



## DEFENCE OF THE THIRD CROSS-RESPONDENT TO CROSS-CLAIM

No. VID1072 of 2024

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### EDWIN PAUL CAYZER

Applicant

### PHOSLOCK ENVIRONMENTAL TECHNOLOGIES LIMITED (ACN 099 555 290) and others named in the schedule

Respondents

### KPMG (a firm) (ABN 51 194 660 183)

Cross-Claimant

### Phoslock Environmental Technologies Ltd (ACN 009 555 290) and others named in the Schedule

Cross-Respondents

### PROCEDURAL

1A. In this Defence to First Statement of Cross-Claim (**Defence**), the Third Cross-Respondent:

- a. will use the headings used in First Statement of Cross-Claim (**Claim**) for convenience only. Use of those headings is not an admission; and
- b. will use the terms defined in the Claim and/or the Amended Statement of Claim (**ASOC**), unless those terms are otherwise defined in this Defence to the Claim (**Defence**).

Filed on behalf of (name & role of party) Robert Paul Schuitema - Third Cross-Respondent

Prepared by (name of person/lawyer) David Healey, Counsel

Law firm (if applicable) Gilchrist Connell

Tel +61 2 8240 8009 Fax +61 2 8240 8099

Email cwright@gclegal.com.au

Address for service 24/6 O'Connell Street, SYDNEY, 2000 – NSW  
(include state and postcode)

- 1B. Pursuant to Order 2 of the orders of Stewart J made 18 July 2025, the requirements of rr 16.03, 16.07, 16.08 and 16.41 of the *Federal Court Rules 2011* (Cth) have been dispensed with to the extent stated in the Order.
- 1C. The Third Cross-Respondent presently intends to seek leave to submit that he has no case to answer, either at the close of the Applicant's case in chief or at the close of the Cross-Claimant's case in chief or at some other appropriate time.

#### **PRIVILEGE CLAIMED**

- 1D. Nothing in this Defence should be taken to amount to an express or implied waiver of any privilege of the Third Cross-Respondent against self-incrimination or privilege against self-exposure to penalty.
- 1E. The Third Cross-Respondent reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case, including to plead:
- a. a positive defence;
  - b. relief from liability (which is denied) pursuant to section 1318 of the *Corporations Act 2001* (Cth) (**Corporations Act**);
  - c. a reduction of liability (which liability is denied) under section 1041I(1B) of the *Corporations Act*, section 12GF(1B) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and section 137B of the *Competition and Consumer Act 2010* (Cth) (**CCA**); and
  - d. proportionate liability (which liability is denied) for apportionable claims pursuant to Division 2A, Part 7.10 of the *Corporations Act*, Subdivision GA of Division 2 of Part 2 of the *ASIC Act* and Part VIA of the *CCA*.

#### **CROSS-CLAIM**

1. In answer to paragraph 1 of the First Cross-Claim (**Claim**), the Third Cross-Respondent:
  - a. refers to and repeats the matters set out in his Defence to Amended Statement of Claim filed 11 July 2025 in paragraphs 1 to 7, 14 to 19, 27 to 48 and 53 to 61;

- b. says that several of the paragraphs of the Cross-Claimant's Defence to Amended Statement of Claim (**KPMG Defence**) do not advance a claim or make allegation against the Third Cross-Respondent;
- c. says that paragraph 1 of the Claim is unclear as to the manner in which it is said to apply to the Third Cross-Defendant and is embarrassing; and
- d. in the circumstances set out above, does not admit paragraph 1 of the Claim and otherwise:
  - i. relies upon Order 2 of the Orders made 18 July 2025;
  - ii. claims privilege against self-exposure to penalty and privilege against self-incrimination (**Privilege**);
  - iii. does not plead to paragraph 1; and
  - iv. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

**A. KPMG Retainers**

- 2. In answer to paragraph 7 of the Claim, the Third Cross-Respondent:
  - a. admits that there were express terms in the 2017 Retainer and the 2018 Retainer;
  - b. admits that the terms of the 2017 Retainer are to be found in or attached to a letter dated 24 November 2017;
  - c. says that the terms of the 2018 Retainer are to be found in or attached to a letter dated 18 December 2018;
  - d. repeats and relies upon the terms of the 2017 Retainer and the terms of the 2018 Retainer as if fully set out herein;
  - e. otherwise denies paragraph 2; and
  - f. otherwise:
    - i. relies upon Order 2 of the Orders made 18 July 2025;

