



## Statement of cross-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

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

Cross-claimant

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

Cross-respondents

If the Cross-claimant (**KPMG**) is liable to the Applicant or to any Group Member (which is denied), then solely for the purpose of this cross-claim, and without admission, KPMG says as follows (adopting the defined terms used in its Defence filed on 10 July 2025).

1. The Cross-claimant (**KPMG**) refers to and repeats the matters alleged and admitted in paragraphs 1 to 7, 14 to 48 and 53 to 61 of the Defence filed on 10 July 2025.

#### A. KPMG Retainers

2. There were express terms of the 2017 Retainer and the 2018 Retainer that:
  - a. the directors and other officers of Phoslock, and Phoslock, were responsible for the preparation of financial reports that complied with the Corporations Act;

#### Particulars

2017 Retainer, section 2, paragraph 2.

2018 Retainer, section 2, paragraph 2

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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		
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- b. the directors and other officers of Phoslock, and Phoslock, were responsible for disclosing all instances of known or suspected fraud, or non-compliance with laws or regulations, that could have a material effect on its financial reports;

**Particulars**

2017 Retainer, section 2, paragraph 4.

2018 Retainer, section 2, paragraph 4.

- c. the directors and management of Phoslock were expected to advise KPMG of any known material and/or contentious issues relating to the preparation of its financial reports; and

**Particulars**

2017 Retainer, section 2, paragraph 5.

2018 Retainer, section 2, paragraph 5.

- d. Phoslock, its controlled entities and its management would provide KPMG with all information relevant to the preparation of its financial reports and the provision of services under the 2017 Retainer and 2018 Retainer (together, the **Retainers**) by KPMG.

**Particulars**

2017 Retainer, section 2, paragraph 7 and Appendix 1, cl 2.1.

2018 Retainer, section 2, paragraph 7 and Appendix 1, cl 3.1.

- 3. If the FY18 Financial Report, the Extended FY18 Financial Report or the FY19 Financial Report did not give a true and fair view of the financial position and performance of Phoslock for the relevant reporting period, or was not prepared in compliance with Australian Accounting Standards, by reason of the matters pleaded in Sections G and GA of the ASOC (as alleged in paragraphs 86A, 155, 179 and 203 of the ASOC), which KPMG does not presently know, then:
  - a. Phoslock, Mr Freedman and Mr Schuitema breached the term of the KPMG retainer set out in paragraph 2(a) above by failing to prepare financial reports which gave a true and fair view of Phoslock's financial performance and position and/or complied with Australian Accounting Standards; and
  - b. Phoslock, Mr Freedman and Mr Schuitema breached the terms of the Retainers set out in paragraphs 2(b) to (d) above by failing to inform KPMG of, or draw to its attention, the matters alleged in paragraphs 70C, 70F, 70I and 71N of the ASOC.

4. By reason of the breaches of each of the 2017 Retainer and the 2018 Retainer pleaded in paragraph 3 above, KPMG has suffered loss and damage.

**Particulars**

But for those breaches, the matters allegedly misrepresented or not disclosed by Phoslock that are the subject of complaint by the Applicant and Group Members in this proceeding would have been properly disclosed, and the Applicant and Group Members would not have any claim against KPMG in respect of any alleged misrepresentation or non-disclosure. Accordingly, KPMG's loss and damage is constituted by:

- (i) any damages or compensation, costs or interest that KPMG is ordered to pay to the Applicant or any Group Member in this proceeding; and
- (ii) the legal costs and disbursements that KPMG has incurred in defending this proceeding.

Further particulars may be provided after the completion of interlocutory steps.

**B. MISLEADING CONDUCT**

**FY18 Financial Report**

5. On or around 27 August 2018, Phoslock provided KPMG with a representation letter, signed by Mr Schuitema, in connection with its audit of the FY18 Financial Report.

**Particulars**

Letter dated 27 August 2018 from Phoslock Environmental Technologies Limited to Sarah Cain of KPMG, titled "Representation letter – audit of annual financial report for period 1 July 2017 to 30 June 2018".

6. By reason of:
- a. the matters pleaded in paragraph 5 above; and
  - b. further or alternatively, statements made orally to KPMG by officers or employees of Phoslock in July and August 2018,

**Particulars**

The particulars to paragraph 5 above are repeated.

