at which a class closure order is made. In our view, the Court should usually not exercise the discretion to make a class closure order based merely on a respondent's assertion that it is unwilling to discuss settlement unless such an order is made. It is a common if not inevitable feature of opt out class actions that the defendant will be faced with uncertainty regarding the quantum of class members' claims: *P Dawson No 2* at [31]; *Thomas v Powercor No 1* at [37]-[38].
- 78 We respectfully agree with the approach taken by Bromberg J in *Winterford v Pfizer Australia Pty Ltd* [2012] FCA 1199 at [9] where his Honour declined to make a class closure order in circumstances where the pleadings were not closed, common questions had not been settled, opt out notices had not been sent out, no settlement discussions had been undertaken, and no settlement discussions were proposed unless the Court made a class closure order. As his Honour said, to make a class closure order at that stage "would turn on its head the very nature of the opt-out model chosen by the legislature." See also *Camping Warehouse Australia Pty Ltd v Downer EDI Ltd* [2015] VSC 122 at [16] (Sifris J).
- 79 Whether it is appropriate to order class closure is a question of balance and judicial intuition. The Court must take into account the interests of the class as a whole in requiring class members to take steps to facilitate settlement, and consider the surrounding circumstances including the point the case has reached, the attitude of the parties, and the complexity and likely duration of

the case: see *Matthews v SPI No 13* at [75]-[79]. This will often involve striking a balance between the conflicting interests of class members.

(Emphasis added.)

- 12 As the highlighted part of [74] makes clear, the Full Court accepted that the Court has power pursuant to s 33ZF of the *Federal Court of Australia Act* to make orders for a process of registering claims in order to facilitate a settlement of a representative proceeding, and that such orders may include an order that class members who do not register are bound into the settlement but barred from sharing in the proceeds. The rationale for such orders was explained by the Full Court at [74]-[75].
- 13 In my view, the Revised Proposed Orders, including the elements relating to registration of claims and the consequences of not doing so, are appropriate in all the circumstances and are reasonably adapted to the purpose of seeking or obtaining justice in the proceeding. It is apparent from their terms that the Revised Proposed Orders have been carefully designed to facilitate an early mediation of the proceeding, with the various procedural steps focussing on matters that are likely to provide an early mediation with the best prospects of success. These procedural steps include: the discovery of key documents; the provision of Group Member transaction data; and the opt out and registration processes.
- 14 I accept the parties' submission that an early mediation of the proceeding is desirable. If the matter can be resolved at a mediation, or soon thereafter, it is likely to avoid a great deal of time and expense, consistently with the objectives set out in s 37M of the *Federal Court of Australia Act*. In the present case, I consider that weight should be accorded to the views of both parties and their lawyers (who are experienced in class action litigation) that the orders sought will assist in facilitating an early resolution of the proceeding.
- 15 The Revised Proposed Orders provide for Group Members to have the option, exercisable before the nominated deadline, to opt out of the proceeding or to register their claim. It is proposed that, if a Group Member does not opt out and does not register its claim (ie, the Group Member does nothing), the Group Member will not (without leave of the Court) be entitled to seek any benefit pursuant to (or monetary compensation from) any settlement (to be approved by the Court) of the proceeding agreed at, or within six months after the conclusion of, the mediation, but will be bound by the terms of any settlement agreement approved by the Court in respect of such settlement. As indicated above, the Full Court in *Treasury Wine* at [74] accepted that there is power to make such orders pursuant to s 33ZF of the *Federal Court of Australia Act* and noted that such orders had been made in numerous cases. By way of

example, I note that the Revised Proposed Orders are broadly similar to those made by this Court in *Bradgate (Trustee) v Ashley Services Group Limited* [2017] FCA 1591 at an early stage in that litigation.

16 Consistently with the observations of the Full Court in *Treasury Wine* at [76], in the event that the matter does not settle at mediation or within six months thereafter, it is not proposed that a Group Member who does not opt out and does not register (that is, a Group Member who does nothing) would be shut out from participating in a favourable judgment in the proceeding or any settlement that takes place after the period of six months following the mediation. This supports the view that the Revised Proposed Orders do not go further than reasonably necessary to facilitate the early resolution of the proceeding. I accept the parties' submission that the period of six months is a reasonable period in which additional negotiations may be required to enable settlement to be achieved following the mediation.

17 One of the matters I raised at the case management hearing related to the period of time between notices being sent to Group Members and the deadline (being the time by which a Group Member may opt out of the proceeding or register its claim). A period of four weeks was originally proposed. At the case management hearing I indicated that I considered a period of two months to be appropriate in the circumstances, to ensure Group Members have adequate time to consider their options and, if they wish, obtain legal advice. This is reflected in the Revised Proposed Orders. The deadline is now 13 August 2019, rather than the date originally proposed (28 June 2019).

18 A second matter I raised at the case management hearing was whether the materials that had been prepared, in particular the notice to Group Members, made the consequences of "doing nothing" sufficiently clear. A number of adjustments were discussed at the case management hearing to highlight the consequences of "doing nothing". These adjustments have been incorporated in the Revised Proposed Orders (including the annexures). In particular, a second paragraph has been added to the "Important Information" at the commencement of the notice to Group Members.

19 A third matter I raised at the case management hearing concerned the choice that is offered to Group Members of either: (a) signing a funding agreement and providing the information set out in the registration form; or (b) simply completing the registration form. Counsel for the applicants indicated that, in either case, the Group Member would be taken to be registered and that whether the Group Member adopted course (a) or (b) would not affect the Group Member's

share of any settlement moneys. The applicants offered to make adjustments to the materials to make the position clearer in this regard. These changes have been incorporated in the Revised Proposed Orders (including the annexures). In particular, a new paragraph 30 has been added to the notice to Group Members.

- 20 The fourth matter I raised at the case management hearing concerned the notification process for shares held by a custodian. As a result of the submissions made at the case management hearing, I am satisfied that the relevant provision in the Computershare protocol (paragraph 3.1) and the relevant part of the notice (paragraph 8) are satisfactory.
- 21 Accordingly, I am satisfied that the Revised Proposed Orders are appropriate to ensure that justice is done in the proceeding, so as to engage the Court's power under s 33ZF of the *Federal Court of Australia Act*.

I certify that the preceding twenty-one (21) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Moshinsky.

Associate:

Dated: 21 May 2019