- ii. claims Privilege;
- iii. does not plead to paragraph 2; and
- iv. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

3. In answer to paragraph 3 of the Claim, the Third Cross-Respondent:

- a. denies that the pleaded financial reports did not give a true and fair view of the financial position and performance of Phoslock for the relevant reporting period and/or were not prepared in compliance with Australian Accounting Standards;
- b. otherwise denies paragraph 3; and
- c. otherwise:
  - i. relies upon Order 2 of the Orders made 18 July 2025;
  - ii. claims Privilege;
  - iii. does not plead to paragraph 3; and
  - iv. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

4. In answer to paragraph 4 of the Claim, the Third Cross-Respondent:

- a. denies paragraph 4 of the Claim;
- b. repeats paragraphs 3 of the Defence above; and
- c. otherwise:
  - i. relies upon Order 2 of the Orders made 18 July 2025;
  - ii. claims Privilege;
  - iii. does not plead to paragraph 4; and

- iv. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

**B. MISLEADING CONDUCT**

**FY18 Financial Report**

- 5. In answer to paragraph 5 of the Claim, the Third Cross-Respondent:
  - a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 5; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
  
- 6. In answer to paragraph 6 of the Claim, the Third Cross-Respondent:
  - a. says that the “officers or employees of Phoslock” referred to in paragraph 6(b) have not been identified;
  - b. relies upon Order 2 of the Orders made 18 July 2025;
  - c. claims Privilege;
  - d. does not plead to paragraph 6; and
  - e. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
  
- 7. In answer to paragraph 7 of the Claim, the Third Cross-Respondent:
  - a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 7; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

**Extended FY18 Financial Report**

8. In answer to paragraph 8 of the Claim, the Third Cross-Respondent:
  - a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 8; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
  
9. In answer to paragraph 9 of the Claim, the Third Cross-Respondent:
  - a. says that the “officers or employees of Phoslock” referred to in paragraph 9(b) have not been identified;
  - b. relies upon Order 2 of the Orders made 18 July 2025;
  - c. claims Privilege;
  - d. does not plead to paragraph 9; and
  - e. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
  
10. In answer to paragraph 10 of the Claim, the Third Cross-Respondent:
  - a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 10; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
  
11. In answer to paragraph 11 of the Claim, the Third Cross-Respondent:
  - a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;

- c. does not plead to paragraph 11; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
12. In answer to paragraph 12 of the Claim, the Third Cross-Respondent:
- a. says that the “officers or employees of Phoslock” referred to in paragraph 12(b) have not been identified;
  - b. relies upon Order 2 of the Orders made 18 July 2025;
  - c. claims Privilege;
  - d. does not plead to paragraph 9; and
  - e. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
13. In answer to paragraph 13 of the Claim, the Third Cross-Respondent:
- a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 13; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

### **Contraventions**

14. In answer to paragraph 14 of the Claim, the Third Cross-Respondent says that if, which has not been admitted, KPMG proves that the Phoslock Representations were made, and were made by the Third Cross-Respondent, and the Schuitema Representations were made, then those representations were made:
- a. in trade or commerce within the meaning of section 18 of the Australian Consumer Law; and/or

- b. if KPMG is liable to the Applicant or any Group Member under section 1041H of the Corporations Act as pleaded in the ASOC, in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act; and/or
  - c. if KPMG is liable to the Applicant or and Group Member under section 12A of the ASIC Act as pleaded in the ASOC, in trade or commerce and in relation to financial services within the meaning of section 12DA of the ASIC Act.
15. In answer to paragraph 15 of the Claim, the Third Cross-Respondent:
- a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 15; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
16. In answer to paragraph 16 of the Claim, the Third Cross-Respondent:
- a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 16; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
17. In answer to paragraph 17 of the Claim, the Third Cross-Respondent:
- a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 17; and