Interview with Mr Schuitema on around 30 July 2018. Further and better particulars may be provided following completion of interlocutory steps.

Phoslock represented to KPMG that:

- c. the FY18 Financial Report gave a true and fair view of the financial position and performance of Phoslock and its controlled entities for the year ending 30 June 2018, and complied with all relevant Australian Accounting Standards;
- d. there were no instances of fraud or suspected fraud affecting Phoslock and its controlled entities and which:
  - i. involved the management of Phoslock and its controlled entities or employees with significant roles in internal control; or
  - ii. could have a material effect on the FY18 Financial Report;
- e. Phoslock had disclosed all instances of non-compliance or suspected non-compliance with laws or regulations that might have a material effect on the FY18 Financial Report known to it;
- f. Phoslock had provided KPMG with all of the information of which its management was aware that was relevant to the preparation of the FY18 Financial Report;
- g. Phoslock had disclosed to KPMG all of the related party transactions in the year ending 30 June 2018 of which its management was aware; and
- h. all related party relationships and transactions of Phoslock and its controlled entities had been accounted for and disclosed in the FY18 Financial Report in accordance with AASB 124

(the **FY18 Phoslock Representations**).

7. By reason of:

- a. the matters pleaded in paragraph 5 above; and
- b. further or alternatively, statements made to KPMG in July or August 2018,

#### **Particulars**

The particulars to paragraph 5 above are repeated.

Interview with Mr Schuitema on around 30 July 2018. Further and better particulars may be provided following completion of interlocutory steps.

Mr Schuitema represented to KPMG that:

- c. the FY18 Financial Report gave a true and fair view of the financial position and performance of Phoslock and its controlled entities for the year ending 30 June 2018, and complied with all relevant Australian Accounting Standards;

- d. there were no instances of fraud or suspected fraud affecting Phoslock and its controlled entities and which:
  - i. involved the management of Phoslock and its controlled entities or employees with significant roles in internal control; or
  - ii. could have a material effect on the FY18 Financial Report;
- e. Phoslock had disclosed all instances of non-compliance or suspected non-compliance with laws or regulations that might have a material effect on the FY18 Financial Report known to it, or alternatively to Mr Schuitema;
- f. Phoslock had provided KPMG with all of the information of which its management, or alternatively Mr Schuitema, was aware that was relevant to the preparation of the FY18 Financial Report;
- g. Phoslock had disclosed to KPMG all of the related party transactions in the year ending 30 June 2018 of which its management, or alternatively Mr Schuitema, was aware; and
- h. all related party relationships and transactions of Phoslock and its controlled entities had been accounted for and disclosed in the FY18 Financial Report in accordance with AASB 124

(the **FY18 Schuitema Representations**).

### **Extended FY18 Financial Report**

- 8. On or around 27 February 2019, Phoslock provided KPMG with a representation letter, signed by Mr Schuitema, in connection with its audit of the Extended FY18 Financial Report.

#### **Particulars**

Letter dated 27 February 2019 from Phoslock Environmental Technologies Limited to Sarah Cain of KPMG, titled "Representation letter – Audit of annual financial report for period 1 July 2018 to 31 December 2018".

- 9. By reason of:
  - a. the matters pleaded in paragraph 8 above; and
  - b. further or alternatively, statements made to KPMG by officers or employees of Phoslock in around December 2018,

#### **Particulars**

The particulars to paragraph 8 above are repeated.

Interview with Mr Schuitema and Chris Hui on around 3 December 2018.  
Further and better particulars may be provided following completion of interlocutory steps.

