Form 17 (adapted)
Rule 15.06(1)(a)

Statement of cross-claim (Fourth Cross-Claim)

No. VID 434 of 2015

Federal Court of Australia

District Registry: Victoria

Division: General

CHERYL WHITTENBURY
Applicant

VOCATION LIMITED (ACN 166 631 330)
First Respondent / Cross-claimant by First Cross-claim

PRICEWATERHOUSECOOPERS (a firm) (ABN 52 780 433 757)
Second Respondent / Cross-claimant by Second and Third Cross-claims

THE PARTNERS OF JOHNSON WINTER & SLATTERY
Cross-respondents by First / Second and Fourth Cross-claims

MARK EDWARD HUTCHINSON and others named in the schedule
Cross-respondents by Third Cross-claim

JOHN DAWKINS
Cross Claimant by Fourth Cross-claim

Nothing in this Cross Claim should be taken to amount to an express or implied waiver of any privilege against self incrimination or privilege against exposure to penalty belonging to the Cross Claimant by Fourth Cross Claim.

A. PARTIES

1. The cross-claimant by fourth cross claim (**Mr Dawkins**):

   (a) was a Director of Vocation Limited (**Vocation**) from 6 November 2013 to 26 November 2014;

   (b) was the non-executive Chairman of the Board of Directors of Vocation from 18 November 2013 to 26 November 2014; and

   (c) was, from 5 September 2013, a member of the Due Diligence Committee (**DDC**) established on 5 September 2013 to conduct the due diligence process for the

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purpose of preparing a prospectus, being an invitation to the public to acquire fully paid ordinary shares in Vocation.

2. The cross-respondent to the fourth cross-claim (**JWS**):

   (a) at all relevant times carried on business as a partnership of solicitors;

   (b) at all relevant times included among its partners James Rozsa (**Mr Rozsa**) and Byron Koster (**Mr Koster**);

   (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 Investment 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 F*air 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* (NT),

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

B. APPLICANT'S CLAIMS AGAINST VOCATION AND PRICEWATERHOUSECOOPERS

3. The Applicant (on behalf of herself and Group Members (**Class**)) has made claims against:

   (a) Vocation in this proceeding, by a Further Amended Consolidated Application dated 2 May 2018 (**the Application**) and the Further Amended Statement of Claim (**FACSOC**), by which she alleges that:

      (i) a prospectus lodged by Vocation and another with the Australian Securities and Investment Commission (**ASIC**) on or about 27 November 2013 (**Replacement Prospectus**) contained misleading or deceptive statements, being:

(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;

(B) Vocation's forecast financial performance in FY2014 would be as set out at paragraph 56(b) of the FACSOC;

(C) following an initial public offering as contemplated by the Replacement Prospectus, Vocation's intangible assets were estimated at $189.1 million, including $150.2 million in goodwill;

(D) BAWM Pty Ltd (**BAWM**) had not engaged in and was not engaging in, conduct which was non-compliant with essential standards for continuing registration as a Registered Training Organisation (**RTO**);

(E) BAWM was not in breach of the terms of BAWM's 2014-2016 VET Funding Contract; and

(F) it was not likely, or there was not a material risk, that the Department of Education and Early Childhood Development in Victoria (**DEECD**) could take steps pursuant to the 2014-16 VET Contract to suspend services, withhold, suspend, cancel or terminate payment of funds, require BAWM to refund funds, require payment of a monetary amount by BAWM to DEECD and/or terminate a contract with a Victorian Government entity,

(ii) Vocation contravened its continuous disclosure obligations pursuant to s 674(2) of the *Corporations Act*;

(iii) Vocation made representations which constituted misleading of deceptive conduct in contravention of s 1041H of the *Corporations Act*, s 12DA of the *ASIC Act* and/or s 236 of the *Australian Consumer Law*.

Particulars

As to misleading statements in the Replacement Prospectus, FACSOC section II, F.
As to contraventions in relation to continuous disclosure, FACSOC section II, G.
As to misleading or deceptive conduct, FACSOC section II, H.

(b) The Applicant on her own behalf and on the behalf of the Class in this proceeding, by the Application and the FACSOC, alleges that:

(i) in August and September 2014, PriceWaterhouseCoopers (**PwC**) engaged in conduct in contravention of s 1041H and s 1041E of the

Corporations Act, s 12DA of the *ASIC Act* and s 18 of the *Australian Consumer Law*; and

(ii) by reason of those alleged contraventions, the Applicant and Group Members have suffered loss and damage.

Particulars

FACSOC, Section III.

4. PwC:

(a) has filed a defence to the FACSOC dated 20 July 2018 (**PwC's Defence**), a copy of which is served with this Statement of Cross-Claim; and

(b) in its Defence, denies that the Applicant and Group Members have any cause of action against PwC, and denies that PwC has any liability to the Applicant or any Group Members for damages or for any of the other relief sought in the Application as alleged In the FACSOC.

C. PWC'S CROSS CLAIM AGAINST MR DAWKINS AND OTHERS

5. By Notice of Cross-Claim filed 20 July 2018, in these proceedings, PwC has brought a cross-claim against:

(a) Mr Dawkins;

(b) Mark Edward Hutchinson (**Mr Hutchinson**);

(c) Stephen John Tucker (**Mr Tucker**);

(d) Michelle Kim Tredenick (**Ms Tredenick**);

(e) Douglas James Halley (**Mr Halley**)

(the persons named at (a) to (e) being **Directors**);

(f) Manvinder Grewal (**Mr Grewal**); and

(g) Vocation,

(the **Third Cross-Claim**) by which PwC claims against each of the Third Cross-Respondents relief which includes, in respect of any non-apportionable claim made against PwC by the FACSOC:

(i) contribution and/or an indemnity pursuant to Part IV of the Wrongs Act 1958 (VIC) (Wrongs Act); further or alternatively

(ii) equitable contribution.

6. Mr Dawkins has filed a defence to the PwC Cross-Claim (**Mr Dawkins' Defence**) a copy of which is served with this Statement of Cross-Claim. In his Defence, Mr Dawkins:

(a) does not admit that the Applicant or Group Members have any cause of action against PwC, or that PwC has any liability to the Applicant or any Group Members for damages or for any of the other relief sought in the application against PwC as alleged in the FACSOC; and

(b) denies that he has any liability to the Applicant or Group Members for the same loss and damage as that for which PwC is sued.

D. BASIS OF THIS CROSS CLAIM

7. If:

(a) PwC is liable to the Applicant and/or the Group Members as alleged in the Application and the FACSOC (which is not admitted);

(b) the Applicant and/or Group Members have suffered loss and damaged (**Applicant's and Group Members' Loss and Damage**) by reason of PwC's alleged contraventions (which is also not admitted); and

(c) Mr Dawkins is liable to PwC pursuant to the Third Cross-Claim (which is denied);

then Mr Dawkins makes the following claims and allegations against JWS expressly on the above basis, and solely for the purpose of this cross-claim against JWS.

8. For the purpose only of this cross-claim, Mr Dawkins repeats the allegations in paragraphs 1-210 of the FACSOC.

E. PROSPECTUS CONTRAVENTIONS

(i) Retainer and Duties of JWS

9. From no later than 5 September 2013, to around 27 November 2013, Vocation retained JWS to advise Vocation in relation to the preparation of a prospectus to be issued by Vocation (**Prospectus Retainer**).

10. It was an implied term of the Prospectus Retainer that JWS would exercise reasonable care and skill in providing advice to Vocation (**JWS Prospectus Duty of Care to Vocation**).

11. By reason of:

(a) the scope of work the subject of the Prospectus Retainer, as pleaded in paragraph 14 below;

(b) the term of the Prospectus Retainer that JWS would exercise reasonable care and skill in providing advice to Vocation;

(c) the position of Mr Dawkins as:

(i) a Director of Vocation;

(ii) a non executive Chairman of the Board of Directors of Vocation;

(iii) a member of the DDC;

(d) the position of JWS as the Australian legal adviser (other than in relation to tax matters) to Vocation in relation to

(i) the offer under a prospectus ;and

(ii) the merger of, amongst others, Avana Group Pty Ltd and its subsidiaries (**AVANA**), BAWM Group Pty Limited and its subsidiaries (**BAWM Group**) and Customer Service Institute of Australia Pty Limited and its subsidiaries and CSIA Education (**CSIA**); and

(e) the legal liability which might attach to Mr Dawkins if a prospectus issued by Vocation contained a misleading or deceptive statement, or an omission required to be included, in the prospectus by the *Corporations Act*,

JWS owed a duty to Mr Dawkins to exercise reasonable care and skill in providing advice to each of Vocation, the DDC, and the Directors (**JWS Prospectus Duty of Care to Mr Dawkins**).

12. On or around 5 September 2013, a DDC was established by Vocation, JWS, Macquarie Capital (Australia) Limited (**Macquarie**), UBS AG Australia Branch (**UBS**) and PwC.

13. The persons representing Vocation on the DDC were Mr Dawkins, Mr Tucker, Mr Hutchinson, Brett Whitford (**Mr Whitford**) and Michael Langtree (**Mr Langtree**).

14. The scope of work of JWS in relation to the Prospectus Retainer included:

(a) to provide James Rozsa (**Mr Rozsa**) to participate as a member of the DDC;

(b) to provide Byron Koster (**Mr Koster**) as an alternate member of the DDC;

(c) to attend all meetings of the DDC, by Mr Rozsa or Mr Koster;

(d) to Chair the DDC;

(e) to provide a secretary to the DDC;

(f) to draft minutes of meetings of the DDC;

(g) to assist with and make recommendations in relation to the design and implementation of the due diligence process;

(h) to provide legal advice in relation to the due diligence process, the Initial Prospectus and the Replacement Prospectus;

(i) to carry out functions and tasks as set out in a Due Diligence Planning Memorandum (**DDPM**);

(j) to assist Vocation to a prospectus (including review and comment on successive drafts of the Initial Prospectus) (**Draft Prospectus**) and what became the prospectus issued on 27 November 2013 (**Replacement Prospectus**);

(k) to assist Vocation with the verification of the Draft Prospectus and the Replacement Prospectus;

(l) to verify certain parts of the Draft Prospectus and the Replacement Prospectus;

(m) to carry out legal due diligence investigations relating to Australian legal matters:

(i) in relation to the Draft Prospectus and the Replacement Prospectus and the listing of Vocation on the Australian Stock Exchange (**ASX**);

(ii) relating to Australian legal matters relevant to the Offer and to the Acquisitions (in each case as defined in the DDPM) as agreed with the DDC in accordance with the legal work plan approved by the DDC;

(n) to review RTO registration certificates, audit reports and related documents provided in the data room and conduct searches of the training register at training.gov.au to verify RTO registration details of companies owned or to be owned by Vocation;

(o) to report to the DDC on the outcome of legal due diligence investigations, including identifying any matters of material liability (or potential issues, in particular those relating to potential or actual liability) and how they had been addressed; and

(p) to provide an opinion to members of the DDC, and to the Directors, on:

(iii) the adequacy of the due diligence system;

(iv) whether the due diligence and reasonable reliance defences were available to Vocation, the Directors and the DDC members; and

(v) whether the Draft Prospectus and the Replacements Prospectus complied with the requirements of the *Corporations Act*.

