

Form 33
Rule 16.32

DEFENCE TO STATEMENT OF CROSS-CLAIM (SECOND CROSS-CLAIM)

No. VID 434 of 2015

Federal Court of Australia
District Registry: Victoria
Division: General

CHERYL WHITTENBURY

Applicant

VOCATION LIMITED (in liquidation) (ACN 166 631 330)

First Respondent / Cross-claimant by First Cross-claim and Cross-Respondent by Third Cross-Claim

PRICEWATERHOUSECOOPERS (a firm) (ABN 52 780 433 757)

Second Respondent / Cross-claimant by Second and Third Cross-claims

THE PARTNERS OF JOHNSON WINTER & SLATTERY

Cross-respondents by First and Second Cross-claims

MARK EDWARD HUTCHINSON and others named in the schedule

Cross-respondents by Third Cross-claim

For the purposes of this Defence, capitalised terms used but not defined in this Defence have the same meaning as in the Cross-Claimant by second cross-claim's (**PwC**) Statement of cross-claim (Second Cross-Claim) dated 20 July 2018 (**Statement of Claim**) unless the context indicates otherwise.

In answer to PwC's Statement of Claim, the cross-respondent to the second cross-claim (**JWS**) says as follows:

A. PARTIES

1. JWS admits the allegations in paragraph 1.
2. JWS admits the allegations in paragraph 2.

Filed on behalf of	The Partners of Johnson Winter & Slattery, Cross-respondent to Second Cross-claim		
Prepared by	Richard Murphy		
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B. APPLICANT'S CLAIMS AGAINST VOCATION LIMITED

3. JWS admits the allegations in paragraph 3, but otherwise does not plead to the allegations contained in the FACSOC as it does not contain any allegations against it.

C. APPLICANT'S CLAIMS AGAINST PWC

4. JWS admits the allegations in paragraph 4, but otherwise does not plead to the allegations contained in the FACSOC as it does not contain any allegations against it.
5. JWS admits the allegations in paragraph 5, but otherwise does not plead to the allegations contained in the FACSOC as it does not contain any allegations against it
6. JWS admits the allegations in paragraph 6, and:
 - (a) says that the claims of the Applicant and/or Group Members against PwC are apportionable claims and PwC therefore cannot maintain any contribution claim against JWS;
 - (b) it otherwise does not plead to the allegations contained in the FACSOC as it does not contain any allegations against it.

D. PWC'S CROSS-CLAIMS AGAINST JWS

7. JWS does not plead to paragraph 7 of the Statement of Claim as it does not contain any allegations against it. For the avoidance of doubt, JWS does not admit any of the allegations contained in Section I and II of the FACSOC.

D.1 Alleged Prospectus contraventions

8. As to paragraph 8:
 - (a) the allegation in paragraph 8 as to the Prospectus Retainer is vague and embarrassing as no particulars are provided as to the alleged retainer, including its terms and scope;
 - (b) accordingly, JWS does not admit the allegations in paragraph 8 and cannot plead further until proper particulars are provided of the alleged retainer.
9. JWS does not admit the allegations in paragraph 9 and refers to and repeats paragraph 8 above.

10. As to paragraph 10:

- (a) the allegation as to the Prospectus Advice is vague and embarrassing and liable to be struck out as no proper particulars are provided as to the alleged Prospectus Advice;
- (b) under cover of that objection:
 - (i) JWS denies that it gave the Prospectus Advice;
 - (ii) JWS admits the allegation in sub-paragraph 10(b), but denies that it was retained to advise Vocation as to whether the Initial Prospectus or the Replacement Prospectus would contravene ss 728(1)(a) and (b) of the Corporations Act and says further that the allegation in sub-paragraph 10(b) is vague and embarrassing and liable to be struck out as it does not identify the alleged contraventions of ss 728(1)(a) and (b) of the Corporations Act;
 - (iii) as to the allegations in sub-paragraph 10(c), it refers to and repeats sub-paragraph (b)(i) above and denies the allegations contained therein;
 - (iv) JWS otherwise denies the allegations in paragraph 10.