Phoslock represented to KPMG that:

- c. the Extended FY18 Financial Report gave a true and fair view of the financial position and performance of Phoslock and its controlled entities for the period ending 31 December 2018, and complied with all relevant Australian Accounting Standards;
- d. there were no instances of fraud or suspected fraud affecting Phoslock and its controlled entities and which:
  - i. involved the management of Phoslock and its controlled entities or employees with significant roles in internal control; or
  - ii. could have a material effect on the Extended FY18 Financial Report;
- e. Phoslock had disclosed all instances of non-compliance or suspected non-compliance with laws or regulations that might have a material effect on the Extended FY18 Financial Report known to it;
- f. Phoslock had provided KPMG with all of the information of which its management was aware that was relevant to the preparation of the Extended FY18 Financial Report;
- g. Phoslock had disclosed to KPMG all of the related party transactions in the period ending 31 December 2018 of which its management was aware; and
- h. all related party relationships and transactions of Phoslock and its controlled entities had been accounted for and disclosed in the Extended FY18 Financial Report in accordance with AASB 124

(the **Extended FY18 Phoslock Representations**).

10. By reason of:

- a. the matters pleaded in paragraph 8 above; and
- b. further or alternatively, statements made to KPMG in around December 2018,

#### **Particulars**

The particulars to paragraph 8 above are repeated.

Interview with Mr Schuitema and Chris Hui on around 3 December 2018.  
Further and better particulars may be provided following completion of interlocutory steps.

Mr Schuitema represented to KPMG that:

- c. the Extended FY18 Financial Report gave a true and fair view of the financial position and performance of Phoslock and its controlled entities for the year ending 30 June 2018, and complied with all relevant Australian Accounting Standards;
- d. there were no instances of fraud or suspected fraud affecting Phoslock and its controlled entities and which:
  - i. involved the management of Phoslock and its controlled entities or employees with significant roles in internal control; or
  - ii. could have a material effect on the Extended FY18 Financial Report;
- e. Phoslock had disclosed all instances of non-compliance or suspected non-compliance with laws or regulations that might have a material effect on the Extended FY18 Financial Report known to it, or alternatively to Mr Schuitema;
- f. Phoslock had provided KPMG with all of the information of which its management, or alternatively Mr Schuitema, was aware that was relevant to the preparation of the Extended FY18 Financial Report;
- g. Phoslock had disclosed to KPMG all of the related party transactions in the period ending 31 December 2018 of which its management, or alternatively Mr Schuitema, was aware; and
- h. all related party relationships and transactions of Phoslock and its controlled entities had been accounted for and disclosed in the Extended FY18 Financial Report in accordance with AASB 124

(the **Extended FY18 Schuitema Representations**).

### **FY19 Financial Report**

- 11. On or around 24 March 2020, Phoslock provided KPMG with a representation letter, signed by Mr Schuitema, in connection with its audit of the FY19 Financial Report.

#### **Particulars**

Letter dated 24 March 2020 from Phoslock Environmental Technologies Limited to Sarah Cain of KPMG, titled "Representation letter – audit of annual financial report for period 1 January 2019 to 31 December 2019".

- 12. By reason of:
  - a. the matters pleaded in paragraph 11 above; and

- b. further or alternatively, statements made orally to KPMG by officers or employees of Phoslock in around October 2019,

**Particulars**

The particulars to paragraph 11 above are repeated.

Interview with Mr Schuitema and Chris Hui on around 16 October 2019.

Further and better particulars may be provided following completion of interlocutory steps.

Phoslock represented to KPMG that:

- c. the FY19 Financial Report gave a true and fair view of the financial position and performance of Phoslock and its controlled entities for the year ending 31 December 2019, and complied with all relevant Australian Accounting Standards;
- d. there were no instances of fraud or suspected fraud affecting Phoslock and its controlled entities and which:
  - i. involved the management of Phoslock and its controlled entities or employees with significant roles in internal control; or
  - ii. could have a material effect on the FY19 Financial Report;
- e. Phoslock had disclosed all instances of non-compliance or suspected non-compliance with laws or regulations that might have a material effect on the FY19 Financial Report known to it;
- f. Phoslock had provided KPMG with all of the information of which its management was aware that was relevant to the preparation of the FY19 Financial Report; and
- g. Phoslock had disclosed to KPMG all of the related party transactions in the year ending 31 December 2019 of which its management was aware; and
- h. all related party relationships and transactions of Phoslock and its controlled entities had been accounted for and disclosed in the FY19 Financial Report in accordance with AASB 124

**(the FY19 Phoslock Representations).**

13. By reason of:

- a. the matters pleaded in paragraph 11 above; and
- b. further or alternatively, statements made to KPMG in around October 2019,

### Particulars

The particulars to paragraph 11 above are repeated.

