



Defence to Further Amended Statement of Claim

No. VID1072 of 2024

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

Edwin Paul Cayzer

Applicant

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

Respondents

In response to the Further Amended Statement of Claim filed on ~~21 March 2025~~ 28 September 2025 (FASOC), the Fourth Respondent (**KPMG**) pleads as follows.

A. THE PARTIES AND GROUP MEMBERS

A.1 The Applicant and the Group Members

1. In response to paragraph 1 of the FASOC, KPMG:

- a. says that throughout this Defence, references to "**Phoslock**" are to:
 - i. "Phoslock Water Solutions Limited", which was the name of the First Respondent between 1 December 2005 and 16 August 2018; and
 - ii. "Phoslock Environmental Technologies Ltd", which has been the name of the First Respondent since 17 August 2018;
- b. denies that it has caused loss or damage to the Applicant or Group Members;
and
- c. otherwise does not know and cannot admit the paragraph.

Filed on behalf of (name & role of party) KPMG (a firm) (ABN 51 194 660 183), Fourth Respondent

Prepared by (name of person/lawyer) John Pavlakis

Law firm (if applicable) Ashurst Australia

Tel (02) 9258 6062

Fax (02) 9258 6999

Email john.pavlakis@ashurst.com

Address for service Level 7, 39 Martin Place, Sydney NSW 2000
(include state and postcode)

2. In response to paragraph 2 of the FASOC, KPMG:
 - a. admits subparagraph 2(a); and
 - b. otherwise does not know and cannot admit the paragraph.
3. KPMG does not know and cannot admit paragraph 3 of the FASOC.

A.2 The Respondents

4. KPMG admits paragraph 4 of the FASOC.
5. In response to paragraph 5 of the FASOC, KPMG:
 - a. admits subparagraphs 5(a) to 5(d);
 - b. in respect of subparagraph 5(e), says that Mr Freedman held an indirect interest in 19,258,824 ordinary shares in Phoslock that were disposed of for \$25,961,510 on 26 August 2019; and
 - c. otherwise does not know and cannot admit the paragraph.
6. In response to paragraph 6 of the FASOC, KPMG:
 - a. admits subparagraphs 6(a) to 6(c);
 - b. in respect of subparagraph 6(d):
 - i. says that Mr Schuitema was, from the start of the Relevant Period (being the period between 11 October 2018 and 17 September 2020 (inclusive)) until 25 May 2020, an officer of Phoslock within the meaning of s 9 of the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - ii. says that ASX Listing Rule 19.12 does not define “officer”; and
 - iii. otherwise denies the subparagraph;
 - c. in respect of subparagraph 6(e), says that Mr Schuitema held a direct and indirect interest in 3,200,000 ordinary shares in Phoslock that were disposed of for \$4,315,804 on 26 August 2019; and
 - d. otherwise does not know and cannot admit the paragraph.

6A. In response to paragraph 6A of the FASOC, KPMG:

- a. refers to and repeats paragraphs 5 and 6 above;
- b. says that:
 - i. any information which an officer of Phoslock had, or which ought reasonably to have come into his or her possession in the course of the performance of his or her respective duties, was information of which Phoslock was aware within the meaning of ASX Listing Rule 19.12; and
 - ii. Mr Schuitema and Mr Freedman were officers of Phoslock within the meaning of ASX Listing Rule 19.12 for so long as they were directors of Phoslock; and
- c. otherwise denies the paragraph.

7. In response to paragraph 7 of the FASOC, KPMG:

- a. in respect of subparagraph 7(a):
 - i. says that KPMG offered, at all material times, professional services, which included audit services, accounting services and advisory services, including in Victoria, New South Wales and elsewhere in Australia;
 - ii. says that KPMG (ABN 51 194 660 183) is a partnership under the *Partnership Act 1982 (NSW)* (the **NSW Partnership Act**); and
 - iii. otherwise denies the subparagraph;
- b. in respect of subparagraph 7(b):
 - i. says that, in respect of the conduct alleged in the FASOC, the only proper persons against whom these proceedings may be brought are those persons who were partners of KPMG during the Relevant Period; and
 - ii. otherwise admits the subparagraph;
- c. in respect of subparagraph 7(c):
 - i. says that Ms Cain was registered as an auditor under Part 9.2 of the Corporations Act with registered auditor number 482839; and

- ii. otherwise admits the subparagraph;
- d. in respect of subparagraph 7(d):
- i. refers to and relies on the provisions of the *Partnership Act 1958 (Vic)* (the **Victorian Partnership Act**) and the NSW Partnership Act for their full force and effect;
 - ii. says that each partner of KPMG during the Relevant Period and at all material times was an agent of KPMG to the extent provided for in s 9 of the Victorian Partnership Act and s 5 of the NSW Partnership Act for the purpose of the business of the partnership;
 - iii. says that, in respect of the conduct alleged in the FASOC:
 - 1. pursuant to s 9(1) of the NSW Partnership Act and/or s 13 of the Victorian Partnership Act, every partner of KPMG is liable jointly with the other partners for any debts and obligations of the firm incurred while the partner was a partner; and
 - 2. pursuant to s 10(1) of the NSW Partnership Act and/or s 13 of the Victorian Partnership Act, in the event (which is denied) that any wrongful act or omission of Ms Cain acting in the ordinary course of the business of the firm, or with the authority of her co-partners, caused loss or injury (which is denied) to any person not being a partner of the firm, KPMG would be liable therefor to the same extent as Ms Cain (which is denied); and
 - iv. otherwise denies the subparagraph.

B. PHOSLOCK'S REPORTING REQUIREMENTS

8. In response to paragraph 8 of the FASOC, KPMG:
- a. in respect of subparagraph 8(a):
 - i. says that Phoslock was subject to and bound by ss 292(1), 295, 296(1), 297, 301(1), 302, 303, 314, 315(1), 319(1) and 320 of the Corporations Act;

- ii. refers to and relies on those provisions of the Corporations Act for their full force and effect;
 - iii. refers to and relies on the provisions of Part 2M.3 of the Corporations Act for their full force and effect;
 - iv. admits subparagraphs 8(a)(i) to 8(a)(v); and
 - v. otherwise denies the subparagraph;
- b. in respect of subparagraph 8(b):
- i. refers to and relies on the provisions of ASX Listing Rules 4.3A, 4.3B, 4.3D, 4.5 and Appendix 4E for their full force and effect; and
 - ii. admits the subparagraph.
- c. in respect of subparagraph 8(c)(i):
- i. says that throughout the Relevant Period prior to 26 May 2020, Phoslock was subject to and bound by ss 111AP(1) and 674(1) of the Corporations Act and ASX Listing Rule 3.1;
 - ii. refers to and relies on the provisions of ss 111AP(1) and 674(1) of the Corporations Act and ASX Listing Rule 3.1 for their full force and effect; and
 - iii. otherwise denies the subparagraph;
- d. in respect of subparagraph 8(c)(ii):
- i. says that between 26 May 2020 and 23 September 2020, section 5 of the Corporations (Coronavirus Economic Response) Determination (No 2) 2020 modified the operation of s 674(2)(c) of the Corporations Act;
 - ii. says that between 24 September 2020 and 21 March 2021, section 6 of the Corporations (Coronavirus Economic Response) Determination (No. 4) 2020 modified the operation of s 674(2)(c) of the Corporations Act;
 - iii. refers to and relies on the terms of s 5 of the Corporations (Coronavirus Economic Response) Determination (No 2) 2020 and s 6 of the

Corporations (Coronavirus Economic Response) Determination (No. 4)
2020 for their full force and effect; and

- iv. otherwise admits the subparagraph.
9. KPMG admits paragraph 9 of the FASOC.
10. In response to paragraph 10 of the FASOC, KPMG:
- a. admits subparagraphs 10(b)(i) and (iii);
 - b. refers to and relies on the terms of AASB 101 for their full force and effect; and
 - c. otherwise denies the paragraph.
11. In response to paragraph 11 of the FASOC, KPMG:
- a. refers to and relies on the terms of AASB 110 for their full force and effect; and
 - b. admits the paragraph.
12. In response to paragraph 12 of the FASOC, KPMG:
- a. admits subparagraphs 12(a) and 12(b); and
 - b. in respect of subparagraphs 12(c) and 12(d):
 - i. refers to and repeats paragraph 8 of this Defence;
 - ii. refers to and relies on the provisions of ASX Listing Rules 4.5, 3.1 and 3.1A for their full force and effect; and
 - iii. otherwise denies the subparagraphs.
13. KPMG admits paragraph 13 of the FASOC.
- C. DIRECTORS' ROLES**
14. KPMG admits paragraph 14 of the FASOC.
15. In response to paragraph 15 of the FASOC, KPMG:
- a. says that as a director of Phoslock for the year ended 30 June 2018, period ended 31 December 2018, and year ended 31 December 2019, Mr Freedman

was obligated pursuant to s 295 of the Corporations Act to include a declaration within the FY18 Financial Report, Extended FY18 Financial Report and the FY19 Financial Report; and

b. otherwise admits the paragraph.

16. In response to paragraph 16 of the FASOC, KPMG:

a. says that as a director of Phoslock for the half year ended 30 June 2019 and half year ended 30 June 2020, Mr Freedman was obliged pursuant to s 303 of the Corporations Act to include a declaration within the 1H19 Financial Report and 1H20 Financial Report; and

b. otherwise admits the paragraph.

17. In response to paragraph 17 of the FASOC, KPMG:

a. says that, from the start of the Relevant Period until 25 May 2020, each of the propositions pleaded in subparagraphs 17(a) to 17(c) was true of Mr Schuitema; and

b. otherwise denies the paragraph.

18. In response to paragraph 18 of the FASOC, KPMG:

a. says that as a director of Phoslock for the year ended 30 June 2018, period ended 31 December 2018, and year ended 31 December 2019, Mr Schuitema was obligated pursuant to s 295 of the Corporations Act to include a declaration within the FY18 Financial Report, Extended FY18 Financial Report and the FY19 Financial Report; and

b. otherwise admits the paragraph.

19. In response to paragraph 19 of the FASOC, KPMG:

a. says that as a director of Phoslock for the half year ended 30 June 2019, Mr Schuitema was obliged pursuant to s 303 of the Corporations Act to include a declaration within the 1H19 Financial Report; and

b. otherwise admits the paragraph.

D. KPMG'S ROLE**D.1 KPMG's Audit Obligations**

20. In response to paragraph 20 of the FASOC, KPMG:

a. says that:

- i. on or about 24 November 2017, KPMG sent a letter of engagement to Phoslock to confirm their engagement as auditors of Phoslock and its controlled entities under the Corporations Act (**2017 Retainer**) which was effective for services performed for the annual financial reporting period ending 30 June 2018;
- ii. pursuant to the 2017 Retainer, KPMG performed auditing services in relation to the FY18 Financial Report;
- iii. on or about 18 December 2018, KPMG sent a letter of engagement to Phoslock to reconfirm their engagement as auditors of Phoslock and its controlled entities under the Corporations Act (**2018 Retainer**) which was effective for services performed for the six month financial reporting period ending 31 December 2018, as well as HY19 (to 30 June 2019, in relation to non-audit review services), FY19 (to 31 December 2019), HY20 (to 30 June 2020 in relation to non-audit review services) and FY20 (to 31 December 2020); and
- iv. pursuant to the 2018 Retainer, KPMG performed auditing services in relation to the Extended FY18 Financial Report, FY19 Financial Report and the FY20 Financial Report, and review services in relation to the 1H19 Financial Report and 1H20 Financial Report;

b. relies on the terms of the 2017 Retainer and 2018 Retainer for their full force and effect; and

c. otherwise denies the paragraph.

21. In response to paragraph 21 of the FASOC, KPMG:

- a. in respect of subparagraph 21(a)(i), refers to and relies on the provisions of ss 297, 305 and 307 of the Corporations Act for their full force and effect;

- b. in respect of subparagraph 21(a)(ii), refers to s 307 of the Corporations Act for its full force and effect;
- c. in respect of subparagraph 21(b):
 - i. refers to and relies upon the provisions of s 307A of the Corporations Act and the applicable auditing standards issued by the Auditing and Assurance Standard Boards for their full force and effect in the form in which they existed at the time;
 - ii. says further that the applicable standards recognised the following matters (in successive iterations and notwithstanding non-material changes in language):
 - 1. the financial report subject to audit is that of the entity, prepared by the management of the entity, with oversight from those charged with governance;

Particulars

ASA 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved 1 December 2015 and 5 December 2018), paragraph 4.