11. JWS denies the allegations in paragraph 11 and refers to and repeats paragraph 10 above.

12. As to paragraph 12:

- (a) the allegation that JWS did not exercise reasonable care and skill in giving the Prospectus advice is vague and embarrassing and liable to be struck out:
 - (i) by reason of the matters set out in paragraphs 8 and 10 above;
 - (ii) by reason of the absence of any proper particulars as to the allegation that JWS did not exercise reasonable care and skill;
- (b) under cover of these objections, JWS denies the allegations in paragraph 12.

13. JWS denies the allegations in paragraph 13 and refers to and repeats paragraph 12 above.

D.2 Alleged Disclosure and Announcement Contraventions

D.2.1 First Disclosure Contravention

14. As to paragraph 14:
 - (a) the allegation in paragraph 14 as to the Continuous Disclosure Obligation is vague and embarrassing and liable to be struck out as no particulars are provided as to the alleged retainer, including its terms and scope;
 - (b) accordingly, JWS does not admit the allegations in paragraph 14, cannot plead further until proper particulars are provided of the alleged retainer, and reserves its right to plead further when proper particulars are provided.
15. JWS does not admit the allegations in paragraph 15 and refers to and repeats paragraph 14 above.
16. JWS denies the allegations in paragraph 16 and says further that:
 - (a) JWS informed Vocation that Vocation should consider its continuous disclosure obligations and that in considering whether or not disclosure was required Vocation needed to make its own assessment as to the materiality and price-sensitivity of the information known to it;

Particulars

The advice was both oral and in writing.

The written advice was provided by Rozsa to Bonnici by email dated 1 August 2014 in which he said, *inter alia*, that “[Vocation] does need to consider whether it might have an ASX disclosure obligation ...” (VOC.006.001.3524).

The oral advice was provided by Rozsa to Bonnici and Grewal on or around 1 August 2014 and Koster to Hutchison in early August 2014.

- (b) JWS informed Vocation of the relevant test of materiality under Listing Rule 3.1;

Particulars

Koster to Hutchison in a discussion in early August 2014.

- (c) Vocation instructed JWS that the Department's investigation was not an issue, that there was nothing to be concerned about in terms of the potential result of the investigation and the potential for funds to be withheld, and that it was only a debtor timing issue and Vocation expected to receive all or nearly all withheld monies;

Particulars

The instructions were provided orally by:

- (i) Bonnici to Koster on or about 1 August 2014; and
 - (ii) Hutchison to Koster in a discussion in early August 2014.
- (d) any discussions between JWS and Vocation on or before 11 August 2014 took place in the context where Vocation had informed JWS that in its view given the expected outcome of the Department's investigation and that only a relatively small amount of funding may be affected, this was not in Vocation's view material;
 - (e) Vocation did not (whether at this time or at any other time) ask JWS to advise as to whether any matters were "material" within the meaning of Listing Rule 3.1 and s 674(2)(c)(i) of the Corporations Act so as to require disclosure;
 - (f) any advice (implied or otherwise) to the effect that Vocation was not obliged to disclose the matters alleged was provided in the context of the matters and instructions identified above.
17. JWS denies the allegations in paragraph 17 and refers to and repeats paragraphs 14 to 16 above.
 18. JWS denies the allegations in paragraph 18 and it refers to and repeats paragraphs 14 to 16 above.
 19. JWS denies the allegations in paragraph 19 and refers to and repeats paragraphs 7 and 16 to 18 above.