Particulars

Memorandum from JWS to the DDC at Annexure 6 to the Final Legal Due Diligence Exceptions Report dated 8 November 2013.

Letter from JWS to the Directors of Vocation, 15 November 2013, page 2.

Due Diligence Planning Memorandum signed by Mr Rozsa and others on 15 November 2013.

(ii) The work of the Due Diligence Committee and JWS Advice

15. The DDC met on 12 occasions at the offices of JWS, 20 Bond Street, Sydney, between 5 September 2013 and 15 November 2013.

Particulars

The DDC met on:

5 September 2013;
18 September 2013;
27 September 2013;
1 October 2013;
4 October 2013;
10 October 2013;
15 October 2013;
22 October 2013;
24 October 2013;
28 October 2013;
1 November 2013; and
15 November 2013.

16. Mr Rozsa chaired all meetings of the DDC.

17. By no later than 5 September 2013, JWS was aware that 98% of BAWM Group's revenue was attached to Victorian government contracts and that this was considered a "key risk" for BAWM Group.

18. By no later than 8 November 2013, JWS had conducted legal due diligence investigations into the registration status and audit history of the Vocation RTOs (amongst other things) and was aware that:

    (a) BAWM had been audited by the VRQA in July 2013 (the **BAWM 2013 Audit**);

    (b) the content of the BAWM 2013 Audit;

    (c) the outcome of the BAWM 2013 Audit was that:

        (i) BAWM was compliant with ETR;

        (ii) there had been minor non-compliance with the Australian Quality Training Framework and with VRQA Guidelines; and

    (d) BAWM after the BAWM 2013 Audit, had its registration renewed to 31 July 2018.

19. By no later than 15 November 2013, JWS had responsibility to verify certain statements included in the Draft Prospectus, including statements with respect to risk factors concerning:

    (a) loss of state or territory funding contract, or access to Commonwealth Government funding programs;

(b) change in government funding and support arrangements for the vocational and educational training sector; and

(c) regulatory risk.

20. On or around 15 November 2013, JWS advised, and represented to each of the Directors, each member of the DDC, and Vocation, in relation to the Draft Prospectus that:

(a) there were no material issues with respect to audits of the RTOs that were required to be disclosed in the Initial Prospectus;

(b) nothing had come to the attention of JWS that caused it to believe, and it did not believe, that the Draft Prospectus contained any statement that was misleading or deceptive;

(c) nothing had come to the attention of JWS that caused it to believe, and it did not believe, that having regard to the requirement of the *Corporations Act* there was any omission of required material from the Draft Prospectus;

(d) nothing had come to the attention of JWS that caused it to believe and it did not believe, that as at 15 November 2013 the inquiries conducted as part of the due diligence process;

(i) would not be likely to be held to constitute all enquiries that were reasonable in the circumstances for the purposes of s731 of the *Corporations Act*, such that each member of the DDC would have reasonable grounds for believing that the Draft Prospectus did not contain a misleading or deceptive statement, and that there was no omission from the Draft Prospectus of information required to be included in a prospectus by the *Corporations Act*;

(ii) had not been implemented substantially in accordance with the DDPM, or that there were any material deviations from it not approved by the DDC;

(e) if a prospectus materially in the form of the Draft Prospectus was found to contain a misleading or deceptive statement, or to omit information required under the *Corporations Act* to be included, nothing had come to the attention of JWS that would cause it to believe and it did not believe, that a Director or another member of the DDC would not have available to them a defence under section 731 or 733(1) of the *Corporations Act* to the extent that such defences were capable of operating as a defence to that person's liability; and

(f) JWS had exercised reasonable care and skill in giving the Prospectus Retainer (**the JWS Reasonable Care Prospectus Representation**),

(together the **JWS Prospectus Representations**).

Particulars

The JWS Prospectus Representations were partly express and partly implied.

To the extent they were express, being (a) to (e) above:

- letter JWS to the Directors and others, dated 15 November 2013; and
- "Material Issues List" prepared by JWS, dated 15 November 2013,

To the extent they were to be implied, being (f) above, the implication arose from the terms of the Prospectus Retainer, the letter from JWS to the Directors and others dated 15 November 2013 and the Material Issues List.

21. By no later than 18 November 2013, JWS was aware that:

(a) funding from various governments accounted for approximately 80% of Vocation's pro forma consolidated revenue for FY2013;

(b) Vocation's eight RTOs were required to remain compliant with their conditions of registration to operate as VET providers;

(c) non-compliance by any of Vocation's RTOs and any associated regulatory response may have an adverse impact on Vocation's reputation, operations, future earning and financial position; and

(d) there was included in the Draft Prospectus a statement to the effect that Vocation's management was not aware of any material instances of non-compliance by its RTOs.

22. JWS did not advise any of the Directors, any member of the DDC, or Vocation, that:

(a) any disclosure made in the Draft Prospectus or the Replacement Prospectus was misleading and/or in contravention of any provision of the *Corporations Act* or any other law;

(b) further disclosures were required in the Draft Prospectus or the Replacement Prospectus so as to not contravene any provision of the *Corporations Act* or any other law; or

(c) the Replacement Prospectus would, or alternatively that there was a real risk that it would, contravene ss 728(1)(a) or (b) of the *Corporations Act*.

23. By making the JWS Prospectus Representations and omitting to give the advice pleaded in paragraph 22 above, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 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*; and/or

(c) in trade or commerce, within the meaning of s 4 of the *Australian Consumer Law.*

(iii) Vocation and Mr Dawkins' reliance on JWS Advice under Prospectus Retainer

24. Vocation relied on each of the JWS Prospectus Representations in publishing the Replacement Prospectus.

25. If and to the extent that Vocation made the statements in the Replacement Prospectus alleged by the Class to be misleading then Vocation made those statements by reason of its reliance on the JWS Prospectus Representations.

26. If and to the extent that the Replacement Prospectus contained an omission of material required by s710 of *the Corporations Act*, within the meaning of s728(1)(b) of the *Corporations Act,* Vocation omitted that material by reason of its reliance on the JWS Prospectus Representations.

27. Mr Dawkins relied on each of the JWS Prospectus Representations in:

(a) not causing the DDC to make further inquiries as to the matters disclosed by, and the sufficiency of disclosure in, the Replacement Prospectus before its publication;

(b) forming his belief that the Replacement Prospectus did not contain any misleading statement, or any omission of any matter required to be included by the *Corporations Act*; and

(c) signing the letter to investors dated 18 November 2013 which appears at page 3 of the Replacement Prospectus.

28. If JWS had advised Vocation, the Directors or the DDC that the Replacement Prospectus would, or that there was a real risk that it might, contravene ss 728(1)(a) or (b) of the *Corporations Act* Mr Dawkins would have:

(a) sought to persuade Vocation, the Directors and the DDC to revise the Replacement Prospectus so that it accorded with advice given by JWS to avoid any, or any real risk of, contravention of ss 728(1)(a) or (b); or

(b) if a prospectus which was compliant, or at no real risk being non-compliant according to the advice of JWS, could not be produced, he would have resigned as a Director of Vocation before any prospectus was published.

(iv) JWS Breach of Duty

29. JWS did not exercise reasonable care and skill in making the JWS Prospectus Representations.

Particulars

By reason of the matters alleged in paragraphs 35, 36, 44 to 53, 59, 60 and 122 to 134 of the FACSOC. JWS did not exercise reasonable care and skill in making the JWS Prospectus Representations.

30. By reason of the matters alleged in paragraphs 9 to 29 above, the conduct of JWS in:

(a) making the JWS Prospectus Representations; and/or

(b) omitting to give the advice pleaded in paragraph 22 above,

was in breach of JWS Prospectus Duty of Care to;

(c) Vocation; and

(d) Mr Dawkins.

31. By reason of the matters alleged in paragraphs 9 to 29 above, the conduct of JWS in:

(a) making the JWS Reasonable Care Prospectus Representation; and

(b) omitting to give the advice pleaded in paragraph 22 above,

was misleading or deceptive or likely to mislead or deceive in contravention of:

(i) s 1041H of the *Corporations Act*;

(ii) s 12DA of the *ASIC Act*; and/or

(iii) s 18 of the *Australian Consumer Law*.

F. DISCLOSURE AND ANNOUNCEMENT CONTRAVENTIONS

(i) Retainer and Duties of JWS

32. In or around late July or early August 2014, Vocation retained JWS to advise Vocation in relation to its disclosure obligations under ASX Listing Rule 3.1 and s 674 of the *Corporations Act* (**Disclosure Obligation Retainer**) including, within the Disclosure Obligation Retainer:

(a) advice to Vocation and to the Directors as to whether or not Vocation had obligations of continuous disclosure under s.674 of the *Corporations Act* having regard to JWS' instructions and the circumstances known to JWS from time to time; and

(b) the content of disclosures by Vocation to the ASX, whether that disclosure was required by s.674 of the *Corporations Act* or not, as requested by Vocation from time to time.

33. It was an implied term of the Disclosure Obligation Retainer that JWS would exercise reasonable care and skill in providing advice to Vocation (**JWS Disclosure Duty of Care to Vocation**).