Interview with Mr Schuitema and Chris Hui on around 16 October 2019.

Further and better particulars may be provided following completion of interlocutory steps.

Mr Schuitema represented to KPMG that:

- c. the FY19 Financial Report gave a true and fair view of the financial position and performance of Phoslock and its controlled entities for the year ending 31 December 2019, and complied with all relevant Australian Accounting Standards;
- d. there were no instances of fraud or suspected fraud affecting Phoslock and its controlled entities and which:
  - i. involved the management of Phoslock and its controlled entities or employees with significant roles in internal control; or
  - ii. could have a material effect on the FY19 Financial Report;
- e. Phoslock had disclosed all instances of non-compliance or suspected non-compliance with laws or regulations that might have a material effect on the FY19 Financial Report known to it, or alternatively to Mr Schuitema;
- f. Phoslock had provided KPMG with all of the information of which its management was aware that was relevant to the preparation of the FY19 Financial Report;
- g. Phoslock had disclosed to KPMG all of the related party transactions in the year ending 31 December 2019 of which its management, or alternatively Mr Schuitema, was aware; and
- h. all related party relationships and transactions of Phoslock and its controlled entities had been accounted for and disclosed in the FY19 Financial Report in accordance with AASB 124

(the **FY19 Schuitema Representations**).

### Contraventions

- 14. Each of the FY18 Phoslock Representations, the Extended FY18 Phoslock Representations and the FY19 Phoslock Representations (together, the **Phoslock Representations**), and the FY18 Schuitema Representations, the Extended FY18

Schuitema Representations and the FY19 Schuitema Representations (together, the **Schuitema Representations**), was made:

- a. in trade or commerce within the meaning of s 18 of the Australian Consumer Law; and/or
  - b. if KPMG is liable to the Applicant or any Group Member under s 1041H of the Corporations Act as pleaded in the ASOC, in relation to a financial product or financial service within the meaning of s 1041H of the Corporations Act; and/or
  - c. if KPMG is liable to the Applicant or any Group Member under s 12DA of the ASIC Act as pleaded in the ASOC, in trade or commerce and in relation to financial services within the meaning of s 12DA of the ASIC Act.
15. If the FY18 Financial Report, Extended FY18 Financial Report or FY19 Financial Report did not give a true and fair view of the financial position and performance of Phoslock for the relevant reporting periods, or were not prepared in compliance with Australian Accounting Standards, which KPMG does not presently know, by reason of the matters pleaded in Sections G and GA of the ASOC, then:
- a. the representations pleaded in paragraphs 6(c), 7(c), 9(c), 10(c), 12(c) and 13(c) above were false, and therefore misleading or deceptive; and
  - b. the representations pleaded in paragraphs 6(d)–(h), 7(d)–(h), 9(d)–(h), 10(d)–(h), 12(d)–(h) and 13(d)–(h) above were misleading or deceptive, in that Phoslock or both Phoslock and Mr Schuitema:
    - i. were aware of one or more of the matters alleged in paragraphs 70C, 70F, 70I and 71N of the ASOC; and
    - ii. had not informed KPMG of, or drawn its attention to, any of those matters.
16. If KPMG is liable to the Applicant or any Group Member under s 1041E of the Corporations Act as pleaded in the ASOC, then, by reason of the matters pleaded in paragraphs 75 to 153 and 234 to 255 of the ASOC:
- a. by making each of the Phoslock Representations and Schuitema Representations, respectively, Phoslock and Mr Schuitema each made a statement or disseminated information which:
    - i. was, at the time it was made, false in a material particular and/or materially misleading;
    - ii. they ought reasonably to have known was false in a material particular or materially misleading; and
    - iii. was likely to:

1. induce ordinary persons in this jurisdiction to acquire financial products, namely ordinary shares in Phoslock; and
  2. in the alternative, have the effect of increasing, maintaining or stabilising the price for trading in Phoslock shares on the ASX.
17. In the premises, by making the Phoslock Representations, or any of them, Phoslock contravened:
- a. s 1041E of the Corporations Act;
  - b. s 1041H of the Corporations Act;
  - c. s 12DA of the ASIC Act; and/or
  - d. s 18 of the Australian Consumer Law.
18. In the premises, by making the Schuitema Representations, or any of them, Mr Schuitema contravened:
- a. s 1041E of the Corporations Act;
  - b. s 1041H of the Corporations Act;
  - c. s 12DA of the ASIC Act; and/or
  - d. s 18 of the Australian Consumer Law.