D.2.2 Second Disclosure Contravention

20. JWS denies the allegations in paragraph 20 and says further that:

- (a) it will refer to the emails set out in the particulars to paragraph 20 of the Statement of Claim for their full context and effect;
- (b) it will refer to the communications and dealings between JWS and Vocation up to and including 21 August 2014 as relevant context for the emails referred to in the particulars to paragraph 20 of the Statement of Claim, including:
 - (i) on 19 August 2014, JWS sent an email to Vocation, following up an earlier email dated 10 December 2013, asking if Vocation would be interested in receiving a training session from JWS on its continuous disclosure obligations;
 - (ii) that Vocation did not accept JWS' offer to conduct training in relation to its continuous disclosure obligations;
 - (iii) on 19 August 2014, and without any discussion with or advice from JWS, the Board of Vocation resolved that Vocation did not need to make any disclosure under Listing Rule 3.1 based on the Board's assessment that the potential impact of the audits, and the expected outcome of the investigation, was that only a relatively small amount of funding was expected to be affected which was not material in Vocation's context;

Particulars

Minutes of Board meeting dated 19 August 2014
(JWS.001.014.0012).

- (iv) Vocation instructed JWS to assist in preparing responses to the Department and the ASX based on Vocation's view that the Department's review was a limited review relating to two courses only and that no disclosure to the ASX was required given Vocation's view that the anticipated outcomes of the Department's investigations were not material;

Particulars

Telephone conversation between Hutchison, Koster and Rozsa on 21 August 2014 in which Hutchison requested JWS' assistance as alleged, and in which Hutchison also instructed Koster and Rozsa that Vocation's view remained that the anticipated outcome of the Department's investigation was not material.

- (v) Vocation's instructions to JWS that:
 - (A) in respect of BAWM, the investigation was focused just on the cohort of enrolments for five specific brokers for two specific qualifications which accounted for just \$2m of the \$18.8m payments withheld (\$1.8m excluding GST), such that the current suspension of payment was, inter alia, not material;
 - (B) in respect of Aspin, that the current suspension of payments was "not material at all".

Particulars

Email from Manvinder Grewal to Koster and Rozsa on 21 August 2014 at 10:19pm attaching a letter setting out Vocation's views in relation to the materiality of the investigation and related matters (VOC.006.001.3417).

- (vi) any advice (implied or otherwise) to the effect that Vocation was not obliged to disclose the matters alleged was provided in the context of the matters and instructions identified above.
21. JWS denies the allegations in paragraph 21 and refers to and repeats paragraph 20 above.
 22. JWS denies the allegations in paragraph 22 and refers to and repeats paragraph 20 above.
 23. JWS denies the allegations in paragraph 23.

D.2.3 Third Disclosure Contravention

24. JWS denies the allegations in paragraph 24 and says further that:

- (a) it refers to and repeats paragraphs 16 and 20 above;
 - (b) it will refer to the emails set out in the particulars to paragraph 24 of the Statement of Claim for their full context and effect;
 - (c) JWS was instructed by management of Vocation that:
 - (i) the expected outcome of the investigation was that only a relatively small amount of funding was expected to be affected which was not material in Vocation's context;
 - (ii) investigations of the sort being conducted were not uncommon, and that management had reviewed the estimates of revenue impact of students likely to be affected and reconfirmed the \$2 million estimate;
 - (d) at the Board meeting on 22 August 2014, JWS reconfirmed to Vocation the disclosure requirements under Listing Rule 3.1, following which the Board made its own decision as to whether disclosure was required;
 - (e) any advice (implied or otherwise) to the effect that Vocation was not obliged to disclose the matters alleged was provided in the context of the matters and instructions identified above.
25. JWS denies the allegations in paragraph 25 and refers to and repeats paragraph 24 above.
26. JWS denies the allegations in paragraph 26 and refers to and repeats paragraph 24 above.
27. JWS denies the allegations in paragraph 27.

D.2.4 Fourth Disclosure Contravention

28. JWS denies the allegations in paragraph 28 and says further that:
- (a) it refers to and repeats paragraph 24 above;
 - (b) it will refer to the emails set out in the particulars to paragraph 28 of the Statement of Claim for their full context and effect, which included, *inter alia*:
 - (i) Vocation instructing JWS to assist to prepare a response to the Department;

Particulars

Email of 23 August 2014 at 8:02pm (JWS.001.001.0297).

- (ii) JWS informing Vocation that it should consider how high its level of confidence was that the Department would release most of the held back money and whether there were expected to be any negative follow on consequences from the review, and Vocation informing JWS to the effect that it had a high degree of confidence that most if not all of the held back money would be released and that there were no other expected negative consequences from the review;

Particulars

Email of 24 August 2014 at 3:43pm (VOC.001.001.0585).

