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Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	VID434/2015
File Title:	Cheryl Whittenbury v Vocation Ltd (in Liquidation) & Anor
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Dated: 11/11/2019 3:44:48 PM AEDT

Registrar

Important Information

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

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Form 17
Rule 8.05(1)(a)

SECOND FURTHER AMENDED CONSOLIDATED STATEMENT OF CLAIM

(filed pursuant to orders made by Middleton J on 11 October 2019 and 8 November 2019)

No. VID 434 of 2015

Federal Court of Australia

District Registry: Victoria

Division: General

Cheryl Whittenbury

Applicant

Vocation Limited (ACN 166 631 330) and others named in the schedule

First Respondent ~~/ Cross Claimant~~

~~**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 / Cross-Claimant by Fifth Cross-Claim~~

~~**Mark Edward Hutchinson and others named in the schedule**~~

~~Cross-Respondents by Third and Fifth Cross-Claims / certain cross-claimants~~

Filed on behalf of Cheryl Whittenbury (Applicant)

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I. INTRODUCTION

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**) by the Applicant in her individual capacity and in a representative capacity on behalf of all persons who or which:

   (a) acquired an interest in fully paid ordinary shares in Vocation Limited (**Vocation Securities**) during the period between:

      (i) 27 November 2013; and

      (ii) 4 December 2014,

      (**Relevant Period**), including securities purchased through the Initial Public Offering under the Replacement Prospectus (as defined in paragraph 7 below) or the Placement (as defined in paragraph 91(a) below);

   (b) allege they suffered loss or damage by reason of the conduct of the First Respondent (**Vocation**), ~~and/or~~ Second Respondent (**PwC**), Third Respondent (**Hutchinson**), Fourth Respondent (**Gréwal**) and/or Fifth Respondent (**Dawkins**) pleaded in this Second Further Amended Consolidated Statement of Claim;

   (c) were not during the Relevant Period, and are not, any of the following:

      (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth)) (**Corporations Act**) of Vocation;

      (ii) a related body corporate (as defined by s 50 of the Corporations Act) of Vocation;

      (iii) an associated entity (as defined by s 50AAA of the Corporations Act) of Vocation; and

      (iv) a director, an officer or a close associate (as defined by s 9 of the Corporations Act) of Vocation;

(d) are not John William Cruse Webster (as Trustee for the Elcar Pty Ltd Super Fund Trust) being the Plaintiff in proceedings VID 228/2017 against Vocation in the Federal Court of Australia.

(**Group Members**).

2. The Applicant acquired interests in Vocation Securities during the Relevant Period:

(a) pursuant to the Initial Public Offering defined in paragraph 10 of this Statement of Claim; and/or

(b) on the financial market operated by the Australian Securities Exchange Limited (**ASX**).

Particulars

Details of the particular transactions of the Applicant are set out below (prices rounded to two decimal places).

Date	Transaction type	Number of shares	Price per security	Transaction value
30 June 2014	Acquisition	1,632	$3.05	$4,977.60
25 August 2014	Disposal	1632	$2.99	$4,879.68
16 October 2014	Acquisition	2,250	$2.19	$4,927.50
28 October 2014	Disposal	2,250	$1.09	$2,441.25
28 October 2014	Acquisition	5,000	$1.09	$5,425.00
29 October 2014	Disposal	5,000	$1.06	$5,300.00

3. Immediately prior to the commencement of this proceeding, the group, on whose behalf this proceeding is brought, comprised more than seven persons.

<u>II. CLAIM AGAINST VOCATION</u>

<u>Note</u>*<u>: This section pleads claims against the First Respondent only</u>*

A THE FIRST RESPONDENT

4. Vocation is and at all material times was:

   (a) incorporated pursuant to the Corporations Act and capable of being sued;

   (b) a person within the meaning of ss 728(1) and 1041H of the Corporations Act;

   (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);

   (d) a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act* 2010 (Cth), as applicable pursuant to:

      (i) s 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);

      (ii) s 28 of the *Fair Trading Act 1987* (NSW);

      (iii) s 16 of the *Fair Trading Act 1989* (Qld);

      (iv) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);

      (v) s 19 of the *Fair Trading Act 2010* (WA);

      (vi) s 14 of the *Fair Trading Act 1987* (SA);

      (vii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT); and/or

      (viii) s 27 of the *Consumer Affairs and Fair Trading Act <u>1990</u>* (NT),

   (individually, or together, the **Australian Consumer Law**).

5. From 6 December 2013 and at all material times, Vocation was:

   (a) included in the official list of the financial market operated by ASX (**Official List**);

(b) an entity, the securities of which are ED securities for the purposes of s 111AE of the Corporations Act, and quoted ED securities within the meaning of s 111AM of the Corporations Act;

(c) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;

(d) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);

(e) obliged by ss 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes aware of, any information concerning Vocation that a reasonable person would expect to have a material effect on the price or value of Vocation Securities, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply) (**Vocation's Continuous Disclosure Obligation**).

B. VOCATION – COMPANY BACKGROUND

B.1 The Offer

6. On or about 18 November 2013, Vocation and ACN 166 629 063 Pty Ltd (**SaleCo**) lodged a document entitled "Vocation Prospectus" (**Initial Prospectus**) with the Australian Securities and Investments Commission (**ASIC**).

7. On or about 27 November 2013, Vocation and SaleCo lodged with ASIC a document which replaced the Initial Prospectus, entitled "Vocation Prospectus" (**Replacement Prospectus**).

8. Vocation:

(a) published the Replacement Prospectus in electronic form on the website www.vocationshareoffer.com.au;

(b) made paper copies of the Replacement Prospectus available to any person in Australia who called the "Vocation Share Offer Hotline" on (+61) 1800 285 677 between specified times.

9. By no later than 27 November 2013, Vocation:

(a) applied to ASX for admission of Vocation to the Official List, and quotation of Vocation Securities on the ASX; and

(b) lodged with ASX:

(i) Appendix 1A ("ASX Listing Application and Agreement") (**Appendix 1A**); and

(ii) "Information Form and Checklist" (**Information Form**),

(together, **Pre-Quotation Disclosure**), as required by ASX Listing Rule 1.7, in order to apply for admission to the Official List.

(c) as part of the Pre-Quotation Disclosure:

(i) lodged with ASX the Replacement Prospectus (as required by Item 4 of the Information Form);

(ii) confirmed that all information that a reasonable person would expect to have a material effect on the price or value of Vocation Securities was included in or provided with the Pre-Quotation Disclosure (as required by Item 40 of the Information Form);

(iii) by deed poll warranted that the information and documents required by the Appendix 1A, including the information and documents referred to in the Information Form were true and complete (as required by cl 4 of the Appendix 1A);

10. By the Replacement Prospectus:

(a) Vocation and SaleCo made an offer of 134,000,000 Vocation Securities (**Initial Public Offering**), as follows:

(i) Vocation offered to issue 75.4 million Vocation Securities; and

(ii) SaleCo offered to sell and transfer 58.6 million Vocation Securities,

at a price of $1.89 per Vocation Security (**Offer Price**) on the terms set out in the Replacement Prospectus, to potential investors in Vocation Securities in Australia (and to certain institutional investors outside Australia).

(b) Vocation and SaleCo disclosed that following completion of the Initial Public Offering:

   (i) Vocation had applied to ASX for admission of Vocation to the Official List, and quotation of Vocation Securities on the ASX (such disclosure being required by s 716(5) of the Corporations Act);

   (ii) Allotment of Vocation Securities would occur on 6 December 2013;

   (iii) Vocation Securities would be listed on the ASX, and would commence trading on the ASX:

      (A) on an unconditional and deferred settlement basis on 9 December 2013;

      (B) on a normal settlement basis on 11 December 2013.

11. By reason of the matters pleaded in paragraphs to 6 to 10, the Replacement Prospectus was, from a time no later than the time when Vocation was admitted to the Official List of the ASX, publicly available to the market of potential investors in Vocation Securities.

B.2 The Merger and the Founding Companies

12. The Replacement Prospectus disclosed that prior to, or contemporaneously with, the issue or sale of Vocation Securities pursuant to the Initial Public Offering, there would be a merger (**Merger**) between:

   (a) Vocation; and

   (b) the following entities (**Founding Companies**):

      (i) AVANA Group Pty Ltd (ACN 110 198 171) ~~(**AVANA**)~~, and its subsidiaries (**AVANA**);

      (ii) BAWM Pty Ltd (formerly known as Taylored Gardens Pty Ltd) (ACN 078 456 676) (**BAWM**) and Aspin Pty Ltd (ACN 106 046 682) (**Aspin**) (referred to together in the Replacement Prospectus as “BAWM”);

      (iii) Customer Service Institute of Australia Pty Ltd (ACN 127 413 923) (**CSIA**), and its subsidiaries, (including TTS-100 Pty Ltd), and CSIA Education Services Pty Ltd (ACN 135 651 204);

(c) certain entities or businesses, which were acquired by Vocation or one of the entities referred to in subparagraph (b) above, either prior to or contemporaneously with the acquisition of AVANA and CSIA by Vocation.

Particulars

Replacement Prospectus at pp. 3, 5 and 131.

13. At all material times prior to the Merger and Initial Public Offering, AVANA:

(a) was a private education provider with core capabilities in tourism, hospitality, retail and community services, predominantly in New South Wales, Western Australia and Tasmania;

(b) had as its Chief Executive Officer, Mark Hutchinson (**Hutchinson**), who was also its founder and majority shareholder;

(c) had as its minority shareholder, Steven Tucker (**Tucker**), who was also its founder and majority shareholder;

(d) had as its Commercial Director, Jonathan Smuskowitz (**Smuskowitz**); and

(e) had reported on a consolidated basis, as at the end of the twelve month period ending on 30 June 2013 (**FY13**):

(i) net assets and total equity of $2,951,306;

(ii) profit before tax for FY13 of $617,946 (derived from revenues of $10,379,349).

Particulars

Prospectus, pp.49, 84, 89, 128 ("AVANA Founder");

Annual Report – 30 June 2013 for AVANA, filed with ASX on 6 December 2013 as part of the Pre-Quotation Disclosure

14. Prior to completion of the Merger and Initial Public Offering, BAWM and Aspin:

(a) operated as private education providers operating under the brands of "RTO Edge", "Buildit Learning", "Diverse Learning" and "Careers Direct", focussing on industries such as transport and logistics, manufacturing, construction and community services, in Victoria (and which had previously also traded under the name "Institute of Counselling and Community Studies" or "ICSS");

(b) were owned directly or indirectly:

(i) prior to 15 November 2013, by a partnership comprising:

(A) Broadtree Investments Pty Ltd as trustee for the Broadtree Investment Trust (**Broadtree**);

(B) Amasue Investments Pty Ltd as trustee for the Amasue Trust;

(C) Jusben Pty Ltd as trustee for the Gillingham Trust;

(D) Boncal Investments Pty Ltd, as trustee for the Bonnici Family Investment Trust (**Boncal**); and

(E) The Morrissey Corporation Pty Ltd as trustee for the Morrissey Family Trust,

(each a **BAWM Founder**);

(ii) after 15 November 2013, by Vocation, by reason of the BAWM Sale Agreement dated 15 November 2013, pursuant to which the BAWM Founders sold BAWM to Vocation in exchange for the issue of approximately 87.5 million Vocation Securities, of which the BAWM Founders subsequently irrevocably offered to sell 58.6 million Vocation Securities to SaleCo for it to offer pursuant to the Initial Public Offering (**Vocation BAWM Purchase**);

(c) had, as Managing Director, Wendy Bonnici (**Bonnici**), who was also a founder and majority shareholder of BAWM (through Boncal);

(d) had, as its Executive Director and Chief Financial Officer, Michael Langtree (**Langtree**), who was also a founder and majority shareholder of BAWM (through Broadtree); and

(i) had, in the case of BAWM, reported on a consolidated basis, as at the end of FY13:

(ii) net assets and total equity of $4,736,455;

(e) profit before tax for FY13 of $6,766,493 (derived from revenues of $36,713,675);

(f) had, in the case of Aspin, reported on a consolidated basis, as at the end of FY13:

(i) net assets and total equity of $104,440;

(ii) profit before tax for FY13 of $63,200 (derived from revenues of $270,659).

Particulars

Prospectus, pp.49, 86-87, 113, 128 ("BAWM Founders").

Financial Report – 30 June 2013 for BAWM, filed with ASX on 6 December 2013 as part of the Pre-Quotation Disclosure.

Financial Report – 30 June 2013 for Aspin filed with ASX on 6 December 2013 as part of the Pre-Quotation Disclosure.

15. Prior to completion of the Merger and Initial Public Offering, CSIA:

(a) was a customer service organisation providing training and professional qualifications in management, business and customer service (in addition to several other product categories), particularly in New South Wales, Victoria, South Australia and Queensland;

(b) had, as its Executive Director, Brett Whitford (**Whitford**), who was also its founder and owner;

(c) had engaged in business activities with Innisfree Australia Pty Limited, a company associated with John Dawkins (**Dawkins**);

(d) had reported on a consolidated basis, as at the end of FY13:

(i) net assets and total equity of $4,314,704;

(ii) profit before tax for FY13 of $1,785,218 (derived from revenues of $6,942,500).

Particulars

Prospectus, pp.49, 87, 113, 128 ("CSIA Founder").

CSIA Special Purpose Annual Report for the year ended 30 June 2013 for BAWM, filed with ASX on 6 December 2013 as part of the Pre-Quotation Disclosure.

B.3 Vocation Directors and Senior Managers

16. Prior to or contemporaneously with incorporation of Vocation:

    (a) the following persons became directors of Vocation (**Vocation Directors**):

        (i) Hutchinson became the Executive Director and Chief Executive Officer of Vocation, and retained that position throughout the Relevant Period;

        (ii) Dawkins became a Non-Executive Director and the Chairman of Vocation, and retained that position throughout the Relevant Period, resigning on 27 November 2014;

        (iii) Tucker became a Non-Executive Director of Vocation, and retained that position throughout the Relevant Period;

        (iv) Michelle Tredenick (**Tredenick**) became a non-executive director of Vocation, and retained that position throughout the Relevant Period;

        (v) Douglas Halley (**Halley**) became a non-executive director of Vocation, and retained that position throughout the Relevant Period, becoming Chairman on 27 November 2014;

    (b) the following persons became part of Vocation's senior management team (**Vocation Senior Managers**):

        (i) Bonnici became the Chief Operating Officer of Vocation, reporting directly to Hutchinson;

        (ii) Smuskowitz became Executive Manager of Vocation, reporting directly to Hutchinson, and retained that position throughout the Relevant Period;

        (iii) Langtree became the Executive Manager, Education of Vocation, reporting directly to Hutchinson, and retained that position throughout the Relevant Period;

        (iv) Whitford became an Executive Manager of Vocation, reporting directly to Hutchinson, and remained in that role until being dismissed in about June 2014; and

(v) Manvinder Gréwal (**Gréwal**) became the Chief Financial Officer of Vocation, reporting directly to Hutchinson,

each of whom was a person who participated in making decisions that affected or could affect the whole or a substantial part of the business of Vocation.

Particulars

Prospectus, pp.84-87.

17. By reason of the matters pleaded in paragraphs 13(b) to 13(d~~e~~), 14(c) to 14(d), 15(b) and 16:

(a) any information which any Vocation Director or Vocation Senior Manager became aware of following the incorporation of Vocation, or which ought reasonably have come into his or her possession in the course of the performance of his or her respective duties was information of which Vocation was aware (as awareness is defined in ASX Listing Rule 19.12);

(b) any information which was, prior to the incorporation of Vocation, in the possession of Hutchinson, Tucker or Smuskowitz about or relating to AVANA was information of which Vocation was aware (as awareness is defined in ASX Listing Rule 19.12) from the time they became Vocation Directors or Vocation Senior Managers;

(c) any information which was, prior to the incorporation of Vocation, in the possession of Bonnici or Langtree about or relating to BAWM or Aspin was information of which Vocation was aware (as awareness is defined in ASX Listing Rule 19.12) from the from the time they became Vocation Senior Managers and/or the date of the Vocation BAWM Purchase; and

(d) any information which was, prior to the incorporation of Vocation, in the possession of Whitford about or relating to CSIA was information of which Vocation was aware (as awareness is defined in ASX Listing Rule 19.12) from the time he became a Vocation Senior Manager.

C. VOCATION'S BUSINESS

C.1 Vocation's business

18. At all material times after the Merger and the Initial Public Offering, Vocation has carried on business as a full-service provider of vocational education and training services (**VET Services**), through its subsidiaries, including, inter alia, AVANA, BAWM, Aspin and CSIA, with significant operations in Victoria.

19. At all relevant times before, alternatively by 18 November 2013, and during the Relevant Period:

    (a) Vocation's business model assumed that Vocation would receive the majority of its revenue through funding received from State, Territory and Commonwealth government funding schemes;

    (b) Vocation's business channels were intended by Vocation thereafter to be:

        (i) its "Enterprise" business channel, to deliver workforce-based training and development solutions to employees of Australian corporate and government clients;

        (ii) its "Direct" business channel, to deliver training directly to individual students; and

        (iii) its "Solutions" business channel, to deliver outsourced managed services and other ancillary services to third party VET providers, learning and development businesses, and industry specialists in Australia – a material part of which business channel would be delivered through the "RTO Edge" part of BAWM's business (**RTO Edge**).

Particulars

The Applicant refers to the Replacement Prospectus at pages 3 and 30-43.

~~*Further particulars may be provided following the completion of discovery and before the initial trial.*~~

20. At all material times Vocation had, or ought reasonably have had, in place internal reporting systems designed to ensure adequate and timely dissemination within Vocation of material or significant developments regarding Vocation's operations, including:

(a) developments relating to the operations of each of its subsidiaries, including, inter alia, AVANA, BAWM, Aspin and CSIA;

(b) developments relating to each of the business channels referred to in paragraph 19;

(c) any breach or material non-compliance by Vocation or its subsidiaries of their statutory and contractual obligations.

Particulars

The Applicant refers to:

i. *the statements set out in the Replacement Prospectus at page 46 under the heading "Registration and Compliance Systems" and at pages 89-92 under the heading "Corporate Governance";*

ii. *Vocation's 2014 Annual Report and the "Corporate Governance Statement" set out at page 33-38 thereof;*

iii. *Vocation's published policies, including those titled "The Board Charter", "Audit and Risk Committee Charter", "Risk Management Policy" and "Continuous Disclosure Policy", as published on Vocation's website at www.vocation.com.au;*

iv. *all relevant statutory obligations applicable to Vocation and its subsidiaries, including those set out in paragraphs 27 and 28 below;*

v. *record keeping obligations, and internal and external audit and review obligations, set out in funding agreements between Vocation (or one of its subsidiaries) and a State, Territory and Commonwealth government department as part of a funding scheme, including the BAWM Government Contracts and Aspin Government Contracts referred to in paragraphs 25 and 26 below;*

vi. *obligations to the effect that notwithstanding the use of any subcontractors, Vocation (or one of its subsidiaries) at all times retained primary responsibility for the performance of its obligations under funding agreements between Vocation (or its subsidiary) and a State, Territory and Commonwealth government department as part of a funding scheme, including the BAWM Government Contracts and Aspin Government Contracts referred to in paragraphs 25 and 26 below;*

vii. *the materiality of those government funding agreements to Vocation's business and revenue;*

viii. *the involvement of Vocation's senior management, including Hutchinson, in the management of the Founding Companies* *and the transition of those businesses into Vocation after 18 November 2013.*

To the extent that Vocation ought to have had in place relevant internal reporting systems, the obligation also existed by reason of ss 286, 674, 710 and 728 of the Corporations Act.

~~*Further particulars may be provided following the completion of discovery and before the initial trial.*~~

C.2 BAWM's and Aspin's Registrations

21. At all material times, BAWM was:

    (a) a registered training organisation (**RTO**), which engaged in teaching activities in Victoria only;

    (b) registered with the Victorian Registration & Qualifications Authority (**VRQA**) pursuant to Part 4.3 of the *Education and Training Reform Act 2006* (Vic) (**Victorian Act**); and

    (c) required in order to maintain its registration to comply with the conditions of its registration, including:

        (i) complying with the *Victorian Guidelines for VET Providers* (**Victorian RTO Guidelines**) in force pursuant to the Victorian Act;

        (ii) complying with the *Australian Quality Training Framework* (**AQTF**) and/or "VET Quality Framework", including the *AQTF 2010 Essential Conditions and Standards for Initial Registration* and the *AQTF 2010 Essential Conditions and Standards for Continuing Registration* as endorsed by the Ministerial Council on 9 June 2010 and as amended or as remade or endorsed from time to time by the Ministerial Council (**National RTO Standards**):

            (A) in force pursuant to the *National Vocational Education and Training Regulator Act 2011* (Cth) (**Commonwealth Act**) and *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011* (Cth); and

            (B) applicable to RTOs registered with VRQA by reason of s 4.3.17(2)(a) of the Victorian Act.

Particulars

BAWM: ID 21357 (22 August 2003 to 31 July 2018).

22. At all material times, Aspin was:

    (a) a RTO, which engaged in teaching activities in all states and territories of Australia;

    (b) registered with the Australian Skills Quality Authority (**ASQA**) pursuant to the Commonwealth Act; and

    (c) obliged by reason of s 21 of the Commonwealth Act to comply with the conditions of its registration, including complying with the National RTO Standards.

Particulars

Aspin: ID 21756 (initially registered 23 March 2006, renewed on 1 June 2014).

23. At all material times pursuant to Div 4 of Part 4.3 of the Victorian Act:

    (a) the VRQA had power in respect of BAWM to:

        (i) conduct a compliance audit (**VRQA Audit**) of BAWM at any time, to which compliance audit BAWM must submit (ss 4.3.17(c), 4.3.25); and

        (ii) amend BAWM's scope of registration, impose new conditions on registration on BAWM, suspend BAWM's registration (or part of the scope of it) by imposing a prohibition on all or some of BAWM's operations, or cancel BAWM's registration (s 4.3.21(2)(b)-(d) (**VRQA Enforcement Action**), if BAWM:

            (A) contravened a condition of its registration (s 4.3.21(3)(b));

            (B) breached a "*government training contract*" as defined in s 4.1.1 (s 4.3.21(3)(g));

    (b) the VRQA had power in respect of Aspin to:

        (i) conduct a VRQA Audit of Aspin in relation to any of Aspin's operations in Victoria, if:

(A) VRQA suspected on reasonable grounds that Aspin had contravened the National RTO Standards;

(B) VRQA had advised ASQA of the suspected contravention; and

(C) ASQA either did not take steps within 30 days to deal with the suspected contravention to the satisfaction of VRQA or advised VRQA it did not propose to take any step to deal with the suspected contravention (s 4.3.26);

(ii) amend the scope of Aspin's registration or registered conditions, or impose a new condition on the registration of Aspin (each as set out in the National Register), so as to impose a restriction applying in Victoria (s 4.3.21(2)(a)), if Aspin:

(A) contravened a condition of its registration (s 4.3.21(3)(b));

(B) breached a "*government training contract*" as defined in s 4.1.1 (s 4.3.21(3)(g)).

24. At all material times pursuant to Part 2 of the Commonwealth Act, ASQA had power in respect of Aspin to:

(a) conduct a compliance audit (**ASQA Audit**) of Aspin at any time, to assess whether Aspin continues to comply with the Commonwealth Act or the RTO Standards, and to review or examine any aspect of Aspin's operations to determine any systemic issues relating to the quality of vocational education and training (s 35);

(b) impose sanctions on Aspin in accordance with s 36 of the Commonwealth Act, including by amending Aspin's scope of registration, suspending Aspin's registration (or part of the scope of it), or cancelling Aspin's registration.

C.3 BAWM and Aspin Government Contracts

25. At the time of the Merger and Initial Public Offering, and at all material times thereafter, BAWM derived a significant proportion of its revenues from contracts with Victorian government entities (**BAWM Government Contracts**) administered by the Victorian Department of Education and Early Childhood Development (**DEECD**).

Particulars

Replacement Prospectus, pp. 32, 77 (Sections 5.2.1-5.2.2).

Vocation had 16 state and territory funding contracts as at the date of the Merger and Initial Public Offering (of which a number were BAWM Government Contracts, including:

i. *for students enrolled on or after 1 January 2013 and before 31 December 2013, the "2013 VET Funding Contract", published by the Victorian Skills Commission (**2013 Government Contract**), such contract held by BAWM being the **2013 BAWM Government Contract**).*

ii. *for students enrolled on or after 1 January 2014 and before 31 December 2014, the 2014-2016 VET Funding Contract published by DEECD on 15 November 2013 (**2014 Government Contract**, such contract held by BAWM being the **2014 BAWM Government Contract**).*

which contracts were standard ~~con~~form contracts.

~~*Further particulars of the BAWM Government Contracts will be given after discovery and inspection, and the issue of subpoenas.*~~

26. At the time of the Initial Public Offering, and at all material times thereafter, Aspin derived a significant proportion of its revenues from a contract with Victorian government entities (**Aspin Government Contracts**) administered by DEECD.

Particulars

Replacement Prospectus, pp. 32, 77 (Sections 5.2.1-5.2.2).

Vocation had 16 state and territory funding contracts as at the date of the Merger and Initial Public Offering, including:

i. *for students enrolled on or after 1 January 2013 and before 31 December 2013, the "2013 VET Funding Contract", published by the Victorian Skills Commission (that is, the 2013 Government Contract, such contract held by Aspin being the **2013 Aspin Government Contract**).*

ii. *for students enrolled on or after 1 January 2014 and before 31 December 2014, the 2014-2016 VET Funding Contract (that is, the 2014 Government Contract, such contract held by Aspin being the **2014 Aspin Government Contract**).*

which contracts were standard ~~con~~form contracts.

~~*Further particulars of the Aspin Government Contracts will be given after discovery and inspection, and the issue of subpoenas.*~~

C.4 BAWM and Aspin Obligations

27. At all material times, the National RTO Standards provided that the following were essential conditions for continuing registration of RTOs (including BAWM and Aspin, CSIA (and TTS-100) and AVANA) as RTOs (**Relevant National RTO Conditions**):

   (a) Condition 1: the RTO must:

      (i) ensure that the RTO complies with the *AQTF Essential Conditions and Standards for Continuing Registration* in relation to all of the operations within the RTO's scope of registration;

      (ii) ensure the RTO's senior officers and directors satisfy fit and proper person requirements;

   (b) Condition 2: the RTO's chief executive must ensure that the RTO co-operates with its registering body by, among other things, providing accurate and timely data relevant to measures of its performance;

   (c) Condition 3: the RTO must:

      (i) comply with relevant Commonwealth, State or Territory legislation and regulatory requirements that are relevant to its operations and its scope of registration; and

      (ii) ensure that its staff and clients are fully informed of these requirements that affect their duties or participation in vocational education and training;

   (d) Condition 6: the RTO must, *inter alia*, issue to persons whom it has assessed as competent in accordance with the requirements of the Training Package or accredited course, a qualification or statement of attainment (as appropriate) that meets the Australian Qualifications Framework requirements, identifies the RTO by its national provider number, and includes the Nationally Recognised Training logo;

   (e) Condition 8: the RTO must ensure its marketing and advertising of AQF qualifications to prospective clients is ethical, accurate and consistent with its scope of registration.

Particulars

AQTF Essential Conditions and Standards for Continuing Registration, Standards 1, 3 and 8.

28. At all material times, the National RTO Standards provided that the following were essential standards for continuing registration of RTOs (including BAWM and Aspin, CSIA (and TTS-100) and AVANA) as RTOs (**Relevant National RTO Standards**):

(a) Standard 1: the RTO must provide quality training and assessment across all of its operations, including, *inter alia*, that:

(i) ensure staff, facilities, equipment and training and assessment materials used by the RTA are consistent with the requirements of the Training Package or accredited course and the RTO's own training and assessment strategies *([Standard 1, [1.3])*;

(ii) training and assessment is delivered by trainers and assessors who:

(A) have the necessary training and assessment competencies as determined by the National Skills Standards Council or its successors; and

(B) have the relevant vocational competencies at least to the level being delivered or assessed; and

(C) can demonstrate current industry skills directly relevant to the training/assessment being undertaken; and

(D) continue to develop their vocational education and training (VET) knowledge and skills as well as their industry currency and trainer/assessor competence.*(Standard 1, [1.4])*

(iii) ensure that assessment including recognition of prior learning ("RPL") meets the requirements of the relevant Training Package or accredited course, is conducted in accordance with the principles of assessment and the rules of evidence, meets workplace and relevant regulatory requirements and is systematically validated (*Standard 1, [1.5]*).

(b) Standard 2: the RTO must adhere to principles of access and equity and maximise the outcome for its clients by:

(i) establishing the needs of clients, and delivers services to meet these needs *(Standard 2 [2.1])*;

(ii) continuously improving client services by collecting, analysing and acting on relevant data *(Standard 2 [2.2])*;

(iii) before clients enrol or enter into an agreement, informing them about the training, assessment and support services to be provided, and about their rights and obligations *(Standard 2 [2.3])*;

(iv) learners receiving training, assessment and support services that meet their individual needs *(Standard 2 [2.5])*;

(v) providing appropriate mechanisms and services for learners to have complaints and appeals addressed efficiently and effectively *(Standard 2, [2.7]*).

(c) Standard 3: the RTO's management systems are responsive to the needs of clients, and the environment in which the RTO operates, in that:

(i) The RTO's management of its operations ensures clients receive the services detailed in their agreement with the RTO (*Standard 3, [3.1])*;

(ii) The RTO uses a systematic and continuous improvement approach to the management of operations *(Standard 3, [3.2]);*

(iii) The RTO monitors training and/or assessment services provided on its behalf to ensure that it complies with all aspects of the AQTF Essential Conditions and Standards for Continuing Registration / VET Quality Framework (*Standard 3, [3.3])*.

Particulars

AQTF Essential Conditions and Standards for Continuing Registration, Standards 1, 2 and 3. See also

i. Standards for NVR Registered Training Organisations 2011, made pursuant to s 185(1) of the Commonwealth Act, SNR 15.4, SNR 16.1-16.3, 16.5, SNR 17.1, 17.3.

ii. Standards for NVR Registered Training Organisations 2012, made pursuant to s 185(1) of the Commonwealth Act, SNR 15.4, SNR 16.1-16.3, 16.5, SNR 17.1, 17.3.

~~*Further particulars may be followed after discovery and inspection, and the issue of subpoenas.*~~

29. At all material times, the Victorian RTO Guidelines provided that (**Relevant Victorian Guidelines**):

    (a) Guideline 1.4: the RTO must have appropriate governance structures in place;

    (b) Guideline 1.5: consistent with its overall governance arrangements the provider must have appropriate academic/educational governance arrangements;

    (c) Guideline 2.2: the RTO must demonstrate that it is able to monitor course quality, externally moderate student performance and drive continuous improvement in course delivery;

    (d) Guideline 2.3: the RTO must demonstrate that they can provide quality education and training to students;

    (e) Guideline 3.3: the RTO must demonstrate that it will be keeping copies of all student acceptance agreements along with details of any fees and charges and refunds for a period of 2 years after the cessation of students' study;

    (f) Guideline 4.3: the RTO must demonstrate that it is providing students with sufficient and relevant student services;

    (g) Guideline 5.1: the RTO must demonstrate that it has the capacity to deliver and assess ALL the courses requested/on the scope of registration.

30. At all relevant times, there were terms of the 2013 ~~BAWM~~ Government Contract (**Relevant Contract Primary Terms**) that:

    (a) the RTO ~~(that is, BAWM or Aspin as the case may be)~~ must maintain registration as an RTO under the ETR Act or the NVETR Act; (clause 3.1(a));

    (b) the RTO must provide Training Services (as defined) in compliance with the requirements of all laws; (clause 3.1(b));

    (c) the RTO must comply with the AQTF and/or the VET Quality Framework (as defined) including the Standards for NVR Registered Training Organisations as applicable; (clause 3.1(f));

(d) the RTO must comply with all requirements in the schedules to the agreement, including in relation to determining eligibility, completing enrolments, levying and collecting tuition fees, application of tuition fee concessions and waivers, Evidence of Participation (as defined), and otherwise meeting the relevant specifications and performance standards; (clause 3.1(g));

(da) the RTO must not pay, or offer, either directly or indirectly, incentives to undertake government subsidised training (clause 3.1(h));

(e) the RTO must ensure that all persons employed or engaged by the RTO to provide the Training Services to each Eligible Individual (as defined) are aware of all obligations under the agreement as appropriate; (clause 3.1(n));

(f) the RTO must provide the Training Services in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from an expert and experienced provider of Training Services; (clause 3.1(o));

(g) the RTO must demonstrate the highest ethical standards in its dealings and conduct in the provision of the Training Services; (clause 3.1(r));

(h) the RTO must make all reasonable efforts to work and communicate effectively with and maintain the confidence of, all stakeholders affected by the agreement; (clause 3.1(s));

(i) the RTO must at all times be accountable to the Commission for its performance under this Agreement and demonstrate its compliance, or report its non-compliance, with the terms of the agreement; (clause 3.1(t));

(j) the RTO must act ethically, and must not do or omit to do anything which may damage, ridicule, bring into disrepute or be detrimental to the Commission, the VET sector, the Victorian government subsidised training market, DEECD or the State's name or reputation; (clause 3.1(u));

(k) the RTO must provide high quality training and assessment including teaching and learning strategies, have strong links to industry and provide support to Eligible Individuals; (clause 4.1);

(l) the RTO must provide the Training Services to each Eligible Individual:

(i) in accordance with the schedules to the agreement and any applicable directions, policies or procedures issued by the Commission and/or the State from time to time;

(ii) exercising due care, skill and judgment and at all times acting in accordance with applicable professional ethics, principles and standards; and

(iii) through fit and proper persons, in a safe and proper manner and to a standard acceptable to the Commission; (clause 4.2);

(m) the RTO may only subcontract training and assessment relating to its Approved Funded Scope (as defined) to another RTO that is currently contracted under a 2013 Service Agreement; (clause 5.1);

(n) subcontracting training and assessment under clauses 5.1 or 5.2 of the agreement is defined as an arrangement where the RTO defers day-to-day responsibility for all or part of the management and conduct of training delivery and assessment activities for subsidised training to another RTO, but where an individual or organisation is solely engaged to conduct the role of trainer or assessor and is not an RTO then this would not represent a subcontracting arrangement as defined under those clauses; (clause 5.3, **2013 Auspicing Carve Out Clause**);

(o) the RTO represents and warrants to the Commission that all subcontractors it will use under this Agreement have appropriate qualifications and are suitably experienced and capable of providing Training Services as required by the agreement; (clause 5.9);

(p) if the RTO subcontracts the provision of some or all of its performance of the Training Services it retains prime responsibility for all of its obligations under the agreement and any subcontract arrangement does not relieve the RTO of any of its liabilities or obligations under the agreement or to otherwise provide the Training Services to an Eligible Individual; (clause 5.10(c));

(q) if the RTO subcontracts the provision of some or all of its performance of the Training Services it is responsible for ensuring the suitability of the subcontractor and for ensuring that any work performed by the subcontractor meets the requirements of the agreement; (clause 5.10(d));

(r) if the RTO subcontracts the provision of some or all of its performance of the Training Services it is liable to the Commission for the acts, or omissions or negligence of any subcontractor (or any employee, officer or agent of the subcontractor) as if they were the acts, or omissions or negligence, of the RTO (or the employees, officers or agents of the RTO); (clause 5.10(e));

(ra) ensure that any promotional publication, report, signage or other material prepared by or on behalf of the RTO relating to the Training Services must be ethical, accurate and consistent with the contract and at law, and identify the RTO legal entity and/or trading name (clause 6.1);

(s) the Commission's payment of the Funds (as defined) to the RTO in respect of an Eligible Individual under the agreement is conditional upon the Commission being satisfied (and continuing to be satisfied) that:

(i) the Training Services are being provided by the RTO to the relevant individual in accordance with this Agreement; and

(ii) the Funds are being reasonably applied by the RTO for the purpose of the provision of the Training Services to that individual, or on matters that reasonably relate to providing the Training Services; (clause 8.2);

(t) without limiting clauses 17 and 18 of the agreement, or any other rights of the Commission, the Commission may deduct from any payment of Funds due to the RTO under this Agreement in respect of Contact Hour Funds (as defined), or seek payment from the RTO in respect of Contact Hour Funds:

(i) money paid for the provision of any Training Services to Eligible Individuals that the Commission is satisfied (in its absolute discretion) have not been provided by the RTO in accordance with this Agreement;

(ii) money expended by the Commission to make good any non-compliance by the RTO with this Agreement;

(iii) money paid by the Commission to auditors or reviewers, or any other authorised person, to verify the delivery, replacement or correction of any of the Training Services by the RTO; (clause 8.3);

(u) the RTO must implement and administer a Recordkeeping (as defined) system that creates and maintains full and accurate hard copy and/or electronic Records (as defined) for all Training Services provided by the RTO, which system must comply with all applicable standards issued under the *Public Records Act 1973* (Vic); (clause 10.3);

(v) the RTO must immediately provide access to the Records to (among others) the Commission or an authorised representative of the Commission for any purpose connected with the agreement; (clause 10.5):

(w) the RTO must ensure that all Records are made available to the Commission on request, including taking any number of copies of any Records or other documents as required and determined by the Commission or Department (or persons authorised by the Commission or Department); (clause 10.8);

(x) without limiting any of the other obligations in clause 10 of the agreement, the RTO must, among other things:

(i) ensure appropriate accounting processes and controls are implemented and administered in connection with the Agreement, the Training Services and the Funds;

(ii) keep complete Records and accounts of all dealings connected with this Agreement, including as required by law and any regulatory authorities applicable to the RTO, which may include quotations, invoices and receipts and must indicate particulars of and payments to any subcontractors;

(iii) upon request by the Commission or Department, make available to the Commission for inspection at a location in Victoria specified by the Commission during business hours, all books, documents or other records in its possession, control or power relating to the Funds or the Training Services;

(iv) supply any information reasonably required by the Commission for the purposes of this Agreement, including information sufficient to allow the Commission to satisfy itself as to the financial position of the RTO, the use of the Funds and/ or the capacity of the RTO to deliver the Training Services to Eligible Individuals;

(v) retain, and make available to the Commission or Department, or its auditors or reviewers for audit or review purposes, all records relating to the Training

Services, including Evidence of Participation (as defined) in respect of each Eligible Individual to whom the RTO provides the Training Services;

(vi) comply with all laws and standards applicable to the RTO relating to Recordkeeping, including the recordkeeping requirements outlined in the AQTF and/or the VET Quality Framework including the SNR (as defined), *Information Privacy Act 2000*, and the *Electronic Transactions (Victoria) Act 2000*; (clause 10.10);

(y) the RTO must conduct an internal audit of its compliance with the provisions of the agreement during the 2013 calendar year, using a checklist supplied by the Commission, which internal audit must be (among other things) signed off by the CEO of the RTO and provided to the Commission or its auditors or reviewers on request; (clause 11.5(g));

31. At all relevant times, there were terms of the 2014 ~~BAWM~~ Government Contract~~s~~ (also **Relevant Contract Primary Terms**) that:

(a) the RTO ~~(that is, BAWM or Aspin as the case may be)~~ must maintain registration as an RTO under the ETR Act or the NVETR Act; (clause 3.1(a));

(b) the RTO must comply with the AQTF and/or the VET Quality Framework (as defined); (clause 3.1(e));

(c) the RTO must provide Training Services (as defined) in compliance with the requirements of all laws; (clause 3.2(a));

(d) the RTO must: (clause 3.3):

(i) act ethically;

(ii) make all reasonable efforts to, among other things, maintain the confidence of all stakeholders affected by the agreement;

(iii) not do or omit to do anything which may damage, ridicule, bring into disrepute or be detrimental to the DEECD, the VET sector, the Victorian government subsidised training market, the DEECD or the State's name and reputation;

(iv) <u>not pay or offer, either directly or indirectly, incentives to undertake government subsidised training (cl 3.3(d));</u>

(e) the RTO must at all times be accountable to the DEECD for its performance under the agreement and demonstrate its compliance, or report its non-compliance, with its terms; (clause 3.4(a));

(f) the RTO must comply with all the requirements set out in Schedule 1 to the agreement, including a requirement therein to comply with the Guidelines about Determining Student Eligibility and Supporting Evidence (as defined); (clause 3.4(b))~~;~~, which Schedule included, inter alia, in Part A the obligation to ensure that any promotional publication, report, signage or other material prepared by or on behalf of the RTO relating to the Training Services must identify the RTO legal entity and/or trading name;

(g) the RTO must ensure that all persons employed or engaged by the RTO to provide the Training Services to Eligible Individuals (as defined) are aware of all obligations under the agreement as appropriate; (clause 3.4(c));

(h) the RTO must~~ comply with the AQTF and/or the VET Quality Framework including the Standards for NVR Registered Training Organisations as applicable~~ ensure that appropriate compliance, reporting and auditing frameworks, controls and systems are in place including the appropriate Segregation of Duties with respect to the provision of the Training Services to each Eligible Individual and receipt of the Funds from the Department; (clause 3.4(f);

(i) the RTO must:

   (i) provide high quality Training Services, including training and assessment and robust administrative processes to support contract compliance;

   (ii) provide the Training Services in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from an expert and experienced provider of Training Services;

   (iii) demonstrate the highest ethical standards in its dealings and conduct in the provision of the Training Services; (clause 4.1);

(j) the RTO must provide the Training Services to each Eligible Individual in accordance with any schedules of the agreement and any applicable directions, policies or procedures issued by DEECD or the State from time to time; (clause 4.2(a));

(k) the RTO may only subcontract training and assessment to an entity that is not an RTO with the written approval of the DEECD, which approval can be given or withheld at DEECD's absolute discretion; (clause 5.2, **2014 Auspicing Approval Clause**);

(l) the RTO warrants to DEECD that all subcontractors it will use under the agreement have appropriate qualifications and are suitably experienced and capable of providing Training Services as required by the agreement; (clause 5.7);

(m) if the RTO subcontracts the provision of some or all of its performance of the Training then, among other things:

   (i) the RTO retains prime responsibility for all of its obligations under the agreement and any subcontract arrangement does not relieve the RTO of any of its liabilities or obligations under the agreement or to otherwise provide the Training Services to an Eligible Individual;

   (ii) the RTO is responsible for ensuring the suitability of the subcontractor and for ensuring that any work performed by the subcontractor meets the requirements of the agreement;

   (iii) is liable to DEECD for the acts, or omissions or negligence of any subcontractor (or any employee, officer or agent of the subcontractor) as if they were the acts, or omissions or negligence, of the RTO (or the employees, officers or agents of the RTO); (clause 5.8);

(n) DEECD's payment of the Funds to the RTO in respect of an Eligible Individual under the agreement is conditional upon DEECD being satisfied (and continuing to be satisfied) that:

   (i) the Training Services are being provided by the RTO to the relevant individual in accordance with this VET Funding Contract; and

   (ii) the Funds are being reasonably applied by the RTO for the purpose of the provision of the Training Services to that individual, or on matters that reasonably relate to providing the Training Services; (clause 7.2);

(o) DEECD may deduct from any payment of Funds (as defined) due to the RTO under the agreement, or require payment from the RTO, in respect of Funds:

(i) money paid for the provision of any Training Services that DEECD is satisfied (in its absolute discretion) have not been provided by the RTO in accordance with the agreement;

(ii) money expended by DEECD to make good any non-compliance by the RTO in accordance with the agreement;

(iii) money paid by DEECD to auditors or reviewers, or any other authorised person, to verify the delivery, replacement or correction of any of the Training Services by the RTO; (clause 7.3);

(p) the RTO must implement and administer a Recordkeeping (as defined) system that creates and maintains full and accurate hard copy and/or electronic Records (as defined) for all Training Services provided by the RTO, which system must comply with all applicable standards issued under the *Public Records Act 1973* (Vic); (clause 9.3);

(q) the RTO must immediately provide access to the Records to, among others, DEECD or an authorised representative of DEECD for any purpose connected with the agreement; (clause 9.5);

(r) the RTO must ensure that all Records are made available to DEECD on request, including taking any number of copies of any Records or other documents as required and determined by DEECD (or persons authorised by DEECD); (clause 9.8);

(s) without limiting any of the other obligations in clause 9 of the agreement, the RTO must:

(i) ensure appropriate accounting processes and controls are implemented and administered in connection with the agreement, the Training Services and the Funds;

(ii) keep complete Records and accounts of all dealings connected with the agreement, including all quotations, invoices and receipts (which must contain full particulars of payments made by the RTO to its subcontractors and other third parties) and other Records and accounts as required by law and any relevant regulatory authorities;

(iii) upon request by DEECD, make available to DEECD for inspection at a location in Victoria specified by DEECD during business hours, all books, documents or other records in its possession, control or power relating to the Funds or the Training Services;

(iv) supply any information reasonably required by DEECD for the purposes of the agreement, including information sufficient to allow DEECD to satisfy itself as to the financial position of the RTO, the use of the Funds and/or the capacity of the RTO to deliver the Training Services to Eligible Individuals;

(v) retain, and make available to DEECD, or its auditors or reviewers for audit or review purposes, all records relating to the Training Services, including Evidence of Eligibility (as defined), Evidence of Concession/Waiver/Exemption (as defined), Statement of Fees (as defined) and Evidence of Participation (as defined) in respect of each Eligible Individual to whom the RTO provides the Training Services;

(vi) comply with all laws and standards applicable to the RTO relating to Recordkeeping, including the recordkeeping requirements outlined in the AQTF and/or the VET Quality Framework including the SNR (as defined), Information Privacy Act 2000, and the Electronic Transactions (Victoria) Act 2000; and

(vii) keep accounting Records in relation to the Funds provided by DEECD under the agreement in such a manner as to enable them to be audited by the Auditor-General of Victoria or any other entity as directed by DEECD; (clause 9.10).

32. It was a further term of the ~~BAWM~~ 2013 Government Contract~~s~~ and 2014 Government Contract (**Relevant Contract Review Terms**) that:

(a) In the case of the 2013 ~~BAWM~~ Government Contract~~s and 2013 Aspin Government Contracts~~:

(i) the Commission or Department (or persons authorised by the Commission or Department) may conduct an audit or review (**DEECD Review**) of the RTO at any reasonable time:

(A) in order to confirm whether the RTO is complying with the agreement;

(B) in order to establish whether and to what extent the Funds have been used for the provision of the Training Services to Eligible Individuals;

(C) in order to investigate allegations or suspected misuse of the Funds; and/or

(D) if applicable, as part of the Commission's Audit and Risk Committee's Internal Audit Plan (as defined); (clause 11.1);

(ii) without limiting the Commission's rights under clause 18 of the agreement, the Commission may invoke any of its rights under clause 17 of the agreement in response to any audit outcomes or review outcomes identifying non-compliance with the agreement or any misuse of the Funds; (clause 11.4);

(b) in the case of the 2014 ~~BAWM Government Contracts and 2014 Aspin~~ Government Contract~~s~~:

(i) DEECD (or persons authorised by DEECD) may conduct an audit or review (also a **DEECD Review**) of the RTO at any reasonable time to, among other things:

(A) confirm whether the RTO is complying with the agreement;

(B) investigate allegations or suspected misuse of the Funds; (clause 10.1);

(ii) if an audit or review by, or on behalf of, DEECD concludes that there has been non-compliance by the RTO with the VET Funding Contract, DEECD may, among other things and at DEECD's absolute discretion, exercise any of its rights under clause 16 or 17 of the agreement; (clause 10.3);

(iii) the RTO must conduct an internal audit of its compliance with the agreement each calendar year in accordance with any requirements of the Department; (clause 10.4).

33. It was a further term of the 2013 ~~BAWM~~ Government Contracts and 2014 Government Contracts (together **Government Contracts**) (**Relevant Contract Enforcement Terms**) that if:

(a) ~~BAWM~~ the RTO breaches a clause of the ~~BAWM~~ Government Contract (including the Relevant Contract Primary Terms);

(b) DEECD reasonably suspects that ~~BAWM~~ the RTO has breached or may breach a clause of the ~~BAWM~~ Government Contract (including the Relevant Contract Primary Terms);

(c) ~~BAWM~~ the RTO does any of the following things (each a **~~BAWM~~ Government Contract Termination Event**):

(i) commits a "Material Breach" of the ~~BAWM~~ Government Contract;

(ii) commits a breach of the ~~BAWM~~ Government Contract which cannot be remedied;

(iii) commits a breach of the ~~BAWM~~ Government Contract, and fails to commence action to remedy the breach within 10 business days after DEECD has served notice or fails to complete action to remedy the breach as soon as possible and in any event within 20 business days of DEECD's notice;

(iv) fails to provide some or all of the training services for which funds have been paid by the government entity, or the training services are not provided to a standard satisfactory to DEECD;

(d) DEECD reasonably suspects that a ~~BAWM~~ Government Contract Termination Event has occurred or may occur;

(e) DEECD became aware of what it considers to be an irregularity or inconsistency regarding ~~BAWM's~~ the RTO's operations, reporting or other obligations under the ~~BAWM~~ Government Contract which ~~BAWM~~ the RTO fails to explain to DEECD's reasonable satisfaction in the time required by DEECD; or

(f) DEECD becomes aware of any communication, representation or step taken by ASQA or VRQA that indicates that ASQA or VRQA has formed an adverse view in relation to ~~BAWM~~ the RTO, or which DEECD considers will impair BAWM's performance of the Government Contract,

then DEECD could take any of the following steps (**DEECD Enforcement Action**):

(g) suspend part or all of the provision of training services under the ~~BAWM~~ Government Contract;

(h) withhold, suspend, cancel or terminate payment of any part of the funds required to be paid by the government entity under the ~~BAWM~~ Government Contract, as DEECD determines is appropriate, until DEECD is satisfied that the issue has been satisfactorily resolved; and

(i) require ~~BAWM~~ the RTO to refund such funds which have been paid by the government entity under the ~~BAWM~~ Government Contract as DEECD reasonably deems appropriate, together with interest;

(j) require payment of a monetary amount by ~~BAWM~~ the RTO to DEECD; and/or

(k) in the case of a ~~BAWM~~ Government Contract Termination Event, terminate the Government Contract.

Particulars

The following documents available from the DEECD website are referred to:

i. the standard form 2013 Service Agreement Victorian Training Guarantee Program, between the Victorian Skills Commission and an RTO, applicable to students commencing training between 1 January and 31 December 2013, cll 17.1, 17.2, 18.3;

ii. the standard form 2014-16 VET Funding Contract, between the State of Victoria (through the Secretary of DEECD) and the RTO), applicable to students commencing training between 1 January and 31 December 2014, cll 16.1, 16.2, 17.3.

~~*Further particulars may be followed after discovery and inspection, and the issue of subpoenas.*~~

34. The ~~Aspin~~ Government Contracts of each of BAWM, Aspin, CSIA (and TTS-100) and AVANA contained terms materially to the same effect as the Relevant Contract Primary Terms, Relevant Contract Review Terms and Relevant Contract Enforcement Terms.

C.5 DEECD Regulatory focus

35. On or about 15 November 2013, and at the same time as publishing the standard form government contract for 2014 (~~in which form~~ the 2014 ~~BAWM~~ Government Contract ~~and 2014 Aspin Government Contracts would be cast~~):

(a) DEECD published an explanatory statement for the 2014 ~~BAWM Government Contract and 2014 ASPIN~~ Government Contract titled "*Information for Providers - Key features of VET Funding Contracts*" and directed to VET providers, which included the following statements under the heading "Subcontracting":

(i) "Subcontracting and third party arrangements involving the delivery of training and assessment continue to be a point of focus for the Department, regulators and the National Skills Standards Council";

(ii) "Risks to quality and compliance have been identified at a State and national level where training and assessment is delivered by a non-registered training organisation";

(iii) In order to continually drive quality professional and organisational practice in the government subsidised training market, from 2014 providers will be required to seek the prior written approval of the Department before subcontracting training and assessment (as distinct from administrative or operational matters) to any third party that is not a contracted RTO, including RTO and non-RTO entities";

(b) DEECD announced that it would reduce the level of funding for a number of courses, including those offered by Vocation's Victorian businesses.

36. Prior to 18 November 2013, by reason of the matters set out above, Vocation knew, or ought reasonably have known, that in 2014:

(a) subcontracting and third party arrangements involving the delivery of training and assessment would be a point of focus for DEECD;

(b) DEECD's stated purpose in including the 2014 Auspicing Approval C~~c~~lause in the 2014 ~~Funding~~ Government Contract was to address risks to quality and compliance that had been identified at a State and national level where training and assessment is delivered by a non-RTO or an RTO that did not hold a 2014 Government Contract ~~VET 2014 funding contract with DEECD~~ (**non-contracted RTO**);

(c) DEECD was unlikely to consent to subcontracting to a non-RTO or non-contracted RTO unless it considered the giving of consent in each case to be consistent with its stated goal to "continually drive quality professional and organisational practice in the government subsidised training market".

Particulars

Vocation's knowledge is to be inferred from:

i. BAWM and Aspin's involvement in providing government-subsidised VET services in Victoria since at least 2010;

ii. BAWM and Aspin's use of A~~a~~uspicing to deliver government-subsidised VET services in Victoria since at least 2012;

iii. the matters set out in the particulars subjoined to paragraph 20;

iv. the matters set out in paragraphs 30(n) and 35;

v. the materiality of the 2014 ~~BAWM Government Contract and 2014 ASPIN~~ Government Contract to the business of BAWM and Aspin, and hence Vocation.

~~Further particulars may be provided following the completion of discovery and other interlocutory steps, and before the initial trial.~~

C.6 Significance of certain businesses to Vocation

37. At the time of the Merger and the Initial Public Offering (and at all material times thereafter), Vocation's business model assumed that:

(a) a material contributor to Vocation's revenue would be its "Solutions" business channel;

(b) RTO Edge would account for approximately 85% of Vocation's "Solutions" business channel revenue, and approximately 36% of Vocation's total revenue, in FY14; and

(c) Vocation would achieve a substantial increase in student enrolments in FY14.

Particulars

The Applicant refers to the Replacement Prospectus at pages 6, 8, 30-43, 47 and 52-75.

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

38. At the time of the Merger and the Initial Public Offering:

(a) a significant proportion of Vocation's "Solutions" channel revenue was, alternatively from 18 November 2013 was intended by Vocation to be, derived through the use of third party subcontractors to provide training and assessment services (**Auspicing**);

(b) a significant proportion of Vocation's clients were, alternatively from 18 November 2013 were intended by Vocation to be, sourced through the use of third party student brokers (**Broking**).

Particulars

The Applicant refers to the Replacement Prospectus at page 62 and 78.

Approximately 50% of enrolments were processed by brokers. (VOC.003.001.1237 at .1263)

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

39. Immediately prior to the Merger and the Initial Public Offering:

(a) BAWM's total assets would have represented approximately 55% of the total assets of Vocation (on a pro forma consolidated basis as at the end of FY13);

(b) BAWM's revenue would have represented approximately 62% of the revenue of Vocation (on a pro forma consolidated basis as at the end of FY13, based on an assumption that the Merger and Initial Public Offering had taken place);

(c) BAWM would have contributed approximately 88% of the net profit before tax of Vocation (on a pro forma consolidated basis as at the end of FY13);

(d) BAWM was worth approximately $165 million, which represented approximately 43% of the market capitalisation of Vocation based on the Offer Price, and the number of Vocation Securities that would be issued following the Initial Public Offering.

Particulars

The percentage in (a) is derived by dividing the Total Assets for BAWM (column 1 of Fig 4.4.1) by the sum of: the Total Assets for BAWM (column 1 of Fig 4.4.1) and the Total Assets for Founding Companies other than BAWM (column 2 of Fig 4.4.1): Replacement Prospectus p.57;

The percentage in (b) is derived by dividing the BAWM revenue described in paragraph 14(e) by the Statutory Revenue for FY13 in the fifth column of Fig 4.3.2.1 (also the Total Revenue for FY13 in the first column of Fig 4.7.2.1.1): Replacement Prospectus pp.56, 69;

The percentage in (c) is derived by dividing BAWM's net profit as described in paragraph 14(e)by the "Profit before tax" for FY13 in column 1 of Fig 4.7.2.1.1: Replacement Prospectus p.69;

The amount in (d) is derived by multiplying the number of Vocation shares issued by Vocation in consideration for the purchase of BAWM (as described in paragraph 14(b)(ii)) by the Offer Price.

40. By reason of the matters pleaded in paragraph 39, at all material times in the Relevant Period after the Merger and the Initial Public Offering:

    (a) BAWM represented a significant proportion of Vocation's assets;

    (b) BAWM's revenue (which was derived principally from government contracts) represented a significant proportion of Vocation's consolidated revenue;

    (c) BAWM contributed to a significant proportion of anticipated profits of Vocation;

    (d) by reason of the matters pleaded in subparagraphs (a) to (c), a significant proportion of the goodwill of Vocation was attributable to BAWM;

    (e) a significant proportion of the market capitalisation of Vocation was attributable to the value attributed to BAWM (and its businesses).

41. Further, at all material times after the Merger and the Initial Public Offering:

    (a) maintaining the strength of the Vocation and underlying brands (including BAWM, and its brands) was a factor which could impact on Vocation's ability to recruit students, maintain government funding, maintain corporate and government relationships and implement its business strategy; and

    (b) any factors which undermined the strength of Vocation's reputation and brands (including BAWM and its brands) could impact on the strength of Vocation's competiveness, growth and profitability.

Particulars

Replacement Prospectus, p.80.

42. By reason of the matters pleaded in paragraph 39 to 41, information which was likely to, or there was a material risk ~~might~~ would, have a material effect on revenue which was derived by BAWM (or businesses operated by BAWM) (**BAWM Adverse Financial Impact Information**) was:

(a) information which was likely to, or there was a material risk ~~might~~ would, have a material adverse impact on Vocation's operations, earnings and financial position (**Vocation Adverse Financial Impact Information**); and

(b) by reason of (a):

(i) information that investors and their professional advisers would reasonably require to make an informed assessment of the assets, liabilities, financial position and performance, profits and losses and prospects of Vocation within the meaning of s 710(1) of the Corporations Act (**Vocation Relevant Information**); and/or

(ii) information that a reasonable person would expect to have a material effect on the price or value of Vocation Securities within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act (**Vocation Material Information**).

43. Further or alternatively, by reason of the matters pleaded in paragraph 39 to 41, information which was likely to, or there was a material risk ~~might~~ would, have a material effect on the reputation of BAWM or BAWM's brands (**BAWM Adverse Reputational Impact Information**), was:

(a) information which was:

(i) likely to, or there was a material risk ~~might~~ would, have a material adverse impact on Vocations reputation and branding, and Vocation's ability to recruit students, maintain government funding, maintain corporate and government relationships and implement its business strategy (**Vocation Adverse Reputational Impact Information**); and

(ii) by reason of sub-sub-paragraph (i), BAWM Adverse Financial Impact Information; and

(b) information which was by reason of paragraph 42 and sub-paragraph (a):

(i) Vocation Adverse Financial Impact Information;

(ii) Vocation Relevant Information; and

(iii) Vocation Material Information.

D. PRE-LISTING CONDUCT

D.1 The BAWM Conduct

Audits of BAWM

43A. On 24 and 25 July 2012, PricewaterhouseCoopers conducted an independent audit at BAWM (then known as Taylored Gardens Pty Ltd and trading as "Build It Learning" and "Institute of Counselling and Community Studies" for the purposes of assessing BAWM's suitability to be granted an extension of its scope of registration as an RTO (**2012 AQTF BAWM Audit**).

43B. On or about 14 August 2012, PricewaterhouseCoopers provided BAWM with its report following the 2012 AQTF BAWM Audit (**2012 AQTF BAWM Audit Report**), which report identified several areas of non-compliance in respect of AQTF Standard 1 ([1.2], [1.3] and [1.5]) and VRQA Guideline 5 (Teaching, Learning and Assessment) by reason of inadequacies in BAWM's Training and Assessment Strategies for the existing courses it was offering.

Particulars

VOC.500.001.7442; VOC.500.011.3477

43C. On or about 20 September 2012, VRQA notified BAWM that it was rejecting BAWM's application for an extension to scope of registration to conduct six further courses, on the basis of the 2012 AQTF BAWM Audit Report, which indicated significant non-compliance with the AQTF and non-compliance with the VRQA Guidelines (and noted BAWM had accepted the findings of the audit report in full).

Particulars

i) VOC.500.001.7440; VOC.500.001.7442

ii) The further courses BAWM had sought an extension of scope in respect of were Certificate I in General Education for Adults; Certificate II in General Education for Adults; Certificate II in Tourism; - Certificate III in Driving Operations; Certificate III in Education Support; and Certificate III in Tourism.

44. Around 15-18 July 2013, VRQA conducted an audit at BAWM for the purposes of assessing BAWM's suitability to be re-registered as an RTO for FY14 (**2013 VRQA BAWM Audit**).

44A. During the 2013 VRQA BAWM Audit, VRQA:

(a) identified non-compliance with Relevant National RTO ~~AQTF~~ Standard 1 (including, inter alia Standard 1, ([1.3], [1.4] and [1.5]) and Relevant Victorian ~~VRQA~~ Guideline 5, in relation to:

(i) inconsistencies between the Training and Assessment Strategy, the Assessment Kit, the actual assessments and record sheets in relation to the duration of courses (by reason of delivery of the Certificate III Warehousing course in an abbreviated timeframe of 8 weeks rather than the 6 month duration stipulated in the Training and Assessment Strategy);

(ii) inconsistencies between the Training and Assessment Strategy, the Assessment Kit, the actual assessments and record sheets in relation to whether certain courses (namely, the Certificate I in Vocational Preparation) were being delivered in isolation, or in combination with other courses;

(iii) inadequacies in record keeping procedures, particularly for clustered delivery of courses (by reason of the absence of assessment record sheets for individual units making it impossible to deem competency at the unit level with this model of delivery and assessment), but also including the absence of original signatures on position descriptions, contracts, skills matrix and PD logs;

(b) identified non-compliance with Relevant National RTO ~~AQTF~~ Standard 2.7 by reason of the failure to inform clients of the right to consult or utilise services of a person of their choice for support or advice during the complaint process;

(c) identified non-compliance with Relevant National RTO Conditions of Registration 1 (by reason of the absence of Fit and Proper Person Checks for senior managers and Board of Studies) & 6 (by reason of the inclusion of an employability skills statement on the certificate and statement of attainment, and the continued use of the name Taylored Gardens Pty Ltd, notwithstanding the name change to BAWM Pty Ltd); and

(d) identified non-compliances with Relevant National RTO Standards 3.2 and 3.3 in respect of the responsiveness of its management systems to the needs of clients, staff and stakeholders, and the environment in which the RTO operates (by reason of the fact that BAWM had yet to fully implement business processes and controls to manage compliance and provide a systematic approach to risk management and continuous improvement).

Particulars

VOC.015.022.3103; VOC.015.002.0874.

The 2013 VRQA BAWM Audit Report is found at document DEC.001.001.0019; VOC.007.013.0006.

As to sub-paragraph (a), in particular, the sections of the report concerned with training delivered by BAWM subcontractors Safe T and VATIVE, in which the following findings of non-compliance were made (VOC.007.013.0006 at .0008):

i. *BAWM was found not compliant with Relevant Victorian ~~VRQA~~ Guideline 1.3.4, 1.4 and 1.5 in respect of matters of Governance, Probity and Compliance with Statutory Requirements (VOC.007.013.0006 at .0013);*

ii. *BAWM was found not compliant with Relevant Victorian ~~VRQA~~ Guideline 5 in respect of matters of Teaching, Learning and Assessment (VOC.007.013.0006 at .0020);*

iii. *BAWM was found not compliant with Relevant National RTO ~~AQTF~~ Condition 1 in respect of Governance (VOC.007.013.0006 at .0028);*

iv. *BAWM was found not compliant with Relevant National RTO ~~AQTF~~ Condition 8 in respect of Accuracy and Integrity of Marketing (VOC.007.013.0006 at.0027 and .0029);*

v. *BAWM was found not compliant with Relevant National RTO ~~AQTF~~ Standard 1.3, 1.4 and 1.5 in respect of providing quality training and assessment across all of its operations (VOC.007.013.0006 at .0032 and .0034);*

vi. *BAWM was found not compliant with Relevant National RTO ~~AQTF~~ Standard 2.7 in respect of adherence to principles of access and equity and maximising outcomes for its clients (VOC.007.013.0006 at .0037); and*

vii. *BAWM was found not compliant with Relevant National RTO ~~AQTF~~ Standard 3.2 and 3.3 in respect of the responsiveness of its management systems to the needs of clients, staff and stakeholders, and the environment in which the RTO operates (VOC.007.013.0006 at .0038).*

45. On or about 16 August 2013, VRQA provided BAWM with its final report following the VRQA BAWM Audit (**2013 VRQA BAWM Audit Report**), which report:

(a) identified a number of areas of non-compliance with the Relevant National RTO Essential Conditions and Standards and Relevant Victorian ~~VRQA~~ Guidelines, namely the non-compliances pleaded in paragraph 44A above; and

(b) included a number of recommendations that BAWM adopt changes to the manner in which it:

(i) marketed and recruited for its courses;

(ii) conducted pre-training reviews and assessed student eligibility;

(iii) conducted training and assessment;

(iv) administered its courses and maintained records; and

(v) maintained oversight of its business generally,

(**VRQA Recommendations**).

Particulars

The 2013 VRQA Audit Report is found at document DEC.001.001.0019; VOC.007.013.0006.

45A. On or about 21 October 2013, an audit of BAWM was conducted for the purposes of assessing BAWM's suitability to be granted an extension of its scope of registration as an RTO (**2013 Further AQTF BAWM Audit**).

Particulars

VOC.001.016.2515

45B. Shortly after 21 October 2013, BAWM received the audit report following the 2013 Further AQTF BAWM Audit (**2013 AQTF Further BAWM Audit Report**), which identified several areas of non-compliance with Relevant National RTO ~~AQTF~~ Standard 1 ([1.3] and [1.4]) by reason of inadequacies in BAWM's training materials for the course TL1C3011A, and because the trainer's qualifications were out of-date (expired licence).

Particulars

VOC.001.016.2515

45C. On or about 31 October 2013, DEECD informed BAWM that it considered that BAWM was engaging in inappropriate advertising of Certificate IV Frontline Management, which did not disclose that BAWM was the RTO providing training, and which offered inappropriate incentives to prospective clients, (which conduct would have involved breach of Relevant National RTO Condition of registration 6).

Particulars

VOC.001.010.5951 (referring to Certificate IV of Frontline Management)

45D By reason of the matters pleaded in paragraphs 43A to 44A, and 45 to 45B above, in the 18 month period immediately prior to the Initial Public Offering of Vocation Securities, BAWM had regularly been non-compliant with (and had been found upon audits being conducted to be non-compliant with) the Relevant National RTO Standards and Relevant Victorian Guidelines.

45E. The instances of non-compliance referred to in paragraph 45D above were (to the extent they were identified prior to 4 October 2013) considered by BAWM to be in the "major non-compliance range".

Particulars

i) Email from Morrissey to Bonnici of 4 October 2013 (VOC.500.001.7622)

ii) The non-compliances which were identified prior to 4 October 2013 were those referred to in paragraphs 43A to 44A and 45 to 45B

BAWM's Conduct

45F. At all material times in the period of at least 6 months immediately prior to the Initial Public Offering of Vocation Securities, BAWM had a practice of heavy reliance on Broking arrangements, whereby it engaged third parties to advertise for, identify and refer students for enrolment in courses provided by BAWM.

Particulars

i) Approximately 50% of enrolments were processed by brokers: VOC.003.001.1237 at .1244, VOC.003.001.1237 at .1263 and VOC.001.012.5167 at 5169-5170

ii) The Applicant does not know the identity of all the third parties engaged by Vocation, and says that Vocation did not maintain a detailed list of such third parties: VOC.003.001.1237 at .1278. To *the best of the Applicant's knowledge the third parties were: 3V Training Group; ASER Aust; Perfect Harmony Group; Aussie Skills Pty Ltd ; Australian Careers Advisory Pty Ltd; Bass Training; Career Life Services; CLI Training; Distinctive Solutions; DJE Group Pty Ltd; Edge Workforce; Elatum Group ; Go Workforce Training; Hope for the Future; Innovative Management and Learning Pty Ltd; Insight Employment Solutions; Business Planning and Control; Interact Education; Courses For You; Victorian Institute of Counselling and Coaching; MMC Group Consulting; National Employment Institute; Northern Alliance Training Services; One Vita; QI Careers; RI Partners Pty Ltd; Rise Training and Employment Solutions Pty Ltd; Skill Boost Training; Skills to Work; Take Course; Tang Solutions Australia Pty Ltd; The Training Base; Training Results; RH Training and Yarra Advantage: VOC.001.012.5167 at .5168.*

iii) The Applicant refers to the findings of the Initial Review of Vocation RTOs dated September 2014 conducted by DEECD in relation to compliance with the 2014 Government Contract from 1 January 2014 to 31 July 2014 (VOC.003.001.1237), and says that it was likely that the matters there referred to were also in place prior to the Initial Public Offering, such findings including that BAWM relied heavily on contractual agreements with third parties such as brokers, independent contractors and labour hire organisations" (VOC.003.001.1237 at .1244)

iv) The Applicant also relies upon the findings of DEECD as recorded in the 27 October Announcement (pleaded in paragraph 107 below, and as referred to in paragraph 108(c)(i)).

v) Although certain of the documents referred to in these particulars are dated after the Initial Public Offering, it is to be inferred that Vocation's business practices had not changed in the intervening period, and the Applicant refers to VOC.008.017.3348 at 3350 and VOC.003.005.0014.

45G. At all material times in the period of at least 6 months immediately prior to the Initial Public Offering of Vocation Securities BAWM did not have adequate policies and procedures in place to ensure that:

(a) inappropriate advertisements were not placed, and inappropriate incentives to students to enrol in courses provided by BAWM were not offered (including by third parties engaged by it under Broking arrangements pleaded in paragraph 45F); and

(b) appropriate advertisements were placed, including information about course duration, entry requirements, content and assessments.