d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

18. In answer to paragraph 18 of the Claim, the Third Cross-Respondent:

a. relies upon Order 2 of the Orders made 18 July 2025;

b. claims Privilege;

c. does not plead to paragraph 18; and

d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

**Loss or damage**

19. The Third Cross-Respondent does not know and therefore cannot admit paragraph 19 of the Claim and otherwise:

a. relies upon Order 2 of the Orders made 18 July 2025;

b. claims Privilege;

c. does not plead to paragraph 19; and

d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

20. The Third Cross-Respondent does not know and therefore cannot admit paragraph 20 of the Claim and otherwise:

a. relies upon Order 2 of the Orders made 18 July 2025;

b. claims Privilege;

c. does not plead to paragraph 20; and

d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

21. The Third Cross-Respondent does not know and therefore cannot admit paragraph 21 of the Claim and otherwise:

- a. relies upon Order 2 of the Orders made 18 July 2025;
- b. claims Privilege;
- c. does not plead to paragraph 21; and
- d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

22. In answer to paragraph 22 of the Claim, the Third Cross-Respondent:

- a. repeats paragraph 4 of the Defence above; and
- b. otherwise:
  - i. relies upon Order 2 of the Orders made 18 July 2025;
  - ii. claims Privilege;
  - iii. does not plead to paragraph 22; and
  - iv. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

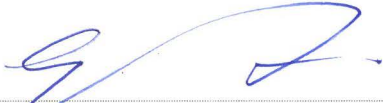
**C. CONTRIBUTION**

23. The Third Cross-Respondent denies paragraph 23 of the Claim and otherwise:

- a. relies upon Order 2 of the Orders made 18 July 2025;
- b. claims Privilege;
- c. does not plead to paragraph 23; and
- d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

24. The Third Cross-Respondent denies paragraph 24 of the Claim and otherwise:
  - a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 24; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
  
25. The Third Cross-Respondent denies paragraph 25 of the Claim and otherwise:
  - a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 25; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
  
26. The Third Cross-Respondent denies paragraph 26 of the Claim and otherwise:
  - a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 26; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.
  
27. The Third Cross-Respondent denies paragraph 27 of the Claim and otherwise:
  - a. relies upon Order 2 of the Orders made 18 July 2025;
  - b. claims Privilege;
  - c. does not plead to paragraph 27; and
  - d. reserves the right to seek leave to amend the Defence after the Cross-Claimant has presented its case.

Date: 29 August 2025

A handwritten signature in blue ink, appearing to be 'CEW', is written above a horizontal dotted line.

Signed by Cecilia Elizabeth Wright  
Lawyer for the Third Respondent

This pleading was prepared by David Healey of Counsel.

**Certificate of lawyer**

I, Cecilia Elizabeth Wright, certify to the Court that, in relation to the defence filed on behalf of the Third Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 29 August 2025.



---

Signed by Cecilia Elizabeth Wright  
Lawyer for the Third Respondent

**Schedule of Parties**

**Edwin Paul Cayzer**

Applicant

**Phoslock Environmental Technologies Ltd (ACN 099 555 290)**

First Respondent

**Laurence Stephen Freedman AM**

Second Respondent

**Robert Paul Schuitema**

Third Respondent

**KPMG (a firm) (ABN 51 194 660 183)**

Fourth Respondent

**KPMG (a firm) (ABN 51 194 660 183)**

Cross-claimant

**Phoslock Environmental Technologies Ltd (ACN 099 555 290)**

First Cross-Respondent

**Laurence Stephen Freedman AM**

Second Cross-Respondent

**Robert Paul Schuitema**

Third Cross-Respondent

## NOTICE OF FILING

### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 29/08/2025 4:22:41 PM AEST  
Date Accepted for Filing: 1/09/2025 6:31:04 PM AEST  
File Number: VID1072/2024  
File Title: EDWIN PAUL CAYZER v PHOSLOCK ENVIRONMENTAL  
TECHNOLOGIES LTD (ACN 099 555 290) & ORS  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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

The date of the filing of the document is determined pursuant to the Court's Rules.