Telephone call from Bonnici to Koster on 24 August 2014.

- (iii) an email from JWS noting that Vocation's proposed ASX announcement was "*fine provided Vocation is confident of getting most of the withheld money and also confident that there will not be other material adverse consequences to revenue from DEECD that have not otherwise been anticipated*";

Particulars

Email of 24 August 2014 from Koster at 4:56 pm (VOC.008.005.0430).

- (c) any advice (implied or otherwise) to the effect that Vocation was not obliged to disclose the matters alleged was provided in the context of the matters and instructions identified above.
29. JWS denies the allegations in paragraph 29 and refers to and repeats paragraph 28 above.
 30. JWS denies the allegations in paragraph 30 and refers to and repeats paragraph 28 above.
 31. JWS denies the allegations in paragraph 31.

D.2.5 Fifth Disclosure Contravention

32. JWS denies the allegations in paragraph 31 and says further that:
- (a) it refers to and repeats paragraph 28 above;
 - (b) at the Board meeting on 25 August 2014, JWS advised that it was for the Board of Vocation to assess whether the information they had concerning the Department's investigation was material and needed to be disclosed;
 - (c) at the Board meeting on 25 August 2014, management advised the Vocation Board that the next payment from the Victorian Government was due on 12 September 2014 and there was no reason to believe that payment would be withheld;
 - (d) at the Board meeting on 25 August 2014, the Board confirmed the previous view that the Department's withholding of funds and related matters arising from the Department's investigation were not material for disclosure at that stage under Listing Rule 3.1, as the expected outcome of the investigation was that only a relatively small amount of funding was expected to be affected which was not material in Vocation's context and the outcome would not be expected to have a material effect on the price or value of Vocation's securities;
 - (e) any advice (implied or otherwise) to the effect that Vocation was not obliged to disclose the matters alleged was provided in the context of the matters and instructions identified above.
33. JWS denies the allegations in paragraph 33 and refers to and repeats paragraph 32 above.
34. JWS denies the allegations in paragraph 34 and refers to and repeats paragraph 32 above.
35. JWS denies the allegations in paragraph 35.

D.2.6 First Announcement Contravention

36. JWS denies the allegations in paragraph 36 and says further that it will refer to the emails set out in the particulars to paragraph 36 of the Statement of Claim for their full context and effect.

37. JWS denies the allegations in paragraph 37 and refers to and repeats paragraph 36 above.
38. JWS denies the allegations in paragraph 38 and refers to and repeats paragraph 36 above.
39. JWS denies the allegations in paragraph 39.

D.2.7 Sixth Disclosure Contravention

40. JWS denies the allegations in paragraph 40 and says further that:
- (a) it refers to and repeats paragraph 32 above;
 - (b) at the Board meeting on 26 August 2014, management advised, *inter alia*, that the expected funds that would be permanently withheld was still in their view around \$2 million;
 - (c) at the Board meeting on 26 August 2014, JWS confirmed and advised that it was a decision for the Board of Vocation to assess whether the information they had concerning the Department's investigation and related matters was material and needed to be disclosed;
 - (d) at the Board meeting on 26 August 2014, the Board confirmed the previous view that the Department's withholding of funds and related matters arising from the Department's investigation were not material for disclosure at this stage under Listing Rule 3.1, as:
 - (i) there had been no loss of contracts;
 - (ii) the expected outcome of the investigation continued to be that only a relatively small amount of funding was expected to be affected which was not material in Vocation's context; and
 - (iii) the outcome would not be expected to have a material effect on the price or value of Vocation's securities;
 - (e) any advice (implied or otherwise) to the effect that Vocation was not obliged to make any further disclosure of the matters alleged was provided in the context of the matters and instructions identified above.

41. JWS denies the allegations in paragraph 41 and refers to and repeats paragraph 40 above.
42. JWS denies the allegations in paragraph 42 and refers to and repeats paragraph 40 above.
43. JWS denies the allegations in paragraph 43.