34. By reason of:

(a) the scope of work the subject of the Disclosure Obligation Retainer;

(b) the term of the Disclosure Obligation Retainer that JWS would exercise reasonable care and skill in providing advice to Vocation;

(c) the position of Mr Dawkins as:

(i) a Director of Vocation;

(ii) non executive Chairman of the Board of Directors of Vocation; and

(d) the legal liability which might attach to Mr Dawkins if Vocation contravened s.674 of the *Corporations Act*, or if it made a misleading or deceptive statement to or through the ASX,

JWS owed a duty to Mr Dawkins to exercise reasonable care and skill in providing advice to Vocation pursuant to the Disclosure Obligation Retainer (**JWS Disclosure Duty of Care to Mr Dawkins**).

(ii) JWS disclosure advice - 1 August - 11 August 2014

35. On or around 24 July 2014, the DEECD wrote to BAWM and stated amongst other things, that:

(a) DEECD had ongoing concerns in respect of BAWM's compliance with the terms of its 2014-2016 VET Funding Contract;

(b) the DEECD would continue to withhold payment of funds to BAWM;

(c) the DEECD directed BAWM to suspend the acceptance of all further enrolments of Eligible Individuals (as stated in the letter particularised below) and to suspend the commencement of training delivery to Eligible Individuals that had enrolled but not yet commenced at the date of notification, at least in respect of the causes Competitive Systems and Practices (**CSP**) and Certificate III in Warehousing Operations (**Warehousing**); and

(d) it sought BAWM's response in relation to several other matters.

Particulars

Letter from DEECD to Ms Wendy Bonnici, Managing Director, BAWM 24 July 2014 (**Ms Bonnici**).

36. On 1 August 2014, Vocation:

(a) provided JWS with a copy of the DEECD letter of 24 July 2014;

(b) informed JWS that the DEECD had suspended payments due under contract to Vocation or a Vocation RTO;

(c) informed JWS that the DEECD had applied a sanction, in that Vocation or a Vocation RTO could not enrol students into dual qualifications with which the DEECD had concerns;

(d) informed JWS that the DEECD continued to have queries and required Vocation to respond to further questions by the close of 1 August 2014;

(e) informed JWS that Vocation had identified a systemic weakness in pre-training review which was the main cause of concern for the government and which resulted in participants enrolling into a program not suited to them;

(f) provided JWS with a draft response to the DEECD by which Vocation intended to inform the DEECD that as an ASX listed business Vocation would have to disclose, if the investigation of it resulted in material repayment or cancellation/suspension of contract.

Particulars

Email Ms Bonnici to Mr Rozsa of 1 August 2014.

37. On 1 August 2014, JWS advised Vocation that:

(a) Vocation may wish to include information about disclosure in a response to the ASX, which would place the DEECD on notice that as an ASX listed entity Vocation could be obliged to make disclosure to the ASX if the DEECD's investigation resulted in either a material repayment or cancellation or further suspension of a contract;

(b) whether it had an ASX disclosure obligation may be dependent upon whether rectification of the matters referred to by the DEECD involved a repayment of fees to the DEECD, and if it did a comparison of the amount to be repaid with Vocation's expected total revenue for FY14; and also a comparison of the amount of lost revenue if the DEECD Contract was cancelled, in comparison to expected total revenue for FY14,

(**the First JWS Disclosure Materiality Advice**).

Particulars

Email Mr Rozsa to Ms Bonnici 1 August 2014.

38. Between 1 August and 11 August 2014, Mr Hutchinson had a number of telephone conversations with Mr Rozsa in which:

(a) Mr Hutchinson asked for Mr Rozsa's advice about whether Vocation needed to make disclosure to the ASX arising from the correspondence with the DEECD; and

(b) Mr Rozsa advised Mr Hutchinson that if Vocation expected that all or most of the funds withheld by the DEECD would be paid in due course, then the withholding of funds was not required to be disclosed as it was a debtor timing issue (the **JWS August Telephone Advice**).

39. The Vocation Board of Directors (**Vocation Board**) met on 11 August 2014 (**the 11 August Board Meeting**).

40. The attendees of the 11 August Board Meeting included:

(a) the Directors; and

(b) Mr Grewal.

41. At the 11 August 2014 Board Meeting, Mr Hutchinson reported:

(a) that he had received advice from JWS; and

(b) in substance, the JWS August Telephone Advice.

(iii) 21 August Fairfax publication, the DEECD ASX Complaint and JWS advice

42. On 21 August 2014, Fairfax Media published an article in which the following appeared:

> *But, with Vocation delivering its first full-year result as a listed company today, investors would do well to ask how the rule-changes around auspicing are affecting BAWM, and whether BAWM's auspicing has been compliant. Shareholders are likely to ask for certainty as to whether there has been any investigation into the practice and whether any of BAWM's funding contracts have been suspended. The informed speculation in the sector is that there may be issues with BAWM's auspicing.*

Particulars

Publication in the Age and Sydney Morning Herald 21 August 2014 (the **August Fairfax Publication**).

43. On 21 August 2014, the DEECD wrote to Vocation and:

(a) referred to the question of Vocation's continuous disclosure obligations to the ASX with regard to measures taken by the DEECD;

(b) stated that its view of the ASX Listing Rules was that the DEECD considered that disclosure of actions taken by the DEECD in relation to Aspin Pty Ltd (**Aspin**) and BAWM should be made to the ASX before being disclosed to any other person, including the media;

(c) communicated its view that the ASX should as soon as practicable be notified of current measures that had been taken by the DEECD in relation to BAWM and Aspin; and

(d) communicated that in default of notification to the ASX by Vocation, the DEECD intended to communicate to the ASX matters which included:

(i) measures had been imposed on BAWM on 3 and 24 July 2014, and against Aspin on 5 August 2014 to withhold payments of funds of $18,819,387.56 (for BAWM) and $1,858,789.03 (for Aspin);

(ii) a direction to suspend the new enrolments of Eligible Individuals and commencement of delivery of Training Services (as stated in the letter particularised below) to Eligible Individuals, in respect of both BAWM and Aspin.

Particulars

Letter DEECD to Vocation 21 August 2014, emailed at 2.32 pm.

44. On 21 August 2014, Vocation forwarded the 21 August 2014 letter from the DEECD to Vocation, to JWS.

Particulars

Email Mr Hutchinson to Mr Rozsa, 21 August 2014, 2.47 pm.

45. On 21 August 2014, JWS advised Vocation that it could make an announcement to the ASX in the following terms:

> *Vocation.. refers to the article in today's [insert newspaper] speculating about the possible suspension of one of the company's contracts with the Victorian Government.*
>
> *None of the company's contracts with the Victorian Government have been suspended. However, the Victorian Government is undertaking a limited review of 2 of those [insert number] of courses Vocation has with the Victorian Government.*
>
> *Vocation will update the market once the review has been finalised.*

(**the JWS August ASX disclosure contention**).

Particulars

Email Mr Rozsa to Mr Hutchinson 21 August 2014, 3.06 pm.

46. On 21 August 2014, JWS advised Vocation to send an email to the DEECD in the following terms:

> *I refer to your letter today concerning disclosure to the ASX of the investigation that your Department is undertaking in to Victorian Government funded courses provided by BAWM Pty Limited and Aspin Pty Ltd.*

Vocation has consistently held the view that no disclosure is required to ASX of the investigation in to those courses nor the suspension of payments and direction to cease enrolments that have accompanied that investigation.

In the view of Vocation, the investigation and its anticipated outcomes are not material in the context of the whole of Vocation, and therefore do not require disclosure to ASX under Listing Rule 3.1.

(**the JWS August DEECD disclosure contention**).

Particulars

Email Mr Koster of JWS to Mr Hutchinson and Mr Rozsa 21 August 2014, 3.54 pm.

47. On 21 August 2014, JWS revised the terms of the announcement that Vocation could make to the ASX to the following terms:

Vocation Limited.. refers to the article in today's [insert newspaper] speculating about the possible suspension of one of the Vocation contracts (sic) with the Victorian Government.

None of Vocation's contracts with the Victorian Government have been suspended. However, the Victorian Government is undertaking a limited review of 2 of the coursed conducted by Vocation for which Vocation receives funding from the Victorian Government.

In the view of Vocation, the investigation and its anticipated outcomes are not material to Vocation.

However, given the press speculation referred to above, Vocation considers it prudent to make this announcement.

Vocation will update the market once the review has been finalised.

(**the revised JWS August ASX disclosure contention**).

Particulars

Email Mr Koster to Mr Hutchinson and Mr Rozsa, 21 August 2014, 4.04 pm.

48. Vocation accepted, relied on and implemented the further revised JWS August DEECD disclosure contention.

Particulars

Email Mr Hutchinson to Lee Watts (**Ms Watts**) 21 August 2014, 4.08 pm.

49. On 21 August 2014 the DEECD responded to Vocation, including that:

(a) the measures that were imposed in relation to BAWM from 3 and 24 July 2014, and Aspin from 5 August 2014, were not matters of speculation but concrete facts;

(b) the DEECD considered the information was material, given the significant role that Vocation's Victorian revenues (in particular BAWM) evidently played in the overall revenues of Vocation; and

(c) the DEECD's intention was to complain to the ASX if no appropriate disclosure was made by Vocation by 6.30 pm on 21 August 2014.

Particulars

Email Ms Watts to Mr Hutchinson and others, 21 August 2014 at 5.19 pm.

50. On 21 August 2014, Vocation forwarded that email to JWS for advice as to a response.

Particulars

Email Mr Hutchinson to Mr Koster and Mr Rozsa 21 August 2014 5.23 pm.

51. On 21 August 2014, JWS advised Vocation that it could respond to the DEECD by restating that the view of Vocation was that Vocation did not have ASX disclosure obligations in relation to the investigation currently being undertaken.

(**the JWS August disclosure denial**).

Particulars

Email Mr Koster to Mr Hutchinson 21 August 2014, 5.42 pm.

52. On 21 August 2014, the DEECD lodged a complaint with the ASX as to Vocation's failure to disclose measures in place in relation to BAWM and Aspin (**the DEECD ASX Complaint**).