- 2. an audit in accordance with the auditing standards requires the auditor to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement;

Particulars

ASA 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved 1 December 2015 and 5 December 2018), paragraph 4.

- 3. reasonable assurance is not an absolute level of assurance, because there are inherent limitations of an audit which result in most of the audit evidence on which the auditor draws conclusions

and bases the auditor's opinion being persuasive rather than conclusive;

Particulars

ASA 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved 1 December 2015 and 5 December 2018), paragraph 5.

4. the inherent limitations of an audit arise from: (a) the nature of financial reporting; (b) the nature of audit procedures; and (c) the need for the audit to be conducted within a reasonable period of time and at a reasonable cost;

Particulars

ASA 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved 1 December 2015 and 5 December 2018), paragraph A47.

5. audit risk is a function of the "risks of material misstatement" (being the risks that the financial report is materially misstated prior to audit) and "detection risk" (being the risk that the procedures performed by the auditor to reduce audit risk to an acceptably low level will not detect a misstatement that exists and that could be material, either individually or when aggregated with other misstatements);

Particulars

ASA 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved 1 December 2015 and 5 December 2018), paragraph A34.

6. the assessment of the risks referred to in the preceding subparagraph is a matter of professional judgement, rather than a matter capable of precise measurement;

Particulars

ASA 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved 1 December 2015 and 5 December 2018), paragraph A34.

7. the audit process involves the exercise of professional judgement by the auditor in planning and performing an audit of a financial report; and

Particulars

ASA 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved 1 December 2015 and 5 December 2018), paragraph 16.

8. the risk of material misstatement arising from the inherent limitations of an audit are particularly significant in the case of misstatements resulting from fraud;

Particulars

ASA 240 (The Auditor's Responsibilities Relating to Fraud in an Audit of a Financial Report) (versions approved 30 May 2017 and 5 December 2018), paragraph 6.

- d. admits subparagraphs 21(c)(i) and 21(c)(ii);
- e. in respect of subparagraph 21(c)(iii), relies on the provisions of ss 308(3B) and 297 of the Corporations Act for their full force and effect;
- f. in respect of subparagraphs 21(d)(i) and 21(d)(ii):
 - i. refers to and relies on the provisions of ss 205 and 309 of the Corporations Act for their full force and effect; and

- ii. says that, as the auditor of Phoslock, KPMG performed a review of the 1H19 Financial Report and 1H20 Financial Report pursuant to s 309 of the Corporations Act;
 - g. in respect of subparagraph 21(d)(iii), relies on the provisions of ss 308(5B) and 305 of the Corporations Act for their full force and effect; and
 - h. otherwise denies the paragraph.
- 22. KPMG denies paragraph 22 of the FASOC and further:
 - a. refers to and relies on the terms of the 2017 Retainer and 2018 Retainer for their full force and effect;
 - b. refers to and repeats paragraph 21 of this Defence;
 - c. refers to and relies upon the provisions of ss 314, 319 and 320 of the Corporations Act and provisions of ASX Listing Rules 4.5.1 and 4.2A.1 for their full force and effect; and
 - d. otherwise denies the paragraph.
- 23. In response to paragraph 23 of the FASOC, KPMG:
 - a. says that the 2017 Retainer and the 2018 Retainer provided that KPMG would plan and perform any audits pursuant to those engagements so as to obtain reasonable assurance that Phoslock's financial reports were free of material misstatement;
 - b. refers to and relies on the terms of the 2017 Retainer and the 2018 Retainer for their full force and effect; and
 - c. otherwise denies the paragraph.

D.2 KPMG Audit Team

- 24. In response to paragraph 24 of the FASOC, KPMG:
 - a. says that a number of persons carried out work in relation to the provision of auditing services to Phoslock, pursuant to the 2017 Retainer and the 2018 Retainer, at the direction of Ms Cain; and
 - b. otherwise denies the paragraph.

25. In response to paragraph 25 of the FASOC, KPMG:
- a. relies on ss 769B(4), (6) and (10) of the Corporations Act for their full meaning and effect; and
 - b. otherwise denies the paragraph.

26. In response to paragraph 26 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 24 and 25 of this Defence; and
 - b. otherwise denies the paragraph.

E. PHOSLOCK'S FINANCIAL STATEMENTS

E.1 Events leading up to FY18

27. In response to paragraph 27 of the FASOC, KPMG:
- a. says that on 4 May 2017, Phoslock published an announcement to the ASX entitled "Major Commercial Agreement with A\$9 Billion Chinese Water Group";
 - b. says further that the announcement stated, among other things, that:
 - i. Phoslock had "signed a Strategic Co-Operation Agreement with Beijing BHZQ Environmental Engineering Technology Co. Ltd"; and
 - ii. "Given the size and scope of BHZQ's project pipeline, [Phoslock] anticipates annual sales to increase from current \$5 million to some \$15 million for the next full financial year"; and
 - c. otherwise denies the paragraph.
28. KPMG denies paragraph 28 of the FASOC.
29. In response to paragraph 29 of the FASOC, KPMG:
- a. says that on or about 16 June 2017, Phoslock shareholders approved the grant of 65 million share options with a grant date of 10 April 2017, of which:
 - i. 30 million performance options were approved to be granted to China Environmental Corporation Australia Pty Ltd;

- ii. 20 million performance options were approved to be granted to “executives” of Phoslock (Beijing) Ecological Engineering Technology Co. Ltd (**PBEE**); and
- iii. 15 million performance options were granted to other Phoslock employees and consultants; and

b. otherwise does not know and cannot admit the paragraph.

30. In response to paragraph 30 of the FASOC, KPMG:

- a. says that on 16 October 2017 Phoslock published and lodged with the ASX its FY17 Annual Report;
- b. says that the FY17 Annual Report stated, among other things, that:
 - i. Phoslock’s revenue for FY17 was forecast to increase by over 420% to \$22 million;
 - ii. Phoslock had “signed a transformational agreement in early May, 2017 with BHZQ”; and
 - iii. Phoslock’s entry into that “transformational agreement” had occurred “[a]fter significant due diligence”;
- c. refers to and relies on the FY17 Annual Report as a whole; and
- d. otherwise denies the paragraph.

E.2 Phoslock’s FY18 financial reporting

31. KPMG admits paragraph 31 of the FASOC.

32. In response to paragraph 32 of the FASOC, KPMG:

- a. says that the FY18 Financial Report comprised:
 - i. a consolidated statement of financial position as at 30 June 2018;
 - ii. a consolidated statement of profit or loss and other comprehensive income;
 - iii. a consolidated statement of changes in equity;

- iv. a consolidated statement of cash flows;
 - v. Notes to the financial statements; and
 - vi. the FY18 Directors' Declaration; and
- b. otherwise admits the paragraph.
33. In response to paragraph 33 of the FASOC, KPMG:
- a. says that the Chairman's Report in the FY18 Annual Report was signed by Mr Freedman on 25 September 2018;
 - b. says further that the Chairman's Report stated, among other things, that:
 - i. Phoslock's sales and revenue had increased almost fourfold from \$4.2 million to \$16.2 million in the financial year ending 30 June 2018; and
 - ii. Phoslock forecast a further rise in revenue of 75% to \$27–30 million in the current financial year; and
 - c. otherwise denies the paragraph.
34. In response to paragraph 34 of the FASOC, KPMG:
- a. says that the Managing Director's Report in the FY18 Annual Report was signed by Mr Schuitema on 25 September 2018;
 - b. says further that the Managing Director's Report stated, among other things, that:
 - i. Phoslock's revenue had increased by 385% from \$4.2 million to \$16.2 million in the financial year ending 30 June 2018;
 - ii. Phoslock had recently announced a preliminary sales revenue range of \$27–30 million and a forecast net profit before tax (excluding non-cash option expenses) of \$7–10 million for the current financial year; and
 - iii. Phoslock was on track to achieve those forecasts; and
 - c. otherwise denies the paragraph.

35. In response to paragraph 35 of the FASOC, KPMG:
- a. in respect of subparagraph 35(a):
 - i. says that the FY18 Annual Report records Phoslock's profit before income tax for the year ended 30 June 2018 as \$913,579;
 - ii. says further that the FY18 Annual Report records Phoslock's profit before income tax from continuing operations for the year ended 30 June 2018 as \$108,026; and
 - iii. otherwise denies the paragraph;
 - b. in respect of subparagraph 35(b), says that the FY18 Annual Report recorded Phoslock's total sales and other revenue for the period ended 30 June 2018 as \$16,254,499;
 - c. in respect of subparagraph 35(c), says that the FY18 Annual Report recorded that Phoslock's total segment revenue from its China segment was:
 - i. \$13,554,377 for the 12 months ended 30 June 2018; and
 - ii. \$207,419 for the 12 months ended 30 June 2017;
 - d. in respect of subparagraph 35(d), says that the FY18 Annual Report recorded that Phoslock's segment profit or loss from its China segment was:
 - i. \$3,214,321 for the 12 months ended 30 June 2018; and
 - ii. -\$1,158,032 for the 12 months ended 30 June 2017;
 - e. admits subparagraphs 35(e) to (h); and
 - f. otherwise denies the paragraph.

E.3 Phoslock's July to December 2018 financial reporting

36. KPMG admits paragraph 36 of the FASOC.
37. KPMG admits paragraph 37 of the FASOC.

38. In response to paragraph 38 of the FASOC, KPMG:

a. says that :

~~i. on 1 April 2019, Phoslock published and lodged with the ASX its accounts for the six months to 31 December 2018 (**Extended FY18 Annual Report**);~~

~~b. the Extended FY18 Annual Report relevantly included:~~

~~ii. the Extended FY18 Financial Report, comprising:~~

- ~~1. a consolidated statement of financial position as at 31 December 2018;~~
- ~~2. a consolidated statement of profit or loss and other comprehensive income;~~
- ~~3. a consolidated statement of changes in equity;~~
- ~~4. a consolidated statement of cash flows;~~
- ~~5. Notes to the financial statements; and~~
- ~~6. a "Directors' Declaration"; and~~

~~iii. an "Independent Auditor's Report" signed by Ms Cain recording the results of an audit of the Extended FY18 Financial Report carried out pursuant to the 2018 Retainer; and~~

~~e.b. otherwise ~~denies~~ admits the paragraph.~~

39. In response to paragraph 39 of the FASOC, KPMG:

a. in respect of subparagraph 39(a), says that the Extended FY18 Annual Report recorded Phoslock's:

- i. profit before option expense and tax as \$1,638,784 for the six months ended 31 December 2018; and
- ii. loss before income tax from continuing operations for the six months ended 31 December 2018 as -\$688,840;

- b. admits subparagraphs 39(b) to (d);
- c. in respect of subparagraph 39(e), says that the Extended FY18 Annual Report recorded the segment assets for Phoslock's China segment as \$21,518,200 as at 31 December 2018;
- d. in respect of subparagraph 39(f), says that the Extended FY18 Annual Report recorded the segment liabilities for Phoslock's China segment as \$4,430,967 as at 31 December 2018;
- e. in respect of subparagraph 39(g), says that the Extended FY18 Annual Report stated that:
 - i. on 16 June 2017, Phoslock shareholders had approved 65 million performance share options with a grant date of 16 June 2017; and
 - ii. all of those options had vested, as their performance criteria had been met; and
- f. otherwise denies the paragraph.

E.4 Phoslock's FY19 financial reporting

- 40. KPMG admits paragraph 40 of the FASOC.
- 41. In response to paragraph 41 of the FASOC, KPMG:
 - a. in respect of subparagraph 41(a), says that the 1H19 Accounts recorded Phoslock's net profit before tax (before options expenses) as \$1,708,998 for the six months ended 30 June 2019;
 - b. as to paragraph 41(b), says that the 1H19 Accounts recorded Phoslock's:
 - i. revenues from ordinary activities as \$9,802,611 for the six months ended 30 June 2019; and
 - ii. total sales and other revenue as \$10,154,973 for the six months ended 30 June 2019; and
 - c. otherwise denies the paragraph.
- 42. KPMG admits paragraph 42 of the FASOC.