Particulars

i) Paragraph 45C is repeated. The Applicant also refers to VOC.600.087.9127, being an email from of 15 May 2013 from DEECD to BAWM concerning advertising practices.

ii) The Applicant also refers to the letter dated 31 October 2013 from DEECD to Bonnici concerning advertising for Certificate IV in Frontline Management (VOC.001.010.5951; DEC.101.001.0015), and to the communications issued by BAWM consequent upon receipt of that letter: VOC.500.013.0725, VOC.500.013.0728, VOC.015.035.4030.

iii) The Applicant refers to the correspondence between BAWM and DEECD dated 4 August 2014 (VOC.001.001.0003), in which BAWM confirmed that:

A) BAWM actively targeted CSP Courses to students under 21 years of age within its broader direct and brokered marketing activities;

B) BAWM's practices did not enable independent review of the determination of suitability for the course and such control was not sufficient;

C) As a result, BAWM had terminated broker agreements with the following brokers: RISE Training and Employment Solutions Pty Ltd, Community Training Initiatives Pty Ltd, Australian Careers Advisory and BSI Learning Pty Ltd,

and says that it is likely that those practices and procedures were also in place prior to the Initial Public Offering, especially having regard to particular (i) above.

iv) The Applicant also relies upon the findings of DEECD as recorded in the 27 October Announcement (pleaded in paragraph 107 below, and as referred to in paragraph 108(c)(i));

v) The Applicant also refers to Claire Field's finding in her report of December 2014 that student marketing materials were inadequate (and there was no evidence that students had all the information they needed about their courses prior to enrolment to allow them to make a good decision) (VOC.003.005.0014 at 0015). See also the VRQA report VOC.500.009.5653 at 5666 (in relation to Certificate III in Aged Care, Certificate III in Home and Community Care and Certificate I in Work Education);

vi) The Applicant says that although certain of the documents referred to in (ii) to (v) of these particulars are dated after the Initial Public Offering, it is to be inferred that Vocation's business practices had not changed in the intervening period and the Applicant refers to VOC.008.017.3348 at 3350 and VOC.003.005.0014.

45H. Further, or alternatively to paragraph 45G, as at the date of the Initial Public Offering, BAWM had not completed the process of remedying the fact that third parties engaged by it had placed advertisements and offered incentives to students to enrol in courses provided with BAWM which were considered by DEECD to be inappropriate and thus to breach of the 2013 Government Contract.

Particulars

i) The particulars to paragraph 45G are repeated.

45I. As at the date of the Initial Public Offering of Vocation Securities (and at all times thereafter), the conduct of BAWM referred to in paragraphs 45G and/or 45H was conduct which:

(a) was:

(i) non-compliant with the Relevant National RTO Conditions (Condition 8) pleaded in paragraph 27(e), and/or the Relevant Victorian Guidelines (Guideline 1.4), pleaded in paragraph 29(a);

(ii) non-compliant during the currency of the 2013 Government Contract with:

(A) by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(c) above; and/or

(B) the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraphs 30(da) and (ra);

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with:

(A) by reason of subparagraph (i) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b) above; and/or

(B) the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraphs 31(d)(iv) and (f);

(b) alternatively, was likely to be considered by DEECD to be:

(i) non-compliant with the Relevant National RTO Conditions (Condition 8) pleaded in paragraph 27(e), and/or the Relevant Victorian Guidelines (Guideline 1.4), pleaded in paragraph 29(a);

(ii) non-compliant during the currency of the 2013 Government Contract with:

(A) by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(c) above; and/or

(B) the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraphs 30(da) and (ra);

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with:

(A) by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b) above; and/or

(B) the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraphs 31(d)(iv) and (f).

Particulars

As to sub-paragraph (b), the Applicant repeats paragraph 45C, and the particulars thereto. Further, the Applicant refers to paragraph 35 above, indicating the DEECD's focus upon arrangements between RTOs and third parties.

45J. At all material times in the period of at least 6 months immediately prior to the Initial Public Offering of Vocation Securities, BAWM had a systemic weakness in its pre-training review procedures, which resulted in students being enrolled in courses that were unsuitable for their needs.

Particulars

i) On 18 November 2013, Ross Robson emailed Amanda King, Wendy Bonnici and others noting "There looks to be a greater requirement for evidence that the RTO has made a reasonable effort to ensure that the student is enrolling in the best course for them" demonstrating awareness that there was a concern that students were being enrolled in inappropriate courses and standards were being raised: VOC.015.037.1080.

ii) The Applicant says that the systemic weakness affected all courses offered by BAWM, but in particular affected Certificate III in Competitive Systems and Practices:

- *On 16 June 2014, Quorum identified that students in Certificate III in Competitive Systems and Practices were typically recent school leavers, yet the description on the training.gov.au website provides that "this training is not suitable for direct entry from school": VOC.001.001.1006 at .1007.*

- *On 1 August 2014, Bonnici identified that "we have identified a systemic weakness in our pre-training review (the main cause of concern for the government) which has resulted in participants enrolling into a program which is not suited to them": VOC.001.016.4329.*

- *On 17 September 2014, Grant Thornton published a report finding that BAWM had identified 1288 students in Certificate III in Competitive Systems and Practices which was unsuited to their needs: VOC.001.001.1330 at .1335.*

- *On 15 December 2014, Claire Field reported that student needs were not being determined prior to enrolment, and courses were not properly designed for students they were intended for (with reference to Certificate 1 in Work Education) (VOC.003.005.0014 at 0015). See also the VRQA audit report (VOC.500.009.5653 at 5656, 5685 (in relation to Certificate III in Aged Care, Certificate III in Home and Community Care and Certification I in Work Education).*

iii) The Applicant also relies upon the findings of DEECD as recorded in the 27 October Announcement (pleaded in paragraph 107 below, and as referred to in paragraph 108(c)), and says that although this and certain of the documents referred to in these particulars are dated after the Initial Public Offering, it is to be inferred that Vocation's business practices had not changed in the intervening period, and the Applicant refers to VOC.008.017.3348 at 3350 and VOC.003.005.0014.

45K. As at the date of the Initial Public Offering of Vocation Securities (and at all times thereafter), the practices of BAWM referred to in paragraph 45J above was conduct which:

(a) was:

(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a)(ii)), Standard 2 (pleaded in paragraph 28(b)(i) and (iv)), and/or the Relevant Victorian Guidelines (Guideline 2.3), pleaded in paragraph 29(d);

(ii) non-compliant during the currency of the 2013 Government Contract with, by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b) and (c) above; and/or

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with, by reason of subparagraph (i) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c) and (f) above; and/or

(b) alternatively, was likely to be considered by DEECD to be:

(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a)(ii)), Standard 2 (pleaded in paragraph 28(b)(i) and (iv)), and/or the Relevant Victorian Guidelines (Guideline 2.3), pleaded in paragraph 29(d);

(ii) non-compliant during the currency of the 2013 Government Contract with, by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b) and (c) above; and/or

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with, by reason of subparagraph (i) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c) and (f) above.

Particulars

As to sub-paragraph (b), particular (i) to paragraph 45J is repeated.

45L. At all material times in the period of at least six months immediately prior to the Initial Public Offering of Vocation Securities, BAWM:

(a) was unable to demonstrate that it was using appropriately qualified individuals to provide training and assessment (including where third parties were engaged by BAWM to provide such training and assessment under Auspicing arrangements) due to its incomplete recording of the trainers and assessors used; and

(b) had a lack of quality control over its trainers and assessors.

Particulars

i) The Applicant refers to VOC.003.001.1237 at .1249, VOC.003.001.1237 at .1258, .1260 and .1263-.1266, VOC.003.005.0014 at 0015 and VOC.500.009.5653 at 5658-5659, 5672, 5675-5676 (in relation to Certificate III in Aged Care, Certificate III in Home and Community Care and Certification I in Work Education).

ii) The Applicant refers to the matters the subject of the March 2015 Enforceable Undertaking (VRQ.100.001.0294), and the acknowledgement of the concerns raised therein by Vocation were in place prior to incorporation, namely a "lack of quality control over trainers and assessors which included incomplete resumes.

iii) The Applicant also relies upon the findings of DEECD as recorded in the 27 October Announcement (pleaded in paragraph 107 below, and as referred to in paragraph 108(c)(ii)), and says that although this and certain of the documents referred to in these particulars are dated after the Initial Public Offering, it is to be inferred that Vocation's business practices had not changed in the intervening period, and the Applicant refers to VOC.008.017.3348 at 3350 and VOC.003.005.0014.

45M. As at the date of the Initial Public Offering of Vocation Securities (and at all times thereafter), the practices of BAWM referred to in paragraph 45L above was conduct which:

(a) was:

(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a)), and/or the Relevant Victorian Guidelines (Guidelines 2.3 and 5), pleaded in paragraph 29(d) and (g);

(ii) non-compliant during the currency of the 2013 Government Contract with, by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b),(c) (f), (k), (l) and/or (o) above; and/or

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with, by reason of subparagraph (i) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c) (i) and (l) above; and/or

(b) alternatively, was likely to be considered by DEECD to be:

(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a)), and/or the Relevant Victorian Guidelines (Guidelines 2.3 and 5), pleaded in paragraph 29(d) and (g);

(ii) non-compliant during the currency of the 2013 Government Contract with, by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b),(c) (f), (k), (l) and/or (o) above; and/or

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with, by reason of subparagraph (i) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c), (i) and (l) above; and/or

Particulars

As to sub-paragraph (b), paragraphs 43B, 44A(a) and 45B indicate that in audits of BAWM the regulatory focus included focus upon compliance with Relevant National RTO Standard 1 and Relevant Victorian Guideline 5, and that an inability to demonstrate appropriate record-keeping was likely to be regarded as non-compliance.

45N. At all material times in the period of at least ~~s~~ix months immediately prior to the Initial Public Offering of Vocation Securities, there were inconsistencies in BAWM's training and assessment documentation for certain courses, which meant it was not possible for it to verify that courses delivered reflected the requirements of the relevant training package.

Particulars

i) The Applicant repeats paragraph 44A(a)(ii)-(iii) (referring to Certificate I in Vocational Preparation).

ii) The Applicant refers to the findings of Claire Field reported that there were "serious inconsistencies" in the assessment documentation (VOC.003.005.0014 at 0015). See also the VRQA audit report (VOC.500.009.5653 at 5656-5657, 5667-5670 (in relation to Certificate III in Aged Care, Certificate III in Home and Community Care and Certification I in Work Education).

iii) The Applicant refers to the matters the subject of the March 2015 Enforceable Undertaking (VRQ.100.001.0294), and the acknowledgement of the concerns raised therein by Vocation were in place prior to incorporation, namely "training and assessment in two dual programs did not meet the requirements of the relevant training packages" (referring to Certificate III in Children's Services

<u>/ Certificate III in Education Support and Certificate III in Aged Care / Certificate III in Home and Community Care).</u>

<u>iv) The Applicant says that although certain of the documents referred to in (i) to (iii) of these particulars are dated after the Initial Public Offering, it is to be inferred from their nature that Vocation's business practices had not changed in the intervening period, and the Applicant also refers to VOC.008.017.3348 at 3340 and VOC.003.005.0014.</u>

<u>45O. As at the date of the Initial Public Offering of Vocation Securities (and at all times thereafter), the practices of BAWM referred to in paragraph 45L above was conduct which:</u>

<u>(a) was:</u>

<u>(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a)), and/or the Relevant Victorian Guidelines (Guideline 5), pleaded in paragraph 29(g);</u>

<u>(ii) non-compliant during the currency of the 2013 Government Contract with, by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b),(c) (f), (k) and/or (o) above; and/or</u>

<u>(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with, by reason of subparagraph (i) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c) (i) and (l) above; and/or</u>

<u>(b) alternatively, was likely to be considered by DEECD to be:</u>

<u>(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a)), and/or the Relevant Victorian Guidelines (Guideline 5), pleaded in paragraph 29(g);</u>

<u>(ii) non-compliant during the currency of the 2013 Government Contract with, by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b),(c) (f), (k) and/or (o) above; and/or</u>

<u>(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with, by reason of subparagraph (i)</u>

above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c) (i) and (l) above; and/or

Particulars

As to sub-paragraph (b), paragraphs 44A(a) indicate that in audits of BAWM the regulatory focus included focus upon compliance with Relevant National RTO Standard 1 and Relevant Victorian Guideline 5, and that inconsistencies in the training and assessment materials was likely to be regarded as non-compliance.

45P. At all material times in the period of at least six months immediately prior to the Initial Public Offering of Vocation Securities, BAWM had a practice of delivering certain of its courses in an abbreviated timeframe (that is, shorter than the timeframe listed in its Training and Assessment Strategy).

Particulars

i) The Applicant repeats paragraph 44A(a)(i),and refers to VOC.007.013.0006 (referring to the combined Certificate III Warehousing Operations/Cert I Vocational Preparation being delivered in 2 weeks of face to face teaching, for a duration shorter than the 6 month course stipulated by the Training and Assessment Strategy).

ii) The Applicant refers to reports by Quorum QA Australia Pty Ltd prepared in June 2014 regarding BAWM's dual "CSP/Warehousing" course and Aspin's "Cert II in General Education for Adults", referring to the Cluster 1 Literacy unit being delivered in 33 hours of face to face teaching, although the scheduled hours in the Training and Assessment Strategy was 120 hours: VOC.001.004.0003 at .0005.

iii) The Applicant refers to the findings of the Initial Review of Vocation RTOs dated September 2014 conducted by DEECD in relation to compliance with the 2014 Government Contract from 1 January 2014 to 31 July 2014 (VOC.003.001.1237), and says that it was likely that the matters there referred to were also in place prior to the Initial Public Offering, such findings including that the delivery and assessment of Certificate III in Warehousing Operations, Certificate III in Competitive Systems and Practices and Certificate II in General Education for Adults is "often conducted in a compressed timeframe (VOC.003.001.1237 at .1255).

iv) The Applicant also relies upon the findings of DEECD as recorded in the 27 October Announcement (pleaded in paragraph 107 below, and as referred to in paragraph 108(c)(ii)).

v~~i~~) The Applicant refers to the matters the subject of the March 2015 Enforceable Undertaking (VRQ.100.001.0294), and the acknowledgement of the concerns raised therein by Vocation were *in place prior to incorporation, namely “abbreviated training in certain qualifications without appropriate justification undermined the integrity of delivery and assessment of those qualifications”.*

vii) The Applicant says that the documents referred to in (ii) to (vi) of these particulars are dated after the Initial Public Offering, it is to be inferred from their nature that Vocation’s business practices had not changed in the intervening period, and the Applicant also refers to VOC.008.017.3348 at 3350 and VOC.003.005.0014.

45Q. As at the date of the Initial Public Offering of Vocation Securities (and at all times thereafter), the practices of BAWM referred to in paragraph 45P above was conduct which:

(a) was:

(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a)(i) and (iii)), and/or the Relevant Victorian Guidelines (Guidelines 2.3 and 5), pleaded in paragraph 29(d) and (g);

(ii) non-compliant during the currency of the 2013 Government Contract with, by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b),(c) (f), (k) and/or (o) above; and/or

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with, by reason of subparagraph (i) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c) (i) and (l) above; and/or

(b) alternatively, was likely to be considered by DEECD to be:

(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a)(i) and (iii)), and/or the Relevant Victorian Guidelines (Guidelines 2.3 and 5), pleaded in paragraph 29(d) and (g);

(ii) non-compliant during the currency of the 2013 Government Contract with, by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b) and (c), (f), (k) and/or (o) above; and/or

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with, by reason of subparagraph (i) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c) and (f) above.

Particulars

As to sub-paragraph (b), paragraphs 43B, 44A(a) and 45B indicate that in audits of BAWM the regulatory focus included focus upon compliance with Relevant National RTO Standard 1 and Relevant Victorian Guideline 5, and that an inability to demonstrate appropriate record-keeping was likely to be regarded as non-compliance.

46. BAWM's conduct as pleaded in paragraphs 45F, 45G (alternatively 45H), 45J, 45L, 45N and 45P is each, and collectively referred to as the **BAWM Conduct**.

~~At a time or times presently unknown to the Applicants prior to the commencement of the Relevant Period but no later than July 2013, BAWM commenced to engage, and continued to engage, in conduct in the provision of VET Services, involving:~~

~~(a) an over-reliance on third parties to identify and refer students for enrolment in Certificate III in Warehousing Operations, Certificate III in Competitive Systems and Practices and Certificate II in General Education for Adults, which resulted in students being enrolled in inappropriate courses for their needs;~~

~~(b) inadequate controls to manage the performance of third parties delivering training and assessment (including by employing unqualified, or underqualified, staff and contractors, including under auspicing arrangements), resulting in some students experiencing a lower quality training experience than intended for their job seeking needs;~~

~~(c) the delivery of VET Services in respect of certain courses in an abbreviated timeframe, which was less than the delivery timeframe listed in BAWM's Training and Assessment Strategy for those courses; and/or~~

~~(d) inappropriate advertising and recruitment practices, including practices of, and training and assessment services provided by, third parties to ensure that they complied with the Relevant National RTO Conditions and the Victorian RTO Guidelines and the BAWM Government Contracts~~

~~(each, and collectively, **BAWM Conduct**).~~

~~**Particulars**~~

~~*The following documents are referred to:*~~

i. ~~*The 2013 VRQA Audit Report prepared following the VRQA Audit in relation to BAWM's application for renewal of its registration as an RTO under the Victorian Act;*~~

ii. ~~*The findings of DEECD as recorded in the 27 October Announcement (pleaded in paragraph 107 below);*~~

iii. ~~*Interview conducted by Jemima Whyte with Whitford, on Channel Nine's Financial Review Sunday on 2 November 2014*~~

iv. ~~*The conduct also is to be inferred from:*~~

v. ~~*the matters set out in paragraphs 73 to 75 and 162 below;*~~

vi. ~~*concerns expressed by DEECD to BAWM about advertisements for courses offered by various of BAWM and Aspin's third party service providers including Customised Training Solutions, StaffCo, Take Course and NEI, which concerns were expressed before and (notwithstanding the VRQA Recommendations) after 18 November 2013;*~~

vii. ~~*complaints received by VRQA in relation to BAWM's administration and record keeping practices for courses offered by BAWM and various of BAWM's third party service providers including ICCC, Aegis Aspire;*~~

viii. ~~*complaints received by VRQA in relation to the quality and standards of courses offered by BAWM and various of BAWM's third party service providers including ICCS and Aegis Aspire;*~~

ix. ~~*the matters set out in reports by Quorum QA Australia Pty Ltd prepared in June 2014 regarding BAWM's dual "CSP/Warehousing" course and Aspin's "Cert II in General Education for Adults" course (at VOC.001.001.1006 and VOC.001.004.0003) (Quorum Reports); and*~~

x. ~~*the likelihood that (notwithstanding the VRQA Recommendations) the conduct the subject of the Victorian Compliance Investigation (as defined in paragraph 64), the DEECD's concerns, the VRQA complaints and the Quorum Reports relate to practices that were in place at BAWM and Aspin prior to the incorporation of Vocation.*~~

~~*Further particulars may be provided following the completion of discovery and other interlocutory steps, and before the initial trial.*~~

D.2 Features of BAWM's Conduct

47. By reason of the matters pleaded in paragraphs 45I(a), 45K(a), 45M(a), 45O(a) and 45Q(a), at ~~At~~ all material times after BAWM commenced to engage in the BAWM Conduct, the BAWM Conduct was conduct which was:

    (a) non-compliant with Relevant National RTO Standards and/or Relevant Victorian Guidelines; and/or

    (b) in breach of Relevant Contract Primary Terms,

    (**BAWM Non-Compliant Conduct**).

Particulars

Paragraphs 45I(a), 45K(a), 45M(a), 45O(a), and 45Q(a) are repeated.

~~*This is to be inferred from the terms of the 27 October Announcement (pleaded in paragraph 107 below), and from the fact and terms of the settlement between Vocation and DEECD, as recorded in the 27 October Announcement.*~~

~~*The best particulars that can presently be provided are that:*~~

~~*i. the BAWM Conduct referred to in sub- paragraphs 0 and 0 was: in non-compliance with Standard 1 ([1.4]) and Standard 2 ([2.1]) of the National RTO Standards, and Guidelines 2.1 and 5.3 of the Victorian Guidelines; and a breach of the Relevant Contract Primary Terms referred to in subparagraph 30(a), 30(c) and 30(g)*~~

~~*ii. the BAWM Conduct referred to in sub-paragraph 30(c) was: in non-compliance with Standard 1 ([1.3]) and a breach of the Relevant Contract Primary Terms referred to in subparagraph 30(a)*~~

~~*Further particulars will be provided following discovery and inspection, and the issue of subpoenas.*~~

48. Further, or alternatively, at all material times after BAWM commenced to engage in the BAWM Conduct~~, as pleaded in paragraphs 45F, 45G, 45H, 45J, 45L, 45N and 45P~~, by reason of the matters pleaded in paragraphs 45I(b), 45K(b), 45M(b), 45O(b) and 45Q(b), there was a material risk that all or any of the BAWM Conduct was, or would be considered by VRQA or DEECD to be, BAWM Non-Compliant Conduct (**BAWM Conduct Non-Compliance Risk**).

Particulars

Paragraphs 45I(b), 45K(b), 45M(b), 45O(b) and 45Q(b), and the particulars thereto are repeated.

~~*In relation to the BAWM Conduct referred to in sub-paragraphs 0 and 0, the Applicants refers to document entitled "Information for Provides – Key Features of VET Funding Contracts" published by DEECD on 15 November 2013, under the heading "Subcontracting"*~~

~~*In relation to the BAWM Conduct referred to in sub-paragraph 0, the Applicants refers to the 2013 VRQA Audit Report (p.9 of 17), which had identified a non-compliance of that, or materially similar, character.*~~

49. By reason of the matters pleaded in paragraphs ~~46~~ 43A to 47 and/or 48 there was at all material times after BAWM commenced to engage in the BAWM Conduct ~~as pleaded in paragraphs 45F, 45G, 45H, 45J, 45L, 45N and 45P~~ a material risk that BAWM could be the subject of DEECD Enforcement Action (**BAWM Conduct Non-Compliance Consequences Risk**).

D.3 ~~Other relevant~~ Conduct of other Founding Companies

Conduct of TTS-100

50. In or around November 2013, ASQA conducted an audit at a subsidiary of CSIA called TTS-100 Pty Ltd (**TTS-100**) for the purposes of assessing TTS-100's suitability to be re-registered as an RTO for FY14 (**TTS-100 Audit**).

51. On or about 21 November 2013, ~~AQFA~~ ASQA provided CSIA, alternatively TTS-100, with its audit findings following the TTS-100 Audit, which report identified significant non-compliance with TTS-100's obligations as an RTO~~.~~, namely:

(a) the training and assessment strategy documentation did not meet the qualification packing rules for 3 courses (CPP20212, AVI20512, TAE40110), and did not include legislatively mandated assessment tools for 1 course (52473WA);

(b) there were internal inconsistencies in the assessment resources, and as between the assessment resources and the training and assessment strategies for 2 courses (CPP20212 and SAS40210), and inadequate evidence that the identity of the trainers and assessors providing certain courses were consistent with those listed in the training and assessment strategies for 8 courses (CPP20212, AVI20512, BSB307312, TAE40110, CPCCOHS1001A, HLTCPR211A, HLTFS207C and 52473WA);

(c) there was insufficient evidence that trainers and assessors were appropriately qualified in respect of 9 courses or units of competency (CPP20212, BSB307312, CPP4707, YAE40110, HLTCPR211A, HLTFS207C, SIS40210, CPCCOHS1001A, AVI20512 and 52473WA);

(d) the assessment tools did not address the elements and performance criteria for 13 units of competency across 6 courses (CPP20212 (units CPPSWX2004B and CPPSEC2007A), AVI20512 (units AVI02012A and AVIZ2050A), CPP40707 (unit CPPSEC4007A), SIS40210 (units SISFFIT421A and SISFFIT419A), TAE40110 (units TAEDEL401A, TAEASS402B, CPCCOHS1001A, HLTCPR211A, HLTFS207C) and 40649SA TESOL (unit AABBH));

(d) failure to ensure that TTS-100 complied with the "VET Quality Framework", by reason of non-rectification of the non-compliances referred to in (a) to (c) above.

Particulars

i) The Continuing Registration Audit Report for TTS-100 Pty Ltd prepared by the ASQA dated 19,20,21 November 2013, which found "significant non-compliance" in relation to training and assessment is VOC.600.096.9116. TTS-100 was provided by ASQA with its audit findings on or about 21 November 2013.

ii) The Report of Vocation's CEO to the Board of Vocation dated 30 January 2014 which, under the heading "Risk Register", identifies as a "Risk" the "TTS-100 Pty Ltd re-registration audit report" dated 21 November 2013, which found "significant non-compliance" in relation to training and assessment (VOC.007.012.0042 at 0094).

iii) The Report of Vocation's CEO to the Board of Vocation dated 24 June 2014 which, under the heading "Risk Register", again identifies as a "Risk" the "TTS-100 Pty Ltd re-registration audit report" conducted by ASQA dated 21 November 2013, which found "significant non-compliance" in relation to training and assessment (VOC.008.020.5042 at .5048).

51A. In the period of at least six months immediately prior to the Initial Public Offering of Vocation Securities, CSIA (through TTS-100) had a practice of delivering certain of its courses in a manner which involved inadequate training and assessment documentation, and without records demonstrating appropriately qualified training and assessors (**TTS-100 Conduct**).

Particulars

The Applicant refers to paragraph 51 and the particulars thereto.

51B. As at the date of the Initial Public Offering of Vocation Securities (and at all times thereafter), the TTS-100 Conduct referred to in paragraph 51A above was conduct which:

(a) was:

(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a) and Standard 3.3 (pleaded in paragraph 28(c)(iii)), and/or the Relevant Victorian Guidelines (Guidelines 2.3 and 5), pleaded in paragraph 29(d) and (g);

(ii) non-compliant during the currency of the 2013 Government Contract with, by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b),(c) (f), (k), (l) and/or (o) above; and/or

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with, by reason of subparagraph (i) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c), (g), (i) and (l) above; and/or

(b) alternatively, was likely to be considered by DEECD to be:

(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a)), and Standard 3.3 (pleaded in paragraph 28(c)(iii)), and/or the Relevant Victorian Guidelines (Guidelines 2.3 and 5), pleaded in paragraph 29(d) and (g);

(ii) non-compliant during the currency of the 2013 Government Contract with, by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b), (c), (f), (k), (l) and/or (o) above; and/or

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with, by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c), (g), (i) and (l) above.

Particulars

As to sub-paragraph (b), paragraphs 43B, 44A(a) and 45B indicate that in audits of BAWM the regulatory focus included focus upon compliance with Relevant National RTO Standard 1 and Relevant Victorian Guideline 5, and that an inability to demonstrate appropriate record-keeping was likely to be regarded as non-compliance.

51C. By reason of the matters pleaded in paragraphs 51 to 51B, at all material times after TTS-100 commenced to engage in the TTS-100 Conduct as pleaded in paragraph 51A, the TTS-100 Conduct was conduct which was:

(a) non-compliant with Relevant National RTO Standards and/or Relevant Victorian Guidelines; and/or

(b) in breach of Relevant Contract Primary Terms,

(**TTS-100 Non-Compliant Conduct**).

51D. Further, or alternatively, at all material times after TTS-100 commenced to engage in the TTS-100 Conduct as pleaded in paragraph 51A, by reason of the matters pleaded in paragraphs 51B(b), there was a material risk that all or any of the TTS-100 Conduct was, or would be considered by VRQA or DEECD to be, TTS-100 Non-Compliant Conduct (**TTS-100 Conduct Non-Compliance Risk**).

Particulars

Paragraphs 51B(b), and the particulars thereto are repeated.

51E. By reason of the matters pleaded in paragraphs 50 to 51C and/or 51D, there was at all material times after TTS-100 commenced to engage in the TTS-100 Conduct as pleaded in paragraph 51A a material risk that TTS-100 could be the subject of DEECD Enforcement Action (**TTS-100 Conduct Non-Compliance Consequences Risk**).

Conduct of AVANA

51F. On or about 7-9 August 2013, an internal audit of AVANA was conducted by Barrack St Compliance (**AVANA Audit**).

51G. In the AVANA Audit, the auditor found that AVANA was non-compliant with 24 "Standards of National Registration", and that AVANA would present a medium risk of non-compliance at audit, with the main areas of risk being that:

(a) b~~B~~alancing organisational growth with maintaining academic integrity. Quality control and compliance activity is not measured nor does it appear to be factored into future growth plans within the organisation;

(b) a~~A~~s to training and assessment, evidence was not present within AVANA's compliance system that showed an appropriate amount of quality assurance activity had been conducted to date', 'assessment processes were poorly articulated, and assessment materials (retail, hospitality) contained did not meet tests for validity, reliability, or sufficiency', and 'student records were incomplete and poorly maintained; and

(c) t~~T~~he relationships between the third parties associated with AVANA training services and AVANA was not clearly established. Further, 'students must have access to sufficient information about who is providing the training, what the total commitment will be (time, cost, and effort), and delivery arrangement prior to enrolment'.

Particulars

VOC.400.005.5647, at 5652-5653.

51H. In the period of at least 6 months immediately prior to the Initial Public Offering of Vocation Securities, AVANA had:

(a) inadequate systems in relation to assessment processes and materials, and the maintenance of records;

(b) a lack of staff knowledge and understanding around the "Standards for NVR Registered Training Organisations" and user choice contract requirements; and/or

(c) inadequate systems in relation to the monitoring of teaching, learning, assessment and compliance, which stemmed from AVANA's board focusing heavily on growth, which significantly outweighed the focus on quality of training and assessment and academic integrity,

(**AVANA Conduct**).

Particulars

The Applicant refers to paragraph 51G(b) and the particulars thereto, and to VOC.400.007.3888.

51I As at the date of the Initial Public Offering of Vocation Securities (and at all times thereafter), the AVANA Conduct referred to in paragraph 51H above was conduct which:

(a) was:

(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a)), Standard 2 (as pleaded in paragraph 28(b)(i)-(iv)) and Standard 3 (pleaded in paragraph 28(c)), and/or the Relevant Victorian Guidelines (Guideline 1.4, 1.5, 2.3, 3.3 and 5.1), pleaded in paragraphs 29(d) and (g);

(ii) non-compliant during the currency of the 2013 Government Contract with:

(A) in the case of the conduct referred to in sub-paragraph 51H(a), by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b), (c), (f), (k) and/or (o) above;

(B) in the case of the conduct referred to in sub-paragraph 51H(b) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(c) and (e); and/or

(C) in the case of the conduct referred to in sub-paragraph 51H(c) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b), (c), (k), and (l);

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with:

(A) in the case of the conduct referred to in sub-paragraph 51H(a), by reason of subparagraph (i) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c) (i) and (l) above;

(B) in the case of the conduct referred to in sub-paragraph 51H(b), the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(h) and (g); and

(C) in the case of the conduct referred to in sub-paragraph 51H(c) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c), (h), (i) and (k);

(b) alternatively, was likely to be considered by DEECD to be:

(i) non-compliant with the Relevant National RTO Standard 1 (pleaded in paragraph 28(a)), Standard 2 (as pleaded in paragraph 28(b)(i)-(iv)) and Standard 3 (pleaded in paragraph 28(c)), and/or the Relevant Victorian Guidelines (Guideline 1.4, 1.5, 2.3, 3.3 and 5.1), pleaded in paragraphs 29(d) and (g);

(ii) non-compliant during the currency of the 2013 Government Contract with:

(A) in the case of the conduct referred to in sub-paragraph 51H(a), by reason of subparagraph (i) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b), (c), (f), (k) and/or (o) above; and/or

(B) in the case of the conduct referred to in sub-paragraph 51H(b) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(c) and (e); and/or

(C) in the case of the conduct referred to in sub-paragraph 51H(c) above, the 2013 Government Contract Relevant Contract Primary Term pleaded in paragraph 30(b), (c), (k), and (l);

(iii) (to the extent continued during the currency of the 2014 Government Contract) potentially non-compliant with:

(A) in the case of the conduct referred to in sub-paragraph 51H(a), by reason of subparagraph (i) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c) (i) and (l) above; and/or

(B) in the case of the conduct referred to in sub-paragraph 51H(b), the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(h) and (g); and

(C) in the case of the conduct referred to in sub-paragraph 51H(c) above, the 2014 Government Contract Relevant Contract Primary Term pleaded in paragraph 31(b), (c), (h), (i) and (k);

Particulars

i) As to sub-paragraph (a):

(A) the Applicant refers to:

- *the email chain between Wendy Bonnici, Mark Hutchinson and Andrea Gannon of Vocation between 4 July 2014 and 6 July 2014 titled "Re: Update – structure" (VOC.001.012.4525) on 5 July 2014 in which Bonnici said: "Also, I have been made aware of a significant issues [sic] in relation to avana's compliance. These are akin to Brett's non disclosures and require investigation. It is alleged that Jonny did not disclose an internal (conducted by external auditors) audit report completed just weeks before float that reported significant Non compliances" (VOC.001.012.4525 at .4526);*
- *the email chain between Mark Hutchinson, Jonathon Smuskowitz and Lesley Harris of 25 July 2013 (VOC.400.007.3888).*

(B) The reference to "Brett's non-disclosures" is a reference to the conduct of TTS-100 referred to in paragraphs 51 to 51A above.

ii) As to sub-paragraph (b), this is to be inferred from the fact that:

(A) Bonnici regarded the AVANA Conduct as involving significant non-compliance in her correspondence of July 2014; and

(B) Lesley Harris described the non-compliances as demonstrating lack of staff knowledge around NVR Standard and user choice requirements "at all levels across the organisation" (VOC.400.007.3888), and Hutchinson described Harris as being of the view that AVANA "need improvement in all areas of compliance", and that the process of rendering it compliant would take 18 months (VOC.701.002.3470).

51J. By reason of the matters pleaded in paragraphs 51F to 51I, at all material times after AVANA commenced to engage in the AVANA Conduct as pleaded in paragraph 51H, the AVANA Conduct was conduct which was:

(a) non-compliant with Relevant National RTO Standards and/or Relevant Victorian Guidelines; and/or

(b) in breach of Relevant Contract Primary Terms,

(**AVANA Non-Compliant Conduct**).

51K. Further, or alternatively, at all material times after AVANA commenced to engage in the AVANA Conduct as pleaded in paragraph 51H, by reason of the matters pleaded in paragraphs 51I(b), there was a material risk that all or any of the AVANA Conduct was, or would be considered by VRQA or DEECD to be, AVANA Non-Compliant Conduct (**AVANA Conduct Non-Compliance Risk**).

Particulars

Paragraphs 51I(b), and the particulars thereto are repeated.

51L. By reason of the matters pleaded in paragraphs 51F to 51J and/or 51K, there was at all material times after AVANA commenced to engage in the AVANA Conduct a material risk that AVANA could be the subject of DEECD Enforcement Action (**AVANA Conduct Non-Compliance Consequences Risk**).

D.4 Systemic Features

52. Further, or alternatively, by reason of the matters pleaded in paragraphs 43A~~0~~ to 47 and 50 to 51C and/or 51F to 51J, by no later than around 15 November 2013, the Founding Companies, further or alternatively subsidiaries of the Founding Companies ~~or third parties engaged by a Founding Company,~~ had been, or were engaged in a range of conduct (**Systemic Conduct**) that was:

    (a) non-compliant with Relevant National RTO Standards and/or Relevant Victorian Guidelines; and/or

    (b) in breach of Relevant Contract Primary Terms,

    (**Systemic Non-Compliant Conduct ~~Issues~~**)

Particulars

i). The Systemic Conduct is the combination of any or all of the BAWM Conduct (or any of it), the TTS-100 Conduct (or any of it) and the AVANA Conduct (or any of it);

ii) The Systemic Conduct was Systemic Non-Compliant Conduct by reason of the combination of any or all of ~~also is to be inferred from~~:

i. the matters set out in paragraph 47 (concerning the BAWM Non-Compliant Conduct); ~~to 48 and the particulars thereto;~~

ii. the matters set out in paragraph 51C (concerning the TTS-100 Non-Compliant Conduct), which resulted in the cancellation of TTS-100's registration as an RTO around 5 August 2014; and/or;

iii. *the matters set out in paragraph 51J (concerning the AVANA Non-Compliant Conduct) ~~the cancellation of TTS-100's registration as an RTO around 5 August 2014~~;*

~~*iv. references in internal Vocation correspondence between members of Vocation's senior management to "significant" compliance issues at each of Avana and CSIA occurring prior to the Prospectus Date;*~~

~~*v. the likelihood that the compliance issues at Avana and CSIA (including TTS-100) represent practices that were in place at Avana and CSIA prior to the incorporation of Vocation.*~~

~~*Further particulars may be provided following the completion of discovery and other interlocutory steps, and before the initial trial.*~~

53. Further, or alternatively, by reason of the matters pleaded in paragraphs 48, 51D and/or 51K by no later than around 15 November 2013, there was a material risk that all or any of the Systemic Conduct was, or would be considered by VRQA or DEECD to be, Systemic Non-Compliant Conduct (**Systemic ~~Conduct Non-Compliance Risk~~ Non-Compliant Conduct Risk**).

54. By reason of the matters pleaded in paragraphs 49, 51E and/or 51L (and 52 and/or 53), there was at all material times after Vocation (and/or the Founding Companies and/or subsidiaries of the Founding Companies) commenced to engage in the Systemic Conduct ~~Issues arose~~ a material risk that Vocation (and/or the Founding Companies and/or subsidiaries of the Founding Companies) could be the subject of DEECD Enforcement Action (**Systemic ~~Conduct Non-Compliance~~ Non-Compliant Conduct Consequences Risk**).

E. RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES OF VOCATION

E.1 The 2013 Prospectus Conduct

55. The Replacement Prospectus contained the following statements:

(a) at the time of the Merger and Offer, Vocation had 16 state and territory funding contracts across Australia (**Vocation Government Contracts**) (pp.8, 77);

(b) there was a risk that Vocation could lose one or more of the Vocation Government Contracts for breaches or non-compliance (pp.8, 77);

(c) n~~N~~on-compliance by Vocation with its conditions of registration could lead regulatory bodies to apply enforcement powers (p.77);

(d) if Vocation were to lose access to one or more of the Vocation Government Contracts this could have a material impact on Vocation's operations, earnings or financial position (p.77);

(e) n~~N~~on-compliance by Vocation's RTOs and associated regulatory response may have an adverse impact on Vocation's reputation, the allocation of its financial and management resources, and Vocation's future earnings and financial position (p.77);

(f) Vocation would have in place a number of systems and processes to ensure it fulfils its compliance obligations (p.46) (**First Prospectus Compliance Statement**); and

(g) Vocation's management was not aware of any material instances of non-compliance by Vocation's RTOs (p.77) (**Second Prospectus Compliance Statement**).

56. The Replacement Prospectus also contained the following statements:

(a) Vocation would pursue a "Growth Strategy" whereby, among other things, Vocation would seek to expand its Victorian business model to other parts of Australia (**Growth Strategy**) (pp.47-49);

(b) Vocation's forecast financial performance in FY14 would be as follows (**FY14 Guidance Statement**) (p.69);

	Pro forma historical results for FY13 ($m)	**Pro forma forecast results for FY14 ($m)**
Business channel		
Enterprise	18.4	44.9
Direct	6.8	22.3
Solutions	34.0	51.1
Total revenue	**59.2**	**118.3**
EBITA	12.3	34.9
NPAT	3.8 ~~8.3~~	19.6
NPATA	8.9	24.7

(c) following the Initial Public Offering as contemplated by the Replacement Prospectus, Vocation's would recognise intangible assets ~~were~~ with an estimated ~~at~~ value of $189.1m, including $150.2m in goodwill (**Goodwill Statement**) (p.57),

(together; **Prospectus Guidance Representations**, and also being Prospectus Representations).

57. In the Replacement Prospectus, Vocation made the following representations (each also being a **Prospectus Representation**) to the market of investors and potential investors in Vocation:

(a) BAWM, Aspin and other Vocation subsidiaries had not engaged in, and ~~was~~ were not engaging in, any ~~BAWM~~ conduct which was not compliant with the Relevant National RTO Standards and/or Relevant Victorian Guidelines, and/or in breach of Relevant Contract Primary Terms (**Non-Compliant Conduct**) (**First Prospectus Compliance Representation**);

(b) It was not likely, or there was not a material risk, that DEECD Enforcement Action in respect of ~~BAWM~~ Government Contracts ~~might~~ held by BAWM and/or other Vocation subsidiaries) would be taken which was likely to, or there was a material risk might, cause or result in:

(i) a material adverse effect on Vocation's revenue ~~which was derived from BAWM (or businesses operated by BAWM);~~ and/or

(ii) a material adverse effect on the reputation of Vocation ~~and BAWM~~ or their brands,

(**Second Prospectus Compliance Representation**);

(c) there was a reasonable basis for each of the Prospectus Guidance Representations (**Prospectus Guidance Basis Representation**).

Particulars

The First Prospectus Compliance Representation was partly express and partly implied. To the extent it is express, subparagraph 55(g) is referred to; to the extent it was implied, it is to be implied from the express statements referred to in paragraph 55 and the absence of any disclosure to the contrary.

The Second Prospectus Compliance Representation is implied, and is to be implied from the express statements referred to in paragraph 55 and the absence of any disclosure to the contrary.

~~*The Prospectus Guidance Representation is implied and is to be implied from the express statements referred to in paragraph 56 and the absence of any disclosure to the contrary.*~~

The Prospectus Guidance Basis Representation is implied and is to be implied from the Prospectus Guidance Representation.

The Second Prospectus Compliance Representation and the Prospectus Guidance Representation are each representations as to a future matter, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.

58. The Replacement Prospectus did not contain any statement describing:

(a) the BAWM Conduct;

(b) <u>the BAWM Non-Compliant Conduct;</u>

(c) the BAWM Conduct Non-Compliance Risk;

(d) the BAWM Conduct Non-Compliance Consequences Risk;

(e) <u>the TTS-100 Conduct;</u>

(f) <u>the TTS-100 Non-Compliant Conduct;</u>

(g) <u>the TTS-100 Conduct Non-Compliance Risk;</u>

(h) <u>The TTS-100 Conduct Non-Compliance Consequences Risk</u>

(i) <u>the AVANA Conduct;</u>

(j) <u>the AVANA Non-Compliant Conduct;</u>

(k) <u>the AVANA Conduct Non-Compliance Risk;</u>

(l) <u>the AVANA Conduct Non-Compliance Consequences Risk;</u>

(m) the Systemic Conduct;

(n) <u>the Systemic Non-Compliant Conduct;</u>

(o) the Systemic ~~Conduct Non-Compliance Risk~~ <u>Non-Compliant Conduct Risk</u>; or

(p) the Systemic Conduct Non-Compliance Consequences Risk.

E.2 Vocation's announcements to the market in 2014

~~E.2 The DEECD Review of BAWM and Aspin in 2014~~

~~59. On a date presently unknown to the Applicant prior to 3 July 2014, DEECD commenced a DEECD Review of BAWM, including as to whether BAWM was complying with the terms of the 2014 Government Contract in respect of certain courses (**BAWM Investigation**).~~

~~60. On 3 July 2014, DEECD wrote to BAWM advising that DEECD was withholding the payment of funds to BAWM under the 2014 BAWM Government Contract until certain issues identified by DEECD in the DEECD Review of BAWM (**Identified BAWM Non-Compliances**) had been satisfactorily resolved (**BAWM Funding Suspension**).~~

~~Particulars~~

~~30 October Announcements (pleaded in paragraph 110 below); Answer to ASX Q.1.~~

~~The Applicant refers to the letter dated 3 July 2014 from Lee Watts (Watts) of DEECD to Bonnici (document VOC.001.001.1001)~~

~~61. By no later than 24 July 2014, in addition to the BAWM funding suspension the DEECD directed BAWM to cease all new enrolments of Eligible Individuals (as defined in the 2014 BAWM Government Contract) pending the outcome of the BAWM investigation (**BAWM Enrolment Suspension**).~~

~~Particulars~~

~~The Applicant refers to the letter dated 24 July 2014 from Watts to Bonnici (document VOC.001.001.0968).~~

~~62. On a date presently unknown to the Applicant, but prior to or on 5 August 2014, DEECD commenced an investigation into Aspin, including as to whether Aspin was complying with the terms of the 2014 Aspin Government Contract in respect of certain courses (**Aspin Investigation**).~~

~~Particulars~~

~~30 October Announcements (pleaded in paragraph 110 below); Answer to ASX Q.1.~~

~~63. On 5 August 2014, DEECD:~~

~~(a) notified Aspin that DEECD was withholding all payments of funds under the 2014 BAWM Government Contract and 2014 ASPIN Government Contract with Aspin until certain concerns about Aspin's compliance with its obligations under that agreement were resolved to DEECD's satisfaction (**Aspin Funding Suspension**, and together with the BAWM Funding Suspension, **Victorian Funding Suspension**); and~~

~~(b) directed Aspin to suspend:~~

~~(i) the acceptance of all future enrolments of Eligible Individuals (as defined in Aspin's 2014 Funding Contract; and~~

~~(ii) the commencement of training delivery to Eligible Individuals that have enrolled but not yet commenced as at 5 August 2014,~~

~~(**Aspin Enrolment Suspension** and together with the BAWM enrolment suspension, **Victorian Enrolment Suspension**).~~

~~Particulars~~

~~The Applicant refers to the statements made in the 30 October Announcement.~~

~~Further particulars may be provided following the completion of discovery and other interlocutory steps, and before the initial trial.~~

~~64. In or about August 2014, the VRQA commenced an investigation into certain of BAWM's courses (**VRQA Investigation**, and together with the BAWM investigation and the Aspin Investigation, **Victorian Compliance Investigation**).~~

~~Particulars~~

~~The Applicant refers to statements attributed to a spokesman for VRQA and reported in The Australian on 30 October 2014 to the effect alleged, and the reference in Vocation's ASX announcement dated 30 October 2014 to "DEECD's overarching review" as having "included input from VRQA".~~

~~Further particulars may be provided following the completion of discovery and other interlocutory steps, and before the initial trial.~~

~~E.3 The August 2014 Conduct~~

~~E.3.1 Vocation's New Revenue Recognition Policy~~

~~65. The FY14 Guidance set out in the Replacement Prospectus was based on the following revenue recognition policy:~~

~~(a) in relation to Vocation's "Enterprise" business channel (including BAWM and Aspin), revenue was to be recognised on a "stage of completion" basis, as assessed by the rendering of invoices following the completion by a student of a unit of competency;~~

~~(b) in relation to Vocation's "Direct" business channel (including BAWM and Aspin), revenue was to be recognised on a "stage of completion" basis, as assessed by the rendering of invoices following the completion by a student of a unit of competency;~~

~~(c) in relation to Vocation's "Solutions" business channel (including BAWM's "RTO Edge" business), revenue was to be recognised at the time at which the relevant company's entitlement to those funds had been verified, as assessed by all five of the following criteria having been met:~~

~~(i) the relevant training has been delivered by the end of the reporting period;~~

~~(ii) the training has been reported to the relevant authority within a month following the reporting period;~~

~~(iii) data evidence of student participation has been received within a month following the reporting period;~~

~~(iv) that data evidence has been subject to a quality control assessment to determine whether they are in accordance with the relevant funding contract; and~~

~~(v) notification by the relevant authority of the claimed monies.~~

~~(**Prospectus Revenue Recognition Policy**)~~

~~**Particulars**~~

~~*The Applicant refers to;*~~

~~*i. The description of the Prospectus Revenue Recognition Policy contained in the Replacement Prospectus at pages 61, 62, 134 and 135.*~~

~~*ii. The statement at page 67 of the Replacement Prospectus that "[t]he Forecast Financial Information has been prepared based on the significant accounting policies adopted by Vocation, which are in accordance with the Australian Accounting Standards".*~~

~~*iii. The statement at page b of the Replacement Prospectus that "[t]he basis of preparation and presentation of the Forecast Financial Information is, to the extent applicable, consistent with the basis of preparation and presentation of the Historical Financial Information".*~~

~~*iv. The description of the basis of preparation of the "Historical Financial Information" at page 52 of the Replacement Prospectus.*~~

~~*v. The description of the revenue recognition policy applied in respect of "Government contract training fees" contained in the "Financial report for the year ended 30 June 2013" lodged by each of Aspin and BAWM with the ASX at page 6 of each document, and the statement on pages 5 and 6 respect of the document lodged by Aspin and on page 6 in respect of the document lodged by BAWM that "Revenue is recognised to the extent that it is probable that the economic benefits will flow to the company and the revenue can be reliably measured… Until such time as the above 5 milestones have been achieved, monies are not considered to be earned as there exists a possibility that monies will be required to be repaid to the relevant authority."*~~

~~*Further particulars may be provided following the completion of discovery and before the initial trial.*~~

~~66. By no later than 19 August 2014, Vocation and its auditor PricewaterhouseCoopers (**PWC**) had developed, and Vocation had approved, a new revenue recognition policy based on the following:~~

~~(a) in relation to Vocation's "Enterprise" business channel (including BAWM and Aspin), revenue would now be recognised according to a "stage of delivery" basis, and recognised:~~

~~(i) as to 50% when a student was enrolled;~~

~~(ii) as to a further 25% at the mid point of a unit;~~

~~(iii) as to the final 25% when the student completed the unit;~~

~~(b) in relation to Vocation's "Direct" business channel (including BAWM and Aspin), revenue would now be recognised according to a "stage of delivery" basis, and recognised:~~

~~(i) as to 35% when a student was enrolled;~~

~~(ii) as to a further 35% at the mid point of a unit;~~

~~(iii) as to the final 30% when the student completed the unit;~~

~~(c) in relation to Vocation's "Solutions" business channel (including BAWM's "RTO Edge" business), revenue would now be recognised based on Vocation management's estimate of the courses or modules provided in a given period in respect of which management estimated that a claim for payment could be issued by the relevant company, regardless of whether a claim had in fact been prepared or issued by that company, rather than when the criteria set out in paragraph 65(c) were met,~~

~~(**New Revenue Recognition Policy**)~~

~~**Particulars**~~

~~*The New Revenue Recognition Policy is described in pages 3 to 6 of the report titled "Vocation Audit & Risk Committee Update" prepared by Gréwal for Vocation's Audit & Risk Committee meeting on 19 August 2014 (CFO FY14 Report), and at pages 6 and 7 of the report titled "Audit & Risk Committee report – year ended 30 June 2014" prepared by PWC for the committee (see VOC.003.001.2586).*~~

~~*Further particulars may be provided following the completion of discovery and before the initial trial.*~~

~~67. The effect of the adoption by Vocation of the New Revenue Recognition Policy relative to the Prospectus Revenue Recognition Policy was:~~

~~(a) to bring forward into FY14 the recognition of material amounts of both revenue and profit which amounts otherwise would have been recognised in FY15, being approximately $15.86m revenue and $7.57m in profit, broken down as follows:~~

~~**Impact on FY14 Results ($m)**~~	~~**Revenue**~~	~~**Expenses**~~	~~**Profit**~~
~~Enterprise~~	~~4.89~~	~~(1.91)~~	~~2.98~~
~~Direct~~	~~2.33~~	~~(0.16)~~	~~2.17~~
~~Solutions~~	~~8.63~~	~~(6.22)~~	~~2.42~~
~~**Total**~~	~~**15.86**~~	~~**(8.29)**~~	~~**7.57**~~

~~(b) as a consequence of (a), that Vocation's reported profit for FY14 was materially greater than it would have been if the New Revenue Recognition Policy had not been adopted.~~

~~**Particulars**~~

~~*The Applicant refers to the analyses set out in the CFO FY14 Report at page 4 and 6. Further particulars may be provided following the completion of discovery and before the initial trial.*~~

~~*E.3.2 Vocation's publication of the FY14 Results Documents*~~

~~68. On 21 August 2014:~~

~~(a) Vocation released to the ASX its Preliminary Financial Report (Appendix 4E) for the year ending 30 June 2014 (**FY14**, and **FY14 Appendix 4E**);~~

~~(b) Vocation released to the ASX an announcement entitled "Vocation delivers strong first full year result, exceeding prospectus guidance", which stated that Vocation had significantly reduced its reliance on Victorian revenue as a result of acquisitions (**FY14 Results Announcement**); and~~

~~(c) Hutchinson made a presentation (**FY14 Results Presentation**), in which he stated:~~

~~(i) Vocation had "current government support of $1.2bn over next 3 years" (Slide 19);~~

~~(ii) In the financial year ending 30 June 2015 (**FY15**), Vocation forecast its reliance on Victorian government funding for its revenues to be reduced due to diversification through acquisition in FY14, from 80% to 40% (Slides 4, 15);~~

~~(d) Hutchinson stated there had been no change to any funding arrangements as of 1 July 2014 (orally, AFR Article "Training wheels wobbly? (25.08.14)).~~

~~69. In the FY14 Appendix 4E, FY14 Results Announcement and FY14 Results Presentation (**FY14 Results Documents**), Vocation made express statements to the effect that:~~

~~(a) In the section headed "Results Overview":~~

~~(i) "Strong result for the 12 months to 30 June 2014, comfortably ahead of prospectus guidance";~~

~~(ii) "Pro forma revenue of $137.2 million (Prospectus forecast: $118.3m)"~~

~~(iii) "Pro forma EBITA of $36.1 million (Prospectus forecast: $34.9m)"~~

~~(iv) "Pro forma NPAT of $22.1 million (Prospectus forecast: $19.6m)"~~

~~(v) "Pro forma NPATA of $25.5 million (Prospectus forecast: $24.7)";~~

~~(vi) "All three revenue channels performed well ahead of expectations";~~

~~(b) "Vocation...reported a strong result for the 12 months to 30 June 2014. On a pro forma basis, Revenue was $137.2 million, EBITA was $36.1 million and NPATA was $25.5 million";~~

~~(c) "FY14 has been a transformational first year for the business. We have exceeded our IPO forecasts";~~

~~(d) In the section headed "FY14 Financial Performance":~~

~~(i) "Vocation delivered pro forma Revenue of $137.2 million (Prospectus forecast: $118.3m) in FY14 and statutory sales revenue of $128.4 million. Pro forma NPAT was $22.1 million (Prospectus forecast: $19.6m), with statutory NPAT of $8.3 million."~~

~~(ii) "Pro forma EBITA was $36.1 million (Prospectus forecast: $34.9m), driven by the strong revenue performance. Pro forma NPATA was $25.5 million (Prospectus forecast $24.7m)."~~

~~(iii) "Vocation's Enterprise business, which delivers education and training services to corporate and government employees, performed strongly to deliver revenue of $50.2 million (Prospectus forecast: $44.9m)."~~

~~(iv) "The Direct channel, which caters to individual students, delivered revenue of $25.5 million (Prospectus forecast: $22.3m), with online enrolments in particular growing in momentum during the year."~~

~~(v) Vocation's Solutions business, which delivers outsourced managed services and industry consulting to third-party providers, performed ahead of expectations over the course of the year driven by strong growth in new clients, delivering revenue of $61.5 million (Prospectus forecast: $51.1m)."~~

~~70. In the FY14 Results Presentation, Vocation made express statements to the effect that:~~

~~(a) in the slide headed "FY2014 – Transformational First Year":~~

~~(i) "We have achieved all our major objectives for FY14";~~

~~(ii) "Prospectus forecast comfortably exceeded – Significant ramp up in organic growth benefitting from scale and operating leverage. Vocation's three revenue channels have performed ahead of Prospectus forecast for FY14";~~

~~(b) in the slide headed "Basis of preparation of FY2014":~~

~~(i) "Pro forma actual" revenue for FY14 was $137.2m;~~

~~(ii) "Pro forma actual" NPAT was $22.1m;~~

~~(iii) "To ensure a like for like comparison to the FY14 forecast earnings and cash flows presented in the Prospectus, the pro forma results presented" exclude earnings and cash flows from two transactions concluded at the end of April and May 2014;~~

~~(c) in the slide headed "FY2014 Results Overview":~~

~~(i) "Prospectus forecast comfortably exceeded. FY14 earnings 2.9x FY13";~~

~~(ii) Vocation's FY14 results relative to the FY14 Guidance were as follows:~~

~~$millions~~	~~**Pro forma Actual**~~	~~**Pro forma Prospectus**~~	~~**Variance to Prospectus**~~	~~**Variance to FY13**~~
~~**Revenue**~~	~~137.2~~	~~118.3~~	~~↑16.0%~~	~~↑2.3x~~
~~**EBITA**~~	~~36.1~~	~~34.9~~	~~↑3.4%~~	~~↑2.9x~~
~~**NPATA**~~	~~25.5~~	~~24.7~~	~~↑3.2%~~	~~↑2.9x~~

~~(d) in the slide headed "Proforma Income Statement – FY2014":~~

~~(i) "Prospectus revenue and earnings forecast comfortably exceeded";~~

~~(ii) "Total revenue exceeded the Prospectus by 16%. All three revenue channels higher than Prospectus forecast";~~

~~(iii) Vocation's FY14 results relative to the FY14 Guidance were as follows:~~

~~$millions~~	~~**Pro forma Prospectus**~~	~~**Pro forma Actual**~~
~~Enterprise~~	~~44.9~~	~~50.2~~

~~Direct~~	~~22.3~~	~~25.5~~
~~Solutions~~	~~51.1~~	~~61.5~~
~~Total Revenue~~	**~~118.3~~**	**~~137.2~~**
~~EBITA~~	**~~34.9~~**	**~~36.1~~**
~~NPAT~~	**~~19.6~~**	**~~22.1~~**
~~NPATA~~	**~~24.7~~**	**~~25.5~~**

~~(e) in the slide headed "Pro forma Cash Flows – FY2014":~~

~~(i) "Final FY14 dividend $6.5m based on 70% of the H2 FY14 $9.3m statutory NPAT (dividend of 3.2 cps);~~

~~(ii) Vocation's FY14 results relative to the FY14 Guidance were as follows:~~

~~$millions~~	**~~Prospectus proforma~~**	**~~Actual proforma~~**
~~EBITDA~~	**~~34.9~~**	**~~36.1~~**

~~71. In the FY14 Results Presentation Vocation made express statements in relation to Vocation's "FY15 Outlook", in the slide headed "FY2015 Outlook", to the effect that "Management are comfortable with current market consensus range" (which range was, at that time between $65.5m and $67.2m).~~

~~Particulars~~

~~The Applicant refers to the following analyst reports as particulars of the current market consensus range~~

~~i. Macquarie Research report dated 3 July 2014, titled "Vocation - The Young Endeavour" (forecast FY15 EBITDA of $65.6m);~~

~~ii. Credit Suisse report dated 29 July 2014, titled "Vocation - Right place, right time" (forecast FY15 EBITDA of $67.2m).~~

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

~~72. The FY14 Results Documents did not contain any information or statement to the effect that:~~

~~(a) Vocation had adopted the New Revenue Recognition Policy;~~

~~(b) the effect of the New Revenue Recognition policy was to bring forward into FY14 a material amount of revenue and profit;~~

~~(c) Vocation was the subject of the Victorian Compliance Investigation, the Victorian Funding Suspensions and the Victorian Enrolment Suspensions;~~

(d) ~~funds had in fact been withheld by the DEECD as part of the Victorian Compliance Investigation (ie the Victorian Funding Suspensions); and/or~~

(e) ~~Vocation's FY14 and FY15 earnings may be affected by the outcome of the Victorian Compliance Investigation, the Victorian Funding Suspensions and the Victorian Enrolment Suspensions.~~

~~E.3.3~~ *<u>E2.1</u> The 25 August Announcement*

73. On 25 August 2014, the Australian Financial Review reported:

(a) that on 20 August 2014, DEECD had advised BAWM that its funding was suspended pending the outcome of a full audit;

(b) DEECD auditors had been reviewing BAWM's books for the previous six weeks.

Particulars

Article, 25 August 2014, "Training Wheels wobbly?"

74. On 25 August 2014 Vocation published and lodged with the ASX an announcement entitled "Response to press speculation" (**25 August Announcement**), in which Vocation stated:

(a) Vocation's funding contracts with DEECD had not been suspended and were continuing;

(b) DEECD was undertaking a review of three of the courses for which Vocation receives funding, and as part of the review process had withheld recent payments under the funding contracts;

(c) Vocation considered that neither the review nor its anticipated outcomes were material to Vocation.

<u>74A. Following the release of the 25 August Announcement, the price of Vocation Securities fell, from a closing price of $3.20 on 24 August 2014, to a closing price of $2.98, being a decline of approximately 6.8%.</u>

~~*E.3.4 The representations made by Vocation on 21-25 August*~~

~~75. By the FY14 Results Documents and the 25 August Announcement, Vocation represented (each an **August Representation**) to the market of investors and potential investors in Vocation that:~~

~~(a) BAWM had not engaged in, and was not engaging in, any BAWM Non-Compliant Conduct (**August Compliance Representation**);~~

~~(b) Vocation had reasonable grounds for believing that the outcome of the DEECD Review would not be material to Vocation (**August Materiality Representation**); and/or~~

~~(c) It was not likely, or there was not a material risk, that DEECD Enforcement Action in respect of BAWM Government Contracts might be taken which was likely to, or there was a material risk might, cause or result in:~~

~~(i) a material adverse effect on revenue which was derived from BAWM (or businesses operated by BAWM); and/or~~

~~(ii) a material adverse effect on the reputation of BAWM or BAWM's brands,~~

~~(**August Immaterial Risk Representation**).~~

~~**Particulars**~~

~~*The August Compliance Representations were partly express and partly implied.*~~

~~*i. The August Compliance Representation is to be implied from the express statements in 68(c) and 74 and the absence of any disclosure to the contrary, or correction to the First Prospectus Representation.*~~

~~*ii. As to the August Materiality Representation: to the extent it is express subparagraph 74(c) is referred to; to the extent it was implied, it is to be implied from the express statement and the absence of any disclosure to the contrary.*~~

~~*iii. As to the August Immaterial Risk Representation this is to be implied from the express statements in 68(c) and 74 the August Compliance Representation and the August Materiality Representation, and the absence of any disclosure to the contrary.*~~

~~*The August Materiality Representation and August Immaterial Risk Representations are representations as to future matters, and s 12BB*~~

~~*of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*~~

~~76. By reason of the matters set out in paragraphs 69 to 71, in releasing the FY14 Results Documents Vocation represented that:~~

~~(a) its financial results for FY14 outperformed the FY14 Guidance (Outperformance Representation);~~

~~(b) the financial information for FY14 was prepared on the same basis as the FY14 Guidance (Same Basis Representation);~~

~~(c) the financial information for FY14 presented in the FY14 Results Documents presented a true and fair view of the company's financial performance and position (True and Fair View Representation);~~

~~(d) the financial information contained in the FY14 Results Documents was reliable (Reliability Representation).~~

~~(together, the **August FY14 Results Representations**)~~

~~**Particulars**~~

~~*The Outperformance Representation is partly express, partly to be implied. In so far as it is express, the Outperformance Representation is contained in the express statements set out in paragraphs 69 and 70. Further and alternatively, in so far as it is implied, it is to be implied from those statements.*~~

~~*The Same Basis Representation is partly express, partly to be implied. In so far as it is express, the Same Basis Representation is contained in the express statements set out in paragraph 76. Further and alternatively, in so far as it is implied, it is to be implied from the inclusion of a side-by-side comparison of the FY14 Guidance figures and what are purported to be Vocation's actual FY14 results, as set out in paragraphs 69 and 70.*~~

~~*The True and Fair Value Representation and Reliability Representations are to be implied from the express statements set out in paragraph 69 and 70, and the fact that the FY14 Results Documents were lodged by Vocation with the ASX in purported compliance with its statutory obligations (including those referable to the ASX Listing Rules).*~~

~~77. Between 21 August 2014 and the end of the Relevant Period, Vocation:~~

~~(a) repeated the August FY14 Results Representations;~~

~~(b) did not amend, qualify or withdraw the substance of the August FY14 Results Representations;~~

~~(c) did not release to the market any further information that would significantly supplement or modify the August FY14 Results Representations; and~~

~~(d) otherwise took no or no adequate step to amend or withdraw the August FY14 Results Representations,~~

~~and accordingly, the August FY14 Results Representations were continuing representations between 21 August 2014 and the end of the Relevant Period.~~

~~Particulars~~

~~The Outperformance Representation and Same Basis Representation were repeated in substance in:~~

~~i. Vocation's Annual Report for 30 June 2014 lodged with the ASX on or about 3 September 2014 (Audited Annual Report), including by reason of the statements:~~

~~On page 2, under the heading "Operations – FY14":~~

~~FY14 has been a transformational first year for the business, with the pro forma results exceeding the IPO prospectus forecasts...~~

~~On page 2, under the heading "Pro forma consolidated income statements: Financial year ended 30 June 2014 compared to financial year ended 30 June 2013":~~

~~The pro forma consolidated income statement for the year ended 30 June 2014 has been prepared on the same basis as the pro forma consolidated income statement for the year ended 30 June 2013 published in the Vocation Limited IPO prospectus issued in November 2013 and adjusted to exclude the impact of acquisitions since IPO.~~

~~The table below sets out the pro forma consolidated income statement for the year ended 30 June 2014 compared to the consolidated income statement for the year ended 30 June 2013 and the pro forma forecast for the year ended 30 June 2014, which were both included in the Prospectus...~~

~~and the inclusion thereafter and in the balance of the Audited Annual Report of financial results relevantly the same as those set out in the FY14 Results Documents;~~

~~ii. Vocation's FY14 Annual Report lodged with the ASX on or about 16 September 2014 (FY14 Annual Report), including by reason of the statements:~~

> *~~On page 3, as part of the "Chairman's Letter":~~*
>
> *~~We have delivered sound first year results, exceeding our IPO prospectus forecasts.~~*

~~and the inclusion thereafter and in the balance of the FY14 Annual Report statements and financial information relevantly the same as those included in the Audited Annual Report;~~

~~iii. The True and Fair View Representation and Reliability Representation were repeated in substance in the Audited Annual Report and FY14 Annual Report, including by reason of:~~

~~A. the inclusion of the statement in the Directors' declaration on pages 75 and 80 respectively:~~

> *~~...the attached financial statements and notes thereto give a true and fair view of the consolidated entity's financial position as at 30 June 2014 and of its performance for the financial year ended on that date...~~*

~~B. the inclusion of PWC's independent auditor's report, bearing the statement on pages 76 and 82 respectively:~~

> *~~...the financial report of Vocation Limited is in accordance with the Corporations Act 2001, including...giving a true and fair view of the consolidated entity's financial position as at 30 June 2014 and of its performance for the year ended on that date...~~*

~~and by implication from the fact that the Audited Annual Report and FY14 Annual Report (and the financial information contained therein) were lodged by Vocation with the ASX in purported compliance with its statutory obligations (including those referable to the ASX Listing Rules).~~

~~78. By reason of the matters pleaded in paragraph 71, on 21 August 2014 Vocation represented (**August FY15 Earnings Representations**) that:~~

~~(a) its FY15 earnings would be approximately $66m (and/or earnings which exceeded FY14 earnings by more than 50%) (**August FY15 Earnings Guidance Representation**); and~~

~~(b) Vocation had reasonable grounds, for forecasting that Vocation would achieve FY15 earnings of approximately $66m (and/or earnings which exceeded FY14 earnings by more than 50%) (**August FY15 Earnings Basis Representation**).~~

~~Particulars~~

~~The representations were partly express and partly implied:~~

~~i. The August FY15 Earnings Guidance Representation was express.~~

~~ii. The August FY15 Earnings Basis Representation is to be implied from the August FY15 Earnings Representation and the absence of any disclosure to the contrary.~~

~~The August FY15 Earnings Guidance Representation is a representation as to a future matter, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.~~

~~E.4 Cash flow Issues, and preparation for institutional placement~~

~~79. Between around 23 August 2014 and 3 September 2014, Macquarie and Vocation prepared an analysis that assessed the impact of some or all of the consequences the subject of the Investigation Consequences Information on Vocation's near term cash flow (**August 2014 Cash Flow Analysis**).~~

~~Particulars~~

~~The August 2014 Cash Flow Analysis was prepared by Vocation's then CFO, Gréwal and Manny Petros of Macquarie, a copy of the initial version of which appears at VOC.008.009.4527. A later copy of the August 2014 Cash Flow Analysis submitted as part of the process of seeking the Debt Facility Increase (as defined in paragraph 81 below) appears at VOC.004.007.0070.~~

~~Among other things, the August 2014 Cash Flow Analysis assessed Vocation's cash flow out to 31 October 2014, and assumed that neither BAWM nor Aspin would receive monies from the DEECD for the period July to October 2014.~~

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

~~80. At all relevant times, the August 2014 Cash Flow Analysis indicated that absent an increase to Vocation's then existing debt facility (or some other source of cash), by no later than early October 2014, Vocation's cash balance would be negative.~~

~~81. On or about 29 August 2014, Vocation commenced negotiations with its lenders, the Commonwealth Bank, Westpac and NAB (collectively, **Vocation's Lenders**) to increase the working capital component of Vocation's then current debt facility by approximately $10m to $15m (**Debt Facility Increase**).~~

~~82. On or about 3 September 2014, Vocation submitted the August 2014 Cash Flow Analysis to Vocation's lenders, which analysis showed that absent a Debt Facility Increase of $15m, Vocation's cash balance was forecast to be negative by around 19 September 2014.~~

~~Particulars~~

~~The August 2014 Cash Flow Analysis was included in a briefing document provided by Vocation to Vocation's lenders on 3 September 2014. A copy of that briefing document appears at VOC.004.007.0070.~~

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

~~83. Vocation did not on 3 September 2014, or any point thereafter in the Relevant Period, obtain the Debt Facility Increase from Vocation's Lenders.~~

~~84. By reason of the matters set out in paragraphs 59 to 64 and 79 to 83, by no later than 3 September 2014, Vocation needed working capital to remain solvent pending a successful resolution of the Victorian investigations (**Cash Requirement Information**).~~

~~85. Between around 3 September 2014 and 8 September 2014, Vocation entered into negotiations with Macquarie Capital (Australia) Ltd (**Macquarie**) with a view to Macquarie underwriting an institutional share placement (**Proposed Placement**), which negotiations did not result in Macquarie agreeing to underwrite the Proposed Placement.~~

~~86. Around 8 September 2014, Vocation entered into negotiations with UBS AG (**UBS**) with a view to UBS underwriting the Proposed Placement.~~

~~87. On 10 September 2014 at approximately 8.10am, UBS entered into an underwriting agreement with respect to the Proposed Placement, the terms of which obliged UBS to commence the bookbuild for the Proposed Placement at 10.00am on 10 September 2014 and to complete the bookbuild for the Proposed Placement by 2.30pm on 10 September 2014.~~

~~Particulars~~

~~The terms of the UBS/Vocation underwriting agreement are set out in the document at VOC.008.011.2768.~~

~~88. Neither Vocation, nor any other person, disclosed the Cash Requirement Information to any of the potential investors in the Proposed Placement.~~

~~89. On 10 September 2014, prior to the commencement of trading, Vocation requested a trading halt of Vocation Securities for up to two days pending an announcement by Vocation in relation to the Proposed Placement.~~

~~E.5 The September 2014 Conduct~~

~~90. On 3 September 2014, Vocation released to the ASX the Audited Annual Report, which:~~

~~(a) repeated in substance the Outperformance Representation and Same Basis Representation; and~~

~~(b) included PWC's independent auditor's report to the members of Vocation Limited (**PWC's Independent Auditor's Report**).~~

~~Particulars~~

~~The particulars to paragraph 77 are repeated.~~

E2.2 The 10 September Announcement

91. On 10 September 2014, Vocation released to the ASX an announcement (**10 September Announcement**) that Vocation would:

(a) undertake a fully underwritten placement to institutional and sophisticated investors to raise approximately $74,000,000 through the issue of approximately 24.3 million Vocation Securities (**Placement**) at a price of $3.05 (**Placement Offer Price**); and

(b) following completion of the Placement, offer Australian and New Zealand shareholders the opportunity to invest up to $15,000 in new Vocation Securities (capped at $10 million) pursuant to a share purchase plan (**SPP**).