53. The DEECD ASX Complaint:

(a) referred to the VET Funding Contract 2014-2016;

(b) stated that the DEECD had taken interim action pending further investigation and consideration in relation to BAWM and Aspin;

(c) stated that measures in place at 21 August 2014, and which had been in place in relation to BAWM since 3 July 2014 were withholding of payments of Funds (calculated as at 8 August 2014 at $18,819,387.56 inclusive of GST);

(d) stated that the DEECD had, since 24 July 2014, directed BAWM to suspend new enrolments of Eligible Individuals and commencement of delivery of Training Services to Eligible Individuals;

(e) stated that the measures at 21 August 2014 in place in relation to Aspin were, and had been since 5 August 2014, withholding of a payment of funds calculated as at 8 August 2014 at $1,858,789.03 inclusive of GST);

(f) stated that the DEECD had, directed Aspin to suspend new enrolments of Eligible Individuals and the commencement of delivery of Training Services to Eligible Individuals;

(g) stated that the State of Victoria provided between 40% and 80% of Vocation's revenues through government subsidised training to Vocation;

(h) stated that much of the 40% to 80% referred to at subparagraph (g) was earned by BAWM and Aspin;

(i) stated that the suspension of funds to BAWM and Aspin had become known to persons outside the DEECD and outside Vocation;

(j) stated that the DEECD had, on 21 August 2014, formed the view that the ASX should as soon as practicable be notified of the current measures that had been taken by the DEECD in relation to BAWM and Aspin;

(k) enclosed a copy of a DEECD letter of 21 August 2014 to Vocation referred to at paragraph 43; and;

(l) enclosed a copy of the August Fairfax Publication .

Particulars

ASX complaint form submitted by Kym Peake (**Ms Peake**) as complainant in relation to Vocation, 21 August 2014.

54. On 21 August 2014, Vocation forwarded the DEECD ASX Complaint to JWS, and sought advice as to how to respond.

Particulars

Email Mr Hutchinson to Mr Rozsa and Mr Koster, 21 August 2014, 6.49 pm.

55. On 21 August 2014, JWS advised Vocation that its response to the DEECD ASX Complaint should be:

(a) to wait to see how the ASX responds;

(b) following ASX response, it should be explained to the DEECD why the subject matters of the DEECD ASX Complaint were not material and it did not require disclosure; and

(c) the key argument for Vocation to put was that the investigations referred to in the DEECD ASX Complaint and their likely outcomes were not material in the context of the whole of Vocation.

(**the JWS August ASX response advice**).

Particulars

Email Mr Koster to Mr Hutchinson 21 August 2014, 7.10 pm.

56. On 22 August 2014, JWS proposed a letter from Vocation to the ASX which included:

(a) that neither in the case of the investigation concerning BAWM nor Aspin was the investigation being conducted by DEECD, or its expected outcomes, material.

(b) in addition, given the complexity and the continuing status from the matters being investigated, any disclosure of the investigation or measures implemented in connection with the investigation would be likely to mislead Vocation shareholders as to the significance of the investigation.

(the **22 August draft letter to the ASX**).

Particulars

Email Mr Koster to Mr Grewal, Mr Rozsa, Mr Hutchinson and Ms Bonnici 22 August 2014, 11.01am.

(iv) Board meeting of 22 August 2014

57. The Vocation Board met by teleconference at 11.00 am on 22 August 2014 (the **22 August Board Meeting**).

58. The attendees at the 22 August Board Meeting were:

(a) the Directors;

(b) Mr Grewal;

(c) Mr Koster; and

(d) Emma Lawler (**Ms Lawler**).

59. At the 22 August Board Meeting, Mr Koster advised the Vocation Board that:

(a) following discussions he had with Vocation's listing adviser at the ASX, the ASX was aware of media on the Victorian audits;

(b) Mr Koster's understanding of the view of Vocation was that there was no material information for disclosure to the market, as an investigation was in progress, and although payments were being withheld, the amount of funds expected to be affected was not material;

(c) the ASX had requested an email be sent explaining the background and Vocation's position regarding disclosure;

(d) following his discussions with Mr Hutchinson, Mr Grewal and Ms Bonnici and review of relevant correspondence, Mr Koster considered that the expected outcome of the investigation was that only a relatively small amount of funding was expected to be affected which was not material in Vocation's context; and

(e) in Mr Koster's view it was appropriate to treat disclosure as not being required, because:

(i) the expected outcome of the investigation was that only relatively small amounts of funding, around $2 million, were expected to be affected;

(ii) $2 million was not material in Vocation's context; and

(iii) the outcome would not be expected to have a material affect on the price or value of Vocation securities.

(**Mr Koster's 22 August advice to the Vocation Board**).

60. On 22 August 2014, JWS advised that a letter, including the features set out at paragraph 59(d) and (e) should be provided to the ASX as soon as possible.

Particulars

Email Mr Koster to Mr Grewal and others 22 August 2014, 1.24 pm.

61. On 22 August 2014, JWS proposed draft letters for Vocation to send to the ASX.

62. On 22 August 2014, in reliance on the advice of JWS, Vocation sent the ASX a letter consistent with the advice received from JWS and substantially in accordance with the draft letters prepared by JWS.

Particulars

Letter dated 22 August 2014 Vocation to the ASX.

(v) JWS Advice on Announcements, including 25 August 2014 ASX Announcement

63. On 24 August 2014, JWS advised Vocation that:

(a) if there was no further press speculation about Vocation's funding contracts, then ASX would not require Vocation to make any disclosure about the issue;

(b) in the light of the risk of further rumours, and the possibility that the ASX might require some disclosure, and short selling that may be occurring, Vocation should consider a pre-emptive announcement; and

(c) the pre-emptive announcement that could be made could recite that the DEECD was undertaking a limited review of two courses conducted by Vocation for which Vocation receives funding, and in Vocation's view that limited review and its anticipated outcomes were not material to Vocation.

Particulars

Email Mr Koster to Mr Hutchinson, Mr Rozsa and others 24 August 2014 at 1.43pm.

(**JWS 24 August Advice disclosure was not necessary**).

64. On 24 August 2014, JWS considered a possible announcement by Vocation to the ASX in the following terms:

> *Vocation has become aware of misinformation in the market regarding the funding contracts that Vocation has with the Department of Education and Early Childhood Development in Victoria. Vocation takes its disclosure obligations seriously. It is the view Vocations' Board having consulted with the companies external legal counsel [and ASX] that all material information has been disclosed and that the company has discharged its disclosure obligations.*

Particulars

Email Lisa Keenan (**Ms Keenan**) of Nightingale Communications to Mr Koster and others, 24 August 2014, 4.21 pm.

65. On 24 August 2014, Mr Koster advised that from a legal perspective the kind of disclosure referred to at paragraph 64 was fine, provided Vocation was confident of getting most of the withheld money and also confident that there would not be other material adverse consequences to revenue from the DEECD that had not otherwise been anticipated.

Particulars

Email Mr Koster to Ms Keenan, Mr Hutchinson, Mr Grewal, Mr Tucker, Mr Dawkins and others, 24 August 2014 at 4.55pm.

(**JWS 24 August Further Advice disclosure was not necessary**).

66. On the morning of 25 August 2014, the Australian Financial Review published an article about Vocation "*Training Wheels Wobbly?*"

Particulars

"*Training Wheels Wobbly*" included the text:

> *The day before Victoria's Education Department advised BAWM its funding was being suspended pending the outcome of a full audit. We hear government auditors had been crawling over BAWM's books for the previous six weeks.*

67. The Vocation Board met by teleconference at 8.00 am on 25 August 2014 (**the 25 August Board Meeting**).

68. The attendees at the 25 August Board meeting were:

(a) the Directors;

(b) Mr Grewal;

(c) Mr Koster;

(d) Mr Rozsa;

(e) Ms Lawler; and

(f) Ms Alison Turtle of Vocation (**Ms Turtle**).

69. At the 25 August Board Meeting:

(a) Mr Koster or Mr Rozsa stated that JWS continued to maintain contact with the ASX;

(b) Mr Koster reconfirmed that the ASX had not required disclosure on 22 August 2014 and was satisfied with Vocation's response to date;

(c) Mr Koster or Mr Rozsa stated that they saw no additional issues in what had been raised in the *Training Wheels Wobbly* article;

(d) Mr Koster advised that while the ASX agreed that disclosure was not required under ASX Listing Rule 3.1, based on information provided by Vocation, in the light of media speculation the ASX thought it was in Vocation's interest to put out a response;

((a) to (d) above being **JWS Advice to the 25 August Board Meeting**);

(e) the Vocation Board confirmed the previous view that the matter was not material for disclosure under ASX Listing Rule 3.1 as the expected outcome of the investigation was that only a relatively small amount of funding was expected to be affected which was not material in Vocation's context and the outcome would not be expected to have a material effect on the price or value of Vocation's securities.

70. On 25 August 2014 between 8:10 am and 9:46 am, JWS and Ms Bonnici amended, and JWS settled the possible announcement to the ASX which had been considered by JWS on 24 August 2014, and is referred to at paragraphs 64 and 65 as follows:

> *Vocation is aware of press speculation regarding the Company's Victorian funding contracts. Vocation would like to reiterate that it takes its disclosure obligations extremely seriously and is comfortable it has complied with these obligations at all times. However in light of the speculation referred to above, Vocation considers it prudent to make the following points:*
>
> - *Vocation's funding contracts with the Victorian Department of Education and Early Childhood Development (DEECD) have not been suspended and are continuing.*
> - *The DEECD is undertaking a review of three of the courses conducted by Vocation for which Vocation receives funding under those contracts. As part of the review process, the DEECD has withheld recent payments under the funding contracts.*
> - *Vocation considers that neither the review nor its anticipated outcomes are material to Vocation.*
>
> *Vocation has had a longstanding and constructive relationship with the DEECD. Vocation is working with DEECD to bring the review to an early conclusion.*

The operation of funding contracts and the audit and review processes that accompany those are part of Vocation's normal business activities.

Particulars

Email Mr Rozsa to Mr Dawkins and others, copy to Mr Koster, 25 August 2014 8:10 am.

Email Mr Rozsa to Mr Hutchinson and others, copy to Mr Koster and others 25 August 2014 9:35 am.

Email Mr Rozsa to Mr Hutchinson and others, copy to Mr Koster and others 25 August 2014 9:46 am.

(**the JWS Advice on the terms of the 25 August 2014 ASX Announcement**).

71. On the morning of 25 August 2014, Vocation made an announcement to the ASX in the form settled by JWS (**the 25 August 2014 ASX Announcement**).