43. In response to paragraph 43 of the FASOC, KPMG:
- a. says that on 3 December 2019, Phoslock lodged and published with the ASX an announcement signed by Mr Schuitema and Mr Freedman;
 - b. in respect of subparagraph 43(a), says that the announcement stated that Phoslock was on track to meet its sales forecast of \$27–30 million for the 2019 financial year;
 - c. denies subparagraph 43(b); and
 - d. otherwise does not know and cannot admit the paragraph.
44. KPMG admits paragraph 44 of the FASOC.
45. In response to paragraph 45 of the FASOC, KPMG:
- a. says that the FY19 Financial Report comprised:
 - i. a consolidated statement of financial position;
 - ii. a consolidated statement of profit or loss and other comprehensive income;
 - iii. a consolidated statement of changes in equity;
 - iv. a consolidated statement of cash flows;
 - v. Notes to the financial statements; and
 - vi. the FY19 Directors' Declaration; and
 - b. otherwise admits the paragraph.
46. In response to paragraph 46 of the FASOC, KPMG:
- a. says that the Chairman's Report in the FY19 Annual Report was signed by Mr Freedman on 14 April 2020;
 - b. says further that the Chairman's Report stated, among other things, that:
 - i. Phoslock's revenue for the 2019 financial year was \$25.1 million, up 30% over the 2018 financial year; and

- ii. sales revenue for the 2020 financial year was forecast to be in the range of \$50–70 million, double the previous year; and
 - c. otherwise denies the paragraph.
- 47. In response to paragraph 47 of the FASOC, KPMG:
 - a. says that the Managing Director's Report in the FY19 Annual Report was signed by Mr Schuitema on 14 April 2020;
 - b. says further that the Managing Director's Report stated, among other things, that:
 - i. Phoslock's revenue for the 2019 financial year was \$25.1 million, up 30% over the 2018 financial year; and
 - ii. Phoslock was currently forecasting revenue in the range of \$50–70 million in the 2020 financial year, up 100% over the 2019 financial year; and
 - c. otherwise denies the paragraph.
- 48. In response to paragraph 48 of the FASOC, KPMG:
 - a. in respect of subparagraph 48(a), says that the FY19 Annual Report recorded Phoslock's:
 - i. profit before income tax as \$3,651,375 for the 12 months ended 31 December 2019; and
 - ii. profit from continuing operations for the 12 months ended 31 December 2019 as \$2,698,582;
 - b. ~~in respect of~~ admits subparagraph 48(b), ~~says that the FY19 Annual Report recorded Phoslock's total sales and other revenue for the period ended 31 December 2019 as \$25,112,831;~~
 - c. in respect of subparagraph 48(c), says that the FY19 Annual Report recorded Phoslock's China segment revenue for the 12 months ended 31 December 2019 as \$22,317,562;
 - d. in respect of subparagraph 48(d), says that the FY19 Annual Report recorded Phoslock's China segment profit before tax for the 12 months ended 31 December 2019 as \$5,417,162;

- e. admits subparagraphs 48(e) and 48(f); and
- f. otherwise denies the paragraph.

E.5 Phoslock's FY20 financial reporting

49. In response to paragraph 49 of the FASOC, KPMG:

- a. says that on 26 August 2020 Phoslock published and lodged with the ASX three announcements, entitled:
 - i. "Half Year Results and Outlook";
 - ii. "Half Year Investor Presentation"; and
 - iii. "Preliminary Half Year Accounts and Report";
- b. says further that the announcement entitled "Preliminary Half Year Accounts and Report" contained Phoslock's unreviewed half year results for the six months to 30 June 2020 (**Unreviewed 1H20 Results**); and
- c. otherwise denies the paragraph.

50. In response to paragraph 50 of the FASOC, KPMG:

- a. in respect of subparagraph 50(a), says that the Unreviewed 1H20 Results recorded that, for the six months ended 30 June 2020, Phoslock had a loss before interest and taxes of \$5,141,000;
- b. in respect of subparagraph 50(b), says that the Unreviewed 1H20 Results recorded that Phoslock had revenues from ordinary activities of \$1,232,000 for the six months ended 30 June 2020; and
- c. otherwise denies the paragraph.

51. In response to paragraph 51 of the FASOC, KPMG:

- a. says that, on 1 February 2021, Phoslock published and lodged with the ASX a document entitled "Half Year - June 30 2020 Report and Accounts";
- b. says further that this document contained Phoslock's results for the half-year ended 30 June 2020, which had been the subject of a review by KPMG (**Reviewed 1H20 Accounts**); and

c. otherwise denies the paragraph.

52. In response to paragraph 52 of the FASOC, KPMG:

a. in respect of subparagraph 52(a), says that the Reviewed 1H20 Accounts recorded that for the six months ended 30 June 2020, Phoslock had:

i. underlying earnings before interest and taxes of -\$4,312,000;

ii. net operating loss of \$21,612,000;

iii. impairment of receivables of \$9,804,000; and

iv. impairment of assets of \$7,536,000;

b. in respect of subparagraph 52(b), says that the Reviewed 1H20 Accounts recorded that for the six months ended 30 June 2020, Phoslock had revenue of \$2,090,000; and

c. otherwise denies the paragraph.

52A. In response to paragraph 52A of the FASOC, KPMG:

a. refers to and repeats paragraphs 50 and 52 of this Defence;

b. says that the receivables and assets impaired in the Reviewed 1H20 Accounts included receivables and assets associated with subsidiaries of Phoslock incorporated in China or with a principal place of business in China; and

c. otherwise denies the paragraph.

F. PHOSLOCK'S CAPITAL RAISINGS

53. In response to paragraph 53 of the FASOC, KPMG:

a. in respect of subparagraph 53(a):

i. says that the First Capital Raising Announcement was entitled "Capital Raising heavily oversubscribed: \$5.5 million raised"; and

ii. otherwise admits that Phoslock published and lodged the First Capital Raising Announcement with the ASX on 4 July 2018;

- b. in respect of subparagraph 53(b), says that the First Capital Raising Announcement stated, among other things, that Phoslock had raised \$5.5 million (before costs) pursuant to a share placement of 15.3 million fully paid ordinary shares at an issue price of 36 cents per share;
 - c. as to subparagraph 53(c), says that the First Capital Raising Announcement recorded Mr Freedman as stating that the placement would provide Phoslock with additional working capital to further expand its China business and to undertake more and even larger projects;
 - d. in respect of subparagraph 53(d), says that on 12 July 2018, Phoslock published and lodged with the ASX a notice under s 708A(5)(e) of the Corporations Act entitled "Allotment of 15.3 million new PHK Ordinary Shares Notice under Section 708(A)(5)(e)" (**First Capital Raising Notice**); and
 - e. otherwise does not know and cannot admit the paragraph.
54. In response to paragraph 54 of the FASOC, KPMG:
- a. refers to and repeats paragraph 53(d) of this Defence;
 - b. in respect of subparagraphs 54(a) and 54(c), says that the First Capital Raising Notice stated that, as at 12 July 2018, Phoslock had complied with s 674 and Chapter 2M of the Corporations Act;
 - c. in respect of subparagraph 54(b), says that the First Capital Raising Notice stated that, as at 12 July 2018, there was no "excluded information" within the meaning of s 708A(7) of the Corporations Act that was required to be disclosed in the notice; and
 - d. otherwise does not know and cannot admit the paragraph.
55. In response to paragraph 55 of the FASOC, KPMG:
- a. says that on 23 September 2019, Phoslock issued 2,800,113 fully paid ordinary shares for nil consideration to all security holders; and
 - b. otherwise denies the paragraph.

Particulars

The issue was a "Bonus Issue" of ordinary shares. See Appendix 3B published and lodged by Phoslock with the ASX on 24 September 2019.

56. In response to paragraph 56 of the FASOC, KPMG:
- a. admits subparagraph 56(a);
 - b. in respect of subparagraph 56(b), says that the Second Capital Raising Announcement stated, among other things, that Phoslock had raised \$12 million (before costs) pursuant to a share placement of 24 million fully paid ordinary shares at an issue price of 50 cents per share;
 - c. in respect of subparagraph 56(c), says that the Second Capital Raising Announcement stated that the funds raised would help to facilitate Phoslock's rapidly growing China business;
 - d. in respect of subparagraph 56(d), says that on 17 April 2019 Phoslock published and lodged with the ASX a notice under s 708A(5)(e) of the Corporations Act entitled "Cleansing Notice under section 708A(5)(e) of the Corporations Act 2001 (Cth) (Act)" (**Second Capital Raising Notice**); and
 - e. otherwise does not know and cannot admit the paragraph.
57. In response to paragraph 57 of the FASOC, KPMG:
- a. refers to and repeats paragraph 56(d) of this Defence;
 - b. in respect of subparagraphs 57(a) and 57(c), says that the Second Capital Raising Notice stated that, as at 17 April 2020, Phoslock had complied with s 674 and Chapter 2M of the Corporations Act;
 - c. as to subparagraph 57(b), says that the Second Capital Raising Notice stated that, as at 17 April 2020, there was no "excluded information" within the meaning of s 708A(7) of the Corporations Act that was required to be disclosed in the notice; and
 - d. otherwise does not know and cannot admit the paragraph.

58. In response to paragraph 58 of the FASOC, KPMG:
- a. admits subparagraph 58(a);
 - b. in respect of subparagraph 58(b), says that the Third Capital Raising Announcement stated, among other things, that Phoslock had received subscriptions of approximately \$17 million from nearly 1,200 shareholders; and
 - c. otherwise does not know and cannot admit the paragraph.
59. In response to paragraph 59 of the FASOC, KPMG:
- a. refers to and repeats paragraph 58 of this Defence; and
 - b. does not know and cannot admit the paragraph.
60. ~~In response to~~ KPMG admits paragraph 60 of the FASOC, ~~KPMG~~:
- ~~a. says that, on 3 June 2020, Phoslock issued 5,700,000 ordinary shares at an issue price of 50 cents per share to certain directors and executives of Phoslock and its subsidiaries, raising a total of \$2,850,000 before costs; and~~
 - ~~b. otherwise does not know and cannot admit the paragraph.~~
61. In response to paragraph 61 of the FASOC, KPMG:
- a. says that on 3 June 2020 Phoslock published and lodged with the ASX a notice under s 708A(5)(e) of the Corporations Act entitled "Cleansing Notice under section 708A(5)(e) of the Corporations Act 2001 (Cth) (Act)";
 - b. says further that this notice stated that, as at the date of the notice:
 - i. Phoslock had complied with s 674 and Chapter 2M of the Corporations Act; and
 - ii. there was no "excluded information" within the meaning of ss 708A(7) and (8) of the Corporations Act that was required to be disclosed in the notice; and
 - c. otherwise does not know and cannot admit the paragraph.

