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

Statement of cross-claim (Sixth Cross-claim)
(Mr Hutchinson's cross-claim against JWS)

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 Sixth Cross-claims

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

Capitalised terms used but not defined in this Sixth Cross-Claim have the same meaning as in the Applicant's Further Amended Consolidated Statement of Claim dated 2 May 2018 (**FACSOC**).

If, which is denied, the First Cross-respondent to the Third Cross-claim (**Mr Hutchinson**) is liable to the Second Respondent / Cross-Claimant (**PwC**) to contribute to any losses for which PwC is liable to the Applicant or the Group Members, then, solely for the purposes of this cross-claim, Mr Hutchinson pleads against the Cross-respondent to the Sixth Cross-claim (**JWS**) as follows:

Filed on behalf of	Mark Hutchinson, Cross-claimant by Sixth Cross Claim / Cross-respondent to Third Cross-claim
Prepared by	Richard Harris
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[Form approved 01/08/2011]

A. PARTIES

1. Mr Hutchinson:

   (a) was Managing Director of the First Respondent (**Vocation**) from 6 November 2013 and remained in that position at all times during the Relevant Period;

   (b) was Chief Executive Officer of Vocation from 6 November 2013 and remained in that position at all times during the Relevant Period;

   (c) was a member of the due diligence committee (**DDC**) convened in around 5 September 2013 to prepare, review and verify the prospectus issued by Vocation on 18 November 2013 (**Initial Prospectus**) and the replacement prospectus issued on 27 November 2013 (**Replacement Prospectus**)

2. JWS:

   (a) at all relevant times carried on business as a partnership of solicitors, with its principal place of business in Adelaide;

   (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**):

   (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* (NT),

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

B. ALLEGATIONS IN FACSOC AND THIRD CROSS-CLAIM

3. For the purpose only of this cross-claim, Mr Hutchinson repeats the allegations in paragraphs 1 to 210 of FACSOC and paragraphs 15 to 17, 31 to 35, 47 to 51, 63 to 67, 79 to 82, 92 to 95, 101 to 103, 111 to 114, 124 to 128, 140 to 144, 156 to 159, 169 to 172, 197 to 230, and 259 to 262 of the Third Cross-Claim.

C. PROSPECTUS CONTRAVENTIONS

(i) JWS Prospectus Retainer

4. From 6 November 2013, JWS was retained to advise Vocation and each of the directors of Vocation (including Mr Hutchinson) (the **Directors**) in relation to an initial public offering of shares in Vocation, including in relation to the Initial Prospectus and the Replacement Prospectus (the **Prospectus Retainer**).

5. The scope of the Prospectus Retainer included:

   (a) for Mr Rosza or Mr Koster to attend and chair meetings of the DDC for the Initial Prospectus and Replacement Prospectus;

   (b) to assist with and make recommendations in relation to the design and implementation of the due diligence process for the Initial Prospectus and Replacement Prospectus;

   (c) to provide legal advice in relation to:

      (i) the due diligence process, including in relation to the design and scope of a reasonable due diligence process;

      (ii) the appropriate steps and processes to verify as accurate and complete the information to be contained in the Initial Prospectus and the Replacement Prospectus; and

      (iii) whether the process followed was adequate to ensure that Vocation and each of the Directors met their legal obligations concerning the Initial Prospectus and Replacement Prospectus;

   (d) to assist Vocation to draft the Initial Prospectus and the Replacement Prospectus (including review and comment on successive drafts of the Initial Prospectus (the **Draft Prospectus**));

   (e) to assist Vocation with the verification of the Initial Prospectus and the Replacement Prospectus;

   (f) to verify certain parts of the Initial Prospectus and the Replacement Prospectus, including statements with respect to risk factors concerning:

(i) loss of state or territory funding contracts, or access to Commonwealth Government funding programs;

(ii) change in government funding and support arrangements for the VET sector; and

(iii) regulatory risk;

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

(i) in relation to the Initial Prospectus and Replacement Prospectus, and 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 Due Diligence Planning Memorandum) as agreed with the DDC in accordance with the legal work plan approved by the DDC;

(h) 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;

(i) 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

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

(iii) the adequacy of the due diligence system;

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

(v) whether the Initial Prospectus and the Replacements Prospectus complied with the requirements of the *Corporations Act*;

Particulars

The terms of the Prospectus Retainer were partly express and partly implied. To the extent they were express, they were contained in the following documents:

- 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, 15 November 2013, page 2.
- Due Diligence Planning Memorandum signed by Mr Rozsa and others on 15 November 2013.

To the extent they were implied, the implication arose from the express terms of the Prospectus Retainer and the nature and content of the services provided by JWS.

6. It was an implied term of the Prospectus Retainer that JWS would exercise reasonable care and skill in providing the services and advice to Vocation.