(vi) JWS advice on disclosure after the DEECD 26 August 2014 Letter

72. On 26 August 2014, the DEECD wrote to Vocation in relation to suspected breaches of the 2014-16 VET Funding Contracts, including that:

(a) the amount of funds claimed by BAWM and withheld excluding GST was $17,047,054;

(b) of that amount $9,377,929 (exclusive of GST) related to Warehousing and CSP;

(c) since 24 July 2014, BAWM had been under direction to suspend all commencements and new enrolments of Eligible Individuals and to suspend the commencement of delivery of Training Services to Eligible Individuals who had enrolled but not yet commenced training;

(d) since 5 August 2014, the DEECD had withheld payments of $1,693,547 to Aspin (exclusive of GST);

(e) of that amount, $1,684,098 related to claims for the Certificate of General Education for Adults (**CGEA**);

(f) since 5 August 2014, Aspin had been under direction to suspend all commencements and new enrolments of Eligible Individuals and to suspend the commencement of delivery of Training Services to Eligible Individuals who had enrolled but not yet commenced training;

(g) the Secretary of the DEECD had directed the DEECD to conduct a review addressing the processes Vocation and its group entities had in place to ensure that all Vocation's subsidiaries holding 2014-2016 VET Funding Contracts were and had been compliant from 1 January 2014;

(h) the Secretary was concerned that the deficiencies in Vocation Group's controls and processes extended to fundamental failures to comply with RTO standards;

(i) in the light of Vocation Group's acknowledgments of systemic flaws in its controls, the DEECD had a reasonable suspicion that funds claimed and/or paid for courses other than Warehousing and CSP were likely to be affected;

(j) the DEECD had a reasonable suspicion that Vocation Group's brokering arrangements had systemic flaws;

(k) the DEECD would now be scrutinising BAWM's brokering arrangements and training delivery across courses other than Warehousing and CSP, and if it ultimately concludes that money should not have been claimed and paid in relation to other courses, the DEECD reserved the right to recover monies from withheld funds; and

(l) a portion of the funds paid by the DEECD to BAWM between 1 January 2014 and 3 July 2014 could be recoverable by the DEECD from BAWM,

(**the DEECD 26 August 2014 Letter**).

73. The Vocation Board met by teleconference at 7:00pm on 26 August 2014 (**the 26 August 2014 Board Meeting**).

74. The attendees at the 26 August 2014 Board Meeting were:

(a) the Directors;

(b) Mr Grewal;

(c) Mr Koster;

(d) Mr Rozsa;

(e) Ms Bonnici;

(f) Mr Langtree;

(g) Amanda King of Vocation (**Ms King**);

(h) Ms Turtle; and

(i) Ms Lawler.

75. JWS had the DEECD 26 August 2014 Letter at, or before the time of, the 26 August Board Meeting.

76. At the 26 August 2014 Board Meeting, JWS advised Vocation that the matters raised by the DEECD in the DEECD 26 August 2014 Letter did not raise matters material for disclosure under ASX Listing Rule 3.1, as:

(a) there had been no loss of contracts;

(b) the expected outcome of the investigation continued to be that only a relatively small amount of funding was expected to be affected which was not material in Vocation's context; and

(c) the outcome would not be expected to have a material effect on the price or value of Vocation's securities.

(**JWS 26 August Advice that disclosure was not required**).

Particulars

Minutes of meeting of Vocation Board, 26 August 2014.

77. The Vocation Board met by teleconference at 3.00 pm on 28 August 2014 (the **28 August 2014 Board Meeting**).

78. The attendees at the 28 August 2014 Board Meeting were:

(a) Mr Dawkins;

(b) Mr Halley;

(c) Ms Tredenick;

(d) Mr Tucker;

(e) Mr Koster;

(f) Ms Bonnici;

(g) Ms King; and

(h) Ms Turtle.

79. The only matter discussed at the 28 August 2014 Board Meeting was the best approach to a meeting to be held with the DEECD later on 28 August 2014, which was to deal with the relationship between Vocation and the DEECD and (on Vocation's part) to secure the release of at least some funds withheld by the DEECD in the near term, in return for entering into a proposed pilot programme and the recommencement of enrolments.

Particulars

Vocation Board Minutes, 28 August 2014 Board Meeting.

80. JWS did not give advice to Vocation in the course of the 28 August 2014 Board Meeting as to any obligation of disclosure to the ASX.

(vii) JWS Advice on Announcements and Cleansing Statement; 5-12 September 2014

81. On 5 September 2014, Vocation:

(a) informed JWS that Vocation was proposing a capital raising of $75 million on Monday 8 September 2014; and

(b) asked JWS to prepare a draft Cleansing Statement, to go before the Vocation Board on 5 September 2014.

Particulars

Email Mr Hutchinson to Mr Rozsa 5 September 2014, 9.12 am.

82. On 5 September 2014, Nightingale Communications sent an email to Mr Hutchinson and Mr Rozsa with a draft announcement in relation to a proposed capital raising which:

(a) recited that Nightingale Communications had tried to position the capital raise as providing Vocation with balance sheet flexibility given Vocation's current facility was fully drawn; and

(b) suggested providing a general update on the Victorian review rather than reference back to the market disclosure of 25 August 2014, as the market disclosure of 25 August 2014 specified three courses being under review rather than all Victorian operations.

Particulars

Email Siobhan Weaver (**Ms Weaver**) to Mr Hutchinson and Mr Rozsa 5 September 2014, 10.48 am.

83. The Vocation Board met by teleconference at 3.00 pm on 5 September 2014 (**the 5 September 2014 Board Meeting**).

84. The attendees at the 5 September 2014 Board Meeting included:

(a) the Directors;

(b) Mr Grewal;

(c) Mr Rozsa;

(d) Mr Koster;

(e) Ms Lawler; and

(f) for part of the meeting, representatives of Macquarie.

85. At the 5 September 2014 Board Meeting:

(a) Mr Rozsa outlined the basis for a cleansing notice and for the Vocation Board to asses based on managements response to the due diligence questionnaire whether there were any matters requiring to be disclosed that had not previously been disclosed due to reliance on an exemption under ASX Listing Rule 3.1A; and

(b) it was agreed that a further meeting would be held on 7 September 2014 to provide a further update on the Victorian review and discuss if necessary any changes to the previous views on disclosure.

86. On 5 September 2014, Mr Grewal forwarded to Mr Rozsa a draft Due Diligence Questionnaire, being a precedent from Macquarie for offers which included share offers made in Australia (**the Draft Due Diligence Questionnaire**).

Particulars

Email Mr Grewal to Mr Rozsa, 5 September 2014, 4.04 pm.

87. The Draft Due Diligence Questionnaire included these questions and answers:

Q. *Discuss any known breaches of Issuers continuous disclosure policy. Is there any reason to suspect that the Issuers reporting system and compliant process is not being following correctly? Confirm that neither ASX nor ASIC has issued any notice or made any declaration regarding the Issuers continuous disclosure compliance.*

A. *None.*

...

Q. *Are you aware of any information (including Excluded Information, "inside information" or anything under consideration or discussion (no matter how preliminary) which would require, or could or will lead to the Issuer making any announcements of significance to the ASX?*

A. *No.*

88. On 5 September 2014, JWS advised Vocation that it had no comments on the Draft Due Diligence Questionnaire.

Particulars

Email Mr Rozsa to Mr Grewal, Mr Hutchinson, copy to Mr Koster and Sophia Bobeff of JWS (**Ms Bobeff**), 5 September 2014, 4.39 pm.

89. On 5 September 2014, JWS provided to Vocation documents which included a draft Cleansing Notice which included the following content:

As at the date of this notice, Vocation:

1. *has complied with the provisions of Chapter 2M of the Corporations Act and section 674 of the Corporations Act; and*
2. *confirms that there is no information that is excluded information for the purpose of section 708A(7) and (8) of the Corporations Act.*

(**Cleansing Notice Compliance Declaration**).

Particulars

Email Mr Rozsa to Mr Hutchinson and Mr Grewal 5 September 2014, 5.03 pm.

90. On 5 September 2014, Mr Grewal provided the documents drafted by JWS and referred to at paragraph 89, including the Cleansing Notice, to the Directors, with a copy to Mr Rozsa.

Particulars

Email Mr Grewal to the Directors 5 September 2014, 7.23pm.

91. On 5 September 2014, Mr Hutchinson sent Mr Rozsa a draft ASX Announcement in relation to the placement to institutional and sophisticated investors to raise funds for Vocation for final comments (**the Draft ASX Placement Announcement**).

Particulars

Email Mr Hutchinson to Mr Rozsa 5 September 2014, 6.49 pm.

92. The Draft Placement ASX Announcement included the following content:

> *"**Update on Victorian review***
>
> *There has been a broadening of the review process by the Victorian Department of Education and Early Childhood Development (**Department**). Vocation has been informed by the Department that the review will be completed by the 31st of October.*
>
> *While the review has had an impact on Vocation's Victorian operations and enrolment activity, this has been mitigated by organic growth across the group, including other parts of the Victorian business. Vocation continues to anticipate that the outcome of this review will not be material."*

93. On 5 September 2014, Mr Rozsa sent an email to Mr Hutchinson, with copy to persons including Mr Koster and Ms Bobeff in response to the email referred to at paragraph 91 with the following content:

> *Thanks Mark.*
>
> *No further comments from JWS.*

(**Mr Rozsa's approval of the Draft ASX Placement Announcement**).

Particulars

Email Mr Rozsa to Mr Hutchinson, 5 September 2014, 6.54 pm.

94. On 7 September 2014, Vocation and Nightingale Communications circulated further drafts of the Draft Placement ASX Announcement (**the Further Drafts of the ASX Placement Announcement**).

95. The Further Drafts of the ASX Placement Announcement:

(a) were sent to persons including Mr Rozsa; and

(b) included an update on *Victorian Review* which stated that the review process by the DEECD had been extended and Vocation continued to anticipate that the outcome of the review would not be material and had been informed by the DEECD that the review would be completed by 31 October.

Particulars

Email Mr Hutchinson to Mr Dawkins and Mr Rozsa 7 September 2014, 8.05 am.

Email Ms Weaver to Mr Hutchinson, Mr Dawkins and Mr Rozsa 7 September 2014, 11.46 am.

96. On 7 September 2014, the Vocation Board met by teleconference at 2.10 pm (**the 7 September 2014 Board Meeting**).

97. The attendees at the 7 September 2014 Board Meeting were:

(a) Mr Dawkins;

(b) Mr Hutchinson;

(c) Ms Tredenick;

(d) Mr Tucker;

(e) Mr Grewal;

(f) Mr Rozsa;

(g) Ms Bobeff; and

(h) Ms Lawler.