~~92. The 10 September Announcement stated that:~~

~~(a) the funds to be raised by the Placement will be employed for the following purposes (**Stated Purposes**):~~

~~(i) "To pay down a large portion of Vocation's $120 million acquisition facility (fully drawn since the $84 million fully debt funded acquisition of Endeavour which completed in July) that allows Vocation to:~~

~~(A) Increase balance sheet capacity to provide the business with the ability to take advantage of strategic opportunities in the market, both organic and through acquisition as the education sector continues to consolidate;~~

~~(B) Increase working capital flexibility as the business continues to grow and diversify across States, FEE HELP programs and Higher Education opportunities through Endeavour;~~

~~(C) Continue diversifying Vocation across multiple channels to improve student choice, quality education and job outcomes";~~

~~(ii) "To fund two small acquisitions totalling approximately $7 million, including:~~

~~(A) The remaining 50 per cent stake in the Australian School of Management (ASM), which will enable Vocation to accelerate expansion of its course offerings across the East Coast utilising excess capacity in Endeavour's campus network;~~

~~(B) An addition to Endeavour's New Zealand operations in respect of which Vocation is in advanced discussions. This acquisition will substantially increase Endeavour's student capacity in that market";~~

~~(iii) "To deliver accelerated investment in the MyVocation platform, in line with Vocation's strategy to deliver positive student outcomes, in particular job opportunities, and decrease reliance on brokers";~~

~~(b) The fund raising will provide us with ongoing flexibility to grow and further diversify our business through organic and acquisitive growth";~~

~~(c) "Vocation is comfortable with current earnings consensus estimates, including EPS, prior to the dilutionary impact of the capital raising";~~

~~(d) the review by DEECD of Vocation was expected to conclude no later than the end of October 2014;~~

~~(e) Vocation considered that neither the review nor its anticipated outcomes are material to Vocation.~~

~~93. The 10 September Announcement did not include:~~

~~(a) the Cash Requirement Information;~~

~~(b) further and alternatively, any statement to the effect that the funds raised by the September 2014 institutional placement would be used to provide additional working capital pending the completion of the Victorian investigations.~~

94. On 11 September 2014, Vocation released to the ASX an announcement that Vocation had completed the Placement and would issue 24.3 million Vocation Securities pursuant to the Placement at a price of $3.05 per Vocation Security on 15-16 September 2014.

~~95. The majority of the funds raised through the Placement were retained by Vocation in term deposits.~~

~~Particulars~~

~~*The Applicant refers to Vocation's ASX announcement dated 24 December 2014 and titled, "Vocation Amends Loan Facility with Bank Group".*~~

~~*Further particulars may be provided following the completion of discovery and before the initial trial.*~~

~~96. Further and alternatively to paragraph 95, the majority of the funds raised through the Placement were not used for the Stated Purposes.~~

~~Particulars~~

~~*The Applicant refers to Vocation's ASX announcement dated 24 December 2014 and titled, "Vocation Amends Loan Facility with Bank Group".*~~

~~*Further particulars may be provided following the completion of discovery and before the initial trial.*~~

~~97. On 16 September 2014, Vocation released to the ASX:~~

~~(a) its Annual Report for FY 2014 (**FY14 Annual Report**);~~

~~(b) a "cleansing notice" to the ASX under s 708A(5)(e) of the Corporations Act following the completion of the September 2014 institutional placement (**September 2014 Cleansing Notice**), which notice included the statement that "As at the date of this notice, Vocation...has complied with the provisions of Chapter 2M of the Corporations Act and section 674 of the Corporations Act".~~

~~98. In the FY14 Annual Report, Vocation:~~

~~(a) stated in the Managing Director's Operating and Financial Review (p.8) that:~~

~~(i) the key risks that may impact on Vocation's ability to deliver on its strategy included "regulatory and government funding";~~

~~(ii) Vocation continues to actively engage with the various regulatory and funding bodies that are relevant to its operations to manage any changes to policy;~~

~~(b) stated in the Directors' Report that likely developments in the operations of the consolidated entity and expected results of those operations are contained in the operation and financial review section (p.20), being a reference to the Managing Director's Operating and Financial Review (p.8);~~

~~(c) did not refer to the review by DEECD at all, including in:~~

~~(i) the Managing Director's Operating and Financial Review (p.8);~~

~~(ii) the "Significant Changes in the State of Affairs" section, the "Matters Subsequent to the End of the Financial Year" section or the Likely Developments and Expected Results of Operations" section of the Directors' Report (pp.19-20).~~

E2.3 The 18 September Announcement

99. On 17 September 2014, the Australian Financial Review reported that:

(a) subsequent to the 25 August Announcement, the Australian Financial Review had sought to clarify whether the funding withheld by the DEECD was just the funding for the three courses referred to in the 15 August Announcement, or all BAWM's funding, but that Vocation had refused to comment;

(b) the Victorian government was concerned about a practise called "channelling" whereby certain RTOs enrol students in courses other than what they intended for the purposes of receiving a greater subsidy level; and

(c) a previous audit of BAWM in July 2013 had found instances of "channelling".

Particulars

Article, 18 September 2014, "Victoria's withheld funding 'material' to Vocation".

100. On 18 September 2014 Vocation published and lodged with the ASX an announcement entitled "Response to press speculation" (**18 September Announcement**), in which Vocation stated:

(a) Vocation's funding contracts with DEECD had not been suspended and are continuing;

(b) the review by DEECD continued to relate to three of the courses for which Vocation receives funding;

(c) DEECD had withheld funding across two of Vocation's four Victorian RTOs, but the other two RTOs continue to receive all payments; and the withholding of payments was a course regularly applied when undertaking normal course review processes;

(d) Vocation looked forward to maintaining a strong presence in Victoria in partnership with DEECD.

<u>100A. Following the release of the 18 September Announcement, the price of Vocation Securities fell, from a closing price of $3.00 on 17 September 2014, to a closing price of $2.74, being a decline of approximately 8.6%.</u>

~~101. By the 10 September Announcement and the matters pleaded in paragraph 93, the FY14 Annual Report and the 18 September Announcement, Vocation represented (each a **September Representation**) to the market of investors and potential investors in Vocation that:~~

~~(a) BAWM had not engaged in, and was not engaging in, any BAWM Non-Compliant Conduct (**September Compliance Representation**);~~

~~(b) Vocation had reasonable grounds for believing that the outcome of the DEECD review would not be material to Vocation (**September Materiality Representation**);~~

~~(c) It was not likely, or there was not a material risk, that DEECD Enforcement Action in respect of BAWM Government Contracts might be taken which was likely to, or there was a material risk might, cause or result in:~~

~~(i) a material adverse effect on revenue which was derived from BAWM (or businesses operated by BAWM); and/or~~

~~(ii) a material adverse effect on the reputation of BAWM or BAWM's brands,~~

~~(**September Immaterial Risk Representation**);~~

~~(d) that the August FY15 Earnings Guidance Representation and the August FY15 Earnings Guidance Basis Representation remained true; and/or~~

~~(e) the funds raised through the September 2014 institutional placement would only be used for the Stated Purposes (**September Placement Representation**).~~

~~**Particulars**~~

~~*The September Representations were partly express and partly implied.*~~

~~*i. The September Compliance Representation is to be implied from the express statements in 92, 98 and 100 and the absence of any disclosure to the contrary, or correction to the First Prospectus Compliance Representation and the August Compliance Representation.*~~

~~*ii. As to the September Materiality Representation: to the extent it is express subparagraphs 92(b) and 100(d) are referred to; to the extent it was implied, it is to be implied from the express statements and the absence of any disclosure to the contrary.*~~

~~*iii. As to the September Immaterial Risk Representation this is to be implied from the express statements in 92, 98 and 100, the First and September Materiality Representations, and the absence of any disclosure to the contrary.*~~

~~*iv. The September Placement Representation is to be implied from the matters pleaded in paragraph 92(a), and from the absence of any disclosure to the contrary.*~~

~~*The September Materiality Representation, the September Immaterial Risk Representation and the September Placement Representation*~~

~~*are representations as to a future matter, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*~~

~~*E.6 The Restructure Decision*~~

~~102. Further and alternatively, on a date presently unknown to the Applicant but prior to around 28 September 2014, Vocation decided to restructure its business to:~~

~~(a) cease using third party providers, including through Aauspicing arrangements and Bbroking arrangements; and~~

~~(b) further or alternatively, significantly reduce its use of third party providers, including through Aaspicing arrangements and Bbroking arrangements,~~

~~(**Restructure Decision**)~~

~~Particulars~~

~~*The Applicant refers to statements made by Vocation in:*~~

~~*i. internal correspondence between Hutchinson and other members of Vocation's senior management around 28 September 2014;*~~

~~*ii. the 27 October Announcement (as defined in paragraph 107 below), including those described at paragraphs 108(e) and 108(f) below;*~~

~~*iii. its ASX announcement titled "Clarification of ASX announcement made on 27 October 2014" and published 30 October 2014;*~~

~~*iv. the 4 December Announcement (as defined in paragraph 117 below), including those described at paragraphs 118(b)(ii), 118(c) and 118(e) below.*~~

~~*Further particulars may be provided following the completion of discovery and before the initial trial.*~~

~~103. By reason of the matters set out in paragraphs 19, 25, 37, 38, 39, and 40, the Restructure Decision gave rise to material risks that Vocation would not be able to:~~

~~(a) achieve the Growth Strategy in the near term; and~~

~~(b) maintain, alternatively grow, its earnings in the calendar and/or financial year in which the Restructure Decision was made and future years.~~

~~E.7 The 16 October Announcement~~

~~104. On 16 October 2014, Vocation held its Annual General Meeting, at which the following statements were made on behalf of Vocation, which were also released to the ASX in written form (**16 October Announcement**):~~

~~(a) Dawkins said:~~

~~(i) DEECD was looking at three courses delivered by Vocation subsidiaries, BAWM and Aspin;~~

~~(ii) Vocation expected the DEECD process to conclude in the next couple of weeks;~~

~~(iii) It was in the nature of the industry that all Vocation RTOs are subject to audits at any time in the normal course of the regulatory process;~~

~~(b) Hutchinson said:~~

~~(i) (c) The current review by DEECD of BAWM and Aspin has had an impact on enrolment activity in Victoria;~~

~~(ii) (d) Vocation had been conducting enrolments through the remaining two Victorian RTOs because Vocation was mindful of minimising the distraction associated with the review process;~~

~~(iii) (e) Vocation was supportive of a strong compliance culture, and was looking forward to a resolution of the review process over the coming weeks;~~

~~(iv) (f) Vocation's overall business remains on a positive footing for FY15.~~

~~105. By the 16 October Announcement, Vocation represented (each a **16 October Representation**) to the market of investors and potential investors in Vocation that:~~

~~(a) BAWM had not engaged in, and was not engaging in, any BAWM Non-Compliant Conduct (**16 October Compliance Representation**);~~

~~(b) Vocation had reasonable grounds for believing that the outcome of the DEECD review would not be material to Vocation (**16 October Materiality Representation**); and/or~~

~~(c) It was not likely, or there was not a material risk, that DEECD Enforcement Action in respect of BAWM Government Contracts might be taken which was likely to, or there was a material risk might, cause or result in:~~

~~(i) a material adverse effect on revenue which was derived from BAWM (or businesses operated by BAWM); and/or~~

~~(ii) a material adverse effect on the reputation of BAWM or BAWM's brands,~~

~~(**16 October Immaterial Risk Representation**).~~

~~**Particulars**~~

~~*The 16 October Representations were partly express and partly implied.*~~

~~*i. The 16 October Compliance Representation is to be implied from the express statements in 58 and the absence of any disclosure to the contrary, or correction to the First Prospectus Compliance Representation, the August Compliance Representation and the September Compliance Representation.*~~

~~*ii. As to the 16 October Materiality Representation: to the extent it is express 104 is referred to; to the extent it was implied, it is to be implied from the express statements and the absence of any disclosure to the contrary.*~~

~~*iii. As to the 16 October Immaterial Risk Representation this is to be implied from the express statements in 104 and the 16 October Materiality Representations, and the absence of any disclosure to the contrary.*~~

~~*The 16 October Materiality Representation and 16 October Immaterial Risk Representations are representations as to a future matter, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*~~

~~*E.8*~~ *E2.4 The 27 and 30 October Announcements*

106. On 23 October 2014, Vocation entered into a trading halt on the ASX (**First Trading Halt**).

107. On Monday 27 October 2014, Vocation lodged with the ASX and publically released an announcement entitled *"Vocation announces settlement with DEECD and completion of the Victorian Review"* (**27 October Announcement**).

108. By the 27 October Announcement Vocation expressly stated and disclosed to the ASX

for the first time that:

(a) Vocation had "reached a settlement with [DEECD] in relation to its review into two of Vocation's Registered Training Organisations (RTOs), BAWM and Aspin" (**DEECD Settlement**);

(b) the DEECD Settlement involved Vocation agreeing to:

  (i) "surrender $19.6 million in Government funding";

  (ii) "undertake a series of measures to ensure continuous improvement in line with VRQA Guidelines for VET and AQTF Continuing Standards for Registration";

(c) DEECD had concluded that:

  (i) "there had been an over reliance on third parties to identify and refer students for enrolment in [Certificate III in Warehousing Operations, Certificate III in Competitive Systems and Practices and Certificate II in General Education for Adults] which resulted in some students being enrolled in in appropriate courses for their needs";

  (ii) "there were inadequate controls in place to manage the performance of third parties delivering training and assessment, resulting in some students experiencing a lower quality training experience than intended for their job seeking needs";

(d) BAWM and Aspin would relinquish their funding contracts (including, *inter* alia, the BAWM Government Contracts and Aspin Government Contracts) with effect from early 2015, and Vocation would thereafter only enrol and train students through other RTOs;

(e) Vocation intended to continue the restructure of its Victorian business, involving:

  (i) "the discontinuation of the use [of] third party training and assessment providers"; and

  (ii) "an overhaul of the senior management team in Victoria"; and

(f) Vocation has also decided to eliminate its use of third party training and assessment providers in Victoria. Although delivery via the use of third parties is common in the industry, Vocation has been reducing its reliance on this practice for some time to ensure important systems and processes are within its own control and of the highest quality";

(g) the "direct and indirect impacts of the review and the Victorian restructure will be taken up in H1 FY15";

(h) the overall financial impact of the settlement and restructure for FY15 was:

(i) the commercial settlement had reached with DEECD had resulted in the forfeiture of $19.6m of funds, and the earnings impact of this in FY15 is a reduction of approximately $5m in earnings;

(ii) lower than budgeted enrolments in Victoria due to the DEECD review and Vocation's decision to restructure part of its business model in Victoria to eliminate third party training and assessment providers; and

(iii) revised EBITDA of between $53M and $57M,

(**FY15 Earnings Guidance Adjustment**);

~~109. By the 27 October Announcements, Vocation represented (each a **Late October Representation**) to the market of investors and potential investors in Vocation that:~~

~~(a) Vocation had disclosed all information of which Vocation was aware about the outcome of the DEECD Review of BAWM and the extent of the material adverse effect on Vocation arising from that DEECD Review and the DEECD Settlement (**27 October Disclosure Representation**);~~

~~(b) Vocation would achieve EBITDA of between $53m and $57m in FY15 (and/or earnings which exceeded FY14 earnings by more than 50%) (**27 October FY15 Earnings Guidance Representation**);~~

~~(c) Vocation had reasonable grounds, having regard to the DEECD Review of BAWM and the DEECD Settlement, for forecasting that Vocation would achieve EBITDA of between $53m and $57m in FY15 (and/or earnings which exceeded FY14 earnings by more than 50%) (**27 October FY15 Earnings Guidance Basis Representation**).~~

~~**Particulars**~~

~~*The Late October Representations pleaded above were partly express and partly implied:*~~

~~*i. As to the 27 October Disclosure Representation, the representation is to be implied from the express statements referred to in paragraph 108.*~~

~~*ii. The 27 October FY15 Earnings Guidance Representation was express.*~~

~~*iii. The 27 October FY15 Earnings Guidance Basis Representation is to be implied from the 27 October Disclosure Representation and the 27 October FY15 Earnings Guidance Representation and the absence of any disclosure to the contrary.*~~

~~*Each of the 27 October FY15 Earnings Guidance Representation and the 27 October FY15 Earnings Guidance Basis Representation is a representation as to a future matter, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*~~

110. On Thursday 30 October 2014, Vocation lodged with the ASX and publically released:

(a) an announcement entitled “Response to ASX Aware Query”; and

(b) an announcement entitled “Clarification of ASX Announcement made on 27 October 2014,

(**30 October Announcements**).

111. By the 30 October Announcements Vocation expressly stated and disclosed to the ASX for the first time that:

(a) Vocation had been aware since 3 July 2014:

(i) of the DEECD Review of BAWM;

(ii) that DEECD had identified certain issues with BAWM which required satisfactory resolution, pending which DEECD was withholding payments under the 2014 ~~BAWM~~ Government Contract;

(b) Vocation had been aware since 5 August 2014:

(i) of the DEECD Review of Aspin;

(ii) that DEECD had identified certain issues with Aspin which required satisfactory resolution, pending which DEECD was withholding payments under the 2014 ~~BAWM~~ Government Contract;

(c) as at 25 August 2014, Vocation was aware that it was unclear what the outcome of the DEECD Review of BAWM and Aspin would be;

(d) DEECD would meet with the Chair of Vocation's new quality oversight committee, and DEECD on a regular basis; and

(e) having regard, *inter alia*, to the DEECD Settlement, and the impact of reduced enrolments in BAWM and Aspin, Vocation expected:

(i) net EBITDA for FY15 from the Cert 1 to Cert IV business line to be $25M (compared to $45m in EBITDA actually achieved by it in FY14);

(ii) group EBITDA for FY15 to be $55m (being the mid point of the earnings guidance provided by the 27 October Announcement);

~~112. By the 30 October Announcements, Vocation represented (each also a **Late October Representation**) to the market of investors and potential investors in Vocation that:~~

~~(a) Vocation had disclosed all information of which Vocation was aware about the outcome of the DEECD Review of BAWM and the extent of the material adverse effect on Vocation arising from that DEECD Review and the DEECD Settlement (and so in substance repeated the 27 October Disclosure Representation (**30 October Disclosure Representation**);~~

~~(b) Vocation would achieve EBITDA of $55 million in FY15 (and so in substance repeated the 27 October FY15 Earnings Guidance Representation) (**30 October FY15 Earnings Guidance Representation**);~~

~~(c) Vocation had reasonable grounds, having regard to the DEECD Review of BAWM and the DEECD Settlement, for forecasting that Vocation would achieve EBITDA of $55 million in FY15 (and so in substance repeated the Third 27 October Representation) (**30 October FY15 Earnings Guidance Basis Representation**).~~

~~**Particulars**~~

~~*The Late October Representations pleaded above were partly express and partly implied:*~~

~~*i. As to the 30 October Disclosure Representation, the representation is to be implied from the express statements referred to in paragraph 111, and the giving of the 30 October Announcement as a clarification of the 27 October Announcement;*~~

~~*ii. The 30 October FY15 Earnings Guidance Representation was express.*~~

~~*iii. The 30 October FY15 Earnings Guidance Basis Representation is to be implied from the 27October FY15 Earnings Guidance Representation and the 30 October FY15 Earnings Guidance Representation and the absence of any disclosure to the contrary.*~~

~~*Each of the 30 October FY15 Earnings Guidance Representation and the 30 October FY15 Earnings Guidance Basis Representation is a representation as to a future matter, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*~~

113. Following the release of:

(a) the 27 October Announcement, the price of Vocation Securities fell, from a closing price of $2.29 on 23 October 2014 (when the First Trading Halt commenced), to a closing price of $1.00 on 28 October 2014 (being the first day after the First Trading Halt was lifted), being a decline of approximately 57%;

(b) the 30 October Announcement, the price of Vocation Securities further declined to a closing price of $0.78 on 30 October 2014.

~~**E.9 The November Conduct**~~

~~114. On 17 November 2014, Vocation lodged with the ASX and publically released an announcement entitled *"Market Update"* (**17 November Announcement**), in which Vocation stated:~~

~~(a) Vocation had completed the restructure of its Victorian business;~~

~~(b) The restructure had had a one off impact of approximately $1 million and this, along with the resultant annualised salary savings of approximately $7 million, was taken into account in the FY15 guidance Vocation announced on 27 October 2014;~~

~~(c) Vocation was withdrawing the SPP.~~

~~115. By the 17 November 2014 Announcement, Vocation represented (**November Representations**) to the market of investors and potential investors in Vocation that:~~

~~(a) Vocation would achieve EBITDA of $55 million in FY15 (and so in substance repeated the 27 October FY15 Earnings Guidance Representation and the 30 October FY15 Earnings Guidance Representation) (**November FY15 Earnings Guidance Representation**);~~

~~(b) Vocation had reasonable grounds, having regard to the DEECD Review of BAWM and the DEECD Settlement and the completion of the restructure, for forecasting that Vocation would achieve EBITDA of $55 million in FY15 (and so in substance repeated the 27 October FY15 Earnings Guidance Basis Representation and the 30 October FY15 Earnings Guidance Basis Representation) (**November FY15 Earnings Guidance Basis Representation**).~~

~~**Particulars**~~

~~*The November Representations were partly express and partly implied:*~~

~~*i. The November FY15 Earnings Guidance Representation was implied from the statement referred to in paragraph 115(b);*~~

~~*ii. The November FY15 Earnings Guidance Basis Representation is to be implied from the November FY15 Earnings Guidance Representation and the absence of any disclosure to the contrary.*~~

~~*The November FY15 Earnings Guidance Representation and the November FY15 Earnings Guidance Basis Representation is a representation as to a future matter, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*~~

~~**E.10**~~ *E2.5 The 4 December Announcement*

116. On 2 December 2014, Vocation entered into a further trading halt on the ASX (**Second Trading Halt**).

117. On 4 December 2014, Vocation lodged with the ASX and publically released an announcement entitled *“Market Update”* (**4 December Announcement**).

118. By the 4 December Announcement Vocation expressly stated and disclosed to the ASX for the first time that:

(a) Vocation had conducted a review of its operating performance and had assessed the further impact of the DEECD Settlement, and now expected its EBITDA for FY15 to be between $25m and $30m, compared to the guidance of $53m to $57m announced in the 27 October Announcement;

(b) Since the DEECD Settlement:

(i) Vocation had experienced a deterioration in enrolment volumes, particularly from its Victorian operations and the “MyVocation” initiative;

(ii) Vocation had:

(A) discontinued its relationship with some brokers;

(B) Vocation had experienced significantly lower student enrolments from its referrer network, and these factors "impact revenue from our Vocational Education and Training business" ;

(iii) as part of the recent changes to our business since the DEECD settlement, Vocation had taken into account the evolving views of industry regulators regarding the use of third party providers;

(iv) Vocation had moved to an in-house model (instead of a model using third party providers) with reduced regulatory risk.

(c) a "breakdown of [Vocation's] revised guidance" was as set out in the table below:

	FY14	Prior FY15*	Revised FY15*
Higher Education	11.0	16.0	14.8
Diplomas	1.0	14.0	4.5
Cert I-IV & Corporate	45.0	25.0	8.2
Total Statutory EBITDA	**57.0**	**55.0**	**27.5**
* Reflects the midpoint of guidance range			

(d) The key factors informing the difference between the guidance provided by the 27 October Announcement and that provided by the 4 December Announcement included:

(i) loss of referral partners to the VET FEE-HELP business due to negative sentiment following the DEECD Settlement;

(ii) loss of momentum in Victorian enrolments resulting from the negative sentiment following the DEECD Settlement;

(e) Vocation had incurred "[o]ne off costs in excess of $10m (which have impacted the H1 statutory EBITDA) which includes the impact of the DEECD settlement, redundancies and other advisor costs".

119. Following the release of the 4 December Announcement, the price of Vocation Securities fell, from a closing price of $0.50 on 2 December 2014 (when the Second Trading Halt commenced), to a closing price of $0.20 on 4 December 2014, being a decline of approximately 62%.

F. PROSPECTUS CONTRAVENTIONS

F.1 Introduction

120. The Replacement Prospectus was:

(a) an offer of securities within the meaning of s 706 of the Corporations Act;

(b) a prospectus within the meaning of s 710 of the Corporations Act;

(c) a disclosure document within the meaning of s 728 of the Corporations Act.

121. Vocation was a person making an offer of securities under the Replacement Prospectus (namely the Offer), within the meaning of s 728 and s 729(1) (Table, Item 1) of the Corporations Act.

F.2 Misleading statements in the Replacement Prospectus

122. Vocation did not have reasonable grounds for making the First Prospectus Compliance Statement, within the meaning of s 728(2) of the Corporations Act.

Particulars

i) Paragraphs ~~0~~ 43A to 47, 50 to 51C, 51F to 51J, 52 and 59 to 60 are repeated.

ii) If Vocation had had a "proven model of … systems and compliance support", then the BAWM Non-Compliant Conduct, TTS-100 Non-Compliant Conduct, AVANA Non-Compliant Conduct and/or Systemic Non-Compliant Conduct would not have existed.

iii) The absence of reasonable grounds can also be inferred from the terms of the 27 October Announcement and 30 October Announcement. If Vocation's systems and processes were capable of ensuring it fulfilled its compliance obligations, then:

A) the BAWM Conduct would not have been able to continue, so as to be BAWM Non-Compliant Conduct;

B) the TTS-100 Conduct would not have been able to continue, so as to be TTS-100 Non-Compliant Conduct;

C) the AVANA Conduct would not have been able to continue, so as to be AVANA Non-Compliant Conduct;

D) the Systemic Conduct would not have been able to continue, so as to be Systemic Non-Compliant Conduct;

iv) The absence of reasonable grounds can also be inferred from the terms of the 27 October Announcement and 30 October Announcement. If Vocation's systems and processes were capable of ensuring it fulfilled its compliance obligations:~~, then the BAWM Conduct would not have been able to continue, so as to be BAWM Non-Compliant Conduct.~~

A) the BAWM Conduct would have been stopped prior to the DEECD Review;

B) the TTS-100 Conduct and AVANA Conduct would not have been able to have occurred and been unreported on amongst Vocation's officers until some time after the Initial Public Offering, in relation to which the Applicant refers to VOC.001.012.4525, in which Bonnici said: "Also, I have been made aware of a significant issues [sic] in relation to avana's compliance. These are akin to Brett's non disclosures [being a reference to the conduct of TTS-100 referred to in paragraphs 51 to 51A above] and require investigation. It is alleged that Jonny did not disclose an internal (conducted by external auditors) audit report completed just weeks before float that reported significant Non compliances" (VOC.001.012.4525 at .4526).

123. By reason of the matters pleaded in paragraphs ~~0 to~~ 47 and/or ~~51 to 0,~~51C and/or 51J and/or 52, as at the time of the Replacement Prospectus ~~it was not the case that~~:

(a) BAWM, Aspin or other Vocation subsidiaries had engaged in, and were engaging in, Non-Compliant Conduct;

(b) the Non-Compliant Conduct which had been, and was, engaged in by BAWM, and other Vocation subsidiaries was either in isolation, or in combination, material; and

(c) Vocation's management was ~~not~~ aware of ~~any material~~ instances of non-compliance by Vocation's RTOs, namely the BAWM Non-Compliant Conduct, the TTS-100 Non-Compliant Conduct and the AVANA Non-Compliant Conduct.

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Particulars of subparagraph (c)

i) Bonnici was aware of the BAWM Non-Compliant Conduct in her capacity as Managing Director of BAWM, with such knowledge also being attributed to Vocation from its incorporation by reason of her becoming a Vocation Senior Manager as pleaded in paragraph 16(b).

ii) Langtree was aware of the BAWM Non-Compliant Conduct in his capacity as Executive Director and Chief Financial Officer of BAWM, with such knowledge also being attributed to Vocation from its incorporation by reason of his becoming a Vocation Senior Manager as pleaded in paragraph 16(b).

iii) Whitford was aware of the TTS-100 Non-Compliant Conduct, in his capacity as Executive Director of CSIA (the holding company of TTS-100), with such knowledge also being attributed to Vocation from its incorporation by reason of him becoming a Vocation Senior Manager as pleaded in paragraph 16(b).

iv) Smuskowitz was aware of the AVANA Non-Compliant Conduct in his capacity as Commercial Director of AVANA, with such knowledge also being attributed to Vocation from its incorporation by reason of him becoming a Vocation Senior Manager as pleaded in paragraph 16(b).

v) Hutchinson was aware of the AVANA Non-Compliant Conduct in his capacity as Chief Executive Officerof AVANA, with such knowledge also being attributed to Vocation from its incorporation by reason of him becoming a Vocation Director as pleaded in paragraph 16(a).

vi) By reason of (i) to (iv) above, each of Bonnici, Langtee, Whitford, Smuskowitz and Hutchinson was aware of instances of non-compliance by Vocation's RTOs.

123A. By reason of the matters pleaded in:

(a) paragraphs 47, 51, 51J, 52 and/or 123;

(b) further or alternatively, paragraphs 48, 51A, 51K and/or 53;

(c) further or alternatively, paragraphs 49, 51B, 51L and/or 54,

it was likely, or there was a material risk, that DEECD Enforcement Action in respect of Government Contracts held by BAWM and/or other Vocation subsidiaries would be taken which was likely to, or there was a material risk would, cause or result in a material adverse effect on Vocation's revenue and/or material adverse effect on the reputation of Vocation or its brands.

124. Vocation did not have reasonable grounds for making the Prospectus Guidance Representations, within the meaning of s 728(2) of the Corporations Act.

Particulars

A lack of reasonable grounds is to be inferred from:

i. the matters set out in paragraphs 35, 36, 44 to 53, and 129 to 130;

ii. the fact that the FY14 Guidance Statement and calculation of the value of Vocation's goodwill set out in the Goodwill Statement were based on the continuation of the then business practices in place at each of the Founding Companies and the matters set out in paragraphs 18, 25, 26, 37, 39 and 40, in relation to which the Applicant refers to the Replacement Prospectus pp. 52, 58, 61, 67, 68, and 136, which stated that:

A) The Forecast Financial Information has been derived from the statutory consolidated forecast income and cash flow statements of Vocation for FY14 after adjusting for the Merger and other adjustments to reflect Vocation's operations following Completion of the Offer and to eliminate non-recurring items as set out in Sections 4.3.2 and 4.5.1 (p.52);

B) Vocation expects that its opening cash and operating cash flows, will position Vocation to grow its business in accordance with the Forecast Financial Information (p.58);

C) Enterprise revenue will be generated from the delivery of education and training services to employees of Australian corporate and government clients. Training provided under *the Enterprise model ranges from the provision of a standardised course to the development and delivery of a customised internal training academy solution that covers the learning and development needs of an entire organisation;*

D) *The key drivers of Enterprise revenue are the number of students who enrol in Vocation courses, the number of students who complete the particular competencies required of that course and the revenue per course (or unit of competency) undertaken (p.60);*

E) *The Forecast Financial Information is based on various best estimate assumptions concerning future events, including those set out below. In preparing the Forecast Financial Information, Vocation has undertaken an analysis of historical performance and applied assumptions in order to predict future performance for FY2014. Vocation believes that it has prepared the Forecast Financial Information with due care and attention and considers all assumptions when taken as a whole to be reasonable at the time of preparing this Prospectus, including each of the general assumptions set out in Section 4.7.1 (p.67);*

F) *There had been no material change in the competitive operating environment in which Vocation operates;*

G) *There had been no material changes in Commonwealth, state or territory government legislation, tax legislation, regulatory legislation, regulatory requirements or government policy that will have a material impact on the financial performance or cash flows, financial position, accounting policies, financial reporting or disclosure of Vocation;*

H) *State and territory government funding arrangements for the VET sector, and/or Vocation, other than contemplated in this Prospectus that have a material impact on the financial performance or cash flows, financial position, accounting policies, financial reporting or disclosure of Vocation;*

I) *There had been no material amendment to any material agreement or arrangement relating to Vocation's business other than set out in, or contemplated by, this Prospectus;*

J) *None of the risks listed in Section 5 has a material adverse impact on the operations of Vocation;*

K) *There were no cost or revenue synergies arising from the formation of Vocation;*

L) *Vocation's forecast for the nine months ending 30 June 2014 also has regard to the current trading performance of*

Vocation up until the date of lodgement of this Prospectus (p.68);

M) Goodwill and intangible assets that have an indefinite useful life are not subject to amortisation and are tested annually for impairment, or more frequently if events or changes in circumstances indicate that they might be impaired (p.136), and thus Vocation should have been aware that the DEECD regulatory focus could negatively impact future cashflows therefore requiring an impairment test, as required under its accounting policies;

ii. *the fact that the FY14 Guidance Statement and calculation of the value of Vocation's goodwill set out in the Goodwill Statement were based on an assumption of significant growth in enrolments, and hence revenue, from each of Vocation's intended business channels, and the other matters set out in paragraphs 18, 25, 26, 37, 39 and 40, as to which the Applicant refers to the Replacement Prospectus pp. 70, 71 and 72:*

A) 'The forecast growth is primarily attributable to expected growth in the volume of students trained across the three business channels, and to a lesser extent, the favourable impact of higher average revenue per new course enrolment.

B) Of the $26.5 million Enterprise revenue growth forecast, approximately $17.4 million is forecast from a growth in new course enrolments…

C) Enterprise new course enrolments are forecast to increase by 64.0% to 16,759 in FY2014 (p.70).

D) Of the $15.5 million Direct revenue growth forecast, approximately $16.0 million is forecast from expected growth in new course enrolments (in particular, continued growth in the Building Brighter Futures program, introduction of Career Direct and growth in AVANA Sky), partially offset by a forecast decline in average revenue per new course enrolment (p.71).

E) Of the $17.1 million forecast growth in Solutions revenue, approximately $16.0 million is forecast to be generated from expected growth in new course enrolments, with the balance attributed to an expected favourable change in average revenue per new course enrolment. (p.72)'.

iv. The Applicant also refers to and relies upon s 769C of the Corporations Act and s 12BB of the ASIC Act.

~~*Further particulars may be provided following the completion of discovery and before the initial trial.*~~

125. By reason of the matters pleaded in paragraph 122, the First Prospectus Compliance

Statement was misleading or deceptive.

126. By reason of the matters pleaded in :

(a) paragraph 123, the Second Prospectus Compliance Statement (and the First Prospectus Compliance Representation); and

(b) paragraphs 123 and/or 123A, the Second Prospectus Compliance Representation,

was misleading or deceptive.

127. By reason of the matters pleaded in paragraph 124, each of the Prospectus Guidance Representation and the Prospectus Guidance Basis Representation was misleading or deceptive.

128. By reason of the matters pleaded in paragraphs 125 and/or 126 and/or 127 the Replacement Prospectus contained a misleading or deceptive statement, within the meaning of s 728(1)(a)(i) of the Corporations Act (**Prospectus Misleading Statements**).

F.3 Omissions from the Replacement Prospectus

129. As at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained the ~~following~~ information~~: (a)~~ that BAWM had engaged, or was engaging, in the BAWM Conduct (**BAWM Conduct Information**).

Particulars

i) Vocation ought reasonably to have obtained the BAWM Conduct Information by making inquiries of Bonnici and Langtree, in respect of whom the Applicant repeats paragraphs 14(c), 14(d), 16(b)(i), 16(b)(iii) and 17(c), and refers to Replacement Prospectus pp.86-87, and further repeats Particulars (i) and (ii) to paragraph 123 above.

ii) The inquiries referred to in (i) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.

iii) Alternatively, Vocation ought have obtained the BAWM Conduct Information by obtaining independent advice in relation to the compliance measures that had been, or were to be, adopted *across the Vocation businesses (including BAWM), which independent review would have ascertained and reported the BAWM Conduct Information to Vocation.*

129A. As at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained the information that the BAWM Conduct was Non-Compliant Conduct (**BAWM Conduct Non-Compliance Information**).

Particulars

i) *Vocation ought on inquiry to have known of the BAWM Conduct Information referred to in paragraph 129, and the particulars to paragraph 129 are repeated.*

ii) *Vocation ought reasonably to have obtained the BAWM Conduct Non-Compliance Information, by reason of the fact it ought to have obtained the BAWM Conduct Information, and having that information ought as part of its inquiries to have known the BAWM Conduct was Non-Compliant Conduct, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, so as to be able to work out the matters pleaded in paragraph 47 (and paragraphs 45I(a), 45K(a), 45M(a), 45O(a)) and 45Q(a)).*

iii) *The inquiries referred to in (i) to (ii) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.*

iv) *Alternatively, Vocation ought to have obtained the BAWM Conduct Non-Compliance Information by obtaining independent advice in relation to the compliance measures that had been, or were to be, adopted across the Vocation businesses (including BAWM), which independent review would have ascertained and reported the BAWM Conduct Information to Vocation.*

129B. As at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained the information referred to in paragraph 45D and 45E, (**BAWM Historical Non-Compliance Information**).

Particulars

i) *Vocation ought reasonably to have obtained the information referred to in paragraph 45D by making inquiries of Bonnici and Langtree, in respect of whom the Applicant repeats paragraphs 14(c), 14(d), 16(b)(i), 16(b)(iii) and 17(c), and/or by scrutinising the records of BAWM which contained records of each of the 2012*

AQTF BAWM Audit Report pleaded in paragraph 43B, the letter referred to in paragraph 43C, the 2013 VRQA BAWM Audit Report pleaded in paragraph 45, the 2013 AQTF Further BAWM Audit Report, and so ought to have become aware of this information.

ii) Vocation ought reasonably to have obtained the information referred to in paragraph 45E by reason of the fact it ought on inquiry to have obtained the information referred to in paragraph 45D, and having that information ought to have known that the non-compliances were material, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms.

iii) The inquiries referred to in (i) to (ii) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.

iii) Alternatively, Vocation ought have obtained the BAWM Historical Non-Compliance Information by obtaining independent advice in relation to the compliance measures that had been, or were to be, adopted across the Vocation businesses (including BAWM), which independent review would have ascertained and reported the BAWM Conduct Information to Vocation.

129C. Further, or alternatively to paragraph 129A, as at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained information ~~(b)~~ that:

(i) the BAWM Conduct Non-Compliance Risk existed; and/or

(ii) the BAWM Conduct Non-Compliance Consequences Risk existed;~~ and/or~~

(**BAWM Conduct Risk Information**)

Particulars

i) Vocation ought on inquiry to have known of the BAWM Conduct Information referred to in paragraph 129, and the particulars to paragraph 129 are repeated.

ii) Vocation ought reasonably to have obtained the BAWM Conduct Risk Information, by reason of the fact it ought to have obtained the BAWM Conduct Information, and having that information ought as part of its inquiries to have known of the risk that the BAWM Conduct was Non-Compliant Conduct, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract

Primary Terms and Relevant Contract Enforcement Terms, so as to be able to work out the matters pleaded in paragraphs 48 and 49 (and paragraphs 45I(b), 45K(b), 45M(b), 45O(b) and 45Q(b)).

iii) *Further, or alternatively if Vocation also ought reasonably have known both the BAWM Conduct Information and the BAWM Historical Non-Compliance Information (and the particulars to paragraphs 129 and 129B are repeated), then this would have increased the perception that would have arisen on inquiry that the BAWM Conduct Risk Information existed, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had the familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, so as to be able to work out the matters pleaded in paragraphs 48 and 49 (and paragraphs 45I(b), 45K(b), 45M(b), 45O(b) and 45Q(b)), and ought to have worked out that such risk existed by reason of the past regulatory investigations the subject of the BAWM Historical Non-Compliance Information.*

iv) *The inquiries referred to in (i) to (iii) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.*

129D. Further to paragraphs 129A and/or 129B and/or 129C, as at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained information that: ~~(iii)~~ there was a likelihood, or material risk that DEECD Enforcement Action in respect of BAWM Government Contracts ~~might~~ would be taken which was likely to, or there was a material risk ~~might~~ would, cause or result in:

(a) ~~(A)~~ a material adverse effect on Vocation's revenue which was derived from BAWM (or businesses operated by BAWM); and/or

(b) ~~(B)~~ a material adverse effect on the reputation of Vocation and BAWM or their brands~~; and/or~~,

(each, **BAWM Conduct Further Risk Information**).

Particulars

i) *Vocation ought on inquiry to have known of the BAWM Conduct Information referred to in paragraph 129, and the particulars to paragraph 129 are repeated.*

ii) *Vocation ought on inquiry to have known of the BAWM Conduct Non-Compliance Information referred to in paragraph 129A (and the particulars to paragraph 129A are repeated), and/or the*

BAWM Conduct Risk Information (and the particulars to paragraph 129C are repeated).

iii) Vocation ought on inquiry to have known of the significance of BAWM to the combined Vocation business, by reason of the matters pleaded in paragraphs 39 to 42 (and the particulars thereto are repeated), which matters ought to have on inquiry led Vocation to be aware that the matters referred to in particulars (i) and (ii) would cause the effects pleaded in sub-paragraph 129D, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, as well as the significance of BAWM in that context.

iv) Further, If Vocation also ought reasonably have known the BAWM Historical Non-Compliance Information (and the particulars to paragraphs 129 and 129B are repeated), then this would have increased the perception that would have arisen on inquiry that the BAWM Conduct Further Risk Information existed, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had the familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, so as to be able to work out the matters pleaded in paragraphs 48 and 49 (and paragraphs 45I(b), 45K(b), 45M(b), 45O(b) and 45Q(b)), and ought to have worked out that such risk or likelihood existed by reason of the past regulatory investigations the subject of the BAWM Historical Non-Compliance Information.

v) The inquiries referred to in (i) to (iv) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.

129E. Further to paragraphs 129A and/or 129B and/or 129C and/or 129D, as at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained information that: ~~(iv)~~ there was a likelihood, or material risk that ~~Vocation~~ BAWM would need to change its business model in Victoria by:

(a) ~~(A)~~ discontinuing or significantly reducing the use of ~~a~~Auspicing arrangements;

(b) ~~(B)~~ further or alternatively, discontinuing or significantly reducing its use of ~~b~~Broking arrangements,

(~~each,~~ **BAWM Conduct ~~Risk~~ Business Implication Information**).

Particulars

i) *Vocation ought on inquiry to have known of the BAWM Conduct Information referred to in paragraph 129, and the particulars to paragraph 129 are repeated.*

ii) *Vocation ought on inquiry to have known of the BAWM Conduct Non-Compliance Information referred to in paragraph 129A (and the particulars to paragraph 129A are repeated), and/or the BAWM Conduct Risk Information (and the particulars to paragraph 129C are repeated).*

iii) *Vocation ought on inquiry to have known of the BAWM Conduct Further Risk Information, and the particulars to paragraph 129D are repeated.*

iv) *Vocation ought on inquiry to have known of the significance of Broking and Auspicing to Vocation business, by reason of the matters pleaded in paragraphs 38 (and the particulars thereto are repeated).*

v) *Vocation ought on inquiry to have known of the regulatory focus of DEECD, by reason of the matters pleaded in paragraphs 35 and 36.*

vi) *The matters set out in (i) to (v) above, ought to have on inquiry led Vocation to be aware of the BAWM Conduct Business Implication Information by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, as well as the significance of Auspicing and Broking to Vocation.*

vii) *Further, If Vocation also ought reasonably have known the BAWM Historical Non-Compliance Information (and the particulars to paragraphs 129 and 129B are repeated), then this would have increased the perception that would have arisen on inquiry that the BAWM Conduct Business Implication Information existed, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, so as to be able to work out the matters pleaded in paragraphs 48 and 49 (and paragraphs 45I(b), 45K(b), 45M(b), 45O(b) and 45Q(b)), and ought to have worked out that such risk or likelihood existed by reason of the past regulatory investigations the subject of the BAWM Historical Non-Compliance Information.*

viii) *The inquiries referred to in (i) to (vii) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.*

129F. As at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained information ~~(b)~~ that Vocation (and/or the Founding Companies and/or subsidiaries of the Founding Companies) had engaged, or was engaging, in the Systemic Conduct ~~Issues existed~~ (**Systemic Conduct Information**).~~:~~

Particulars

i) The Systemic Conduct Information is a combination of information relating to BAWM, TTS-100 and/or AVANA, and:

A) Insofar as Vocation ought reasonably to have obtained the information so far as it related to BAWM, the Applicant repeats paragraph 129 above concerning how Vocation ought have made inquiries so as to be aware of the BAWM Conduct Information;

B) Insofar as Vocation ought reasonably to have obtained the information so far as it related to TTS-100:

I) the information is that the TTS-100 Conduct existed; and

II) Vocation ought to have made inquiries of Whitford, in respect of whom the Applicant repeats paragraphs 15(b), 16(b)(iv), 17(d) refers to Replacement Prospectus pp.86-87, and further repeats Particular (iii) to paragraph 123 above; and

C) Insofar as Vocation ought reasonably to have obtained the information so far as it related to AVANA:

I) the information is that the AVANA Conduct existed; and

II) Vocation ought reasonably to have obtained the information so far as it related to AVANA, by making inquiries of Smuskowitz, in respect of whom the Applicant repeats paragraph 13(d), 16(b)(ii), 17(b), and refers to Replacement Prospectus pp.86-87, and further repeats Particular (iv) to paragraph 123 above.

ii) The inquiries referred to in (i) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.

iii) Alternatively, Vocation ought have obtained the Systemic Conduct Information by obtaining independent advice in relation to the compliance measures that had been, or were to be, adopted across the Vocation businesses (including BAWM), which independent review would have ascertained and reported the BAWM Conduct Information to Vocation.

129G. As at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained the information that the Systemic Conduct was Non-Compliant Conduct (**Systemic Conduct Non-Compliance Information**).

Particulars

i) The Systemic Conduct Non-Compliance Information is a combination of information relating to BAWM, TTS-100 and/or AVANA, and:

A) Insofar as Vocation ought reasonably to have obtained the information so far as it related to BAWM, the Applicant repeats paragraph 129A above concerning how Vocation ought have made inquiries so as to be aware of the BAWM Conduct Non-Compliance Information;

B) Insofar as Vocation ought reasonably to have obtained the information so far as it related to TTS-100:

I) Vocation ought on inquiry to have known of the TTS-100 Conduct, and Particular (i)(B) to paragraph 129F is repeated' and

II) By reason of the fact it ought to have obtained the information referred to in (I), and having that information, Vocation ought as part of its inquiries to have known the TTS-100 Conduct was Non-Compliant Conduct, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, so as to be work out the matters pleaded in paragraph 51C (and paragraph 51B(a)).

C) Insofar as Vocation ought reasonably to have obtained the information so far as it related to AVANA:

I) Vocation ought on inquiry to have known of the AVANA Conduct, and Particular (i)(C) to paragraph 129F is repeated' and

II) By reason of the fact it ought to have obtained the information referred to in (I), and having that information, Vocation ought as part of its inquiries to have known the AVANA Conduct was Non-Compliant Conduct, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, so as to be able to work out the matters pleaded in paragraph 51J (and paragraph 51I(a)).

ii) The inquiries referred to in (i) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.

iii) Alternatively, Vocation ought have obtained the Systemic Conduct Non-Compliance Information by obtaining independent advice in relation to the compliance measures that had been, or were to be, adopted across the Vocation businesses (including BAWM), which independent review would have ascertained and reported the BAWM Conduct Information to Vocation.

129H. As at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained the information that immediately prior to the Initial Public Offering of Vocation Securities, several of the Founding Companies (and/or their subsidiaries) had been in non-compliance with (and had been found upon audits being conducted to be in non-compliance with) the Relevant National RTO Standards and Relevant Victorian Guidelines, (**Systemic Historical Non-Compliance Information**).

Particulars

i) The Systemic Historical Non-Compliance Information is a combination of information relating to BAWM, TTS-100 and/or AVANA, and:

A) Insofar as Vocation ought reasonably to have obtained the information so far as it related to BAWM, the Applicant repeats paragraph 129B above concerning how Vocation ought have made inquiries so as to be aware of the BAWM Historical Non-Compliance Information;

B) Insofar as Vocation ought reasonably to have obtained the information so far as it related to TTS-100, the Applicant says that it ought have obtained the information referred to in paragraphs 50 to 51, by making inquiries of Whitford in respect of whom the Applicant repeats paragraphs 15(b), 16(b)(iv), 17(d) and/or by scrutinising the records of CSIA and TTS-100 which would contain records of the then current audit TTS-100 Audit pleaded in paragraps 50 and 51, and inquiries ought to have been made of the Whitford and/or the auditor as to whether the auditor's report was likely to report non-compliance, and so ought have become aware of this information; and/or

C) Insofar as Vocation ought reasonably to have obtained the information so far as it related to AVANA, the Applicant says that it ought have obtained the information referred to in paragraphs 51F to 51J, by making inquiries of Smuskowitz in respect of whom the Applicant repeats paragraph 13(d), 16(b)(ii), 17(b), and/or by scrutinising the records of AVANA *which would contain records of the AVANA Audit pleaded in paragraph 51F and the AVANA Audit report pleaded in paragraph 51G, and so ought have become aware of this information,*

and upon obtaining that information ought to have known that the non-compliances were material, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms.

ii) The inquiries referred to in (i) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.

iii) Alternatively, Vocation ought have obtained the Systemic Historical Non-Compliance Information by obtaining independent advice in relation to the compliance measures that had been, or were to be, adopted across the Vocation businesses (including BAWM), which independent review would have ascertained and reported the BAWM Conduct Information to Vocation.

129I. Further, or alternatively to paragraph 129G, as at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained information ~~(c)~~ that:

(i) the Systemic ~~Conduct Non-Compliance Risk~~ Non-Compliant Conduct Risk existed; and/or

(ii) the **Systemic ~~Conduct Non-Compliance~~ Non-Compliant Conduct Consequences Risk** existed; ~~and/or~~

(each, **Systemic Conduct Risk Information**).

Particulars

i) Vocation ought on inquiry to have known of the Systemic Conduct Information referred to in paragraph 129F, and the particulars to paragraph 129F are repeated.

ii) Vocation ought reasonably to have obtained the Systemic Conduct Risk Information, by reason of the fact it ought to have obtained the Systemic Conduct Information, and having that information ought as part of its inquiries to have known of the risk that the Systemic Conduct was Non-Compliant Conduct, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian

Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, so as to work out the matters pleaded in paragraphs 48 and 49 (and paragraphs 45I(b), 45K(b), 45M(b), 45O(b) and 45Q(b)), paragraphs 51D and 51E (and paragraph 51B(b)), and/or paragraphs 51K and 51L (and paragraph 51I(b)).

iii) *Further, or alternatively if Vocation also ought reasonably have known both the Systemic Conduct Information and the Systemic Historical Non-Compliance Information (and the particulars to paragraphs 129G and 129H are repeated), then this would have increased the perception that would have arisen on inquiry that the Systemic Conduct Risk Information existed, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, so as to work out the matters pleaded in paragraphs 48 and 49 (and paragraphs 45I(b), 45K(b), 45M(b), 45O(b) and 45Q(b)), paragraphs 51D and 51E (and paragraph 51B(b)), and/or paragraphs 51K and 51L (and paragraph 51I(b)), and ought to have worked out that such risk existed by reason of the past regulatory investigations the subject of the Systemic Historical Non-Compliance Information.*

iv) *The inquiries referred to in (i) to (iii) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.*

129J. Further to paragraphs 129G and/or 129H and/or 129I, as at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained information that: ~~(iii)~~ there was a likelihood, or material risk that DEECD Enforcement Action in respect of government contracts of Vocation (and/or the Founding Companies, further or alternatively subsidiaries of the Founding Companies)) ~~might~~ would be taken which was likely to, or there was a material risk ~~might~~ would cause or result in:

(a) ~~(A)~~ a material adverse effect on Vocation's revenue; and/or

(b) ~~(B)~~ a material adverse effect on the reputation of Vocation and its brands,

(each, **Systemic Conduct Further Risk Information**).

Particulars

i) *Vocation ought on inquiry to have known of the Systemic Conduct Information referred to in paragraph 129F, and the particulars to paragraph 129F are repeated.*

ii) Vocation ought on inquiry to have known of the Systemic Conduct Non-Compliance Information referred to in paragraph 129G (and the particulars to paragraph 129G are repeated), and/or the Systemic Conduct Risk Information (and the particulars to paragraph 129I are repeated).

iii) Vocation ought on inquiry to have known of:

A) the significance of BAWM to the combined Vocation business, by reason of the matters pleaded in paragraphs 39 to 42 (and the particulars thereto are repeated);

B) the significance of each of CSIA and AVANA to the combined Vocation business, and paragraphs 15(d) and 13(e) are repeated; and

C) the significance of the combination of BAWM, CSIA and AVANA – being the three constituent elements of the combined Vocation business,

which matters ought to have on inquiry led Vocation to be aware that the matters referred to in particulars (i) and (ii) would cause the effects pleaded in sub-paragraph 129J, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms.

iv) Further, if Vocation also ought reasonably have known the Systemic Historical Non-Compliance Information (and the particulars to paragraphs 129F and 129H are repeated), then this would have increased the perception that would have arisen on inquiry that the Systemic Conduct Further Risk Information existed, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had the familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, so as to work out the matters pleaded in paragraphs 48 and 49 (and paragraphs 45I(b), 45K(b), 45M(b), 45O(b) and 45Q(b)), paragraphs 51D and 51E (and paragraph 51B(b)), and/or paragraphs 51K and 51L (and paragraph 51I(b)),, and ought to have worked out that such risk or likelihood existed by reason of the past regulatory investigations the subject of the Systemic Historical Non-Compliance Information.

v) The inquiries referred to in (i) to (iv) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.

129K. Further to paragraphs 129G and/or 129H and/or 129I and/or 129J, as at the date of the Replacement Prospectus, Vocation ought reasonably to have, by making inquiries, obtained information that: ~~(iv)~~ there was a likelihood, or material risk that Vocation would need to change its business model in Victoria by:

(a) ~~(A)~~ discontinuing or significantly reducing the use of ~~a~~Auspicing arrangements;

(b) ~~(B)~~ further or alternatively, discontinuing or significantly reducing its use of ~~b~~Broking arrangements,

(each, **Systemic Conduct ~~Risk~~ Business Implication Information**).

Particulars

i) Vocation ought on inquiry to have known of the Systemic Conduct Information referred to in paragraph 129F, and the particulars to paragraph 129F are repeated.

ii) Vocation ought on inquiry to have known of the Systemic Conduct Non-Compliance Information referred to in paragraph 129G (and the particulars to paragraph 129G are repeated), and/or the Systemic Conduct Risk Information (and the particulars to paragraph 129I are repeated).

iii) Vocation ought on inquiry to have known of the BAWM Conduct Further Risk Information, and the particulars to paragraph 129D are repeated.

iv) Vocation ought on inquiry to have known of the significance of Broking and Auspicing to Vocation business, by reason of the matters pleaded in paragraphs 38 (and the particulars thereto are repeated)~~-~~.

v) Vocation ought on inquiry to have known of the regulatory focus of DEECD, by reason of the matters pleaded in paragraphs 35 and 36.

vi) The matters set out in (i) to (v) above, ought to have on inquiry led Vocation to be aware of the Systemic Conduct Business Implication Information by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have had familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, as well as the significance of Auspicing and Broking to Vocation.

~~iv~~ vii) Further, if Vocation also ought reasonably have known the Systemic Historical Non-Compliance Information (and the particulars to paragraphs 129F and 129H are repeated), then this would have increased the perception that would have arisen on inquiry that the Systemic Conduct Further Risk Information existed, by reason that any person who was to assume the role of a Vocation Director or Vocation Senior Manager ought to have

had the familiarity with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, so as to work out the matters pleaded in paragraphs 48 and 49 (and paragraphs 45I(b), 45K(b), 45M(b), 45O(b), and 45Q(b)), paragraphs 51D and 51E (and paragraph 51B(b)), and/or paragraphs 51K and 51L (and paragraph 51I(b)), and ought to have worked out that such risk or likelihood existed by reason of the past regulatory investigations the subject of the Systemic Historical Non-Compliance Information.

viii) The inquiries referred to in (i) to (vii) above ought to have been made by each of the persons who would assume a role as Vocation Directors or Vocation Senior Managers, and ought to have been made prior to the Replacement Prospectus being issued, as part of the due diligence process or otherwise.

~~*Vocation ought reasonably to have obtained the information referred to in (a) and (b) by making inquiries of Bonnici and Langtree:*~~

~~*i. in respect of whom the Applicant:*~~

~~*A. repeats paragraphs 14(c), 14(d), 16(b)(i), 16(b)(iii) and 17(c);*~~

~~*B. refers to Replacement Prospectus pp.86-87*~~

~~*ii. in circumstances where:*~~

~~*A. the BAWM Conduct Information was known to Bonnici and Langtree by reason of their respective capacities as directors and officers of BAWM.*~~

~~*B. The BAWM Conduct Risk Information ought reasonably to have been known by Bonnici and Langtree, by reason of the familiarity they ought to have had with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, in their respective capacities as directors and officers of BAWM.*~~

~~*Further, Vocation ought reasonably to have obtained the information referred to in (a) to (d) by making inquiries into the operations of each of the Founding Companies (including BAWM and CSIA) before they agreed to the Merger, which inquiries:*~~

~~*i. would have revealed the BAWM Conduct Information and/or the Systemic Conduct Information; and*~~

~~*ii. would, when combined with the familiarity they had, or ought reasonably to have had, with Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, in their respective capacities as directors and officers of Vocation,*~~

~~*being an entity the business of which was as pleaded in paragraph 18 (or its Founding Companies), have revealed the BAWM Conduct Risk Information and/or the Systemic Conduct Risk Information.*~~

130. At all material times the BAWM Conduct Information, BAWM Conduct Non-Compliance Information, BAWM Historical Non-Compliance Information, ~~and~~ BAWM Conduct Risk Information, BAWM Conduct Further Risk Information and/or BAWM Conduct Business Implication Information was (by reason of the matters pleaded in paragraphs 42 and 43) information that was:

(a) BAWM Adverse Financial Impact Information;

(b) BAWM Adverse Reputational Impact Information;

(c) by reason of subparagraphs (a) and/or (b):

(i) Vocation Adverse Financial Impact Information;

(ii) Vocation Adverse Reputational Impact Information; and

(iii) Vocation Relevant Information.

130A. At all material times the Systemic Conduct Information, Systemic Conduct Non-Compliance Information, Systemic Historical Non-Compliance Information, Systemic Conduct Risk Information, Systemic Conduct Further Risk Information and/or Systemic Conduct Business Implication Information was:

(a) Vocation Adverse Financial Impact Information;

(b) Vocation Adverse Reputational Impact Information; and

(c) Vocation Relevant Information.

131. By reason of the matters pleaded in paragraphs 129 to 130A, s 710 of the Corporations Act required the Replacement Prospectus to contain:

(a) the BAWM Conduct Information;

(b) the BAWM Conduct Non-Compliance Information;

(c) the BAWM Historical Non-Compliance Information;

(d) the BAWM Conduct Risk Information;

(e) the BAWM Conduct Further Risk Information;

(f) the BAWM Conduct Business Implication Information;

(g) the Systemic Conduct Information;

(h) the Systemic Conduct Non-Compliance Information;

(i) the Systemic Historical Non-Compliance Information;

(j) the Systemic Conduct Risk Information;

(k) the Systemic Conduct Further Risk Information; and/or

(l) the Systemic Conduct Business Implication Information.

132. The Replacement Prospectus did not contain any statement disclosing:

(a) the BAWM Conduct Information;

(b) the BAWM Conduct Non-Compliance Information;

(c) the BAWM Historical Non-Compliance Information;

(d) the BAWM Conduct Risk Information~~.~~;

(e) the BAWM Conduct Further Risk Information;

(f) the BAWM Conduct Business Implication Information;

(g) the Systemic Conduct Information; ~~and~~

(h) the Systemic Conduct Non-Compliance Information;

(i) the Systemic Historical Non-Compliance Information;

(j) the Systemic Conduct Risk Information;

(k) the Systemic Conduct Further Risk Information; and/or

(l) the Systemic Conduct Business Implication Information.

133. By reason of the matters pleaded in paragraphs 58 and 131 to 132, the Replacement

Prospectus contained an omission of material required by s 710 of the Corporations Act, within the meaning of s 728(1)(b) of the Corporations Act (**Prospectus Omissions**).

F.4 The Prospectus Contraventions

134. By reason of each of the Prospectus Misleading Statements and Prospectus Omissions, the Initial Public Offering under the Replacement Prospectus contravened s 728(1) of the Corporations Act (each a **Prospectus Contravention**).

135. By reason of s 729(1) of the Corporations Act, any person who suffers loss or damage by reason of a Prospectus Contravention may recover the amount of that loss or damage from Vocation, by reason of the matters pleaded in paragraph 121.

135A. Further, or alternatively, by reason ~~of each of~~ that the Replacement Prospectus contained the Prospectus Misleading Statements and omitted the material the subject of the Prospectus Omissions, Vocation engaged in conduct which was:

(a) in relation to financial products (being Vocation Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;

(c) likely to induce persons in Australia to subscribe for or purchase financial products (being Vocation Securities); and/or

(d) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law; and

(e) misleading or deceptive, or likely to mislead or deceive, in contravention of:

(i) s 1041H(1) of the Corporations Act;

(ii) s 12DA(1) of the ASIC Act; and/or

(iii) s 18 of the Australian Consumer Law,

a contravention of any of those sections being a **Vocation Prospectus Misleading Conduct Contravention**.

135B. Vocation published the Replacement Prospectus to the ASX as part of the Pre-

Quotation Disclosure, pleaded in paragraph 9(c) above, and by reason thereof, each of the Prospectus Misleading Statements were made to the market of investors and potential investors in Vocation Securities, and the substance of those representations were not amended, withdrawn or qualified the substance of those representations, such that they were thereby continuing representations from the beginning of the Relevant Period to 27 October 2014, alternatively 4 December 2014.

135C. If Vocation had disclosed:

(a) the BAWM Conduct Information;

(b) the BAWM Conduct Non-Compliance Information;

(c) the BAWM Historical Non-Compliance Information;

(d) the BAWM Conduct Risk Information;

(e) the BAWM Conduct Further Risk Information;

(f) the BAWM Conduct Business Implication Information;

(g) the Systemic Conduct Information;

(h) the Systemic Conduct Non-Compliance Information;

(i) the Systemic Historical Non-Compliance Information;

(j) the Systemic Conduct Risk Information;

(j) the Systemic Conduct Further Risk Information; and/or

(k) the Systemic Conduct Business Implication Information,

in the Replacement Prospectus, then that information would have been disclosed to the market of investors and potential investors in Vocation Securities as part of the Pre-Quotation Disclosure, pleaded in paragraph 9(c) above, but instead the omission to disclose that information continued from the beginning of the Relevant Period to 27 October 2014, alternatively 4 December 2014.