G. THE TRUE POSITION

G.1 Related party contracts

62. In response to paragraph 62 of the FASOC, KPMG:

a. admits subparagraph 62(a);

b. [not used];

c. in respect of subparagraph 62(c):

i. admits that during the Relevant Period Phoslock operated in China;

ii. says that during the Relevant Period, the following entities were wholly owned subsidiaries of Phoslock with their principal place of business in and/or country of incorporation as China:

1. Phoslock (Shanghai) Water Solutions Ltd;

2. Phoslock (Changxing) Water Solutions Ltd;

3. PBEE; and

4. Beijing Ecosystem Environmental Science and Technology Co., Ltd (**BEST**);

iii. says that, from 20 February 2020 until the end of the Relevant Period, Zhejiang Phoslock Environmental Technologies Ltd was a wholly owned subsidiary of Phoslock with its principal place of business in, and country of incorporation in, China,

(each of the companies referred to in subparagraphs 62(c)(ii)(1) to (4) and (iii) is, for so long as it was a wholly owned subsidiary of Phoslock, referred to below as one of **Phoslock's China Subsidiaries**);

d. [not used];

e. in respect of subparagraph 62(e), says that:

i. Mr Zhang was a director of Phoslock from 12 June 2017 to 28 September 2020;

- ii. Mr Ma was a director of Phoslock from 5 December 2018 to 28 September 2020; and
 - iii. Mr Tingshan Liu resigned as the "General Manager – China Sales" of Phoslock on 31 December 2020;
 - f. [not used]; and
 - g. otherwise does not know and cannot admit the paragraph.
- 62A. In response to paragraph 62A of the FASOC, KPMG:
- a. refers to and repeats paragraphs 27, 35, 39, 48 and 62 of this Defence;
 - b. says that, during the Relevant Period, a significant share of the revenue and profit reported by Phoslock was made by Phoslock's China Subsidiaries; and
 - c. otherwise does not know and cannot admit the paragraph.
63. In response to paragraph 63 of the FASOC, KPMG:
- a. admits that Mr Zhang held a majority share in BHEET and BKHEDT at all material times during the Relevant Period;
 - b. says that, as at 21 August 2020:
 - i. BHZQ was 30% owned by Beijing Jiayuan Environmental Engineering Co. Ltd (**BJEE**); and
 - ii. BJEE was owned 90.62% by Mr Zhang and 9.38% by Mr Ma;
 - c. admits that, during the Relevant Period, BHZQ, BHEET and BKHEDT transacted with Phoslock or Phoslock's China Subsidiaries; and
 - d. otherwise does not know and cannot admit the paragraph.
64. In response to paragraph 64 of the FASOC, KPMG:
- a. refers to and repeats paragraph 63(b) of this Defence; and
 - b. otherwise does not know and cannot admit the paragraph.
65. [Not used]

66. [Not used]

67. [Not used]

68. [Not used]

69. [Not used]

70. [Not used]

G.2 Allegations about potentially suspicious payments

70A. Under cover of the pleading that paragraph 70A of the EASOC makes no allegation against it, KPMG:

- a. admits that, during the Relevant Period, payments were made by Phoslock or Phoslock's China Subsidiaries to Chinese government officials for which KPMG is not aware of a legitimate commercial explanation;
- b. denies that it knew or ought reasonably to have known the matter pleaded in paragraph 70A(a) of this Defence at any material time; and
- c. otherwise does not know and cannot admit the paragraph.

G.3 [not used]

G.4 Allegations about China Impacted Revenue

70B. Under cover of the pleading that paragraph 70B of the EASOC makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 62A, 63 and 70A of this Defence; and
- b. otherwise does not know and cannot admit the paragraph.

G.5 Allegations about Undisclosed BHZQ Related Party Information

70C. Under cover of the pleading that paragraph 70C of the EASOC makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 63 and 64 of this Defence; and
- b. otherwise does not know and cannot admit the paragraph.

70D. Under cover of the pleading that paragraph 70D of the FASOC makes no allegation against it, KPMG:

- a. refers to and repeats paragraph 70C of this Defence; and
- b. otherwise does not know and cannot admit the paragraph.

70E. Under cover of the pleading that paragraph 70E of the FASOC makes no allegation against it, KPMG:

- a. says that, during the Relevant Period, Phoslock publicly disclosed that Mr Zhang and Mr Ma were senior executives of BHZQ;

Particulars

The disclosures were made, inter alia, in the FY18 Annual Report and the FY19 Annual Report.

- b. admits that Phoslock did not publicly disclose the matters pleaded in subparagraphs 63(a) and (b) of this Defence during the Relevant Period; and
- c. otherwise does not know and cannot admit the paragraph.

G.5A Allegations about Undisclosed China Business Practice Information

70F. Under cover of the pleading that paragraph 70F of the FASOC makes no allegation against it, KPMG:

- a. refers to and repeats paragraph 70A of this Defence; and
- b. otherwise does not know and cannot admit the paragraph.

70G. Under cover of the pleading that paragraph 70G of the FASOC makes no allegation against it, KPMG does not know and cannot admit the paragraph.

70H. In response to paragraph 70H of the FASOC, KPMG:

- a. admits that, if the Undisclosed China Business Practice Information was true (as to which KPMG refers to and repeats paragraphs 70A and 70F of this Defence), Phoslock did not publicly disclose that information during the Relevant Period; and
- b. otherwise does not know and cannot admit the paragraph.

G.6 Further allegations about Impacted China Revenue

70I. Under cover of the pleading that paragraph 70I of the EASOC makes no allegation against it, KPMG:

- a. refers to and repeats paragraph 70B of this Defence; and
- b. otherwise does not know and cannot admit the paragraph.

70J. Under cover of the pleading that paragraph 70J of the EASOC makes no allegation against it, KPMG does not know and cannot admit the paragraph.

70K. In response to paragraph 70K of the EASOC, KPMG:

- a. admits that, if the China Impacted Revenue Information was true (as to which KPMG refers to and repeats paragraphs 70B and 70I of this Defence), Phoslock did not publicly disclose that information during the Relevant Period; and
- b. otherwise does not know and cannot admit the paragraph.

71. [Not used]

GA. TRUE POSITION – NON-PAYMENT OF RECEIVABLES**GA.1 Allegations about non-payment of receivables**

71A. In response to paragraph 71A of the EASOC, KPMG:

- a. says that the minutes of a meeting of the directors of Phoslock on 12 December 2017 record that the CFO or the Company Secretary reported that:
 - i. as at 9 December 2017, Phoslock (including its controlled entities) had trade debtors of \$2,200,000, including \$900,000 due to PBEE for a project referred to as “HeZhang”; and
 - ii. Phoslock was pushing PBEE to obtain payment of the \$900,000 before the end of December 2017;
- b. says further that it does not know whether the matters recorded to have been reported by the CFO or Company Secretary, as pleaded in paragraph 71A(a)(i) and (ii) of this Defence, were true; and
- c. otherwise denies the paragraph.

71B. In response to paragraph 71B of the FASOC, KPMG:

- a. says that the Agenda for a meeting of the directors of Phoslock on 21 March 2018 records that the CFO or the Company Secretary reported that:
 - i. as at 11 March 2018, \$900,000 remained due to PBEE for a project referred to as “HeZhang”;
 - ii. as at 31 December 2017, BHZQ owed Phoslock (including its controlled entities) \$2.3 million (RMB 12.2 million) for the “Xinfeng River” project; and
 - iii. institutional investors were asking direct questions as to whether Chinese debtors of PBEE were making payments to PBEE within normal payment terms;
- b. says further that it does not know whether the matters recorded to have been reported by the CFO or Company Secretary, as pleaded in paragraph 71B(a)(i)–(iii) of this Defence, were true; and
- c. otherwise denies the paragraph.

71C. In response to paragraph 71C of the FASOC, KPMG:

- a. says that the Agenda for a meeting of the directors of Phoslock on 11 May 2018 records that the CFO or the Company Secretary reported that:
 - i. since the previous board meeting, PBEE and/or BEST had paid \$520,000 for materials and prepaid freight for the “Beijing wetlands” project;
 - ii. as at 7 May 2018, \$400,000 (RMB 1.8 million) remained due to PBEE for a project referred to as “HeZhang”; and
 - iii. BHZQ owed Phoslock (including its controlled entities) \$2 million (RMB 9.4 million) for the “Xinfeng River” project;
- b. says further that it does not know whether the matters recorded to have been reported by the CFO or Company Secretary, as pleaded in paragraph 71C(a)(i)–(iii) of this Defence, were true; and
- c. otherwise denies the paragraph.

71D. In response to paragraph 71D of the EASOC, KPMG:

- a. says that the Agenda for a meeting of the directors of Phoslock on 15 June 2018 records that the Managing Director reported to the board that:
 - i. as at 30 June 2018, PBEE and/or BEST were forecast to have accounts receivable owing from BHZQ in a total amount of RMB 43.5 million; and
 - ii. he was not sure when payment from BHZQ of an account receivable of RMB 6 million for the “Beijing Canals” project would be received; and
- b. says further that the minutes of a meeting of the directors of Phoslock on 15 June 2018 record that Mr Zhang reported to the board that the accounts receivable owing from BHZQ to PBEE and/or BEST would be paid slowly, because the Chinese government was slow in paying BHZQ;
- c. says further that it does not know whether the matters recorded to have been reported by the Managing Director or Mr Zhang, as pleaded in paragraph 71D(a) and (b) of this Defence, were true; and
- d. otherwise denies the paragraph.

71E. In response to paragraph 71E of the EASOC, KPMG:

- a. says that the Agenda for a meeting of the directors of Phoslock on 18 September 2018 records that the CFO or the Company Secretary reported that:
 - i. the total value of accounts receivable owing to PBEE and/or BEST was \$9.7 million (RMB 47.5 million); and
 - ii. of that amount, some \$9.1 million (RMB 44.6 million) was owing from BHZQ;
- b. says further that it does not know whether the matters recorded to have been reported by the CFO or Company Secretary, as pleaded in paragraph 71E(a)(i) and (ii) of this Defence, were true; and
- c. otherwise denies the paragraph.

71F. In response to paragraph 71F of the FASOC, KPMG:

- a. says that the Agenda for a meeting of the directors of Phoslock on 16 October 2018 records that the CFO or the Company Secretary reported that:
 - i. PBEE and/or BEST had received RMB 10.5 million (\$2.2 million) from BHZQ at the end of September 2018;
 - ii. as at 12 October 2018, the total value of accounts receivable owing to Phoslock (including its controlled entities) was \$8.3 million; and
 - iii. of that amount, the total value of accounts receivable owing to PBEE and/or BEST was \$7.5 million (RMB 36.4 million), of which some \$7.1 million (RMB 34.6 million) was owing from BHZQ;
- b. says further that it does not know whether the matters recorded to have been reported by the CFO or Company Secretary, as pleaded in paragraph 71F(a)(i)–(iii) of this Defence, were true; and
- c. otherwise denies the paragraph.

71G. In response to paragraph 71G of the FASOC, KPMG:

- a. says that the Agenda for a meeting of the directors of Phoslock on 21 November 2018 records that the Managing Director reported that:
 - i. as at 15 November 2018, the total value of accounts receivable owing to Phoslock (including its controlled entities) was approximately \$18 million, including \$15.5 million (RMB 77 million) owing from BHZQ;
 - ii. the payment of Chinese receivables was a major issue with shareholders of Phoslock and its auditors, KPMG; and
 - iii. Phoslock needed to receive payment of invoices issued to BHZQ before 30 June 2018 by late December 2018;
- b. says further that the minutes of a meeting of the directors of Phoslock on 21 November 2018 record that Mr Zhang reported that it would be difficult for BHZQ to make large payments before 31 December 2018, as most companies would cease payments between 15 December 2018 and around 15 February 2019;

- c. says further that it does not know whether the matters recorded to have been reported by the Managing Director or Mr Zhang, as pleaded in paragraph 71G(a) and (b) of this Defence, were true; and
- d. otherwise denies the paragraph.

71H. In response to paragraph 71H of the EASOC, KPMG:

- a. says that the Agenda for a meeting of the directors of Phoslock on 15 January 2019 records that the Managing Director reported that:
 - i. as at 31 December 2018, the total value of accounts receivable owing to Phoslock (including its controlled entities) was \$17.7 million, of which \$16.5 million was payable to PBEE and/or BEST; and
 - ii. BHZQ had confirmed that it would pay PBEE and/or BEST:
 - 1. RMB 5 million in the week of 14–18 January 2018;
 - 2. RMB 20 million before 30 January 2018; and
 - 3. a further RMB 10 to 20 million soon afterwards, on a date to be confirmed;
- b. says that the minutes of a meeting of the directors of Phoslock on 15 January 2019 record that the Managing Director reported that the further RMB 10 to 20 million was expected to be paid by BHZQ by the end of February 2019; and
- c. says further that it does not know whether the matters recorded to have been reported by the Managing Director, as pleaded in paragraph 71H(a) and (b) of this Defence, were true; and
- d. otherwise denies the paragraph.