98. At the 7 September 2014 Board Meeting:

(a) Mr Hutchinson and Mr Dawkins advised that the situation in Victoria was still as expected and discussions/review with the management team would continue post the 7 September 2014 Board Meeting to help preparation with a meeting to be held the next day with the DEECD;

(b) Mr Hutchinson advised that to answer the due diligence management questionnaire for the proposed placement, a further thorough review over the weekend of all correspondence relating to the Victorian audit was conducted as well as a recent enrolment statistics;

(c) Mr Hutchinson confirmed that the overall enrolments for the Vocation Group over the last month had not been adversely impacted by the review;

(d) Mr Hutchinson reconfirmed his view that the impact on Vocation's business due to the Victorian review was not material;

(e) the Vocation Board discussed whether any additional disclosures to ASX were required in relation to the Victorian audit issue;

(f) the Vocation Board concluded none was required; and

(g) it was agreed to review the conclusion in relation to disclosure, following the outcome of the meeting with the DEECD on 8 September 2014.

Particulars

Minutes of Vocation Board Meeting 2.10 pm Sunday 7 September 2014.

99. On 7 September 2014, Mr Hutchinson sent an email to Ms Weaver, Mr Dawkins and Mr Rozsa with a further draft of the Draft ASX Placement Announcement (**the Revised Further Draft ASX Placement Announcement**).

Particulars

Email Mr Hutchinson to Ms Weaver, Mr Dawkins, Mr Rozsa, 7 September 2014, 3.48pm.

100. The Revised Further Draft ASX Placement Announcement included the following:

> ***Update on Victorian review***
>
> *As part of our regime of continuous disclosure, we are providing an update on the Victorian review.*
>
> *The review process by the Victorian Department of Education and Early Childhood Development (**Department**) has been extended. Vocation continues to anticipate that the outcome of this review will not be material and has been informed by the Department that the review will be completed by the 31st of October.*
>
> *Organic growth across the Group including in Victoria, has mitigated impacts of the review on Victorian operations.*

101. On 7 September 2014, JWS emailed a revised draft ASX Placement Announcement to Vocation,

(**the JWS 7 September draft ASX Announcement**).

Particulars

Email Ms Bobeff to Ms Weaver, copied to Mr Hutchinson, Mr Grewal, Mr Rozsa, Mr Koster and Emanuel Petros 7 September 2014, 4.54 pm.

102. In relation to the JWS 7 September draft ASX Announcement:

(a) deleted the sentence; "*We are providing an update on the Victorian review as part of our regime of continuous disclosure*";

(b) stated the deletion was because Vocation was taking the position that the review was not material, and therefore disclosure was not required under the continuous disclosure regime; and

(c) included the following words:

> *The review process by the Victorian Department of Education and Early Childhood Development (Department) has been extended. Vocation continues to anticipate that the outcomes of this review will not be material and has been informed by the Department that the review will be completed by the 31st of October.*

103. The Vocation Board met by teleconference at 1.00 pm on 8 September 2014 (**the 8 September 2014 Board Meeting**).

104. The attendees of the 8 September 2014 Board Meeting were:

(a) the Directors;

(b) Mr Grewal;

(c) Mr Rozsa;

(d) Ms Bobeff; and

(e) Ms Lawler.

105. At the 8 September 2014 Board Meeting:

(a) the JWS 7 September draft ASX Announcement was tabled;

(b) a Cleansing Statement to be lodged following the issue of shares under the Placement was tabled;

(c) each director confirmed that in their opinion, to the best of their knowledge and belief, there was no omission from the ASX announcement or the Cleansing Statement of information required by the *Corporations Act* or the *ASX Listing Rules*; and

(d) neither Mr Rozsa nor Ms Bobeff offered any qualification as to the accuracy of either of the tabled documents or the directors confirmation.

106. On 8 September 2014, Mr Hutchinson sent a further revision of the 7 September draft ASX Announcement to Ms Weaver and Mr Dawkins with copies to others including Mr Rozsa.

Particulars

Email Mr Hutchinson to Ms Weaver and Mr Dawkins 8 September 2014, 2.35 pm.

107. The announcement circulated by Mr Hutchinson included the following:

Update on Victorian review

The review by the Department is expected to conclude by the end of October. Vocation considers that neither the review nor its anticipated outcomes are material to Vocation.

108. On 8 September 2014, JWS provided further comments on the Draft Placement ASX Announcement, whereby it revised that draft announcement to include the following:

Update on Victorian review

The review by the Victorian Department of Education and Early Childhood Development is expected to conclude by the end of October. Vocation considers that neither the review nor its anticipated outcomes are material to Vocation.

(the content of the Draft Placement ASX Announcement set out at paragraph 91, 95, 100, 102 and 108, together **JWS proposed disclosure concerning the Victorian Review for the 10 September Announcement**).

109. On 8 September 2014, Mr Grewal circulated a number of documents by email to persons including Mr Hutchinson and Mr Rozsa including:

(a) a Cleansing Statement which utilised the Cleansing Notice Compliance Declaration; and

(b) an ASX announcement which utilised the wording set out at paragraph 102 above.

110. On 9 September 2014, Ms Tredenick asked Mr Rozsa to confirm that all was in order to make the placement offer as outlined in the Draft Placement ASX Announcement from any legal, disclosure or due diligence perspectives.

Particulars

Email Ms Tredenick to Mr Hutchinson and Mr Rozsa 9 September 2014, 9.29pm.

111. On 10 September 2014, UBS emailed Mr Hutchinson and others, including Ms Bobeff and Mr Rozsa, a further revised draft Placement ASX Announcement.

Particulars

Email Alex Dignam (**Mr Dignam**) to Mr Hutchinson and others 10 September 2014, 1.48 pm.

112. The further revised draft Placement ASX Announcement included the following content:

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.

113. Further versions of the draft placement ASX Announcement were sent by UBS to Mr Hutchinson and others, including JWS, on 10 September 2014, in each case incorporating the same wording set out at paragraph 112.

Particulars

Emails from Mr Dignam to Mr Hutchinson and others, including Mr Rozsa and Ms Bobeff, 10 September 2014, 8.31 am and 9.05 am.

114. JWS did not object to, comment on or seek to alter any Draft Placement ASX Announcement containing the wording set out at paragraph 112.

115. On 10 September 2014, Vocation made an announcement to the ASX which contained the words set out at paragraph 112 (**the 10 September 2014 ASX Announcement**).

116. On 12 September 2014, JWS provided a draft of a Cleansing Notice to UBS and Vocation.

Particulars

Email Ms Bobeff to Mr Dignam, Dane Fitzgibbon, Mr Grewal and Mr Rozsa 12 September 2014, at 11.14 am.

117. The Cleansing Notice provided under cover of the email referred to at paragraph 116 repeated the Cleansing Notice Compliance Declaration.

(viii) 18 September – Rear Window Publication and Further ASX Announcement

118. On 18 September 2014, the Rear Window: Australian Financial Review published the following about Vocation:

> *The business, floated in December last year, derived 80 per cent of its revenues from subsidiary BAWM in FY14. Ninety per cent of BAWM's revenue is in the form of contracts with the Victorian government to run training courses (i.e. Certificate III in landscape gardening, and so forth).*
>
> *Back on August 25, in response to a searching story in this column about the suspension of this government funding,* ***Vocation*** *advised the market rather obtusely that Victoria's Department of Education "is undertaking a review of three of the courses conducted by* ***Vocation*** *for which* ***Vocation*** *receives funding under those contracts. As part of the review process, the DEECD has withheld recent payments under the funding contracts".*
>
> *They added that "neither the review nor its anticipated outcomes are material to Vocation".*
>
> *We've tried to clarify whether that funding being withheld by the Department is just the funding for those three courses, or absolutely all of BAWM's funding - as in $5 million a month.*
>
> *Because if it's the latter (as is the chatter around the market), we'd call that fairly material! And, given that two weeks later* ***Vocation*** *tapped the market for $74 million in new capital, it would certainly raise questions about the capital raising's stated purpose of paying down debt and funding acquisitions. Should they have added "to keep the lights on"?*
>
> ***Vocation*** *has refused to comment, citing commercial confidentiality.*
>
> *The Department is equally tight-lipped.*
>
> *BAWM isn't the only Registered Training organisation facing scrutiny. Both sides of Victorian politics are turning the screws on the industry.*
>
> *Last year, then education minister Peter Hall promised to crack down on "channelling", a practice where "providers, more for their own purpose than for the outcome of students, are enrolling students in courses other than what they would have originally intended, for the purposes of receiving a greater subsidy level ... There has been a displacement where students enrolled in [one course] are now being enrolled in [another], then exiting at an earlier time to take the benefit of the higher subsidy. That is inappropriate and something the government is addressing." The minister also referred to "rampant rorting among some of the more unscrupulous providers in the industry".*

The policy platform Labor is taking to the November 29 election promises to "ensure that unscrupulous operators offering 'tick and flick' training are weeded out from the system".

A previous audit of BAWM, conducted by the Department in July 2013, found instances of channelling.

The Department has indicated its current audit of BAWM will be completed in October. It is understood that bureaucrat Lee Watts has a fair whack of audit personnel allocated to the case.

(**the 18 September Rear Window Article**).

119. On 18 September 2014, and following the publication of the 18 September Rear Window Article, the ASX emailed Vocation, copied to JWS, requesting confirmation as to:

(a) whether by the 25 August 2014 ASX Announcement Vocation intended to communicate there had been a withholding of all payments to BAWM and the withholding of all payments to Aspin (as opposed to funding just for those contracts);

(b) whether Vocation considered the market was sufficiently informed; and

(c) whether an adverse outcome that would see the DEECD cancelling the three courses referred to in the 25 August 2014 ASX Announcement would be material to Vocation.

Particulars

Email Simon Daniels to Mr Grewal, copy to Mr Koster and Mr Hutchinson, 18 September 2014, 11.01 am.

120. On 18 September 2014, Vocation sent to JWS a final statement which was then being checked by the DEECD with a request to check for inaccuracies.

Particulars

Email Mr Hutchinson to Mr Koster and Ms Weaver, 18 September 2014, 1.14 pm.

121. The final statement sent to JWS by Vocation included the following text:

Vocation is aware of ongoing press and market speculation regarding the Company's Victorian funding contracts.