(ii) JWS conduct

7. 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 and that reasonable inquiries had been made to confirm those matters;

(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 s. 731 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; and

(ii) had not been implemented substantially in accordance with the Due Diligence Planning Memorandum, or that there were any material deviations from it not approved by the Due Diligence Committee;

(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 ss. 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 advice referred to in sub-paragraphs (a) to (e).

(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;
- "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.

8. Between 22 November 2013 and 27 November 2013, JWS co-ordinated the preparation of the Replacement Prospectus and advised Vocation and the Directors on the Replacement Prospectus.

9. On 25 November 2013, JWS advised and represented to each of the members of the DDC and Directors that:

(a) nothing had come to their attention other than information included in the Replacement Prospectus that, in their opinion, would need to be included in the Replacement Prospectus to comply with the disclosure requirements in the Corporations Act; and

(b) nothing had come to their attention which would cause them to believe that the Replacement Prospectus contained a statement that is misleading or deceptive (including by omission); and

(c) JWS had exercised reasonable care and skill in giving the advice referred to in sub-paragraphs (a) and (b),

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

Particulars

The JWS Prospectus Representations were partly express and partly implied.

The representations in paragraphs (a) and (b) were made expressly by Mr Rosza at the meeting of the DDC on 25 November 2013 by his confirmation of those matters, as recorded in the minutes of that meeting.

The representation in paragraph (c) arises from the terms of the Prospectus Retainer and Mr Rosza's representation at the DDC meeting and in further emails to the DDC and the Directors that the Replacement Prospectus could be lodged.

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

  (a) any disclosures proposed to be made in the Initial Prospectus or the Replacement Prospectus were misleading and/or in contravention of any provision of the Corporations Act or any other law;

  (b) further disclosures were required in the Initial 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;

  (d) the defence in s. 731 of the Corporations Act would not be available, or there was a real risk that it may not be available, because the DDC had not made all inquiries that were reasonable in the circumstances;

  (e) the defence in s. 733(3) of the Corporations Act would not be available, or there was a real risk that it may not be available, because it was not reasonable to rely on the work carried out by and on behalf of the DDC (including by JWS).

(iii) Prospectus Contraventions

Negligence and breach of contract

11. In providing the services and advice to Vocation under the Prospectus Retainer, JWS knew or ought to have known that:

  (a) Mr Hutchinson, as a director of Vocation, could be liable under s. 729(1) of the Corporations Act if Vocation failed to comply with the requirements of ss. 710 and 728(1)(a) and (b) of the Corporations Act with respect to the Initial Prospectus and the Replacement Prospectus;

  (b) the liability of a director under s. 729(1) of the Corporations Act is strict, subject to the defences in ss. 731 and 733;

  (c) Mr Hutchinson did not receive any other legal advice as to his obligations and potential liability under ss. 710, 728 and 729 of the Corporations Act, and the availability of the defences under ss. 731 and 733 of the Corporations Act;

(d) Mr Hutchinson relied on JWS' services (including JWS' due diligence services) and advice in deciding whether or not to approve the Initial Prospectus and Replacement Prospectus for release to the market; and

(e) Mr Hutchinson would rely on JWS' services (including JWS' due diligence services) and advice to establish the defences in ss. 731 and 733 of the Corporations Act if the Initial Prospectus or Replacement Prospectus was found to contravene s. 728 of the Corporations Act.

12. By reason of:

(a) the position of JWS as the Australian legal adviser (other than in relation to tax matters) to Vocation in relation to the offer under the Initial Prospectus and the Replacement Prospectus;

(b) the fact that Mr Rosza and Mr Koster held themselves out as experienced legal advisers specialising in equity capital markets and ASX listings;

(c) the scope of work the subject of the Prospectus Retainer as pleaded in paragraph 5;

(d) the term of the Prospectus Retainer that JWS would exercise reasonable care and skill in providing advice to Vocation as pleaded in paragraph 6;

(e) the position of Mr Hutchinson as:

(i) Managing Director of Vocation;

(ii) Chief Executive Officer of Vocation; and

(iii) member of the DDC;

(f) JWS' knowledge of Mr Hutchinson's vulnerability as pleaded in paragraph 11;

in addition to the contractual duty pleaded in paragraph 6 above, JWS owed a tortious duty to Mr Hutchinson to exercise reasonable care and skill in:

(g) performing the due diligence services pursuant to the Prospectus Retainer; and

(h) providing advice to each of Vocation, the DDC, and the directors of Vocation concerning Vocation's disclosure obligations under ss. 710 and 728(1)(a) and (b) of the Corporations Act.