71I. In response to paragraph 71I of the EASOC, KPMG:

- a. says that the minutes of a meeting of the directors of Phoslock on 12 February 2019 record that the Managing Director reported that PBEE and/or BEST had received RMB 45 million from BHZQ on 19 January 2019;
- b. says further that the Agenda for a meeting of the directors of Phoslock on 12 February 2019 records that the Managing Director reported that as at 8 February

2019, the total value of accounts receivable owing to Phoslock (including its controlled entities) was \$8.2 million, of which \$7.3 million was payable to PBEE and/or BEST;

- c. says further that it does not know whether the matters said to have been reported by the Managing Director, as pleaded in paragraph 71I(a) and (b) of this Defence, were true; and
- d. otherwise denies the paragraph.

71J. In response to paragraph 71J of the FASOC, KPMG:

- a. says that the Agenda for a meeting of the directors of Phoslock on 26 November 2019 records that the Managing Director reported that:
 - i. as at 20 November 2019, the total value of accounts receivable owing to Phoslock (including its controlled entities) was \$7.9 million, of which \$6.1 million (RMB 29.7 million) was payable to PBEE and/or BEST; and
 - ii. BEST had received a promissory note from BHZQ with a value of RMB 10 million, which would mature on 24 May 2020;
- b. says further that it does not know whether the matters recorded to have been reported by the Managing Director, as pleaded in paragraph 71J(a)(i) and (ii) of this Defence, were true; and
- c. otherwise denies the paragraph.

71K. In response to paragraph 71K of the FASOC, KPMG:

- a. says that the Agenda for a meeting of the directors of Phoslock on 3 March 2020 records that the Managing Director reported that:
 - i. as at 24 February 2020, the total value of accounts receivable owing to Phoslock (including its controlled entities) was \$16.5 million; and
 - ii. as at 31 December 2019, the total value of accounts receivable payable to PBEE and/or BEST was \$16.1 million (RMB 78.2 million), of which some RMB 7 million had been paid prior to 3 March 2020;

- b. says further that it does not know whether the matters recorded to have been reported by the Managing Director, as pleaded in paragraph 71K(a)(i) and (ii) of this Defence, were true; and
- c. otherwise denies the paragraph.

71L. In response to paragraph 71L of the FASOC, KPMG:

- a. says that on or around 31 March 2021, Phoslock published and lodged with the ASX its annual report for the financial year ending 31 December 2020, which relevantly included:
 - i. a financial report, comprising:
 - 1. a consolidated statement of profit or loss and other comprehensive income;
 - 2. a consolidated statement of financial position;
 - 3. a consolidated statement of changes in equity;
 - 4. a consolidated statement of cash flows;
 - 5. Notes to the financial statements; and
 - 6. a "Director's Declaration"(together, the **FY20 Financial Report**); and
 - ii. an "Independent Auditor's Report" signed by Ms Cain recording the results of an audit of the FY20 Financial Report carried out pursuant to the 2018 Retainer (the **FY20 Audit Report**);
- b. says further that the FY20 Financial Report:
 - i. recorded an impairment of receivables for the year ended 31 December 2020 of \$10,935,000; and
 - ii. stated that Phoslock or its controlled entities was party to a trade receivable balance due from BHZQ totalling \$2,567,000 as at 31 December 2020, which receivable was "past due" and had a "remote" probability of collection;

- c. refers to and repeats paragraph 71Q of this Defence; and
- d. otherwise denies the paragraph.

71M. In response to paragraph 71M of the EASOC, KPMG:

a. says that:

i. a meeting of the audit committee of the board of Phoslock was held on or around 13 May 2022;

ii. the papers for that meeting record that:

1. Phoslock (or its controlled entities) had received a payment of \$1,800,000 on 10 January 2022 on account of an outstanding receivable, and had recognised a corresponding reversal in its accounts as at 31 December 2021;
2. Phoslock continued to impair the outstanding balance of accounts receivable in relation to the “Xingyun Lake” project because of concerns regarding the interdependence of two contracts related to that project; and
3. the impairment for those accounts receivable involved an allowance of \$6,403,000 for expected credit losses as at 31 December 2020; and

b. otherwise denies the paragraph.

GA.2 Allegations about Undisclosed Receivables Non-Payment Information

71N. Under cover of the pleading that paragraph 71N of the EASOC makes no allegation against it, KPMG:

a. refers to and repeats paragraphs 71A to 71M of this Defence; and

b. otherwise does not know and cannot admit the paragraph.

71O. Under cover of the pleading that paragraph 71O of the EASOC makes no allegation against it, KPMG:

a. refers to and repeats paragraph 71N of this Defence; and

- b. otherwise does not know and cannot admit the paragraph.

71P. In response to paragraph 71P of the EASOC, KPMG:

- a. says that:

- i. shareholders of Phoslock were aware during the Relevant Period that Phoslock or Phoslock's China Subsidiaries were receiving payments of some accounts receivables due from Chinese debtors slowly, or otherwise than in accordance with standard credit terms; and

Particulars

Papers for meetings of the directors of Phoslock on 21 March 2018 and 21 November 2018 (among others) refer to payments of Chinese receivables as an issue for institutional investors and other shareholders.

- ii. each of the FY18 Financial Report, the Extended FY18 Financial Report and the FY19 Financial Report stated that:
 - 1. trade receivables (other than in China) were generally subject to trading terms requiring payment within 30 to 60 days; and
 - 2. receivables payable by Chinese entities were generally subject to trading terms requiring payment within 60 to 150 days;
- iii. the FY18 Financial Report stated that, of gross trade and other receivables of \$16,701,096, \$195,523 was past due, but under 30 days overdue and not impaired;
- iv. the Extended FY18 Financial Report stated that, of gross trade and other receivables of \$17,562,206:
 - 1. \$7,006,403 was past due, but under 30 days overdue and not impaired; and
 - 2. \$133,541 was over 90 days overdue, but not impaired; and
- v. the FY19 Financial Report stated that, of gross trade and other receivables of \$16,701,096:
 - 1. \$12,088 was between 31 and 60 days overdue, but not impaired;

2. \$1,096,808 was between 61 and 90 days overdue, but not impaired; and
 3. \$989,954 was over 90 days overdue, but not impaired; and
- b. otherwise does not know and cannot admit the paragraph.

GA.3 Allegations about the accounting treatment of “Phoslock Beijing Receivables”

71Q. In response to paragraph 71Q of the FASOC, KPMG:

- a. refers to and repeats paragraphs 71N to 71P of this Defence;
- b. says that:
 - i. AASB 15 provided that monetary consideration payable under a contract with a customer was to be recognised as revenue if, among other things, the collection of that consideration was probable having regard only to the customer’s ability and intention to pay; and

Particulars

AASB 15, paragraph 9(e).

- ii. AASB 15 did not otherwise require Phoslock to measure or account for expected credit loss when recognising monetary consideration payable under a contract as revenue;
- c. says that further that:
- i. the FY20 Financial Report:
 1. contained restatements of the accounts for Phoslock (and the consolidated group comprising Phoslock and its controlled entities) for the years ending 31 December 2019 and 31 December 2018, including restatements made as a consequence of the reversal of revenue recognised from transactions during the year ending 31 December 2019 in the FY19 Financial Report; and
 2. impaired \$10,935,000 of receivables in the accounts for Phoslock (and the consolidated group comprising Phoslock and its

controlled entities) for the financial year ended 31 December 2020;

ii. the FY20 Audit Report stated, among other things, that as a consequence of the outcome of investigations undertaken by Phoslock in relation to Phoslock's China Subsidiaries:

1. KPMG did not express an opinion on the FY20 Financial Report because it had not been able to obtain sufficient appropriate audit evidence to provide a basis for the formation of an opinion;
2. KPMG's concerns about the reliability of the records of the business operations in China of Phoslock and Phoslock's China Subsidiaries had material and pervasive impacts on its ability to form an opinion about the FY20 Financial Report, including the restatements in that report; and
3. KPMG did not have sufficient evidence regarding a number of transactions, including transactions in the year ending 31 December 2019, to determine whether consideration payable under those transactions should be recognised as revenue;

iii. having regard to the matters known to KPMG as at the date of this Defence, including the matters in subparagraphs 71Q(c)(i) and (ii) of this Defence, KPMG does not presently know whether or not the FY18 Financial Report, the Extended FY18 Financial Report and the FY19 Financial Report:

1. provided a true and fair view of the financial position and performance of Phoslock (and the consolidated group comprising Phoslock and its controlled entities) for the relevant periods; and
2. were prepared in accordance with Australian Accounting Standards in relation to the recognition of revenue and the impairment of receivables; and

d. does not know and cannot admit the paragraph.

71R. In response to paragraph 71R of the EASOC, KPMG:

a. refers to and repeats paragraph 71Q of this Defence; and

b. otherwise does not know and cannot admit the paragraph.

71S. In response to paragraph 71S of the FASOC, KPMG:

a. refers to and repeats paragraph 71Q of this Defence; and

b. otherwise does not know and cannot admit the paragraph.

71T. In response to paragraph 71T of the FASOC, KPMG:

a. refers to and repeats paragraphs 71R to 71S of this Defence; and

b. otherwise does not know and cannot admit the paragraph.

71U. In response to paragraph 71U of the FASOC, KPMG:

a. refers to and repeats paragraphs 71Q to 71T of this Defence; and

b. otherwise does not know and cannot admit the paragraph.

71V. In response to paragraph 71V of the FASOC, KPMG:

a. says that says that Phoslock recorded no impairment of receivables, including receivables payable to PBEE, during the:

i. 12 months ended 30 June 2018,

ii. 6 months ended 31 December 2018, and

iii. 12 months ended 31 December 2019; and

b. otherwise denies the paragraph.

71W. In response to paragraph 71W of the FASOC, KPMG:

a. refers to and repeats paragraphs 71A to 71M and 71Q of this Defence; and

b. does not know and cannot admit the paragraph.

72. [Not used]

H. PHOSLOCK'S ALLEGED CONTRAVENTION OF ITS CONTINUOUS DISCLOSURE OBLIGATIONS

73. [Not used]

74. [Not used]
75. Under cover of the pleading that paragraph 75 of the FASOC makes no allegation against it, KPMG:
- a. refers to and repeats paragraphs 70C, 70F, 70I and 71N of this Defence; and
 - b. otherwise denies the paragraph.
- 75A. Under cover of the pleading that paragraph 75A of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
- 75B. Under cover of the pleading that paragraph 75B of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
76. Under cover of the pleading that paragraph 76 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
77. Under cover of the pleading that paragraph 77 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
78. Under cover of the pleading that paragraph 78 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

I. DIRECTORS' ALLEGED CONTRAVENING CONDUCT

I.1 Directors' alleged representations

79. Under cover of the pleading that paragraph 79 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
80. Under cover of the pleading that paragraph 80 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
81. Under cover of the pleading that paragraph 81 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
82. Under cover of the pleading that paragraph 82 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
83. Under cover of the pleading that paragraph 83 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

84. Under cover of the pleading that paragraph 84 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
85. Under cover of the pleading that paragraph 85 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
86. Under cover of the pleading that paragraph 86 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

I.2 Alleged misleading or deceptive conduct (FY18)

- 86A. In response to paragraph 86A of the FASOC, KPMG:
- a. refers to and repeats paragraphs 62 to 70K and 71A to 71W of this Defence;
 - b. admits that, if and to the extent they did not identify all of the related party transactions to which Phoslock's China Subsidiaries were party (as to which KPMG refers to and repeats paragraph 63 of this Defence), the FY18 Financial Report, Extended FY18 Financial Report and FY19 Financial Report were not prepared in compliance with Australian Accounting Standards; and
 - c. otherwise does not know and cannot admit the paragraph.
87. [Not used]
88. In response to paragraph 88 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 70A to 70K, 71A to 71D, 71Q to 71W and 86A of this Defence; and
 - b. otherwise does not know and cannot admit the paragraph.
89. Under cover of the pleading that paragraph 89 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
90. Under cover of the pleading that paragraph 90 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
91. Under cover of the pleading that paragraph 91 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
92. Under cover of the pleading that paragraph 92 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