Vocation would like to reiterate, as stated in ASX announcements on 25 August 2014 and 10 September 2014, that neither the review nor its anticipated outcomes are expected to be material to Vocation. The Company restates, and the Victorian Department of Education and Early Childhood Development (DEECD) has today confirmed:

- *Vocation's funding contracts with the DEECD have not been suspended and are continuing.*
- *The review continues to only relate to only three of the courses conducted by Vocation for which Vocation receives funding.*

- *As stated in the ASX announcement on 25 August 2014, DEECD has withheld recent payments under the funding contracts. To clarify, the withheld payments relate to all funding across only two of Vocation's four Victorian RTOs - the other contracted RTO's continue to receive all payments. Under the terms of the funding contract DEECD has the ability to withhold all payments to an RTO while undertaking a review of a course provided by that RTO, and the DEECD regularly applies this approach when undertaking its normal course review processes.*

- *The review from the DEECD remains focused on three courses (as previously stated) which comprise only a proportion of the payments withheld.*

Vocation has also advised that the review is expected to conclude no later than 31 October 2014.

[DEECD have advised that a portion of the withheld payment (not in relation to the three courses under review) will be released in XX day]

Vocation takes its disclosure obligations extremely seriously and remains comfortable that it has complied with these obligations at all times. The operation of funding contracts and the audit and review processes that accompany those are part of Vocation's normal business activities.

Vocation looks forward to maintaining a strong presence in Victoria in partnership with DEECD.

Particulars

Email from Mr Hutchinson to Ms Weaver and Mr Koster, 18 September 2014, 1.14 pm.

122. JWS advised Vocation that JWS was comfortable with an ASX Announcement having the text set out at paragraph 121 other than that the word *extremely* in the second last paragraph should be deleted as it sounded like over pleading.

Particulars

Email Mr Koster to Ms Weaver, copy to Mr Hutchinson and Mr Grewal 18 September 2014, 1.43 pm.

(**JWS approval of Vocation's draft of the 18 September Announcement**).

123. The DEECD advised Vocation that it could not endorse the proposed ASX Announcement because of concerns that it was misleading, including because:

(a) significant entitlements under contracts with BAWM and Aspin had been suspended;

(b) the announcement referred to suspension of funding but not the entitlement to commence new students who would attract government subsidy; and

(c) the announcement did not accurately reflect that approximately 90% of Vocation's payments from DEECD in 2014 related to BAWM and Aspin and that the majority of funding had been withheld, relating to the qualifications which was subject of the first phase of a DEECD review.

Particulars

Email Ms Peake to Mr Hutchinson, 18 September 2014, 1.40 pm.

124. On 18 September 2014, Vocation sent the DEECD email referred to at paragraph 123 to JWS, together with a revised proposed ASX Announcement.

Particulars

Email Mr Hutchinson to Mr Dawkins and others, copied to Mr Koster and others, 18 September 2014, 2.01 pm.

125. The text of the proposed ASX Announcement sent by Vocation to JWS was the following:

Vocation is aware of ongoing press and market speculation regarding the Company's Victorian funding contracts.

Vocation would like to reiterate, as stated in ASX announcements on 25 August 2014 and 10 September 2014, that neither the review nor its anticipated outcomes are expected to be material to Vocation. The Company restates:

- *Vocation's funding contracts with the DEECD have not been suspended and are continuing.*
- *The review continues to only relate to three of the courses conducted by Vocation for which Vocation receives funding.*
- *As stated in the ASX announcement on 25 August 2014, DEECD has withheld recent payments under the funding contracts. To clarify, the withheld payments relate to funding across two of Vocation's four Victorian RTOs. Vocation's remaining contracted RTO's continue to receive all payments. Under the terms of the funding contract DEECD has the ability to withhold payments to an RTO while undertaking a review of a course provided by that RTO, and the DEECD regularly applies this approach when undertaking its normal course review processes.*
- *The review from the DEECD remains focused on three courses (as previously stated).*

Vocation has also advised that the review is expected to conclude no later than 31 October 2014.

Vocation takes its disclosure obligations seriously and remains comfortable that it has complied with these obligations at all times. The operation of funding contracts and the audit and review processes that accompany those are part of Vocation's normal business activities.

Vocation looks forward to maintaining a strong presence in Victoria in partnership with DEECD.

126. JWS advised Vocation that the text of the proposed ASX Announcement referred to at paragraph 125 looked fine to Mr Koster.

Particulars

Email Mr Koster to Mr Hutchinson and other, 18 September 2014, 2.29 pm.

(**JWS further approval of Vocation's draft of the 18 September Announcement**).

127. Vocation made an announcement to the ASX in the terms set out at paragraph 125 on 18 September 2014 (**the 18 September 2014 Announcement**).

(ix) JWS advice concerning disclosure - 19 - 22 September 2014

128. On 19 September 2014, JWS advised Vocation that:

(a) Vocation didn't need to go in to a trading halt;

(b) Vocation didn't need to make a further announcement;

(c) if an announcement was made and the total amount held back by the DEECD was disclosed, investors might be confused as to the significance of the amount held back; and

(d) class action investors would not have a case because the decision made on 18 September not to make an announcement was in consultation with the ASX and the share placement of 18 September was made when Vocation's directors honestly held the view that the outcome of the review would not be material,

(**JWS' 19 September Advice that disclosure was not necessary**).

129. On 22 September 2014, the Australian Financial Review published an article in its "Rear Window" column headed "Glaring omission may be an understatement" (**the 22 September Rear Window article**).

130. The 22 September Rear Window Article included the information that Mr Hutchinson and Mr Grewal had briefed Ord Minnett Stockbrokers on 19 September 2014 with confirmation that all of the Victorian Government's funding to Vocation's main subsidiary BAWM had been suspended since July 2014, despite the omission of that information from Vocation's multiple statements to the ASX on the matter;

131. On 22 September 2014, Nightingale Communications, on behalf of Vocation, asked JWS if the publication of the 22 September 2014 Rear Window Article changed Vocation's disclosure position.

Particulars

Email Ms Weaver to Mr Koster, copied to Mr Hutchinson, Mr Grewal and Ms Kennan, 22 September 2014, 7.30 am.

132. JWS advised that it did not think that another announcement should be made on 22 September 2014.

(**JWS 22 September Advice that disclosure was not necessary**).

Particulars

Email Mr Koster to Ms Weaver, copied to Mr Hutchinson, Mr Grewal and Ms Kennan and Scott Cummins, 22 September 2014, 10.00 am.

133. JWS did not give any other advice as to the making of an announcement in response to the 22 September Rear Window article on any other day.

(x) JWS advice and the announcement of 27 October 2014

134. By 24 October 2014, negotiations between the DEECD and Vocation concerning the outcome of the DEECD's review of 3 qualifications, being Warehousing, CSP and CGEA had progressed to a point at which it was likely that the DEECD and Vocation would enter an agreement to resolve the issues raised by the DEECD with Vocation concerning those qualifications (**the Anticipated DEECD Settlement**).

135. Between 24 October 2014 and 27 October 2014, JWS advised Vocation on the terms of an announcement to be made to the ASX disclosing the terms of the Anticipated DEECD Settlement once it had been entered (**JWS Advice concerning the DEECD Settlement Announcement**).

Particulars

Email Mr Hutchinson to Mr Rozsa and Mr Koster, 24 October 2014, 10.31 am.

Email Ms Turtle to Mr Koster 24 October 2014, 3.08 pm.

Email Mr Koster to Mr Hutchinson and Ms Turtle, 24 October 2014, 3.55 pm.

Email Mr Koster to John Hurst (**Mr Hurst**), Mr Hutchinson and Ms Turtle, 24 October 2014, 5.38 am.

Email Mr Hutchinson to Mr Koster, Mr Hurst and Ms Turtle, 24 October 2014, 6.34 pm.

Email Mr Hurst to Mr Koster, 24 October 2014, 6.55 pm.

Email Mr Koster to Mr Hurst and Mr Hutchinson, 25 October 2014, 2.59 pm.

Email Mr Hutchinson to Mr Hurst and Mr Grewal, copied to Mr Koster, Mr Rozsa, Dougal Ross and Naomi Philp, 25 October 2014, 7.27 pm.

Email Mr Koster to Mr Dawkins and Mr Grewal, 25 October 2014, 8.04 pm.

Email Mr Koster to Mr Hurst, copied to Mr Hutchinson, Mr Rozsa, Dougal Ross (**Mr Ross**) and Naomi Philp (**Ms Philp**), 25 October 2014, 8.08 pm.

Email Mr Hutchinson to Mr Koster, 26 October 2014, 9.23 pm.

Teleconference 26 October, 10.30 am, attended by Mr Koster, Mr Hutchinson, Mr Grewal, Mr Dawkins, Mr Rozsa, Ms Philp, Mr Hurst and Mr Ross.

Email Mr Grewal to Mr Koster and Mr Dawkins, 26 October 2014, 1.28 am.

Email Mr Koster to Mr Hutchinson, 26 October 2014, 3.26 pm.

Email Mr Koster to Mr Hutchinson, 26 October 2014, 4.40 pm.

Email Mr Koster to Mr Grewal, 26 October 2014, 4.47 pm.

Email Mr Koster to Mr Hutchinson, 26 October 2014, 5.54 pm.

Email Mr Grewal to Mr Hutchinson, Mr Koster and Mr Hurst, 26 October 2014, 7.25 pm.

Email Mr Koster to Mr Grewal, 26 October 2014, 4.47 pm.

Email Mr Hutchinson to Mr Koster, 26 October 2014, 6.51 pm.

Email Mr Koster to Mr Hutchinson, 26 October 2014, 9.06 pm.

Email Mr Koster to Mr Hutchinson, 26 October 2014, 10.58 pm.

Email Mr Hurst to Mr Hutchinson, Mr Rozsa, Mr Koster and Mr Grewal, 27 October 2014, 7.16 am.

Email Mr Hurst to Mr Koster, Mr Grewal and Mr Hutchinson, 27 October 2014, 8.37 am.

Email Mr Grewal to Mr Hutchinson, Mr Koster, Mr Hurst and Mr Fitzgibbon, 27 October 2014, 9.10 am.

Email Mr Koster to Mr Hurst, Mr Grewal and Mr Hutchinson, 27 October 2014, 5.00 pm.