13. By reason of the matters pleaded at paragraphs 6 to 8, 35 to 58 and 120 to 135 of the FACSOC (including the paragraphs cross-referenced therein) and paragraphs 15 to 17 and 261 of the Third Cross-claim (each of which are denied, but are repeated solely for the purpose of this cross-claim):

(a) by giving the advice pleaded in paragraph 7 and 9 above and omitting to give the advice pleaded in 10 above, JWS breached the duty of care pleaded at paragraph 12 above and the term of the Prospectus Retainer pleaded in paragraph 6 above;

(b) but for the breaches pleaded in paragraph 13(a) above, JWS would have advised Mr Hutchison, the Directors and 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;

(c) had JWS given the advice pleaded in paragraph 13(b), Mr Hutchinson would have:

(i) not signed the letter to investors dated 18 November 2013 which appears at page 3 of the Replacement Prospectus;

(ii) caused the DDC to make all reasonable inquiries as to the matters disclosed by, and the sufficiency of disclosure in, the Replacement Prospectus before its publication;

(iii) taken steps to cause Vocation to disclose the matters alleged by the Applicant and PwC to have been omitted from the Replacement Prospectus in contravention of ss. 710 and 728(1)(a) of the Corporations Act; and

(iv) taken steps to cause Vocation to amend the statements in the Replacement Prospectus alleged by the Applicant and PwC to have been misleading in contravention of ss. 710 and 728(1)(b) of the Corporations Act;

(d) Mr Hutchinson has suffered loss and damage by virtue of the breaches pleaded in paragraph 13(a) above.

Particulars

Mr Hutchinson's loss and damage includes any liability of Mr Hutchinson to make contribution to any amount payable by PwC to the Applicant or Group Members.

Misleading and deceptive conduct

14. By making the JWS Prospectus Representations and the JWS Replacement Prospectus Representations and omitting to give the advice pleaded in paragraph 10 above, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of ss. 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in relation to financial services, within the meaning of ss. 12DA and 12BAB of the ASIC Act;

(c) likely to have the effect of increasing, reducing, maintaining or stabilising the price of financial products (being Vocation shares) within the meaning of s. 1041E of the Corporations Act;

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

15. By virtue of the matters pleaded at paragraphs 6 to 8, 35 to 58 and 120 to 135 of the FACSOC (including the paragraphs cross-referenced therein) and paragraphs 15 to 17 and 261 of the Third Cross-claim (each of which are denied, but are repeated solely for the purpose of this cross-claim):

(a) by making the JWS Prospectus Representations and omitting to give the advice pleaded in paragraph 8 above, JWS engaged in misleading or deceptive conduct (or conduct likely to mislead or deceive) in contravention of s. 18 of the Australian Consumer Law, s. 1041H of the Corporations Act and s. 12DA of the ASIC Act, and made statements which were false in a material particular in contravention of s. 1041E of the Corporations Act;

(b) but for the contraventions pleaded in paragraph 15(a) above, Mr Hutchinson would have:

(i) not signed the letter to investors dated 18 November 2013 which appears at page 3 of the Replacement Prospectus.

(ii) caused the DDC to make all reasonable inquiries as to the matters disclosed by, and the sufficiency of disclosure in, the Replacement Prospectus before its publication;

(iii) taken steps to cause Vocation to disclose the matters alleged by the Applicant and PwC to have been omitted from the Replacement Prospectus in contravention of ss. 710 and 728(1)(a) of the Corporations Act; and

(iv) taken steps to cause Vocation to amend the statements in the Replacement Prospectus alleged by the Applicant and PwC to have been misleading in contravention of ss. 710 and 728(1)(b) of the Corporations Act;

(c) Mr Hutchinson has suffered loss and damage caused by JWS's contraventions pleaded in paragraph 15(a) above.

Particulars

Mr Hutchinson's loss and damage includes any liability of Mr Hutchinson to make contribution to any amount payable by PwC to the Applicant or Group Members.

D. 2014 DISCLOSURE CONTRAVENTIONS

(i) JWS Disclosure Retainer

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

Particulars

The Disclosure Obligation Retainer is not in writing. The retainer, and the scope of the retainer pleaded in paragraph 17, is implied from the engagement of JWS to carry out the relevant services and the services provided by JWS pursuant to that engagement.

17. The scope of the Disclosure Obligation Retainer included:

(a) to review information provided by Vocation and the Directors to JWS for the purpose of considering whether or not Vocation had an obligation to disclose that information to the ASX;

(b) to advise Vocation and each of the Directors on how they were required to approach consideration of the question of whether information was required to be disclosed by Listing Rule 3.1 and s. 674 of the Corporations Act;

(c) to advise Vocation and each of the Directors as to whether or not Vocation had an obligation to disclose certain information to the market under s.674 of the Corporations Act and the ASX Listing Rules, as requested by Vocation or the Directors from time to time; and

(d) drafting, commenting and advising Vocation and each of the Directors on the content of proposed disclosures by Vocation to the ASX, as requested by Vocation or the Directors from time to time.

18. It was an implied term of the retainer pleaded in the previous paragraph that JWS would exercise reasonable care and skill in providing advice to Vocation and each of the Directors.