D.2.8 Seventh Disclosure Contravention

44. JWS denies the allegations in paragraph 44 and says further that it refers to and repeats paragraphs 16, 20, 24, 32 and 40 above.
45. JWS denies the allegations in paragraph 45 and refers to and repeats paragraph 44 above.
46. JWS denies the allegations in paragraph 46 and refers to and repeats paragraph 44 above.
47. JWS denies the allegations in paragraph 47.

D.2.9 Failure to give advice on 28 August 2014

48. As to paragraph 48, JWS:
 - (a) admits that Koster did not provide the advice alleged in that paragraph;
 - (b) denies that it had any obligation to advise Vocation that it was obliged to make the alleged disclosure to the ASX.

D.2.10 Eighth Disclosure Contravention

49. JWS denies the allegations in paragraph 49 and says further that:
 - (a) it refers to and repeats paragraphs 16, 20, 24, 32, 40 and 44 above;
 - (b) the Board meeting on 5 September 2014 related to an underwritten share placement by Vocation, in relation to which JWS was instructed to prepare a cleansing notice based on information provided to it by Vocation;

Particulars

By emails dated 4 and 5 September 2014, Hutchinson of Vocation instructed JWS to prepare a cleansing notice and instructed JWS as to the content of the notice which would be signed off by the Board on

the afternoon of 5 September 2014 (JWS.001.002.0020 and JWS.001.002.0021).

- (c) it was instructed by Vocation that the anticipated outcomes of the Department's review remained non-material to Vocation, and that any advice (implied or otherwise) as to whether Vocation was obliged to make any further disclosure to the ASX was based on those instructions;

Particulars

Email from Hutchison of Vocation dated 5 September 2014 (JWS.001.002.0099).

Conversations on or about 5 September 2014 between Rozsa and Hutchinson and Grewal in which Hutchison/Grewal said, *inter alia*, that the Department's investigation would be fine and that they remained of the view that the Department's investigation was not material and that it would not lead to significant cash problems.

- (d) it advised Vocation to seek formal confirmation from relevant members of management that no information excluded from the documents connected with the placement was information that a reasonable person would expect to have a material effect on the price or value of Vocation's shares, and that a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence the decision of a reasonable investor, whether to accept the offer under the placement;

Particulars

Email of 6 September 2014 (JWS.001.002.0371)

- (e) any advice (implied or otherwise) to the effect that Vocation was not obliged to make any further disclosure of the matters alleged was provided in the context of the matters and instructions identified above.
50. JWS denies the allegations in paragraph 50 and refers to and repeats paragraph 49 above.
51. JWS denies the allegations in paragraph 51 and refers to and repeats paragraph 49 above.

52. JWS denies the allegations in paragraph 52.

D.2.11 Failure to give advice on 5 September 2014

53. As to paragraph 53, JWS:

- (a) admits that on 5 September 2014 JWS did not provide advice in the terms alleged in that paragraph;
- (b) denies that it was retained to advise Vocation as to whether it was obliged to make the alleged disclosure to the ASX;
- (c) refers to and repeats paragraph 49 above.

D.2.12 Ninth Disclosure Representation

54. JWS denies the allegations in paragraph 54 and says further that:

- (a) it refers to and repeats paragraphs 16, 20, 24, 32, 40, 44 and 49 above;
- (b) it was again instructed by Vocation, and management reconfirmed, that the anticipated outcomes of the Department's review remained non-material to Vocation, and that:
 - (i) the Board made its own decision as to whether disclosure was required;
 - (ii) any advice (implied or otherwise) to the effect that Vocation was not obliged to make any further disclosure to the ASX was provided in the context of the matters and instructions identified above.

Particulars

At the Board meeting on 7 September 2014:

- (A) Hutchinson reconfirmed that the impact on Vocation's business due to the Victorian Department's review was not material;
- (B) the Board discussed whether any additional disclosures were required in relation to this issue and concluded that at this stage none were required.