93. Under cover of the pleading that paragraph 93 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
94. In response to paragraph 94 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 62 to 71I, 71N to 71W and 86A of this Defence; and
 - b. otherwise does not know and cannot admit the paragraph.
95. Under cover of the pleading that paragraph 95 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
96. Under cover of the pleading that paragraph 96 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
97. Under cover of the pleading that paragraph 97 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
98. Under cover of the pleading that paragraph 98 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
99. Under cover of the pleading that paragraph 99 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

1.2A Alleged misleading or deceptive conduct (FY19)

100. In response to paragraph 100 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 62 to 71K, 71N to 71W and 86A of this Defence; and
 - b. otherwise does not know and cannot admit the paragraph.
101. Under cover of the pleading that paragraph 101 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
102. Under cover of the pleading that paragraph 102 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
103. Under cover of the pleading that paragraph 103 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

104. Under cover of the pleading that paragraph 104 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

105. Under cover of the pleading that paragraph 105 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

I.3 Alleged Section 1041E liability in respect of the alleged FY18 Directors' Opinion, Extended FY18 Directors' Opinion and FY19 Directors' Opinion to ASX

106. Under cover of the pleading that paragraph 106 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

107. Under cover of the pleading that paragraph 107 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

108. Under cover of the pleading that paragraph 108 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

109. Under cover of the pleading that paragraph 109 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

110. Under cover of the pleading that paragraph 110 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

111. Under cover of the pleading that paragraph 111 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

112. Under cover of the pleading that paragraph 112 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

113. Under cover of the pleading that paragraph 113 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

114. Under cover of the pleading that paragraph 114 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

115. Under cover of the pleading that paragraph 115 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

116. Under cover of the pleading that paragraph 116 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

117. Under cover of the pleading that paragraph 117 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
118. Under cover of the pleading that paragraph 118 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
119. Under cover of the pleading that paragraph 119 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
120. Under cover of the pleading that paragraph 120 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
121. Under cover of the pleading that paragraph 121 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
122. Under cover of the pleading that paragraph 122 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
123. Under cover of the pleading that paragraph 123 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

I.4 Alleged Section 1041E liability in respect of the alleged FY18 Directors' Representation, Extended FY18 Directors' Representation and FY19 Directors' Representation to ASX

124. Under cover of the pleading that paragraph 124 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
125. Under cover of the pleading that paragraph 125 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
126. Under cover of the pleading that paragraph 126 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
127. Under cover of the pleading that paragraph 127 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
128. Under cover of the pleading that paragraph 128 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
129. Under cover of the pleading that paragraph 129 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

130. Under cover of the pleading that paragraph 130 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
131. Under cover of the pleading that paragraph 131 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
132. Under cover of the pleading that paragraph 132 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
133. Under cover of the pleading that paragraph 133 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
134. Under cover of the pleading that paragraph 134 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
135. Under cover of the pleading that paragraph 135 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
136. Under cover of the pleading that paragraph 136 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
137. Under cover of the pleading that paragraph 137 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
138. Under cover of the pleading that paragraph 138 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
139. Under cover of the pleading that paragraph 139 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
140. Under cover of the pleading that paragraph 140 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
141. Under cover of the pleading that paragraph 141 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

**I.5 Nature of the alleged Directors' FY18 Accounts Misleading Conduct
Contraventions**

142. Under cover of the pleading that paragraph 142 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

143. Under cover of the pleading that paragraph 143 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
144. Under cover of the pleading that paragraph 144 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

I.6 Directors' alleged liability in respect of the Capital Raising

145. Under cover of the pleading that paragraph 145 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
146. Under cover of the pleading that paragraph 146 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
147. Under cover of the pleading that paragraph 147 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
148. Under cover of the pleading that paragraph 148 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
149. Under cover of the pleading that paragraph 149 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
150. Under cover of the pleading that paragraph 150 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
151. Under cover of the pleading that paragraph 151 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
152. Under cover of the pleading that paragraph 152 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.
153. Under cover of the pleading that paragraph 153 of the FASOC makes no allegation against it, KPMG does not know and does not admit the paragraph.

J. KPMG'S ALLEGED CONTRAVENING CONDUCT

J.1 KPMG's alleged representations in FY18

154. In response to paragraph 154 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 21, 23, 31, 32 and 71Q of this Defence;

- b. says that the FY18 Audit Report stated that:
 - i. KPMG had conducted an audit of the FY18 Financial Report in accordance with Australian Auditing Standards; and
 - ii. KPMG was of the opinion that the FY18 Financial Report:
 - 1. gave a true and fair view of the financial position of Phoslock (and the consolidated group comprising Phoslock and its controlled entities) as at 30 June 2018, and their performance for the year ending on that date; and
 - 2. had been prepared in accordance with Australian Accounting Standards;
- c. refers to and relies on the terms of the FY18 Audit Report for their full force and effect; and
- d. otherwise denies the paragraph.

J.2 Alleged misleading or deceptive conduct in FY18

155. In response to paragraph 155 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 62 to 70B, 70F, 70I, 70K, 71A to 71E, 71N, 71Q to 71W and 86A of this Defence; and
 - b. otherwise does not know and cannot admit the paragraph.
156. In response to paragraph 156 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 62 to 70B, 70F, 70I, 70K, 71A to 71E, 71N, 71Q to 71W and 86A of this Defence; and
 - b. denies the paragraph.
157. In response to paragraph 157 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 155 and 156 of this Defence; and
 - b. denies the paragraph.

158. In response to paragraph 158 of the FASOC, KPMG:
- a. says that if the FY18 KPMG Opinion to ASX and the FY18 KPMG Representation to ASX were made (which is denied), the expression of the opinion and/or the making of the representation was conduct in trade or commerce within the meaning of s 12DA(1) of the ASIC Act and s 4 of the Australian Consumer Law; and
 - b. otherwise denies the paragraph.
159. In response to paragraph 159 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 156 to 158 of this Defence; and
 - b. denies the paragraph.
160. In response to paragraph 160 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 25, 156 and 157 of this Defence; and
 - b. denies the paragraph.
161. In response to paragraph 161 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 156 and 157 of this Defence; and
 - b. denies the paragraph.
162. In response to paragraph 162 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 25, 156 and 157 of this Defence; and
 - b. denies the paragraph.
163. In response to paragraph 163 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 31, 32 and 154 of this Defence;
 - b. denies the paragraph.
164. In response to paragraph 164 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 156 and 157 of this Defence; and

- b. denies the paragraph.
165. KPMG denies paragraph 165 of the FASOC.
166. In response to paragraph 166 of the FASOC, KPMG:
- a. refers to and repeats paragraph 165 of this Defence; and
 - b. denies the paragraph.
167. In response to paragraph 167 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 156 and 157 of this Defence; and
 - b. denies the paragraph.
168. In response to paragraph 168 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 163 to 167 of this Defence; and
 - b. denies the paragraph.
169. In response to paragraph 169 of the FASOC, KPMG:
- a. refers to and repeats paragraph 25 of this Defence; and
 - b. denies the paragraph.
170. In response to paragraph 170 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 31, 32 and 154 of this Defence;
 - b. denies the paragraph.
171. In response to paragraph 171 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 156 and 157 of this Defence; and
 - b. denies the paragraph.
172. KPMG denies paragraph 172 of the FASOC.
173. In response to paragraph 173 of the FASOC, KPMG:
- a. refers to and repeats paragraph 172 of this Defence; and

b. denies the paragraph.

174. In response to paragraph 174 of the FASOC, KPMG:

a. refers to and repeats paragraphs 156 and 157 of this Defence; and

b. denies the paragraph.

175. In response to paragraph 175 of the FASOC, KPMG:

a. refers to and repeats paragraphs 170 to 174 of this Defence; and

b. denies the paragraph.

176. In response to paragraph 176 of the FASOC, KPMG:

a. refers to and repeats paragraph 25 of this Defence; and

b. denies the paragraph.

J.3 Nature of the alleged KPMG FY18 Accounts Contraventions

177. KPMG denies paragraph 177 of the FASOC.

J.4 KPMG's alleged representations in Extended FY18

178. In response to paragraph 178 of the FASOC, KPMG:

a. refers to and repeats paragraphs 21, 23, 36 to 39 and 71Q of this Defence;

b. says that the Extended FY18 Audit Report stated that:

i. KPMG had conducted an audit of the Extended FY18 Financial Report in accordance with Australian Auditing Standards; and

ii. KPMG was of the opinion that the Extended FY18 Financial Report:

1. gave a true and fair view of the financial position of Phoslock (and the consolidated group comprising Phoslock and its controlled entities) as at 31 December 2018, and their performance for the period ending on that date; and

2. had been prepared in accordance with Australian Accounting Standards;

- c. refers to and relies on the terms of the Extended FY18 Audit Report for their full force and effect; and
- d. otherwise denies the paragraph.

J.5 Alleged misleading or deceptive conduct in Extended FY18

179. In response to paragraph 179 of the FASOC, KPMG:

- a. refers to and repeats paragraphs 62 to 71I, 71N to 71W and 86A of this Defence; and
- b. otherwise does not know and cannot admit the paragraph.

180. In response to paragraph 180 of the FASOC, KPMG:

- a. refers to and repeats paragraphs 62 to 71I, 71N to 71W and 86A of this Defence; and
- b. otherwise denies the paragraph.

181. In response to paragraph 181 of the FASOC, KPMG:

- a. refers to and repeats paragraphs 179 and 180 of this Defence; and
- b. denies the paragraph.

182. In response to paragraph 182 of the FASOC, KPMG:

- a. says that if the FY18 KPMG Opinion to ASX and the FY18 KPMG Representation to ASX were made (which is denied), the expression of the opinion and/or the making of the representation was conduct in trade or commerce within the meaning of s 12DA(1) of the ASIC Act and s 2 of the Australian Consumer Law; and
- b. otherwise denies the paragraph.

183. In response to paragraph 183 of the FASOC, KPMG:

- a. refers to and repeats paragraphs 180 to 182 of this Defence; and
- b. denies the paragraph.

184. In response to paragraph 184 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 25, 180 and 181 of this Defence; and
 - b. denies the paragraph.
185. In response to paragraph 185 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 180 and 181 of this Defence; and
 - b. denies the paragraph.
186. In response to paragraph 186 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 25, 180 and 181 of this Defence; and
 - b. denies the paragraph.
187. In response to paragraph 187 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 36 to 39 and 178 of this Defence;
 - b. denies the paragraph.
188. In response to paragraph 188 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 180 and 181 of this Defence; and
 - b. denies the paragraph.
189. KPMG denies paragraph 189 of the FASOC.
190. In response to paragraph 190 of the FASOC, KPMG:
- a. refers to and repeats paragraph 189 of this Defence; and
 - b. denies the paragraph.
191. In response to paragraph 191 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 180 and 181 of this Defence; and
 - b. denies the paragraph.

192. In response to paragraph 192 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 187 to 191 of this Defence; and
 - b. denies the paragraph.
193. In response to paragraph 193 of the FASOC, KPMG:
- a. refers to and repeats paragraph 25 of this Defence; and
 - b. denies the paragraph.
194. In response to paragraph 194 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 36 to 39 and 178 of this Defence;
 - b. denies the paragraph.
195. In response to paragraph 195 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 180 and 181 of this Defence; and
 - b. denies the paragraph.
196. KPMG denies paragraph 196 of the FASOC.
197. In response to paragraph 197 of the FASOC, KPMG:
- a. refers to and repeats paragraph 196 of this Defence; and
 - b. denies the paragraph.
198. In response to paragraph 198 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 180 and 181 of this Defence; and
 - b. denies the paragraph.
199. In response to paragraph 199 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 194 to 198 of this Defence; and
 - b. denies the paragraph.

200. In response to paragraph 200 of the FASOC, KPMG:

- a. refers to and repeats paragraph 25 of this Defence; and
- b. denies the paragraph.