(ii) JWS conduct – August 2014

19. For the purposes only of this cross-claim, Mr Hutchinson repeats paragraphs 59 to 64 and 73 to 75 of the FACSOC.

20. On 1 August 2014 Vocation:

(a) provided JWS with a copy of the Department of Education and Early Childhood Development (**DEECD**) letter of 24 July 2014 referred to in paragraph 61 of the FACSOC;

(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; and

(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 on 1 August 2014.

21. On 1 August 2014 JWS advised Vocation that whether it had an ASX disclosure obligation in relation to the matters pleaded in paragraph 20 depended 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.

Particulars

Email Mr Rozsa to Ms Bonnici on 1 August 2014.

22. On or around 11 August 2014, JWS advised Mr Hutchinson that Vocation was not obliged to disclose to the ASX:

(a) the BAWM Investigation or the Aspin Investigation;

(b) the Victorian Funding Suspension;

(c) the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin.

Particulars

The advice was oral and was given by James Rozsa and/or Byron Koster (of JWS) to Mr Hutchinson.

23. On 21 August 2014, JWS advised Mr Hutchinson that:

(a) the BAWM Investigation or the Aspin Investigation and their likely outcomes were not material in the context of the whole of Vocation;

(b) Vocation was not obliged to disclose to the ASX:

(i) the BAWM Investigation or the Aspin Investigation;

(ii) the Victorian Funding Suspension;

(iii) the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin;

(c) if Vocation made an announcement to the market in response to press speculation, it should say that the BAWM Investigation and the Aspin Investigation were a 'limited review' and the investigations and their anticipated outcomes were not material;

(d) Vocation should tell the DEECD that:

(i) in the view of Vocation, the BAWM Investigation or the Aspin Investigation and their anticipated outcomes are not material in the context of the whole of Vocation; and

(ii) Vocation did not have ASX disclosure obligations in relation to the BAWM Investigation or the Aspin Investigation.

Particulars

Email from James Rozsa to Mark Hutchinson sent at 3.08 pm on 21 August 2014.

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

Email from Byron Koster to Mark Hutchinson sent at 4.04 pm on 21 August 2014.

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

Email from Byron Koster to Mark Hutchinson sent at 7.10 pm on 21 August 2014.

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

25. 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.

Particulars

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

26. 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 at 6.49pm on 21 August 2014.

27. On 21 August 2014, JWS advised Vocation in relation to the DEECD ASX Complaint that:

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

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

(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.

Particulars

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

28. On 22 August 2014, JWS proposed a letter from Vocation to the ASX which included statements to the effect that:

(a) 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.

Particulars

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

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

29. On 22 August 2014, Vocation sent the ASX a letter consistent with the advice received from JWS.

30. On 22 August 2014, JWS advised the Board of Vocation (including Mr Hutchinson) that Vocation was not obliged to disclose to the ASX:

(a) the BAWM Investigation or the Aspin Investigation;

(b) the Victorian Funding Suspension;

(c) the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin,

on the basis that:

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

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

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

Particulars

The advice was oral and was given by Byron Koster to the Board of Vocation during their Board meeting which commenced at around 11 am on 22 August 2014.

31. On 24 August 2014, JWS advised Mr Hutchinson that:

(a) Vocation was not obliged to disclose to the ASX:

(i) the BAWM Investigation or the Aspin Investigation;

(ii) the Victorian Funding Suspension;

(iii) the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin;

(b) in response to a proposal to make an ASX announcement confirming that Vocation's Board had consulted with external legal counsel and its view was that it had discharged its disclosure obligations, a statement of that nature was "fine" "from a legal perspective" if 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 from Byron Koster to Mark Hutchinson and others sent at 4.55 pm on 24 August 2014.

32. On 25 August 2014, JWS advised the Board of Vocation (including Mr Hutchinson) that:

(a) Vocation was not obliged to disclose to the ASX:

(i) the BAWM Investigation or the Aspin Investigation;

(ii) the Victorian Funding Suspension;

(iii) the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin;

(b) however, in light of the press speculation, the ASX thought that it was in Vocation's interest to put out a response.

Particulars

The advice was oral and was given by Byron Koster and James Rozsa to the Board of Vocation during their Board meeting on 25 August 2014.

33. On 25 August 2014, JWS:

(a) advised Vocation and Mr Hutchinson on the content of an ASX announcement to be made by Vocation in order to respond to press speculation and drafted the wording of that ASX announcement;

(b) settled the form of the ASX announcement released by Vocation on 25 August 2015 (the **25 August Announcement**), including settling any express or implied representations as alleged in paragraph 75 of the FACSOC;

(c) did not advise Vocation or Mr Hutchinson that the 25 August Announcement was liable to be regarded as misleading or deceptive.

Particulars

Email from James Rozsa to Mark Hutchinson and others sent at 9.29 am on 25 August 2014.

Email from James Rozsa to Mark Hutchinson and others sent at 9.35 am on 25 August 2014.