~~G. CONTINUOUS DISCLOSURE CONTRAVENTIONS~~

~~G.1 Failure to disclose the non-compliant conduct, and its implications~~

~~136. At all material times in the Relevant Period prior to 27 October 2014, Vocation had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) the following information:~~

~~(a) the BAWM Conduct Information;~~

~~(b) the BAWM Conduct Risk Information;~~

~~(c) the Systemic Conduct Information;~~

~~(d) the Systemic Conduct Risk Information.~~

~~Particulars~~

~~*i. Vocation was aware of the information within the meaning of ASX Listing Rule 19.12 prior to the implementation of the Merger, and the particulars to paragraph 129 are repeated.*~~

~~*ii. Further, from no later than the implementation of the Merger, Vocation was aware of the information within the meaning of ASX Listing Rule 19.12, because:*~~

~~*A. Bonnici and Langtree were officers of Vocation within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12, (and the particulars to paragraph 129 are repeated):*~~

~~*B. Further, officers of Vocation other than Bonnici and Langtree ought reasonably to have come into possession of the information prior to, or contemporaneously with the Merger, by reason of the familiarity they ought to have had with:*~~

~~*(i) BAWM's operations as a subsidiary of Vocation; and*~~

~~*(ii) Relevant National RTO Standards, Relevant Victorian Guidelines, Relevant Contract Primary Terms and Relevant Contract Enforcement Terms, in their respective capacities as directors and officers of Vocation, being an entity the business of which was as pleaded in paragraph 18.*~~

~~*iii. Further, from at least 3 July 2014, Vocation's awareness is to be inferred from the matters pleaded in paragraphs 59 to 64 and 143.*~~

~~iv. *Further, from the date on which the Restructure Decision was made (as defined in paragraph 102), Vocation's awareness is to be inferred from the matters pleaded in paragraphs 102 to 103.*~~

~~v. *Further, from the terms of the DEECD Settlement referred to in the 27 October 2014 Announcement.*~~

~~137. At all material times the BAWM Conduct Information and BAWM Conduct Risk Information was (by reason of the matters pleaded in paragraphs 42 and 43) information that was:~~

~~(a) BAWM Adverse Financial Impact Information;~~

~~(b) BAWM Adverse Reputational Impact Information;~~

~~(c) by reason of subparagraphs (a) and/or (b):~~

~~(i) Vocation Adverse Financial Impact Information;~~

~~(ii) Vocation Adverse Reputational Impact Information;~~

~~(iii) Vocation Material Information.~~

~~138. At all material times between the Initial Public Offering and 27 October 2014, the BAWM Conduct Information and BAWM Conduct Risk Information was not information generally available within the meaning of ss 674(2)(c) and 676 of the Corporations Act.~~

~~139. By reason of the matters pleaded in paragraphs 136 to 138, Vocation became obliged pursuant to ASX Listing Rule 3.1 to tell the ASX the BAWM Conduct Information and/or the BAWM Conduct Risk Information no later than 6 December 2013;~~

~~140. Vocation did not tell the ASX any part of the BAWM Conduct Information and/or the BAWM Conduct Risk Information prior to 27 October 2014, and did not tell the ASX the balance of that information at any time during the Relevant Period.~~

~~141. By reason of the matters pleaded in paragraph 139 to 140, Vocation contravened s 674(2) of the Corporations Act (**Vocation's First Continuous Disclosure Contravention**), and that contravention continued until 27 October 2014 and/or the end of the Relevant Period.~~

~~G.2 Failure to disclose the DEECD Investigation and its implications~~

~~142. At all material times in the Relevant Period from a date presently unknown to the Applicant no later than 3 July 2014, Vocation had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) the following information:~~

~~(a) the Identified BAWM Non-Compliance (**BAWM Identified Non-Compliance Information**);~~

~~(b) that:~~

~~(i) the BAWM Conduct Non-Compliance Risk existed;~~

~~(ii) the BAWM Conduct Non-Compliance Consequences Risk existed,~~

~~and was increased by the BAWM Identified Non-Compliance Information Issues (each, **BAWM Conduct Increased Risk Information**);~~

~~Particulars~~

~~*i. Vocation's knowledge is to be inferred from:*~~

~~*A. the matters set out in paragraphs 18 to 20, 25, 26, 30 and 33 to 40, and the particulars subjoined thereto;*~~

~~*B. the matters referred to in the 30 October Announcement; and*~~

~~*C. the matters set out in the Replacement Prospectus at pages 8, 9, 76 to 78 and 80, in which Vocation identifies hypothetical risk factors affecting its business.*~~

~~*ii. Vocation's awareness is also to be inferred from the terms of the DEECD Settlement and the other matters referred to by Vocation in the 27 October Announcement).*~~

~~*iii. Further particulars may be provided following the completion of discovery and other interlocutory steps, and before the initial trial.*~~

~~143. Further, or alternatively, at all material times in the Relevant Period from the dates identified in sub-paragraph (a) Vocation had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) the following information:~~

~~(a) each of:~~

~~(i) the Victorian Compliance Investigation, at least to the extent they related to the BAWM Investigation (of which Vocation was aware from a date not presently known to the Applicant no later than 3 July 2014);~~

~~(ii) the Victorian Funding Suspensions, at least to the extent they related to the BAWM Funding Suspension (of which Vocation was aware from 3 July 2014); and/or~~

~~(iii) the Victorian Enrolment Suspensions, at least to the extent they related to the BAWM Enrolment Suspension (of which Vocation was aware from a date not presently known to the Applicant no later than 24 July 2014),~~

~~(**BAWM Investigation Information**);~~

~~(b) alternatively, from each of the dates referred to in (a) above, that the Victorian Compliance Investigation and/or the Victorian Funding Suspensions and/or the Victorian Enrolment Suspensions respectively (at least to the extent they related to the BAWM Investigation, BAWM Funding Suspension and BAWM Enrolment Suspension) gave rise to a likelihood, or material risk that:~~

~~(i) a significant proportion of funding otherwise payable under the 2014 BAWM Government Contract would be forfeited and/or that DEECD would terminate the 2014 BAWM Government Contract;~~

~~(ii) DEECD Enforcement Action in respect of BAWM's Government Contracts might be taken which was likely to, or there was a material risk might, cause or result in:~~

~~(A) a material adverse effect on Vocation's revenue which was derived from BAWM (or businesses operated by BAWM);~~

~~(B) a material adverse effect on the reputation of Vocation and BAWM or their brands; and/or,~~

~~(iii) Vocation would need to change its business model in Victoria by:~~

~~(A) discontinuing or significantly reducing the use of Aauspicing arrangements;~~

~~(B) further or alternatively, discontinuing or significantly reducing its use of Bbroking arrangements,~~

~~(**BAWM Investigation Risk Information**);~~

~~Particulars~~

~~*i. The particulars to paragraph 142 are repeated, and in addition Vocation's awareness is also to be inferred from the date on which the Restructure Decision (as defined in paragraph 102) was made, the matters set out at paragraphs 102 and 103;*~~

~~*ii. Further particulars may be provided following the completion of discovery and other interlocutory steps, and before the initial trial.*~~

~~144. Further, or alternatively, at all material times in the Relevant Period from 5 August 2014 Vocation had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) the following information:~~

~~(a) each of:~~

~~(i) the Victorian Compliance Investigation;~~

~~(ii) the Victorian Funding Suspensions;~~

~~(iii) and/or the Victorian Enrolment Suspensions;~~

~~(**Victorian Investigation Information**);~~

~~(b) alternatively, from 5 August 2014, that the Victorian Compliance Investigation and/or the Victorian Funding Suspension and/or the Victorian Enrolment Suspensions respectively gave rise to a likelihood, or material risk that:~~

~~(i) a significant proportion of funding otherwise payable under the 2014 BAWM Government Contract and the 2014 Aspin Government Contract would be forfeited and/or that DEECD would terminate the 2014 BAWM Government Contract and the 2014 Aspin Government Contract;~~

~~(ii) DEECD Enforcement Action in respect of BAWM Government Contract and Aspin Government Contracts might be taken which was likely to, or there was a material risk might, cause or result in:~~

~~(A) a material adverse effect on Vocation's revenue which was derived from BAWM and Aspin (or businesses operated by BAWM and Aspin);~~

~~(B) a material adverse effect on the reputation of Vocation (and BAWM and Aspin) or their brands; and/or,~~

~~(iii) Vocation would need to change its business model in Victoria by:~~

~~(A) discontinuing or significantly reducing the use of auspicing arrangements;~~

~~(B) further or alternatively, discontinuing or significantly reducing its use of broking arrangements,~~

~~(**Victorian Investigation Risk Information**).~~

~~**Particulars**~~

~~*i. The particulars to paragraph 142 are repeated, and in addition Vocation's awareness is also to be inferred from the date on which the Restructure Decision (as defined in paragraph 102) was made, the matters set out at paragraphs 102 and 103;*~~

~~*ii. Further particulars may be provided following the completion of discovery and other interlocutory steps, and before the initial trial.*~~

~~145. At all material times the BAWM Identified Non-Compliance Information and/or BAWM Conduct Increased Risk Information and/or the BAWM Investigation Information and/or the BAWM Investigation Risk Information and/or the Victorian Investigation Information and/or the Victorian Investigation Risk Information was (by reason of the matters pleaded in paragraphs 42 and 43) information that was:~~

~~(a) BAWM Adverse Financial Impact Information;~~

~~(b) BAWM Adverse Reputational Impact Information;~~

~~(c) by reason of subparagraphs (a) and/or (b):~~

~~(i) Vocation Adverse Financial Impact Information;~~

~~(ii) Vocation Adverse Reputational Impact Information;~~

~~(iii) Vocation Material Information.~~

~~146. At all material times between the Offer and 27 October 2014, the BAWM Identified Non-Compliance Information and BAWM Conduct Increased Risk Information was not~~

~~generally available within the meaning of ss 674(2)(c) and 676 of the Corporations Act.~~

~~147. By reason of the matters pleaded in paragraphs 142 to 146, Vocation became obliged pursuant to ASX Listing Rule 3.1 to tell the ASX the BAWM Identified Non-Compliance Information, the BAWM Conduct Increased Risk Information, the BAWM Investigation Information and/or the BAWM Investigation Risk Information and/or the Victorian Investigation Information and/or the Victorian Investigation Risk Information no later than the times respectively pleaded in paragraphs 142, 143 and 144.~~

~~148. Vocation did not tell the ASX:~~

~~(a) any of the BAWM Investigation Information and/or Victorian Investigation Information until 25 August 2014;~~

~~(b) any of the BAWM Identified Non-Compliance Information, the BAWM Conduct Increased Risk Information, the BAWM Investigation Risk Information and/or the Victorian Investigation Information and/or the Victorian Investigation Risk Information prior to 27 October 2014;~~

~~(c) the balance of the BAWM Identified Non-Compliance Information, the BAWM Conduct Increased Risk Information, the BAWM Investigation Information and/or the BAWM Investigation Risk Information and/or the Victorian Investigation Information and/or the Victorian Investigation Risk Information, at any time in the Relevant Period.~~

~~149. By reason of the matters pleaded in paragraph 147 to 148, Vocation contravened s 674(2) of the Corporations Act (each contravention being one of **Vocation's Second Continuous Disclosure Contravention**).~~

~~G.3 Failure to disclose the Cash Requirement Information~~

~~150. The fact of the Cash Requirement Information was:~~

~~(a) information that a reasonable person would expect to have a material effect on the price or value of Vocation Securities;~~

~~(b) not generally available;~~

~~(c) information needed by an investor to make an informed assessment of Vocation's financial performance and financial position.~~

~~151. On and from 3 September 2014 and throughout the rest of the Relevant Period, the Cash Requirement Information was information of which Vocation was aware within the meaning of the Listing Rules.~~

~~Particulars~~

~~Vocation's knowledge is to be inferred from:~~

~~i. the matters set out in paragraphs 20 and 79 to 87, and the particulars subjoined thereto;~~

~~ii. the fact that Vocation had the assistance of an experienced corporate advisor, namely Macquarie, in the discussions with Vocation's lenders in relation to the Debt Facility Increase, the preparation of the August 2014 Cash Flow Analysis, and the announcement of the September 2014 institutional placement; and~~

~~iii. the fact that in negotiating with Macquarie and UBS the proposed underwriting arrangements referred to in paragraphs 85 and 87, Vocation would reasonably be expected to have participated in a due diligence process with each of Macquarie and UBS before either would agree to underwrite the Proposed Placement.~~

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

~~152. By reason of the matters alleged in paragraphs 5, 176, 177, 196 and 197, Vocation was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act to immediately notify the ASX of the Cash Requirement Information on and from at least 3 September 2014.~~

~~153. Notwithstanding the matters alleged in paragraphs 150 to 152, Vocation did not disclose the Cash Requirement Information at any time during the Relevant Period.~~

~~154. By reason of the matters alleged in paragraphs 150 to 152, Vocation contravened s 674(2) of the Corporations Act (**Vocation's Third Continuous Disclosure Contravention**).~~

~~155. The September 2014 Placement Disclosure Contravention commenced on 3 September 2014 and was a continuing contravention that continued until the end of the Relevant Period.~~

~~G.4 Failure to disclose the Restructure Information~~

~~156. At all material times on and after the date referred to in paragraph 102 (being a date prior to around 28 September 2014), Vocation had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12):~~

~~(a) the fact of the Restructure Decision;~~

~~(b) the material risks referred to in paragraph 103;~~

~~(together, **Restructure Information**).~~

~~Particulars~~

~~Vocation's knowledge is to be inferred from:~~

~~i. the matters set out in paragraphs 19, 25, 26, 30 to 40 and the particulars subjoined thereto;~~

~~ii. the fact that it made the Restructure Decision; and~~

~~iii. the matters set out in the Replacement Prospectus at pages 8, 9, 76 to 78 and 80, in which Vocation identifies hypothetical risk factors affecting its business.~~

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

~~157. At all material times on and after the date referred to in paragraph 102 (being a date prior to around 28 September 2014), the Restructure Information was Vocation Material Information.~~

~~158. At all material times on and after the date referred to in paragraph 102 (being a date prior to around 28 September 2014), the Restructure Information was not generally available within the meaning of s 674(2)(c) and 676 of the Corporations Act.~~

~~159. By reason of the matters pleaded in paragraphs 156 to 158, Vocation became obliged pursuant to ASX Listing Rule 3.1 to tell the ASX the Restructure Information on and from at least around 28 September 2014.~~

~~160. Vocation did not tell the ASX:~~

~~(a) any part of the Restructure Information until 27 October 2014 (when the fact of the Restructure Decision was disclosed in the 27 October Announcement);~~

~~(b) the balance of the Restructure Information at any time in the Relevant Period.~~

~~161. By reason of the matters pleaded in paragraph 159 to 160, Vocation contravened s 674(2) of the Corporations Act (each contravention being one of Vocation's **Fourth Continuous Disclosure Contravention**).~~

~~G.5 Failure to disclose the Post-DEECD Settlement Earnings Unreliability Information~~

~~162. At all material times on and after 27 October 2014, Vocation had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) the following information:~~

~~(a) the level of Vocation's future enrolments depended upon Vocation's relationships with referral partners, clients and brokers, and~~

~~(i) there was a real and/or a material risk that the announcement of the DEECD Settlement would cause negative sentiment which would adversely affect Vocation's relationships with referral partners and clients;~~

~~(ii) the DEECD Settlement would require Vocation to discontinue its relationship with some brokers;~~

~~(b) Vocation had to conduct, or complete conducting a further review of its operating performance in order completely to assess the impact of the DEECD Settlement;~~

~~(c) there was a real and/or a material risk that the 27 October FY15 Earnings Guidance Representation was not reliable,~~

~~(**Post-DEECD Settlement Earnings Unreliability Information**).~~

~~163. At all material times the Post-DEECD Settlement Earnings Unreliability Information was information that was:~~

~~(a) Vocation Adverse Reputational Impact Information;~~

~~(b) Vocation Adverse Financial Impact Information;~~

~~(c) Vocation Material Information.~~

~~164. At all material times between 27 October 2014 and 4 December 2014, the Post-DEECD~~

~~Review Earnings Unreliability Information was not generally available within the meaning of s 674(2)(c) and 676 of the Corporations Act.~~

~~165. By reason of the matters pleaded in paragraphs 163 to 164, Vocation became obliged pursuant to ASX Listing Rule 3.1 to tell the ASX the Post-DEECD Review Earnings Unreliability Information no later than 27 October 2014.~~

~~166. Vocation did not tell the ASX any of the Post-DEECD Review Earnings Unreliability Information prior to 4 December 2014.~~

~~167. By reason of the matters pleaded in paragraph 165 to 166, Vocation contravened s 674(2) of the Corporations Act (each contravention being one of **Vocation's Fifth Continuous Disclosure Contravention**).~~

~~H. ONGOING MISLEADING OR DECEPTIVE CONDUCT~~

~~H.1 Compliance and Risk Representations~~

~~*H.1.1 – Misleading or deceptive conduct*~~

~~168. Vocation published the Replacement Prospectus to the ASX as part of the Pre-Quotation Disclosure, pleaded in paragraph 9(c) above, and by reason thereof, Vocation made the following representations to the market of investors and potential investors in Vocation Securities, and thereafter repeated, and failed publicly to amend, withdraw or qualify the substance of those representations, which were thereby continuing representations, from:~~

- ~~(aa) the beginning of the Relevant Period to 27 October 2014, alternatively 4 December 2014, the First Prospectus Compliance Statement, the Second Prospectus Compliance Statement, the First Prospectus Compliance Representation, the Second Prospectus Compliance Representation, the Prospectus Guidance Representation and the Prospectus Guidance Basis Representation; and/or~~

- ~~(a) the beginning of the Relevant Period to 27 October 2014:~~

(i) ~~by reason of the First Prospectus Compliance Representation, the August Compliance Representation, the September Compliance Representation and the 16 October Compliance Representation (or any of them), that BAWM had not engaged in, and was not engaging in, any BAWM Non-Compliant Conduct (**Continuing Compliance Representation**);~~

(ii) ~~by reason of the First Prospectus Compliance Representation, the August Immaterial Risk Representation, the September Immaterial Risk Representation and the 16 October Immaterial Risk Representation (or any of them), it was not likely, or there was not a material risk, that DEECD Enforcement Action in respect of BAWM Government Contracts might be taken which was likely to, or there was a material risk might, cause or result in:~~

(A) ~~a material adverse effect on revenue which was derived from BAWM (or businesses operated by BAWM); and/or~~

(B) ~~a material adverse effect on the reputation of BAWM or BAWM's brands,~~

~~(**Continuing Immaterial Risk Representation**).~~

(b) ~~25 August 2014 to 27 October 2014, by reason of the August Compliance Representations, the September Representations and the 16 October Representations, that Vocation had reasonable grounds for believing that the outcome of the DEECD review would not be material to Vocation (**Continuing Materiality Representation**).~~

~~168A. If Vocation had disclosed:~~

~~(a) the BAWM Conduct Information;~~

~~(b) the BAWM Conduct Non-Compliance Information;~~

~~(c) the BAWM Historical Non-Compliance Information;~~

~~(d) the BAWM Conduct Risk Information;~~

~~(e) the BAWM Conduct Further Risk Information;~~

~~(f) the BAWM Conduct Business Implication Information;~~

~~(g) the Systemic Conduct Information;~~

~~(h) the Systemic Conduct Non-Compliance Information;~~

~~(i) the Systemic Historical Non-Compliance Information;~~

~~(j) the Systemic Conduct Risk Information;~~

~~(j) the Systemic Conduct Further Risk Information; and/or~~

~~(k) the Systemic Conduct Business Implication Information,~~

~~in the Replacement Prospectus, then that information would have been disclosed to the market of investors and potential investors in Vocation Securities as part of the Pre-Quotation Disclosure, pleaded in paragraph 9(c) above, but instead the omission to disclose that information continued from the beginning of the Relevant Period to 27 October 2014, alternatively 4 December 2014.~~

~~169. The making, and maintaining, of each of the Prospectus Representations, August Compliance Representations, September Representations, 16 October Representations, Continuing Compliance Representations, No Material Risk Continuing Representations, and Continuing Immaterial Risk Representations representations referred to in paragraph 168 (and the omission to disclose the information referred to in paragraph 168A), was conduct engaged in by Vocation:~~

~~(a) in relation to financial products (being Vocation Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;~~

~~(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;~~

~~(c) likely to induce persons in Australia to subscribe for or purchase financial products (being Vocation Securities); and/or~~

~~(d) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.~~

~~170. By reason of the matters pleaded in paragraphs 0 to 47 and/or 51 to 0, it was not the case that BAWM had not engaged in, and was not engaging in, any BAWM Non-Compliant Conduct.~~

~~171. At all material times after 25 August 2014, Vocation did not have reasonable grounds for believing that the outcome of the DEECD review would not be material to Vocation, within the meaning of s 769C(1)(b) of the Corporations Act, s 12BB(1)(b) of the ASIC Act and s 4(1)(b) of the Australian Consumer Law.~~

~~Particulars~~

~~*i. Paragraphs 46 to 47, and 59 to 60 are repeated.*~~

~~*ii. A lack of reasonable grounds is to be inferred from the matters set out in paragraphs 47 to 48, 52 to 53, 59 to 64, 129 to 130 and 143, and (so far as the Restructure Decision was made before 21 August 2014) 102 to 103;*~~

~~*iii. A lack of reasonable grounds is to be inferred from the fact that the revenue Vocation expected to receive from the courses the subject of the Victorian Compliance Investigation was a material component of Vocation's Victorian revenue;*~~

~~*iv. The absence of reasonable grounds can also be inferred from the terms of the 27 October Announcement and 30 October Announcement, and the statement made by Vocation in its ASX announcement dated 28 January 2015 that as a result of the Victorian Compliance Investigation it incurred "$5 million in one-off costs for professional and other fees in relation to the DEECD settlement and financing arrangements"..*~~

~~*v. Sections 12BB(2) of the ASIC Act and/or s 4(2) of the Australian Consumer Law are relied upon.*~~

~~172. By reason of the matters pleaded in paragraphs 46 to 47 48, 51 to 53, and/or 170, at all material times from the commencement of the Relevant Period it was likely, or there was a material risk, that DEECD Enforcement Action in respect of BAWM Government Contracts might be taken which was likely to, or there was a material risk might, cause or result in:~~

~~(a) a material adverse effect on revenue which was derived from BAWM (or businesses operated by BAWM); and/or~~

~~(b) a material adverse effect on the reputation of BAWM or BAWM's brands.~~

~~Particulars~~

~~*Paragraphs 46 to 47 are repeated.*~~

~~*Sections 12BB(2) of the ASIC Act and/or s 4(2) of the Australian Consumer Law are relied upon.*~~

~~173. By reason of the matters pleaded in paragraph 170, Vocation's conduct in making, and omitting to correct the First Prospectus Compliance Representation, the August Compliance Representation, the September Compliance Representation and the 16 October Compliance Representations, and the Continuing Compliance Representation was misleading or deceptive, or likely to mislead or deceive, in contravention of:~~

~~(a) s 1041H(1) of the Corporations Act;~~

~~(b) s 12DA(1) of the ASIC Act; and/or~~

~~(c) s 18 of the Australian Consumer Law,~~

~~a contravention of any of those sections being a~~ **Vocation** ~~**Misleading Conduct Contraventions**.~~

~~174. By reason of the matters pleaded in paragraph 171, Vocation's conduct in making, and omitting to correct the August Materiality Representation, the September Materiality Representations, 16 October Materiality Representations, and the Continuing Immaterial Risk Representation was misleading or deceptive, or likely to mislead or deceive, and a~~ Vocation ~~Misleading Conduct Contravention.~~

~~175. By reason of the matters pleaded in paragraph 172, Vocation's conduct in making, and omitting to correct the Second Prospectus Compliance Representation, August Immaterial Risk Representation, the September Immaterial Risk Representations, 16 October Immaterial Risk Representations, and the Continuing Materiality Representation (and not disclosing the information referred to in paragraph 168A) was misleading or deceptive, or likely to mislead or deceive, and a~~ Vocation ~~Misleading Conduct Contravention.~~

~~*H.1.2 – Section 1041E*~~

~~176. Further or alternatively, each of the August Materiality Representation and September Materiality Representation and 16 October Materiality Representation and Continuing Materiality Representation was a statement, or conveyed information, that was likely:~~

~~(a) to induce persons in Australia to apply for financial products, namely Vocation Securities (including the Vocation Securities to be issued under the Placement);~~

~~(b) to induce persons in Australia to acquire financial products, namely Vocation Securities (including the Vocation Securities to the be issued under the Placement);~~

~~(c) to have the effect of increasing, maintaining or stabilising the price for trading in financial products on a financial market operated in Australia, namely Vocation Securities.~~

~~177. Each of the August 2014 Materiality Representation and September Materiality Representations and 16 October Materiality Representation and Continuing Materiality Representation was a statement, or conveyed information, that was:~~

~~(a) false in a material particular; or~~

~~(b) materially misleading.~~

~~Particulars~~

~~The Applicant refers to the matters set out in paragraphs 79 to 87, and 171.~~

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

~~178. As at the dates on which the August 2014 Materiality Representation and September Materiality Representations and 16 October Materiality Representation and Continuing Materiality Representation was made and throughout the remainder of the Relevant Period, Vocation:~~

~~(a) did not care whether each of those statements or the information it conveyed was true or false;~~

~~(b) knew, or ought to have known, that each of those statements or the information it conveyed was false in a material particular or materially misleading.~~

~~Particulars~~

~~Vocation's actual or constructive knowledge is to be inferred from:~~

~~i. the matters set out in paragraphs 136, 143 and 156 and the particulars subjoined thereto;~~

~~ii. the involvement of Vocation's senior management in discussions with the DEECD in relation to the Victorian Investigations;~~

~~*iii. the involvement of Vocation's senior management in the making of the Restructure Decision;*~~

~~*iv. . the involvement of Vocation's senior management in the discussions and negotiations referred to in paragraphs 79 to 87;*~~

~~*Further particulars may be provided following the completion of discovery and before the initial trial.*~~

~~179. By reason of the matters set out in paragraphs 176 to 178, by making the August Materiality Representation and September Materiality Representations and 16 October Materiality Representation and Continuing Materiality Representation, alternatively by disseminating the information conveyed by those representations, Vocation contravened s 1041E of the Corporations Act (such contraventions being a **Section 1041E Contravention**).~~

~~**H.2 August FY14 Results Representations**~~

~~*H.2.1 – Misleading or deceptive conduct*~~

~~180. The making, and maintaining, of each of the August FY14 Results Representations was:~~

~~(a) in relation to financial products (being Vocation Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;~~

~~(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;~~

~~(c) likely to induce persons in Australia to subscribe for or purchase financial products (being Vocation Securities); and/or~~

~~(d) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.~~

~~181. Each of the August FY14 Results Representations was not true in that:~~

~~(a) by reason of the matters set out in paragraphs 65 to 67, Vocation's FY14 performance did not outperform the FY14 Guidance;~~

~~(b) by reason of the matters set out in paragraphs 65 to 67, the financial information set out in the FY14 Results Documents (and the Audited Annual Report and FY14 Annual Report) was not prepared on the same basis as the FY14 Guidance;~~

~~(c) by reason of the matters set out in paragraphs 59 to 67 and 72 (and the existence of the BAWM Investigation Risks Information and the Victorian Investigation Risks Information), the financial information for FY14 presented in the FY14 Results Documents did not present a true and fair view of the company's financial performance and position;~~

~~(d) by reason of the matters set out in paragraphs 65 to 67 and 71, the financial information contained in the FY14 Results Documents (and the Audited Annual Report and FY14 Annual Report) was not reliable.~~

~~182. By reason of the matters pleaded in paragraph 170, Vocation's conduct in making, and omitting to correct the August FY14 Results Representations was misleading or deceptive, or likely to mislead or deceive, and a Vocation Misleading Conduct Contravention.~~

~~*H.2.21 – Section 1041E*~~

~~183. Further or alternatively, each of the August FY14 Results Representations was a statement, or conveyed information, that was likely:~~

~~(a) to induce persons in Australia to apply for financial products, namely Vocation Securities;~~

~~(b) to induce persons in Australia to acquire financial products, namely Vocation Securities;~~

~~(c) to have the effect of increasing, maintaining or stabilising the price for trading in financial products on a financial market operated in Australia, namely Vocation Securities.~~

~~184. Each of the August FY14 Results Representations was a statement, or conveyed information, that was:~~

~~(a) false in a material particular; or~~

~~(b) materially misleading.~~

~~**Particulars**~~

~~*The Applicant refers to the matters set out in paragraph 181.*~~

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

~~185. From 21 August 2014 until the end of the Relevant Period, in relation to each of the August FY14 Results Representations, Vocation:~~

~~(a) did not care whether each of those statements or the information it conveyed was true or false;~~

~~(b) knew, or ought to have known, that each of those statements or the information it conveyed was false in a material particular or materially misleading.~~

~~Particulars~~

~~Vocation's actual or constructive knowledge is to be inferred from:~~

~~i. the matters set out i in paragraphs 65 to 67, 143, 156 and the particulars subjoined thereto;~~

~~ii. the involvement of Vocation's senior management in discussions with the DEECD in relation to the Victorian Investigations;~~

~~iii. the involvement of Vocation's senior management in the making of the Restructure Decision;~~

~~iv. the involvement of Vocation's senior management in the adoption of the New Revenue Recognition Policy;~~

~~v. the fact that at all relevant times, Vocation was assisted and advised by external legal advisors (namely JWS) in the preparation of its published financial results and ASX announcements.~~

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

~~186. By reason of the matters set out in paragraphs 183 to 185, by making the August FY14 Results Representations, alternatively by disseminating the information conveyed by those representations, Vocation contravened s 1041E of the Corporations Act (such contraventions being a Section 1041E Contravention).~~

~~H.3 August FY15 Earnings Representations~~

~~187. During the Relevant Period, Vocation:~~

~~(a) repeated the August FY15 Earnings Guidance Representation, in the circumstances set out in paragraph 92(c)~~

~~(b) qualified the August FY15 Earnings Guidance Representation only on 27 October (and to the extent of the October FY15 Earnings Representation;~~

~~(c) otherwise:~~

~~(i) failed publicly to amend, qualify or withdraw the substance of;~~

~~(ii) did not release to the market any further information that would significantly supplement or modify;~~

~~(iii) took no or no adequate step to amend or withdraw,~~

~~the August FY15 Earnings Guidance Representation and the August FY15 Earnings Guidance Basis Representation, each of which accordingly, was a continuing representation between 25 August and 27 October 2014.~~

~~188. The making, and maintaining, of the August FY15 Earnings Guidance Representation and the August FY15 Earnings Guidance Basis Representation was:~~

~~(a) in relation to financial products (being Vocation Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;~~

~~(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;~~

~~(c) likely to induce persons in Australia to subscribe for or purchase financial products (being Vocation Securities); and/or~~

~~(d) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.~~

~~189. At all material times on and after 21 August 2014, Vocation did not have reasonable grounds for the August FY15 Earnings Guidance Representation within the meaning of s 769C(1)(b) of the Corporations Act, s 12BB(1)(b) of the ASIC Act and s 4(1)(b) of the Australian Consumer Law.~~

~~Particulars~~

~~The absence of reasonable grounds can be inferred from the terms of:~~

~~i. the matters set out in paragraphs 47 to 48, 52 to 53, 59 to 64, 129, 130 and 143 and (so far as the Restructure Decision was made before 21 August 2014) 102 to 103;~~

~~*ii. the fact that the revenue Vocation expected to receive in FY15 from the courses the subject of the Victorian Compliance Investigation was a material component of Vocation's Victorian revenue for FY15;*~~

~~*iii. the matters set out in paragraphs 65 to 67;*~~

~~*iv. the conclusions reached by DEECD following the Victorian Compliance Investigation;*~~

~~*v. the terms of the DEECD Settlement and the other matters referred to by Vocation in the 27 October Announcement;*~~

~~*vi. the 4 December Announcement including a statement that Vocation had incurred "One off costs in excess of $10m (which have impacted the H1 statutory EBITDA) which includes the impact of the DEECD settlement, redundancies and other advisor costs";*~~

~~*vii. Vocation's ASX announcement released on or about 28 January 2015 and titled "Vocation – Financial and Business Update", including the restatement therein by Vocation of its FY14 results.*~~

~~*Sections 12BB(2) of the ASIC Act and/or s 4(2) of the Australian Consumer Law are relied upon.*~~

~~*Further particulars may be provided following the completion of discovery and before the initial trial.*~~

~~190. By reason of the matters set out in paragraphs 185 to 189, Vocation's conduct in making, and omitting to correct the August FY15 Earnings Guidance Representation was misleading or deceptive, or likely to mislead or deceive, and a Vocation Misleading Conduct Contravention.~~

~~191. By reason of the matters pleaded in paragraph 189, Vocation's conduct in making and omitting to correct the August FY15 Earnings Guidance Basis Representation was misleading or deceptive, or likely to mislead or deceive, and a Vocation Misleading Conduct Contravention.~~

~~H.4 September Placement Representations~~

~~*H.4.1 Misleading or deceptive conduct*~~

~~192. From 10 September 2014 until the end of the Relevant Period, Vocation:~~

~~(a) repeated, and failed publicly to amend, qualify or withdraw the substance of the September Placement Representations;~~

~~(b) did not release to the market any further information that would significantly supplement or modify the September Placement Representations; and~~

~~(c) otherwise took no or no adequate step to amend or withdraw the September Placement Representations; and~~

~~(d) accordingly, the September 2014 Placement Representations were continuing representations until the end of the Relevant Period.~~

~~Particulars~~

~~The September 2014 Placement Representations was repeated in substance in:~~

~~i. Vocation's ASX announcement released on or about 11 September 2014 in relation to the September 2014 institutional placement, by reason of the statement:~~

~~A. We are very pleased with the response we received to the placement from both existing shareholders and new investors. The capital raised provides us with the flexibility to pursue organic and acquisitive growth opportunities.~~

~~ii. Vocation's Appendix 3B document filed with the ASX on or about 16 September 2014 in relation to the September 2014 institutional placement, including by reason of the statements in response to item 6 thereof ("Purpose of the issue"):~~

~~The funds will be used:~~

~~A. to pay down a portion of Vocation's $120 million debt facility;~~

~~B. to fund two acquisitions totalling $7 million relating to the remaining 50% stake in Australian School of Management and an addition to Endeavour's NZ operations; and~~

~~C. to deliver accelerated investment in the My Vocation platform.~~

~~193. The making, and maintaining, the September Placement Representation was conduct by Vocation which was:~~

~~(a) in relation to financial products (being Vocation Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;~~

(b) ~~in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;~~

(c) ~~likely to induce persons in Australia to subscribe for or purchase financial products (being Vocation Securities); and/or~~

(d) ~~in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.~~

194. ~~At all material times on and after 10 September 2014, Vocation did not have reasonable grounds for the September Placement Representation within the meaning of s 769C(1)(b) of the Corporations Act, s 12BB(1)(b) of the ASIC Act and s 4(1)(b) of the Australian Consumer Law.~~

~~Particulars~~

~~A lack of reasonable grounds is to be inferred from the matters set out in paragraphs 79 to 87 and/or 95 and 96;~~

~~The Applicant also refers to and rely upon s 769C of the Corporations Act and s 12BB of the ASIC Act.~~

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

195. ~~By reason of the matters pleaded in paragraph 194, Vocation's conduct in making, and omitting to correct the September Placement Representation was misleading or deceptive, or likely to mislead or deceive, and a~~ Vocation ~~Misleading Conduct Contravention.~~

~~H.4.2 – Section 1041E~~

196. ~~Further or alternatively, the September Placement Representation was a statement, or conveyed information, that was likely:~~

(a) ~~to induce persons in Australia to apply for financial products, namely Vocation Securities (including the Vocation Securities to be issued under the Placement);~~

(b) ~~to induce persons in Australia to acquire financial products, namely Vocation Securities (including the Vocation Securities to the be issued under the Placement);~~

~~(c) to have the effect of increasing, maintaining or stabilising the price for trading in financial products on a financial market operated in Australia, namely Vocation Securities.~~

~~197. The September Placement Representation was a statement, or conveyed information, that was:~~

~~(a) false in a material particular; or~~

~~(b) materially misleading.~~

~~Particulars~~

~~The Applicant refers to the matters set out in paragraphs 95, 96, and 194.~~

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

~~198. As at the date on which September Placement Representation was made and throughout the remainder of the Relevant Period, Vocation:~~

~~(a) did not care whether each of those statements or the information it conveyed was true or false;~~

~~(b) knew, or ought to have known, that each of those statements or the information it conveyed was false in a material particular or materially misleading.~~

~~Particulars~~

~~Vocation's actual or constructive knowledge is to be inferred from:~~

~~i. the matters set out in paragraphs 79 to 87 and the particulars subjoined thereto;~~

~~ii. the involvement of Vocation's senior management in discussions with the DEECD in relation to the Victorian Investigations;~~

~~iii. the involvement of Vocation's senior management in the making of the Restructure Decision;~~

~~iv. the involvement of Vocation's senior management in the discussions and negotiations referred to in paragraphs 79 to 87;~~

~~Further particulars may be provided following the completion of discovery and before the initial trial.~~

~~199. By reason of the matters set out in paragraphs 196 to 198, by making the September Placement Representations, alternatively by disseminating the information conveyed by those representations, Vocation contravened s 1041E of the Corporations Act (such contraventions being a Section 1041E Contravention).~~

~~H.5 October FY15 Earnings Representations~~

~~200. Between 27 October 2014 and 4 December 2014, Vocation represented continuously to the market of investors and potential investors in Vocation that:~~

~~(a) by reason of the August FY15 Earnings Guidance Representation, 27 October FY15 Earnings Guidance Representation, the 30 October FY15 Earnings Guidance Representation and the November FY15 Earnings Guidance Representation (or any of them), modified the August FY15 Earnings Guidance Representation, and represented that Vocation would achieve EBITDA of at least $55 million in FY15 and/or EBITDA which exceeded the FY14 EBITDA by approximately 50% (**Continuing FY15 Earnings Guidance Representation**);~~

~~(b) by reason of the August FY15 Earnings Guidance Basis Representation, 27 October FY15 Earnings Guidance Basis Representation, the 30 October FY15 Earnings Guidance Basis Representation and the November FY15 Earnings Guidance Basis Representation (or any of them), Vocation had reasonable grounds for forecasting that Vocation would achieve EBITDA of approximately $55 million in FY15 and/or EBITDA which exceeded the FY14 EBITDA by approximately 50% (**Continuing FY15 Earnings Guidance Basis Representation**).~~

~~201. The making of each of the Late October Representations and November Representations, was conduct engaged in by Vocation:~~

~~(a) in relation to financial products (being Vocation Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;~~

~~(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;~~

~~(c) likely to induce persons in Australia to subscribe for or purchase financial products (being Vocation Securities); and/or~~

~~(d) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.~~

~~202. By reason of the matters pleaded in paragraph 111, it was not the case that by the 27 October Announcement, Vocation had disclosed all information of which Vocation was aware about the outcome of the DEECD Review of BAWM and the extent of the material adverse effect on Vocation arising from that DEECD Review.~~

~~203. At all material times on and after 27 October 2014, Vocation did not have reasonable grounds for representing that Vocation would achieve EBITDA of between $53m and $57m in FY15, within the meaning of s 769C(1)(b) of the Corporations Act, s 12BB(1)(b) of the ASIC Act and s 4(1)(b) of the Australian Consumer Law.~~

~~Particulars~~

> *~~The absence of reasonable grounds can be inferred from the terms of the 4 December Announcement.~~*
>
> *~~Sections 12BB(2) of the ASIC Act and/or s 4(2) of the Australian Consumer Law are relied upon.~~*

~~204. By reason of the matters pleaded in paragraph 202, Vocation's conduct in making and omitting to correct the 27 October Disclosure Representation was misleading or deceptive, or likely to mislead or deceive, and a Vocation Misleading Conduct Contravention.~~

~~205. By reason of the matters pleaded in paragraph 203, Vocation's conduct in making and omitting to correct the 27 October FY15 Earnings Guidance Representation, 30 October FY15 Earnings Representation and November FY15 Earnings Guidance Representation was misleading or deceptive, or likely to mislead or deceive, and a Vocation Misleading Conduct Contravention.~~

~~206. By reason of the Post-DEECD Settlement Earnings Unreliability Information and the matters pleaded in paragraph 203, Vocation's conduct in making and omitting to correct the 27 October FY15 Earnings Guidance Basis Representation, 30 October FY15 Earnings Guidance Basis Representation and November Earnings Guidance Basis Representation was misleading or deceptive, or likely to mislead or deceive, and a Vocation Misleading Conduct Contravention.~~

~~H.6 Continuous Disclosure Representation~~

~~207. From the beginning of the Relevant Period Vocation represented (**Continuous**~~

~~**Disclosure Representations**) to the market of investors and potential investors in Vocation that:~~

~~(a) it had a sound and effective system of ensuring that Vocation complied with its obligations under ASX Listing Rule 3.1;~~

~~(b) it was in compliance with its obligations under ASX Listing Rule 3.1.~~

~~**Particulars**~~

~~*The Continuous Disclosure Representations were partly express and partly implied. Insofar as they were express representations they were made and/or repeated in the 25 August Announcement, 10 September Announcement, FY14 Annual Report 18 September Announcement and 16 October Announcement. Insofar as they were implied, they were implied by Vocation's conduct including listing on the ASX and regularly making ASX announcements.*~~

~~*i. Vocation's FY14 audited annual report released on or about 3 September 2014, by reason of the statements made concerning Vocation's corporate governance practices at pages 22 to 30;*~~

~~*ii. Vocation's Annual Report for FY14 released on or about 16 September 2014, by reason of the statements made concerning Vocation's corporate governance practices at pages 33 to 38;*~~

~~*iii. The September 2014 Cleansing Notice (as defined in paragraph 97(b) below), by reason of the statement:*~~

~~*As at the date of this notice, Vocation... has complied with the provisions of Chapter 2M of the Corporations Act and section 674 of the Corporations Act.*~~

~~*iv. the 18 September 2014 Announcement, including by reason of the statement:*~~

~~*Vocation takes its disclosure obligations seriously and remains comfortable that it has complied with these obligations at all times...*~~

~~*v. Vocation's response to the "ASX aware query" dated 28 October 2014, both of which were published by Vocation on the ASX on 30 October 2014, including by reason of the following question and response:*~~

~~*7. Please confirm that the Entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.*~~

~~*Vocation confirms that it is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.*~~

~~vi. *Vocation's ASX market release dated 2 November 2014, including by reason of the statement attributed to Hutchinson:*~~

~~*"Vocation's disclosure in respect of the size of the settlement with the DEECD, once that became apparent, was completely appropriate."*~~

~~vii. *Vocation's ASX market release dated 14 November 2014;*~~

~~viii. *Vocation's ASX market release dated 17 November 2014 (lodged with the title, "Vocation response to speculation"), including by reason of the statement:*~~

~~*As previously announced, Vocation refutes allegations of any impropriety in its disclosure surrounding the DEECD review and will vigorously defend any claim of that kind if it was to be commenced.*~~

~~ix. *Vocation's ASX market release dated 27 November 2014 (lodged with the title, "Vocation response to a claim"), including by reason of the statement:*~~

~~*Vocation denies the claims [set out in a Writ issued by the Supreme Court of Victoria at the request of Victorian Solicitor, Mark Elliott] and believes they lack any proper foundation. Vocation will vigorously defend the proceeding.*~~

~~208. The making of each of the Continuous Disclosure Representations, was conduct engaged in by Vocation:~~

~~(a) in relation to financial products (being Vocation Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;~~

~~(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;~~

~~(c) likely to induce persons in Australia to subscribe for or purchase financial products (being Vocation Securities); and/or~~

~~(d) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.~~

~~209. By reason of:~~

~~(a) Vocation's First Continuous Disclosure Contravention, as from 6 December 2013;~~

~~(b) Vocation's Second Continuous Disclosure Contravention, as from a date not presently known to the Applicant no later than 3 July 2014 and/or alternatively 5 August 2014;~~

~~(c) Vocation's Third Continuous Disclosure Contravention, as from no later than 3 September 2014;~~

~~(d) Vocation's Fourth Continuous Disclosure Contravention, as from no later than 28 September 2014;~~

~~(e) Vocation's Fifth Continuous Disclosure Contravention, as from no later than 27 October 2014~~

~~it was not the case that Vocation had a sound and effective system of ensuring that Vocation complied with its obligations under ASX Listing Rule 3.1; and/or that Vocation was in compliance with its obligations under ASX Listing Rule 3.1.~~

~~210. By reason of the matters pleaded in paragraph 207 to 209, Vocation's conduct in making, and omitting to correct the Continuous Disclosure Representations was misleading or deceptive, or likely to mislead or deceive, and a~~ Vocation ~~Misleading Conduct Contravention.~~

211-245. [There are no paragraphs 211 to 245].

J. CONTRAVENING CONDUCT CAUSED LOSS

J.1 No transaction case in respect of the Prospectus Contraventions and ~~Placement~~ Vocation Prospectus Misleading Conduct Contraventions

~~*J.1.1 No transaction case in respect of the Prospectus Contraventions*~~

246. Were it not for the Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions, ~~the Applicant and~~ some Group Members would not have acquired Vocation Securities pursuant to the Initial Public Offering.

Particulars

The identities of all those Group Members which or would not have acquired Vocation Securities pursuant to the Initial Public Offering are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's *claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's~~'~~ claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

247. Alternatively, had the Replacement Prospectus:

(a) not contained the Prospectus Misleading Statements, the Prospectus Representations (or any of them); and/or

(b) not omitted the material the subject of the Prospectus Omissions,

the transactions contemplated by the Prospectus would not have occurred (1) in the way in which they occurred, or (2) at all, and the Applicant and Group Members would not have had the opportunity to acquire Vocation Securities pursuant to the Initial Public Offering, or on-market.

Particulars

i) The Merger would not have been agreed to on terms which involved the payment to SaleCo of the consideration agreed to be paid for the acquisition of BAWM and Aspin.

ii) Alternatively, the Underwriters would not have agreed to underwrite the Initial Public Offering (or would have terminated their underwriting agreements), and the Initial Public Offering would not have gone ahead.

iii) Alternatively, ASX would have declined to accept Vocation's application for listing for non-compliance with Listing Rule 1.1 (and Condition 1), by reason that Vocation's structure, business, financial condition and governance arrangements were not suitable for an entity listed on ASX.

iv) The forecast financial information would not have been presented in a form which attributed to BAWM the value referred to in paragraph 39, but a value which was significantly lower, or nil (particulars of which will be provided when the Applicant serves opinion evidence).

v) The price for Vocation Securities would not have been the Offer Price, which was partially derived from the value attributed to BAWM in paragraph 39.

vi) Any offer of Vocation Securities (if it occurred at all) would have been a completely different offer to the Initial Public Offering.

~~*J.1.2 No transaction case in respect of the Placement Contraventions*~~

247A. Were it not for ~~the Market Contraventions~~ the Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions ~~pleaded against Vocation in this Second Further Amended Consolidated Statement of Claim~~ ~~other than Vocation's Fourth Continuous Disclosure Contravention and Vocation's Fifth Continuous Disclosure Contravention~~ (and each of them) ~~(together, **Vocation Pre-Placement Contraventions**)~~, some Group Members would not have acquired Vocation Securities pursuant to the Placement.

Particulars

The identities of all those Group Members which or would not have acquired Vocation Securities pursuant to the Placement are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's~~s'~~ claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

247B. Alternatively, had the the Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions ~~Vocation Pre-Placement Contraventions~~ not occurred, the Placement would not have occurred in the way in which it occurred, or at all, and ~~the Applicant and~~ Group Members would not have had the opportunity to acquire Vocation Securities pursuant to the Placement, or on-market.

Particulars

i. *The Applicant refers to the particulars to paragraphs 250(c) and say that Vocation set the Placement Offer Price by reference to the then prevailing market price in the manner set out in those particulars;*

ii. *If the Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions ~~Vocation Pre-Placement Contraventions~~ had not occurred and/or if the then prevailing market price had been materially lower, then, either:*

   A. *Vocation would not have proceeded to conduct the Placement; or*

   B. *Alternatively, if Vocation had proceeded to conduct the Placement then the Placement Offer Price would have been materially lower than it in fact was.*

iii. *The extent to which the ~~Market~~ Vocation Prospectus Misleading Conduct Contraventions ~~Vocation Pre-Placement~~*

~~Contraventions~~ caused the market price for Vocation Securities to be substantially greater than their true value and/or the market price that would otherwise had prevailed (that is, inflated) during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding being expert evidence that: (a) will establish that the ASX was relevantly a "semi-strong" efficient capital market; (b) will establish that Vocation Securities traded responsively to information released to that market during the Relevant Period; and (c) being an event study of the type referred to in Earglow Pty Ltd v Newcrest Mining Ltd [2015] FCA 328 at [87]-[88].

iv. *In the case of the ~~Market Contraventions other than PWC's 19 August and 2 September~~ Vocation Prospectus Misleading Conduct Contraventions ~~Vocation Pre-Placement Contraventions~~, inflation was caused by the withholding of information from and/or the direct release of information to the market of actual and potential investors in Vocation.*

v. *Alternatively, the Placement would not have been underwritten, and in the absence of the Placement Vocation would have entered insolvency administration by reason of ~~its~~ inability to obtain the cash it required~~, as referred to in paragraph 84~~.*

vi. *Further particulars will be provided with the Applicant's opinion evidence in chief.*

J.2 Market-based causation

J.2.1 Market-based causation for on-market purchasers

248. The Applicant and some Group Members acquired an interest in Vocation Securities in a market of investors or potential investors in Vocation Securities:

(a) operated by the ASX;

(b) regulated by, inter alia, s 674(2) of the Corporations Act and ASX Listing Rule 3.1;

(c) where the price or value of Vocation Securities would reasonably be expected to have been informed or affected by information disclosed in accordance with s 674(2) of the Corporations Act and ASX Listing Rule 3.1; and

(d) where:

(i) material information had not been disclosed by Vocation, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Vocation Securities (namely the information the subject of the Prospectus Omissions and the omitted information the subject of the Vocation Prospectus Misleading Conduct Contraventions, ~~and/or~~ ~~the information the subject of~~ ~~Vocation's First Continuous Disclosure Contravention and/or Vocation's Second Continuous Disclosure Contravention and/or Vocation's Third Continuous Disclosure Contravention and/or Vocation's Fourth Continuous Disclosure Contravention and/or Vocation's Fifth Continuous Disclosure Contravention (the latter five together being~~ ~~**Continuous Disclosure Contraventions**)~~;

(ii) misleading or deceptive and/or false or misleading statements had been made (namely the Prospectus Misleading Statements ~~and/or the representations the subject of the Vocation Misleading Conduct Contraventions and/or the statements the subject of the Section 1041E Contraventions)~~ that a reasonable person would expect to have a material effect on the price or value of Vocation Securities, in that if they had not been made no investors or potential investors in Vocation Securities would have been in a position to read or rely upon them.~~;~~

Particulars

i. The identities of all those Group Members which or would not have acquired Vocation Securities on the market operated by the ASX are not known with the current state of the Applicant's~~s'~~ knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's~~s'~~ claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

ii. Further particulars will be provided with the Applicant's~~s'~~ opinion evidence in chief.

J.2.2 Market-based causation for Initial Public Offering subscribers

249. ~~The Applicant and s~~Some Group Members acquired an interest in Vocation Securities pursuant to the Initial Public Offering in a market:

(a) regulated by, inter alia, Chapter 6D of the Corporations Act;

(b) where the Offer Price of Vocation Securities under the Prospectus or Replacement Prospectus would reasonably be expected by potential investors in Vocation Securities to have been reasonably determined by Vocation to represent a fair market value for Vocation Securities, based on:

(i) the anticipated number of Vocation Securities to be issued;

(ii) Vocation's expected market capitalisation at the Offer Price;

(iii) the historical financial performance of the Founding Companies;

(iv) Vocation's expected financial performance in FY14; and

(v) all other information required to be contained in the Prospectus and Replacement Prospectus in accordance with s 710 of the Corporations Act;

(c) to which the Prospectus and Replacement Prospectus was directed, in circumstances where those documents:

(i) purported to identify "Key Risks" and "Risk Factors" applicable to Vocation;

(ii) set out Vocation's Growth Strategy;

(iii) included the Prospectus Guidance Representations;

being matters that a reasonable person would expect to have a material effect on the willingness of potential investors to accept the offer set out in the Prospectus and Replacement Prospectus, whether at the Offer Price or generally;

(d) where:

(i) material information had not been disclosed (namely the information the subject of the Prospectus Omissions and the omitted information the subject of the Vocation Prospectus Misleading Conduct Contraventions), which a reasonable person would expect, had it been disclosed, to have caused the Initial Public Offering not to proceed, the Offer Price to be lower and/or there to be a material effect on the willingness of potential investors to accept the offer set out in the Prospectus and Replacement Prospectus, whether at the Offer Price or generally;

(ii) misleading or deceptive statements had been made (namely the Prospectus Misleading Statements~~and/or Prospectus Representations~~), which had they not been made, a reasonable person would expect to have caused the Offer Price to be lower and/or there to be a material effect on the willingness of potential investors to accept the offer set out in the Prospectus and Replacement Prospectus, whether at the Offer Price or generally.~~,~~

Particulars

The identities of all those Group Members which or would not have acquired Vocation Securities pursuant to the Initial Public Offering are not known with the current state of the Applicant's~~'~~ knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's~~'~~ claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

J.2.3 Market-based causation for Placement purchasers

250. Some Group Members acquired an interest in Vocation Securities pursuant to the Placement in a market:

(a) regulated by, inter alia, Chapter 6D of the Corporations Act;

(b) where the offer price of Vocation Securities under the Placement would reasonably be expected by potential investors in Vocation Securities to have been reasonably determined by Vocation to represent a fair market value for Vocation Securities, based on:

(i) the anticipated number of Vocation Securities to be issued;

(ii) Vocation's then current market capitalisation;

(iii) Vocation's historical financial performance; and

(iv) Vocation's expected financial performance in FY15;

(c) alternatively to 250(b), where the offer price for the Placement was in fact determined by Vocation by reference to the then prevailing market price for Vocation Securities;

Particulars

The determination by Vocation is to be inferred from the statement in the 10 September 2014 ASX announcement that, "The Offer Price of $3.05 represents a discount of 7.9 per cent to the last close price of $3.31 as at 9 September 2014 and a 7.3 per cent discount to the 5-day VWAP to 9 September of $3.29 per share" and the fact that an institutional placement offer whose issue price exceeded the prevailing market price was at all relevant times unlikely to be accepted by the targeted investors.

The determination by Vocation also is to be inferred from the statement by Vocation in a "Share purchase plan booklet" published on the ASX by Vocation on 15 October 2014 that under that plan "eligible shareholders will be given the opportunity to subscribe for Vocation Shares at the lower of $3.05 (the price offered to institutional investors under the [September 2014 institutional placement] and a 2.5% discount to the volume weighted average price of Vocation Shares in the last five trading days in the SPP offer period".

~~*Further particulars may be provided following the completion of discovery and before the initial trial.*~~

(d) where:

(i) material information had not been disclosed to the ASX (namely the information the subject of the Prospectus Omissions and/or the Vocation Prospectus Misleading Conduct Contraventions)~~and/or Vocation's First Continuous Disclosure Contravention and/or Vocation's Second Continuous Disclosure Contravention and/or Vocation's Third Continuous Disclosure Contravention and/or Vocation's Fourth Continuous Disclosure Contravention and/or Vocation's Fifth Continuous Disclosure Contravention)~~, which a reasonable person would expect, had it been disclosed, to have caused the Placement not to proceed, the Placement Offer Price to be lower and/or there to be a material effect on the willingness of potential investors to accept the offer of Vocation Securities made pursuant to the Placement, whether at the Placement Offer Price or generally;

(ii) misleading or deceptive statements had been made (namely the Prospectus Misleading Statements ~~and/or the representations the subject of the Vocation Misleading Conduct Contraventions prior to the Placement~~

~~being undertaken,~~ which had they not been made, a reasonable person would expect to have caused the Placement Offer Price to be lower and/or there to be a material effect on the willingness of potential investors to accept the offer of Vocation Securities made pursuant to the Placement, whether at the Placement Offer Price or generally.

Particulars

The identities of all those Group Members which or would not have acquired Vocation Securities pursuant to the Placement are not known with the current state of the Applicant’s~~’~~ knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member’s claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant’s~~’~~ claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

J.2.4 Effect of the Vocation Market Contraventions

251. In the Relevant Period, the Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions ~~and/or the Continuous Disclosure Contraventions and/or the Vocation Misleading Conduct Contraventions and/or the Section 1041E Contraventions~~ (and each of them) ~~(**Vocation Market Contraventions**)~~ caused or materially contributed to the market price of Vocation Securities to be substantially greater than:

(a) their true value; and/or

(b) the market price that would have prevailed but for those contraventions ~~the Vocation Market Contraventions~~,

from the respective dates that those ~~Vocation Market~~ Contraventions commenced, as pleaded in this Statement of Claim.

Particulars

i. The extent to which the Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions ~~Vocation Market Contraventions~~ caused the market price for Vocation Securities to be substantially greater than their true value and/or the market price that would otherwise had prevailed (that is, inflated) during the Relevant Period is a matter for evidence, particulars of which will be served *immediately following the Applicant filing opinion evidence in the proceeding being expert evidence that: (a) will establish that the ASX was relevantly a "semi-strong" efficient capital market; (b) will establish that Vocation Securities traded responsively to information released to that market during the Relevant Period; and (c) being an event study of the type referred to in Earglow Pty Ltd v Newcrest Mining Ltd [2015] FCA 328 at [87]-[88].*

ii. *In the case of the <u>Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions</u> ~~Vocation Market Contraventions~~ inflation was caused by the withholding of information from and/or the direct release of information to the market of actual and potential investors in Vocation.*

251A. At all times between 10 September 2014 and 16 September 2014, the <u>Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions</u> ~~Vocation Pre-Placement Contraventions~~ caused or materially contributed to the Placement Offer Price for Vocation Securities to be materially greater than:

(a) their true value; and/or

(b) the Placement Offer Price that would have prevailed but for the ~~Placement~~ <u>Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct</u> Contraventions.

Particulars

i. *The Applicant repeats the particulars to paragraph 250 and say that Vocation set the Placement Offer Price by reference to the then prevailing market price in the manner set out in those particulars, such that, if Vocation had proceeded to conduct the Placement in circumstances where the then prevailing market price had been materially lower, the Placement Offer Price also would have been materially lower.*

ii. *The extent to which the <u>Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions</u> ~~Vocation Market Contraventions~~ caused the market price for Vocation Securities to be substantially greater than their true value and/or the market price that would otherwise had prevailed (that is, inflated) during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding being expert evidence that: (a) will establish that the ASX was relevantly a "semi-strong" efficient capital market; (b) will establish that Vocation Securities traded responsively to information released to that market during the Relevant Period; and (c) being an event study of the type* *referred to in Earglow Pty Ltd v Newcrest Mining Ltd [2015] FCA 328 at [87]-[88].*

iii. *In the case of the Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions ~~Vocation Market Contraventions~~ inflation was caused by the withholding of information from and/or the direct release of information to the market of actual and potential investors in Vocation.*

iv. *The extent to which the Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions ~~Vocation Pre-Placement Contraventions~~ caused the Placement Offer Price to be substantially higher than the price at which Vocation Securities otherwise would have been offered pursuant to the Placement is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence.*

252. The declines in the price of Vocation Securities pleaded in paragraphs 74A, 100A, 113 and 119 above:

(a) ~~was~~ were caused or materially contributed to by:

(i) the market's reaction to the information released to the ASX in the 25 August Announcement, the 18 September Announcement, 27 October Announcement and/or 30 October Announcement, and the 4 December Announcement; and

(ii) Vocation's Prospectus Contraventions ~~Vocation's First Continuous Disclosure Contravention and/or Vocation's Second Continuous Disclosure Contravention~~ and/~~n~~or the Vocation Prospectus Misleading ~~and Deceptive~~ Conduct Contraventions~~, Vocation's Continuous Disclosure Contraventions pleaded in paragraphs 168 to 191 and/or the Section 1041E Contraventions~~; and

(b) would, to the extent it removed inflation from the price of VET Securities, have occurred, or substantially occurred, earlier if:

(i) Vocation had disclosed to the market the information the subject of the Prospectus Omissions and the Vocation Prospectus Misleading Conduct Contraventions ~~and/or Vocation's Continuous Disclosure Contraventions, Vocation's First Continuous Disclosure Contravention and/or Vocation's~~

~~Second Continuous Disclosure Contravention~~ earlier; and/or

(ii) Vocation had not made the Prospectus Misleading Statements ~~(and/or Prospectus Representations) and/or engaged in the conduct the subject of the~~ Vocation ~~Misleading and Deceptive Conduct Contraventions pleaded in paragraphs 168 to 191 and/or engaged in the conduct the subject of the Section 1041E Contraventions~~.

Particulars

The extent to which inflation was removed from the price of Vocation Securities, and would have been removed at earlier points in time during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence as referred to in the particulars to paragraph 251.

253. [Not used] ~~The decline in the price of Vocation Securities pleaded in paragraph 119 above:~~

~~(a) was caused or materially contributed to by:~~

~~(i) the market's reaction to the information released to the ASX in the 4 December Announcement; and~~

~~(ii) Vocation's Fourth Continuous Disclosure Contravention and/or the Misleading and Deceptive Conduct Contraventions pleaded in paragraphs 200 to 209; and~~

~~(b) would, to the extent it removed inflation from the price of VET Securities, have occurred, or substantially occurred, earlier if:~~

~~(i) Vocation had disclosed to the market the information the subject of Vocation's Fourth Continuous Disclosure Contravention earlier.~~

~~(ii) Vocation had not engaged in the conduct the subject of the Misleading and Deceptive Conduct Contraventions pleaded in paragraphs 200 to 209.~~

J.3 Reliance

254. Further, or in the alternative to paragraphs 246 to 252 ~~248 to 253~~ in the decision to acquire an interest in Vocation Securities:

(a) the Applicant and some Group Members would not have acquired interests in Vocation Securities if they had known the following information:

(i) the BAWM Conduct Information;

(ii) the BAWM Conduct Non-Compliance Information;

(iii) the BAWM Historical Non-Compliance Information;

(iv) the BAWM Conduct Risk Information;

(v) the BAWM Conduct Further Risk Information;

(vi) the BAWM Conduct Business Implication Information;

(vii) the Systemic Conduct Information;

(viii) the ~~BAWM~~ Systemic Conduct ~~Risk~~ Non-Compliance Information;

(ix) the BAWM Historical Non-Compliance Information;

(x) the Systemic Conduct Risk Information;

(xi) the Systemic Conduct Further Risk Information;

(xii) the Systemic Conduct Business Implication Information,

~~(xiii) the BAWM Identified Non-Compliance Information;~~

~~(xiv) the BAWM Conduct Increased Risk Information;~~

~~(xv) the BAWM Investigation Information;~~

~~(xvi) the BAWM Investigation Risk Information;~~

~~(xvii) the Victorian Investigation Information;~~

~~(xviii) the Victorian Investigation Risk Information;~~

~~(xix) the Cash Requirement Information~~

~~(xx) the Restructure Information; and/or~~

~~(xxi) the Post-DEECD Settlement Earnings Unreliability Information,~~

which for the reasons pleaded in paragraphs ~~136~~ 120 to 135C ~~167~~ constituted contravening conduct.

(b) the Applicant and some Group Members relied directly on some or all of the following representations:

(i) The Prospectus Misleading Statements (or any of them);

(ii) the Prospectus Representations (or any of them);

~~(iii) the August Representations (or any of them), namely:~~

~~(A) the August Compliance Representation;~~

~~(B) the August Materiality Representation;~~

~~(C) the August Immaterial Risk Representation;~~

~~(iv) the August FY14 Results Representations (or any of them);~~

~~(v) the September Representations (or any of them);~~

~~(A) the September Compliance Representation;~~

~~(B) the September Materiality Representation;~~

~~(C) the September Immaterial Risk Representation;~~

~~(vi) the 16 October Representations (or any of them);~~

~~(A) the 16 October Compliance Representation;~~

~~(B) the 16 October Materiality Representation;~~

~~(C) the 16 October Immaterial Risk Representation;~~

~~(vii) the Late October Representations (or any of them);~~

~~(A) the 27 October Disclosure Representation;~~

~~(B) the 27 October FY15 Earnings Guidance Representation;~~

~~(C) the 27 October FY15 Earnings Guidance Basis Representation;~~

~~(D) the 30 October FY15 Earnings Guidance Representation;~~

~~(E) the 30 October FY15 Earnings Guidance Basis Representation;~~

~~(viii) the November Representations (or any of them);~~

~~(A) the November FY15 Earnings Guidance Representation;~~

~~(B) the November FY15 Earnings Guidance Basis Representation;~~

~~(ix) the Continuing Compliance Representation;~~

~~(x) the Continuing Materiality Representations (or any of them);~~

~~(xi) the Continuing Immaterial Risk Representation; and/or~~

~~(xii) the Continuing FY15 Earnings Guidance Representation~~

~~(xiii) the Continuing FY15 Earnings Guidance Basis Representation~~

~~(xiv) the Continuous Disclosure Representations;~~

which for the reasons pleaded in paragraphs ~~168~~ 120 to 135C ~~210~~ constituted contravening conduct.

Particulars

Particulars of the Applicant's reliance will be provided prior to the initial trial

The identities of all those Group Members which or who would not have acquired an interest in Vocation Securities had they known of any or all of the information referred to in sub-paragraph 25~~474~~(a) and/or which or who relied directly on any or all of the representations referred to in sub-paragraph 25~~474~~(b) are not known with the current state of the Applicant's~~'~~ knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

J.4 Loss or damage suffered by the Applicant and Group Members

255. By reason of the matters pleaded in paragraphs 246 and/or 247, the Applicant and some Group Members have suffered loss and damage by and resulting from the Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions.

Particulars

The loss suffered by the Applicant will be calculated by reference to:

i. the difference between the price at which Vocation Securities were acquired by the Applicant during the Relevant Period and the true value of that interest; or

ii. the difference between the price at which interests in Vocation Securities were acquired and the market price that would have prevailed had the Prospectus Contraventions not occurred; or

iii. the difference between the price at which the Applicant acquired an interest in Vocation Securities and the amount left in hand.

Further particulars in relation to the Applicant's losses will be provided after the service of opinion evidence in chief.

Particulars of the losses of Group Members are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members, but that loss will be calculated by reference to the same measures identified above.

255A By reason of the matters pleaded in paragraphs 247A and/or 247B, the Applicant and some Group Members have suffered loss and damage by and resulting from Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions ~~Vocation's Pre-Placement Contraventions~~.

Particulars

Particulars of the losses of Group Members are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following the determination of the

<u>*Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members, but that loss will be calculated by reference to:*</u>

i. <u>*the difference between the price at which Vocation Securities were acquired by the Applicant during the Relevant Period and the true value of that interest; or*</u>

ii. <u>*the difference between the price at which interests in Vocation Securities were acquired and the market price that would have prevailed had the Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions not occurred; or*</u>

iii. <u>*the difference between the price at which the Applicant acquired an interest in Vocation Securities and the amount left in hand.*</u>

256. By reason of the matters pleaded in paragraphs 248 to <u>252</u> ~~253~~, the Applicant and some Group Members have suffered loss and damage by and resulting from the <u>Prospectus Contraventions and/or the Vocation Prospectus Misleading Conduct Contraventions</u> ~~Vocation Market Contraventions~~ (or any one or combination of them).

Particulars

The loss suffered by the Applicants will be calculated by reference to:

i. *the difference between the price at which Vocation Securities were acquired by the Applicants during the Relevant Period and the true value of that interest; or*

ii. *the difference between the price at which the Applicants acquired an interest in Vocation Securities and the market price that would have prevailed had the Market Contraventions not occurred; or*

<u>*iii.* *the difference between the price at which the Applicant acquired an interest in Vocation Securities and the amount left in hand.*</u>

~~*iii.* *in respect of Vocation Securities acquired pursuant to the Placement, the difference between the price at which those securities were acquired, being the Placement Offer Price, and the price at which those securities would have been offered had the Placement Contraventions not occurred;*~~

~~*iv.* *alternatively, for days during the Relevant Period and thereafter where the traded price of Vocation Securities fell as a result of the disclosure information which had not previously been disclosed because of the Market Contraventions, the quantum of that fall; or*~~

~~*v. alternatively, the days after the Relevant Period when the traded price of Vocation Securities fell as a result of the disclosure of information which had not previously been disclosed because of the Market Contraventions, the quantum of that fall.*~~

Further particulars in relation to the Applicant's losses will be provided after the service of opinion evidence in chief, including as referred to in the particulars to paragraph 251.

Particulars of the losses of Group Members are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicants take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the Applicant's' claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

257. Further, or alternatively, to paragraph 255, by reason of the matters pleaded in paragraph 254, the Applicant and some Group Members have suffered loss or damage.

Particulars

The particulars to paragraph 256 are repeated.

258-260. [There are no paragraphs 258-260].

III. CLAIM AGAINST PRICEWATERHOUSECOOPERS

***Note**: This section is in substitution for the claim formerly pleaded against the Second Respondent in paragraphs [211]-[248] of the Consolidated Statement of Claim, and amendments are not indicated on the document: see Whittenbury v Vocation Ltd [2017] FCA 1185 at [54].*

A. PWC AND PWC'S ROLE

A.1 PWC

261. The Second Respondent (**PWC**):

(a) was, at all material times, a partnership and the Applicant is entitled, by reason of Rule 9.41 of the *Federal Court Rules 2011* (Cth), to bring this proceeding against the partners of PWC in the partnership name;

(b) conducted business within New South Wales as accountants and auditors under the partnership name "PricewaterhouseCoopers";

(c) included among its partners and employees practising in New South Wales persons who were registered company auditors including Mr Steven Bourke (**Bourke**) who at all material times was:

(i) a partner of PWC; and

(ii) a person for the purposes of ss 1041E and 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the Australian Consumer Law;

(d) was the owner of its wholly owned subsidiary PricewaterhouseCoopers Securities Ltd (ACN 003 311 617) (**PWCS**);

(e) was, by reason of s 761F of the Corporations Act, a person for the purposes of Chapter 7 of the Corporations Act, such that any contravention of a provision of Chapter 7 of the *Corporations Act* (including ss 1041E and 1041H of the Corporations Act) that would otherwise be a contravention by PWC is taken to have been a contravention by each partner of PWC who:

(i) aided, abetted, counselled or procured the relevant act or omission; or

(ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner);

(f) was governed, inter alia, by each of the *Partnership Act 1958* (Vic) and the *Partnership Act 1892* (NSW), such that each partner of PWC (including Bourke):

(i) is an agent of the firm and each partner of the firm for the purposes of the business of the partnership; and

(ii) is liable jointly with the other partners for all wrongful acts or omissions of any partner acting in the ordinary course of the business of PWC.

A.2 PWC's Role

262. Vocation Ltd (**Vocation**) was:

(a) a public company within the meaning of s 9 of the Corporations Act;

(b) a disclosing entity within the meaning of ss 111AC(1) of the Corporations Act;

(c) included in the official list of the financial market operated by ASX (**Official List**), and a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;

(d) subject to and bound by Part 2M.3 of the Corporations Act, including being obliged:

(i) by s 295 of the Corporations Act, to prepare a financial report for a financial year (including FY14), consisting of the financial statements for the year the notes to the financial statements and the directors' declaration about the statements and notes (**Financial Report**), which:

(A) complies with accounting standards, as required by s 296 of the Corporations Act, including Australian Accounting Standard 108 ("Accounting Policies, Changes in Accounting Estimates and Errors") (**AASB108**), Australian Accounting Standard 3 ("Business Combinations") (**AASB3**), Australian Accounting Standard 110 ("Events after the Reporting Period") (**AASB110**); Australian Accounting Standard 118 ("Revenue") (**AASB118**); Australian Accounting Standard 139 ("Financial Instruments; Recognition and

Measurement") (**AASB139**); Australian Accounting Standard 136 ("Impairment of Assets") (**AASB136**); Australian Accounting Standard 101 ("Presentation of Financial Statements") (**AASB101**), and Australian Accounting Standard 137 ("Provisions, Contingent Liabilities and Contingent Assets") (**AASB137**);

(B) gives a true and fair view of the financial position and performance of Vocation, and the consolidated entity comprising Vocation and its subsidiaries;

(ii) by s 301 of the Corporations Act, to have the financial report for a financial year audited in accordance with Part 2M.3, Division 3 and obtain an auditor's report (**Auditor's Report**);

(iii) by ss 314 and 315(1) of the Corporations Act, to provide the Financial Report and the Auditor's Report to the members of Vocation by no later 21 days before the next Annual General Meeting of the members of Vocation after the end of the financial year, or 4 months after the end of the financial year (whichever is the earlier);

(iv) by s 319 of the Corporations Act, to lodge the Financial Report and the Auditor's Report with the Australian Securities and Investments Commission within 3 months of the end of the financial year,

(**Vocation's Statutory Reporting Obligations**).

(e) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**), including being obliged:

(i) by Listing Rules 4.3A and 4.3B, to give ASX the information set out in Appendix 4E (which must be based upon the same accounting policies as the accounts upon which it is based, and which must comply with all relevant accounting standards) immediately they are ready to be given to ASX and no later than the time that it lodges any accounts with ASIC, and in any event no later than 2 months after the end of the accounting period, which information includes:

(A) the amount and percentage change up or down from the previous corresponding period of revenue from ordinary activities (Item 2.1);

(B) the amount and percentage change up or down from the previous corresponding period of profit (loss) from ordinary activities after tax attributable to members (Item 2.2);

(C) the amount and percentage change up or down from the previous corresponding period of net profit (loss) for the period attributable to members (Item 2.3);

(D) any other significant information needed by an investor to make an informed assessment of its financial performance and financial position (Item 12);

(E) a commentary on the results for the period, which is sufficient for the user to be able to compare the information presented with equivalent information for previous periods, which would include discussion of any factor which has affected the results in the period or which are likely to affect results in the future, including those where the effect could not be quantified (Item 14); and

(F) a statement as to whether the report is based on accounts which have been audited or subject to review, are in the process of being audited or reviewed, or have not yet been audited or reviewed (Item 15), and if the accounts have not yet been audited and are likely to contain an independent audit report that is subject to a modified opinion, emphasis of matter or other matter paragraph, a description of the modified opinion, emphasis of matter or other matter paragraph (Item 16).

(ii) by Listing Rule 4.3D, if it became aware of any circumstance which was likely to materially affect the results or other information contained in the preliminary final report given to ASX under Listing Rule 4.3A, to immediately give ASX an explanation of the circumstances and the effects the circumstances are expected to have on its current or future financial performance or financial position;

(iii) by Listing Rule 4.5, to give ASX a copy of the documents which it must lodge with ASC under s 319 of the Corporations Act at the same time as it lodges them with ASIC, (**Vocation's ASX Reporting Obligations**).

263. On or about 4 December 2013, Vocation retained PWC for the purpose of auditing, as required by s 301 of the Corporations Act, the Financial Report for the period ending 30 June 2014 (**FY14**) to be included in Vocation's FY14 Annual Report (**PWC Retainer**).

Particulars

i. The PWC Retainer is referred to in Vocation's FY14 Annual Report on pp.20 and 62.

ii. The auditor's independence declaration was signed by Bourke as the lead auditor pursuant to s 307C(3) of the Corporations Act implying that an audit firm being PWC was appointed to conduct the audit of Vocation.

iii. Further particulars of the PWC Retainer may be provided after discovery.

264. As auditor of Vocation for the year ended 30 June 2014, PWC through Bourke was obligated (**Statutory Auditing Obligations**):

(a) pursuant to s 307 of the Corporations Act to form an opinion as to whether:

(i) Vocation's financial report for FY14 was in accordance with the Corporations Act, including whether it complied with the accounting standards, and whether it gave a true and fair view of the financial position and performance of Vocation; and

(ii) whether PWC had been given all information, explanation and assistance necessary for the conduct of the audit; and

(b) pursuant to s 307A of the Corporations Act to conduct the audit in accordance with applicable auditing standards, including Australian Auditing Standard 200 ("Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards") (**ASA200**), Australian Auditing Standard 500 ("Audit Evidence") (**ASA500**), Australian Auditing Standard 505 ("External Confirmations") (**ASA505**) and Australian Auditing Standard 570 ("Going Concern") (**ASA570**);

(c) pursuant to s 308 of the Corporations Act to:

(i) report to the members of Vocation on whether PWC was of the opinion that Vocation's financial report for FY14 was in accordance with the Corporations Act, including whether it complied with the accounting standards, and whether it gave a true and fair view of the financial position and performance of Vocation, and:

(A) if PWC was not of that opinion, say in the report why; and

(B) if PWC was of the opinion that Vocation's financial report for FY14 was not in compliance with an accounting standard, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report, or if it is not practicable to quantify the effect fully, say why; and

(ii) describe in the Auditor's Report:

(A) any defect or irregularity in Vocation's financial report for FY14;

(B) any deficiency, failure or shortcoming in respect of whether PWC has been given all information, explanation and assistance necessary for the conduct of the audit, whether Vocation has kept financial records sufficient to enable a financial report to be prepared and audited, and whether Vocation has kept other records and registers required by the Corporations Act;

(iii) if the financial report contained additional information to give a true and fair view of the financial position and performance of Vocation, state in the Auditor's Report whether the inclusion of that additional information was necessary to give a true and fair view.

265. Pursuant to the PWC Retainer and/or the Statutory Auditing Obligations, PWC through Bourke was obligated to prepare an Auditor's Report in respect of Vocation's Financial Report for FY14 by no later than the date which would enable Vocation to comply with Vocation's Statutory Reporting Obligations and Vocation's ASX Reporting Obligation (**Audit Due Date**).

Particulars

i. To the extent the obligation arose contractually, the term was implied to give business efficacy to the relationship between

PWC and the entities PWC was required to audit pursuant to the PWC Retainer.

ii. *To the extent the obligation arose by statute, the Applicant refers to and relies upon Vocation's Statutory Reporting Obligations, and the mandatory timeframes for lodgement of an Auditor's Report with ASIC, for which s 319 of the Corporations Act provides (as pleaded in paragraph 262(d)(iv)).*

iii. *The Audit Due Date was:*

   A. *originally no later than 30 September 2014;*

   B. *subsequently varied to be no later than about 25 September 2014, in that when Vocation announced on 31 July 2014 that it would hold its AGM on 16 October 2014, 25 September was the date which was 21 days prior to the date for Vocation's AGM, so as to become the earlier of the dates for which s 315 of the Corporations Act provides (as pleaded in paragraph 262(d)(iii));*

   C. *subsequently varied to be no later than 2 September 2014.*

iv. *Further particulars will be provided after discovery.*

266. It was a term of the PWC Retainer that PWC would use reasonable skill and care in providing services pursuant to the PWC Retainer.