J.6 Nature of the alleged KPMG Extended FY18 Accounts Contraventions

201. KPMG denies paragraph 201 of the FASOC.

J.7 KPMG's alleged representations in FY19

202. In response to paragraph 202 of the FASOC, KPMG:

- a. refers to and repeats paragraphs 21, 23, 44 to 48 and 71Q of this Defence;
- b. says that the FY19 Audit Report stated that:
 - i. KPMG had conducted an audit of the FY19 Financial Report in accordance with Australian Auditing Standards; and
 - ii. KPMG was of the opinion that the FY19 Financial Report:
 1. gave a true and fair view of the financial position of Phoslock (and the consolidated group comprising Phoslock and its controlled entities) as at 31 December 2019, and their performance for the year ending on that date; and
 2. had been prepared in accordance with Australian Accounting Standards;
- c. refers to and relies on the terms of the FY19 Audit Report for their full force and effect; and
- d. otherwise denies the paragraph.

J.8 Alleged misleading or deceptive conduct in FY19

203. In response to paragraph 203 of the FASOC, KPMG:

- a. refers to and repeats paragraphs 62 to 71K, 71N to 71W and 86A of this Defence; and
- b. otherwise does not know and cannot admit the paragraph.

204. In response to paragraph 204 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 62 to 71K, 71N to 71W and 86A of this Defence; and
 - b. denies the paragraph.
205. In response to paragraph 205 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 203 and 204 of this Defence; and
 - b. denies the paragraph.
206. In response to paragraph 206 of the FASOC, KPMG:
- a. says that if the FY19 KPMG Opinion to ASX and the FY19 KPMG Representation to ASX were made (which is denied), the expression of the opinion and/or the making of the representation was conduct in trade or commerce within the meaning of s 12DA(1) of the ASIC Act and s 2 of the Australian Consumer Law; and
 - b. otherwise denies the paragraph.
207. In response to paragraph 207 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 204 to 206 of this Defence; and
 - b. denies the paragraph.
208. In response to paragraph 208 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 25, 204 and 205 of this Defence; and
 - b. denies the paragraph.
209. In response to paragraph 209 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 204 and 205 of this Defence; and
 - b. denies the paragraph.
210. In response to paragraph 210 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 25, 204 and 205 of this Defence; and

- b. denies the paragraph.
211. In response to paragraph 211 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 44 to 48 and 202 of this Defence;
 - b. denies the paragraph.
212. In response to paragraph 212 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 204 and 205 of this Defence; and
 - b. denies the paragraph.
213. KPMG denies paragraph 213 of the FASOC.
214. In response to paragraph 214 of the FASOC, KPMG:
- a. refers to and repeats paragraph 213 of this Defence; and
 - b. denies the paragraph.
215. In response to paragraph 215 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 204 and 205 of this Defence; and
 - b. denies the paragraph.
216. In response to paragraph 216 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 211 to 215 of this Defence; and
 - b. denies the paragraph.
217. In response to paragraph 217 of the FASOC, KPMG:
- a. refers to and repeats paragraph 25 of this Defence; and
 - b. denies the paragraph.
218. In response to paragraph 218 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 44 to 48 and 202 of this Defence;
 - b. denies the paragraph.

219. In response to paragraph 219 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 204 and 205 of this Defence; and
 - b. denies the paragraph.
220. KPMG denies paragraph 220 of the FASOC.
221. In response to paragraph 221 of the FASOC, KPMG:
- a. refers to and repeats paragraph 220 of this Defence; and
 - b. denies the paragraph.
222. In response to paragraph 222 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 204 and 205 of this Defence; and
 - b. denies the paragraph.
223. In response to paragraph 223 of the FASOC, KPMG:
- a. refers to and repeats paragraphs 218 to 222 of this Defence; and
 - b. denies the paragraph.
224. In response to paragraph 224 of the FASOC, KPMG:
- a. refers to and repeats paragraph 25 of this Defence; and
 - b. denies the paragraph.

J.9 Nature of the alleged KPMG FY19 Accounts Contraventions

225. KPMG denies paragraph 225 of the FASOC.

K. CONTRAVENING CONDUCT ALLEGEDLY CAUSED LOSS

K.1 What happened after the contraventions

226. In response to paragraph 226 of the FASOC, KPMG:
- a. says that paragraphs 229 to 233B of the FASOC concern the making of ASX announcements, rather than matters of fact that were or could have been the subject of such announcements;

- b. refers to and repeats paragraphs 227 to 233F of this Defence; and
- c. otherwise denies the paragraph.

227. KPMG admits paragraph 227 of the FASOC.

228. In response to paragraph 228 of the FASOC, KPMG:

- a. says that on 21 September 2020, the securities of Phoslock were suspended from quotation immediately, at the request of Phoslock; and
- b. otherwise denies the paragraph.

229. In response to paragraph 229 of the FASOC, KPMG:

- a. refers to and repeats paragraph 228 of this Defence;
- b. says that the September 2020 Announcement referred to Listing Rule 17.2, not Listing Rule 7.12; and
- c. otherwise admits the paragraph.

230. In response to paragraph 230 of the FASOC, KPMG:

- a. says that on 8 October 2020, Phoslock published an announcement with the ASX titled "Market Update – China accounting irregularities";
- b. says further that the announcement stated that:
 - i. KPMG had reported the preliminary findings of its investigation into suspected accounting irregularities relating to Phoslock's China operations;
 - ii. the investigation had identified:
 - 1. false accounting and falsification of invoices and service contracts purportedly received by Phoslock or its subsidiaries;
 - 2. potential improper tax reporting and misappropriation of funds; and
 - 3. previously undisclosed related party transactions; and

- iii. further investigation was required to determine the full extent of those and possibly further irregularities and to quantify the impact on the company's finances and accounts; and

c. otherwise denies the paragraph.

231. In response to paragraph 231 of the FASOC, KPMG:

- a. says that on 26 October 2020, Phoslock published and lodged with the ASX an announcement entitled "September 2020 Quarterly Update", which stated that it provided among other things, a trading update for the quarter ending 30 September 2020; and
- b. otherwise denies the paragraph.

232. In response to paragraph 232 of the FASOC, KPMG:

- a. says that on 12 November 2020, Phoslock published and lodged with the ASX an announcement entitled "China accounting irregularities – investigation update", which concerned an investigation into accounting irregularities in Phoslock's China operations; and
- b. otherwise denies the paragraph.

233. In response to paragraph 233 of the FASOC, KPMG:

- a. says that on 28 January 2021, Phoslock published and lodged with the ASX an announcement entitled "December 2020 Quarterly Update";
- b. says further that the announcement included a section concerning an investigation into accounting irregularities in Phoslock's China operations; and
- c. otherwise denies the paragraph.

233A. In response to paragraph 233A of the FASOC, KPMG:

- a. says that paragraph 233A is vague and embarrassing, and liable to be struck out, in the absence of a complete set of particulars identifying the updates relied upon by the Applicant; and
- b. under cover of that objection:
 - i. refers to and repeats paragraph 71Q of this Defence;

- ii. says that on 16 November 2021 and 16 September 2022, Phoslock published and lodged with the ASX announcements which addressed, among other things, an investigation into accounting irregularities in Phoslock's China operations; and
- iii. otherwise does not know and cannot admit the paragraph.

233B. In response to paragraph 233B of the FASOC, KPMG:

- a. refers to and repeats paragraphs 70C, 70F, 70I, 71N, 71Q and 233A of this Defence; and
- b. denies the paragraph.

233C. KPMG admits paragraph 233C of the FASOC.

233D. In response to paragraph 233D of the FASOC, KPMG:

- a. says that on 16 September 2022, the price of Phoslock's shares on the ASX closed at \$0.08; and
- b. otherwise does not know and cannot admit the paragraph.

233E. In response to paragraph 233E of the FASOC, KPMG:

- a. says that on 23 September 2022, the price of Phoslock's shares on the ASX closed at \$0.061; and
- b. otherwise does not know and cannot admit the paragraph.

233F. KPMG denies paragraph 233F of the FASOC, and says further that:

- a. between 13 September 2019 and 16 September 2020, the price of Phoslock's shares on the ASX had declined from \$1.458 to \$0.24; and
- b. the suspension of Phoslock's shares from quotation on 17 September 2020 interrupted a trajectory of decline in the value of those shares which would, but for that suspension, have continued.

N.2 What would have happened but for the contraventions

234. In response to paragraph 234 of the FASOC, KPMG:

- a. in so far as the paragraph concerns the alleged Directors' FY18 Accounts Contraventions, says that the paragraph makes no allegation against it, and under cover of that pleading:
 - i. refers to and repeats paragraphs 71Q and 86A of this Defence; and
 - ii. does not know and cannot admit the paragraph; and
- b. otherwise denies the paragraph.

235. In response to paragraph 235 of the FASOC, KPMG:

- a. in so far as the paragraph concerns the alleged Directors' FY18 Accounts Contraventions and the alleged Directors' Capital Raising Contraventions, says that the paragraph makes no allegation against it, and under cover of that pleading:
 - i. refers to and repeats paragraphs 56 to 61 and 234 of this Defence; and
 - ii. does not know and cannot admit the paragraph; and
- b. otherwise denies the paragraph.

236. In response to paragraph 236 of the FASOC, KPMG:

- a. in so far as the paragraph concerns the alleged Directors' Extended FY18 Accounts Contraventions and the alleged Directors' Capital Raising Contraventions, says that the paragraph makes no allegation against it, and under cover of that pleading:
 - i. refers to and repeats paragraphs 71Q and 86A of this Defence; and
 - ii. does not know and cannot admit the paragraph; and
- b. otherwise denies the paragraph.

237. In response to paragraph 237 of the FASOC, KPMG:

- a. in so far as the paragraph concerns the alleged Directors' Extended FY18 Accounts Contraventions and the alleged Directors' Capital Raising Contraventions, says that the paragraph makes no allegation against it, and under cover of that pleading:
 - i. refers to and repeats paragraphs 56 to 61 and 236 of this Defence; and
 - ii. does not know and cannot admit the paragraph; and
- b. otherwise denies the paragraph.

238. In response to paragraph 238 of the FASOC, KPMG:

- a. in so far as the paragraph concerns the alleged Directors' FY19 Accounts Contraventions says that the paragraph makes no allegation against it, and under cover of that pleading:
 - i. refers to and repeats paragraphs 71Q and 86A of this Defence; and
 - ii. does not know and cannot admit the paragraph; and
- b. otherwise denies the paragraph.

239. In response to paragraph 239 of the FASOC, KPMG:

- a. in so far as the paragraph concerns the alleged Directors' FY19 Accounts Contraventions and the alleged Directors' Capital Raising Contraventions, says that the paragraph makes no allegation against it, and under cover of that pleading:
 - i. refers to and repeats paragraphs 56 to 61 and 238 of this Defence; and
 - ii. does not know and cannot admit the paragraph; and
- b. otherwise denies the paragraph.

K.3 Causation: acquisitions in the Capital Raising

240. In response to paragraph 240 of the FASOC, KPMG:

- a. admits subparagraph 240(a), to the extent that it is established that the Applicant or a Group Member acquired relevant interests in Phoslock Shares during the Relevant Period;
- b. in respect of subparagraphs 240(b) and (c), says that the price of Phoslock Shares would reasonably be expected to have been informed or affected by material information disclosed to the ASX and by other publicly available information, amongst other factors affecting the price at which those shares were traded; and
- c. otherwise denies the paragraph.

241. KPMG denies paragraph 241 of the FASOC.

242. In response to paragraph 242 of the FASOC, KPMG:

- a. refers to and repeats paragraph 154 of this Defence; and
- b. otherwise does not know and cannot admit the paragraph.

243. In response to paragraph 243 of the FASOC, KPMG:

- a. refers to and repeats paragraph 240 of this Defence; and
- b. otherwise denies the paragraph.

244. KPMG denies paragraph 244 of the FASOC.

245. In response to paragraph 245 of the FASOC, KPMG:

- a. refers to and repeats paragraph 178 of this Defence; and
- b. otherwise does not know and cannot admit the paragraph.

246. In response to paragraph 246 of the FASOC, KPMG:

- a. refers to and repeats paragraph 240 of this Defence; and
- b. otherwise denies the paragraph.

247. KPMG denies paragraph 247 of the FASOC.

248. In response to paragraph 248 of the FASOC, KPMG:

- a. refers to and repeats paragraph 202 of this Defence; and
- b. otherwise does not know and cannot admit the paragraph.