Email Mr Rozsa to Mr Hutchinson and others, copy to Mr Koster and others sent at 9.46 am on 25 August 2014.

34. On 26 August 2014, JWS advised the Board of Vocation (including Mr Hutchinson) that Vocation was not obliged to make any further disclosure to the ASX concerning:

(a) the BAWM Investigation or the Aspin Investigation;

(b) the Victorian Funding Suspension;

(c) the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin,

on the basis that:

(d) there had been no loss of contracts;

(e) the expected outcome of the investigations 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

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

Particulars

The advice was oral and was given by Byron Koster and James Rozsa to the Board of Vocation during their Board meeting on 26 August 2014.

35. On 28 August 2014, Mr Koster attended the Board meeting of Vocation held that day and did not advise the Board (including Mr Hutchinson) that Vocation was obliged to make further disclosure to ASX concerning:

(a) the BAWM Investigation or the Aspin Investigation;

(b) the Victorian Funding Suspension;

(c) the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin.

(iii) JWS conduct – September 2014 (capital raising)

36. For the purposes only of this cross-claim, Mr Hutchinson repeats paragraphs 79 to 89, 91 to 96 and 101 of the FACSOC.

37. On 5 September 2014, Mr Hutchinson:

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

(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.

38. On 5 September 2014, Mr Rozsa and Mr Koster attended the Board meeting of Vocation held that day and did not advise the Board (including Mr Hutchinson) that Vocation was obliged to make further disclosure to ASX concerning:

(a) the BAWM Investigation or the Aspin Investigation;

(b) the Victorian Funding Suspension;

(c) the Victorian Enrolment Suspension.

39. On 5 September 2014, Mr Grewal forwarded to Mr Rozsa a draft Due Diligence Questionnaire, being a precedent from Macquarie Capital (Australia) Limited for offers which included share offers made in Australia which had been populated with draft answers for Vocation (**the Draft Due Diligence Questionnaire**) and asked Mr Rozsa to review it.

Particulars

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

40. 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.*

Particulars

Macquarie Draft Due Diligence Questionnaire dated April 2013, page 8.

41. On 5 September 2014, JWS:

(a) advised Vocation that it had no comments on the Draft Due Diligence Questionnaire; and

(b) advised that the BAWM Investigation, Aspin Investigation, Victorian Funding Suspension and Victorian Enrolment Suspension did not require further disclosure to the ASX.

Particulars

Email Mr Rozsa to Mr Grewal, Mr Hutchinson, copy to Mr Koster and Ms Bobeff 5 September 2014, 4.39pm.

The advice in sub-paragraph (b) is implied from Mr Rosza's representation that he had no comments on the Draft Due Diligence Questionnaire.

42. On 5 September 2014, JWS provided Mr Hutchinson with 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;*

2. *confirms that there is no information that is excluded information for the purpose of section 708A(7) and (8) of the Corporations Act.*

Particulars

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

43. Between on or around 5 September 2014 to on or around 10 September 2014, JWS:

(a) advised Mr Hutchinson (amongst others) on the content of an ASX announcement to be made by Vocation in order to announce a share placement and drafted the wording of that ASX announcement;

(b) settled the contents of the ASX announcement, including settling any of the express or implied representations in the announcement alleged in paragraph 101 of the FACSOC;

(c) did not advise Vocation or Mr Hutchison that the ASX announcement was liable to be regarded as misleading or deceptive, or should have included the information referred to in paragraph 93 of the FACSOC; and

(d) did not advise Vocation or Mr Hutchinson that there was any reason that the Cleansing Notice could not be issued in the form set out in paragraph 42.

Particulars

Email from James Rosza to Mark Hutchinson and Manvinder Grewal, copied to Byron Koster and Sophia Bobeff, sent at 6.01pm on 5 September 2014.

Email from Mark Hutchinson to John Dawkins and James Rosza, copied to Siobhan Weaver and others, sent at 8.04am on 7 September 2014.

Email from Sophia Bobeff to Siobhan Weaver, copied to Mark Hutchinson and others, sent at 4.54pm on 7 September 2014.

Email from Sophia Bobeff to Siobhan Weaver, copied to Mark Hutchinson and others, sent at 3.29pm on 8 September 2014.

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

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

44. On 7 September 2014, Mr Rozsa attended the Board meeting of Vocation held that day and did not advise the Board (including Mr Hutchinson) that Vocation was obliged to make further disclosure to ASX concerning:

(a) the BAWM Investigation or the Aspin Investigation;

(b) the Victorian Funding Suspension;

(c) the Victorian Enrolment Suspension.