Particulars

i. *The term was implied to give business efficacy to the relationship between PWC and the entities PWC was required to audit pursuant to the PWC Retainer.*

ii. *Further particulars will be provided after discovery.*

A.3 PWC Audit Team

267. At all material times, PWC and Bourke employed, engaged to act on their behalf, or directed, consented to or agreed to a number of persons (**PWC Audit Team**) to carry out work in providing professional accounting and auditing services to Vocation for and incidental to the PWC Retainer and the performance of the Statutory Auditing Obligations.

Particulars

i. *To the best of the Applicant's knowledge, the PWC Audit Team included:*

A. Bourke (as Group Engagement Partner);

*B. Matthew Palmer (**Palmer**);*

*C. Troy Porter (**Porter**).*

ii. Any person in the PWC Audit Team who was not an employee of PWC was engaged to act on behalf of PWC, under the direction of and with the consent or agreement of Bourke, as agent of PWC, with authority to give such direction, consent or agreement.

iii. Further particulars will be provided after discovery.

268. At all material times, pursuant to s 769B(4), (6) and (10) of the Corporations Act:

(a) conduct (including acts or omissions) engaged in on behalf of the partners of PWC (including Bourke), by:

(i) an employee or agent of the partners of PWC (including Bourke), acting within the scope of the actual or apparent authority of that employee or agent; or

(ii) any other person acting at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the partners of PWC (including Bourke), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is taken, for the purposes of Chapter 7 of the Corporations Act, to have been engaged in also by the partners of PWC (including Bourke);

(b) the state of mind (including actual knowledge and constructive knowledge (that is, what ought to be known)) of:

(i) an employee or agent of the partners of PWC (including Bourke), acting within the scope of the actual or apparent authority of that employee or agent; or

(ii) any other person acting at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the partners of

PWC (including Bourke), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is sufficient to establish the state of mind of the partners of PWC (including Bourke) for the purposes of a proceeding under Chapter 7 of the Corporations Act in respect of conduct engaged in by the partners of PWC or the firm PWC.

269. At all material times, by reason of the matters pleaded in paragraphs 267 to 268:

(a) the conduct (including acts or omissions) of persons in the PWC Audit Team is taken, for the purposes of Chapter 7 of the Corporations Act, to have been engaged in by the partners of PWC (including Bourke); and

(b) the state of mind (including actual knowledge and constructive knowledge (that is, what ought to be known)) of persons in the PWC Audit Team is imputed to the partners of PWC (including Bourke) for the purposes of a proceeding under Chapter 7 of the Corporations Act in relation to the conduct of PWC (including conduct which the partners of PWC (including Bourke) are taken to have engaged in by reason of the matters pleaded in sub-paragraph (a) above).

B. FACTS RELEVANT TO THE CLAIM AGAINST PWC

B.1 Vocation

270. On or about 27 November 2013, Vocation and ACN 166 629 063 Pty Ltd (**SaleCo**) lodged with ASIC a document entitled “Vocation Prospectus” (VOC.503.001.0001) (**Replacement Prospectus**).

271. By the Replacement Prospectus:

(a) Vocation and SaleCo made an offer of 134,000,000 Vocation Securities (**Initial Public Offering**), as follows:

(i) Vocation offered to issue 75.4 million Vocation Securities; and

(ii) SaleCo offered to sell and transfer 58.6 million Vocation Securities, at a price of $1.89 per Vocation Security (**Offer Price**) on the terms set out in the Replacement Prospectus, to potential investors in Vocation Securities in Australia (and to certain institutional investors outside Australia).

(b) Vocation and SaleCo disclosed that following completion of the Initial Public Offering, Vocation had applied to ASX for admission of Vocation to the Official List, and quotation of Vocation Securities on the ASX (such disclosure being required by s 716(5) of the Corporations Act).

272. The Replacement Prospectus disclosed that prior to, or contemporaneously with, the issue or sale of Vocation Securities pursuant to the Initial Public Offering, there would be a merger (**Merger**) between:

(a) Vocation; and

(b) the following entities (**Founding Companies**):

(i) AVANA Group Pty Ltd (ACN 110 198 171) (**AVANA**), and its subsidiaries;

(ii) BAWM Pty Ltd (ACN 078 456 676) (**BAWM**) and Aspin Pty Ltd (ACN 106 046 682) (**Aspin**) (referred to together in the Replacement Prospectus as “BAWM”);

(iii) Customer Service Institute of Australia Pty Ltd (ACN 127 413 923) (**CSIA**), and its subsidiaries, and CSIA Education Services Pty Ltd (ACN 135 651 204);

(c) certain entities or businesses, which were acquired by Vocation or one of the ~~entities referred to in subparagraph 272(b) above~~ Founding Companies, either prior to or contemporaneously with the acquisition of AVANA and CSIA by Vocation.

Particulars

i. *Replacement Prospectus at pp. 3, 5 and 131.*

B.2 BAWM and Aspin

273. Prior to completion of the Merger and Initial Public Offering, BAWM and Aspin:

(a) operated as private education providers operating under the brands of “RTO Edge”, “Buildit Learning”, “Diverse Learning” and “Careers Direct”, focusing on industries such as transport and logistics, manufacturing, construction and community services, in Victoria (and which had previously also traded under the name "Institute of Counselling and Community Studies" or "ICSS");

(b) had, in the case of BAWM, reported on a consolidated basis, as at the end of FY13:

(i) net assets and total equity of $4,736,455;

(ii) profit before tax for FY13 of $6,766,493 (derived from revenues of $36,713,675);

(c) had, in the case of Aspin, reported on a consolidated basis, as at the end of FY13:

(i) net assets and total equity of $104,440;

(ii) profit before tax for FY13 of $63,200 (derived from revenues of $270,659).

Particulars

i. Prospectus, pp.49, 86-87, 113, 128 ("BAWM Founders").

ii. Financial Report – 30 June 2013 for BAWM, filed with ASX on 6 December 2013 as part of the Pre-Quotation Disclosure.

iii. Financial Report – 30 June 2013 for Aspin filed with ASX on 6 December 2013 as part of the Pre-Quotation Disclosure.

274. Immediately prior to the Merger and the Initial Public Offering:

(a) BAWM's total assets would have represented a very large proportion of the total assets of Vocation (on a pro forma consolidated basis as at the end of FY13);

(b) BAWM's revenue would have represented a very large proportion of the revenue of Vocation (on a pro forma consolidated basis as at the end of FY13, based on an assumption that the Merger and Initial Public Offering had taken place);

(c) BAWM would have contributed a very large proportion of the net profit before tax of Vocation (on a pro forma consolidated basis as at the end of FY13).

Particulars

i. The proportion in 274(a) is about 55%, derived by dividing the Total Assets for BAWM (column 1 of Fig 4.4.1) by the sum of:

the Total Assets for BAWM (column 1 of Fig 4.4.1) and the Total Assets for Founding Companies other than BAWM (column 2 of Fig 4.4.1): Replacement Prospectus p.57.

ii. *The proportion in 274(b) is about 62% derived by dividing the BAWM revenue described in paragraph 274(b) by the Statutory Revenue for FY13 in the fifth column of Fig 4.3.2.1 (also the Total Revenue for FY13 in the first column of Fig 4.7.2.1.1): Replacement Prospectus pp.56, 69.*

iii. *The proportion in 274(c) is about 88%, derived by dividing BAWM's net profit as described in paragraph 274(b) by the "Profit before tax" for FY13 in column 1 of Fig 4.7.2.1.1: Replacement Prospectus p.69.*

275. By reason of the matters pleaded in paragraph 274, at all material times in the Relevant Period after the Merger and the Offer:

(a) BAWM represented a significant proportion of Vocation's assets;

(b) BAWM's revenue (which was derived principally from government contracts) represented a significant proportion of Vocation's consolidated revenue;

(c) BAWM contributed to a significant proportion of anticipated profits of Vocation;

(d) by reason of the matters pleaded in subparagraphs 275(a) to (c), a significant proportion of the goodwill of Vocation was attributable to BAWM.

276. At all material times, BAWM derived a significant proportion of its revenues from contracts with Victorian government entities (**BAWM Government Contracts**) administered by the Victorian Department of Education and Early Childhood Development (**DEECD**).

Particulars

i. *Vocation had 16 state and territory funding contracts as at the date of the Merger and Initial Public Offering (of which a number were BAWM Government Contracts), including:*

A. *for students enrolled on or after 1 January 2013 and before 31 December 2013, the "2013 VET Funding Contract", published by the Victorian Skills Commission (<u>such contract with BAWM being the</u> **2013 BAWM Government Contract**);*

B. *for students enrolled on or after 1 January 2014 and before 31 December 2014, the 2014-2016 VET Funding Contract published by DEECD on 15*

*November 2013 (<u>such contract with BAWM being the</u> **2014 BAWM Government Contract**),*

which contracts were standard form contracts.

277. It was a term of the BAWM Government Contracts (**Relevant Contract Review Terms**) that:

(a) In the case of the 2013 BAWM Government Contracts and 2013 Aspin Government Contracts:

(i) the Commission or Department (or persons authorised by the Commission or Department) may conduct an audit or review (**DEECD Review**) of the RTO at any reasonable time:

(A) in order to confirm whether the RTO is complying with the agreement;

(B) in order to establish whether and to what extent the Funds have been used for the provision of the Training Services to Eligible Individuals;

(C) in order to investigate allegations or suspected misuse of the Funds; and/or

(D) if applicable, as part of the Commission's Audit and Risk Committee's Internal Audit Plan (as defined) (clause 11.1);

(ii) without limiting the Commission's rights under clause 18 of the agreement, the Commission may invoke any of its rights under clause 17 of the agreement in response to any audit outcomes or review outcomes identifying non-compliance with the agreement or any misuse of the Funds (clause 11.4);

(b) in the case of the 2014 BAWM Government Contracts and 2014 Aspin Government Contracts:

(i) DEECD (or persons authorised by DEECD) may conduct an audit or review (also a **DEECD Review**) of the RTO at any reasonable time to, among other things:

(A) confirm whether the RTO is complying with the agreement;

(B) investigate allegations or suspected misuse of the Funds (clause 10.1);

(ii) if an audit or review by, or on behalf of, DEECD concludes that there has been non-compliance by the RTO with the VET Funding Contract, DEECD may, among other things and at DEECD's absolute discretion, exercise any of its rights under clause 16 or 17 of the agreement (clause 10.3);

(iii) the RTO must conduct an internal audit of its compliance with the agreement each calendar year in accordance with any requirements of the Department (clause 10.4).

278. It was a further term of the BAWM Government Contracts (**Relevant Contract Enforcement Terms**) that if:

(a) BAWM breaches a clause of the BAWM Government Contract;

(b) DEECD reasonably suspects that BAWM has breached or may breach a clause of the BAWM Government Contract (including the Relevant Contract Primary Terms);

(c) BAWM does any of the following things (each a **BAWM Government Contract Termination Event**):

(i) commits a “Material Breach” of the BAWM Government Contract;

(ii) commits a breach of the BAWM Government Contract which cannot be remedied;

(iii) commits a breach of the BAWM Government Contract, and fails to commence action to remedy the breach within 10 business days after DEECD has served notice or fails to complete action to remedy the breach as soon as possible and in any event within 20 business days of DEECD’s notice;

(iv) fails to provide some or all of the training services for which funds have been paid by the government entity, or the training services are not provided to a standard satisfactory to DEECD;

(d) DEECD reasonably suspects that a BAWM Government Contract Termination Event has occurred or may occur;

(e) DEECD became aware of what it considers to be an irregularity or inconsistency regarding BAWM's operations, reporting or other obligations under the BAWM Government Contract which BAWM fails to explain to DEECD's reasonable satisfaction in the time required by DEECD; or

(f) DEECD becomes aware of any communication, representation or step taken by ASQA or VRQA that indicates that ASQA or VRQA has formed an adverse view in relation to BAWM, or which DEECD considers will impair BAWM's performance of the Government Contract,

then DEECD could take any of the following steps (**DEECD Enforcement Action**):

(g) suspend part or all of the provision of training services under the BAWM Government Contract;

(h) withhold, suspend, cancel or terminate payment of any part of the funds required to be paid by the government entity under the BAWM Government Contract, as DEECD determines is appropriate, until DEECD is satisfied that the issue has been satisfactorily resolved;

(i) require BAWM to refund such funds which have been paid by the government entity under the BAWM Government Contract as DEECD reasonably deems appropriate, together with interest;

(j) require payment of a monetary amount by BAWM to DEECD;

(k) in the case of a BAWM Government Contract Termination Event, terminate the Government Contract.

Particulars

i. The following documents available from the DEECD website are referred to:

A. the standard form 2013 Service Agreement Victorian Training Guarantee Program, between the Victorian Skills Commission and an RTO, applicable to students commencing training between 1 January and 31 December 2013, cll 17.1, 17.2, 18.3;

B. *the standard form 2014-16 VET Funding Contract, between the State of Victoria (through the Secretary of DEECD) and the RTO), applicable to students commencing training between 1 January and 31 December 2014, cll 16.1, 16.2, 17.3.*

279. The Aspin Government Contracts contained terms materially to the same effect as the Relevant Contract Review Terms and Relevant Contract Enforcement Terms.

B.3 Vocation's New Revenue Recognition Policy

280. The Replacement Prospectus lodged by Vocation with ASIC on or about 27 November 2013 contained a statement that Vocation's forecast financial performance in FY14 would be as follows (**FY14 Guidance**) (p.69);

	Pro forma historical results for FY13 ($m)	**Pro forma forecast results for FY14 ($m)**
Business channel		
Enterprise	18.4	44.9
Direct	6.8	22.3
Solutions	34.0	51.1
Total revenue	**59.2**	**118.3**
EBITA	12.3	34.9
NPAT	8.3	19.6
NPATA	8.9	24.7

281. The FY14 Guidance set out in the Replacement Prospectus was based on the following revenue recognition policy:

(a) in relation to Vocation's "Enterprise" business channel (including BAWM and Aspin), revenue was to be recognised on a "stage of completion" basis, as assessed by the rendering of invoices following the completion by a student of a unit of competency;

(b) in relation to Vocation's "Direct" business channel (including BAWM and Aspin), revenue was to be recognised on a "stage of completion" basis, as assessed by the rendering of invoices following the completion by a student of a unit of competency;

(c) in relation to Vocation's "Solutions" business channel (including BAWM's "RTO Edge" business), revenue was to be recognised at the time at which the relevant company's entitlement to those funds had been verified, as assessed by all five of the following criteria having been met:

(i) the relevant training has been delivered by the end of the reporting period;

(ii) the training has been reported to the relevant authority within a month following the reporting period;

(iii) data evidence of student participation has been received within a month following the reporting period;

(iv) that data evidence has been subject to a quality control assessment to determine whether they are in accordance with the relevant funding contract; and

(v) notification by the relevant authority of the claimed monies,

(**Prospectus Revenue Recognition Policy**).

Particulars

The Applicant refers to:

i. The description of the Prospectus Revenue Recognition Policy contained in the Replacement Prospectus at pages 61, 62, 134 and 135.

ii. The statement at page 67 of the Replacement Prospectus that "[t]he Forecast Financial Information has been prepared based on the significant accounting policies adopted by Vocation, which are in accordance with the Australian Accounting Standards".

iii. The statement at page b of the Replacement Prospectus that "[t]he basis of preparation and presentation of the Forecast Financial Information is, to the extent applicable, consistent with the basis of preparation and presentation of the Historical Financial Information".

iv. The description of the basis of preparation of the "Historical Financial Information" at page 52 of the Replacement Prospectus.

v. The description of the revenue recognition policy applied in respect of "Government contract training fees" contained in the "Financial report for the year ended 30 June 2013" lodged by each of Aspin and BAWM with the ASX at page 6 of each document, and the statement on pages 5 and 6 respect of the document lodged by Aspin and on page 6 in respect of the *document lodged by BAWM that "Revenue is recognised to the extent that it is probable that the economic benefits will flow to the company and the revenue can be reliably measured… Until such time as the above 5 milestones have been achieved, monies are not considered to be earned as there exists a possibility that monies will be required to be repaid to the relevant authority."*

282. By no later than 19 August 2014, Vocation had approved a new revenue recognition policy based on the following:

(a) in relation to Vocation's "Enterprise" business channel (including BAWM and Aspin), revenue would now be recognised according to a "stage of delivery" basis, and recognised:

(i) as to 50% when a student was enrolled;

(ii) as to a further 25% at the mid point of a unit;

(iii) as to the final 25% when the student completed the unit;

(b) in relation to Vocation's "Direct" business channel (including BAWM and Aspin), revenue would now be recognised according to a "stage of delivery" basis, and recognised:

(i) as to 35% when a student was enrolled;

(ii) as to a further 35% at the mid point of a unit;

(iii) as to the final 30% when the student completed the unit;

(c) in relation to Vocation's "Solutions" business channel (including BAWM's "RTO Edge" business), revenue would now be recognised based on Vocation management's estimate of the courses or modules provided in a given period in respect of which management estimated that a claim for payment could be issued by the relevant company, regardless of whether a claim had in fact been prepared or issued by that company, rather than when the criteria set out in paragraph 281(c) were met,

(**New Revenue Recognition Policy**).

Particulars

*i. The New Revenue Recognition Policy is described in pages 3 to 6 of the report titled "Vocation Audit & Risk Committee Update" prepared by Gréwal for Vocation's Audit & Risk Committee meeting on 19 August 2014 (**CFO FY14 Report**), and at pages 6 and 7 of the report titled "Audit & Risk Committee report – year ended 30 June 2014" prepared by PWC for the committee (see VOC.003.001.2586).*

283. The effect of the adoption by Vocation of the New Revenue Recognition Policy relative to the Prospectus Revenue Recognition Policy was:

(a) to bring forward into FY14 the recognition of material amounts of both revenue and profit which amounts otherwise would have been recognised in FY15;

(b) as a consequence of 283(a), that Vocation's reported profit for FY14 was materially greater than it would have been if the New Revenue Recognition Policy had not been adopted, and materially better than the FY14 Guidance rather than materially worse than the FY14 Guidance,

(**New Revenue Recognition Policy Effects**).

Particulars

i. As to sub-paragraph (a), the Applicant refers to the analyses set out in the CFO FY14 Report at page 4 and 6, and say that the effect was to bring forward approximately $15.86m revenue and $7.57m in profit before tax, or approximately $5.3m in profit after tax, broken down as follows:

Impact on FY14 Results ($m)	Revenue	Expenses	Profit (before tax)	Profit (after tax)
Enterprise	4.89	(1.91)	2.98	2.09
Direct	2.33	(0.16)	2.17	1.52
Solutions	8.63	(6.22)	2.42	1.69
Total	**15.86**	**(8.29)**	**7.57**	**5.30**

The column in the table entitled "Profit (after tax)" has been derived by applying a flat 30% effective tax rate to the figures in the column entitled "Profit (before tax)"

ii. As to sub-paragraph (b), the Applicant says that the effect on Vocation's reported profit was to increase Vocation's reported NPAT by approximately $5.3M (31.5%) from $16.8M to $22.1M, *and to enable reported NPAT to be approximately 12% better than the FY14 Guidance rather than 14% worse, as follows:*

$millions	***FY14 pro forma guidance***	***FY14 pro forma as reported***	***FY14 adjusted to reverse effect of New Revenue Recognition Policy***
Enterprise	*44.9*	*50.2*	*45.31*
Direct	*22.3*	*25.5*	*23.17*
Solutions	*51.1*	*61.5*	*52.87*
Total Revenue	***118.3***	***137.2***	***121.35***
Total Expenses	***(83.4)***	***(101.1)***	***(92.81)***
EBITA	***34.9***	***36.1***	***28.54***
Amortisation of acquired intangibles	*(5.1)*	*(4.9)*	*(4.9)*
EBIT	***29.8***	***31.2***	***23.64***
Net interest income	*0.4*	*0.4*	*0.4*
Profit before tax	*30.2*	*31.6*	*24.0*
Income tax expense	*(10.6)*	*(9.5)*	*(7.2)*
NPAT	***19.6***	***22.1***	***16.8***
NPATA	***24.7***	***25.5***	***21.7***

iii. Further particulars may be provided following the completion of discovery and before the initial trial.

B.4 The 2014 Victorian Funding Suspensions

284. On a date presently unknown to the Applicant prior to 3 July 2014, DEECD commenced a DEECD Review of BAWM, including as to whether BAWM was complying with the terms of the 2014 Government Contract in respect of certain courses (**BAWM Investigation**).

285. On 3 July 2014, DEECD wrote to BAWM advising that DEECD was withholding the payment of funds to BAWM under the 2014 BAWM Government Contract until certain

issues identified by DEECD in the DEECD Review of BAWM had been satisfactorily resolved (**BAWM Funding Suspension**).

Particulars

i. 30 October Announcements entitled "Response to ASX Aware Query"; and "Clarification of ASX Announcement; Answer to ASX Q.1.

ii. The Applicant refers to the letter dated 3 July 2014 from Lee Watts of DEECD to Bonnici (document VOC.001.001.1001).

286. By no later than 24 July 2014, in addition to the BAWM funding suspension the DEECD directed BAWM to cease all new enrolments of Eligible Individuals (as defined in the 2014 BAWM Government Contract) pending the outcome of the BAWM investigation (**BAWM Enrolment Suspension**).

Particulars

i. The Applicant refers to the letter dated 24 July 2014 from Watts to Bonnici (document VOC.001.001.0968).

287. On a date presently unknown to the Applicant, but prior to or on 5 August 2014, DEECD commenced an investigation into Aspin, including as to whether Aspin was complying with the terms of the 2014 Aspin Government Contract in respect of certain courses (**Aspin Investigation**).

Particulars

i. 30 October Announcements; entitled "Response to ASX Aware Query" and "Clarification of ASX Announcement made on 27 October 2014"; Answer to ASX Q.1.

288. On 5 August 2014, DEECD:

(a) notified Aspin that DEECD was withholding all payments of funds under the 2014 BAWM Government Contract and 2014 Aspin Government Contract with Aspin until certain concerns about Aspin's compliance with its obligations under that agreement were resolved to DEECD's satisfaction (**Aspin Funding Suspension**, and together with the BAWM Funding Suspension, **Victorian Funding Suspensions**); and

(b) directed Aspin to suspend:

(i) the acceptance of all future enrolments of Eligible Individuals (as defined in Aspin's 2014 Funding Contract); and

(ii) the commencement of training delivery to Eligible Individuals that have enrolled but not yet commenced as at 5 August 2014,

(**Aspin Enrolment Suspension** and together with the BAWM Enrolment Suspension, **Victorian Enrolment Suspensions**).

Particulars

i. The Applicant refers to the statements made in the 30 October Announcements entitled "Response to ASX Aware Query"; and "Clarification of ASX Announcement made on 27 October 2014".

C. PWC'S CONDUCT PRIOR TO 21 AUGUST 2014

C.1 PWC's Earlier Engagements

289. PWCS was engaged by Vocation as Investigating Accountant to report on the historical and forecast financial information included in the Replacement Prospectus (**PWCS IPO Engagement**).

Particulars

i. *The Investigating Accountant's Report was dated 15 November 2013, and signed by Porter as authorised representative of PWCS: Replacement Prospectus, pp.101-109.*

290. PWC was engaged by Vocation to review the Investor Presentation and Half Year Financial Report for the half year ended 31 December 2013, lodged with ASX on 21 February 2014 (**PWC 1H14 Engagement**).

Particulars

i. *Minutes of Vocation's Board Audit and Risk Committee dated 20 February 2014 (VOC.003.002.0736 at .0738).*

C.2 PWC's Audit Work

291. From a time presently unknown to the Applicant after 4 December 2013 and prior to 19 August 2014, in performance of the PWC Retainer Bourke and other members of the

PWC Audit Team commenced to conduct an audit of the Financial Report for FY14 to be included in Vocation's FY2014 Annual Report (**FY14 Financial Report**), for the purposes of which they:

(a) attended meetings of Vocation's Board Audit and Risk Committee (**ARC**);

(b) had access to and reviewed the books of Vocation made available to PWC by officers and employees of Vocation;

(c) carried out audit testing (including substantive testing and controls testing);

(d) communicated with and made inquiries of Vocation's management, including by consulting with management in relation to the preparation of detailed accounting papers on all key matters including, inter alia, revenue recognition;

(e) had access to and reviewed work papers and documents collected and prepared in the course of the PWCS IPO Engagement and the PWC 1H14 Engagement,

(**PWC's Audit Work**).

Particulars

The best particulars the Applicant can presently provide of PWC's Audit Work are that:

i. PWC had prepared a report to the ARC on 28 January 2014 which communicated PWC's audit team, communication plan and certain areas of focus (VOC.003.002.0736 at .0754).

ii. Vocation's year end financial reporting timelines (VOC.003.002.0736 at .0742) contemplated that on:

A. 2 June 2014 – there be interim testing and clearance of key accounting issues prior to year end, by the external auditor;

B. 24 June 2014 – there be a BARC meeting to discuss the external audit plan;

C. 14 July 2014 – final audit fieldwork to commence, with an anticipated completion date of end-August 2014;

D. 24 July 2014 – there be an audit status/issues update meeting with management on subsidiary fieldwork;

E. 4 August 2014 – the draft 4E and financial report to be made available for PwC Review;

F. 13 August 2014 – there be an audit clearance meeting with management;

G. 14 August 2014 – ARC papers to be sent, including the draft 4E and first draft of Financial Report, and PWC audit committee report;

H. 19 August 2014, there be an ARC meeting; and

I. 19-21 August 2014, finalise changes to financial report following ARC/Board comments.

iii. As to sub-paragraph (a), Bourke and other PWC staff attended ARC meetings on:

*A. 20 February 2014 (**24 February ARC Meeting**), attended by Bourke and Porter at which PWC outlined the key accounting and review matters outlined in PWC's Half Year Review Report, and the PwC Letter of Engagement" was discussed (VOC.003.002.0736 at .0737).*

*B. 24 June 2014 (**24 June ARC Meeting**), attended by Bourke and Palmer, at which PWC's Audit Plan (VOC.003.002.0736 at .0754) was formally presented (although it had been discussed in draft with management earlier), and Vocation's year end financial reporting timelines (VOC.003.002.0736 at .0742) were discussed.*

*C. 19 August 2014 (**19 August ARC Meeting**), attended by Bourke and Palmer, at which:*

(i) Gréwal presented the CFO FY14 Report;

(ii) Gréwal presented the draft FY14 Appendix 4E; and

*(iii) Bourke and Palmer presented a report dated 15 August 2014 (VOC.003.001.2586 at 2688) (**15 August PWC Report**).*

iv. As to sub-paragraphs (b), (c) and (d), by no later than 15 August 2014, PWC had progressed its audit as documented in the 15 August PWC Report, by reviewing those books of Vocation and making the inquiries of management referred to in the 15 August PWC Report. In particular, PWC had:

A. completed its audit work in relation to the underlying trading results and revenue recognition (at .2691);

B. was currently focussing on the disclosures that will be included in the Appendix 4E (at .2691);

C. consulted with Vocation's management in relation to the preparation of detailed accounting papers for key judgmental areas to be presented to the ARC, including revenue recognition (at .2704).

v. As to sub-paragraph (e):

A. the Audit Plan referred to PWC's earlier engagement in relation to the half year review as part of the basis of PWC's understanding of Vocation (VOC.003.002.0753 at .0754); and

B. the Audit Plan referred to "our role as Investigating Accountants on the IPO" as part of the basis of PWC's understanding of Vocation (VOC.003.002.0736 at .0758).

C.3 The knowledge of PWC and Bourke of the New Revenue Recognition Policy as at 15 August 2014

292. In the course of carrying out PWC's Audit Work prior to 15 August 2014, Bourke and PWC (through Bourke and other members of the PWC Audit Team, including Porter) became aware of:

(a) the FY14 Guidance;

(b) the Prospectus Revenue Recognition Policy;

(c) the New Revenue Recognition Policy; and

(d) the New Revenue Recognition Policy Effects,

(**Revenue Recognition Policy Relevant Facts**).

Particulars

i. As to the FY14 Guidance:

A. The Replacement Prospectus contained the FY14 Guidance, and paragraph 280 is repeated.

B. Further, the Investor Presentation reviewed by PWC as part of the PWC 1H14 Engagement restated and maintained the FY14 Guidance, and Bourke and Porter became aware of it in the course of that engagement.

ii. As to the Prospectus Revenue Recognition Policy:

A. The Replacement Prospectus disclosed the Prospectus Revenue Recognition Policy, and paragraph 281 is *repeated. The "IPO" and the revenue recognition policy in place at that time was referred to in the PWC 15 August Report (at .2696).*

B. Further, the financial information reviewed as part of PWCS IPO Engagement was based on the Prospectus Revenue Recognition Policy, and Porter became aware of it in the course of that engagement.

iii. As to the New Revenue Recognition Policy and the New Revenue Recognition Policy Effects:

A. Bourke and Matthew Palmer attended the 24 June ARC Meeting at which the committee discussed the revenue recognition policy (VOC.003.001.2586 at .2587).

B. Between 24 June 2014 and 19 August 2014, PWC tested the application of the revenue recognition policy (VOC.003.001.2586 at .2588).

C. PWC prepared the 15 August PWC Report for presentation at the 19 August ARC Meeting, which commented on the revenue recognition policy (at .2691, .2696).

D. PWC attended the 19 August ARC Meeting, at which:

(i) The CFO FY14 Report was presented, which outlined the New Revenue Recognition Policy, and the particulars to paragraph 282 are repeated.

(ii) the ARC requested PWC to highlight items in the draft FY14 Appendix 4E for their attention, and PWC highlighted and discussed revenue recognition.

(iii) PWC presented the 15 August PWC Report, which discussed revenue recognition at .2696-2697.

iv. Further particulars may be provided after discovery.

C.4 The knowledge of PWC and Bourke of the Victorian Funding Suspensions as at 15 August 2014

293. In the course of carrying out PWC's Audit Work prior to 15 August 2014, Bourke and PWC (through Bourke and other members of the PWC Audit Team) became aware:

(a) that Vocation was the subject of the BAWM Investigation and the Aspin Investigation;

(b) of the Victorian Funding Suspensions, and the quantum of funding the subject of the Victorian Funding Suspensions;

(c) of the Victorian Enrolment Suspensions;

(d) that Vocation's management had offered to repay DEECD $4.0 million (which would result in a reversal of revenue in the financial statements for FY2014); and

(e) that Vocation's management did not propose to make any provision against the remaining accrued withheld revenue of approximately $14.4 million,

(**Funding Suspension Relevant Facts**).

Particulars

i. The 15 August PWC Report stated that "[m]anagement has received notification from the Victorian government that they have suspended payment of Vocation's June and July claims, subject to the completion of an RTO audit that is currently ongoing. The correspondence and discussion between Vocation and the Victorian government indicates that they are investigating claims with total revenue claimed of $4.0m. We understand that management is going to accept that this revenue has been incorrectly claimed and repay it to the Victorian government. Accordingly the revenue and related costs recognised in FY14 will be reversed in the FY14 financial statements. No provision has been recognised against the remaining accrued revenue of $14.4m and that accrued based on the July and August claims as noted above." (at .2697).

ii. Further particulars may be provided after discovery.

C.5 The knowledge of PWC and Bourke of the contents of Vocation's Appendix 4E as at 15-19 August 2014

294. By no later than 19 August 2014, Bourke and PWC (through Bourke and other persons in the PWC Audit Team) were provided with a draft of Vocation's Preliminary Final Report (Appendix 4E), including the Preliminary Financial Report for the year ending 30 June 2014 (**Draft FY14 Appendix 4E**), which was based on the FY14 Financial Report.

Particulars

i. The Draft FY14 Appendix 4E was included in the papers for the 19 August ARC Meeting (VOC.003.001.2586 at .2622), circulated on 16 August 2014. An updated version was tabled at the 19 August ARC Meeting (attended by Bourke), and the ARC recommended that it be submitted to the Board of Vocation for approval: Minutes (VOC.007.016.0065 at .0065-.0066).

ii. *Vocation's year end financial reporting timelines (VOC.003.002.0736 at .0742) contemplated that the draft FY14 4E and financial report would be made available for PwC review by 4 August 2014;*

iii. *The PWC 15 August Report referred to the Draft FY14 Appendix 4E explicitly (at .2689, .2691), and implicitly, as it was based on identical financial figures (save for rounding), such as:*

A. *the Revenue line item of $128,575 in the Draft FY14 Appendix 4E (at .2623) and $128,5741 in the PWC 15 August Report (at .2693);*

B. *the Profit after tax line item of $8,272 in the Draft FY14 Appendix 4E (at .2623) and $8,270 in the PWC 15 August Report (at .2693).*

295. The Draft FY14 Appendix 4E stated:

(a) In the section entitled "Results for announcement to the market" (.2620):

(i) that to aid comparability, the following information relates to Vocation as a continuation of an existing business, following the corporate/group re-organisation, and not from the date the company was incorporated:

(A) Vocation's revenues from ordinary activities were "up 246.0%" to $128,575,000;

(B) Vocation's profit from ordinary activities after tax attributable to the owners of Vocation was "up 74.6%" to $8,272,000; and

(ii) The profit for the consolidated entity after providing for income tax "amounted $8,272,000 (30 June 2013: $4,737,000)".

(b) in the statement of profit or loss and other comprehensive income in the Preliminary Financial Report (at .2623), that:

(i) Vocation's revenue was $128,575,000 (2014 unaudited consolidated), compared to $37,162,000 (2013 unaudited consolidated); and

(ii) Vocation's profit after income tax expense for the year attributable to the owners of Vocation (2014 consolidated and unaudited) was $8,272,000, compared to $4,737,000 (2013 consolidated unaudited).

(c) in Note 1 (Significant accounting policies) in the Preliminary Financial Report under the heading "Revenue recognition" (at .2628) that:

(i) Revenue is recognised when it is probable that the economic benefit will flow to the consolidated entity, and the revenue can be reliably measured. Revenue is measured at the fair value of the consideration received or receivable;

(ii) Revenue from services is recognised in the accounting period in which the services are rendered. For fixed-price contracts, revenue is recognised under the percentage of completion method, based on the actual service provided as a proportion of the total services to be provided;

(iii) If circumstances arise that may change the original estimates of revenues, costs, or extent of progress toward completion, estimates are revised. These revisions may result in increases or decreases in estimated revenues or costs and are reflected in profit or loss in the period in which the circumstances that give rise to the revision become known by management;

(d) in Note 8 (Events after the reporting period) in the Preliminary Financial Report (at .2648-2649), that apart from the acquisition of 100% of the share capital of Endeavour College of Natural Health, no other matter or circumstance had arisen since 30 June 2014 that had significantly affected, or may significantly affect the consolidated entity's operations, the results of those operations, or the consolidated entity's state of affairs in future financial years.

296. The Draft FY14 Appendix 4E did not contain any information or statement to the effect:

(a) that:

(i) Vocation had adopted the New Revenue Recognition Policy (which differed from the Prospectus Revenue Recognition Policy);

(ii) the effect of the New Revenue Recognition Policy was to bring forward into FY14 a material amount of revenue and profit (that is, the New Revenue Recognition Policy Effects);

(b) that:

(i) Vocation was the subject of the BAWM Investigation and the Aspin Investigation;

(ii) Vocation was the subject of the Victorian Funding Suspensions, and disclosing the quantum of funding the subject of the Victorian Funding Suspensions;

(iii) Vocation was the subject of the Victorian Enrolment Suspensions;

(iv) Vocation's FY14 and FY15 earnings may be affected by the outcome of the BAWM Investigation, the Aspin Investigation and/or the Victorian Funding Suspensions.

297. By no later than 19 August 2014, Bourke and PWC (through Bourke and other members of the PWC Audit Team, including Palmer) became aware that Vocation was shortly to release to the ASX documents substantially in the form of the Draft FY14 Appendix 4E:

(a) containing the statements substantially to the effect pleaded in paragraph 295; and

(b) not containing any information or statement substantially to the effect pleaded in paragraph 296(a) or 296(b).

Particulars

i. The particulars to paragraph 294 are repeated.

ii. PWC attended the 19 August ARC Meeting and/or presented the 15 August PWC Report to that meeting, and the Draft FY14 Appendix 4E was on the agenda for that meeting (VOC.003.001.2586).

iii. At the 19 August ARC Meeting, the ARC recommended that the Draft FY14 Appendix 4E as tabled be submitted to the Board for approval.

iv. The draft FY14 Appendix 4E was reviewed in detail by Vocation's Audit and Risk Committee at the 19 August ARC

Meeting, before the ARC resolved to submit the Draft FY14 Appendix 4E to the Board for approval.

v. *By reason of the matters referred to in (i) to (iv), PWC was aware of the positive statements contained in the Draft FY14 Appendix 4E, and was aware of what was omitted from it (in circumstances where PWC had the knowledge as pleaded in paragraphs 292 and/or 293).*

vi. *Further particulars may be provided after discovery.*

C.6 PWC's August Representations to Vocation

298. On 15 August 2014, Bourke and PWC (through Bourke) issued the 15 August PWC Report, in which Bourke and PWC (through Bourke):

(a) stated to Vocation (and/or the ARC of Vocation) that:

(i) PWC had completed its audit work in relation to the underlying trading results, revenue recognition and a number of key areas such as acquisition accounting;

(ii) following the release of the Appendix 4E, Vocation's management will continue to finalise the full Annual Report and financial statements;

(iii) based on PWC's current work to date, PWC expected to issue an unqualified audit opinion;

(iv) if circumstances changed, or PWC became aware of additional information, PWC would let Vocation know as this may affect PWC's audit opinion and the contents of the 15 August PWC Report.

(b) did not state:

(i) that there was any issue of concern to PWC which might lead it to issue a qualified audit opinion in respect of Vocation's FY14 Financial Statements;

(ii) that there was any issue with Vocation's use of the New Revenue Recognition Policy, or the disclosures pertaining to revenue recognition, in the FY14 Financial Report (including the notes thereto) which PWC was auditing at that time;

(iii) that there was any issue with Vocation not disclosing the Victorian Funding Suspensions and/or Victorian Enrolment Suspensions in its FY14 Financial Statements (including the notes thereto).

Particulars

i. 15 August PWC Report (VOC.003.001.2586 at .2689, .2691).

299. On 19 August 2014, Bourke and Palmer attended an ARC meeting of Vocation in which they:

(a) stated that the audit process was progressing well, and, while some further policies and procedures needed to be established in writing, PWC recognised this would take some time;

(b) did not raise any significant issues either in public or private session, and did not:

(i) say that there was any issue of concern to PWC which might lead it to issue a qualified audit opinion in respect of Vocation's FY14 Financial Statements;

(ii) say that there was any issue with Vocation's use of the New Revenue Recognition Policy, or the disclosures pertaining to revenue recognition in the notes to the financial statements which PWC was auditing at that time;

(iii) say that there was any issue with Vocation not disclosing the Victorian Funding Suspensions and/or Victorian Enrolment Suspensions.

Particulars

i. Minutes of 19 August ARC Meeting (VOC.007.016.0065).

ii. Minutes of Board of Vocation held on 19 August 2014 (VOC.003.001.3132 at .3133).

300. By reason of the matters pleaded in paragraphs 298 to 299, between on or about 15 and 19 August 2014, Bourke and PWC (through Bourke):

(a) stated to Vocation (and/or the ARC of Vocation) that in PWC's opinion the financial information contained in Vocation's FY14 financial statements upon which the Draft FY14 Appendix 4E was based, was prepared in compliance with

Accounting Standards and/or would give a true and fair view of Vocation's financial position and financial performance in FY14 (**PWC August Opinion**);

(b) represented to Vocation (and/or the ARC of Vocation) that the PWC August Opinion was based upon reasonable grounds and was the product of an exercise of reasonable skill and care (**PWC August Representation**).

Particulars

i. *The PWC August Opinion was partly express and partly implied.*

A. *To the extent that it was express, the Applicant refers to sub-paragraphs 298(a) and 299(a) and says that:*

(i) *On 15 August 2014, PWC (through Bourke) advised the ARC in writing in the PWC 15 August Report that "Following the release of the Appendix 4E, management will continue to finalise the full Annual Report and financial statements and, based on our current work to date, once the directors approve the financial statements and notes, and sign their director's declaration, we expect to issue an unqualified audit opinion. If circumstances change or we become aware of additional information, we will let you know, as this may affect our audit opinion and this report" and "our work in relation to the underlying trading results, revenue recognition and a number of key areas such as acquisition accounting is complete." (VOC.003.001.2586 at .2689, .2691).*

(ii) *PWC (through Bourke) advised the ARC of Vocation that the audit process was progressing well, and, while some further policies and procedures needed to be established in writing, PWC recognised this would take some time (VOC.003.001.3132 at .3133).*

B. *To the extent that it was implied, the Applicant refers to paragraph 298(b) and 299(b) and says that in the 15 August PWC Report and in the 19 August ARC Meeting, PWC (through Bourke) did not raise any significant issues.*

ii. *The PWC August Representation was implied from the conduct of Bourke and PWC (through Bourke) as professional accountants and auditors in expressing the PWC August Opinion (being an opinion apparently within their professional expertise), coupled with the absence of any or any adequate reservation or qualification to that opinion. While the PWC August Opinion was not an audit opinion which PWC was* *obliged to give pursuant to the PWC Retainer, it was nonetheless an opinion that Bourke and PWC (through Bourke) did in fact give, and a reasonably competent professional auditor exercising reasonable care and skill would have exercised reasonable care and skill, and complied with ASA200 in expressing that opinion, which was in the nature of an audit opinion on the FY14 financial statements which formed the basis of the FY14 Appendix 4E.*

D. VOCATION'S PUBLICATION OF THE FY14 RESULTS DOCUMENTS ON 21 AUGUST 2014

D.1 The ARC and Board approval of the FY14 Results Documents

301. On 19 August 2014, the ARC of Vocation resolved to:

(a) submit the Draft FY14 Appendix 4E to the Board of Vocation for approval; and

(b) recommend to the Board that the "Investor Presentation", "Media Release" and "Outlook Statement" be approved in principle and that management be authorised to make final adjustments,

(**19 August ARC Recommendation**).

Particulars

i. Minutes of Vocation's ARC meeting held on 19 August 2014 (VOC.007.016.0065 at .0066, .0068).

302. In making the 19 August ARC Recommendation, the ARC of Vocation relied upon:

(a) the PWC August Opinion; and/or

(b) the PWC August Representation.

Particulars

i. Minutes of Vocation's ARC meeting held on 19 August 2014 (VOC.007.016.0065 at 0066).

303. On 19 August 2014, the Board of Vocation met and:

(a) was advised by Halley that the ARC had reviewed in detail the Draft FY14 Appendix 4E and draft Full Year Financial Report for the financial year ended 30

June 2014 and accompanying documents;

(b) noted that PWC had advised at a meeting that the audited financial results and Annual Report are progressing well, and that PWC did not raise any significant issues in the private session (VOC.003.001.3132 at .3133);

(c) noted that the ARC had received a pack of information, including the Draft FY14 Appendix 4E, draft investor presentation (as updated and tabled at the ARC), media release, and full year financial report;

(d) resolved, that as recommended by the ARC and subject to the final review, amendment and approval by a committee of any two directors of Vocation, inter alia:

(i) the Draft FY14 Appendix 4E be approved;

(ii) the Investor Presentation and Media Release be approved ; and

(iii) the company secretary be authorised to lodge the Appendix 4E, media release and investor presentation with the ASX immediately,

(**19 August Board Approval**).

Particulars

i. Minutes of Board of Vocation held on 19 August 2014 (VOC.003.001.3132).

304. On 20 August 2014, a committee of the Board of Vocation comprising Halley, Hutchinson and Tucker (**Board Committee**) resolved to:

(a) approve the Appendix 4E for the financial year ended 30 June 2014;

(b) approve the accompanying investor presentation and media release; and

(c) authorise the company secretary of Vocation to lodge the Appendix 4E, media release and investor presentation with ASX prior to market opening on 21 August 2014,

(**20 August Board Committee Approval**).

Particulars

i. Minutes of Board Committee meeting of Vocation held on 20 August 2014 (VOC.007.010.0005).

305. In making:

(a) the 19 August Board Approval, the Board of Vocation; and

(b) the 20 August Board Committee Approval, the board committee of Vocation comprising Halley, Hutchinson and Tucker,

each relied upon the 19 August ARC Recommendation, which in turn was made by the ARC in reliance upon the PWC August Opinion and the PWC August Representation (as pleaded in paragraph 302 above).

Particulars

i. Minutes of Board of Vocation held on 19 August 2014 (VOC.003.001.3132).

ii. Minutes of Board Committee meeting of Vocation held on 20 August 2014 (VOC.007.010.0005).

D.2 Contents of the FY14 Results Documents

306. On 21 August 2014:

(a) Vocation released to the ASX its Preliminary Financial Report (Appendix 4E) for the year ending 30 June 2014 (**FY14 Appendix 4E**) (ASX.001.001.0826);

(b) Vocation released to the ASX its FY14 Results Presentation (**FY14 Results Presentation**) (ASX.001.001.0856); and

(c) Vocation released to the ASX an announcement entitled "Vocation delivers strong first full year result, exceeding prospectus guidance" (**FY14 Results Announcement**) (ASX.001.001.0885),

(together, **FY14 Results Documents**).

307. The FY14 Appendix 4E contained statements identical to those contained in the Draft FY14 Appendix 4E (as pleaded in paragraph 295 above), namely:

(a) In the section entitled "Results for announcement to the market" (at .0826):

(i) that to aid comparability, the following information relates to Vocation as a continuation of an existing business, following the corporate/group re-organisation, and not from the date the company was incorporated:

(A) Vocation's revenues from ordinary activities were "up 246.0%" to $128,575,000;

(B) Vocation's profit from ordinary activities after tax attributable to the owners of Vocation was "up 74.6%" to $8,272,000; and

(ii) The profit for the consolidated entity after providing for income tax "amounted $8,272,000 (30 June 2013: $4,737,000)".

(b) in the statement of profit or loss and other comprehensive income in the Preliminary Financial Report (at .0829), that:

(i) Vocation's revenue was $128,575,000 (2014 unaudited consolidated), compared to $37,162,000 (2013 unaudited consolidated); and

(ii) Vocation's profit after income tax expense for the year attributable to the owners of Vocation (2014 consolidated and unaudited) was $8,272,000, compared to $4,737,000 (2013 consolidated unaudited).

(c) in Note 1 (Significant accounting policies) in the Preliminary Financial Report under the heading "Revenue recognition" (at .0834) that:

(i) Revenue is recognised when it is probable that the economic benefit will flow to the consolidated entity, and the revenue can be reliably measured. Revenue is measured at the fair value of the consideration received or receivable;

(ii) Revenue from services is recognised in the accounting period in which the services are rendered. For fixed-price contracts, revenue is recognised under the percentage of completion method, based on the actual service provided as a proportion of the total services to be provided;

(iii) If circumstances arise that may change the original estimates of revenues, costs, or extent of progress toward completion, estimates are revised. These revisions may result in increases or decreases in estimated revenues or costs and are reflected in profit or loss in the period in which the circumstances that give rise to the revision become known by management;

(d) in Note 8 (Events after the reporting period) in the Preliminary Financial Report (at .0853-0854), that apart from the acquisition of 100% of the share capital of Endeavour College of Natural Health, no other matter or circumstance had arisen since 30 June 2014 that had significantly affected, or may significantly affect the consolidated entity's operations, the results of those operations, or the consolidated entity's state of affairs in future financial years.

308. In the FY14 Results Presentation, Vocation made express statements to the effect that:

(a) in the slide headed "FY2014 – Transformational First Year" (at .0859):

(i) "We have achieved all our major objectives for FY14";

(ii) "Prospectus forecast comfortably exceeded – Significant ramp up in organic growth benefitting from scale and operating leverage. Vocation's three revenue channels have performed ahead of Prospectus forecast for FY14";

(b) in the slide headed "Basis of preparation of FY2014" (at .0861):

(i) "Pro forma actual" revenue for FY14 was $137.2m;

(ii) "Pro forma actual" NPAT was $22.1m;

(iii) "The financials presented in this Investor Pack predominantly relate to the pro forma FY14 results for Vocation. The appendices include a detailed reconciliation of the pro forma revenue and NPAT to the statutory revenue and NPAT. Refer to the 4E Preliminary Financial statements for further detail on the statutory financial information for FY14"; and

(iv) "To ensure a like for like comparison to the FY14 forecast earnings and cash flows presented in the Prospectus, the pro forma results presented" exclude earnings and cash flows from two transactions concluded at the end of April and May 2014;

(c) in the slide headed "FY2014 Results Overview" (at .0862):

(i) "Prospectus forecast comfortably exceeded. FY14 earnings 2.9x FY13";

(ii) Vocation's FY14 results relative to the FY14 Guidance were as follows:

$millions	**Pro forma Actual**	**Pro forma Prospectus**	**Variance to Prospectus**	**Variance to FY13**
Revenue	137.2	118.3	↑16.0%	↑2.3x
EBITA	36.1	34.9	↑3.4%	↑2.9x
NPATA	25.5	24.7	↑3.2%	↑2.9x

(d) in the slide headed "Proforma Income Statement – FY2014" (at .0863):

(i) "Prospectus revenue and earnings forecast comfortably exceeded";

(ii) "Total revenue exceeded the Prospectus by 16%. All three revenue channels higher than Prospectus forecast";

(iii) Vocation's FY14 results relative to the FY14 Guidance were as follows:

$millions	**Pro forma Prospectus**	**Pro forma Actual**
Enterprise	44.9	50.2
Direct	22.3	25.5
Solutions	51.1	61.5
Total Revenue	**118.3**	**137.2**
EBITA	**34.9**	**36.1**
NPAT	**19.6**	**22.1**
NPATA	**24.7**	**25.5**

309. In the FY14 Results Announcement, Vocation made express statements to the effect that:

(a) In the section headed "Results Overview":

(i) "Strong result for the 12 months to 30 June 2014, comfortably ahead of prospectus guidance";

(ii) "Pro forma revenue of $137.2 million (Prospectus forecast: $118.3m)";

(iii) "Pro forma EBITA of $36.1 million (Prospectus forecast: $34.9m)";

(iv) “Pro forma NPAT of $22.1 million (Prospectus forecast: $19.6m)”;

(v) “Pro forma NPATA of $25.5 million (Prospectus forecast: $24.7)”;

(vi) “All three revenue channels performed well ahead of expectations”;

(b) “Vocation...reported a strong result for the 12 months to 30 June 2014. On a pro forma basis, Revenue was $137.2 million, EBITA was $36.1 million and NPATA was $25.5 million”;

(c) “FY14 has been a transformational first year for the business. We have exceeded our IPO forecasts”;

(d) In the section headed “FY14 Financial Performance”:

(i) “Vocation delivered pro forma Revenue of $137.2 million (Prospectus forecast: $118.3m) in FY14 and statutory sales revenue of $128.4 million. Pro forma NPAT was $22.1 million (Prospectus forecast: $19.6m), with statutory NPAT of $8.3 million.”

(ii) “Pro forma EBITA was $36.1 million (Prospectus forecast: $34.9m), driven by the strong revenue performance. Pro forma NPATA was $25.5 million (Prospectus forecast $24.7m).”

(iii) “Vocation’s Enterprise business, which delivers education and training services to corporate and government employees, performed strongly to deliver revenue of $50.2 million (Prospectus forecast: $44.9m).”

(iv) “The Direct channel, which caters to individual students, delivered revenue of $25.5 million (Prospectus forecast: $22.3m), with online enrolments in particular growing in momentum during the year.”

(v) Vocation’s Solutions business, which delivers outsourced managed services and industry consulting to third-party providers, performed ahead of expectations over the course of the year driven by strong growth in new clients, delivering revenue of $61.5 million (Prospectus forecast: $51.1m).”

D.3 Omissions from the FY14 Results Documents

310. The FY14 Results Documents did not contain any information or statement to the effect:

(a) that:

(i) Vocation had adopted the New Revenue Recognition Policy (which differed from the Prospectus Revenue Recognition Policy);

(ii) the effect of the New Revenue Recognition Policy was to bring forward into FY14 a material amount of revenue and profit and show reported FY14 NPAT as materially outperforming the FY14 Guidance rather than materially underperforming the FY14 Guidance (that is, disclosing the New Revenue Recognition Policy Effects);

(b) that:

(i) Vocation was the subject of the BAWM Investigation and the Aspin Investigation;

(ii) Vocation was the subject of the Victorian Funding Suspensions, and disclosing the quantum of funding the subject of the Victorian Funding Suspensions, and making any provision or write-down in relation to that funding;

(iii) Vocation was the subject of the Victorian Enrolment Suspensions, and disclosing any uncertainty as to Vocation's ability to continue as a going concern;

(iv) Vocation's FY14 and FY15 earnings may be affected by the outcome of the BAWM Investigation, the Aspin Investigation, the Victorian Funding Suspensions and/or the Victorian Enrolment Suspensions.

D.4 Vocation's reliance on PWC in issuing the FY14 Results Documents

311. By reason of the matters pleaded in paragraphs 301 to 310:

(a) Vocation relied on the PWC August Opinion and/or the PWC August Representation in approving the FY14 Results Documents to be released to the ASX; and/or

(b) had Bourke and PWC not expressed the PWC August Opinion and/or made the PWC August Representation:

(i) the FY14 Results Documents would not have been released to the ASX in the form in which they were released (omitting the information referred to in paragraph 310); and/or

(ii) the FY14 Results Documents would have been released to the ASX in a form which:

(A) contained the information referred to in paragraph 310; or

(B) alternatively, stated that Vocation's accounts were likely to contain an independent audit report that is subject to a modified opinion, emphasis of matter or other matter paragraph, and described the information referred to in paragraph 310.

D.5 The partial corrective disclosure on 25 August 2014 in relation to the fact of the Victorian Investigations, and part of the Funding Suspensions

312. On 25 August 2014, the Australian Financial Review reported:

(a) that on 20 August 2014, DEECD had advised BAWM that its funding was suspended pending the outcome of a full audit;

(b) DEECD auditors had been reviewing BAWM's books for the previous six weeks.

Particulars

i. Article, 25 August 2014, "Training Wheels wobbly?".

313. On 25 August 2014 Vocation published and lodged with the ASX an announcement entitled "Response to press speculation" (**25 August Announcement**), in which Vocation stated:

(a) Vocation's funding contracts with DEECD had not been suspended and were continuing;

(b) DEECD was undertaking a review of three of the courses for which Vocation receives funding, and as part of the review process had withheld recent payments under the funding contracts;

(c) Vocation considered that neither the review nor its anticipated outcomes were material to Vocation.

314. By the 25 August Announcement, Vocation published to the ASX part of the information which was omitted from the FY14 Results Documents (as pleaded in paragraph 310(b)) and which would have been released earlier had Bourke and PWC not expressed the PWC August Opinion and/or made the PWC August Representation (as pleaded in paragraph 311(b)).

Particulars

i. The part of the information published by the 25 August Announcement was part (but not all) of the information referred to in paragraph 310(b)(i) and (ii) being the fact of some investigations by DEECD, and the fact of some suspension of funding.

ii. The 25 August Announcement did not disclose the full extent of the Victorian Investigations (including that it extended to both BAWM and Aspin), or the quantum of funding the subject of the Victorian Funding Suspensions.

315. Following the release of the 25 August Announcement, the price of Vocation Securities fell, from a closing price of $3.20 on 24 August 2014, to a closing price of $2.98, being a decline of approximately 6.8%.

E. PWC'S CONDUCT BETWEEN 21 AUGUST 2014 AND 2 SEPTEMBER 2014

E.1 PWC's finalisation of PWC's audit

316. Between 19 August 2014 and 2 September 2014, Bourke and other members of the PWC Audit Team continued to undertake PWC's Audit Work (**PWC's Further Audit Work**).

317. As part of PWC's Further Audit Work, Bourke and PWC did not form the view that there needed to be any correction or qualification to:

(a) Vocation's consolidated 2014 revenue and profit, as reported in the statement of profit or loss and other comprehensive income in the Preliminary Financial Report which was contained in the FY14 Appendix 4E (as pleaded in paragraph 307

(b) (b) above);

(c) the terms of the disclosures of significant accounting policies as reported in the Preliminary Financial Report which was contained in the FY14 Appendix 4E (as pleaded in paragraph 307(c) and (d) above); or

(d) the PWC August Opinion.

Particulars

i. The relevant entries and notes in the audited FY14 Financial Statements, in respect of which PWC issued its Independent Auditor's Report (as pleaded in paragraph 319 below) were identical to those in the FY14 Appendix 4E.

318. On 2 September 2014:

(a) Bourke (on behalf of PWC), in performance of the PWC Retainer, provided to the Board Committee of Vocation (comprising Halley, Hutchinson and Tucker) a draft of an Independent Auditor Report addressed to the members of Vocation (**PWC's Draft Auditor's Report**) in respect of the audited FY14 Financial Statements (**FY14 Audited Financial Statements**) to be included in Vocation's annual report for FY14 (**FY14 Annual Report**);

(b) Bourke and Palmer attended a teleconference meeting of the Board Committee (comprising Halley, Hutchinson and Tucker) (**2 September Board Committee Meeting**), and:

(i) advised they had updated their report since 19 August 2014, summarised the unadjusted audit differences and noted that they agreed with management's proposal of not providing the BAWM balance sheet as part of the FY14 Financial Statements; and

(ii) did not advise of any correction or qualification to the matters referred to in sub-paragraphs 317(a) to (c).

Particulars

i. Minutes of Board Committee meeting held on 2 September 2014 (VOC.007.010.0007).

ii. The form of the FY14 Annual Report and FY14 Audited Financial Statements was the same as the form ultimately released to ASX on 3 September 2014 (ASX.01.001.0958).

> *iii. The form of PWC's Draft Auditor's Report was the same as the form ultimately included in the FY14 Annual Report (ASX.01.001.0958 at 1034-1035), save that the Applicant does not with her present state of knowledge know whether it already bore Bourke's signature.*

319. The FY14 Audited Financial Statements presented financial information identical to that contained in the Draft FY14 Appendix 4E (as pleaded in paragraph 295 above) and FY14 Appendix 4E (as pleaded in paragraph 307(b)-(d) above), namely:

    (a) in the statement of profit or loss and other comprehensive income, that:

        (i) Vocation's revenue was $128,575,000 (2014 consolidated), compared to $37,162,000 (2013 consolidated); and

        (ii) Vocation's profit after income tax expense for the year attributable to the owners of Vocation (2014 consolidated) was $8,272,000, compared to $4,737,000 (2013 consolidated).

    (b) in Note 1 (Significant accounting policies) under the heading "Revenue recognition" that:

        (i) Revenue is recognised when it is probable that the economic benefit will flow to the consolidated entity, and the revenue can be reliably measured. Revenue is measured at the fair value of the consideration received or receivable;

        (ii) Revenue from services is recognised in the accounting period in which the services are rendered. For fixed-price contracts, revenue is recognised under the percentage of completion method, based on the actual service provided as a proportion of the total services to be provided;

        (iii) If circumstances arise that may change the original estimates of revenues, costs, or extent of progress toward completion, estimates are revised. These revisions may result in increases or decreases in estimated revenues or costs and are reflected in profit or loss in the period in which the circumstances that give rise to the revision become known by management;

(c) in Note 8 (Events after the reporting period), that apart from the acquisition of 100% of the share capital of Endeavour College of Natural Health, no other matter or circumstance had arisen since 30 June 2014 that had significantly affected, or may significantly affect the consolidated entity's operations, the results of those operations, or the consolidated entity's state of affairs in future financial years.

320. The FY14 Annual Report and FY14 Audited Financial Statements did not contain any information or statement to the effect:

(a) that:

(i) Vocation had adopted the New Revenue Recognition Policy (which differed from the Prospectus Revenue Recognition Policy);

(ii) the effect of the New Revenue Recognition Policy was to bring forward into FY14 a material amount of revenue and profit and show reported FY14 NPAT as materially outperforming the FY14 Guidance rather than materially underperforming the FY14 Guidance (that is, the disclosing New Revenue Recognition Policy Effects);

(b) that:

(i) Vocation was the subject of the BAWM Investigation and the Aspin Investigation;

(ii) Vocation was the subject of the Victorian Funding Suspensions, and disclosing the quantum of funding the subject of the Victorian Funding Suspensions, and making any provision or write-down in relation to that funding;

(iii) Vocation was the subject of the Victorian Enrolment Suspensions, and disclosing any uncertainty as to Vocation's ability to continue as a going concern;

(iv) Vocation's FY14 and FY15 earnings may be affected by the outcome of the BAWM Investigation, the Aspin Investigation and/or the Victorian Funding Suspensions and/or the Victorian Enrolment Suspensions.

321. The PWC's Draft Auditor's Report stated that:

(a) we have conducted an audit of the accompanying financial report of Vocation, which comprises the statement of financial position as at 30 June 2014, the statement of profit or loss and other comprehensive income, statement of changes in equity and statement of cash flows for the year ended on that date, a summary of significant accounting policies, other explanatory notes and the directors' declaration for Vocation Group (the consolidated entity);

(b) we conducted our audit in accordance with Australian Auditing Standards;

(c) an audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report, and includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report;

(d) we believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion;

(e) in our opinion the financial report of Vocation Limited is in accordance with the Corporations Act 2001, including:

(i) giving a true and fair view of the consolidated entity's financial position as at 30 June 2014 and of its performance for the year ended on that date; and

(ii) complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the Corporations Regulations 2001.

322. Further, on 2 September 2014, Bourke (on behalf of PWC) signed an Independent Auditor's Report to the members of Vocation which was in the same form as PWC's Draft Auditor's Report (**PWC's Final Auditor's Report**), and provided it to Vocation with authority to lodge it with ASX as part of the FY14 Annual Report.

Particulars

i. FY14 Annual Report, pp.81-82 (ASX.01.001.0958 at 1034-1035).

E.2 The knowledge of PWC and Bourke of the New Revenue Recognition Policy as at 2 September 2014

323. As at 2 September 2014, Bourke and PWC (through Bourke and other members of the PWC Audit Team) were aware of the matters referred to in paragraph 292.

Particulars

i. The particulars to paragraph 292 are repeated, and the Applicant says that in the course of the Further Audit Work, Bourke and PWC did not come into any information which qualified or contradicted that information.

E.3 The knowledge of PWC and Bourke of the Victorian Funding Suspensions as at 2 September 2014

324. As at 2 September 2014, Bourke and PWC (through Bourke and other members of the PWC Audit Team) were aware of the matters referred to in paragraph 293.

Particulars

i. The particulars to paragraph 293 *are repeated, and the Applicant says that in the course of the Further Audit Work, Bourke and PWC did not come into any information which qualified or contradicted that information.*

E.4 The knowledge of PWC and Bourke of the contents of Vocation's FY14 Annual Report and FY14 Audited Financial Statements

325. By no later than 2 September 2014, Bourke and PWC (through Bourke and other persons in the PWC Audit Team) were aware of the contents of Vocation's FY14 Audited Financial Statements (as pleaded in paragraph 319 and 320).

Particulars

i. The Applicant refers to PWC's Draft Auditor's Report and PWC's Final Auditor's Report, and paragraphs 318(a), 319 and 320 are repeated.

326. By no later than 2 September 2014, Bourke and PWC (through Bourke) were aware that Vocation was shortly to release to the ASX:

(a) the FY14 Audited Financial Statements in a form which contained the statements substantially to the effect contained in the FY14 Appendix 4E (pleaded in paragraphs 295 and 307), as pleaded in paragraph 319; and

(b) the FY14 Audited Financial Statements in a form which did not contain any information or statement substantially to the effect pleaded in paragraph 320(a) or 320(b); and

(c) PWC's Final Auditor's Report in a form which was the same as PWC's Draft Auditor's Report, containing the statements pleaded in paragraph 321.

Particulars

i. The particulars to paragraph 325 are repeated, in that Bourke (and PWC) had completed the audit of the FY14 Audited Financial Statements.

ii. PWC attended the 2 September Board Committee Meeting and/or presented PWC's Draft Auditor's Report to the committee members prior to that meeting (VOC.007.001.0007).

iii. By reason of the matters referred to in (i) to (ii), PWC was aware of the positive statements contained in the ~~Audited~~ FY14 Audited Financial Statements, and was aware of what was omitted from it (in circumstances where PWC had the knowledge as pleaded in paragraphs 292 and 323 and/or 293 and 324).

E.5 PWC's September Representations to Vocation

327. On or about 2 September 2014, by reason of the matters pleaded in paragraph 318(a) and 321, Bourke and PWC (through Bourke):

(a) stated to Vocation (and/or the members of the Board Committee, being Halley, Hutchinson and Tucker) that, in their opinion, the financial report contained in the FY14 Annual Report:

(i) gave a true and fair view of Vocation's financial position and financial performance in FY14; and

(ii) complied with Australian Accounting Standards,

(**PWC September Opinion to Vocation**);

(b) represented to Vocation (and/or the members of the Board Committee, being Halley, Hutchinson and Tucker) that the PWC September Opinion to Vocation was based upon reasonable grounds and was the product of an exercise of reasonable skill and care (**PWC September Representation to Vocation)**.

Particulars

i. The PWC September Opinion to Vocation was express, and was contained in PWC's Draft Auditor's Report.

ii. The PWC September Representation to Vocation was implied from the conduct of Bourke and PWC (through Bourke) as professional accountants and auditors in giving the PWC September Opinion to Vocation (being an opinion apparently within their professional expertise), coupled with the absence of any or any adequate reservation or qualification to that opinion.

F. VOCATION'S APPROVAL AND PUBLICATION OF THE FY14 ANNUAL REPORT AND AUDITED FY14 FINANCIAL STATEMENTS ON 2-3 SEPTEMBER 2014

F.1 The Board Committee approval of the FY14 Annual Report

328. On 2 September 2014, the Board Committee of Vocation comprising Halley, Hutchinson and Tucker resolved to:

(a) approve the FY14 Annual Report containing the FY14 Audited Financial Statements; and

(b) authorise the company secretary of Vocation to lodge the FY14 Annual Report, with ASX,

(**2 September Board Committee Approval**).

Particulars

i. Minutes of Board Committee meeting held on 2 September 2014 (VOC.007.010.0007).

329. In making the 2 September Board Committee Approval, the Board Committee of Vocation comprising Halley, Hutchinson and Tucker each relied upon the PWC September Opinion to Vocation and the PWC September Representation to Vocation.

Particulars

i. Minutes of Board Committee meeting held on 2 September 2014 (VOC.007.010.0007).

ii. Minutes of Board Committee meeting of Vocation held on 20 August 2014 (VOC.007.010.0005).

F.2 Contents of the FY14 Annual Report and Audited FY14 Financial Statements

330. On 3 September 2014, Vocation released to the ASX the FY14 Annual Report, containing the FY14 Audited Financial Statements and PWC's Final Auditor's Report.

Particulars

i. The Financial Report is contained in the FY14 Annual Report, pp.39-80.

331. The FY14 Annual Report stated:

(a) FY14 has been a transformational first year for the business, with the pro forma results exceeding the IPO prospectus forecasts;

(b) under the heading "Pro forma consolidated income statements: Financial year ended 30 June 2014 compared to financial year ended 30 June 2013":

(i) The pro forma consolidated income statement for the year ended 30 June 2014 has been prepared on the same basis as the pro forma consolidated income statement for the year ended 30 June 2013 published in the Vocation Limited IPO prospectus issued in November 2013 and adjusted to exclude the impact of acquisitions since IPO;

(ii) The table below sets out the pro forma consolidated income statement for the year ended 30 June 2014 compared to the consolidated income statement for the year ended 30 June 2013 and the pro forma forecast for the year ended 30 June 2014, which were both included in the Prospectus,

and thereafter presented financial results relevantly the same as those set out in the FY14 Results Documents, as pleaded in paragraph 319.

F.3 Omissions from the FY14 Annual Report and Audited FY14 Financial Statements

332. The FY14 Annual Report and FY14 Audited Financial Statements released to the ASX did not contain any information or statement to the effect:

(a) that:

(i) Vocation had adopted the New Revenue Recognition Policy (which differed from the Prospectus Revenue Recognition Policy);

(ii) the effect of the New Revenue Recognition Policy was to bring forward into FY14 a material amount of revenue and profit and show reported FY14 NPAT as materially outperforming the FY14 Guidance rather than materially underperforming the FY14 Guidance (that is, disclosing the New Revenue Recognition Policy Effects);

(b) that:

(i) Vocation was the subject of the BAWM Investigation and the Aspin Investigation;

(ii) Vocation was the subject of the Victorian Funding Suspensions, and disclosing the quantum of funding the subject of the Victorian Funding Suspensions, and making any provision or write-down in relation to that funding;

(iii) Vocation was the subject of the Victorian Enrolment Suspensions, and disclosing any uncertainty as to Vocation's ability to continue as a going concern;

(iv) Vocation's FY14 and FY15 earnings may be affected by the outcome of the BAWM Investigation, the Aspin Investigation and/or the Victorian Funding Suspensions.

F.4 Vocation's reliance on PWC in issuing the FY14 Annual Report and FY14 Audited Financial Statements

333. By reason of the matters pleaded in paragraphs 328 to 332:

(a) Vocation relied on the PWC September Opinion to Vocation and the PWC September Representation to Vocation in approving the FY14 Annual Report and FY14 Audited Financial Statements to be released to the ASX (and lodged with ASIC); and/or

(b) had Bourke and PWC not expressed the PWC September Opinion to Vocation and the PWC September Representation to Vocation:

(i) the FY14 Annual Report and FY14 Audited Financial Statements would not have been released to the ASX (and lodged with ASIC) in the form in which they were released (omitting the information referred to in paragraph 332);

and/or

(ii) the FY14 Annual Report and FY14 Audited Financial Statements would have been released to the ASX in a form which:

(A) contained the information referred to in paragraph 332; or

(B) alternatively, contained an independent audit report that stated that the FY14 Audited Financial Statements did not comply with Accounting Standards and did not give a true and fair view fair view of Vocation's financial position and financial performance in FY14.

G. PWC'S SEPTEMBER REPRESENTATIONS TO ASX

334. On or about 3 September 2014, by reason of the matters pleaded in paragraphs 322 and 330, Bourke and PWC (through Bourke):

(a) stated to the members of Vocation, and the market of investors or potential investors in Vocation, that, in their opinion, the financial report contained in the FY14 Annual Report:

(i) gave a true and fair view of Vocation's financial position and financial performance in FY14; and

(ii) complied with Australian Accounting Standards,

(**PWC September Opinion to ASX**);

(b) represented to the members of Vocation, and the market of investors or potential investors in Vocation, that the PWC September Opinion to ASX was based upon reasonable grounds and was the product of an exercise of reasonable skill and care (**PWC September Representation to ASX)**.