### **Loss or damage**

19. KPMG relied on the FY18 Phoslock Representations and the FY18 Schuitema Representations in performing its audit of the FY18 Financial Report pursuant to the 2017 Retainer.
20. KPMG relied on the Extended FY18 Phoslock Representations and the Extended FY18 Schuitema Representations in performing its audit of the Extended FY18 Financial Report pursuant to the 2018 Retainer.
21. KPMG relied on the FY19 Phoslock Representations and the FY19 Schuitema Representations in performing its audit of the FY19 Financial Report pursuant to the 2018 Retainer.
22. By reason of the contraventions alleged in paragraphs 17 and/or 18 above, KPMG has suffered loss and damage.

### **Particulars**

KPMG refers to and repeats the particulars to paragraph 4 above.

**C. CONTRIBUTION**

23. To the extent that KPMG is, by reason of the claims against KPMG made in the ASOC (the **Claims**), liable to the Applicant or any Group Member for any loss or damage (the **Claimed Loss**), Phoslock, Mr Schuitema and Mr Freedman are also, by reason of the matters pleaded in paragraphs 75 to 153 and 234 to 255 of the ASOC, liable to the Applicant or that Group Member in respect of the same loss or damage.
24. Further or alternatively to paragraph 23 above, any liability of KPMG to the Applicant or any Group Member is co-ordinate with the liability of Phoslock, Mr Schuitema and/or Mr Freedman referred to in that paragraph.
25. In the premises of paragraphs 23 and 24 above, to the extent that the Claims are not apportionable claims within the meaning of s 1041L of the Corporations Act, s 12GP of the ASIC Act and/or s 87CB of the CCA, KPMG is entitled to contribution or indemnity from Phoslock, Mr Schuitema and/or Mr Freedman in respect of the Claimed Loss:
- a. pursuant to s 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW); and
  - b. alternatively, in equity.
26. Further or alternatively, by reason of the matters pleaded in paragraphs 79 to 153 and 234 to 255 of the ASOC, any liability of KPMG for the Claimed Loss arose as a result of conduct by Mr Freedman and Mr Schuitema that was in contravention of ss 1041E and/or 1041H of the Corporations Act.
27. In the premises pleaded in paragraph 26 above, to the extent that the Claims are not apportionable claims within the meaning of s 1041L of the Corporations Act, s 12GP of the ASIC Act and/or s 87CB of the CCA, KPMG is entitled to an order under s 1325 of the Corporations Act that Mr Freedman and Mr Schuitema indemnify KPMG against, or pay KPMG an amount by way of contribution for, any liability for the Claimed Loss.

Date: 10 July 2025



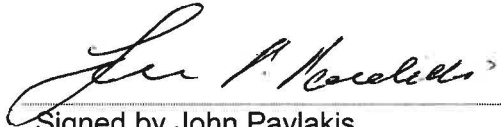
Signed by John Pavlakis  
Lawyer for KPMG, the Cross-Claimant

This pleading was prepared by Alison Hammond and Harry Rogers of counsel.

**Certificate of lawyer**

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

Date: 10 July 2025

A handwritten signature in cursive script, appearing to read "John Pavlakis", written over a horizontal line.

Signed by John Pavlakis  
Lawyer for KPMG, the Cross-Claimant

**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

**Cross-claimant** KPMG (a firm) ABN 51 194 660 183

**Cross-respondents**

First Cross-respondent Phoslock Environmental Technologies Limited  
Second Cross-respondent Laurence Freedman  
Third Cross-respondent Robert Schuitema

## NOTICE OF FILING

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
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File Title: EDWIN PAUL CAYZER v PHOSLOCK ENVIRONMENTAL  
TECHNOLOGIES LTD (ACN 099 555 290) & ORS  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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

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