136. There was no advice given by JWS in relation to the necessary content of an announcement to be made to the ASX on 27 October 2014 (**the 27 October 2014 ASX Announcement**) as at 27 October 2014 which was not incorporated in the 27 October 2014 ASX Announcement.

(xi) Advice Omissions

137. Between late July and 27 October 2014, JWS did not advise Vocation that Vocation was obliged to make any disclosure to the ASX (in addition to such disclosures as Vocation did make) concerning:

(a) the DEECD's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

(b) the DEECD's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(c) the DEECD's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract; and

(d) the fact that the DEECD had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses.

(**the BAWM and Aspin Withholding and Suspension Measures**).

138. Between late July and 27 October 2014, JWS did not advise Vocation that in assessing whether or not Vocation was obliged to make disclosure to the ASX, it was necessary to take into account matters that did not have direct or immediate financial consequences including risks to Vocation's reputation.

(these omissions of advice and the absence of advice as to disclosure concerning the BAWM and Aspin withholding measures together "**JWS Advice Omissions**")

(xii) Vocation's Reliance on JWS Advice

139. Vocation relied on the:

(a) JWS Advice to the 25 August Board Meeting; and

(b) JWS advice on the terms of the 25 August 2014 ASX Announcement,

to publish the 25 August 2014 ASX Announcement.

140. Vocation relied on:

(a) the First JWS Disclosure Materiality Advice;

(b) the JWS August Telephone Advice;

(c) the JWS August ASX disclosure contention;

(d) the JWS August DEECD disclosure contention;

(e) the revised JWS August ASX disclosure contention;

(f) the JWS August disclosure denial;

(g) the JWS August ASX response advice;

(h) Mr Koster's 22 August Advice to the Vocation Board;

(i) JWS 24 August Advice Disclosure was not necessary;

(j) JWS 24 August Further Advice disclosure was not necessary;

(k) JWS Advice to the 25 August Board meeting;

(l) JWS Advice on the terms of the 25 August 2014 ASX announcement;

(m) JWS 26 August Advice that disclosure was not required; and

(n) drafting, and providing to Vocation, the Cleansing Notice Compliance Declaration,

to make the Cleansing Statement.

141. Vocation relied upon:

(a) each of the matters set out and referred to at paragraph 140;

(b) Mr Rozsa's approval of the Draft ASX Placement Announcement;

(c) the JWS 7 September draft ASX Announcement; and

(d) JWS proposed disclosure concerning the Victorian review for the 10 September Announcement,

to make the 10 September 2014 ASX announcement.

142. Vocation relied upon:

(a) each of the matters set out and referred to at paragraphs 140 and 141;

(b) JWS approval of Vocation's draft of the 18 September announcement; and

(c) JWS further approval of Vocation's draft of the 18 September announcement,

to make the 18 September 2014 announcement.

143. Vocation relied upon the JWS' Advice concerning the DEECD Settlement Announcement to make the 27 October 2014 ASX Announcement.

144. Vocation relied on the JWS advice given in, and in respect of,

(a) the First JWS Disclosure Materiality Advice;

(b) the JWS August Telephone Advice;

(c) the JWS August ASX disclosure contention;

(d) the JWS August DEECD disclosure contention;

(e) the revised JWS August ASX disclosure contention;

(f) the JWS August disclosure denial;

(g) the JWS August ASX response advice;

(h) Mr Koster's 22 August Advice to the Vocation Board;

(i) JWS 24 August Advice Disclosure was not necessary;

(j) JWS 24 August Further Advice disclosure was not necessary;

(k) JWS Advice to the 25 August Board meeting;

(l) JWS Advice on the terms of the 25 August 2014 ASX announcement;

(m) JWS 26 August Advice that disclosure was not required;

(n) drafting, and providing to Vocation, the Cleansing Notice Compliance Declaration;

(o) the Draft Placement ASX Announcement;

(p) the Further Drafts of the ASX Placement Announcement;

(q) the JWS 7 September draft ASX Announcement;

(r) Mr Rozsa's approval of the Draft ASX Placement Announcement;

(s) JWS proposed disclosure concerning the Victorian Review for the 10 September Announcement;

(t) JWS approval of Vocation's draft of the 18 September announcement;

(u) JWS further approval of Vocation's draft of the 18 September announcement;

(v) JWS' 19 September Advice that disclosure was not necessary;

(w) JWS' 22 September Advice that disclosure was not necessary;

(x) JWS' Advice concerning the DEECD Settlement Announcement; and

(y) the 27 October 2014 ASX Announcement.

(**the JWS Non-Disclosure Advice**) to not disclose the BAWM and Aspin Withholding and Suspension Measures, beyond the disclosure contained in:

(i) the 25 August 2014 ASX announcement;

(ii) the 10 September 2014 ASX announcement;

(iii) the 18 September 2014 ASX announcement;

(iv) the Cleansing Notice; and

(v) the 27 October 2014 ASX Announcement.

(xiii) JWS misleading conduct and breach of duty

145. If, and to the extent, that any of:

(a) the 25 August 2014 ASX announcement

(b) the 10 September 2014 ASX announcement;

(c) the 18 September 2014 ASX announcement;

(d) the Cleansing Notice; or

(e) the 27 October 2014 ASX Announcement,

were deceptive or misleading, or likely to mislead or deceive, or in breach of the duty of Vocation to the members of the Class or any of them, so as to create a liability of

Vocation to the Class, then JWS by its contravention of one or more of SS1041H, 1041E of the *Corporations Act*, S12DA of the *ASIC Act* and S18 of the *Australian Consumer Law* has caused the Applicant's and Group Members' Loss and Damage as alleged in the FACSOC and JWS is liable to the Applicant and the Group Members for that loss and damage pursuant to SS1041I and/or 1325 of the *Corporations Act*, SS12GF and/or 12GM of the *ASIC Act* and/or S236 of the *Australian Consumer Law.*

146. Further JWS represented to Vocation that each element of the JWS non-disclosure advice was given with due skill and care.

147. JWS did not exercise reasonable care and skill in giving the JWS non-disclosure Advice.

148. In giving the JWS Non Disclosure Advice, JWS conduct was deceptive or misleading or likely to mislead or deceive in contravention of:

(a) s.1041H of the *Corporations Act*;

(b) s.1041E of the *Corporations Act*;

(c) s.12DA of the *ASIC Act*; and/or

(d) s.18 of the *Australian Consumer Law.*

(**JWS' Misleading Conduct**)

149. Had JWS not omitted to advise Vocation as set out in the JWS Advice Omissions, Mr Dawkins would not have contravened ss 1041H and/or 1041E of the *Corporations Act,* s 12DA of the *ASIC Act* and/or s18 of the *Australian Consumer Law* as alleged by PwC in the Third Cross Claim (which contraventions are in any event denied).

150. If Vocation is in breach of duty to the members of the Class or any of them, so as to create a liability of Vocation to the Class, then JWS by JWS' Misleading Conduct and by JWS Advice Omission has caused the Applicant's and Group Members' Loss and Damage as alleged in the FACSOC and JWS is liable to the Applicant and the Group Members for that loss and damage.

151. If Mr Dawkins contravened ss 1041 H and/or 1041 E of the *Corporations Act*, s 12DA of the *ASIC Act* and/or s 18 of the *Australian Consumer Law* as alleged by PwC in the Third Cross Claim (which is denied), and if those contraventions caused or contributed to Applicant's and Group Members' Loss and Damage as alleged in the Third Cross Claim (which is also denied), then JWS by giving JWS' Non-Disclosure Advice and by JWS Advice Omission has caused and/or contributed to the Applicant's and Group Members' Loss and Damage, and JWS is liable to the Applicant and Group Members for that loss and damage by reason of JWS' Misleading Conduct.

152. By reason of the matters set out at paragraph 32 to 151 JWS was in breach of JWS Disclosure Duty of Care to Mr Dawkins.

153. As a consequence of each of:

(a) JWS' Misleading Conduct, and

(b) JWS' breach of JWS' Disclosure Duty of Care to Mr Dawkins,

if Mr Dawkins has a liability as alleged by the Third Cross Claim, he has suffered loss.

Particulars

Any liability of Mr Dawkins to PwC under the Third Cross Claim

154. By reason of the matters alleged in paragraphs 139-153 above, if Mr Dawkins is liable to PwC for the Applicant and Group Members for the Applicant's and Group Members' Loss and Damage as alleged in the Third Cross Claim (which is denied), then Mr Dawkins is entitled to damages against JWS.

Date: 4 December 2018

signed by Andrew Salgo
Baker McKenzie
Lawyer for the Cross Claimant by the Fourth Cross Claim

This pleading was prepared by Andrew Salgo, Amy Middlebrook and Jayme-Lyn Hendriks and settled by Marcus Pesman of Counsel.

Certificate of lawyer

I Andrew Salgo certify to the Court that, in relation to the statement of cross-claim (Fourth Cross-Claim) filed on behalf of the Cross Claimant by the Fourth Cross Claim, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 4 December 2018

....

signed by Andrew Salgo

Baker McKenzie

Lawyer for the Cross Claimant
by the Fourth Cross Claim

Schedule

No. VID 434 of 2015

Federal Court of Australia
District Registry: Victoria
Division: General

Applicant

Applicant	**CHERYL WHITTENBURY**

Respondents

First Respondent	**VOCATION LIMITED (ACN 166 631 330)**
Second Respondent	**PRICEWATERHOUSECOOPERS (a firm) (ABN 52 780 433 757)**

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	**PricewaterhouseCoopers (A Firm) (ABN 52 780 433 757)**
Cross-claimant	
Cross-respondents	
First Cross-respondent	
by Third Cross-claim:	**Mark Edward Hutchinson**
Second Cross-respondent	
by Third Cross-claim:	**Manvinder Grewal**
Third Cross-respondent	
by Third Cross-claim:	**John Sydney Dawkins**
Fourth Cross-respondent	

By Third Cross-claim:	**Stephen John Tucker**
Fifth Cross-respondent	
by Third Cross-claim:	**Michelle Kim Tredenick**
Sixth Cross-respondent	
by Third Cross-claim:	**Douglas ·James Halley**
Seventh Cross-respondent	
by Third Cross-claim:	**Vocation limited (ACN 166 631 330)**
Fourth Cross Claim	
Cross-claimant	John Dawkins
Cross-respondent	The Partners of Johnson Winter & Slattery