Particulars

i. The PWC September Opinion to ASX was express, and was contained in PWC's Independent Auditor's Report dated 2 September 2014, contained in the FY Annual Report lodged with ASX by Vocation as pleaded in paragraph 330.

ii. The PWC September Representation to ASX was implied from the conduct of PWC (through Bourke) in giving the PWC September Opinion to ASX, coupled with the absence of any or any adequate reservation or qualification to that opinion.

H. EVENTS AFTER 3 SEPTEMBER 2014

H.1 The Placement

334A. By reason of the matters set out in paragraphs 284 to 288, by no later than 3 September 2014, Vocation needed working capital to remain solvent if there was not a successful resolution of the Victorian investigations (**Cash Requirement Information**).

335. Between around 3 September 2014 and 8 September 2014, Vocation entered into negotiations with Macquarie Capital (Australia) Ltd (**Macquarie**) with a view to Macquarie underwriting an institutional share placement (**Proposed Placement**), which negotiations did not result in Macquarie agreeing to underwrite the Proposed Placement.

336. Around 8 September 2014, Vocation entered into negotiations with UBS AG (**UBS**) with a view to UBS underwriting the Proposed Placement.

337. On 10 September 2014 at approximately 8.10am, UBS entered into an underwriting agreement with respect to the Proposed Placement, the terms of which obliged UBS to commence the bookbuild for the Proposed Placement at 10.00am on 10 September 2014 and to complete the bookbuild for the Proposed Placement by 2.30pm on 10 September 2014.

Particulars

i. The terms of the UBS/Vocation underwriting agreement are set out in the document at VOC.008.011.2768.

338. On 10 September 2014, Vocation released to the ASX an announcement that Vocation would:

(a) undertake a fully underwritten placement to institutional and sophisticated investors to raise approximately $74,000,000 through the issue of approximately 24.3 million Vocation Securities (**Placement**) at a price of $3.05 (**Placement Offer Price**); and

(b) following completion of the Placement, offer Australian and New Zealand shareholders the opportunity to invest up to $15,000 in new Vocation Securities (capped at $10 million) pursuant to a share purchase plan (**SPP**).

339. On 11 September 2014, Vocation released to the ASX an announcement that Vocation had completed the Placement and would issue 24.3 million Vocation Securities pursuant to the Placement at a price of $3.05 per Vocation Security on 15-16 September 2014.

H.2 The partial corrective disclosure on 18 September 2014 in relation to the quantum of the Victorian Funding Suspensions

340. On 17 September 2014, the Australian Financial Review reported that:

(a) subsequent to the 25 August Announcement, the Australian Financial Review had sought to clarify whether the funding withheld by the DEECD was just the funding for the three courses referred to in the 15 August Announcement, or all BAWM's funding, but that Vocation had refused to comment;

(b) the Victorian government was concerned about a practise called "channelling" whereby certain RTOs enrol students in courses other than what they intended for the purposes of receiving a greater subsidy level; and

(c) a previous audit of BAWM in July 2013 had found instances of "channelling".

Particulars

i. Article, 18 September 2014, "Victoria's withheld funding 'material' to Vocation".

341. On 18 September 2014 Vocation published and lodged with the ASX an announcement entitled "Response to press speculation" (**18 September Announcement**), in which Vocation stated:

(a) Vocation's funding contracts with DEECD had not been suspended and are continuing;

(b) the review by DEECD continued to relate to three of the courses for which Vocation receives funding;

(c) DEECD had withheld funding across two of Vocation's four Victorian RTOs, but the other two RTOs continue to receive all payments; and the withholding of payments was a course regularly applied when undertaking normal course review processes;

(d) Vocation looked forward to maintaining a strong presence in Victoria in partnership with DEECD.

342. By the ~~25 August~~ 18 September Announcement, Vocation published to the ASX part of the information which was omitted from the FY14 Results Documents (as pleaded in paragraph 310(b)) and the FY14 Annual Report and FY14 Financial Statements (as pleaded in paragraphs 320 and 332), and which would have been released earlier had Bourke and PWC not expressed the PWC August Opinion and/or made the PWC August Representation (as pleaded in paragraph 311(b)), or had they not expressed the PWC September Opinion to Vocation and/or made the PWC September Representation to Vocation (as pleaded in paragraph 333(b)).

Particulars

i. The part of the information published by the 18 September Announcement was part (but not all) of the information referred to in paragraph 310(b)(i) and (ii) being the fact that the Victorian Investigation extended to two of Vocation's Victorian businesses.

ii. The 18 September Announcement did not disclose the full extent of the Victorian Investigations (including that it extended to BAWM and Aspin), or the quantum of funding the subject of the Victorian Funding Suspensions.

343. Following the release of the 18 September Announcement, the price of Vocation Securities fell, from a closing price of $3.00 on 17 September 2014, to a closing price of $2.74, being a decline of approximately 8.6%.

H.3 The Corrective disclosure on 27 and 30 October 2014 in relation to the quantum of the Victorian Funding Suspensions

344. On 23 October 2014, Vocation entered into a trading halt on the ASX (**Trading Halt**).

345. On Monday 27 October 2014, Vocation lodged with the ASX and publically released an announcement entitled *"Vocation announces settlement with DEECD and completion of the Victorian Review"* (**27 October Announcement**).

346. By the 27 October Announcement Vocation expressly stated and disclosed to the ASX for the first time that:

(a) Vocation had "reached a settlement with [DEECD] in relation to its review into two of Vocation's Registered Training Organisations (RTOs), BAWM and Aspin", which involved Vocation agreeing to:

(i) "surrender $19.6 million in Government funding";

(ii) "undertake a series of measures to ensure continuous improvement in line with VRQA Guidelines for VET and AQTF Continuing Standards for Registration";

(b) DEECD had concluded that:

(i) "there had been an over reliance on third parties to identify and refer students for enrolment in [Certificate III in Warehousing Operations, Certificate III in Competitive Systems and Practices and Certificate II in General Education for Adults] which resulted in some students being enrolled in in appropriate courses for their needs";

(ii) "there were inadequate controls in place to manage the performance of third parties delivering training and assessment, resulting in some students experiencing a lower quality training experience than intended for their job seeking needs";

(c) BAWM and Aspin would relinquish their funding contracts (including, *inter alia*, the BAWM Government Contracts and Aspin Government Contracts) with effect from early 2015, and Vocation would thereafter only enrol and train students through other RTOs;

(d) the overall financial impact of the settlement and restructure for FY15 was:

(i) the commercial settlement had reached with DEECD had resulted in the forfeiture of $19.6m of funds, and the earnings impact of this in FY15 is a reduction of approximately $5m in earnings;

(ii) lower than budgeted enrolments in Victoria due to the DEECD review and Vocation's decision to restructure part of its business model in Victoria to eliminate third party training and assessment providers; and

(iii) revised EBITDA of between $53M and $57M.

347. By the 27 October Announcement, the market of investors and potential investors in Vocation Securities became aware of the balance of the information which was omitted from the FY14 Results Documents (as pleaded in paragraph 310(b)) and the FY14 Annual Report and FY14 Financial Statements (as pleaded in paragraphs 320 and 332), and which would have been released earlier had Bourke and PWC not expressed the PWC August Opinion and/or made the PWC August Representation (as pleaded in paragraph 311(b), or had they not expressed the PWC September Opinion to Vocation and/or made the PWC September Representation to Vocation (as pleaded in paragraph 333(b)).

348. Following the release of the 27 October Announcement, the price of Vocation Securities fell, from a closing price of $2.29 on 23 October 2014 (when the Trading Halt commenced), to a closing price of $1.00 on 28 October 2014 (being the first day after the Trading Halt was lifted), being a decline of approximately 57%.

I. PWC'S AUGUST CONTRAVENING CONDUCT

I.1 August misleading or deceptive conduct

349. The conduct of Bourke and PWC (through Bourke) in expressing the PWC August Opinion and making the PWC August Representation was conduct which was:

(a) in relation to financial products (being Vocation Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;

(c) in trade or commerce, within the meaning of s 2 of the Australian Consumer Law.

350. As at the time Bourke and PWC (through Bourke) expressed the PWC August Opinion and made the PWC August Representation, the financial information contained in Vocation's FY14 financial statements upon which the Draft FY14 Appendix 4E was based, was not prepared in compliance with Accounting Standards and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 in that:

(a) it used the New Revenue Recognition Policy without disclosing that the New Revenue Recognition Policy was a change in accounting policy from the revenue recognition policy which BAWM had used in FY13 (that is, the Prospectus Revenue Recognition Policy); and

(b) it did not:

(i) provide a justification that:

(A) the amount of revenue under the revised policy can be reliably estimated, as the lack of reliability of estimation was the justification for the Prospectus Revenue Recognition Policy;

(B) the New Revenue Recognition Policy provides reliable and more relevant information than the Prospectus Revenue Recognition Policy; and

(C) the percentage of completion of the service can be measured reliably, and in particular the reliability of the percentage of completion upon enrolment of students;

(ii) apply the change in accounting policy from the Prospectus Revenue Recognition Policy to the New Revenue Recognition Policy retrospectively by restating the comparative amounts; and/or

(iii) make all of the disclosures required by AASB 108 paragraph 29, including nature, reasons and quantification of the effect of the change, explaining that $15.86 million of revenue and $7.57 million of profit that would otherwise have been reported in FY15 had been included in FY14.

Particulars

i. The reasons why the financial information contained in Vocation's FY14 financial statements upon which the Draft FY14 Appendix 4E was based was not prepared in compliance with Accounting Standards (namely AASB108) and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 1, [48]-[63].

ii. What was required in order for that financial information to comply with Accounting Standards and give a true and fair view is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 2, [82].

351. Further or alternatively, at the time Bourke and PWC (through Bourke) expressed the PWC August Opinion and made the PWC August Representation, the financial information contained in Vocation's FY14 financial statements upon which the Draft FY14 Appendix 4E was based, was not prepared in compliance with Accounting Standards and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 in that:

(a) first:

(i) communications between DEECD and BAWM and Aspin dated 3 July 2014 (VOC.001.001.1001), 4 July 2014 (VOC.001.001.0977), 18 July 2014 (VOC.001.001.0928) 24 July 2014 (VOC.001.001.0968), 4 August 2014 (VOC.001.001.0234), 5 August 2014 (VOC.001.001.0162) and 15 August 2014 (VOC.001.010.6782, VOC.001.010.6786) (together **Pre-19 August DEECD Communications**) were adjusting events after the reporting period under AASB110; and

(ii) it did not

(A) in the Contingent Liabilities note to the financial report, disclose the breaches of contract claimed by DEECD, indicate that a reasonable estimate of the expected loss has been taken up as a provision in the financial report, indicate that any further amount is a contingent liability and if determinable indicate an estimate of the maximum possible financial consequences and/or effect of the breaches; and

(B) contain a Subsequent Events note which indicated that DEECD had suspended payments of claims by Vocation from June 2014 and that DEECD had instructed BAWM and Aspin to suspend the acceptance of new enrolments and suspend the commencement of training delivery; and/or

(b) secondly:

(i) the goodwill of $15 million carried in the financial statements relating to Aspin was impaired under AASB136; and

(ii) it did not write off the goodwill of $15 million pertaining to Aspin on the basis that the requirement to cease taking new enrolments and to cease the delivery of training meant that the carrying value of Aspin goodwill could no longer be justified.

Particulars

i. The reasons why the financial information contained in Vocation's FY14 financial statements upon which the Draft FY14 Appendix 4E was based was not prepared in compliance with Accounting Standards (namely AASB110, AASB136 and AASB101) and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 1, [64]-[72].

ii. What was required in order for that financial information to comply with Accounting Standards and give a true and fair view is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 2, [83].

352. As at 19 August 2014, the PWC August Opinion was not the product of an exercise of reasonable skill and care by reason of:

(a) the treatment of the New Revenue Recognition Policy in the financial statements upon which the Draft FY14 Appendix 4E was based (as pleaded in paragraph 350 above); and/or

(b) the treatment of the Victorian Funding Suspensions and Victorian Enrolment Suspensions, and non-disclosure of:

(i) the fact and quantum subject to the Victorian Funding Suspensions as a post-balance date adjusting event giving rise to contingent liabilities; and

(ii) the non-impairment of goodwill associated with Aspin,

(as pleaded in paragraph 351 above).

Particulars

i. As to sub-paragraph (a), a reasonably competent professional auditor exercising reasonable care and skill, and/or in accordance with ASA200, who was aware of the Revenue Recognition Policy Relevant Facts, would have identified the matters pleaded in paragraph 350 by no later than 19 August

2014, and would have indicated to the Audit and Risk Committee of Vocation that unless the matters pleaded in paragraph 350 were addressed to the auditor's satisfaction, the auditor would be required to issue a qualified opinion: Report of David Boymal dated 18 March 2018, Answer to Question 3, [85]-[89].

ii. As to sub-paragraph (b), a reasonably competent professional auditor exercising reasonable care and skill, and/or in accordance with ASA200, who was aware of the Funding Suspension Relevant Facts, would have identified the matters pleaded in paragraph 351 by no later than 19 August 2014, and would have reserved its position on whether to issue an unqualified audit opinion, until the DEECD Issues had further clarified: Report of David Boymal dated 18 March 2018, Answer to Question 3, [85], [90]-[94].

iii. A reasonably competent professional auditor exercising reasonable care and skill would not have expressed the PWC August Opinion without reasonable grounds, and paragraphs 350 and 351, and sub-paragraphs (i) and (ii) are repeated.

353. As at 19 August 2014, by reason of the matters pleaded in paragraphs 350 and/or 351 and/or 352, the PWC August Opinion was not based upon reasonable grounds.

354. As at 19 August 2014, by reason of the matters pleaded in paragraph 350 to 353, the conduct of Bourke in expressing the PWC August Opinion (and in failing to correct or qualify that opinion) was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H(1) of the Corporations Act;

(b) s 12DA(1) of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(each such contravention of such provisions being a **PWC August Misleading Conduct Contravention**).

355. Further, or alternatively, as at 19 August 2014 the conduct of Bourke in expressing the PWC August Opinion (and in failing to correct or qualify that opinion):

(a) was conduct which was, by reason of the matters pleaded in paragraph 350 to 353, misleading or deceptive or likely to mislead or deceive;

(b) was conduct engaged in on behalf of, and as agent of, every other partner of PWC and the firm PWC, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each other partner of PWC and the firm PWC as pleaded in paragraph 68(a);

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of PWC, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by Bourke, being a partner of PWC who was party to the act of expressing the PWC August Opinion (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 261(e); and

(d) by reason of sub-paragraphs (a) and (b), gave to rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of PWC.

356. As at 19 August 2014, by reason of the matters pleaded in paragraphs 352 and/or 353, the conduct of Bourke in making the PWC August Representation (and in failing to correct or qualify that representation), was misleading or deceptive or likely to mislead or deceive, and comprised a PWC August Misleading Conduct Contravention.

357. Further, or alternatively, as at 19 August 2014 the conduct of Bourke in making the PWC August Representation (and in failing to correct or qualify that representation):

(a) was conduct which was, by reason of the matters pleaded in paragraph 352 and/or 353, misleading or deceptive or likely to mislead or deceive;

(b) was conduct engaged in on behalf of, and as agent of, every other partner of PWC and the firm PWC, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of PWC and the firm PWC as pleaded in paragraph 268(a);

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of PWC, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by Bourke, being a partner of PWC who was party to the act of making the PWC August Representation (and the omission of failing to correct or qualify that representation), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 261(e); and

(d) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of PWC.

I.2 August Section 1041E Contraventions

I.2.1 Section 1041E liability in respect of the PWC August Opinion

358. By reason of the matters pleaded in paragraphs 298 to 299 and 300(a), Bourke and PWC (through Bourke) made a statement or disseminated information, being the PWC August Opinion.

359. By reason of the matters pleaded in paragraph 350 to 353, the PWC August Opinion was a statement made or information disseminated by Bourke (and PWC (through Bourke)) which was materially misleading.

Particulars

i. The PWC August Opinion was a statement (of an opinion), or alternatively, information which was materially misleading because the person expressing it did not have reasonable grounds for it.

ii. Bourke did not have reasonable grounds for the PWC August Opinion for the reasons pleaded and particularised in paragraph 350 to 352.

360. The PWC August Opinion was likely to be relied upon by Vocation in deciding whether to:

(a) release the Draft FY14 Appendix 4E to the ASX; or

(b) not release to the ASX a preliminary final report which contained information or statements to the effect that:

(i) Vocation had adopted the New Revenue Recognition Policy (which differed from the Prospectus Revenue Recognition Policy);

(ii) the effect of the New Revenue Recognition policy was to bring forward into FY14 a material amount of revenue and profit (that is, the New Revenue Recognition Policy Effects);

(iii) Vocation was the subject of the BAWM Investigation and the Aspin Investigation;

(iv) Vocation was the subject of the Victorian Funding Suspensions, and disclosing the quantum of funding the subject of the Victorian Funding Suspensions;

(v) Vocation's FY14 and FY15 earnings may be affected by the outcome of the BAWM Investigation, the Aspin Investigation and/or the Victorian Funding Suspensions.

Particulars

i. This was inherently likely, and the Applicant refers to the fact and contents of the preparation of the PWC 15 August Report, and the 19 August ARC Meeting.

361. By reason of the matters pleaded in paragraph 360, the PWC August Opinion was likely to have the effect of increasing, maintaining or stabilising the price for trading in Vocation Securities on the ASX.

Particulars

i. Statements or information which were likely to be relied upon by in deciding whether and in what form to release the Draft FY14 Appendix 4E were also likely to cause the market price for Vocation Securities to be increased, maintained or stabilised, because the Draft FY14 Appendix 4E:

A. contained positive information about Vocation's financial performance and financial position, namely that: (1) Vocation's financial results for FY14 could be compared to, and outperformed, the FY14 Guidance (a representation which was contained in that part of the Draft FY14 Appendix 4E referred to in sub-paragraph 295(a)), and (2) the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Vocation and its subsidiaries, having regard to Listing Rule 4.3A (as pleaded in paragraph 262(e)(i)); and

B. did not contain adverse information, namely the information referred to in paragraphs 310, 350(b), 351(a)(ii) and (b)(ii).

362. As at 15 to 19 August 2014, when expressing the PWC August Opinion Bourke, by

reason of the knowledge pleaded in:

(a) paragraphs 292, 294, 295, 296(a) and 297; and/or

(b) paragraphs 293, 294, 295, 296(b) and 297,

ought reasonably to have known that:

(i) the PWC August Opinion was not based upon reasonable grounds, as pleaded in paragraph 354; and

(ii) by reason of sub-paragraph (i), the PWC August Opinion was materially misleading.

Particulars

i. Bourke ought reasonably to have known what a reasonably competent auditor would have known.

ii. A reasonably competent auditor acting with reasonable care and skill who had the knowledge pleaded in paragraphs 292, 294, 295, 296(a) and 297 and/or the knowledge pleaded in paragraphs 293, 294, 295, 296(b) and 297 would have known that the PWC August Opinion was not based upon reasonable grounds as pleaded and particularised in paragraph 354.

iii. Such a reasonably competent auditor would thereby have known that the PWC August Opinion was materially misleading.

363. By reason of the matters pleaded in paragraphs 358 to 362, by expressing the PWC August Opinion, Bourke and PWC (through Bourke) contravened s 1041E of the Corporations Act (this being a **PWC August s 1041E Contravention**).

I.2.2 Section 1041E liability in respect of the PWC August Representation

364. By reason of the matters pleaded in paragraphs 298 to 299 and 300(b), Bourke and PWC (through Bourke) made a statement or disseminated information, being the PWC August Representation.

365. By reason of the matters pleaded in paragraph 352 and/or 353, the PWC August Representation was a statement made or information disseminated by Bourke (and PWC (through Bourke)) which was materially misleading.

Particulars

i. The PWC August Representation was a statement, or alternatively, information which was materially misleading because the matters pleaded in paragraph 352 and/or 353 falsified it.

ii. Bourke did not have reasonable grounds for the PWC August Opinion for the reasons pleaded and particularised in paragraphs 350 to 353.

366. The PWC August Representation was likely to be relied upon by Vocation in deciding whether to:

(a) release the Draft FY14 Appendix 4E to the ASX; or

(b) not release to the ASX a preliminary final report which contained information or statements to the effect that:

(i) Vocation had adopted the New Revenue Recognition Policy (which differed from the Prospectus Revenue Recognition Policy);

(ii) the effect of the New Revenue Recognition policy was to bring forward into FY14 a material amount of revenue and profit (that is, the New Revenue Recognition Policy Effects);

(iii) Vocation was the subject of the BAWM Investigation and the Aspin Investigation;

(iv) Vocation was the subject of the Victorian Funding Suspensions, and disclosing the quantum of funding the subject of the Victorian Funding Suspensions;

(v) Vocation's FY14 and FY15 earnings may be affected by the outcome of the BAWM Investigation, the Aspin Investigation and/or the Victorian Funding Suspensions.

Particulars

i. This was inherently likely, and the Applicant refers to the fact and contents of the preparation of the PWC 15 August Report, and the 19 August ARC Meeting.

367. By reason of the matters pleaded in paragraph 366, the PWC August Representation

was likely have the effect of increasing, maintaining or stabilising the price for trading in Vocation Securities on the ASX.

Particulars

i. Statements or information which were likely to be relied upon by in deciding whether and in what form to release the Draft FY14 Appendix 4E were also likely to cause the market price for Vocation Securities to be increased, maintained or stabilised, because the Draft FY14 Appendix 4E:

A. contained positive information about Vocation's financial performance and financial position, namely that: (1) Vocation's financial results for FY14 could be compared to, and outperformed, the FY14 Guidance (a representation which was contained in that part of the Draft FY14 Appendix 4E referred to in sub-paragraph 295(a)), and (2) the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Vocation and its subsidiaries, having regard to Listing Rule 4.3A (as pleaded in paragraph 262(e)(i)); and

B. did not contain adverse information, namely the information referred to in paragraphs 310, 350(b), 351(a)(ii) and (c)(ii).

368. As at 15 to 19 August 2014, when making the PWC August Representation Bourke and PWC, by reason of the knowledge pleaded in:

(a) paragraphs 292, 294, 295, 296(a) and 297; and/or

(b) paragraphs 293, 294, 295, 296(b) and 297,

ought reasonably to have known that:

(i) the PWC August Representation was false because the PWC August Opinion was not based upon reasonable grounds (as pleaded in paragraphs 350 to 353) and was not the product of an exercise of reasonable care and skill (as pleaded in paragraph 352); and

(ii) by reason of sub-paragraph (a), the PWC August Representation was materially misleading.

Particulars

i. *Bourke ought reasonably to have known what a reasonably competent auditor would have known.*

ii. *A reasonably competent auditor acting with reasonable care and skill who had the knowledge pleaded in paragraphs 292, 294, 295, 296(a) and 297 and/or the knowledge pleaded in paragraphs 293, 294, 295, 296(b) and 297 and who would have known that the PWC August Opinion was not based upon reasonable grounds (as per Particular (ii) to paragraph 362 above) would also have known that the PWC August Opinion was an opinion which was not based upon the exercise of reasonable care and skill (in that it is an opinion that a reasonably competent auditor acting with reasonable care and skill would not have formed, or expressed).*

iii. *Such a reasonably competent auditor would thereby have known that the PWC August Representation was materially misleading.*

369. By reason of the matters pleaded in paragraphs 364 to 368, by making the PWC August Representation, Bourke and PWC (through Bourke) contravened s 1041E of the Corporations Act (this being a PWC August s 1041E Contravention).

J. PWC'S SEPTEMBER CONTRAVENING CONDUCT

J.1 September Misleading or deceptive conduct

370. The conduct of Bourke and PWC (through Bourke) in:

(a) expressing the PWC September Opinion to Vocation and the PWC September Opinion to ASX (**PWC September Opinions**), and in failing to correct or qualify those opinions; and

(b) making the PWC September Representation to Vocation and the PWC September Representation to ASX (**PWC September Representations**), and in failing to correct or qualify those representations,

was conduct which was:

(i) in relation to financial products (being Vocation Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(ii) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;

(iii) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

371. As at the time Bourke and PWC (through Bourke) expressed the PWC September Opinions and made the PWC September Representations, Vocation's FY14 Financial Report (and the FY14 Audited Financial Statements) was not prepared in compliance with Accounting Standards and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 in that:

(a) it used the New Revenue Recognition Policy without disclosing that the New Revenue Recognition Policy was a change in accounting policy from the Prospectus Revenue Recognition Policy; and

(b) it did not:

(i) provide a justification that:

(A) the amount of revenue under the revised policy can be reliably estimated, as the lack of reliability of estimation was the justification for the Prospectus Revenue Recognition Policy;

(B) the New Revenue Recognition Policy provides reliable and more relevant information than the Prospectus Revenue Recognition Policy; and

(C) the percentage of completion of the service can be measured reliably, and in particular the reliability of the percentage of completion upon enrolment of students;

(ii) apply the change in accounting policy from the Prospectus Revenue Recognition Policy to the New Revenue Recognition Policy retrospectively by restating the comparative amounts;

(iii) make all of the disclosures required by AASB 108 paragraph 29, including nature, reasons and quantification of the effect of the change, explaining that \$15.86 million of revenue and \$7.57 million of profit that would otherwise have been reported in FY 15 had been included in FY14; and/or

(iv) amend any references to having bettered the projected results in the Prospectus to take account of the effect of the change in accounting policy from the Prospectus Revenue Recognition Policy to the New Revenue Recognition Policy.

Particulars

i. The reasons why the financial information contained in Vocation's FY14 Financial Report <u>was not prepared in compliance with Accounting Standards</u> (namely AASB108) and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 1, [48]-[63].

ii. What was required in order for Vocation's FY14 Financial Report to comply with Accounting Standards and give a true and fair view is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 2, [82].

372. Further or alternatively, at the time Bourke and PWC (through Bourke) expressed the PWC September Opinions and made the PWC September Representations, ~~the financial information contained in Vocation's FY14 financial statements upon which the Draft FY14 Appendix 4E was based,~~ <u>Vocation's FY14 Financial Report (and the FY14 Audited Financial Statements)</u> was not prepared in compliance with Accounting Standards and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 in that:

(a) first:

(i) the Pre-19 August DEECD Communications, and the communications between DEECD and BAWM and Aspin, dated 26 August 2014 (VOC.001.001.0693) were adjusting events after the reporting period under AASB110; and

(ii) it did not<u>:</u>

(A) in the Contingent Liabilities note to the financial report, disclose the breaches of contract claimed by DEECD, indicate that a reasonable estimate of the expected loss has been taken up as a provision in the financial report, indicate that any further amount is a contingent liability and if determinable indicate an estimate of the maximum possible financial consequences and/or effect of the breaches; and

(B) contain a Subsequent Events note which indicated that DEECD had suspended payments of claims by Vocation from June 2014 and that DEECD had instructed BAWM and Aspin to suspend the acceptance of new enrolments and suspend the commencement of training delivery; and/or

(b) secondly:

(i) the goodwill of $15 million carried in the financial statements relating to Aspin was potentially impaired under AASB136; and

(ii) it did not write off the goodwill of $15 million pertaining to Aspin on the basis that the requirement to cease taking new enrolments and to cease the delivery of training meant that the carrying value of Aspin goodwill could no longer be justified; and/or

(c) thirdly:

(i) there was material uncertainty as to whether, by reason of the Victorian Funding Suspensions and Victorian Enrolment Suspensions, Vocation was able to continue as a going concern, within the meaning of AASB101; and

(ii) it did not disclose that there was material uncertainty as to whether, by reason of the Victorian Funding Suspensions and Victorian Enrolment Suspensions, Vocation was able to continue as a going concern.

Particulars

i. The reasons why the financial information contained in Vocation's FY14 Financial Report was not prepared in compliance with Accounting Standards (namely AASB110, AASB136 and AASB101) and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 1, [64]-[72] and [76]-[79].

ii. What was required in order for that financial information to comply with Accounting Standards and give a true and fair *view is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 2, [83].*

373. The PWC September Opinions were not the product of an exercise of reasonable skill and care by reason of:

(a) the treatment of the New Revenue Recognition Policy; and/or

(b) the treatment of the Victorian Funding Suspensions and Victorian Enrolment Suspensions, and non-disclosure of:

(i) the fact and quantum subject to the Victorian Funding Suspensions as a post-balance date adjusting event giving rise to contingent liabilities;

(ii) the non-impairment of goodwill associated with Aspin; and

(iii) the non-disclosure of the material uncertainty regarding the ability of Vocation to continue as a going concern.

Particulars

i. As to sub-paragraph (a), a reasonably competent professional auditor exercising reasonable care and skill, and/or in accordance with ASA200 would have identified the matters pleaded in paragraph 371 by no later than 19 August 2014, or alternatively 2 September 2014, and would not have issued an unqualified audit opinion, but rather would have indicated to the Audit and Risk Committee of Vocation that unless the matters pleaded in paragraph 371 were addressed to the auditor's satisfaction, the auditor would be required to issue a qualified opinion: Report of David Boymal dated 18 March 2018, Answer to Question 4, [96]-[98].

ii. As to sub-paragraph (b), a reasonably competent professional auditor exercising reasonable care and skill, and/or in accordance with ASA200 and ASA 570 would have identified the matters pleaded in paragraph 372 by no later than 2 September 2014, and would not have issued an unqualified audit opinion, but rather would have required these issues be addressed by the raising of an adequate provision, proper disclosure, the impairment of goodwill associated with Aspin and a going concern note (and an associated emphasis of matter paragraph in the Independent Auditor's Report), or else have issued a qualified or adverse audit opinion: Report of David Boymal dated 18 March 2018, Answer to Question 4, [96], [99]-[112].

iii. *A reasonably competent professional auditor exercising reasonable care and skill would not have expressed the PWC September Opinion without reasonable grounds, and paragraphs 371 and 372, and sub-paragraphs (i) and (ii) are repeated.*

374. The PWC September Opinions were not, by reason of the matters pleaded in paragraphs 371 and/or 372 and/or 373, based upon reasonable grounds.

375. As at 2 September 2014, by reason of the matters pleaded in paragraphs 371 to 374, the conduct of Bourke and PWC (through Bourke) in expressing the PWC September Opinions (and in failing to correct or qualify those opinions) was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H(1) of the Corporations Act;

(b) s 12DA(1) of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(contravention of such provisions being a **PWC September Misleading Conduct Contravention**).

376. Further, or alternatively, as at 2 September 2014 the conduct of Bourke in expressing the PWC September Opinions (and in failing to correct or qualify those opinions):

(a) was conduct which was, by reason of the matters pleaded in paragraphs 371 to 374, misleading or deceptive or likely to mislead or deceive;

(b) was conduct engaged in on behalf of, and as agent of, every other partner of PWC and the firm PWC, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of PWC and the firm PWC as pleaded in paragraph 268(a);

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of PWC, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by Bourke, being a partner of PWC who was party to the act of expressing the PWC September Opinions (and the omission of failing to correct or qualify those opinions), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 261(e); and

(d) by reason of sub-paragraphs (a) and (b), gave to rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of PWC.

377. As at 2 September 2014, by reason of the matters pleaded in paragraphs 371 to 374, the conduct of Bourke and PWC (through Bourke) in making the PWC September Representations (and in failing to correct or qualify those representations), was misleading or deceptive or likely to mislead or deceive, and comprised a PWC September Misleading Conduct Contravention.

378. Further, or alternatively, as at 2 September 2014 the conduct of Bourke in making the PWC September Representations (and in failing to correct or qualify those representations):

(a) was conduct which was, by reason of the matters pleaded in paragraphs 371 to 374, misleading or deceptive or likely to mislead or deceive;

(b) was conduct engaged in on behalf of, and as agent of, every other partner of PWC and the firm PWC, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of PWC and the firm PWC as pleaded in paragraph 268(a); and

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of PWC, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by Bourke, being a partner of PWC who was party to the act of making the PWC September Representations (and the omission of failing to correct or qualify those representations), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 261(e).

J.2 September Section 1041E Contraventions

J.2.1 Section 1041E liability in respect of the PWC September Opinions

379. By reason of the matters pleaded in paragraphs 318(a), 321, 322 and 327(a), Bourke

and PWC (through Bourke) made a statement or disseminated information, being the PWC September Opinions.

380. By reason of the matters pleaded in paragraph 371 to 374, the PWC September Opinions were statements made or information disseminated by Bourke (and PWC (through Bourke)) which were materially misleading.

Particulars

i. The PWC September Opinions were statements (of an opinion), or alternatively, information which was materially misleading because the person expressing them did not have reasonable grounds for it.

ii. Bourke did not have reasonable grounds for the PWC September Opinions for the reasons pleaded and particularised in paragraph 371 to 373.

381. Each of the PWC September Opinions was likely to be relied upon by Vocation in deciding whether to:

(a) release the FY14 Annual Report and FY14 Audited Financial Statements to the ASX; or

(b) not release to the ASX an annual report which contained information or statements to the effect that:

(i) Vocation had adopted the New Revenue Recognition Policy (which differed from the Prospectus Revenue Recognition Policy);

(ii) the effect of the New Revenue Recognition policy was to bring forward into FY14 a material amount of revenue and profit (that is, the New Revenue Recognition Policy Effects);

(iii) Vocation was the subject of the Victorian Funding Suspensions, and disclosing the quantum of funding the subject of the Victorian Funding Suspensions;

(iv) Vocation's FY14 and FY15 earnings may be affected by the outcome of the BAWM Investigation, the Aspin Investigation and/or the Victorian Funding Suspensions.

Particulars

i. *This was inherently likely, and the Applicant refers to the fact and contents of the preparation of PWC's Draft Auditor's Report and the 2 September Board Committee Meeting.*

382. By reason of the matters pleaded in paragraph 381, each of the PWC September Opinions was likely to have the effect of increasing, maintaining or stabilising the price for trading in Vocation Securities on the ASX.

Particulars

i. *Statements or information which were likely to be relied upon by Vocation in deciding whether and in what form to release the FY14 Annual Report and FY14 Audited Financial Statements were also likely to cause the market price for Vocation Securities to be increased, maintained or stabilised, because the FY14 Annual Report and FY14 Audited Financial Statements:*

   A. *contained positive information about Vocation's financial performance and financial position, by repeating and confirming the positive information contained in Vocation's FY14 Appendix 4E, as pleaded in paragraph 319; and*

   B. *did not contain adverse information, namely the information referred to in paragraphs 310, 320, 371(b), 372(a)(ii), (b)(ii) and (c)(ii), which information would have corrected or qualified the contents of Vocation's FY14 Appendix 4E.*

383. Further or alternatively, the PWC September Opinion to ASX was likely to be relied upon by the members of Vocation, and the market of investors or potential investors in Vocation, in deciding whether to acquire or dispose of Vocation Securities, and was likely to induce persons to acquire Vocation Securities and/or to have the effect of increasing, maintaining or stabilising the price for trading in Vocation Securities on the ASX.

Particulars

i. *The PWC September Opinion to ASX was likely to induce persons to acquire Vocation Securities and/or to not dispose of Vocation Securities, and to thereby cause the market price for Vocation Securities to be increased, maintained or stabilised, because it was likely to cause members of Vocation and the market of investors or potential investors in Vocation to believe that the FY14 Audited Financial Statements complied with Australian Accounting Standards and presented a true and fair* *view of Vocation's financial position and performance in FY14, which document:*

A. contained positive information about Vocation's financial performance and financial position, by repeating and confirming the positive information contained in Vocation's FY14 Appendix 4E, as pleaded in paragraph 319; and

B. did not contain adverse information, namely the information referred to in paragraphs 310, 320, 371(b), 372(a)(ii), (b)(ii) and (c)(ii), which information would have corrected or qualified the contents of Vocation's FY14 Appendix 4E.

384. As at 2 September 2014, when expressing the PWC September Opinions Bourke and PWC, by reason of the knowledge pleaded at:

(a) paragraphs 292, 294, 295, 296(a) and 297 (and/or paragraphs 323, 325 and 326; and/or

(b) paragraphs 293, 294, 295, 296(b) and 297 (and/or paragraphs 324, 325 and 326,

ought reasonably to have known that:

(i) the PWC September Opinions were not based upon reasonable grounds, as pleaded in paragraphs 371 to 374; and

(ii) by reason of sub-paragraph (i), the PWC September Opinions were materially misleading.

Particulars

i. Bourke ought reasonably to have known what a reasonably competent auditor would have known.

ii. A reasonably competent auditor acting with reasonable care and skill who had the knowledge pleaded in paragraphs 292, 294, 295, 296(a) and 297 (and/or paragraphs 323, 325 and 326) and/or the knowledge pleaded in paragraphs 293, 294, 295, 296(b) and 297 (and/or paragraphs 324, 325 and 326 would have known that the PWC September Opinions were not based upon reasonable grounds as pleaded and particularised in paragraphs 371 to 374.

iii. Such a reasonably competent auditor would thereby have known that the PWC September Opinions were materially misleading.

385. By reason of the matters pleaded in paragraphs 379 to 384, by expressing the PWC September Opinions, Bourke and PWC (through Bourke) contravened s 1041E of the Corporations Act (being a **PWC September s 1041E Contravention**).

J.2.2 Section 1041E liability in respect of the PWC September Representations

386. By reason of the matters pleaded in paragraphs 318(a), 321, 322 and 327(b), Bourke and PWC (through Bourke) made a statement or disseminated information, being the PWC September Representations.

387. By reason of the matters pleaded in paragraph 373 and/or 374, the PWC September Representations were statements or information which were materially misleading.

Particulars

i. *The PWC September Representations were statements, or alternatively, information which was materially misleading because the matters pleaded in paragraph 373 and/or 374 falsified them.*

ii. *Bourke did not have reasonable grounds for the PWC September Opinions for the reasons pleaded and particularised in paragraphs 371 to 374.*

388. Each of the PWC September Representations was likely to be relied upon by Vocation in deciding whether to:

(a) release the FY14 Annual Report and FY14 Audited Financial Statements to the ASX; or

(b) not release to the ASX an annual report which contained information or statements to the effect that:

(i) Vocation had adopted the New Revenue Recognition Policy (which differed from the Prospectus Revenue Recognition Policy);

(ii) the effect of the New Revenue Recognition policy was to bring forward into FY14 a material amount of revenue and profit (that is, the New Revenue Recognition Policy Effects);

(iii) Vocation was the subject of the Victorian Funding Suspensions, and disclosing the quantum of funding the subject of the Victorian Funding Suspensions;

(iv) Vocation's FY14 and FY15 earnings may be affected by the outcome of the BAWM Investigation, the Aspin Investigation and/or the Victorian Funding Suspensions.

Particulars

i. This was inherently likely, and the Applicant refers to the fact and contents of the preparation of PWC's Draft Auditor's Report and the 2 September Board Committee Meeting.

389. By reason of the matters pleaded in paragraph 387, each of the PWC September Representations was likely to have the effect of increasing, maintaining or stabilising the price for trading in Vocation Securities on the ASX.

Particulars

i. Statements or information which were likely to be relied upon by Vocation in deciding whether and in what form to release the FY14 Annual Report and FY14 Audited Financial Statements were also likely to cause the market price for Vocation Securities to be increased, maintained or stabilised, because the FY14 Annual Report and FY14 Audited Financial Statements:

A. contained positive information about Vocation's financial performance and financial position, by repeating and confirming the positive information contained in Vocation's FY14 Appendix 4E; and

B. did not contain adverse information, namely the information referred to in sub-paragraph 387(b), which information would have corrected or qualified the contents of Vocation's FY14 Appendix 4E.

390. Further or alternatively, the PWC September Representation to ASX was likely to be relied upon by the members of Vocation, and the market of investors or potential investors in Vocation, in deciding whether to acquire or dispose of Vocation Securities, and was likely to induce persons to acquire Vocation Securities and/or to have the effect of increasing, maintaining or stabilising the price for trading in Vocation Securities on the ASX.

Particulars

i. The PWC September Representation to ASX was likely to induce persons to acquire Vocation Securities and/or to not dispose of Vocation Securities, and to thereby cause the *market price for Vocation Securities to be increased, maintained or stabilised, because it was likely to cause members of Vocation and the market of investors or potential investors in Vocation to believe that the FY14 Audited Financial Statements complied with Australian Accounting Standards and presented a true and fair view of Vocation's financial position and performance in FY14, which document:*

A. contained positive information about Vocation's financial performance and financial position, by repeating and confirming the positive information contained in Vocation's FY14 Appendix 4E, as pleaded in paragraph 319; and

B. did not contain adverse information, namely the information referred to in paragraphs 310, 320, 371(b), 372(a)(ii), (b)(ii) and (c)(ii), which information would have corrected or qualified the contents of Vocation's FY14 Appendix 4E.

391. As at 2 September 2014, when making the PWC September Representations Bourke and PWC, by reason of the knowledge pleaded at:

(a) paragraphs 292, 294, 295, 296(a) and 297 (and/or paragraphs 323, 325 and 326); and/or

(b) paragraphs 293, 294, 295, 296(b) and 297 (and/or paragraphs 324, 325 and 326),

ought reasonably to have known that:

(i) the PWC September Representations were false because the PWC September Opinions were not based upon reasonable grounds (as pleaded in paragraphs 371 to 374) and was not the product of an exercise of reasonable care and skill (as pleaded in paragraph 373); and

(ii) by reason of sub-paragraph (i), the PWC September Representations were materially misleading.

Particulars

i. Bourke ought reasonably to have known what a reasonably competent auditor would have known.

ii. A reasonably competent auditor acting with reasonable care and skill who had the knowledge pleaded in paragraphs 292, 294, 295, 296(a) and 297 (and/or paragraphs 323, 325 and

326) and/or the knowledge pleaded in paragraphs 293, 294, 295, 296(b) and 297 (and/or paragraphs 324, 325 and 326) would have known that the PWC September Opinions were not based upon reasonable grounds (as per (i) above) and would also have known that the PWC September Opinions were opinions which were not based upon the exercise of reasonable care and skill (in that it is an opinion that a reasonably competent auditor acting with reasonable care and skill would not have formed, or expressed).

iii. Such a reasonably competent auditor would thereby have known that the PWC September Representations were materially misleading.

392. By reason of the matters pleaded paragraphs 386 to 391, by making the PWC September Representations, Bourke and PWC (through Bourke) contravened s 1041E of the Corporations Act (and amounted to a PWC September s 1041E Contravention).

K. LOSS AND DAMAGE ARISING FROM PWC'S CONTRAVENTIONS

K.1 Market-based causation

K.1.1 Market-based causation for on-market purchasers

393. The Applicant and some Group Members acquired an interest in Vocation Securities on or after 21 August 2014 and before 3 September 2014 in a market of investors or potential investors in Vocation Securities:

(a) operated by the ASX;

(b) regulated by, inter alia, s 674(2) of the Corporations Act and ASX Listing Rules 3.1 and 4.3A; and

(c) where the price or value of Vocation Securities would reasonably be expected to have been informed or affected by information disclosed in accordance with s 674(2) of the Corporations Act and ASX Listing Rule 3.1, including the FY14 Appendix 4E:

(i) which by reason of the matters pleaded in paragraphs 301 to 305 was lodged with ASX by Vocation in reliance upon PWC's August Opinion and PWC's August Representation, which:

(A) by reason of the matters pleaded in paragraphs 349 to 357 amounted to PWC's August Misleading Conduct Contraventions; and/or

(B) by reason of the matters pleaded in paragraphs 358 to 369 amounted to PWC August s 1041E Contraventions; and

(ii) the disclosure of which to the ASX was thereby caused or materially contributed to by to PWC's August Misleading Conduct Contraventions and/or PWC August s 1041E Contraventions.

394. The Applicant and some Group Members acquired an interest in Vocation Securities on or after 3 September 2014 in a market of investors or potential investors in Vocation Securities:

(a) operated by the ASX;

(b) regulated by, inter alia, s 674(2) of the Corporations Act and ASX Listing Rules 3.1 and 4.5;

(c) where the price or value of Vocation Securities would reasonably be expected to have been informed or affected by information disclosed in accordance with s 674(2) of the Corporations Act and ASX Listing Rule 3.1, including the FY14 Annual Report and FY14 Audited Financial Statements and PWC's Final Auditor's Report:

(i) which by reason of the matters pleaded in paragraphs 328 to 329 was lodged with ASX by Vocation in reliance upon PWC's September Opinion to Vocation and PWC's September Representation to Vocation, which:

(A) by reason of the matters pleaded in paragraphs 370 to 378 amounted to PWC's September Misleading Conduct Contraventions; and/or

(B) by reason of the matters pleaded in paragraphs 379 to 392 amounted to PWC September s 1041E Contraventions; and

(ii) the disclosure of which to the ASX was thereby caused or materially contributed to by to PWC's September Misleading Conduct Contraventions and/or PWC's September s 1041E Contraventions; and

(iii) which contained misleading or deceptive and/or false or misleading statements (being the PWC September Opinion to ASX and the PWC September Representation to ASX).

K.1.2 Market-based causation for Placement purchasers

395. Some Group Members acquired an interest in Vocation Securities pursuant to the Placement in a market:

(a) regulated by, inter alia, Chapter 6D of the Corporations Act;

(b) where the offer price of Vocation Securities under the Placement would reasonably be expected by potential investors in Vocation Securities to have been reasonably determined by Vocation to represent a fair market value for Vocation Securities, based on:

(i) the anticipated number of Vocation Securities to be issued;

(ii) Vocation's then current market capitalisation;

(iii) Vocation's historical financial performance; and

(iv) Vocation's expected financial performance in FY15;

(c) alternatively to 395(b), where the offer price for the Placement was in fact determined by Vocation by reference to the then prevailing market price for Vocation Securities, which market price would reasonably be expected to have been informed or affected by information disclosed in accordance with s 674(2) of the Corporations Act and ASX Listing Rule 3.1, including:

(i) the FY14 Appendix 4E, which:

(A) by reason of the matters pleaded in paragraphs 301 to 305 was lodged with ASX by Vocation in reliance upon PWC's August Opinion and PWC's August Representation, which:

1. by reason of the matters pleaded in paragraphs 349 to 357 amounted to PWC's August Misleading Conduct Contraventions; and/or

2. by reason of the matters pleaded in paragraphs 358 to 369 amounted to PWC August s 1041E Contraventions; and

(B) was thereby caused or materially contributed to by to PWC's August Misleading Conduct Contraventions and/or PWC August s 1041E Contraventions.

(ii) the FY14 Annual Report and FY14 Audited Financial Statements and PWC's Final Auditor's Report, which:

(A) by reason of the matters pleaded in paragraphs 328 to 329 was lodged with ASX by Vocation in reliance upon PWC's September Opinion to Vocation and PWC's September Representation to Vocation, which:

1. by reason of the matters pleaded in paragraphs 370 to 378 amounted to PWC's September Misleading Conduct Contraventions; and/or

2. by reason of the matters pleaded in paragraphs 379 to 392 amounted to PWC September s 1041E Contraventions; and

(B) was thereby caused or materially contributed to by to PWC's September Misleading Conduct Contraventions and/or PWC's September s 1041E Contraventions; and

(C) which contained misleading or deceptive and/or false or misleading statements (being the PWC September Opinion to ASX and the PWC September Representation to ASX),

being information that a reasonable person would expect to have caused the Placement Offer Price to be lower and/or there to be a material effect on the willingness of potential investors to accept the offer of Vocation Securities made pursuant to the Placement, whether at the Placement Offer Price or generally.

Particulars

i. The determination by Vocation is to be inferred from the statement in the 10 September 2014 ASX announcement that, "The Offer Price of $3.05 represents a discount of 7.9 per cent to the last close price of $3.31 as at 9 September 2014 and a 7.3 per cent discount to the 5-day VWAP to 9 September of

$3.29 per share" and the fact that an institutional placement offer whose issue price exceeded the prevailing market price was at all relevant times unlikely to be accepted by the targeted investors.

ii. *The determination by Vocation also is to be inferred from the statement by Vocation in a "Share purchase plan booklet" published on the ASX by Vocation on 15 October 2014 that under that plan "eligible shareholders will be given the opportunity to subscribe for Vocation Shares at the lower of $3.05 (the price offered to institutional investors under the [September 2014 institutional placement]) and a 2.5% discount to the volume weighted average price of Vocation Shares in the last five trading days in the SPP offer period".*

K.1.3 Effect of the PWC~~'s~~ Market Contraventions

396. In the period on and from:

(a) 21 August 2014, the PWC August Misleading Conduct Contraventions and/or the PWC August s 1041E Contraventions; and/or

(b) 3 September 2014, the PWC September Misleading Conduct Contraventions and/or the PWC September s 1041E Contraventions,

(each such contravention being a **PWC Market Contravention**) caused or materially contributed to the market price of Vocation Securities being substantially greater than their true value; and/or the market price that would have prevailed but for those contraventions.

Particulars

i. *The extent to which each of the PWC August Misleading Conduct Contraventions, the PWC August s 1041E Contraventions, the PWC September Misleading Conduct Contraventions and/or the PWC September s 1041E Contraventions caused the market price for Vocation Securities to be substantially greater than their true value and/or the market price that would otherwise had prevailed (that is, inflated) during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding.*

397. Further, the PWC Market Contraventions caused or materially contributed to the Placement Offer Price for Vocation Securities being materially greater than their true value and/or the Placement Offer Price that would have prevailed but for the ~~Placement~~ PWC Market Contraventions.

Particulars

i. *The Applicant repeats the particulars to paragraph 395 ~~393(c)~~ and says that Vocation set the Placement Offer Price by reference to the then prevailing market price in the manner set out in those particulars, such that, if Vocation had proceeded to conduct the Placement in circumstances where the then prevailing market price had been materially lower, the Placement Offer Price also would have been materially lower.*

ii. *The extent to which the PWC Market Contraventions caused the Placement Offer Price to be substantially higher than the price at which Vocation Securities otherwise would have been offered pursuant to the Placement is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence.*

398. The declines in the price of Vocation Securities pleaded in paragraphs 315, 343 and 348 above:

(a) were caused or materially contributed to by:

(i) the market's reaction to the information released to the ASX in the 25 August Announcement, the 18 September Announcement and the 27 October Announcement; and

(ii) the PWC~~'s~~ Market Contraventions, to the extent they related to the non-disclosure of the matters pleaded in paragraph 310(b), 320(b) and 332(b); and

(b) would, to the extent they removed inflation from the price of Vocation Securities, have occurred, or substantially occurred, earlier if PWC had not engaged in the PWC~~'s~~ Market Contraventions.

Particulars

i. *The extent to which inflation was removed from the price of Vocation Securities, and would have been removed at earlier points in time during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence.*

K.2 Reliance

399. Further, or in the alternative to paragraphs 391 to 396, in the decision to acquire an interest in Vocation Securities the Applicant and some Group Members relied directly

on:

(a) the FY14 Appendix 4E;

(b) the FY14 Annual Report and FY14 Audited Financial Statements; and/or

(c) the PWC September Opinion to ASX and the PWC September Representation to ASX~~.~~,

and, or alternatively would not have purchased Vocation Securities had she or they known of the matters pleaded in paragraphs 371(a) or (b) or 372(a), (b) or (c).

Particulars

i. In her decision to acquire Vocsation Securities on 16 October 2014 the Applicant relied upon the FY14 Appendix 4E, the FY14 Annual Report, the FY14 Audited Financial Statements, the PWC September Opinion to ASX and the PWC September Representation to ASX.

ii. The identities of all those Group Members which or who relied as pleaded in paragraph 399 are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

K.3 No transaction case in respect of the Placement

400. Alternatively, had the PWC Market Contraventions not occurred, the Placement would not have occurred in the way in which it occurred, or at all, and some Group Members would not have had the opportunity to acquire Vocation Securities pursuant to the Placement, or on-market.

Particulars

i. The Applicant refers to the particulars to paragraphs 395 and says that Vocation set the Placement Offer Price by reference to the then prevailing market price in the manner set out in those particulars.

ii. *If the PWC Market Contraventions had not occurred and/or if the then prevailing market price had been materially lower, then, either:*

A. *Vocation would not have proceeded to conduct the Placement; or*

B. *Alternatively, if Vocation had proceeded to conduct the Placement then the Placement Offer Price would have been materially lower than it in fact was.*

iii. *The extent to which the PWC~~'s~~ Market Contraventions caused the market price for Vocation Securities to be substantially greater than their true value and/or the market price that would otherwise had prevailed (that is, inflated) during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding;*

iv. *Alternatively, the Placement would not have been underwritten, and in the absence of the Placement Vocation would have entered insolvency administration by reason of its inability to obtain the working capital required to remain solvent if there was not a successful resolution of the Victorian investigations', as referred to in paragraph 334A.*

K.4 Loss or damage suffered by the Applicant and Group Members

401. By reason of the matters pleaded in paragraphs 393 to 398, the Applicant and some Group Members have suffered loss and damage by and resulting from the PWC~~'s~~ Market Contraventions (or any one or combination of them).

Particulars

i. *The loss suffered by the Applicant will be calculated by reference to:*

A. *the difference between the price at which Vocation Securities were acquired by the Applicant during the Relevant Period and the true value of that interest; or*

B. *the difference between the price at which the Applicant acquired an interest in Vocation Securities and the market price that would have prevailed had the PWC~~'s~~ Market Contraventions not occurred; or*

C. *the difference between the price at which the Applicant acquired an interest in Vocation Securities and the amount left in hand.*

~~*C. in respect of Vocation Securities acquired pursuant to the Placement, the difference between the price at which those securities were acquired, being the Placement Offer Price, and the price at which those*~~

~~*securities would have been offered had the Contraventions not occurred;*~~

~~*D. alternatively, for days during the Relevant Period and thereafter where the traded price of Vocation Securities fell as a result of the disclosure information which had not previously been disclosed because of the PWC's Market Contraventions, the quantum of that fall; or*~~

~~*E. alternatively, the days after the Relevant Period when the traded price of Vocation Securities fell as a result of the disclosure of information which had not previously been disclosed because of the PWC's Market Contraventions, the quantum of that fall.*~~

ii. Further particulars in relation to the Applicant's losses will be provided after the service of opinion evidence in chief.

iii. Particulars of the losses of Group Members are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

402. Further, or alternatively, by reason of the matters pleaded in paragraph 399, the Applicant and some Group Members have suffered loss or damage.

Particulars

i. The particulars to paragraph 401 are repeated.

403. Further, or alternatively, by reason of the matters pleaded in paragraph 400, <u>the Applicant and </u>some Group Members have suffered loss or damage.

Particulars

i. <u>The </u>Particular<u>s</u> ~~(iii)~~ to paragraph 401 <u>are</u> ~~is~~ repeated.

IV. CLAIMS AGAINST HUTCHINSON, GREWAL AND DAWKINS

***Note**: This section pleads claims against the Third to Fifth Respondents only*

A THE THIRD TO FIFTH RESPONDENTS

404. The Third Respondent (**Hutchinson**):

(a) was appointed the Managing Director of the First Respondent (**Vocation**) on 6 November 2013 and remained in that office at all times during the Relevant Period;

(b) was appointed the Chief Executive Officer of Vocation on 6 November 2013 and remained in that office at all times during the Relevant Period;

(c) is and was at all relevant times a person within the meaning of s 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**);

(d) is and was at all relevant times a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

(e) is and was at all relevant times a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:

(i) s 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);

(ii) s 28 of the *Fair Trading Act 1987* (NSW);

(iii) s 16 of the *Fair Trading Act 1989* (Qld);

(iv) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);

(v) s 19 of the *Fair Trading Act 2010* (WA);

(vi) s 14 of the *Fair Trading Act 1987* (SA);

(vii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT); and/or

(viii) s 27 of the *Consumer Affairs and Fair Trading Act 1990* (NT),

(individually, or collectively, the **Australian Consumer Law**),

405. The Fourth Respondent (**Gréwal**):

(a) was appointed as the Chief Financial Officer of Vocation on 6 November 2013 and remained in that office at all times during the Relevant Period;

(b) was appointed company secretary of Vocation on 6 November 2013 and remained in that office at all times during the Relevant Period;

(c) is and was at all relevant times a person within the meaning of s 1041H of the Corporations Act;

(d) is and was at all relevant times a person within the meaning of s 12DA of the ASIC Act; and

(e) is and was at all relevant times a person within the meaning of s 18 of the Australian Consumer Law.

406. The Fifth Respondent (**Dawkins**):

(a) became a director of Vocation on 6 November 2013, was appointed Non Executive Chairman on or before 18 November 2013 and remained in that office until 26 November 2014;

(b) is and was at all relevant times a person within the meaning of s 1041H of the Corporations Act;

(c) is and was at all relevant times a person within the meaning of s 12DA of the ASIC Act; and

(d) is and was at all relevant times a person within the meaning of s 18 of the Australian Consumer Law.

B VOCATION

B.1 Introduction

407. From 6 December 2013 and at all material times, Vocation was:

(a) included in the official list of the financial market operated by ASX (**Official List**);

(b) an entity, the securities of which are ED securities for the purposes of s 111AE of the Corporations Act, and quoted ED securities within the meaning of s 111AM of the Corporations Act;

(c) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;

(d) obliged by ss 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes aware of, any information concerning Vocation that a reasonable person would expect to have a material effect on the price or value of Vocation Securities, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply) (**Vocation's Continuous Disclosure Obligation**);

(e) subject to and bound by Part 2M.3 of the Corporations Act, including being obliged:

(i) by s 295 of the Corporations Act, to prepare a financial report for a financial year (including FY14), consisting of the financial statements for the year the notes to the financial statements and the directors' declaration about the statements and notes (**Financial Report**), which:

(A) complies with accounting standards, as required by s 296 of the Corporations Act, including Australian Accounting Standard 108 ("Accounting Policies, Changes in Accounting Estimates and Errors") (**AASB108**), Australian Accounting Standard 3 ("Business Combinations") (**AASB3**), Australian Accounting Standard 110 ("Events after the Reporting Period") (**AASB110**); Australian Accounting Standard 118 ("Revenue") (**AASB118**); Australian Accounting Standard 139 ("Financial Instruments; Recognition and Measurement") (**AASB139**); Australian Accounting Standard 136

("Impairment of Assets") (**AASB136**); Australian Accounting Standard 101 ("Presentation of Financial Statements") (**AASB101**), and Australian Accounting Standard 137 ("Provisions, Contingent Liabilities and Contingent Assets") (**AASB137**);

(B) gives a true and fair view of the financial position and performance of Vocation, and the consolidated entity comprising Vocation and its subsidiaries;

(ii) by s 301 of the Corporations Act, to have the financial report for a financial year audited in accordance with Part 2M.3, Division 3 and obtain an auditor's report (**Auditor's Report**);

(iii) by ss 314 and 315(1) of the Corporations Act, to provide the Financial Report and the Auditor's Report to the members of Vocation by no later 21 days before the next Annual General Meeting of the members of Vocation after the end of the financial year, or 4 months after the end of the financial year (whichever is the earlier);

(iv) by s 319 of the Corporations Act, to lodge the Financial Report and the Auditor's Report with the Australian Securities and Investments Commission within 3 months of the end of the financial year,

(**Vocation's Statutory Reporting Obligations**);

(f) subject to and bound by the listing rules of the ASX (**ASX Listing Rules**), including being obliged:

(i) by Listing Rules 4.3A and 4.3B, to give ASX the information set out in Appendix 4E (which must be based upon the same accounting policies as the accounts upon which it is based, and which must comply with all relevant accounting standards) immediately they are ready to be given to ASX and no later than the time that it lodges any accounts with ASIC, and in any event no later than 2 months after the end of the accounting period, which information includes:

(A) the amount and percentage change up or down from the previous corresponding period of revenue from ordinary activities (Item 2.1);

(B) the amount and percentage change up or down from the previous corresponding period of profit (loss) from ordinary activities after tax attributable to members (Item 2.2);

(C) the amount and percentage change up or down from the previous corresponding period of net profit (loss) for the period attributable to members (Item 2.3);

(D) any other significant information needed by an investor to make an informed assessment of its financial performance and financial position (Item 12);

(E) a commentary on the results for the period, which is sufficient for the user to be able to compare the information presented with equivalent information for previous periods, which would include discussion of any factor which has affected the results in the period or which are likely to affect results in the future, including those where the effect could not be quantified (Item 14); and

(F) a statement as to whether the report is based on accounts which have been audited or subject to review, are in the process of being audited or reviewed, or have not yet been audited or reviewed (Item 15), and if the accounts have not yet been audited and are likely to contain an independent audit report that is subject to a modified opinion, emphasis of matter or other matter paragraph, a description of the modified opinion, emphasis of matter or other matter paragraph (Item 16);

(ii) by Listing Rule 4.3D, if it became aware of any circumstance which was likely to materially affect the results or other information contained in the preliminary final report given to ASX under Listing Rule 4.3A, to immediately give ASX an explanation of the circumstances and the effects the circumstances are expected to have on its current or future financial performance or financial position;

(iii) by Listing Rule 4.5, to give ASX a copy of the documents which it must lodge with ASC under s 319 of the Corporations Act at the same time as it lodges them with ASIC, (**Vocation's ASX Reporting Obligations**).

B.2 The Initial Public Offering

408. On or about 27 November 2013, Vocation and ACN 166 629 063 Pty Ltd (**SaleCo**) lodged with ASIC a document entitled "Vocation Prospectus" (VOC.503.001.0001) (**Replacement Prospectus**).

409. By the Replacement Prospectus:

(a) Vocation and SaleCo made an offer of 134,000,000 Vocation Securities (**Initial Public Offering**), as follows:

(iii) Vocation offered to issue 75.4 million Vocation Securities; and

(iv) SaleCo offered to sell and transfer 58.6 million Vocation Securities,

at a price of $1.89 per Vocation Security (**Offer Price**) on the terms set out in the Replacement Prospectus, to potential investors in Vocation Securities in Australia (and to certain institutional investors outside Australia).

(b) Vocation and SaleCo disclosed that following completion of the Initial Public Offering, Vocation had applied to ASX for admission of Vocation to the Official List, and quotation of Vocation Securities on the ASX (such disclosure being required by s 716(5) of the Corporations Act).

410. The Replacement Prospectus disclosed that prior to, or contemporaneously with, the issue or sale of Vocation Securities pursuant to the Initial Public Offering, there would be a merger (**Merger**) between:

(a) Vocation; and

(b) the following entities (**Founding Companies**):

(i) AVANA Group Pty Ltd (ACN 110 198 171) (**AVANA**), and its subsidiaries;

(ii) BAWM Pty Ltd (ACN 078 456 676) (**BAWM**) and Aspin Pty Ltd (ACN 106 046 682) (**Aspin**) (referred to together in the Replacement Prospectus as "BAWM");

(iii) Customer Service Institute of Australia Pty Ltd (ACN 127 413 923) (**CSIA**), and its subsidiaries, and CSIA Education Services Pty Ltd (ACN 135 651 204);

(c) certain entities or businesses, which were acquired by Vocation or one of Founding Companies, either prior to or contemporaneously with the acquisition of AVANA and CSIA by Vocation.

Particulars

i. *Replacement Prospectus at pp. 3, 5 and 131.*

B.3 BAWM and Aspin

411. Prior to completion of the Merger and Initial Public Offering, BAWM and Aspin:

(a) operated as private education providers operating under the brands of "RTO Edge", "Buildit Learning", "Diverse Learning" and "Careers Direct", focusing on industries such as transport and logistics, manufacturing, construction and community services, in Victoria (and which had previously also traded under the name "Institute of Counselling and Community Studies" or "ICSS");

(b) had, in the case of BAWM, reported on a consolidated basis, as at the end of FY13:

(i) net assets and total equity of $4,736,455;

(ii) profit before tax for FY13 of $6,766,493 (derived from revenues of $36,713,675);

(c) had, in the case of Aspin, reported on a consolidated basis, as at the end of FY13:

(i) net assets and total equity of $104,440;

(ii) profit before tax for FY13 of $63,200 (derived from revenues of $270,659).

Particulars

i. Prospectus, pp.49, 86-87, 113, 128 ("BAWM Founders").

ii. Financial Report – 30 June 2013 for BAWM, filed with ASX on 6 December 2013 as part of the Pre-Quotation Disclosure.

iii. *Financial Report – 30 June 2013 for Aspin filed with ASX on 6 December 2013 as part of the Pre-Quotation Disclosure.*

412. Immediately prior to the Merger and the Initial Public Offering:

(a) BAWM's total assets would have represented a very large proportion of the total assets of Vocation (on a pro forma consolidated basis as at the end of FY13);

(b) BAWM's revenue would have represented a very large proportion of the revenue of Vocation (on a pro forma consolidated basis as at the end of FY13, based on an assumption that the Merger and Initial Public Offering had taken place);

(c) BAWM would have contributed a very large proportion of the net profit before tax of Vocation (on a pro forma consolidated basis as at the end of FY13).

Particulars

i. *The proportion in sub-paragraph (a) is about 55%, derived by dividing the Total Assets for BAWM (column 1 of Fig 4.4.1) by the sum of: the Total Assets for BAWM (column 1 of Fig 4.4.1) and the Total Assets for Founding Companies other than BAWM (column 2 of Fig 4.4.1): Replacement Prospectus p.57.*

ii. *The proportion in sub-paragraph (b) is about 62% derived by dividing the BAWM revenue described in paragraph 274(b) by the Statutory Revenue for FY13 in the fifth column of Fig 4.3.2.1 (also the Total Revenue for FY13 in the first column of Fig 4.7.2.1.1): Replacement Prospectus pp.56, 69.*

iii. *The proportion in sub-paragraph (c) is about 88%, derived by dividing BAWM's net profit as described in paragraph 274(b) by the "Profit before tax" for FY13 in column 1 of Fig 4.7.2.1.1: Replacement Prospectus p.69.*

413. By reason of the matters pleaded in paragraph 412, at all material times in the Relevant Period after the Merger and the Offer:

(a) BAWM represented a significant proportion of Vocation's assets;

(b) BAWM's revenue (which was derived principally from government contracts) represented a significant proportion of Vocation's consolidated revenue;

(c) BAWM contributed to a significant proportion of anticipated profits of Vocation;

(d) by reason of the matters pleaded in subparagraphs 413(a) to (c), a significant proportion of the goodwill of Vocation was attributable to BAWM.

414. At all material times, BAWM derived a significant proportion of its revenues from contracts with Victorian government entities (**BAWM Government Contracts**) administered by the Victorian Department of Education and Early Childhood Development (**DEECD**).

Particulars

i. *Vocation had 16 state and territory funding contracts as at the date of the Merger and Initial Public Offering (of which a number were BAWM Government Contracts), including:*

   A. *for students enrolled on or after 1 January 2013 and before 31 December 2013, the "2013 VET Funding Contract", published by the Victorian Skills Commission (such contract with BAWM being the **2013 BAWM Government Contract**);*

   B. *for students enrolled on or after 1 January 2014 and before 31 December 2014, the 2014-2016 VET Funding Contract published by DEECD on 15 November 2013 (such contract with BAWM being the **2014 BAWM Government Contract**),*

which contracts were standard form contracts.

415. It was a term of the BAWM Government Contracts (**Relevant Contract Review Terms**) that:

(a) In the case of the 2013 BAWM Government Contracts and 2013 Aspin Government Contracts:

(i) the Commission or Department (or persons authorised by the Commission or Department) may conduct an audit or review (**DEECD Review**) of the RTO at any reasonable time:

(A) in order to confirm whether the RTO is complying with the agreement;

(B) in order to establish whether and to what extent the Funds have been used for the provision of the Training Services to Eligible Individuals;

(C) in order to investigate allegations or suspected misuse of the Funds; and/or

(D) <u>if applicable, as part of the Commission’s Audit and Risk Committee’s Internal Audit Plan (as defined) (clause 11.1);</u>

(ii) <u>without limiting the Commission's rights under clause 18 of the agreement, the Commission may invoke any of its rights under clause 17 of the agreement in response to any audit outcomes or review outcomes identifying non-compliance with the agreement or any misuse of the Funds (clause 11.4);</u>

(b) <u>in the case of the 2014 BAWM Government Contracts and 2014 Aspin Government Contracts:</u>

(i) <u>DEECD (or persons authorised by DEECD) may conduct an audit or review (also a **DEECD Review**) of the RTO at any reasonable time to, among other things:</u>

(A) <u>confirm whether the RTO is complying with the agreement;</u>

(B) <u>investigate allegations or suspected misuse of the Funds (clause 10.1);</u>

(ii) <u>if an audit or review by, or on behalf of, DEECD concludes that there has been non-compliance by the RTO with the VET Funding Contract, DEECD may, among other things and at DEECD's absolute discretion, exercise any of its rights under clause 16 or 17 of the agreement (clause 10.3);</u>

(iii) <u>the RTO must conduct an internal audit of its compliance with the agreement each calendar year in accordance with any requirements of the Department (clause 10.4).</u>

416. <u>It was a further term of the BAWM Government Contracts (**Relevant Contract Enforcement Terms**) that if:</u>

(a) <u>BAWM breaches a clause of the BAWM Government Contract;</u>

(b) <u>DEECD reasonably suspects that BAWM has breached or may breach a clause of the BAWM Government Contract (including the Relevant Contract Primary Terms);</u>

(c) BAWM does any of the following things (each a **BAWM Government Contract Termination Event**):

(i) commits a “Material Breach” of the BAWM Government Contract;

(ii) commits a breach of the BAWM Government Contract which cannot be remedied;

(iii) commits a breach of the BAWM Government Contract, and fails to commence action to remedy the breach within 10 business days after DEECD has served notice or fails to complete action to remedy the breach as soon as possible and in any event within 20 business days of DEECD’s notice;

(iv) fails to provide some or all of the training services for which funds have been paid by the government entity, or the training services are not provided to a standard satisfactory to DEECD;

(d) DEECD reasonably suspects that a BAWM Government Contract Termination Event has occurred or may occur;

(e) DEECD became aware of what it considers to be an irregularity or inconsistency regarding BAWM’s operations, reporting or other obligations under the BAWM Government Contract which BAWM fails to explain to DEECD’s reasonable satisfaction in the time required by DEECD; or

(f) DEECD becomes aware of any communication, representation or step taken by ASQA or VRQA that indicates that ASQA or VRQA has formed an adverse view in relation to BAWM, or which DEECD considers will impair BAWM’s performance of the Government Contract,

then DEECD could take any of the following steps (**DEECD Enforcement Action**):

(g) suspend part or all of the provision of training services under the BAWM Government Contract;

(h) withhold, suspend, cancel or terminate payment of any part of the funds required to be paid by the government entity under the BAWM Government Contract, as DEECD determines is appropriate, until DEECD is satisfied that the issue has been satisfactorily resolved;

(i) require BAWM to refund such funds which have been paid by the government entity under the BAWM Government Contract as DEECD reasonably deems appropriate, together with interest;

(j) require payment of a monetary amount by BAWM to DEECD;

(k) in the case of a BAWM Government Contract Termination Event, terminate the Government Contract.