45. On 8 September 2014, Mr Rozsa attended the Board meeting of Vocation held that day and did not advise the Board (including Mr Hutchinson) that:

(a) the draft ASX Announcement tabled at that meeting (which JWS had been involved in drafting) was liable to be considered misleading or deceptive, or should have included the information referred to in paragraph 93 of the FACSOC;

(b) there was any reason that the Cleansing Notice could not be issued in the form set out in paragraph 42;

(c) Vocation was obliged to make further disclosure to ASX concerning:

(i) the BAWM Investigation or the Aspin Investigation;

(ii) the Victorian Funding Suspension;

(iii) the Victorian Enrolment Suspension.

(iv) JWS conduct – September 2014 (18 September 2014 announcement)

46. For the purposes only of this cross-claim, Mr Hutchinson repeats paragraphs 99 to 101 of the FACSOC.

47. On 18 September 2014, JWS:

    (a) advised Mr Hutchinson (amongst others) on the content of an ASX announcement to be made by Vocation in order to respond to the press speculation referred to in paragraph 99 of the FACSOC;

    (b) did not advise Vocation or Mr Hutchison that the ASX announcement was liable to be regarded as misleading or deceptive, including in relation to any of the express or implied representations alleged in paragraph 101 of the FACSOC.

Particulars

Email from Byron Koster to Manvinder Grewal sent at 10.05am on 18 September 2014.

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

Email from Byron Koster to Doug Halley, copied to Michelle Tredenick and others, sent at 1.48pm on 18 September 2014.

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

Email from Byron Koster to Mark Hutchinson, copied to John Dawkins and others, sent at 2.29pm on 18 September 2014.

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

48. On 19 September 2014, JWS advised Mr Hutchinson that:

    (a) Vocation did not need to go into a trading halt;

    (b) Vocation was not obliged to make any further disclosure to the ASX concerning:

        (i) the BAWM Investigation or the Aspin Investigation;

        (ii) the Victorian Funding Suspension;

        (iii) the Victorian Enrolment Suspension;

    (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;

    (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,

Particulars

Email from Byron Koster to Mark Hutchinson sent at 8.07 am on 19 September 2014.

49. On 22 September 2014, JWS advised Mr Hutchinson in response to an article in the Australian Financial Review on that day that:

(a) Vocation's announcement of 18 September 2018 was sufficient; and

(b) Vocation was not obliged to make any further disclosure concerning:

(i) the BAWM Investigation or the Aspin Investigation;

(ii) the Victorian Funding Suspension;

(iii) the Victorian Enrolment Suspension;

Particulars

Email from Byron Koster to Siobhan Weaver, copied to Mark Hutchinson and others, sent at 9.10 am on 22 September 2014.

(vi) JWS advice concerning disclosure – announcement of 27 October 2014

50. For the purposes only of this cross-claim, Mr Hutchinson repeats paragraphs 106 to 109 of the FACSOC.

51. Between on or around 21 October 2014 to 27 October 2014, JWS:

(a) advised Vocation and Mr Hutchison on the content of an ASX announcement to be made by Vocation if a settlement was reached with the DEECD;

(b) advised Vocation and Mr Hutchison on the content of an ASX announcement to be made by Vocation after settlement was reached with the DEECD on 27 October 2014;

(c) reviewed and drafted the wording of the 27 October Announcement (as defined in the FACSOC), including the express and implied representations alleged in paragraph 109 of the FACSOC;

(d) did not advise Vocation or Mr Hutchison that the 27 October Announcement was liable to be regarded as misleading or deceptive, nor that the 27 October Announcement omitted information that Vocation was required to disclose to the ASX.

Particulars

Email from Byron Koster to Mark Hutchinson, copied to James Rosza and Naomi Philp, sent at 8.44pm on 21 October 2014.

Email Mark Hutchinson to James Rozsa and Byron Koster, 24 October 2014, 10.31 am.

Email from Byron Koster to Mark Hutchinson and Ali Turtle, copied to James Rosza, sent at 3.55pm on 24 October 2014.

Email Byron Koster to John Hurst, Mr Hutchinson and Ms Turtle, at 5.38 am on 24 October 2014.

Email Mr Koster to Ms Hurst and Mr Hutchinson at 2.59pm on 25 October 2014.

Email from Byron Koster to John Hurst and Mark Hutchinson, copied to James Rosza and others. sent at 7.00pm on 25 October 2014.

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

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

Teleconference 26 October, 10.30 am, attended by Mr Koster, Mr Hutchinson, Mr Grewal, Mr Dawkins, Mr Rozsa, Naomi Philp, Mr Hurst and Dougal 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 from Mark Hutchinson to Byron Koster, copied to John Hurst and others, sent at 5.54pm on 26 October 2014, in response to email from Byron Koster sent at 5.54pm.

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 John 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 Dane Fitzgibbon, 27 October 2014, 9.10 am.

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

(vii) JWS disclosure advice omissions

52. Between on or around late July and 27 October 2014, JWS did not advise Vocation or Mr Hutchinson that Vocation was obliged to make disclosure to ASX (beyond that made in its ASX announcements of 25 August 2014, 10 and 18 September 2014 and 27 October 2014) concerning:

    (a) the BAWM Investigation or the Aspin Investigation;

    (b) the Victorian Funding Suspension;

    (c) the Victorian Enrolment Suspension; or

    (d) the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin.