55. JWS denies the allegations in paragraph 55 and refers to and repeats paragraph 54 above.

56. JWS denies the allegations in paragraph 56 and refers to and repeats paragraph 54 above.

57. JWS denies the allegations in paragraph 57.

D.2.13 Failure to give advice on 7 September 2014

58. As to paragraph 58, JWS:

- (a) admits that on 7 September 2014 JWS did not provide advice in the terms alleged in that paragraph;
- (b) denies that it had any obligation to advise Vocation that it was obliged to make the alleged disclosure to the ASX;
- (c) refers to and repeats paragraph 54 above.

D.2.14 Tenth Disclosure Contravention

59. JWS denies the allegations in paragraph 59 and says further that:

- (a) it refers to and repeats paragraphs 16, 20, 24, 32, 40, 44, 49 and 54 above;
- (b) following previous confirmation from Vocation that the impact on Vocation's business due to the Victorian Department's review was not material, the Chairman of Vocation stated at the Board meeting on 8 September 2014 that at a meeting he had attended with the Department earlier in the day, it had been confirmed that:
 - (i) the review scope was to be narrowed to the three courses in question, and would only be in relation to BAWM and Aspin (and not Vocation's business as a whole);
 - (ii) the review was expected to be completed within 7 to 14 days, and would in any event be completed by no later than 31 October 2014;
 - (iii) enrolment in other BAWM and Aspin courses could recommence;
- (c) any advice (implied or otherwise) to the effect that Vocation was not obliged to make any further disclosure of the matters alleged was provided in the context of the matters and instructions identified above.

60. JWS denies the allegations in paragraph 60 and refers to and repeats paragraph 59 above.

61. JWS denies the allegations in paragraph 61 and refers to and repeats paragraph 59 above.

62. JWS denies the allegations in paragraph 62.

D.2.15 Failure to give advice on 8 September 2014

63. As to paragraph 63, JWS:

- (a) admits that on 8 September 2014 JWS did not provide advice in the terms alleged in that paragraph;
- (b) denies that it had any obligation to advise Vocation that it was obliged to make the alleged disclosure to the ASX;
- (c) refers to and repeats paragraph 59 above.

D.2.16 Second Announcement Contravention

64. JWS denies the allegations in paragraph 64 and says further that:

- (a) it will refer to the emails set out in the particulars to paragraph 64 of the Statement of Claim for their full context and effect;
- (b) it refers to and repeats paragraphs 49, 54 and 59 above.

65. JWS denies the allegations in paragraph 65 and refers to and repeats paragraph 64 above.

66. JWS denies the allegations in paragraph 66 and refers to and repeats paragraph 64 above.

67. JWS denies the allegations in paragraph 67.

D.2.17 Third Announcement Contravention

68. JWS denies the allegations in paragraph 68 and says further that:

- (a) it will refer to the emails set out in the particulars to paragraph 68 of the Statement of Claim for their full context and effect;
- (b) it refers to and repeats paragraphs 49, 54 and 59 above.

69. JWS denies the allegations in paragraph 69 and refers to and repeats paragraph 68 above.
70. JWS denies the allegations in paragraph 70 and refers to and repeats paragraph 68 above.
71. JWS denies the allegations in paragraph 71.

D.2.18 Fourth Announcement Contravention

72. JWS denies the allegations in paragraph 72 and says further that:
- (a) it will refer to the emails set out in the particulars to paragraph 68 of the Statement of Claim for their full context and effect;
 - (b) it refers to and repeats paragraphs 49, 54 and 59 above.
73. JWS denies the allegations in paragraph 73 and refers to and repeats paragraph 72 above.
74. JWS denies the allegations in paragraph 74 and refers to and repeats paragraph 72 above.
75. JWS denies the allegations in paragraph 75.

D.2.19 Eleventh Disclosure Contravention

76. As to paragraph 76, JWS:
- (a) admits that it sent the emails referred to in paragraph 76(a) and will refer to those emails for their full context and meaning;
 - (b) says that the context in which those emails were sent was:
 - (i) repeated and continuing confirmation and statements from Vocation that it continued to be confident that the review outcomes from the Department's review would not be material;

Particulars

JWS refers to and repeats paragraphs 16(b), 16(e), 20(b)(iii), 20(b)(V)(a), 20(b)(vi), 24(c), 28(b)(ii), 32(d), 40(d), 49(d), 54(c), and 59(c) above.