Particulars

i. The following documents available from the DEECD website are referred to:

A. the standard form 2013 Service Agreement Victorian Training Guarantee Program, between the Victorian Skills Commission and an RTO, applicable to students commencing training between 1 January and 31 December 2013, cll 17.1, 17.2, 18.3;

B. the standard form 2014-16 VET Funding Contract, between the State of Victoria (through the Secretary of DEECD) and the RTO), applicable to students commencing training between 1 January and 31 December 2014, cll 16.1, 16.2, 17.3.

417. The Aspin Government Contracts contained terms materially to the same effect as the Relevant Contract Review Terms and Relevant Contract Enforcement Terms.

B.4 Vocation's Prospectus Recognition Policy

418. The Replacement Prospectus lodged by Vocation with ASIC on or about 27 November 2013 contained a statement that Vocation's forecast financial performance in FY14 would be as follows (**FY14 Guidance**) (p.69);

	Pro forma historical results for FY13 ($m)	**Pro forma forecast results for FY14 ($m)**
Business channel		
Enterprise	18.4	44.9
Direct	6.8	22.3
Solutions	34.0	51.1
Total revenue	**59.2**	**118.3**
EBITA	12.3	34.9
NPAT	8.3	19.6
NPATA	8.9	24.7

419. The FY14 Guidance set out in the Replacement Prospectus was based on the following revenue recognition policy:

(a) in relation to Vocation's "Enterprise" business channel (including BAWM and Aspin), revenue was to be recognised on a "stage of completion" basis, as assessed by the rendering of invoices following the completion by a student of a unit of competency;

(b) in relation to Vocation's "Direct" business channel (including BAWM and Aspin), revenue was to be recognised on a "stage of completion" basis, as assessed by the rendering of invoices following the completion by a student of a unit of competency;

(c) in relation to Vocation's "Solutions" business channel (including BAWM's "RTO Edge" business), revenue was to be recognised at the time at which the relevant company's entitlement to those funds had been verified, as assessed by all five of the following criteria having been met:

(i) the relevant training has been delivered by the end of the reporting period;

(ii) the training has been reported to the relevant authority within a month following the reporting period;

(iii) data evidence of student participation has been received within a month following the reporting period;

(iv) that data evidence has been subject to a quality control assessment to determine whether they are in accordance with the relevant funding contract; and

(v) notification by the relevant authority of the claimed monies,

(**Prospectus Revenue Recognition Policy**).

Particulars

The Applicant refers to:

i. The description of the Prospectus Revenue Recognition Policy contained in the Replacement Prospectus at pages 61, 62, 134 and 135.

ii. *The statement at page 67 of the Replacement Prospectus that "[t]he Forecast Financial Information has been prepared based on the significant accounting policies adopted by Vocation, which are in accordance with the Australian Accounting Standards".*

iii. *The statement at page b of the Replacement Prospectus that "[t]he basis of preparation and presentation of the Forecast Financial Information is, to the extent applicable, consistent with the basis of preparation and presentation of the Historical Financial Information".*

iv. *The description of the basis of preparation of the "Historical Financial Information" at page 52 of the Replacement Prospectus.*

v. *The description of the revenue recognition policy applied in respect of "Government contract training fees" contained in the "Financial report for the year ended 30 June 2013" lodged by each of Aspin and BAWM with the ASX at page 6 of each document, and the statement on pages 5 and 6 respect of the document lodged by Aspin and on page 6 in respect of the document lodged by BAWM that "Revenue is recognised to the extent that it is probable that the economic benefits will flow to the company and the revenue can be reliably measured… Until such time as the above 5 milestones have been achieved, monies are not considered to be earned as there exists a possibility that monies will be required to be repaid to the relevant authority."*

C RELEVANT EVENTS OF MID 2014

C.1 The New Revenue Recognition Policy

420. By no later than 19 August 2014, Vocation had approved a new revenue recognition policy based on the following:

(a) in relation to Vocation's "Enterprise" business channel (including BAWM and Aspin), revenue would now be recognised according to a "stage of delivery" basis, and recognised:

(i) as to 50% when a student was enrolled;

(ii) as to a further 25% at the mid point of a unit;

(iii) as to the final 25% when the student completed the unit;

(b) in relation to Vocation's "Direct" business channel (including BAWM and Aspin), revenue would now be recognised according to a "stage of delivery" basis, and recognised:

(i) as to 35% when a student was enrolled;

(ii) as to a further 35% at the mid point of a unit;

(iii) as to the final 30% when the student completed the unit;

(c) in relation to Vocation's "Solutions" business channel (including BAWM's "RTO Edge" business), revenue would now be recognised based on Vocation management's estimate of the courses or modules provided in a given period in respect of which management estimated that a claim for payment could be issued by the relevant company, regardless of whether a claim had in fact been prepared or issued by that company, rather than when the criteria set out in paragraph 281(c) were met,

(**New Revenue Recognition Policy**).

Particulars

*i. The New Revenue Recognition Policy is described in pages 3 to 6 of the report titled "Vocation Audit & Risk Committee Update" prepared by Gréwal for Vocation's Audit & Risk Committee meeting on 19 August 2014 (**CFO FY14 Report**), and at pages 6 and 7 of the report titled "Audit & Risk Committee report – year ended 30 June 2014" prepared by PWC for the committee (see VOC.003.001.2586).*

421. The effect of the adoption by Vocation of the New Revenue Recognition Policy relative to the Prospectus Revenue Recognition Policy was:

(a) to bring forward into FY14 the recognition of material amounts of both revenue and profit which amounts otherwise would have been recognised in FY15;

(b) as a consequence of sub-paragraph (a), that Vocation's reported profit for FY14 was materially greater than it would have been if the New Revenue Recognition Policy had not been adopted, and materially better than the FY14 Guidance rather than materially worse than the FY14 Guidance,

(**New Revenue Recognition Policy Effects**).

Particulars

i. *As to sub-paragraph (a), the Applicant refers to the analyses set out in the CFO FY14 Report at page 4 and 6, and say that the effect was to bring forward approximately $15.86m revenue and $7.57m in profit before tax, or approximately $5.3m in profit after tax, broken down as follows:*

Impact on FY14 Results ($m)	**Revenue**	**Expenses**	**Profit (before tax)**	**Profit (after tax)**
Enterprise	4.89	(1.91)	2.98	2.09
Direct	2.33	(0.16)	2.17	1.52
Solutions	8.63	(6.22)	2.42	1.69
Total	**15.86**	**(8.29)**	**7.57**	**5.30**

The column in the table entitled "Profit (after tax)" has been derived by applying a flat 30% effective tax rate to the figures in the column entitled "Profit (before tax)"

ii. *As to sub-paragraph (b), the Applicant says that the effect on Vocation's reported profit was to increase Vocation's reported NPAT by approximately $5.3M (31.5%) from $16.8M to $22.1M, and to enable reported NPAT to be approximately 12% better than the FY14 Guidance rather than 14% worse, as follows:*

$millions	***FY14 pro forma guidance***	***FY14 pro forma as reported***	***FY14 adjusted to reverse effect of New Revenue Recognition Policy***
Enterprise	*44.9*	*50.2*	*45.31*
Direct	*22.3*	*25.5*	*23.17*
Solutions	*51.1*	*61.5*	*52.87*
Total Revenue	***118.3***	***137.2***	***121.35***
Total Expenses	***(83.4)***	***(101.1)***	***(92.81)***
EBITA	***34.9***	***36.1***	***28.54***
Amortisation of acquired intangibles	*(5.1)*	*(4.9)*	*(4.9)*
EBIT	***29.8***	***31.2***	***23.64***
Net interest income	*0.4*	*0.4*	*0.4*

Profit before tax	*30.2*	*31.6*	*24.0*
Income tax expense	*(10.6)*	*(9.5)*	*(7.2)*
NPAT	***19.6***	***22.1***	***16.8***
NPATA	***24.7***	***25.5***	***21.7***

iii. Further particulars may be provided following the completion of discovery and before the initial trial.

C.2 The Victorian Funding Suspensions

422. On a date presently unknown to the Applicant prior to 3 July 2014, DEECD commenced a DEECD Review of BAWM, including as to whether BAWM was complying with the terms of the 2014 Government Contract in respect of certain courses (**BAWM Investigation**).

423. On 3 July 2014, DEECD wrote to BAWM advising that DEECD was withholding the payment of funds to BAWM under the 2014 BAWM Government Contract until certain issues identified by DEECD in the DEECD Review of BAWM had been satisfactorily resolved (**BAWM Funding Suspension**).

Particulars

i. 30 October Announcements entitled "Response to ASX Aware Query"; and "Clarification of ASX Announcement; Answer to ASX Q.1.

ii. The Applicant refers to the letter dated 3 July 2014 from Lee Watts of DEECD to Bonnici (document VOC.001.001.1001).

424. By no later than 24 July 2014, in addition to the BAWM funding suspension the DEECD directed BAWM to cease all new enrolments of Eligible Individuals (as defined in the 2014 BAWM Government Contract) pending the outcome of the BAWM investigation (**BAWM Enrolment Suspension**).

Particulars

i. The Applicant refers to the letter dated 24 July 2014 from Watts to Bonnici (document VOC.001.001.0968).

425. On a date presently unknown to the Applicant, but prior to or on 5 August 2014, DEECD commenced an investigation into Aspin, including as to whether Aspin was complying with the terms of the 2014 Aspin Government Contract in respect of certain courses

(**Aspin Investigation**).

Particulars

i. 30 October Announcements; entitled "Response to ASX Aware Query" and "Clarification of ASX Announcement made on 27 October 2014"; Answer to ASX Q.1.

426. On 5 August 2014, DEECD:

(a) notified Aspin that DEECD was withholding all payments of funds under the 2014 BAWM Government Contract and 2014 Aspin Government Contract with Aspin until certain concerns about Aspin's compliance with its obligations under that agreement were resolved to DEECD's satisfaction (**Aspin Funding Suspension**, and together with the BAWM Funding Suspension, **Victorian Funding Suspensions**); and

(b) directed Aspin to suspend:

(i) the acceptance of all future enrolments of Eligible Individuals (as defined in Aspin's 2014 Funding Contract); and

(ii) the commencement of training delivery to Eligible Individuals that have enrolled but not yet commenced as at 5 August 2014,

(**Aspin Enrolment Suspension** and together with the BAWM Enrolment Suspension, **Victorian Enrolment Suspensions**).

Particulars

ii. The Applicant refers to the statements made in the 30 October Announcements entitled "Response to ASX Aware Query"; and "Clarification of ASX Announcement made on 27 October 2014".

D. LIABILITY OF HUTCHINSON AND GRÉWAL IN RESPECT OF 21 AUGUST CONDUCT (AND VOCATION'S DEFECTIVE FY14 RESULTS DOCUMENTS)

427. For the purposes of the claim pleaded in this Section D, the Applicant repeats paragraphs 408 to 426 above against Hutchinson and Gréwal.

D.1 Publication of the 21 August Results Documents

428. On 19 August 2014, the Audit and Risk Committee (**ARC**) of Vocation resolved to:

(a) submit a draft FY14 Appendix 4E to the Board of Vocation for approval; and

(b) recommend to the Board that the "Investor Presentation", "Media Release" and "Outlook Statement" be approved in principle and that management be authorised to make final adjustments,

(**19 August ARC Recommendation**).

Particulars

i. Minutes of Vocation's ARC meeting held on 19 August 2014 (VOC.007.016.0065 at .0066, .0068).

ii. The draft FY14 Appendix 4E was included in the papers for the 19 August ARC Meeting (VOC.003.001.2586 at .2622), circulated on 16 August 2014. An updated version was tabled at the 19 August ARC Meeting.

429. On 19 August 2014, the Board of Vocation met and:

(a) was advised by Halley that the ARC had reviewed in detail the Draft FY14 Appendix 4E and draft Full Year Financial Report for the financial year ended 30 June 2014 and accompanying documents;

(b) noted that PWC had advised at a meeting that the audited financial results and Annual Report are progressing well, and that PWC did not raise any significant issues in the private session (VOC.003.001.3132 at .3133);

(c) noted that the ARC had received a pack of information, including the draft FY14 Appendix 4E, draft investor presentation (as updated and tabled at the ARC), media release, and full year financial report;

(d) resolved, that as recommended by the ARC and subject to the final review, amendment and approval by a committee of any two directors of Vocation, inter alia:

(i) the draft FY14 Appendix 4E be approved;

(ii) the Investor Presentation and Media Release be approved; and

(iii) the company secretary be authorised to lodge the Appendix 4E, media release and investor presentation with the ASX immediately,

(**19 August Board Approval**).

Particulars

i. Minutes of Board of Vocation held on 19 August 2014 (VOC.003.001.3132).

430. On 20 August 2014, a committee of the Board of Vocation comprising Halley, Hutchinson and Tucker (**Board Committee**) resolved to:

(a) approve the Appendix 4E for the financial year ended 30 June 2014;

(b) approve the accompanying investor presentation and media release; and

(c) authorise the company secretary of Vocation to lodge the Appendix 4E, media release and investor presentation with ASX prior to market opening on 21 August 2014,

(**20 August Board Committee Approval**).

Particulars

i. Minutes of Board Committee meeting of Vocation held on 20 August 2014 (VOC.007.010.0005).

431. On 21 August 2014:

(a) Vocation released to the ASX its Preliminary Financial Report (Appendix 4E) for the year ending 30 June 2014 (**FY14 Appendix 4E**) (ASX.001.001.0826);

(b) Vocation released to the ASX its FY14 Results Presentation (**FY14 Results Presentation**) (ASX.001.001.0856); and

(c) Vocation released to the ASX an announcement entitled "Vocation delivers strong first full year result, exceeding prospectus guidance" (**FY14 Results Announcement**) (ASX.001.001.0885),

(together, **FY14 Results Documents**).

432. The FY14 Appendix 4E contained the following statements:

(a) In the section entitled "Results for announcement to the market" (at .0826):

(i) that to aid comparability, the following information relates to Vocation as a continuation of an existing business, following the corporate/group re-organisation, and not from the date the company was incorporated:

(A) Vocation's revenues from ordinary activities were "up 246.0%" to $128,575,000;

(B) Vocation's profit from ordinary activities after tax attributable to the owners of Vocation was "up 74.6%" to $8,272,000; and

(ii) The profit for the consolidated entity after providing for income tax "amounted $8,272,000 (30 June 2013: $4,737,000)".

(b) in the statement of profit or loss and other comprehensive income in the Preliminary Financial Report (at .0829), that:

(i) Vocation's revenue was $128,575,000 (2014 unaudited consolidated), compared to $37,162,000 (2013 unaudited consolidated); and

(ii) Vocation's profit after income tax expense for the year attributable to the owners of Vocation (2014 consolidated and unaudited) was $8,272,000, compared to $4,737,000 (2013 consolidated unaudited).

(c) in Note 1 (Significant accounting policies) in the Preliminary Financial Report under the heading "Revenue recognition" (at .0834) that:

(i) Revenue is recognised when it is probable that the economic benefit will flow to the consolidated entity, and the revenue can be reliably measured. Revenue is measured at the fair value of the consideration received or receivable;

(ii) Revenue from services is recognised in the accounting period in which the services are rendered. For fixed-price contracts, revenue is recognised under the percentage of completion method, based on the actual service provided as a proportion of the total services to be provided;

(iii) If circumstances arise that may change the original estimates of revenues, costs, or extent of progress toward completion, estimates are revised. These revisions may result in increases or decreases in estimated revenues or costs and are reflected in profit or loss in the period in which the circumstances that give rise to the revision become known by management;

(d) in Note 8 (Events after the reporting period) in the Preliminary Financial Report (at .0853-0854), that apart from the acquisition of 100% of the share capital of Endeavour College of Natural Health, no other matter or circumstance had arisen since 30 June 2014 that had significantly affected, or may significantly affect the consolidated entity's operations, the results of those operations, or the consolidated entity's state of affairs in future financial years.

433. In the FY14 Results Presentation, Vocation made express statements to the effect that:

(a) in the slide headed "FY2014 – Transformational First Year" (at .0859):

(i) "We have achieved all our major objectives for FY14";

(ii) "Prospectus forecast comfortably exceeded – Significant ramp up in organic growth benefitting from scale and operating leverage. Vocation's three revenue channels have performed ahead of Prospectus forecast for FY14";

(b) in the slide headed "Basis of preparation of FY2014" (at .0861):

(i) "Pro forma actual" revenue for FY14 was $137.2m;

(ii) "Pro forma actual" NPAT was $22.1m;

(iii) "The financials presented in this Investor Pack predominantly relate to the pro forma FY14 results for Vocation. The appendices include a detailed reconciliation of the pro forma revenue and NPAT to the statutory revenue and NPAT. Refer to the 4E Preliminary Financial statements for further detail on the statutory financial information for FY14"; and

(iv) "To ensure a like for like comparison to the FY14 forecast earnings and cash flows presented in the Prospectus, the pro forma results presented" exclude earnings and cash flows from two transactions concluded at the end of April and May 2014;

(c) in the slide headed "FY2014 Results Overview" (at .0862):

(i) "Prospectus forecast comfortably exceeded. FY14 earnings 2.9x FY13";

(ii) Vocation's FY14 results relative to the FY14 Guidance were as follows:

$millions	**Pro forma Actual**	**Pro forma Prospectus**	**Variance to Prospectus**	**Variance to FY13**
Revenue	137.2	118.3	↑16.0%	↑2.3x
EBITA	36.1	34.9	↑3.4%	↑2.9x
NPATA	25.5	24.7	↑3.2%	↑2.9x

(d) in the slide headed "Proforma Income Statement – FY2014" (at .0863):

(i) "Prospectus revenue and earnings forecast comfortably exceeded";

(ii) "Total revenue exceeded the Prospectus by 16%. All three revenue channels higher than Prospectus forecast";

(iii) Vocation's FY14 results relative to the FY14 Guidance were as follows:

$millions	**Pro forma Prospectus**	**Pro forma Actual**
Enterprise	44.9	50.2
Direct	22.3	25.5
Solutions	51.1	61.5
Total Revenue	**118.3**	**137.2**
EBITA	**34.9**	**36.1**
NPAT	**19.6**	**22.1**
NPATA	**24.7**	**25.5**

434. In the FY14 Results Announcement, Vocation made express statements to the effect that:

(a) In the section headed "Results Overview":

(i) "Strong result for the 12 months to 30 June 2014, comfortably ahead of prospectus guidance";

(ii) "Pro forma revenue of $137.2 million (Prospectus forecast: $118.3m)";

(iii) "Pro forma EBITA of $36.1 million (Prospectus forecast: $34.9m)";

(iv) "Pro forma NPAT of $22.1 million (Prospectus forecast: $19.6m)";

(v) "Pro forma NPATA of $25.5 million (Prospectus forecast: $24.7)";

(vi) "All three revenue channels performed well ahead of expectations";

(b) "Vocation...reported a strong result for the 12 months to 30 June 2014. On a pro forma basis, Revenue was $137.2 million, EBITA was $36.1 million and NPATA was $25.5 million";

(c) "FY14 has been a transformational first year for the business. We have exceeded our IPO forecasts";

(d) In the section headed "FY14 Financial Performance":

(i) "Vocation delivered pro forma Revenue of $137.2 million (Prospectus forecast: $118.3m) in FY14 and statutory sales revenue of $128.4 million. Pro forma NPAT was $22.1 million (Prospectus forecast: $19.6m), with statutory NPAT of $8.3 million."

(ii) "Pro forma EBITA was $36.1 million (Prospectus forecast: $34.9m), driven by the strong revenue performance. Pro forma NPATA was $25.5 million (Prospectus forecast $24.7m)."

(iii) "Vocation's Enterprise business, which delivers education and training services to corporate and government employees, performed strongly to deliver revenue of $50.2 million (Prospectus forecast: $44.9m)."

(iv) "The Direct channel, which caters to individual students, delivered revenue of $25.5 million (Prospectus forecast: $22.3m), with online enrolments in particular growing in momentum during the year."

(v) Vocation's Solutions business, which delivers outsourced managed services and industry consulting to third-party providers, performed ahead of expectations over the course of the year driven by strong growth in new clients, delivering revenue of $61.5 million (Prospectus forecast: $51.1m)."

435. The FY14 Results Documents did not contain any information or statement to the effect:

(a) that:

(i) Vocation had adopted the New Revenue Recognition Policy (which differed from the Prospectus Revenue Recognition Policy);

(ii) the effect of the New Revenue Recognition Policy was to bring forward into FY14 a material amount of revenue and profit and show reported FY14 NPAT as materially outperforming the FY14 Guidance rather than materially underperforming the FY14 Guidance (that is, disclosing the New Revenue Recognition Policy Effects);

(b) that:

(i) Vocation was the subject of the BAWM Investigation and the Aspin Investigation;

(ii) Vocation was the subject of the Victorian Funding Suspensions, and disclosing the quantum of funding the subject of the Victorian Funding Suspensions, and making any provision or write-down in relation to that funding;

(iii) Vocation was the subject of the Victorian Enrolment Suspensions, and disclosing any uncertainty as to Vocation's ability to continue as a going concern;

(iv) Vocation's FY14 and FY15 earnings may be affected by the outcome of the BAWM Investigation, the Aspin Investigation, the Victorian Funding Suspensions and/or the Victorian Enrolment Suspensions.

D.2 21 August Representations made by Hutchinson and Gréwal

436. Each of Hutchinson and Gréwal authorised, or participated in authorising, the making and lodgement by Vocation with the ASX of the FY14 Results Documents in the form, or substantially in the form, in which those documents were made and lodged with ASX.

Particulars

i. As to Hutchinson:

FY14 Results Presentation

- *Hutchinson was involved in preparing the FY14 Results Presentation (VOC.003.001.2586 at 2666) and his name and contact details appear at the end of the FY14 Results Presentation (ASX.001.001.0856).*

- *Hutchinson delivered the FY14 Results Presentation on 21 August 2014, together with Gréwal, to investors (VET.1005.0001.0681).*

FY14 Appendix 4E

- *Hutchinson received documents referencing the FY14 results prior to their release (eg, VOC.003.001.2584 and VOC.003.001.2586).*

- *Hutchinson informed the ARC at the 19 August ARC Meeting that he was prepared to sign the s 295A Declaration for the purpose of the FY14 Annual Report of Vocation and the FY14 Appendix 4E (VOC.007.016.0065).*

- *Hutchinson also signed the s 295A declaration for the purposes of the FY14 Annual Report of Vocation which Vocation lodged with the ASX on 2 September 2014 and the FY14 Appendix 4E (VOC.003.001.3035).*

FY14 Results Announcement

- *Hutchinson was involved in preparing the FY14 Results Announcement (VOC.008.013.2254, VOC.008.013.2271, VOC.008.013.6921, VOC.014.0052 and VOC.008.013.6937) and he is quoted extensively in it (ASX.001.001.0885).*

Additional matters

- *Hutchinson sought the ARC's recommendation, at the 19 August ARC Meeting, of the draft FY14 Documents to the Board.*

- *Hutchinson was present at the meeting of the Board Committee that unanimously made the 20 August Board Committee Approval.*

- *Further, Hutchinson's authorisation or participation is to be inferred from his position as Managing Director and Chief Executive Officer of Vocation at the time the FY14 Results Documents were prepared and lodged with the ASX.*

ii. As to Gréwal:

FY14 Results Presentation

- *Gréwal* was *involved in preparing the FY14 Results Presentation for investors (eg, VOC. 008.009.3505, VOC.003.001.2584 and VOC.003.001.2586) and his name and contact details appear at the* *end of the FY14 Results Presentation (ASX.001.001.0856).*

- *Gréwal delivered the FY14 Results Presentation, together with Hutchinson, to investors on 21 August 2014 (VET.1005.0001.0681).*

FY14 Appendix 4E

- *Gréwal was involved in preparing the FY14 Appendix 4E and Grewal signed the FY14 Appendix 4E (ASX.001.001.0826).*
- *Gréwal informed the ARC at the 19 August ARC Meeting that he was prepared to sign the s 295A Declaration for the purpose of the FY14 Annual Report of Vocation and the FY14 Appendix 4E (VOC.007.016.0065).*
- *Gréwal also signed the s 295A declaration for the purposes of the FY14 Annual Report and the FY14 Appendix 4E (VOC.003.001.3035), and he signed the Appendix 4E (VOC.008.013.1783).*

FY14 Results Announcement

- *Gréwal was involved in preparing the FY14 Results Announcement (VOC.008.013.2254, VOC.008.013.2271, VOC.008.013.6921, VOC.014.0052, VOC.008.013.0627 and VOC.008.013.6937)*

Additional matters

- *Gréwal spoke to the draft FY14 Results Documents at the 19 August ARC Meeting.*
- *Gréwal spoke to the draft FY14 Results Documents at the meeting of the Board Committee.*
- *Further, Gréwal's authorisation or participation is to be inferred from his position as Chief Financial Officer and Company Secretary of Vocation at the time the FY14 Results Documents were prepared and lodged with the ASX.*

437. Further, or alternatively on 21 August 2014:

(a) each of Hutchinson and Gréwal adopted the FY14 Results Documents as statements made by them; and

(b) in the course of presenting the FY14 Results Presentation:

(i) Gréwal stated that since 30 June 2014 there had been no change in BAWM's funding arrangements with the Victorian government other than a price list revision;

(ii) Hutchinson did not contradict or qualify what Gréwal had stated as alleged in paragraph 437(b)(i).

Particulars

i. As to paragraph (a), the sub-particulars to paragraph 436 are repeated.

ii. As to paragraph (b)

A. The sub-particulars to each of particulars (i) and (ii) under the heading "FY14 Presentation" to paragraph 436 is repeated, in that each of Hutchinson and Gréwal together delivered the FY14 Results Presentation to analysts in an investor call on 21 August 2014 in which Hutchinson and Gréwal were active participants. The analysts who participated in that investor call were likely to take into account information communicated to them in the course of the call in formulating their valuations of, and recommendations in relation to the price or value of Vocation Securities, and such statements would either be passed on directly to their clients, or indirectly via the opinions of the analysts on the valuation of Vocation Securities.

B. The relevant statement in (b)(i) above was made orally by Gréwal in the course of the investor call referred to in (i) above, in answer to a question from Mr Pendlebury, and Mr Hutchinson did not contradict or qualify this statement: refer to ASIC v Vocation Ltd (in Liq) [2019] FCA 807 at [186]-[187].

438. By reason of the matters pleaded in paragraphs 436 and/or 437(a) above, on 21 August 2014 Hutchinson and Gréwal each represented to the market of investors and potential investors in Vocation Securities that:

(a) the financial information contained in Vocation's FY14 financial statements upon which the FY14 Appendix 4E was based had been prepared in accordance with the Australian Accounting Standards and the Corporations Act; and

(b) the financial information contained in Vocation's FY14 financial statements upon which the FY14 Appendix 4E was based gave a true and fair view of the financial position and performance of Vocation as at 30 June 2014;

(the **Officers' 21 August Accounts Representations**).

Particulars

The representations were implied and arise from the express statements contained in the FY14 Results Documents, as pleaded in paragraphs 432 to 434 above, and the absence of any material qualification or contradiction to it.

439. Further, or alternatively, by reason of the matters pleaded in paragraph 438 above, on

21 August 2014 Hutchinson and Gréwal each represented to the market of investors and potential investors in Vocation Securities that they had reasonable grounds for making the Officers' 21 August Accounts Representations (**Officers' 21 August Accounts Reasonable Grounds Representation**).

440. Further, by reason of the matters pleaded in paragraph 437(b) above, on 21 August 2014 Hutchinson and Gréwal each represented to the market of investors and potential investors in Vocation Securities that since 30 June 2014 there had been no change in BAWM's funding arrangements with the Victorian government other than a price list revision (**Officers Further 21 August Representation**)

D.3 Misleading nature of the Officers' 21 August Accounts Representation and Officers' 21 August Accounts Reasonable Grounds Representation made by Hutchinson and Gréwal

441. The financial information contained in Vocation's FY14 financial statements upon which the FY14 Appendix 4E was based was not prepared in compliance with Accounting Standards and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 (and Hutchinson and Gréwal did not have reasonable grounds for believing otherwise) in that:

(a) it used the New Revenue Recognition Policy without disclosing that the New Revenue Recognition Policy was a change in accounting policy from the revenue recognition policy which BAWM had used in FY13 (that is, the Prospectus Revenue Recognition Policy); and

(b) it did not:

(i) provide a justification that:

(A) the amount of revenue under the revised policy can be reliably estimated, as the lack of reliability of estimation was the justification for the Prospectus Revenue Recognition Policy;

(B) the New Revenue Recognition Policy provides reliable and more relevant information than the Prospectus Revenue Recognition Policy; and

(C) the percentage of completion of the service can be measured reliably, and in particular the reliability of the percentage of completion upon enrolment of students;

(ii) apply the change in accounting policy from the Prospectus Revenue Recognition Policy to the New Revenue Recognition Policy retrospectively by restating the comparative amounts; and/or

(iii) make all of the disclosures required by AASB 108 paragraph 29, including nature, reasons and quantification of the effect of the change, explaining that $15.86 million of revenue and $7.57 million of profit that would otherwise have been reported in FY15 had been included in FY14.

Particulars

i. The reasons why the financial information contained in Vocation's FY14 financial statements upon which the Draft FY14 Appendix 4E was based was not prepared in compliance with Accounting Standards (namely AASB108) and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 1, [48]-[63].

ii. What was required in order for that financial information to comply with Accounting Standards and give a true and fair view is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 2, [82].

442. Further or alternatively, the financial information contained in Vocation's FY14 financial statements upon which the FY14 Appendix 4E was based, was not prepared in compliance with Accounting Standards and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 (and Hutchinson and Gréwal did not have reasonable grounds for believing otherwise) in that:

(a) first:

(i) communications between DEECD and BAWM and Aspin dated 3 July 2014 (VOC.001.001.1001), 4 July 2014 (VOC.001.001.0977), 18 July 2014 (VOC.001.001.0928) 24 July 2014 (VOC.001.001.0968), 4 August 2014 (VOC.001.001.0234), 5 August 2014 (VOC.001.001.0162) and 15 August 2014 (VOC.001.010.6782, VOC.001.010.6786) (together **Pre-19 August DEECD Communications**) were adjusting events after the reporting period under AASB110; and

(ii) it did not:

(A) in the Contingent Liabilities note to the financial report, disclose the breaches of contract claimed by DEECD, indicate that a reasonable estimate of the expected loss has been taken up as a provision in the financial report, indicate that any further amount is a contingent liability and if determinable indicate an estimate of the maximum possible financial consequences and/or effect of the breaches; and

(B) contain a Subsequent Events note which indicated that DEECD had suspended payments of claims by Vocation from June 2014 and that DEECD had instructed BAWM and Aspin to suspend the acceptance of new enrolments and suspend the commencement of training delivery; and/or

(b) secondly:

(i) the goodwill of $15 million carried in the financial statements relating to Aspin was impaired under AASB136; and

(ii) it did not write off the goodwill of $15 million pertaining to Aspin on the basis that the requirement to cease taking new enrolments and to cease the delivery of training meant that the carrying value of Aspin goodwill could no longer be justified.

Particulars

i. *The reasons why the financial information contained in Vocation's FY14 financial statements upon which the Draft FY14 Appendix 4E was based was not prepared in compliance with Accounting Standards (namely AASB110, AASB136 and AASB101) and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 1, [64]-[72].*

ii. *What was required in order for that financial information to comply with Accounting Standards and give a true and fair* *view is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 2, [83].*

443. By reason of the matters pleaded in paragraph 441 and/or 442, as at 21 August 2014 Hutchinson and Gréwal did not have reasonable grounds for believing that:

(a) the financial information contained in Vocation's FY14 financial statements upon which the FY14 Appendix 4E was based had been prepared in accordance with the Australian Accounting Standards and the Corporations Act; and

(b) the financial information contained in Vocation's FY14 financial statements upon which the FY14 Appendix 4E was based gave a true and fair view of the financial position and performance of Vocation as at 30 June 2014.

D.4 Misleading nature of the Officers' Further 21 August Representation made by Hutchinson and Gréwal

444. By reason of the matters pleaded in paragraphs 422 to 426 and 442(a), as at 21 August 2014, it was not the case that since 30 June 2014 there had been no change in BAWM's funding arrangements with the Victorian government other than a price list revision.

D.5 Hutchinson's and Gréwal's 21 August Contraventions

445. By making the Officers' 21 August Accounts Representations, and the Officers' 21 August Accounts Reasonable Grounds Representation and Officers' Further 21 August Representation, Hutchinson and Gréwal each engaged in conduct:

(a) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act;

(b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

(c) in trade or commerce within the meaning of section 18 of the Australian Consumer Law.

446. By reason of the matters pleaded in paragraphs 427 to 443, each of Hutchinson and Gréwal engaged in conduct which was misleading or deceptive, or likely to mislead or deceive by:

(a) making the Officers' 21 August Accounts Representations;

(b) making the Officers' 21 August Accounts Reasonable Grounds Representation;

(c) failing to correct or qualify the Officers' 21 August Accounts Representations; and/or

(d) failing to correct or qualify the Officers' 21 August Accounts Reasonable Grounds Representation.

447. By reason of the matters pleaded in paragraph 444, each of Hutchinson and Gréwal engaged in conduct which was misleading or deceptive, or likely to mislead or deceive by making the Officers' Further 21 August Representation.

448. By reason of the matters pleaded in paragraphs 445 and 446 and/or 445 and 447, each of Hutchinson and Gréwal contravened:

(a) section 1041H of the Corporations Act;

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the Australian Consumer Law,

(each being a **Director/Officer Misleading Conduct Contravention**).

E LIABILITY OF HUTCHINSON IN RESPECT OF 25 AUGUST CONDUCT

449. For the purposes of the claim pleaded in this Section E, the Applicant repeats paragraphs 422 to 426 against Hutchinson.

E.1 Publication of the 25 August Announcement

450. On 25 August 2014, the Australian Financial Review reported:

(a) that on 20 August 2014, DEECD had advised BAWM that its funding was suspended pending the outcome of a full audit;

(b) DEECD auditors had been reviewing BAWM's books for the previous six weeks.

Particulars

Article, 25 August 2014, "Training Wheels wobbly?"

451. On 25 August 2014 Vocation published and lodged with the ASX an announcement entitled "Response to press speculation" (**25 August Announcement**), in which Vocation stated:

(a) Vocation's funding contracts with DEECD had not been suspended and were continuing;

(b) DEECD was undertaking a review of three of the courses for which Vocation receives funding, and as part of the review process had withheld recent payments under the funding contracts;

(c) Vocation considered that neither the review nor its anticipated outcomes were material to Vocation.

E.2 25 August Representations made by Hutchinson

452. By the 25 August Announcement, Vocation represented to the market of investors and potential investors in Vocation Securities that:

(a) none of Vocation's entitlements under its RTOs' funding contracts with DEECD had been suspended other than the withholding of recent payments due under the contracts (**August No Suspension Representation**);

(b) Vocation was able to continue to enrol students and deliver vocational education and training and ancillary services under all of its RTOs' funding contracts with DEECD (**August Continuing Enrolment and Delivery Representation**);

(c) there were reasonable grounds for believing that the withholding of recent payments under Vocation's RTO funding contracts (and the outcome of the DEECD review) would not be material to Vocation (**August Materiality Representation**).

Particulars

*i. The August No Suspension Representation was partly express and partly implied. To the extent it is express subparagraphs 450(a) and (b) is referred to, and it was contained in the following words in the 25 August Announcement: "Vocation's funding contracts with the Victorian Department of Education and Early Childhood Development (**DEECD**) have not been suspended …" and "As part of the review process, the DEECD has withheld recent payments under the funding contracts." To* *the extent it was implied, it is to be implied from the express statements, the context in which they appear and the absence of any disclosure to the contrary.*

ii. *The August Continuing Enrolment and Delivery Representation was partly express and partly implied. To the extent it was express, it was contained in the following words in the 25 August Announcement: "Vocation's finding contracts with the Victorian Department of Education and Early Childhood Development (DEECD) have not been suspended and are continuing" are referred to. To the extent it was implied, it is to be implied from the express statements, the context in which they appear and the absence of any disclosure to the contrary.*

iii. *The August Materiality Representation was partly express and partly implied. To the extent it is express subparagraphs 451(c) is referred to; to the extent it was implied, it is to be implied from the express statement and the absence of any disclosure to the contrary. The August Materiality Representation is a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

453. Hutchinson authorised, or participated in authorising, the making and lodgement by Vocation with the ASX of the 25 August Announcement in the form, or substantially in the form, in which that document was made and lodged with ASX, including the inclusion therein of the August No Suspension Representation, the August Continuing Enrolment and Delivery Representation and the August Materiality Representation.

Particulars

i. *On or around 21 August 2014, Hutchinson told analyst Ed Pendlebury during an investor call that there had been 'no material change' in Vocation's funding arrangements. This comment was the subject of email correspondence between Koster and others concerning the materiality of the 25 August Announcement (VOC.001.010.1106; VOC.001.009.0592; VOC.008.005.0430).*

ii. *On 23 August 2014, Hutchinson emailed Tredenick and others regarding the extent of the funding suspensions and the correspondence with DEECD concerning the same (VOC.003.001.0958);*

iii. *On 24 August 2014, Hutchinson was copied to emails concerning the drafting of the 25 August Announcement and responses to media enquiries concerning Vocation's continuous disclosure requirements (VOC.016.012.1536);*

iv. *On 24 August 2014, Hutchinson participated in email correspondence with Koster and others concerning, among other things, the possibility that there is a 'false market' in Vocation shares and that the ASX may require some further* *disclosure from Vocation as part of the 25 August Announcement (VOC.008.010.7200);*

v. *On 24 August 2014, Hutchinson participated in email correspondence with Grewal, Bonnici and Koster and others concerning, among other things, structure and materiality of the 25 August Announcement (VOC.001.001.0585; VOC.008.005.0430);*

vi. *On 25 August 2014, Hutchinson attended the Vocation Board meeting at which a final draft copy of the 25 August Announcement was circulated and it was agreed that a market release be issued noting that: (a) contracts have not been suspended; (b) recent payments are withheld pending review; (c) anticipating outcomes will not be material (VOC.007.003.0010).*

vii. *Further, Hutchinson's authorisation or participation is to be inferred from his position as Managing Director and Chief Executive Officer of Vocation at the time the 25 August Announcement was prepared and lodged with the ASX.*

viii. *Further, Hutchinson's authorisation or participation is to be inferred from the fact that his name and contact details appeared at the foot of the 25 August Announcement.*

454. Further, or alternatively, Hutchinson adopted the 25 August Announcement as a statement made by himself.

Particulars

i. *Particular (iii) to paragraph 452 is repeated.*

455. By reason of the matters pleaded in paragraphs 452 and 453 and/or 454 above, on 25 August 2014 Hutchinson made the following representations to the market of investors and potential investors in Vocation Securities:

(a) the August No Suspension Representation;

(b) the August Continuing Enrolment and Delivery Representation; and

(c) the August Materiality Representation,

(the **Officers' 25 August Representations**).

456. Further, or alternatively, by reason of the matters pleaded in paragraph 455 above, on 21 August 2014 Hutchinson represented to the market of investors and potential

investors in Vocation Securities that he had reasonable grounds for making the Officers' 25 August Representations (**Officers' 25 August Reasonable Grounds Representation**).

E.3 Misleading nature of the Officers 25 August Representations and the Officers' 25 August Reasonable Grounds Representation made by Hutchinson

457. By reason of the matters pleaded in paragraph 449, as at 25 August 2014, it was not the case that:

(a) none of Vocation's entitlements under its RTOs' funding contracts with DEECD had been suspended other than the withholding of recent payments due under the contracts; or

(b) Vocation was able to continue to enrol students and deliver vocational education and training and ancillary services under all of its RTOs' funding contracts with the DEECD.

Particulars

i. Paragraph 449 is repeated. As at 25 August 2014 (and at all relevant times thereafter), the entitlements of two of Vocation's RTOs (BAWM and Aspin) to receive payments for training previously delivered by them and to enrol new students for future training had been suspended, and BAWM and Aspin were not free to provide training services to students pursuant to the terms of the relevant finding contracts.

458. By reason of the matters pleaded in paragraph 449, as at 25 August 2014, Hutchinson did not have reasonable grounds for believing that:

(a) none of Vocation's entitlements under its RTOs' funding contracts with DEECD had been suspended other than the withholding of recent payments due under the contracts;

(b) Vocation was able to continue to enrol students and deliver vocational education and training and ancillary services under all of its RTOs' funding contracts with the DEECD; or

(c) the withholding of recent payments under Vocation's RTO funding contracts (and the outcome of the DEECD review) would not be material to Vocation.

Particulars

i. *Paragraph 449 is repeated.*

ii. *As at 25 August 2014, the total amount calculated as withheld was $18,819,387.56 for BAWM and $1,858,789.03 for Aspin (approximately $21.0 million total) (DEECD's letter to ASX dated 21 August 2014)(VOC.001.001.0394).*

iii. *As at 25 August 2014, Vocation had not received any written legal advice in relation to its dispute with DEECD, or its likely resolution.*

iv. *As at 25 August 2014 (at the least), the dispute between DEECD and Vocation was rapidly evolving, DEECD may not release funds for some time, possibly not at all, and Vocation's right to recover all or even part of the withheld funds was the subject of considerable uncertainty.*

v. *As at 25 August 2014:*

A. *On 19 August 2014, Hutchinson had informed Vocation's board that the suspensions were likely to negatively affect Vocation's earnings in the range of $8.0 million to $10.0 million;*

B. *There was no reasonable basis for thinking as at 25 August 2014 that less was at risk, and any claimed belief that only $2.0 million was at risk based on Mr Langtree's email of 21 August 2014 would not be objectively reasonable in circumstances where Mr Langtree's reference was not not an estimate of what amount might be permanently withheld, but an estimate of what portion of CSP and Warehousing revenue related to enrolments by the five brokers who had enrolled students into courses run by or on behalf of BAWM in respect of which payments had been withheld;*

E.4 Hutchinson's 25 August Contraventions

459. By making the Officers' 25 August Representations, and the Officers' 25 August Reasonable Grounds Representation, Hutchinson engaged in conduct:

(a) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act;

(b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

(c) in trade or commerce within the meaning of section 18 of the Australian

Consumer Law.

460. By reason of the matters pleaded in paragraphs 457 and/or 458, Hutchinson engaged in conduct which was misleading or deceptive, or likely to mislead or deceive by:

(a) making the Officers' 25 August Representations;

(b) making the Officers' 25 August Reasonable Grounds Representation;

(c) failing to correct or qualify the Officers' 25 August Representations; and/or

(d) failing to correct or qualify the Officers' 25 August Reasonable Grounds Representation.

461. By reason of the matters pleaded in paragraphs 459 to 460, Hutchinson contravened:

(a) section 1041H of the Corporations Act;

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the Australian Consumer Law,

(each being a Director/Officer Misleading Conduct Contravention).

F LIABILITY OF HUTCHINSON AND DAWKINS IN RESPECT OF 3 SEPTEMBER CONDUCT (AND VOCATION'S DEFECTIVE FY14 FINANCIAL REPORT)

462. For the purposes of the claim pleaded in this Section F, the Applicant repeats paragraphs 408 to 426 above against Hutchinson and Dawkins.

F.1 Publication of the FY14 Annual Report and FY14 Audited Financial Statements

463. On 2 September 2014, the Board Committee of Vocation comprising Halley, Hutchinson and Tucker resolved to:

(a) approve Vocation's annual report for FY14 (**FY14 Annual Report**) containing Vocation's audited financial statements for FY14 (**FY14 Audited Financial Statements**); and

(b) authorise the company secretary of Vocation to lodge the FY14 Annual Report, with ASX,

(**2 September Board Committee Approval**).

Particulars

i. Minutes of Board Committee meeting held on 2 September 2014 (VOC.007.010.0007).

464. On 3 September 2014, Vocation released to the ASX the FY14 Annual Report, containing the FY14 Audited Financial Statements.

Particulars

i. The Financial Report is contained in the FY14 Annual Report, pp.39-80.

465. The FY14 Annual Report stated:

(a) FY14 has been a transformational first year for the business, with the pro forma results exceeding the IPO prospectus forecasts;

(b) under the heading "Pro forma consolidated income statements: Financial year ended 30 June 2014 compared to financial year ended 30 June 2013":

(i) The pro forma consolidated income statement for the year ended 30 June 2014 has been prepared on the same basis as the pro forma consolidated income statement for the year ended 30 June 2013 published in the Vocation Limited IPO prospectus issued in November 2013 and adjusted to exclude the impact of acquisitions since IPO;

(ii) The table below sets out the pro forma consolidated income statement for the year ended 30 June 2014 compared to the consolidated income statement for the year ended 30 June 2013 and the pro forma forecast for the year ended 30 June 2014, which were both included in the Prospectus,

and thereafter presented financial results relevantly the same as those set out in the FY14 Results Documents.

466. The FY14 Audited Financial Statements presented financial information identical to that contained in the FY14 Appendix 4E (as pleaded in paragraph 432 (b)-(d) above),

namely:

(a) in the statement of profit or loss and other comprehensive income, that:

(i) Vocation's revenue was $128,575,000 (2014 consolidated), compared to $37,162,000 (2013 consolidated); and

(ii) Vocation's profit after income tax expense for the year attributable to the owners of Vocation (2014 consolidated) was $8,272,000, compared to $4,737,000 (2013 consolidated).

(b) in Note 1 (Significant accounting policies) under the heading "Revenue recognition" that:

(i) Revenue is recognised when it is probable that the economic benefit will flow to the consolidated entity, and the revenue can be reliably measured. Revenue is measured at the fair value of the consideration received or receivable;

(ii) Revenue from services is recognised in the accounting period in which the services are rendered. For fixed-price contracts, revenue is recognised under the percentage of completion method, based on the actual service provided as a proportion of the total services to be provided;

(iii) If circumstances arise that may change the original estimates of revenues, costs, or extent of progress toward completion, estimates are revised. These revisions may result in increases or decreases in estimated revenues or costs and are reflected in profit or loss in the period in which the circumstances that give rise to the revision become known by management;

(c) in Note 8 (Events after the reporting period), that apart from the acquisition of 100% of the share capital of Endeavour College of Natural Health, no other matter or circumstance had arisen since 30 June 2014 that had significantly affected, or may significantly affect the consolidated entity's operations, the results of those operations, or the consolidated entity's state of affairs in future financial years.

467. The FY14 Annual Report and FY14 Audited Financial Statements released to the ASX did not contain any information or statement to the effect:

(a) that:

(i) Vocation had adopted the New Revenue Recognition Policy (which differed from the Prospectus Revenue Recognition Policy);

(ii) the effect of the New Revenue Recognition Policy was to bring forward into FY14 a material amount of revenue and profit and show reported FY14 NPAT as materially outperforming the FY14 Guidance rather than materially underperforming the FY14 Guidance (that is, disclosing the New Revenue Recognition Policy Effects);

(b) that:

(i) Vocation was the subject of the BAWM Investigation and the Aspin Investigation;

(ii) Vocation was the subject of the Victorian Funding Suspensions, and disclosing the quantum of funding the subject of the Victorian Funding Suspensions, and making any provision or write-down in relation to that funding;

(iii) Vocation was the subject of the Victorian Enrolment Suspensions, and disclosing any uncertainty as to Vocation's ability to continue as a going concern;

(iv) Vocation's FY14 and FY15 earnings may be affected by the outcome of the BAWM Investigation, the Aspin Investigation and/or the Victorian Funding Suspensions.

F.2 3 September Representations made by Hutchinson and Dawkins

468. Each of Hutchinson and Dawkins authorised, or participated in authorising, the making and lodgement by Vocation with the ASX of the FY14 Annual Report (including the FY14 Financial Report and the FY14 Audited Financial Statements) in the form, or substantially in the form, in which those documents were made and lodged with ASX.

Particulars

i. As to Hutchinson:

- *On 30 August 2014, Hutchinson was copied into emails circulating the materials to be provided to the ARC committee members prior to the 2 September Board Committee Approval. The emails also discussed Vocation's cash flow and extensions to its loan facility (VOC.003.001.3890);*
- *Hutchinson was present at the meeting of the Board Committee that unanimously made the 2 September Board Committee Approval.*
- *Hutchinson declared, as a director (pursuant to a resolution of directors made pursuant to s 295(5)(a) of the Corporations Act), that the financial statements and notes contained in the FY14 Annual Report complied with the applicable legislation, standards and reporting requirements and gave a true and fair of Vocation's financial position (VET.0003.0013.0001), and paragraph 469 below is repeated.*
- *Further, Hutchinson's authorisation or participation is to be inferred from his position as Managing Director and Chief Executive Officer of Vocation at the time the FY14 Annual Report were prepared and lodged with the ASX.*

ii. As to Dawkins:

- *On 30 August 2014, Dawkins was copied into emails circulating the materials to be provided to the ARC committee members prior to the 2 September Board Committee Approval. The emails also discussed Vocation's cash flow and extensions to its loan facility (VOC.003.001.3890);*
- *Dawkins signed the Directors' Declaration in the FY14 Annual Report (pursuant to a resolution of directors made pursuant to s 295(5)(a) of the Corporations Act) declaring that the financial statements and notes contained in the FY14 Annual Report complied with the applicable legislation, standards and reporting requirements and gave a true and fair of Vocation's financial position (VET.0003.0013.0001), and paragraph 469 below is repeated.*
- *Further, Dawkins' authorisation or participation is to be inferred from his position as Chairman of the Board of Vocation at the time the FY14 Annual Report was provided to the* ASX.

469. Further, Vocation's FY14 Annual Report containing Vocation's FY14 Audited Financial Statements contained a directors' declaration **(Directors' Declaration)** by which Dawkins declared on behalf of himself and all directors including Dawkins (inter alia) that:

(a) the FY14 Audited Financial Statements and notes thereto "complied with the

Corporations Act 2001, the Accounting Standards, the Corporations Regulations 2001 and other mandatory professional reporting requirements";

(b) the FY14 Audited Financial Statements and notes thereto gave "a true and fair view of the consolidated entity's financial position as at 30 June 2014 and of its performance for the financial year ended on that date"; and

(c) "there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable".

Particulars

i. Page 75 of the FY14 Annual Report. The declaration was *made by Dawkins on behalf of himself and each of the other Directors.*

470. By reason of the matters pleaded in paragraphs 468 and/or 469 above, on 3 September 2014 Hutchinson and Dawkins each represented to the market of investors and potential investors in Vocation Securities that:

(a) the FY14 Audited Financial Statements in the FY14 Annual Report had been prepared in accordance with the Australian Accounting Standards and the Corporations Act;

(b) the FY14 Audited Financial Statements in the FY14 Annual Report gave a true and fair view of the financial position and performance of Vocation as at 30 June 2014; and

(c) there were reasonable grounds to believe that Vocation would be able to pay its debts as and when they become due and payable,

(the **Directors' FY14 Accounts Representations**).

Particulars

i. The representations were express, and contained in the Directors' Declaration.

471. Further, or alternatively, by reason of the matters pleaded in paragraph 468 above, on 3 September 2014 Hutchinson and Dawkins each represented to the market of investors and potential investors in Vocation Securities that they had reasonable grounds for

making the Directors' FY14 Accounts Representations (**Directors' FY14 Accounts Reasonable Grounds Representation**).

F.3 Misleading nature of the Directors' FY14 Accounts Representations and the Directors' FY14 Accounts Reasonable Grounds Representations made by Hutchinson and Dawkins

472. Vocation's FY14 Financial Report (and the FY14 Audited Financial Statements) was not prepared in compliance with Accounting Standards and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 in that:

(a) it used the New Revenue Recognition Policy without disclosing that the New Revenue Recognition Policy was a change in accounting policy from the Prospectus Revenue Recognition Policy; and

(b) it did not:

(i) provide a justification that:

(A) the amount of revenue under the revised policy can be reliably estimated, as the lack of reliability of estimation was the justification for the Prospectus Revenue Recognition Policy;

(B) the New Revenue Recognition Policy provides reliable and more relevant information than the Prospectus Revenue Recognition Policy; and

(C) the percentage of completion of the service can be measured reliably, and in particular the reliability of the percentage of completion upon enrolment of students;

(ii) apply the change in accounting policy from the Prospectus Revenue Recognition Policy to the New Revenue Recognition Policy retrospectively by restating the comparative amounts;

(iii) make all of the disclosures required by AASB 108 paragraph 29, including nature, reasons and quantification of the effect of the change, explaining that $15.86 million of revenue and $7.57 million of profit that would otherwise have been reported in FY 15 had been included in FY14; and/or

(iv) amend any references to having bettered the projected results in the Prospectus to take account of the effect of the change in accounting policy from the Prospectus Revenue Recognition Policy to the New Revenue Recognition Policy.

Particulars

i. *The reasons why the financial information contained in Vocation's FY14 Financial Report was not prepared in compliance with Accounting Standards (namely AASB108) and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 1, [48]-[63].*

ii. *What was required in order for Vocation's FY14 Financial Report to comply with Accounting Standards and give a true and fair view is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 2, [82].*

473. Further or alternatively, as at 3 September 2014, Vocations' FY14 Financial Report (and the FY14 Audited Financial Statements) was not prepared in compliance with Accounting Standards and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 in that:

(a) first:

(i) the Pre-19 August DEECD Communications, and the communications between DEECD and BAWM and Aspin, dated 26 August 2014 (VOC.001.001.0693) were adjusting events after the reporting period under AASB110; and

(ii) it did not

(A) in the Contingent Liabilities note to the financial report, disclose the breaches of contract claimed by DEECD, indicate that a reasonable estimate of the expected loss has been taken up as a provision in the financial report, indicate that any further amount is a contingent liability and if determinable indicate an estimate of the maximum possible financial consequences and/or effect of the breaches; and

(B) contain a Subsequent Events note which indicated that DEECD had suspended payments of claims by Vocation from June 2014 and that DEECD had instructed BAWM and Aspin to suspend the acceptance of new enrolments and suspend the commencement of training delivery; and/or

(b) secondly:

(i) the goodwill of $15 million carried in the financial statements relating to Aspin was potentially impaired under AASB136; and

(ii) it did not write off the goodwill of $15 million pertaining to Aspin on the basis that the requirement to cease taking new enrolments and to cease the delivery of training meant that the carrying value of Aspin goodwill could no longer be justified; and/or

(c) thirdly:

(i) there was material uncertainty as to whether, by reason of the Victorian Funding Suspensions and Victorian Enrolment Suspensions, Vocation was able to continue as a going concern, within the meaning of AASB101; and

(ii) it did not disclose that there was material uncertainty as to whether, by reason of the Victorian Funding Suspensions and Victorian Enrolment Suspensions, Vocation was able to continue as a going concern.

Particulars

i. *The reasons why the financial information contained in Vocation's FY14 Financial Report was not prepared in compliance with Accounting Standards (namely AASB110, AASB136 and AASB101) and/or did not give a true and fair view of Vocation's financial position and financial performance in FY14 is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 1, [64]-[72] and [76]-[79].*

ii. *What was required in order for that financial information to comply with Accounting Standards and give a true and fair view is set out in the Report of David Boymal dated 18 March 2018, Answer to Question 2, [83].*

474. By reason of the matters pleaded in paragraph 472 and/or 473, as at 3 September 2014 Hutchinson and Dawkins did not have reasonable grounds for believing that:

(a) the FY14 Audited Financial Statements in the FY14 Annual Report had been prepared in accordance with the Australian Accounting Standards and the Corporations Act;

(b) the FY14 Audited Financial Statements in the FY14 Annual Report gave a true and fair view of the financial position and performance of Vocation as at 30 June 2014; and

(c) there were reasonable grounds to believe that Vocation would be able to pay its debts as and when they become due and payable.

F.4 Hutchinson's and Dawkins' 3 September Contraventions

475. By making the Directors' FY14 Accounts Representations and the Directors' FY14 Accounts Reasonable Grounds Representation, Hutchinson and Dawkins each engaged in conduct:

(a) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act;

(b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

(c) in trade or commerce within the meaning of section 18 of the Australian Consumer Law.

476. By reason of the matters pleaded in paragraphs 463 to 474, each of Hutchinson and Dawkins engaged in conduct which was misleading or deceptive, or likely to mislead or deceive by

(a) making the Directors' FY14 Accounts Representations;

(b) making the Directors'. FY14 Accounts Reasonable Grounds Representation;

(c) failing to correct or qualify the Directors' FY14 Accounts Representations; and/or

(d) failing to correct or qualify the Directors' Accounts Reasonable Grounds Representation.

477. By reason of the matters pleaded in paragraphs 475 to 476, each of Hutchinson and Dawkins contravened:

(a) section 1041H of the Corporations Act;

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the Australian Consumer Law.

(each being a Director/Officer Misleading Conduct Contravention).

G LIABILITY OF HUTCHINSON AND GRÉWAL IN RESPECT OF 10 SEPTEMBER CONDUCT (THE DDQ AND VOCATION'S DEFECTIVE ANNOUNCEMENT RE THE PLACEMENT)

478. For the purposes of the claim pleaded in this Section G, the Applicant repeats paragraphs 408 to 426 above against Hutchinson and Gréwal.

G.1 The Proposed Placement, the DDQ and the 10 September Announcement

479. By reason of the matters set out in paragraph 478, by no later than 3 September 2014, Vocation needed working capital to remain solvent if there was not a successful resolution of the Victorian investigations (**Cash Requirement Information**).

480. Between around 3 September 2014 and 8 September 2014, Vocation entered into negotiations with Macquarie Capital (Australia) Ltd (**Macquarie**) with a view to Macquarie underwriting an institutional share placement (**Proposed Placement**).

481. At the 7 September Board Meeting, the Vocation board:

(a) was considering a proposed institutional share placement (being the Proposed Placement);

(b) asked Hutchinson and Gréwal a number of questions regarding answers set out in the Due Diligence Questionnaire issued by Macquarie in connection with the proposed September Placement, which Macquarie was considering underwriting; and

(c) agreed certain amendments to the answers to be given by Vocation in the Macquarie Due Diligence Questionnaire.

Particulars

i. Minutes on meeting of 7 September Board Meeting (PWC.600.001.4682)

482. On 8 September 2014, Macquarie's involvement and participation in the proposed September placement ceased, because Macquarie was not prepared to underwrite the placement.

483. Around 8 September 2014, Vocation entered into negotiations with UBS AG (**UBS**) with a view to UBS underwriting the Proposed Placement, when Hutchinson made contact with Mr Fitzgibbon and Mr Digman of UBS and enquired as to whether UBS would be prepared to underwrite the proposed placement.

Particulars

i. VET.0014.0001.1508; VET.0014.0001.1509

484. By an email sent at 7.04 am on 9 September 2014, Gréwal sent a copy of the Macquarie Due Diligence Questionnaire (which included Vocation's unsigned answers to the questions in the questionnaire) to Mr Fitzgibbon and Mr Digman of UBS.

Particulars

i. VET.0014.0001.1508; VET.0014.0001.1509.

485. By an email sent at 9.14 pm on 9 September 2014, Mr Dignam of UBS sent Gréwal a "final" version of the Due Diligence Questionnaire, which was addressed jointly to Macquarie and UBS, rather than just Macquarie, and stated that "we will have a hardcopy ready for you to sign tomorrow win our office".

Particulars

i. VET.0014.0001.1590; VET.0014.0001.1591; VET.0014.0001.1614.

486. On the morning of 10 September 2014, Hutchinson and Gréwal attended UBS's office and signed and provided to UBS, for and on behalf of Vocation, a hard copy of the Due

Diligence Questionnaire addressed to UBS which contained Vocation's answers to the questions in the questionnaire (**DDQ**).

Particulars

i. VET.0012.0001.0283.

487. The DDQ stated:

(a) In answer to the question "When were the Victorian funding payments suspended?": "12th July was first payment missed, we get paid on around the 12th of every month

(b) In answer to the question "Is it usual for funding to be suspended in this manner?": "Yes. This is common and there are several RTO's we know of in VIC under the same process. It has happened in the past to BAWM and Real RTO's with recommencement of funding after 2-3 months. The contract (in its ability to suspend all payments for the RTO and not just the courses that are being investigated) is a legacy of dealing with small RTO's in that suspending payments whilst investigations are occurring was necessary for the department to protect it's position as small RTO's probably wouldn't have the funds to make any repayments. The same contract and mechanism applies to a $2m RTO as its does to a $650m listed company.

(c) In answer to the question "Is it the funding contracts or payments that have been suspended?", "Only payments. There is no indication that they is any variation to the terms in the contract, withholding funding is a mechanism the Department can use whilst an RTO is under review.

(d) In answer to the question "Specifically, why is this investigation occurring?", "Regular monitoring check of contracted RTO's in Victoria often results in areas the Department would like more information on. The monitoring body is called the Market Monitoring Unit (MMU). It is an annual event and this year is the most scrutiny RTO's in Victoria have come under as the general trend of increased compliance flows across the sector";

(e) In answer to the question "Which courses does the investigation relate to?", "Competitive Systems, General Education and Warehousing";

(f) In answer to the question "How much revenue is being withheld?", "$22m – July/August claiming";

(g) In answer to the question: "When do you expect to receive a decision?", "We have received a letter stating review findings will be delivered no later than the 31st of October – this letter came in late last week. This was reconfirmed in a meeting on 8 September in which DEECD also promised to expedite the review.";

(h) In answer to the question "When do you expect the revenue to be released?", "We would expect partial funding released in the next 14 days, then after full resolution the remainder November, less any funding we may need to repay which we continue to believe is a non material amount.";

(i) In answer to the question "Can you please comment on the risk of the review being extended to additional courses provided in Victoria, including any recent dialogue you have had with the Department?", "Vocation's Chairman and CEO met with the Secretary (Richard Bolt) and Executive Director (Kym Peake) of DEECD on 8 September. The meeting confirmed that the proposed review will be confined to an isolated set of issues limited to the 3 qualifications in question being Certificate II in General Education for Adult, Certificate III in Competitive Systems and Processes and Certificate III in Warehousing Operations. It is anticipated that the review panel will be asked to expedite this process, and will conduct the review of those three qualifications within 7 to 14 days. Following that step Vocation will have an opportunity to comment on any findings before any decisions are taken, and at that point any extension of the scope to other qualifications will be discussed. Vocation is of the view that the risk of the review being extended to additional courses provided in Victoria is extremely low based on the internal review work Vocation has carried out."

(j) In answer to the question "Is this investigation material? Should it be disclosed to the market?", "Board and Management are comfortable with current disclosures and extended disclosure that will appear post placement next week and believe that the market is fully informed."

(k) In answer to the question, "What steps have been taken to ascertain if this is material?":

  (i) "Countless models cut, recut and cut again. **Based on all communication we have with the Department on what exactly they have issues with, that is focused on a very small issue of "school leaver" definitions around particular students brokered into our solutions line**. Other specific findings have not been made available to us from the Department, more vague comments on course duration and applicability – we just keep answering questions and providing evidence." (emphasis added); and

  (ii) "There are no outstanding requests for information at this stage as far as we know. DEECD indicated on 8 September that they will expedite the review to conclude no later than the end of October."

(l) In answer to the question "Will the investigation impact the business model going forward? If so how?", "We have already adjusted our business model to decrease the reliance on our Solutions business by investing in the MyVocation platform to reduce reliance on brokers. We have also said goodbye to 5 Brokers so far. To procure a student internally costs us 7% of a course fee vs. an average of 30% brokered, so the marginal benefits are significant and given the current heavy hand of the Department that is focused on Brokered students accelerating the MyVocation platform that has always been part of our strategy will be a focus of FY15."

(m) In answer to the question "Will the current investigation affect FY15 results? If so please specify how and by how much?"

  (i) "Enrolments in BAWM or Aspin RTO's were only impacted negligibly in July and by an immaterial amount in August. Enrolments in these two RTO's were halted on 25 August however will recommence by Mid September. **The impact in August/September is being is being [sic] made up through enrolments in our other RTO's in Victorian that remain able to enrol and receive funding**" (emphasis added);

(ii) With significant cost and revenue levers across the group that we have accelerated there are many ways we are making up any potential prolonged enrolment stoppage (which based on the meeting we had with DEECD on 8 September is highly unlikely as they have indicated that the review will be completed by the end of October by the latest)"; and

(iii) "Should the outcome of the review be as expected, these enrolments would ramp up again under a higher margining business model that we will be rolling out progressively over FY15, as we decrease broker reliance over the next 12-months. Should the review determine any other adjustments to our business model, then there may be an impact in FY15 however it is too early to tell at this point. November will be the likely confirmation of how we're looking which gives the business plenty of time to look for alternative growth in FY15."

(n) In answer to the question, "Are there any present issues with regard to liquidity or receipt of cash flows vis a vis accounting profit?":

(i) "The suspension of funding with the Victorian review is starting to impact our normal high cash flows, however receipt of cash flow from all other parts of the business are normal and the business is forecast to be cash flow positive into CY15"; and

(ii) "**DEECD indicated on 8 September their willingness to pay a substantial part of the withheld funds in the next 7-14 days.** The banking syndicate are also supportive of extending the current bank facility by $15m (by 12 September) (emphasis added).

488. The DDQ further stated that:

(a) The answers provided in this document are, having made all necessary enquiries of its directors, officers, employees, representatives and advisers, and having considered any relevant documentation and other information, true and correct and complete and not misleading or deceptive (whether by omission or otherwise).

(b) By completing, signing and returning the DDQ to the LM (that is, UBS), the Issuer (that is, Vocation) acknowledges that LM (that is, UBS) will:

(i) be relying on the answers provided to these questions as being complete, true and correct and not misleading or deceptive; and

(ii) use and rely on the information in connection with the scope and terms of its engagements without having independently verified the information.

489. On 10 September 2014 at approximately 8.10am, UBS entered into an underwriting agreement with respect to the Proposed Placement, the terms of which obliged UBS to commence the bookbuild for the Proposed Placement at 10.00am on 10 September 2014 and to complete the bookbuild for the Proposed Placement by 2.30pm on 10 September 2014.

Particulars

i. The terms of the UBS/Vocation underwriting agreement are set out in the document at VOC.008.011.2768.

490. On 10 September 2014, Vocation released to the ASX an announcement (**10 September Announcement**), which stated that Vocation would:

(a) undertake a fully underwritten placement to institutional and sophisticated investors to raise approximately $74,000,000 through the issue of approximately 24.3 million Vocation Securities (**Placement**) at a price of $3.05 (**Placement Offer Price**); and

(b) following completion of the Placement, offer Australian and New Zealand shareholders the opportunity to invest up to $15,000 in new Vocation Securities (capped at $10 million) pursuant to a share purchase plan (**SPP**).

491. The 10 September Announcement stated that:

(a) the funds to be raised by the Placement will be employed for the following purposes (**Stated Purposes**):

(i) "To pay down a large portion of Vocation's $120 million acquisition facility (fully drawn since the $84 million fully debt funded acquisition of Endeavour which completed in July) that allows Vocation to:

(A) Increase balance sheet capacity to provide the business with the ability to take advantage of strategic opportunities in the market, both organic and through acquisition as the education sector continues to consolidate;

(B) Increase working capital flexibility as the business continues to grow and diversify across States, FEE HELP programs and Higher Education opportunities through Endeavour;

(C) Continue diversifying Vocation across multiple channels to improve student choice, quality education and job outcomes";

(ii) "To fund two small acquisitions totalling approximately $7 million, including:

(A) The remaining 50 per cent stake in the Australian School of Management (ASM), which will enable Vocation to accelerate expansion of its course offerings across the East Coast utilising excess capacity in Endeavour's campus network;

(B) An addition to Endeavour's New Zealand operations in respect of which Vocation is in advanced discussions. This acquisition will substantially increase Endeavour's student capacity in that market";

(iii) "To deliver accelerated investment in the MyVocation platform, in line with Vocation's strategy to deliver positive student outcomes, in particular job opportunities, and decrease reliance on brokers";

(b) The fund raising will provide us with ongoing flexibility to grow and further diversify our business through organic and acquisitive growth";

(c) "Vocation is comfortable with current earnings consensus estimates, including EPS, prior to the dilutionary impact of the capital raising";

(d) the review by DEECD of Vocation was expected to conclude no later than the end of October 2014;

(e) Vocation considered that neither the review nor its anticipated outcomes are material to Vocation.

492. The 10 September Announcement did not include:

(a) the Cash Requirement Information;

(b) further and alternatively, any statement to the effect that the funds raised by the September 2014 institutional placement may be used to provide additional working capital pending the completion of the Victorian investigations.

493. On 11 September 2014, Vocation released to the ASX an announcement that Vocation had completed the Placement and would issue 24.3 million Vocation Securities pursuant to the Placement at a price of $3.05 per Vocation Security on 15-16 September 2014.

G.2 10 September DDQ Representations made by Hutchinson and Gréwal

494. By the DDQ, each of Hutchinson and Gréwal represented to UBS that:

(a) the focus of DEECD's concerns was the extent to which school leavers were undertaking particular courses offered by BAWM and Aspin;

(b) the loss of revenue to Vocation from suspensions in enrolments in courses offered by BAWM and Aspin had been offset by enrolling students in qualifications offered by Vocation's other Victorian RTOs; and

(c) DEECD had indicated to Vocation a willingness to pay a substantial portion of the currently withheld funds within 7 to 14 days;

(d) the answers provided in the DDQ were true and correct and complete and not misleading or deceptive (whether by omission or otherwise);

(the **Officers' 10 September DDQ Representations**).

Particulars

i. Each of Hutchinson and Gréwal signed the DDQ, which contained a declaration that "by signing this documents on behalf of the Issuer [Vocation], each of the following authorised representatives of the Issuer [viz, Gréwal and Hutchinson] undertakes and represents to LM [UBS] that …"(VET.0012.0001.0283)

ii. Further:

A. the representation in (a) was partly express and partly implied. To the extent it was express, the Applicant refers to paragraph 487(k)(i); to the extent it was *implied, it is to be implied from the express statements and the absence of any disclosure to the contrary.*

B. *The representation in (b) was partly express and partly implied. To the extent it was express, the Applicant refers to paragraph 487(m)(i); to the extent it was implied, it is to be implied from the express statements and the absence of any disclosure to the contrary.*

C. *The representation in (c) was partly express and partly implied. To the extent it was express, the Applicant refers to paragraph 487(n)(ii); to the extent it was implied, it is to be implied from the express statements and the absence of any disclosure to the contrary.*

D. *The representation in (d) was express, and the Applicant refers to paragraph 488.*

495. UBS relied on:

(a) the DDQ as true and correct and not misleading or deceptive; and

(b) the Officers' 10 September DDQ Representations,

in deciding to enter the underwriting agreement as pleaded in paragraph 489.

Particulars

Paragraph 488 is repeated.