K.4 Market-based causation (on-market acquisitions)

249. In response to paragraph 249 of the FASOC, KPMG:

- a. refers to and repeats paragraphs 62 to 71W of this Defence;
- b. admits subparagraphs 249(a) and (b) to the extent it is established that the Applicant or a Group Member acquired relevant interests in Phoslock Shares on the financial market operated by the ASX during the Relevant Period;
- c. in respect of subparagraph 249(c), says that the price of Phoslock Shares would reasonably be expected to have been informed or affected by material information disclosed to the ASX and by other publicly available information, amongst other factors affecting the price at which those shares were traded; and
- d. otherwise denies the paragraph.

250. KPMG denies paragraph 250 of the FASOC and says further that, in so far as it is alleged that loss or damage can be claimed by the Applicant or Group Members who are not proved individually to have relied in fact on the impugned conduct of KPMG, the allegation is contrary to law, and no such loss or damage can be awarded.

251. KPMG denies paragraph 251 of the FASOC.

252. In response to paragraph 252 of the FASOC, KPMG:

- a. refers to and repeats paragraphs 154, 178 and 202 of this Defence; and
- b. otherwise does not know and cannot admit the paragraph.

K.5 Causation: Retained Shareholders

253. In response to paragraph 253 of the FASOC, KPMG:

- a. refers to and repeats paragraphs 154, 178 and 202 of this Defence; and

b. otherwise does not know and cannot admit the paragraph.

254. In response to paragraph 254 of the FASOC, KPMG:

a. refers to and repeats paragraphs 250 and 253 of this Defence; and

b. denies the paragraph.

K.5 Loss or damage allegedly suffered by the Applicant and Group Members

255. In response to paragraph 255 of the FASOC, KPMG:

a. refers to and repeats paragraphs 226 to 254 of this Defence; and

b. denies the paragraph.

256. [Not used]

257. [Not used]

258. [Not used]

M. ENTITLEMENT TO RELIEF

259. KPMG denies that the Applicant and Group Members are entitled to the relief claimed, or any relief at all.

260. In further answer to the whole of the FASOC, KPMG pleads the matters set out at paragraphs 261 to 281 of this Defence.

N. RELIEF FROM LIABILITY

261. If (which is denied) KPMG is liable to the Applicant or any Group Member by reason of the facts and matters alleged in the FASOC, then:

a. KPMG acted honestly; and

b. having regard to all of the circumstances of the case, KPMG ought fairly be excused from any such liability,

and the Court should wholly, or alternatively partly, relieve KPMG from any liability pursuant to s 1317S (by reason of s 1041(4)) and/or s 1318 of the Corporations Act.

O. PROFESSIONAL STANDARDS SCHEME

262. It was an express term of the 2017 Retainer that the services performed in relation to the FY18 Audit Report would be limited by the application of the Chartered Accountants in Australia (NSW) Scheme commencing 8 October 2014 (the **2014 Scheme**) approved under the *Professional Standards Act 1994* (NSW) (the **PSA**), or such other applicable scheme approved under the PSA.

Particulars

2017 Retainer, Appendix 1, cl 8.1.

263. It was an express term of the 2018 Retainer that the services performed in relation to the Extended FY18 Audit Report and the FY19 Audit Report would be limited in accordance with any applicable scheme approved under professional standards legislation.

Particulars

2018 Retainer, Appendix 1, cl 8.1.

O.1 FY18 and Extended FY18 Audit Reports

264. At all material times, the 2014 Scheme was a scheme approved and operating under the PSA.
265. At all material times, KPMG was a participating member of the 2014 Scheme.
266. It was a term of the 2014 Scheme that a participating member against whom a proceeding is brought relating to occupational liability (as defined in the PSA) in connection with the provision of audit services in respect of which the fee for those services is \$100,000 or more, but less than \$300,000, is not liable in damages in relation to that claim above \$5,000,000.

Particulars

2014 Scheme, cll 3.2, 3.3 and 4.1.

267. KPMG charged Phoslock:
- a. \$103,618.75 for the performance of audit services in relation to the FY18 Financial Report; and

Particulars

- 1 KPMG Invoice issued to Phoslock dated 29 August 2018 in the amount of \$81,632.50 (incl. GST) (KPMG.001.015.0005); and
 - 2 KPMG Invoice issued to Phoslock dated 12 November 2018 in the amount of \$21,986.25 (incl. GST) (KPMG.001.015.0007).
- b. \$107,021.96 for the performance of audit services in relation to the Extended FY18 Financial Report.

Particulars

- 1 KPMG Invoice issued to Phoslock dated 13 February 2019 in the amount of \$81,374.50 (incl. GST) (KPMG.001.015.0009); and
 - 2 KPMG Invoice issued to Phoslock dated 1 April 2019 in the amount of \$25,647.46 (incl. GST) (KPMG.001.015.0011).
268. By reason of the matters pleaded in paragraphs 262 to 267 of this Defence and:
- a. ss 28 and 29(2) of the PSA; and
 - b. s 137 of the *Competition and Consumer Act 2010* (Cth) (**CCA**);
 - c. s 12GNA of the ASIC Act; or
 - d. s 1044B of the Corporations Act,
- any liability of KPMG arising from the performance of the 2017 Retainer and the 2018 Retainer in relation to the FY18 Financial Report and the Extended FY18 Financial Report, as claimed in the FASOC, is limited to \$5,000,000.

O.2 FY19 Financial Report

269. At all material times, the Chartered Accountants in Australia (NSW) Scheme commencing 8 October 2019 (the **2019 Scheme**) was a scheme approved and operating under the PSA.
270. At all material times, KPMG was a participating member of the 2019 Scheme.
271. It was a term of the 2019 Scheme that a participating member against whom a proceeding is brought relating to occupational liability (as defined in the PSA) in connection with the provision of audit services in respect of which the fee is \$100,000 or

more, but less than \$300,000, is not liable in damages in relation to that claim above \$5,000,000.

Particulars

2019 Scheme, cl 3.2, 3.3 and 4.1.

272. KPMG charged Phoslock \$133,862.04 for the performance of audit services for the FY19 Financial Report.

Particulars

- 1 KPMG Invoice issued to Phoslock dated 7 January 2020 in the amount of \$36,796.24 (incl. GST) (KPMG.001.015.0015);
- 2 KPMG Invoice issued to Phoslock dated 3 February 2020 in the amount of \$57,004.07 (incl. GST) (KPMG.001.015.0017); and
- 3 KPMG Invoice issued to Phoslock dated 26 March 2020 in the amount of \$40,061.73 (incl. GST) (KPMG.001.015.0019).

273. By reason of the matters pleaded in paragraphs 263 and 269 to 271 of this Defence and:

- a. ss 28 and 29(2) of the PSA; and
- b. s 137 of the CCA;
- c. s 12GNA of the ASIC Act; or
- d. s 1044B of the Corporations Act,

any liability of KPMG arising from the performance of the 2018 Retainer in relation to the FY19 Financial Report, as claimed in the FASOC, is limited to \$5,000,000.

R. PROPORTIONATE LIABILITY

274. In respect of alleged contraventions of s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the Australian Consumer Law by KPMG (the **Claims**), if (which is denied) KPMG is liable to the Applicant or any Group Member for any loss or damage that is the subject of the Claims (**Claimed Loss**), it pleads as follows.

275. The Claims are apportionable claims within the meaning of:

- a. in respect of any alleged contravention of s 1041H of the Corporations Act, s 1041L of the Corporations Act;

- b. in respect of any alleged contravention of s 12DA of the ASIC Act, s 12GP of the ASIC Act; and
- c. in respect of any alleged contravention of s 18 of the Australian Consumer law, s 87CB of the CCA.

R.1 Financial Reports

276. In respect of the FY18 Financial Report, Extended FY18 Financial Report and FY19 Financial Report, Phoslock, Mr Schuitema and Mr Freedman are each a “concurrent wrongdoer” within the meaning of s 1041L(3) of the Corporations Act, s 12GP(3) of the ASIC Act and s 87CB(3) of the CCA by reason of:

- a. the matters pleaded in paragraphs 75 to 153 of the FASOC; and
- b. Mr Schuitema and Mr Freedman each being a person whose acts or omissions caused the Claimed Loss, as pleaded in paragraphs 234 to 255 of the FASOC.

277. In the premises, KPMG’s liability (if any) to the Applicant and each Group Member in respect of the FY18 Financial Report, Extended FY18 Financial Report and FY19 Financial Report is limited by s 1041N of the Corporations Act, s 12GR of the ASIC Act, and s 87CD of the CCA, to an amount reflecting that proportion of Claimed Loss that the Court considers is just having regard to the extent of KPMG’s responsibility for that Claimed Loss.

R.2 Advisers

278. If (which is not presently known to KPMG):

- a. the Applicant or any Group Member was advised by an adviser in relation to purchases of Phoslock Shares in respect of which the Applicant or any Group Member now makes Claims;
- b. that advice was negligent; and
- c. that advice caused or contributed to the making of those purchases,

that adviser is a person whose acts or omissions caused the Claimed Loss in respect of the Applicant or that Group Member.

Particulars

Further particulars may be provided following discovery in respect of the claims by the Applicant and, prior to the trial of each Group Member's claims, by that Group Member.

279. In the premises, any adviser referred to in the preceding paragraph is, in relation to the Claims by the Applicant or Group Member referred to in that paragraph, a concurrent wrongdoer within the meaning of s 1041L(3) of the Corporations Act, s 12GP(3) of the ASIC Act and s 87CB(3) of the CCA.

S. CONTRIBUTORY NEGLIGENCE

280. If (which is not presently known to KPMG) the decision of the Applicant or any Group Member to purchase Phoslock Shares, in respect of which the Applicant or that Group Member now makes claims based on alleged contraventions of ss 1041H of the Corporations Act, s 12DA of the ASIC Act or s 18 of the Australian Consumer Law, involved a failure by that Applicant or Group Member to take reasonable care, then, by reason of:
- a. in respect of the contravention of s 1041H of the Corporations Act alleged against KPMG, s 1041I of the Corporations Act;
 - b. in respect of the contravention of s 12DA of the ASIC Act alleged against KPMG, s 12GF of the ASIC Act; and
 - c. in respect of the contravention of s 18 of the Australian Consumer Law alleged against KPMG, s 137B of the Australian Consumer Law,

any liability of KPMG in relation to those claims is limited to an amount which the Court thinks just and equitable having regard to the responsibility of the Applicant or that Group Member.

Particulars

Further particulars may be provided following discovery in respect of the Applicant's claim and, prior to any trial of each Group Member's claims, that Group Member.

T. NORMATIVE CAUSATION

281. Further, and in answer to each of the claims made:

- a. having regard to the subject matter, scope and purpose of ss 1041H and 1041I of the Corporations Act, it is not appropriate for the scope of KPMG's liability to extend to any loss or damage claimed;
- b. having regard to the subject matter, scope and purpose of ss 1041E and 1041I of the Corporations Act, it is not appropriate for the scope of KPMG's liability to extend to any loss or damage claimed;
- c. having regard to the subject matter, scope and purpose of ss 12DA(1) and 12GF of the ASIC Act, it is not appropriate for the scope of KPMG's liability to extend to any loss or damage claimed; and
- d. having regard to the subject matter, scope and purpose of ss 18 and 236 of the Australian Consumer Law, it is not appropriate for the scope of KPMG's liability to extend to any loss or damage claimed.

Date: ~~10 July 2025~~²⁹ September 2025



Signed by John Pavlakis
Lawyer for KPMG, Fourth Respondent

This pleading was prepared by Perry Herzfeld SC, Alison Hammond and Harry Rogers of counsel.

Certificate of lawyer

I John Pavlakis certify to the Court that, in relation to the defence filed on behalf of the Fourth 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: ~~10 July 2025~~ 29 September 2025



Signed by John Pavlakis
Lawyer for KPMG, Fourth Respondent

Schedule

No. VID1072 of 2024

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

Applicant Edwin Paul Cayzer

Respondents:

First Respondent: Phoslock Environmental Technologies Limited
Second Respondent: Laurence Freedman
Third Respondent: Robert Schuitema
Fourth Respondent: KPMG (a firm) ABN 51 194 660 183

NOTICE OF FILING

Details of Filing

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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.