53. Further and alternatively JWS represented to Vocation and Mr Hutchinson that each element of the continuous disclosure advice was given with due skill and care.

(vii) 2014 breaches

Negligence and breach of contract

54. In providing the advice and legal services pursuant to the Disclosure Obligations Retainer, at all times between late July and 27 October 2014, JWS knew or ought to have known that:

    (a) Mr Hutchinson, as Managing Director and Chief Executive Officer of Vocation, could be liable under s. 674(2A) of the Corporations Act if Vocation failed to comply with the requirements of s. 674(1) of the Corporations Act;

    (b) Mr Hutchinson could be liable under s. 79 of the Corporations Act, s. 12GB of the ASIC Act or s. 2 of the Australian Consumer Law if Vocation's statements to the market contravened sections 1041H or 1041E of the Corporations Act, s. 12DA of the ASIC Act or s. 18 of the Australian Consumer Law;

    (c) Mr Hutchinson did not receive any other legal advice as to his obligations and potential liability in relation to the matters pleaded in paragraphs 54(a) and 54(b) above;

    (d) Mr Hutchinson relied on JWS' advice in deciding whether or not to cause Vocation to disclose information to the market and whether or not to approve proposed statements to be disclosed to the market.

55. By reason of:

    (a) the position of JWS as the Australian legal adviser (other than in relation to tax matters) to Vocation in relation to the offer under the Initial Prospectus and the Replacement Prospectus;

(b) the fact that Mr Rosza and Mr Koster held themselves out as experienced legal advisers specialising in equity capital markets and ASX listings, including with respect to the continuous disclosure obligations of ASX listed entities;

(c) the scope of work the subject of the Disclosure Obligations Retainer as pleaded in paragraph 17;

(d) the term of the Disclosure Obligations Retainer that JWS would exercise reasonable care and skill in providing advice to Vocation as pleaded in paragraph 18;

(e) the position of Mr Hutchinson as:

(i) Managing Director of Vocation;

(ii) Chief Executive Officer of Vocation;

(f) JWS' knowledge of Mr Hutchinson's vulnerability as pleaded in paragraph 54;

in addition to the contractual duty of care pleaded at paragraph 18 above, JWS owed a tortious duty to Mr Hutchinson to exercise reasonable care and skill in in giving advice concerning Vocation's disclosure obligations under Listing Rule 3.1 ands. 674 of the Corporations Act.

56. By virtue of the matters pleaded at paragraphs 136 to 155, 162 to 179, 192 to 199 and 207 to 210 of the FACSOC (including the paragraphs cross-referenced therein) and paragraphs 31 to 35, 47 to 51, 63 to 67, 79 to 82, 92 to 95, 101 to 103, 111 to 114, 124 to 128, 139 to 144, 156 to 159, 169 to 172 of the Third Cross-claim (which are denied, but are repeated solely for the purpose of this cross-claim):

(a) by:

(i) giving the advice pleaded in paragraphs 21, 22, 23, 27, 28, 30, 31, 32, 33, 34, 41, 42, 43, 47, 48, 49and 51 above; and

(ii) omitting to give the advice pleaded in paragraphs 33, 35, 38, 43, 44, 45, 47, 51 and 52 above,

JWS breached:

(iii) the term of its retainer pleaded at paragraph 18 above;

(iv) the duty of care pleaded at paragraph 55 above.

(b) But for the breaches pleaded in paragraph 56(a) above JWS would have advised Vocation and Mr Hutchison that, or that there was a real risk that:

(i) prior to 25 August 2014, a failure to disclose information concerning the BAWM Investigation, Aspin Investigation, Victorian Funding Suspension, or Victorian Enrolment Suspension (or the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin) would constitute a contravention by Vocation of s. 674(1) of the Corporations Act;

(ii) prior to 27 October 2014, a failure to disclose further information concerning the BAWM Investigation, Aspin Investigation, Victorian Funding Suspension, or Victorian Enrolment Suspension (or the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin) would constitute a contravention by Vocation of s. 674(1) of the Corporations Act;

(iii) the 25 August 2014 ASX announcement, the 10 September 2014 ASX announcement, the 18 September 2014 ASX announcement, the Cleansing Notice or the 27 October ASX Announcement were deceptive or misleading, or likely to mislead or deceive in contravention of ss. 1041H and 1041E of the Corporations Act, s. 12DA of the ASIC Act and s. 18 of the Australian Consumer Law.