496. If UBS had not entered into the underwriting agreement as pleaded in paragraphs 489 (in the circumstances pleaded in paragraph 495), Vocation would not have:

(a) been able to undertake the Placement, or the SPP, neither of which would have occurred (and the 24.3 million Vocation Securities issued as pleaded in paragraph 493 would not have been issued, or subsequently traded on ASX); and

(b) released the 10 September Announcement.

G.3 10 September Market Representations made by Hutchinson

497. By the 10 September Announcement, Vocation represented that:

(a) the review being conducted by the DEECD was only in respect of three courses conducted by Vocation for which it received funding (**September First Review**

Scope Representation);

(b) the amount being withheld by the DEECD for what had been described in the 25 August Announcement as "recent payments" was being held only in respect of the claims to which those withheld payments related (**September Second Review Scope Representation**);

(c) that none of Vocation's entitlements under its RTO's funding contracts with the DEECD had been suspended other than the withholding of recent payments due under the contracts (**September No Suspension Representation**);

(d) that Vocation was able to continue to enroll students and deliver vocational educational training and ancillary services under all its RTOs' funding contracts with the DEECD (the **September Continuing Enrolment and Delivery Representation**);

(e) Vocation had reasonable grounds for believing that the outcome of the DEECD review would not be material to Vocation (**September Materiality Representation**);

(f) the funds raised through the September 2014 institutional placement would only be used for the Stated Purposes (**September Placement Representation**).

Particulars

i. *The September First Review Scope Representation was partly express and partly to be implied. In so far as it was express, it was contained in the following words in the 10 September announcement: "Further to the ASX announcement dated 25 August 2014, Vocation advises that the review being conducted by the Victorian Department of Education and Early Childhood Development is expected to conclude no later than the end of October (confirmed in its meeting with the Department earlier this week)." To the extent it was implied, the September First Review Scope Representation arose from: (A) the fact that the 10 Sept announcement referred back to the 25 August Announcement in which Vocation had stated that the DEECD was undertaking a review of three courses conducted by Vocation for which it received funding; and (B) the context in which the words extracted above appeared in the 10 September Announcement.*

ii. *The September Second Review Scope Representation was partly in writing and partly to be implied. In so far as it was in writing, it was contained in the following words in the 10 September announcement: "Further to the ASX announcement dated 25 August 2014, Vocation advises that the review being conducted by the Victorian Department of Education and Early Childhood Development is expected to conclude no later than the end of October (confirmed in its meeting with the Department earlier this week)." To the extent it was implied, the Sepptember Second Review Scope Representation arose from: (A) the fact that the 10 Sept announcement referred back to the 25 August Announcement in which Vocation had stated that the DEECD was undertaking a review of three courses conducted by Vocation for which it received funding, and further stated that " as part of the review process, the DEECD has withheld recent payments under the funding contracts", and (B) the context in which the words extracted above appeared in the 10 September Announcement.*

iii. *The September No Suspension Representation was partly express and partly to be implied. In so far as it was express, it was contained in the following words in the 10 September announcement: "Further to the ASX announcement dated 25 August 2014, Vocation advises that the review being conducted by the Victorian Department of Education and Early Childhood Development is expected to conclude no later than the end of October (confirmed in its meeting with the Department earlier this week). Vocation considers that neither the review nor its anticipated outcomes are material to Vocation." To the extent it was implied, the September No Suspension Representation arose from the context in which the words extracted above appeared in the 10 September announcement, the reference back to the 25 August Announcement in the 10 September announcement and the failure to correct the August No Suspension Representation made in the 25 August Announcement;*

iv. *The September Continuing Enrolment and Delivery Representation was partly express and partly to be implied. In so far as it was express, it was contained in the following words in the 10 September announcement: "Further to the ASX announcement dated 25 August 2014, Vocation advises that the review being conducted by the Victorian Department of Education and Early Childhood Development is expected to conclude no later than the end of October (confirmed in its meeting with the Department earlier this week). Vocation considers that neither the review nor its anticipated outcomes are material to Vocation." To the extent it was implied, the September Continuing Enrolment And Delivery Representation arose from the context in which the words extracted above appeared in the 10 September announcement, the reference back to the 25 August Announcement in the 10 September announcement and the failure to correct the August No Suspension Representation made in the 25 August Announcement.*

v. *The September Materiality Representation was implied, and is to be implied from the express statement pleaded in paragraph 491(e). The representations was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

vi. *The September Placement Representation was express, and the Applicant repeats paragraph 491(a). The representations was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

498. On or around 10 September 2014, Hutchinson authorised, or participated in authorising, the making and lodgement by Vocation with the ASX of the 10 September Announcement in the form, or substantially in the form, in which that document was made and lodged with ASX.

Particulars

i. *On 4 September 2014, Hutchinson wrote to the Vocation Board, including Dawkins (copied to Gréwal), stating that "I've spoken with all of you regarding my recommendation of a placement early next week" and "JWS and I are drawing up a cleansing statement for your approval tomorrow" (VOC.004.007.0105).*

ii. *On 5 September 2014, Gréwal emailed the "VET placement docs" to the Vocation Board (including Hutchinson and Dawkins) (VOC. 008.003.0990, VOC.008.003.0991, VOC.008.003.1004, VOC.008.003.1005, VOC.008.003.1010, VOC.008.003.1012 and VOC.008.003.1013).*

iii. *At the 5 September Board Meeting, which Hutchinson attended, the proposed equity raising was discussed and the Board discussed the draft ASX announcement and requested certain amendments (VOC. 006.001.6373).*

iv. *At the 7 September Board Meeting, which Hutchinson attended, the proposed equity raising* was *discussed and the Board discussed the draft ASX announcement and requested certain amendments (VOC. 007.003.0021)*

v. *On* 8 *September* 2014*, Hutchinson sent an email to Siobhan Weaver and Dawkins (copied to Gréwal and others) attaching a further draft of ASX announcement "based on the conversations with the Department this morning and Board call just completed"* (VOC.006.001.5747; V0C.006.001.5752).

vi. *Hutchinson, together with Gréwal, signed the management confirmation regarding the ASX announcements in relation to* *the September Placement and related offer materials (VOC.008.003.0990 and VOC.008.003.1013).*

vii. *Further, Hutchinson's authorisation or participation is to be inferred from his position as Managing Director and Chief Executive Officer of Vocation at the time of the September Placement.*

viii. *Further, Hutchinson's authorisation or participation is to be inferred from the fact that his name and contact details appeared at the foot of the 10 September Announcement.*

499. Further, or alternatively, Hutchinson adopted the 10 September Announcement as a statement made by himself.

Particulars

i. Particulars (vi) to (viii) to paragraph 497 is repeated.

500. By reason of the matters pleaded in paragraphs 497 and/or 498 and 499 above, on 10 September 2014 Hutchinson made the following representations to the market of investors and potential investors in Vocation Securities:

(a) the September First Review Scope Representation;

(b) the September Second Review Scope Representation;

(c) the September No Suspension Representation;

(d) the September Continuing Enrolment and Delivery Representation;

(e) the September Materiality Representation; and

(f) the September Placement Representation,

(the **Officers' 10 September ASX Representations**).

501. Further, or alternatively, by reason of the matters pleaded in paragraph 500 above, on 10 September 2014 Hutchinson represented to the market of investors and potential investors in Vocation Securities that he had reasonable grounds for making the Officers' 10 September Representations (**Officers' 10 September Reasonable Grounds Representation**).

G.4 Misleading nature of the Officers 10 September DDQ Representations made by Hutchinson and Gréwal

502. As at 10 September 2014:

(a) DEECD's review was focused on a number of issues including the quality of pre-training reviews and the quality of the training delivered to students in the CSP and Warehousing dual qualification, and extended to BAWM and Aspin's overall compliance with their obligations under their funding contracts, with a particular focus on the five areas specified in Section D of the 26 August 2014 letter from Ms Watts of DEECD to Vocation; and

(b) DEECD's review was not focused on the issue of the extent to which school leavers were undertaking particular courses offered by BAWM and Aspin.

Particulars

i. Communications between DEECD and BAWM and Aspin, dated 26 August 2014 (VOC.001.001.0693).

503. By reason of the matters pleaded in paragraph 502, as at 10 September 2014 it was not the case that the focus of DEECD's concerns was the extent to which school leavers were undertaking particular courses offered by BAWM and Aspin

504. As at 10 September 2014:

(a) Payments in respect of:

(i) training for students enrolled in the CSP and Warehousing courses comprised the majority of payments made by DEECD to BAWM in the months prior to the imposition of the contractual measures by DEECD;

(ii) training for students enrolled in the CGEA course comprised about 90% or more of payments made by DEECD to Aspin in the months prior to the imposition of the contractual measures by DEECD;

(b) The combined amount of the payments by DEECD to Vocation's other Victorian RTOs (CSIA, Green Skills, Real and TDA) under their Funding Contracts amounted to about $1.76 million in June 2014, but following the imposition of the suspensions reduced to about $1.22 million in August 2014, $780,000 in September 2014 and $547,000 in October 2014, as compared to:

(i) the payments by DEECD to BAWM under its Funding Contract of about $6.6 million in May 2014 and $8.7 million in June 2014 (with nil received in July 2014, August 2014 or September 2014 to date), and

(ii) the payments by DEECD to Aspin under its Funding Contract of about $1.76 million in May 2014, $2.06 million in June 2014 and $2.10 million in July 2014 (with nil received in July 2014, August 2014 or September 2014 to date).

505. By reason of the matters pleaded in paragraph 504, as at 10 September 2014 it was not the case that the loss of revenue to Vocation from suspensions in enrolments in courses offered by BAWM and Aspin had been offset by enrolling students in qualifications offered by Vocation's other Victorian RTOs

506. As at 10 September 2014, DEECD had not indicated to Vocation a willingness to pay a substantial portion of the currently withheld funds within 7 to 14 days.

507. As at 10 September 2014, by reason of the matters pleaded in paragraphs 502 to 503, 504, 505 and/or 506, it was not the case that the answers provided in the DDQ were true and correct and complete and not misleading or deceptive (whether by omission or otherwise).

G.5 Misleading nature of the Officers' 10 September ASX Representations made by Hutchinson

September First Review Scope Representation, September Second Review Scope Representation, September No Suspension Representation and September Continuing Enrolment and Delivery Representation

508. At the time each of the First Review Scope Representation, the Second Review Scope Representation, the Second No Suspension Representation and the Second Continuing Enrolment and Delivery Representation was made (and at all relevant times thereafter), it was not the case that:

(a) the review being conducted by the DEECD was only in respect of three courses conducted by Vocation for which it received funding;

(b) the amount being withheld by the DEECD for what has been described in the 25 August Announcement as "recent payments" was being held only in respect of the claims to which those withheld payments related.

(c) none of Vocation's entitlements under its RTO's finding contracts with the DEECD had been suspended other than the withholding of recent payments due under the contracts;

(d) Vocation was able to continue to enrol students and deliver vocational educational training and ancillary services under all of its RTOs' funding contracts with the DEECD.

Particulars

i. As to (a), by 10 September 2014, the scope of the review being conducted by the DEECD had been expanded to cover all of Vocations' RTOs that were party to relevant finding contracts with the DEECD

ii. As to (b), by 10 September 2014, the amount being withheld by the DEECD for what has been described in the 25 August Announcement as "recent payments" was being held only in respect of the claims to which those withheld payments related, but also for payments previously paid by the DEECD to BAWN and Aspin under their funding contracts with the DEECD.

iii. As to (c), as at 10 September 2014 (and at all relevant times thereafter), the entitlements of two of Vocation's RTOs (BAWM and Aspin) to receive payments for training previously delivered by them and to enrol new students for future training had been suspended, and BAWM and Aspin were not free to provide training services to students pursuant to the terms of the relevant funding contracts.

iv. As to (d), the Applicant refers to and repeats (iii) above.

September Materiality Representation

509. Paragraph 458 is repeated, and by reason of the matters pleaded in paragraph 449, it was not the case and Hutchinson did not have reasonable grounds for believing that the withholding of recent payments under Vocation's RTO funding contracts (and the outcome of the DEECD review) would not be material to Vocation.

Particulars

i. The particulars to paragraph 458 are repeated.

September Placement Representation

510. In the event that Vocation was incorrect in its statement that neither the review nor its anticipated outcomes are material to Vocation (as pleaded in paragraph 491(e)), it was likely (having regard to the matters pleaded in paragraph 479 that the majority of the funds raised through the Placement would not be used only for the Stated Purposes, but instead to provide working capital to Vocation in lieu of the funds being withheld by DEECD, as pleaded by reason of the Victorian Funding Suspensions.

511. By reason of the matters pleaded in paragraph 510, it was not the case, and Hutchinson did not have reasonable grounds to believe that the funds raised through the September 2014 institutional placement would only be used for the Stated Purposes.

Officers' 10 September Reasonable Grounds Representation

512. By reason of the matters pleaded in paragraphs 508 to 511, Hutchinson did not have reasonable grounds to believe that:

(a) the review being conducted by the DEECD was only in respect of three courses conducted by Vocation for which it received funding;

(b) the amount being withheld by the DEECD for what had been described in the 25 August Announcement as "recent payments" was being held only in respect of the claims to which those withheld payments related;

(c) none of Vocation's entitlements under its RTO's funding contracts with the DEECD had been suspended other than the withholding of recent payments due under the contracts;

(d) Vocation was able to continue to enroll students and deliver vocational educational training and ancillary services under all its RTOs' funding contracts with the DEECD;

(e) the outcome of the DEECD review would not be material to Vocation;

(f) the funds raised through the September 2014 institutional placement would only be used for the Stated Purposes.

Particulars

i. As to (a) to (d), paragraphs 508 to 509 are repeated.

ii. As to (e), paragraph 510 is repeated;

iii. As to (f), paragraph 511 is repeated.

G.6 Hutchinson's and Gréwal's contraventions in respect of the DDQ

513. By making the Officers' 10 September DDQ Representations, Hutchinson and Gréwal each engaged in conduct

(a) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act;

(b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

(c) in trade or commerce within the meaning of section 18 of the Australian Consumer Law.

514. By reason of the matters pleaded in paragraphs 481 to 489, and:

(a) paragraphs 494(a) and 502 to 503;

(b) paragraphs 494(b) and 504 to 505; and/or

(c) paragraphs 494(c) and 506;

(d) paragraphs 494(d) and 507,

Hutchinson and Gréwal engaged in conduct which was misleading or deceptive, or likely to mislead or deceive by:

(d) making the Officers' 10 September DDQ Representations; and/or

(e) failing to correct or qualify the Officers' 10 September DDQ Representations.

515. By reason of the matters pleaded in paragraphs 513 to 514, each of Hutchinson and Gréwal contravened:

(a) section 1041H of the Corporations Act;

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the Australian Consumer Law,

(each being a **Director/Officer DDQ Misleading Conduct Contravention**).

G.7 Hutchinson's contraventions in respect of the 10 September Announcement

516. By making the Officers' 10 September ASX Representations and the Officers' 10 September ASX Reasonable Grounds Representation, Hutchinson engaged in conduct:

(a) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act;

(b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

(c) in trade or commerce within the meaning of section 18 of the Australian Consumer Law.

517. By reason of the matters pleaded in paragraphs 490 to 492, 497 to 499 and:

(a) paragraphs 497(a)-(d), 500(a)-(d) and 508;

(b) paragraphs 497(e), 500(e) and 509; and/or

(c) paragraphs 497(f), 500(f) and 510 to 511,

(d) paragraph 501 and 512,

Hutchinson engaged in conduct which was misleading or deceptive, or likely to mislead or deceive by:

(e) making each of the Officers' 10 September ASX Representations;

(f) making each of the Officers' 10 September ASX Reasonable Grounds Representation;

(g) failing to correct or qualify each of the Officers' 10 September ASX Representations; and/or

(h) failing to correct or qualify each of the Officers' 10 September ASX Reasonable Grounds Representation.

518. By reason of the matters pleaded in paragraphs 516 to 517, Hutchinson contravened:

(a) section 1041H of the Corporations Act;

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the Australian Consumer Law,

(each being a Director/Officer Misleading Conduct Contravention).

H FACTS RELEVANT TO CAUSATION

H.1 The partial corrective disclosure on 25 August 2014 in relation to the fact of the Victorian Investigations, and part of the Funding Suspensions

519. Paragraphs 450 and 451 are repeated.

520. By the 25 August Announcement, Vocation published to the ASX part of the information which was omitted from the FY14 Results Documents (as pleaded in paragraph 435(b)) and which would have been released earlier had Hutchinson and Gréwal not expressed the Officers' 21 August Accounts Representations, the Officers' 21 August Accounts Reasonable Grounds Representation and/or the Officers' 21 August Further Representation.

Particulars

i. The part of the information published by the 25 August Announcement was part (but not all) of that information being the fact of some investigations by DEECD, and the fact of some suspension of funding.

ii. The 25 August Announcement did not disclose the full extent of the Victorian Investigations (including that it extended to both BAWM and Aspin), or the quantum of funding the subject of the Victorian Funding Suspensions.

521. Following the release of the 25 August Announcement, the price of Vocation Securities fell, from a closing price of $3.20 on 24 August 2014, to a closing price of $2.98, being a decline of approximately 6.8%.

H.2 The partial corrective disclosure on 18 September 2014 in relation to the quantum of the Victorian Funding Suspensions

522. On 17 September 2014, the Australian Financial Review reported that:

(a) subsequent to the 25 August Announcement, the Australian Financial Review had sought to clarify whether the funding withheld by the DEECD was just the funding for the three courses referred to in the 15 August Announcement, or all BAWM's funding, but that Vocation had refused to comment;

(b) the Victorian government was concerned about a practise called "channelling" whereby certain RTOs enrol students in courses other than what they intended for the purposes of receiving a greater subsidy level; and

(c) a previous audit of BAWM in July 2013 had found instances of "channelling".

Particulars

ii. Article, 18 September 2014, "Victoria's withheld funding 'material' to Vocation".

523. On 18 September 2014 Vocation published and lodged with the ASX an announcement entitled "Response to press speculation" (**18 September Announcement**), in which Vocation stated:

(a) Vocation's funding contracts with DEECD had not been suspended and are continuing;

(b) the review by DEECD continued to relate to three of the courses for which Vocation receives funding;

(c) DEECD had withheld funding across two of Vocation's four Victorian RTOs, but the other two RTOs continue to receive all payments; and the withholding of payments was a course regularly applied when undertaking normal course review processes;

(d) Vocation looked forward to maintaining a strong presence in Victoria in partnership with DEECD.

524. By the 18 September Announcement, Vocation published to the ASX part of the information which was omitted from the FY14 Results Documents (as pleaded in paragraph 435(b)) and the FY14 Annual Report and FY14 Financial Statements (as pleaded in paragraph 467), and which would have been released earlier had:

(a) Hutchinson and Gréwal not expressed the Officers' 21 August Accounts Representations, the Officers' 21 August Accounts Reasonable Grounds Representation and/or the Officers' 21 August Further Representation;

(b) Hutchinson not expressed the Officers' 25 August Representation;

(c) Hutchinson and Dawkins not expressed the Directors' FY14 Accounts Representations and the Directors' FY14 Accounts Reasonable Grounds Representations on 3 September 2014; and/or

(d) Hutchinson not expressed the Officers' 10 September Representations or the Officers' 10 September Reasonable Grounds Representations?

Particulars

i. The part of the information published by the 18 September Announcement was part (but not all) of the information referred to in paragraph 435(b)(i) and (ii) being the fact that the Victorian Investigation extended to two of Vocation's Victorian businesses.

ii. The 18 September Announcement did not disclose the full extent of the Victorian Investigations (including that it extended to BAWM and Aspin), or the quantum of funding the subject of the Victorian Funding Suspensions.

525. Following the release of the 18 September Announcement, the price of Vocation Securities fell, from a closing price of $3.00 on 17 September 2014, to a closing price of $2.74, being a decline of approximately 8.6%.

H.3 The Corrective disclosure on 27 and 30 October 2014 in relation to the quantum of the Victorian Funding Suspensions

526. On 23 October 2014, Vocation entered into a trading halt on the ASX (**Trading Halt**).

527. On Monday 27 October 2014, Vocation lodged with the ASX and publically released an announcement entitled *"Vocation announces settlement with DEECD and completion of the Victorian Review"* (**27 October Announcement**).

528. By the 27 October Announcement Vocation expressly stated and disclosed to the ASX for the first time that:

(a) Vocation had "reached a settlement with [DEECD] in relation to its review into two of Vocation's Registered Training Organisations (RTOs), BAWM and Aspin", which involved Vocation agreeing to:

(i) "surrender $19.6 million in Government funding";

(ii) "undertake a series of measures to ensure continuous improvement in line with VRQA Guidelines for VET and AQTF Continuing Standards for Registration";

(b) DEECD had concluded that:

(iii) "there had been an over reliance on third parties to identify and refer students for enrolment in [Certificate III in Warehousing Operations, Certificate III in Competitive Systems and Practices and Certificate II in General Education for Adults] which resulted in some students being enrolled in in appropriate courses for their needs";

(iv) "there were inadequate controls in place to manage the performance of third parties delivering training and assessment, resulting in some students experiencing a lower quality training experience than intended for their job seeking needs";

(c) BAWM and Aspin would relinquish their funding contracts (including, *inter alia*, the BAWM Government Contracts and Aspin Government Contracts) with effect from early 2015, and Vocation would thereafter only enrol and train students through other RTOs;

(d) the overall financial impact of the settlement and restructure for FY15 was:

(i) the commercial settlement had reached with DEECD had resulted in the forfeiture of $19.6m of funds, and the earnings impact of this in FY15 is a reduction of approximately $5m in earnings;

(ii) lower than budgeted enrolments in Victoria due to the DEECD review and Vocation's decision to restructure part of its business model in Victoria to eliminate third party training and assessment providers; and

(iii) revised EBITDA of between $53M and $57M.

529. By the 27 October Announcement, the market of investors and potential investors in Vocation Securities became aware of the balance of the information which was omitted

from the FY14 Results Documents (as pleaded in paragraph 435(b)) and the FY14 Annual Report and FY14 Financial Statements (as pleaded in paragraphs 465 and 466), and which would have been released earlier had:

(a) Hutchinson and Gréwal not expressed the Officers' 21 August Accounts Representations, the Officers' 21 August Accounts Reasonable Grounds Representation and/or the Officers' 21 August Further Representation;

(b) Hutchinson not expressed the Officers' 25 August Representation;

(c) Hutchinson and Dawkins not expressed the Directors' FY14 Accounts Representations and the Directors' FY14 Accounts Reasonable Grounds Representations on 3 September 2014; and/or

(d) Hutchinson not expressed the Officers' 10 September Representations or the Officers' 10 September Reasonable Grounds Representations.

530. Following the release of the 27 October Announcement, the price of Vocation Securities fell, from a closing price of $2.29 on 23 October 2014 (when the Trading Halt commenced), to a closing price of $1.00 on 28 October 2014 (being the first day after the Trading Halt was lifted), being a decline of approximately 57%.

I LOSS AND DAMAGE ARISING FROM HUTCHINSON'S, GRÉWAL'S AND DAWKINS' CONTRAVENTIONS

I.1 Market-based causation

I.1.1 Market-based causation for on-market purchasers

531. The Applicant and some Group Members acquired an interest in Vocation Securities on or after 21 August 2014 in a market of investors or potential investors in Vocation Securities:

(a) operated by the ASX;

(b) regulated by, inter alia, s 674(2) of the Corporations Act and ASX Listing Rules 3.1 and 4.3A; and

(c) where the price or value of Vocation Securities would reasonably be expected to have been informed or affected by information disclosed in accordance with s 674(2) of the Corporations Act and ASX Listing Rule 3.1, including:

(i) the FY14 Results Documents, which by reason of the matters pleaded in paragraphs 427 to 447 was lodged by reason of the Director/Officer Misleading Conduct Contraventions of Hutchinson and Gréwal pleaded in paragraph 448;

(ii) the 25 August Announcement, which by reason of the matters pleaded in paragraphs 449 to 460 was lodged by reason of the Director/Officer Misleading Conduct Contraventions of Hutchinson pleaded in paragraph 461;

(iii) the FY14 Annual Report (and FY14 Audited Financial Statements), which by reason of the matters pleaded in paragraphs 462 to 476 was lodged by reason of the Director/Officer Misleading Conduct Contraventions of Hutchinson and Dawkins pleaded in paragraph 477;

(iv) the 10 September Announcement, which by reason of the matters pleaded in paragraphs 478 to 493, 508 to 512, and 516 to 517 was lodged by reason of the Director/Officer Misleading Conduct Contraventions of Hutchinson pleaded in paragraph 518;

the disclosure of which to the ASX was thereby caused or materially contributed to by the Director/Officer Misleading Conduct Contraventions.

I.1.2 Market-based causation for Placement purchasers

532. Some Group Members acquired an interest in Vocation Securities pursuant to the Placement in a market:

(a) regulated by, inter alia, Chapter 6D of the Corporations Act;

(b) where the offer price of Vocation Securities under the Placement would reasonably be expected by potential investors in Vocation Securities to have been reasonably determined by Vocation to represent a fair market value for Vocation Securities, based on:

(i) the anticipated number of Vocation Securities to be issued;

(ii) Vocation's then current market capitalisation;

(iii) Vocation's historical financial performance; and

(iv) Vocation's expected financial performance in FY15;

(c) alternatively to 532(b), where the offer price for the Placement was in fact determined by Vocation by reference to the then prevailing market price for Vocation Securities, which market price would reasonably be expected to have been informed or affected by information disclosed in accordance with s 674(2) of the Corporations Act and ASX Listing Rule 3.1, including:

(i) the FY14 Results Documents, which by reason of the matters pleaded in paragraphs 427 to 447 was lodged by reason of the Director/Officer Misleading Conduct Contraventions of Hutchinson and Gréwal pleaded in paragraph 448;

(ii) the 25 August Announcement, which by reason of the matters pleaded in paragraphs 449 to 460 was lodged by reason of the Director/Officer Misleading Conduct Contraventions of Hutchinson pleaded in paragraph 461;

(iii) the FY14 Annual Report (and FY14 Audited Financial Statements), which by reason of the matters pleaded in paragraphs 462 to 476 was lodged by reason of the Director/Officer Misleading Conduct Contraventions of Hutchinson and Dawkins pleaded in paragraph 477;

(iv) Hutchinson not expressed the Officers' 10 September Representations or the Officers' 10 September Reasonable Grounds Representations, which by reason of the matters pleaded in paragraphs 478 to 493, 508 to 512, and 516 to 517 was lodged by reason of the Director/Officer Misleading Conduct Contraventions of Hutchinson pleaded in paragraph 518.

being information that a reasonable person would expect to have caused the Placement Offer Price to be lower and/or there to be a material effect on the willingness of potential investors to accept the offer of Vocation Securities made pursuant to the Placement, whether at the Placement Offer Price or generally.

Particulars

i. *The determination by Vocation is to be inferred from the statement in the 10 September 2014 ASX announcement that, "The Offer Price of $3.05 represents a discount of 7.9 per cent to the last close price of $3.31 as at 9 September 2014 and a 7.3 per cent discount to the 5-day VWAP to 9 September of $3.29 per share" and the fact that an institutional placement offer whose issue price exceeded the prevailing market price was at all relevant times unlikely to be accepted by the targeted investors.*

ii. *The determination by Vocation also is to be inferred from the statement by Vocation in a "Share purchase plan booklet" published on the ASX by Vocation on 15 October 2014 that under that plan "eligible shareholders will be given the opportunity to subscribe for Vocation Shares at the lower of $3.05 (the price offered to institutional investors under the [September 2014 institutional placement]) and a 2.5% discount to the volume weighted average price of Vocation Shares in the last five trading days in the SPP offer period".*

I.1.3 Effect of the Director/Officer Market Contraventions

533. In the period on and from:

(a) 21 August 2014, the Director/Officer Misleading Conduct Contraventions of Hutchinson and Gréwal pleaded in paragraph 448;

(b) 25 August 2014, the Director/Officer Misleading Conduct Contraventions of Hutchinson pleaded in paragraph 461;

(c) 3 September 2014, the Director/Officer Misleading Conduct Contraventions of Hutchinson and Dawkins pleaded in paragraph 477; and/or

(d) 10 September 2014, the Director/Officer Misleading Conduct Contraventions of Hutchinson pleaded in paragraph 518;

(each such contravention being a **Director/Officer Market Contravention**) caused or materially contributed to the market price of Vocation Securities being substantially greater than their true value; and/or the market price that would have prevailed but for those contraventions.

Particulars

i. *The extent to which each of the Director/Officer Market Contraventions caused the market price for Vocation Securities to be substantially greater than their true value and/or the market price that would otherwise had prevailed (that is,* *inflated) during the Relevant Period is a matter for evidence, particulars of which will be served following the Applicant filing opinion evidence in the proceeding.*

534. Further, the Director/Officer Market Contraventions caused or materially contributed to the Placement Offer Price for Vocation Securities being materially greater than their true value and/or the Placement Offer Price that would have prevailed but for the Director/Officer Market Contraventions.

Particulars

i. *The Applicant repeats the particulars to paragraph 532 and says that Vocation set the Placement Offer Price by reference to the then prevailing market price in the manner set out in those particulars, such that, if Vocation had proceeded to conduct the Placement in circumstances where the then prevailing market price had been materially lower, the Placement Offer Price also would have been materially lower.*

ii. *The extent to which the Director/Officer Market Contraventions caused the Placement Offer Price to be substantially higher than the price at which Vocation Securities otherwise would have been offered pursuant to the Placement is a matter for evidence, particulars of which will be served following the Applicant filing opinion evidence.*

535. The declines in the price of Vocation Securities pleaded in paragraphs 521, 525 and 530 above:

(a) were caused or materially contributed to by:

(i) the market's reaction to the information released to the ASX in the 25 August Announcement, the 18 September Announcement and the 27 October Announcement; and

(ii) the Director/Officer Market Contraventions; and

(b) would, to the extent they removed inflation from the price of Vocation Securities, have occurred, or substantially occurred, earlier if Hutchinson, Gréwal and Dawkins had not engaged in the Director/Officer Market Contraventions.

Particulars

i. *The extent to which inflation was removed from the price of Vocation Securities, and would have been removed at earlier points in time during the Relevant Period is a matter for* *evidence, particulars of which will be served following the Applicant filing opinion evidence.*

I.2 Reliance

536. Further, or in the alternative to paragraphs 531 to 535, in the decision to acquire an interest in Vocation Securities the Applicant and some Group Members relied directly on:

(a) the FY14 Results Documents;

(b) the 25 August Announcement;

(c) the FY14 Annual Report and FY14 Audited Financial Statements; and/or

(d) the 10 September Announcement.

Particulars

i. *In her decision to acquire Vocation Securities on 16 October 2014 the Applicant relied upon the FY14 Appendix 4E, the FY14 Annual Report, and the FY14 Audited Financial Statements.*

ii. *The identities of all those Group Members which or who relied as pleaded in paragraph 536 are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

I.3 No transaction case in respect of the Placement

537. Alternatively, had the Director/Officer Market Contraventions and/or the Director/Officer DDQ Misleading Conduct Contraventions not occurred, the Placement would not have occurred in the way in which it occurred, or at all, and some Group Members would not have had the opportunity to acquire Vocation Securities pursuant to the Placement, or on-market.

Particulars

i. *The Applicant refers to the particulars to paragraphs 532 and says that Vocation set the Placement Offer Price by reference* *to the then prevailing market price in the manner set out in those particulars.*

ii. *If the Director/Officer Market Contraventions had not occurred and/or if the then prevailing market price had been materially lower, then, either:*

A. *Vocation would not have proceeded to conduct the Placement; or*

B. *Alternatively, if Vocation had proceeded to conduct the Placement then the Placement Offer Price would have been materially lower than it in fact was.*

iii. *The extent to which the Director/Officer Market Contraventions caused the market price for Vocation Securities to be substantially greater than their true value and/or the market price that would otherwise had prevailed (that is, inflated) during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding;*

iv. *Alternatively, the Placement would not have been underwritten (by reason of the matters pleaded in paragraphs 495 and 496), and in the absence of the Placement Vocation would have entered insolvency administration by reason of its inability to obtain the cash it required, as referred to in paragraph 479.*

I.4 Loss or damage suffered by the Applicant and Group Members

538. By reason of the matters pleaded in paragraphs 531 to 535, the Applicant and some Group Members have suffered loss and damage by and resulting from the Director/Officer Market Contraventions (or any one or combination of them).

Particulars

i. *The loss suffered by the Applicant will be calculated by reference to:*

A. *the difference between the price at which Vocation Securities were acquired by the Applicant during the Relevant Period and the true value of that interest; or*

B. *the difference between the price at which the Applicant acquired an interest in Vocation Securities and the market price that would have prevailed had the Director/Officer Market Contraventions not occurred; or*

C. *the difference between the price at which the Applicant acquired an interest in Vocation Securities and the amount left in hand.*

ii. *Further particulars in relation to the Applicant's losses will be provided after the service of opinion evidence in chief.*

iii. *Particulars of the losses of Group Members are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

539. Further, or alternatively, by reason of the matters pleaded in paragraph 536, the Applicant and some Group Members have suffered loss or damage.

Particulars

i. *The particulars to paragraph 538 are repeated.*

540. Further, or alternatively, by reason of the matters pleaded in paragraph 537, the Applicant and some Group Members have suffered loss or damage.

Particulars

i. *The particulars to paragraph 538 are repeated.*

This pleading was prepared by W.A.D. Edwards of counsel and settled by R.H.M. Attiwill of Queens Counsel.

SCHEDULE A (DEFINED TERMS IN THE CLAIM AGAINST VOCATION)

10 September Announcement means Vocation's announcement to ASX dated 10 September 2014, as pleaded in paragraph 91;

~~**16 October Announcement** means written statements provided to ASX dated 16 October 2014 titled 'Vocation AGM - Chairman and Managing Director addresses', as pleaded in paragraph 104;~~

~~**16 October Compliance Representation** has the meaning set out in paragraph 105(a);~~

~~**16 October Immaterial Risk Representation** has the meaning set out in paragraph 105(c);~~

~~**16 October Materiality Representation** has the meaning set out in paragraph 105(b);~~

~~**16 October Representations** has the meaning set out in paragraph 105;~~

~~**17 November Announcement** means Vocation's announcement to ASX dated 17 November 2014 titled 'Market update', as pleaded in paragraph 114;~~

18 September Announcement means Vocation's announcement to ASX dated 18 September 2014 titled 'Response to press speculation', as pleaded in paragraph 100;

2012 AQTF BAWM Audit has the meaning set out in paragraph 43A;

2012 AQTF BAWM Audit Report has the meaning set out in paragraph 43B;

2013 Aspin Government Contract has the meaning set out in paragraph 26;

2013 Auspicing Carve Out Clause has the meaning set out in paragraph 30(n);

2013 BAWM Government Contract has the meaning set out in paragraph 25;

2013 Further AQTF BAWM Audit has the meaning set out in paragraph 45A;

2013 AQTF Further BAWM Audit Report has the meaning set out in paragraph 45B;

2013 Government Contract means the "2013 VET Funding Contract", published by the Victorian Skills Commission, as pleaded in the particulars to paragraph 25;

2013 VRQA BAWM Audit means the audit of BAWM conducted by VRQA on 15-18 July 2013, as pleaded in paragraph 44;

2013 VRQA BAWM Audit Report means the report prepared by VQRA following the audit of 15-18~~6~~ July 2013, as pleaded in paragraph 45;

2014 Aspin Government Contract means Aspin's 2014-2016 VET Funding Contract;

2014 Auspicing Approval Clause has the meaning set out in paragraph 31(k);

2014 BAWM Government Contract means BAWM's 2014-2016 VET Funding Contract;

2014 Government Contract means the "2014 VET Funding Contract", published by the Victorian Skills Commission, as pleaded in the particulars to paragraph 25;

25 August Announcement means Vocation's announcement to ASX dated 25 August 2014 titled 'Response to press speculation', as pleaded in paragraph 74;

27 October Announcement means Vocation's announcement to ASX dated 27 October 2014 titled 'Vocation announces settlement with DEECD and completion of the Victorian Review', as pleaded in paragraph 107;

~~**27 October Disclosure Representation** has the meaning set out in paragraph 109(a);~~

~~**27 October FY15 Earnings Guidance Basis Representation** has the meaning set out in paragraph 109(c);~~

~~**27 October FY15 Earnings Guidance Representation** has the meaning set out in paragraph 109(b);~~

30 October Announcements refers to the announcements by Vocation to ASX dated 30 October 2014 titled 'Response to ASX Aware Query' and 'Clarification of ASX Announcement made on 27 October 2014', as pleaded in paragraph 110;

~~**30 October Disclosure Representation** has the meaning set out in paragraph 112(a);~~

~~**30 October FY15 Earnings Guidance Basis Representation** has the meaning set out in paragraph 112(c);~~

~~**30 October FY15 Earnings Guidance Representation** has the meaning set out in paragraph 112(b);~~

4 December Announcement means Vocation's announcement to ASX dated 4 December 2014 titled 'Market update', as pleaded in paragraph 117;

Appendix 1A has the meaning set out in paragraph 9(b)(i)

AQTF means the Australian Quality Training Framework;

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth);

ASIC means the Australian Securities and Investment Commission;

~~**Aspin Enrolment Suspension** has the meaning set out in paragraph 63(b);~~

~~**Aspin Funding Suspension** has the meaning set out in paragraph 63(a);~~

Aspin Government Contracts has the meaning set out in paragraph 26;

~~**Aspin Investigation** has the meaning set out in paragraph 62;~~

Aspin means Aspin Pty Ltd (ACN 106 046 682);

ASQA Audit has the meaning set out in paragraph 24(a);

ASQA means the Australian Skills Quality Authority;

ASX Listing Rules means the Listing Rules of the ASX;

ASX means Australian Securities Exchange Limited;

~~**August 2014 Cash Flow Analysis** has the meaning set out in paragraph 79;~~

~~**August Compliance Representation** has the meaning set out in paragraph 75(a);~~

~~**August FY14 Results Representations** has the meaning set out in paragraph 76;~~

~~**August FY15 Earnings Basis Representation** has the meaning set out in paragraph 78(b);~~

~~**August FY15 Earnings Guidance Representation** has the meaning set out in paragraph 78(a);~~

~~**August FY15 Earnings Representations** has the meaning set out in paragraph 78;~~

~~**August Immaterial Risk Representation** has the meaning set out in paragraph 75(c);~~

~~**August Materiality Representation** has the meaning set out in paragraph75(b);~~

~~**August Representations** has the meaning set out in paragraph 75;~~

Auspicing has the meaning set out in paragraph 38(a)

Australian Consumer Law has the meaning set out in paragraph 4(d);

AVANA means Avana Group Pty Ltd (ACN 110 198 171) and its subsidiaries;

AVANA Audit has the meaning set out in paragraph 51F;

AVANA Conduct has the meaning set out in paragraph 51H;

AVANA Conduct Non-Compliance Consequences Risk has the meaning set out in paragraph 51L;

AVANA Conduct Non-Compliance Risk has the meaning set out in paragraph 51K;

AVANA Non-Compliant Conduct has the meaning set out in paragraph 51J;

BAWM Adverse Financial Impact Information has the meaning set out in paragraph 42;

BAWM Adverse Reputational Impact Information has the meaning set out in paragraph 43;

BAWM Conduct has the meaning set out in paragraph 46;

BAWM Conduct Business Implication Information has the meaning set out in paragraph 129E;

BAWM Conduct Further Risk Information has the meaning set out in paragraph 129D;

~~**BAWM Conduct Increased Risk Information** has the meaning set out in paragraph 142(b);~~

BAWM Conduct Information has the meaning set out in paragraph 129~~(a)~~;

BAWM Conduct Non-Compliance Consequences Risk has the meaning set out in paragraph 49;

BAWM Conduct Non-Compliance Information has the meaning set out in paragraph 129A;

BAWM Conduct Non-Compliance Risk has the meaning set out in paragraph 48;

BAWM Conduct Risk Information has the meaning set out in paragraph 129C~~(b)~~;

~~**BAWM Enrolment Suspension** has the meaning set out in paragraph 61;~~

BAWM Founders has the meaning set out in paragraph 14(b);

~~**BAWM Funding Suspension** has the meaning set out in paragraph 60;~~

~~**BAWM Government Contract Termination Events** has the meaning set out in paragraph 33(c);~~

BAWM Government Contracts has the meaning set out in paragraph 25;

BAWM Historical Non-Compliance Information has the meaning set out in paragraph 129B;

~~**BAWM Identified Non-Compliance Information** has the meaning set out in paragraph 142(a);~~

~~**BAWM Investigation** has the meaning set out in paragraph 59;~~

~~**BAWM Investigation Information** has the meaning set out in paragraph 143(a);~~

~~**BAWM Investigation Risk Information** has the meaning set out in paragraph 143(b);~~

BAWM means BAWM Pty Ltd (ACN 078 456 676);

BAWM Non-Compliant Conduct has the meaning set out in paragraph 47;

Boncal means Boncal Investments Pty Ltd, as trustee for the Bonnici Family Investment Trust;

Bonnici means Ms Wendy Bonnici, as set out in paragraph 14(c);

Broadtree means Broadtree Investments Pty Ltd as trustee for the Broadtree Investment Trust;

Broking has the meaning set out in paragraph 38(b);

~~**Cash Requirement Information** has the meaning set out in paragraph 84;~~

CFO FY14 Report has the meaning set out in the particulars to paragraph 66;

Commonwealth Act means the *National Vocational Education and Training Regulator Act 2011* (Cth);

~~**Continuing Compliance Representation** has the meaning set out in paragraph 168(a);~~

~~**Continuing FY15 Earnings Guidance Basis Representation** has the meaning set out in paragraph 200(b);~~

~~**Continuing FY15 Earnings Guidance Representation** has the meaning set out in paragraph 200(a);~~

~~**Continuing Immaterial Risk Representation** has the meaning set out in paragraph 168(a)(ii);~~

~~**Continuing Materiality Representation** has the meaning set out in paragraph 168(b);~~

~~**Continuous Disclosure Contraventions** has the meaning set out in paragraph 248(d)(i);~~

~~**Continuous Disclosure Representations** has the meaning set out in paragraph 207;~~

Corporations Act means the *Corporations Act 2001* (Cth);

CSIA means Customer Service Institute of Australia Pty Ltd (ACN 127 413 923);

Dawkins means Mr John Dawkins, as set out in paragraph 15(c);

~~**Debt Facility Increase** has the meaning set out in paragraph 81;~~

DEECD Enforcement Actions has the meaning set out in paragraph 33;

DEECD means the Department of Education and Early Childhood Development of the State of Victoria;

DEECD Review has the meaning set out in paragraphs 32(a)(i) and 32(b)(i);

DEECD Settlement has the meaning set out in paragraph 108;

FCAA means the *Federal Court of Australia Act 1976* (Cth);

First Prospectus Compliance Representation has the meaning set out in paragraph 57(a);

First Prospectus Compliance Statement has the meaning set out in paragraph 55(f);

First Trading Halt has the meaning set out in paragraph 106;

Founding Companies has the meaning set out in paragraph 12(b);

FY14 Guidance Statement has the meaning set out in paragraph 56(b);

FY15 Earnings Guidance Adjustment has the meaning set out in paragraph 108(h);

FY13 means the twelve month period ending 30 June 2013;

FY14 means the twelve month period ending 30 June 2014;

~~**FY14 Annual Report** means Annual Report released by Vocation to the ASX on 16 September 2014;~~

~~**FY14 Results Announcement** has the meaning set out in paragraph 68(b);~~

~~**FY14 Results Documents** has the meaning set out in paragraph 69;~~

~~**FY14 Results Presentation** has the meaning set out in paragraph 68(c);~~

FY15 means the twelve month period ending 30 June 2015;

Goodwill Statement has the meaning set out in paragraph 56(c);

Government Contracts has the meaning set out in paragraph 33;

Government Contract Termination Event has the meaning set out in paragraph 33(c);

Gréwal means Mr Manvinder Gréwal, as set out in paragraph 16(b)(v);

Group Members has the meaning set out in paragraph 1;

Growth Strategy has the meaning set out in paragraph 56(a);

Halley means Mr Douglas Halley, as set out in paragraph 16(a)(v);

Hutchinson means Mr Mark Hutchinson, as set out in paragraph 13(b);

~~**Identified BAWM Non-Compliances** has the meaning set out in paragraph 60;~~

Information Form has the meaning set out in paragraph 9(b)(ii);

Initial Prospectus means the prospectus Vocation and SaleCo lodged with ASIC on or about 18 November 2013;

Initial Public Offering has the meaning set out in paragraph 10(a);

Langtree means Mr Michael Langtree, as set out in paragraph 14(d);

Late October Representation has the meaning set out in paragraph 109;

~~**Macquarie** has the meaning set out in paragraph 85;~~

~~**Market Contraventions** has the meaning set out in paragraph 251;~~

Merger has the meaning set out in paragraph 12;

~~**Misleading Conduct Contraventions** has the meaning set out in paragraph 173;~~

National RTO Standards has the meaning set out in paragraph 21(c)(ii);

~~**New Revenue Recognition Policy** has the meaning set out in paragraph 66;~~

Non-Compliant Conduct has the meaning set out in paragraph 57;

Non-contracted RTO has the meaning set out in paragraph 36(b);

~~**November FY15 Earnings Guidance Basis Representation** has the meaning set out in paragraph 115(b);~~

~~**November FY15 Earnings Guidance Representation** has the meaning set out in paragraph 115(a);~~

~~**November Representations** has the meaning set out in paragraph 115;~~

Offer Price has the meaning set out in paragraph 10(a);

Official List means the official list of the financial market operated by ASX;

~~**Outperformance Representation** has the meaning set out in paragraph 76(a);~~

Placement has the meaning set out in paragraph 91(a);

~~**Placement Contraventions** has the meaning set out in paragraph 247A~~

Placement Offer Price has the meaning set out in paragraph 91(a);

~~**Post-DEECD Settlement Earnings Unreliability Information** has the meaning set out in paragraph 162;~~

Pre-Quotation Disclosure has the meaning set out in paragraph 9(b);

~~**Proposed Placement** has the meaning set out in paragraph 85;~~

Prospectus Contravention has the meaning set out in paragraph134;

Prospectus Guidance Basis Representation has the meaning set out in paragraph 57(c) ;

Prospectus Guidance Representations has the meaning set out in paragraph 56;

Prospectus Misleading Statements has the meaning set out in paragraph 128;

Prospectus Omissions has the meaning set out in paragraph 133;

Prospectus Representation has the meaning set out in paragraph 57;

PWC means PricewaterhouseCoopers;

Relevant Contract Enforcement Terms has the meaning set out in paragraph 33;

Relevant Contract Primary Terms has the meaning set out in paragraphs 30 and 31;

Relevant Contract Review Terms has the meaning set out in paragraph 32;

Relevant National RTO Conditions has the meaning set out in paragraph 27;

Relevant National RTO Standards has the meaning set out in paragraph 28;

Relevant Period has the meaning set out in paragraph 1(a);

Relevant Victorian Guidelines has the meaning set out in paragraph 29;

~~**Reliability Representation** has the meaning set out in paragraph 76(d);~~

~~**Restructure Information** has the meaning set out in paragraph 156;~~

Replacement Prospectus means the prospectus Vocation and SaleCo lodged with ASIC on or about 27 November 2013;

RTO Edge has the meaning set out in paragraph 19(b)(iii);

RTO is an acronym for “registered training organisation”;

SaleCo means ACN 166 629 063 Pty Ltd;

~~**Same Basis Representation** has the meaning set out in paragraph 76(b);~~

Second Prospectus Compliance Representation has the meaning set out in paragraph 57(b);

Second Prospectus Compliance Statement has the meaning set out in paragraph 55(g);

Second Trading Halt has the meaning set out in paragraph 116;

~~**Section 1041E Contravention** has the meaning set out in paragraph 179;~~

~~**September Compliance Representation** has the meaning set out in paragraph 101(a);~~

~~**September Immaterial Risk Representation** has the meaning set out in paragraph 101(c);~~

~~**September Materiality Representation** has the meaning set out in paragraph 101(b);~~

~~**September Placement Representation** has the meaning set out in paragraph 101(e);~~

~~**September Representation** has the meaning set out in paragraph 101;~~

Smuskowitz means Mr Jonathan Smuskowitz, as set out in paragraph 13(d).

SPP has the meaning set out in paragraph 91(b);

Systemic Conduct ~~Issues~~ has the meaning set out in paragraph 52;

Systemic Conduct Information has the meaning set out in paragraph 129F~~(c)~~;

Systemic Conduct Business Implication Information has the meaning set out in paragraph 129K;

Systemic Conduct Further Risk Information has the meaning set out in paragraph 129J;

Systemic Conduct Non-Compliance Information has the meaning set out in paragraph 129G;

Systemic Non-Compliant Conduct has the meaning set out in paragraph 52;

Systemic Conduct Non Compliance Risk has the meaning set out in paragraph 53;

Systemic ~~Conduct Non-Compliance~~ Non-Compliant Conduct Consequences Risk has the meaning set out in paragraph 54;

Systemic Conduct Risk Information has the meaning set out in paragraph 129I~~(d)~~;

Systemic Historical Non-Compliance Information has the meaning set out in paragraph 129H;

Tredenick means Ms Michelle Tredenick, as set out in paragraph 16(a)(iv);

~~**True and Fair View Representation** has the meaning set out in paragraph 76(c);~~

TTS-100 Audit has the meaning set out in paragraph 50;

TTS-100 Conduct has the meaning set out in paragraph 51A;

TTS-100 Conduct Non-Compliance Consequences Risk has the meaning set out in paragraph 51E;

TTS-100 Conduct Non-Compliance Risk has the meaning set out in paragraph 51D;

TTS-100 Non-Compliant Conduct has the meaning set out in paragraph 51C;

TTS-100 has the meaning set out in paragraph 50;

Tucker means Mr Steven Tucker, as set out in paragraph 13(c);

~~**UBS** has the meaning set out in paragraph 86;~~

VET Services has the meaning set out in paragraph 18;

Victorian Act means *Education and Training Reform Act 2006* (Vic);

~~**Victorian Compliance Investigation** has the meaning set out in paragraph 64;~~

~~**Victorian Enrolment Suspension** has the meaning set out in paragraph 63(b);~~

~~**Victorian Funding Suspension** has the meaning set out in paragraph 63(a);~~

Vocation Government Contracts has the meaning set out in paragraph 55(a);

~~**Victorian Investigation Information** has the meaning set out in paragraph 144(a);~~

~~**Victorian Investigation Risk Information** has the meaning set out in paragraph 144(b);~~

Victorian RTO Guidelines has the meaning set out in paragraph 21(c)(i);

Vocation Adverse Financial Impact Information has the meaning set out in paragraph 42(a~~b~~);

Vocation Adverse Reputational Impact Information has the meaning set out in paragraph 43(a);

Vocation BAWM Purchase has the meaning set out in paragraph 14(b)(ii);

Vocation Directors has the meaning set out in paragraph 16(a);

Vocation Government Contracts has the meaning set out in paragraph 55(a);

Vocation Material Information is information that a reasonable person would expect to have a material effect on the price or value of Vocation Securities within the meaning of ASX Listing Rule 3.1 (as pleaded in paragraph 42(b)(ii);

Vocation means Vocation Limited and its controlled entities;

~~**Vocation Market Contraventions** has the meaning set out in paragraph 2510A;~~

~~**Vocation Misleading Conduct Contraventions** has the meaning set out in paragraphs 135A and 173;~~

~~**Vocation Pre-Placement Contraventions** has the meaning set out in paragraph 247A;~~

Vocation Prospectus Misleading Conduct Contraventions has the meaning set out in paragraph 135A;

Vocation Relevant Information has the meaning set out in paragraph 42(b)(i);

Vocation Securities means fully paid ordinary shares in Vocation Limited;

Vocation Senior Managers has the meaning set out in paragraph 16(b);

Vocation's Continuous Disclosure Obligation has the meaning set out in paragraph 5(e);

~~**Vocation's Fifth Continuous Disclosure Contravention** has the meaning set out in paragraph 167;~~

~~**Vocation's First Continuous Disclosure Contravention** has the meaning set out in paragraph 141;~~

~~**Vocation's Fourth Continuous Disclosure Contravention** has the meaning set out in paragraph 161;~~

~~**Vocation's Lenders** has the meaning set out in paragraph 81;~~

~~**Vocation's Second Continuous Disclosure Contravention** has the meaning set out in paragraph 149;~~

~~**Vocation's Third Continuous Disclosure Contravention** has the meaning set out in paragraph 154;~~

VRQA Audit has the meaning set out in paragraph 23(a)(i);

VRQA Enforcement Action has the meaning set out in paragraph 23(a)(ii);

~~**VRQA Investigation** has the meaning set out in paragraph 64;~~

VRQA Recommendations has the meaning set out in paragraph 45(b);

VRQA means the Victorian Registration & Qualifications Authority;

Whitford means Brett Whitford, as set out in paragraph 15(b).

SCHEDULE B (DEFINED TERMS IN THE CLAIM AGAINST PWC)

2 September Board Committee Approval has the meaning set out in paragraph 328;

2 September Board Committee Meeting has the meaning set out in paragraph 318(b);

15 August PWC Report has the meaning set out in paragraph 291;

18 September Announcement means Vocation's announcement to ASX dated 18 September 2014 titled 'Response to press speculation', as pleaded in paragraph 341;

19 August ARC Meeting has the meaning set out in the particulars to paragraph 291;

19 August ARC Recommendation has the meaning set out in paragraph 301;

19 August Board Approval has the meaning set out in paragraph 303;

20 August Board Committee Approval has the meaning set out in paragraph 304;

204 February ARC Meeting has the meaning set out in the particulars to paragraph 291;

24 June ARC Meeting has the meaning set out in the particulars to paragraph 291;

25 August Announcement has the meaning set out in paragraph 313;

27 October Announcement means Vocation's announcement to ASX dated 27 October 2014 titled 'Vocation announces settlement with DEECD and completion of the Victorian Review', as pleaded in paragraph 345;

2013 BAWM Government Contract has the meaning set out in the particulars to paragraph 276;

2014 BAWM Government Contract has the meaning set out in the particulars to paragraph 276;

AASB3 means Australian Accounting Standard 3 ("Business Combinations") , as set out in paragraph 262(d)(i)(A);

AASB101 means Australian Accounting Standard 101 ("Presentation of Financial Statements") , as set out in paragraph 262(d)(i)(A);

AASB108 means Australian Accounting Standard 108 ("Accounting Policies, Changes in Accounting Estimates and Errors"), as set out in paragraph 262(d)(i)(A);

AASB110 means Australian Accounting Standard 110 ("Events after the Reporting Period"), as set out in paragraph 262(d)(i)(A);

AASB118 means Australian Accounting Standard 118 ("Revenue") , as set out in paragraph 262(d)(i)(A);

AASB136 means Australian Accounting Standard 136 ("Impairment of Assets") , as set out in paragraph 262(d)(i)(A);

AASB137 means Australian Accounting Standard 137 ("Provisions, Contingent Liabilities and Contingent Assets") , as set out in paragraph 262(d)(i)(A);

AASB139 means Australian Accounting Standard 139 ("Financial Instruments; Recognition and Measurement") , as set out in paragraph 262(d)(i)(A);

ARC has the meaning set out in paragraph 291(a);

ASA200 means Australian Auditing Standard 200 ("Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards"), as set out in paragraph 264(b);

ASA500 means Australian Auditing Standard 500 ("Audit Evidence"), as set out in paragraph 264(b);

ASA505 means Australian Auditing Standard 505 ("External Confirmations"), as set out in paragraph 264(b);

ASA570 means Australian Auditing Standard 570 ("Going Concern"), as set out in paragraph 264(b);

Aspin Enrolment Suspension has the meaning set out in paragraph 288(b);

Aspin Funding Suspension has the meaning set out in paragraph 288(a);

Aspin Investigation has the meaning set out in paragraph 287;

ASX Listing Rules has the meaning set out in paragraph 262(e);

Audit Due Date has the meaning set out in paragraph 265;

Auditor's Report has the meaning set out in paragraph 262(d)(ii);

BAWM Enrolment Suspension has the meaning set out in paragraph 286;

BAWM Funding Suspension has the meaning set out in paragraph 285;

BAWM Government Contracts has the meaning set out in paragraph 276;

BAWM Government Contract Termination Event has the meaning set out in paragraph 278(c);

BAWM Investigation has the meaning set out in paragraph 284;

Board Committee has the meaning set out in paragraph 304;

Bourke means Mr Steven Bourke, as set out in paragraph 261(c);

CFO FY14 Report has the meaning set out in the particulars to paragraph 282;

DEECD means the Victorian Department of Education and Early Childhood Development, as set out in paragraph 276;

DEECD Enforcement Action has the meaning set out in paragraph 278;

DEECD Review has the meaning set out in paragraph 277(a)(i) and 277(b)(i);

Draft FY14 Appendix 4E has the meaning set out in paragraph 294;

Financial Report has the meaning set out in paragraph 262(d)(i);

Founding Companies has the meaning set out in paragraph 272(a)(ii);

Funding Suspension Relevant Facts has the meaning set out in paragraph 293;

FY14 has the meaning set out in paragraph 263;

FY14 Annual Report has the meaning set out in paragraph 318(a);

FY14 Appendix 4E has the meaning set out in paragraph 306(a);

FY14 Audited Financial Statements has the meaning set out in paragraph 318(a);

FY14 Financial Report has the meaning set out in paragraph 291;

FY14 Guidance has the meaning set out in paragraph 280;

FY14 Results Announcement has the meaning set out in paragraph 306(c);

FY14 Results Documents has the meaning set out in paragraph 306;

FY14 Results Presentation has the meaning set out in paragraph 306(b);

Initial Public Offering has the meaning set out in paragraph 271(a);

Macquarie means Macquarie Capital (Australia) Ltd, as set out in paragraph 335;

Merger has the meaning set out in paragraph 272(a);

New Revenue Recognition Policy has the meaning set out in paragraph 282;

New Revenue Recognition Policy Effects has the meaning set out in paragraph 283;

Offer Price has the meaning set out in paragraph 271(a);

Official List means the official list of the financial market operated by ASX;

Palmer means Matthew Palmer, as set out in the particulars to paragraph 267;

Placement has the meaning set out in paragraph 338(a);

Placement Offer Price has the meaning set out in paragraph 338(a);

Porter means Troy Porter, as set out in the particulars to paragraph 267;

Pre-19 August DEECD Communications has the meaning set out in paragraph 351(a)(i);

Proposed Placement has the meaning set out in paragraph 335;

Prospectus Revenue Recognition Policy has the meaning set out in paragraph 281;

PWC 1H14 Engagement has the meaning set out in paragraph 290;

PWC August Misleading Conduct Contravention has the meaning set out in paragraph 354;

PWC August Opinion has the meaning set out in paragraph 300(a);

PWC August Representation has the meaning set out in paragraph 300(b);

PWC August s 1041E Contravention has the meaning set out in paragraphs 363;

PWC Audit Team has the meaning set out in paragraph 267;

PWC's Audit Work has the meaning set out in paragraph 291;

PWC's Draft Auditor's Report has the meaning set out in paragraph 318(a);

PWC's Final Auditor's Report has the meaning set out in paragraph 322;

PWC's Further Audit Work has the meaning set out in paragraph 316;

PWC Market Contravention has the meaning set out in paragraph 396;

PWC Retainer has the meaning set out in paragraph 263;

PWC September Misleading Conduct Contravention has the meaning set out in paragraph 375;

PWC September Opinion to ASX has the meaning set out in paragraph 334(a);

PWC September Opinion to Vocation has the meaning set out in paragraph 327(a);

PWC September Opinions has the meaning set out in paragraph 370(a);

PWC September Representation to ASX has the meaning set out in paragraph 334(b);

PWC September Representation to Vocation has the meaning set out in paragraph 327(b);

PWC September Representations has the meaning set out in paragraph 370(b);

PWC September s 1041E Contravention has the meaning set out in paragraph 385;

PWCS means PricewaterhouseCoopers Securities Ltd (ACN 003 311 617);

PWCS IPO Engagement has the meaning set out in paragraph 289;

Relevant Contract Enforcement Terms has the meaning set out in paragraph 278;

Relevant Contract Review Terms has the meaning set out in paragraph 277;

Replacement Prospectus means the prospectus Vocation and SaleCo lodged with ASIC on or about 27 November 2013;

Revenue Recognition Policy ~~Effects~~ Relevant Facts has the meaning set out in paragraph 292;

SaleCo means ACN 166 629 063 Pty Ltd;

SPP has the meaning set out in paragraph 338(b);

Statutory Auditing Obligations has the meaning set out in paragraph 264;

Trading Halt has the meaning set out in paragraph 344;

UBS has the meaning set out in paragraph 336;

Vocation means Vocation Limited and its controlled entities;

Victorian Enrolment Suspensions has the meaning set out in paragraph 288(b);

Victorian Funding Suspension has the meaning set out in paragraph 288(a);

Vocation's ASX Reporting Obligations has the meaning set out in paragraph 262;

Vocation's Statutory Reporting Obligations has the meaning set out in paragraph 262.

SCHEDULE C (DEFINED TERMS IN THE CLAIM AGAINST HUTCHINSON, GRÉWAL AND DAWKINS)

10 September Announcement has the meaning set out in paragraph 490;

18 September Announcement has the meaning set out in paragraph 523;

19 August ARC Recommendation has the meaning set out in paragraph 428;

19 August Board Approval has the meaning set out in paragraph 429(d);

2 September Board Committee Approval has the meaning set out in paragraph 463;

20 August Board Committee Approval has the meaning set out in paragraph 430;

2013 BAWM Government Contract has the meaning set out in the particulars to paragraph 414;

2014 BAWM Government Contract has the meaning set out in the particulars to paragraph 414;

25 August Announcement has the meaning set out in paragraph 451;

27 October Announcement has the meaning set out in paragraph 527;

AASB101 has the meaning set out in paragraph 407(e)(i)(A);

AASB108 has the meaning set out in paragraph 407(e)(i)(A);

AASB110 has the meaning set out in paragraph 407(e)(i)(A);

AASB118 has the meaning set out in paragraph 407(e)(i)(A);

AASB136 has the meaning set out in paragraph 407(e)(i)(A);

AASB137 has the meaning set out in paragraph 407(e)(i)(A);

AASB139 has the meaning set out in paragraph 407(e)(i)(A);

AASB3 has the meaning set out in paragraph 407(e)(i)(A);

ARC has the meaning set out in paragraph 428;

ASIC Act means the Australian Securities and Investments Commission Act 2001 (Cth);

ASX Listing Rules has the meaning set out in paragraph 407(f);

Aspin means Aspin Pty Ltd (ACN 106 046 682);

Aspin Enrolment Suspension has the meaning set out in paragraph 426(b);

Aspin Funding Suspension has the meaning set out in paragraph 426(a);

Aspin Investigation has the meaning set out in paragraph 425;

Auditor's Report has the meaning set out in paragraph 407(e)(i)(B);

August Continuing Enrolment and Delivery Representation has the meaning set out in paragraph 452(b);

August Materiality Representation has the meaning set out in paragraph 452(c);

August No Suspension Representation has the meaning set out in paragraph 452(a);

Australian Consumer Law has the meaning set out in paragraph 404(e);

AVANA means AVANA Group Pty Ltd (ACN 110 198 171) and its subsidiaries;

BAWM means BAWM Pty Ltd (ACN 078 456 676);

BAWM Enrolment Suspension has the meaning set out in paragraph 424;

BAWM Funding Suspension has the meaning set out in paragraph 423;

BAWM Government Contracts has the meaning set out in paragraph 414;

BAWM Government Contract Termination Event has the meaning set out in paragraph 416(c);

BAWM Investigation has the meaning set out in paragraph 422;

Board Committee has the meaning set out in paragraph 430;

Cash Requirement Information has the meaning set out in paragraph 479;

Corporations Act means the Corporations Act 2001 (Cth);

CSIA means Customer Service Institute of Australia Pty Ltd (ACN 127 413 923);

Dawkins means Mr John Dawkins, the Fifth Respondent, as set out in paragraph 406;

DDQ has the meaning set out in paragraph 486;

DEECD means the Victorian Department of Education and Early Childhood Development;

DEECD Enforcement Action has the meaning set out in paragraph 416;

DEECD Review has the meaning set out in paragraphs 415(a)(i) and 415(b)(i);

Directors' Declaration has the meaning set out in paragraph 469;

Directors' FY14 Accounts Reasonable Grounds Representation has the meaning set out in paragraph 471;

Directors' FY14 Accounts Representations has the meaning set out in paragraph 470;

Director/Officer DDQ Misleading Conduct Contravention has the meaning set out in paragraph 515;

Director/Officer Misleading Conduct Contravention has the meaning set out in paragraph 448;

Financial Report has the meaning set out in paragraph 407(e)(i);

Founding Companies has the meaning set out in paragraph 410(b);

FY14 Annual Report has the meaning set out in paragraph 463(a);

FY14 Appendix 4E has the meaning set out in paragraph 431(a);

FY14 Audited Financial Statements has the meaning set out in paragraph 463(a);

FY14 Results Announcement has the meaning set out in paragraph 431(c);

FY14 Results Documents has the meaning set out in paragraph 431;

FY14 Results Presentation has the meaning set out in paragraph 431(b);

Gréwal means Mr Manvinder Gréwal, the Fourth Respondent, as set out in paragraph 405;

Hutchinson means Mr Mark Hutchinson, the Third Respondent, as set out in paragraph 404;

Initial Public Offering has the meaning set out in paragraph 409(a);

Macquarie means Macquarie Capital (Australia) Ltd;

Merger has the meaning set out in paragraph 410;

New Revenue Recognition Policy has the meaning set out in 420;

New Revenue Recognition Policy Effects has the meaning set out in paragraph 421;

Offer Price has the meaning set out in paragraph 409;

Officers' 10 September ASX Representations has the meaning set out in paragraph 500;

Officers' 10 September DDQ Representations has the meaning set out in paragraph 494;

Officers' 10 September Reasonable Grounds Representation has the meaning set out in paragraph 501;

Officers' 21 August Accounts Reasonable Grounds Representation has the meaning set out in paragraph 439;

Officers' 25 August Reasonable Grounds Representation has the meaning set out in paragraph 456;

Officers' 25 August Representations has the meaning set out in paragraph 455;

Officers' 21 August Accounts Representations has the meaning set out in paragraph 438;

Officers' Further 21 August Representation has the meaning set out in paragraph 440;

Official List means the official list of the financial market operated by ASX;

Placement has the meaning set out in paragraph 490(a);

Placement Offer Price has the meaning set out in paragraph 490(a);

Pre-19 August DEECD Communications has the meaning set out in paragraph 442(a)(i);

Proposed Placement has the meaning set out in paragraph 480;

Prospectus Revenue Recognition Policy has the meaning set out in paragraph 419;

Relevant Contract Enforcement Terms has the meaning set out in paragraph 416;

Relevant Contract Review Terms has the meaning set out in paragraph 415;

Replacement Prospectus has the meaning set out in paragraph 408;

September Continuing Enrolment and Delivery Representation has the meaning set out in paragraph 497(d);

September First Review Scope Representation has the meaning set out in paragraph 497(a);

September Materiality Representation has the meaning set out in paragraph 497(e);

September No Suspension Representation has the meaning set out in paragraph 497(c);

September Placement Representation has the meaning set out in paragraph 497(f);

September Second Review Scope Representation has the meaning set out in paragraph 497(b);

SPP has the meaning set out in paragraph 490(b);

Stated Purposes has the meaning set out in paragraph 491(a);

UBS means UBS AG, as set out in paragraph 483;

Victorian Enrolment Suspensions has the meaning set out in paragraph 426(b);

Victorian Funding Suspensions has the meaning set out in paragraph 426(a);

Vocation means Vocation Limited and its controlled entities;

Vocation's ASX Reporting Obligations has the meaning set out in paragraph 407;

Vocation's Continuous Disclosure Obligation has the meaning set out in paragraph 407(d);

Vocation's Statutory Reporting Obligations has the meaning set out in paragraph 407(e)

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) and others named in the schedule

First Respondent ~~/ Cross Claimant~~

~~**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 / Cross-Claimant by Fifth Cross-Claim~~

~~**Mark Edward Hutchinson and others named in the schedule**~~

~~Cross-Respondents by Third and Fifth Cross-Claims / certain cross-claimants~~

Certificate of lawyers

We, Brooke Dellavedova and Andrew Paull, certify to the Court that, in relation to the second further amended consolidated statement of claim filed on behalf of the Applicant, the factual and legal material available to us at present provides a proper basis for each allegation in the pleading.

Date: 11 November 2019

Brooke Dellavedova

Signed by Brooke Dellavedova Joint Lawyer for the Applicant	Signed by Andrew Paull Joint Lawyer for the Applicant

Schedule

Federal Court of Australia	No. VID 434 of 2015
District Registry: Victoria	
Division: General	

Applicant	Cheryl Whittenbury

Respondents

First Respondent	Vocation Limited (ACN 166 631 330)
Second Respondent	PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)
Third Respondent	Mark Edward Hutchinson
Fourth Respondent	Manvinder Gréwal
Fifth Respondent	John Sydney Dawkins

Details of all cross-claims in the proceeding

First Cross-Claim

Cross-Claimant	Vocation Limited (ACN 166 631 330)
Cross-Respondent	The Partners of Johnson Winter & Slattery

Second Cross-Claim

Cross-Claimant	PricewaterhouseCoopers (a firm) (ABN.52 780 433 757)
Cross-Respondent	The Partners of Johnson Winter & Slattery

Third Cross-Claim

Cross-Claimant	PricewaterhouseCoopers (a firm) (ABN.52 780 433 757)
First Cross-Respondent	Mark Edward Hutchinson

Second Cross-Respondent	Manvinder Gréwal
Third Cross-Respondent	John Sydney Dawkins
Fourth Cross-Respondent	Stephen John Tucker
Fifth Cross-Respondent	Michelle Kim Tredenick
Sixth Cross-Respondent	Douglas James Halley
Seventh Cross-Respondent	Vocation limited (ACN 166 631 330)

Fourth Cross-Claim

Cross-Claimant	John Sydney Dawkins
Cross-Respondent	The Partners of Johnson Winter & Slattery

Fifth Cross-Claim

Cross-Claimant	The Partners of Johnson Winter & Slattery
First Cross-Respondent	Mark Edward Hutchinson
Second Cross-Respondent	Manvinder Gréwal
Third Cross-Respondent	John Sydney Dawkins
Fourth Cross-Respondent	Stephen John Tucker
Fifth Cross-Respondent	Michelle Kim Tredenick
Sixth Cross-Respondent	Douglas James Halley
Seventh Cross-Respondent	Vocation limited (ACN 166 631 330)

Sixth Cross-Claim

Cross-Claimant	Mark Edward Hutchinson
Cross-Respondent	The Partners of Johnson Winter & Slattery

Seventh Cross-Claim

Cross-Claimant	Manvinder Gréwal
Cross-Respondent	The Partners of Johnson Winter & Slattery