- (ii) previous advice from JWS that it was for the Board of Vocation to assess whether the information they had concerning the Department's investigation was material and needed to be disclosed, and advising Vocation as to the test of materiality to be applied;

Particulars

Paragraphs 16(c), 24(d), 32(b), 40(c) and 40(e) above are repeated.

- (iii) confirmation from the ASX that no further announcement was required;

Particulars

Email from Simon Daniels of ASX to Koster (copied to Grewal and Hutchinson) at 10:07am on 19 September 2014 (JWS.001.008.0098).

- (iv) JWS being informed that the Department was comfortable with the draft ASX announcement;

Particulars

Email from Hutchinson to Tredenick (copied to, among others, Koster) on 18 September 2014 at 6:27pm (JWS.001.008.0062).

- (c) any advice (implied or otherwise) to the effect that Vocation was not obliged to make any further disclosure of the matters alleged was provided in the context of the matters and instructions identified above;
 - (d) refers to and repeats paragraphs 16, 20, 24, 32, 40, 44, 49 and 54 above;
 - (e) otherwise denies the allegations in paragraph 76.
- 77. JWS denies the allegations in paragraph 77 and refers to and repeats paragraph 76 above.
 - 78. JWS denies the allegations in paragraph 78 and refers to and repeats paragraph 76 above.
 - 79. JWS denies the allegations in paragraph 79.

D.2.20 Twelfth Disclosure Contravention

80. As to paragraph 80, JWS:

- (a) admits that it sent the emails referred to in paragraph 80(a) and will refer to those emails for their full context and meaning;
- (b) says that the context in which those emails were sent was:
 - (i) repeated and continuing confirmation and statements from Vocation that it continued to be confident that the outcomes from the Department's review would not be material;

Particulars

JWS refers to and repeats the particulars to paragraph 76(b) above.

- (ii) previous advice from JWS that it was for the Board of Vocation to assess whether the information they had concerning the Department's investigation was material and needed to be disclosed, and advising Vocation as to the test of materiality to be apply;

Particulars

JWS refers to and repeats the particulars to paragraph 76(b) above.

- (iii) a direction from the ASX that it required a further clarifying announcement to be made by Vocation in relation to the status of its Victorian funding contracts;

Particulars

Email from Simon Daniels of ASX to Koster (copied to Grewal and Hutchinson) at 12:32pm on 22 September 2014 (JWS.001.008.0134).

- (c) says that in the email of 12:36pm, JWS offered to prepare a further draft ASX announcement addressing the status of Vocation's Victorian funding contracts and related matters;

- (d) says that any advice (implied or otherwise) to the effect that Vocation was not obliged to make any further disclosure of the matters alleged was provided in the context of the matters and instructions identified above
 - (e) otherwise does not admit the allegations in paragraph 80.
81. JWS denies the allegations in paragraph 81 and refers to and repeats paragraph 80 above.
82. JWS denies the allegations in paragraph 82 and refers to and repeats paragraph 80 above.
83. JWS denies the allegations in paragraph 83.

D.2.21 Fifth Announcement Contravention

84. JWS denies the allegations in paragraph 84 and says further that it will refer to the emails set out in the particulars to paragraph 84 of the Statement of Claim for their full context and effect.
85. JWS denies the allegations in paragraph 85 and refers to and repeats paragraph 84 above.
86. JWS denies the allegations in paragraph 86 and refers to and repeats paragraph 84 above.
87. JWS denies the allegations in paragraph 87.