(c) Had JWS given the advice pleaded in paragraph 56(b) above, Mr Hutchinson would have:

(i) taken steps to cause Vocation to disclose information concerning the BAWM Investigation, Aspin Investigation, Victorian Funding Suspension or Victorian Enrolment Suspension (or the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin) prior to 25 August 2014;

(ii) taken steps to cause Vocation to disclose further information concerning the BAWM Investigation, Aspin Investigation, Victorian Funding Suspension or Victorian Enrolment Suspension (or the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin) prior to 27 October 2014;

(iii) taken steps to cause Vocation to amend the statements in the 25 August 2014 ASX announcement, the 10 September 2014 ASX announcement, the 18 September 2014 ASX announcement, the Cleansing Notice or the 27 October ASX Announcement so that those statements were not misleading or deceptive (or likely to mislead or deceive) or contained any information that was false in a material particular.

(d) Mr Hutchinson has suffered loss and damage by virtue of the breaches pleaded in paragraph 56(a) above.

Particulars

Mr Hutchinson's loss and damage is any liability of Mr Hutchinson to make contribution to any amount payable by PwC to the Applicant or a Group Member by reasons of his asserted liability to the Applicant and Group Members by PwC in the Third Cross-claim.

Misleading or deceptive conduct

57. By:

   (a) making the representations pleaded in paragraphs 21, 22, 23, 27, 28, 30, 31, 32, 33, 34, 41, 42, 43, 47, 48, 49and 51 and 53 above; and

   (b) omitting to give the advice pleaded in paragraphs 33, 35, 38, 43, 44, 45, 47, 51 and 52 above,

   JWS engaged in conduct which was:

   (c) in relation to financial products (being Vocation shares), within the meaning of ss. 1041H(1) and 1041H(2)(b) of the Corporations Act;

   (d) in relation to financial services, within the meaning of ss. 12DA and 12BAB of the ASIC Act;

   (e) likely to have the effect of increasing, reducing, maintain or stabilising the price of financial products (being Vocation shares) within the meaning of s. 1041E of the Corporations Act;

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

58. By virtue of the matters pleaded at paragraphs 136 to 155, 162 to 179, 192 to 199 and 207 to 210 of the FACSOC (including the paragraphs cross-referenced therein) and paragraphs 31 to 35, 47 to 51, 63 to 67, 79 to 82, 92 to 95, 101 to 103, 111 to 114, 124 to 128, 139 to 144, 156 to 159, 169 to 172 of the Third Cross-claim (each of which are denied, but are repeated solely for the purpose of this cross-claim):

   (a) by making the representations and omitting to give the advice pleaded in paragraph 57 above, JWS engaged in misleading or deceptive conduct (or conduct likely to mislead or deceive) in contravention of s. 18 of the Australian Consumer Law, s. 1041H of the Corporations Act and s. 12DA of the ASIC Act, and made statements which were false in a material particular in contravention of s. 1041E of the Corporation;

   (b) but for the contraventions pleaded in paragraph 58(a) above, Mr Hutchinson would have:

      (i) taken steps to cause Vocation to disclose information concerning the BAWM Investigation, Aspin Investigation, Victorian Funding Suspension or Victorian Enrolment Suspension (or the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin) prior to 25 August 2014;

(ii) taken steps to cause Vocation to disclose further information concerning the BAWM Investigation, Aspin Investigation, Victorian Funding Suspension or Victorian Enrolment Suspension (or the DEECD's direction to suspend enrolments for certain courses provided by BAWM and Aspin) prior to 27 October 2014;

(iii) taken steps to cause Vocation to amend the statements in the 25 August 2014 ASX announcement, the 10 September 2014 ASX announcement, the 18 September 2014 ASX announcement, the Cleansing Notice or the 27 October ASX Announcement so that those statements were not misleading or deceptive (or likely to mislead or deceive) or contained any information that was false in a material particular.

(c) Mr Hutchinson has suffered loss and damage by virtue of the breaches pleaded in paragraph 58(a) above.

Particulars

Mr Hutchinson's loss and damage includes any liability of Mr Hutchinson to make contribution to any amount payable by PwC to the Applicant or a Group Member by reasons of his asserted liability to the Applicant and Group Members by PwC in the Third Cross-claim.

AND THE CROSS-CLAIMANT CLAIMS:

A. Damages

B. Damages pursuant to s. 236 of the Australian Consumer Law

C. Damages pursuant to s. 1041I and/or s. 1325 of the Corporations Act.

D. Damages pursuant to s. 12GF of the ASIC Act.

E. Interest.

F. Costs.

Date: 6 December 2018

Signed by Richard Glenn Harris
Solicitor for Mr Hutchinson

This pleading was prepared by Stuart Lawrance and Jerome Entwisle of counsel.

Certificate of lawyer

I Richard Glenn Harris certify to the Court that, in relation to the statement of claim filed on behalf of the Cross-claimant by Sixth Cross-claim, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 6 December 2018

Signed by Richard Glenn Harris
Solicitor for Mr Hutchinson

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)**

Sixth Cross-claim

Cross-claimant	Mark Edward Hutchinson
Cross-respondent	The Partners of Johnson Winter & Slattery