D.2.22 Advice omissions

88. As to paragraph 88, JWS:
- (a) admits that it did not provide advice in the terms alleged in that paragraph;
 - (b) denies that it had any obligation to advise Vocation that it was obliged to make the alleged disclosures to the ASX;
 - (c) refers to and repeats paragraphs 16, 20, 24, 28, 32, 40, 49, 54, 59, 76 and 80 above as to its communications with, or advice to, Vocation;
 - (d) otherwise denies the allegations in paragraph 88.
89. As to paragraph 89, JWS:

- (a) admits that it did not provide advice in the terms alleged in that paragraph;
- (b) denies that it had any obligation to advise Vocation that it was obliged to make the alleged disclosures to the ASX;
- (c) refers to and repeats paragraphs 16, 20, 24, 28, 32, 40, 49, 54, 59, 76 and 80 above as to its communications with, or advice to, Vocation;
- (d) otherwise denies the allegations in paragraph 89.

90. JWS denies the allegations in paragraph 90.

91. As to paragraph 91:

- (a) the allegation in paragraph 91 is vague and embarrassing and liable to be struck out because it fails to provide proper details (and provides only a rolled-up allegation) as to conduct of JWS being alleged to be misleading or deceptive or likely to mislead or deceive;
- (b) under cover of this objection, JWS denies the allegations in paragraph 91.

E. RELIEF

92. JWS does not plead to paragraph 92 of the Statement of Claim as it does not contain any allegations against it.

93. JWS denies the allegations in paragraph 93.

94. In response to paragraph 94:

- (a) JWS denies the allegations;
- (b) further or alternatively, it says that if JWS is found liable to make contribution pursuant to Part IV of the Wrongs Act or otherwise the amount of the contribution recoverable from it shall be such as may be found by the court to be just and equitable having regard to the extent of its responsibility for the loss and damage, and must take into account the responsibility of the second respondent (PwC), the first respondent and seventh cross-respondent (Vocation) and each of the other cross-respondents in this proceeding (Mark Hutchison, Manvinder Grewal, John Sydney Dawkins, Stephen John Tucker, Michelle Kim Tredenick and Douglas James Halley);

- (c) further or alternatively:
- (i) any liability that JWS may have to PwC or the Applicant and Group Members (which is denied) is based on claims that are apportionable claims within the meaning of Part VIA of the *Competition and Consumer Act 2010* (Cth) and/or the relevant provisions in the *Civil Liability Act 2002* (NSW) and corresponding provisions in the legislation of other States and Territories (as referred to in paragraph 406(a) of PwC's Defence dated 20 July 2018);
 - (ii) each of PwC, Vocation, Hutchison, Grewal, Dawkins, Tucker, Tredenick and Halley is a person whose acts or omissions caused, independently of each other or jointly, the loss or damage the subject of the apportionable claims; and
 - (iii) in the circumstances, the liability of JWS is limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of JWS' responsibility for the loss or damage.

Particulars

For the purpose only of its defence in this paragraph, JWS refers to and repeats the allegations against each of Vocation, PwC, Hutchison, Grewal, Dawkins, Tucker, Tredenick and Halley made in the PwC Defence and the FACSOC.

F. RESERVATION OF RIGHTS

95. As to paragraph 95, JWS says that:

- (a) it denies that PwC can maintain a cross-claim for damages based on facts that are not alleged in the Statement of Claim, or that it is entitled to seek to plead those facts at some later point in time so as to advance a positive claim against JWS;
- (b) it does not admit that PwC is entitled to rely, alternatively to rely as against JWS, on the privilege against self-incrimination or privilege against exposure to penalty;

- (c) PwC should not be granted leave to bring a cross-claim for damages at some future time in light of its decision not to advance such a claim now.

G. LIMITATION OF LIABILITY – PROFESSIONAL STANDARDS SCHEME

96. In further answer to all of the claims against JWS, if (which is denied) JWS is liable for any of the loss alleged, that liability is limited in accordance with The Law Society of South Australia Professional Standards Scheme approved under the *Professional Standards Act 2004* (SA).

Date: 6 December 2018



Signed by Richard Murphy
Minter Ellison

Lawyer for the Cross Respondent by Second Cross Claim

This pleading was prepared by Paul Liondas, of counsel, and settled by Jeffery Gleeson QC, of counsel.