



Form 17
Rule 8.05(1)(a)

Further Amended Statement of Claim

No. VID1072 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

Edwin Paul Cayzer

Applicant

Phoslock Environmental Technologies Ltd (ACN 099 555 290) and others named in the schedule

Respondents

A. THE PARTIES AND GROUP MEMBERS

A.1 The Applicant and the Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicant on their own behalf and on behalf of all persons who or which:

- (a) entered into a contract (whether by themselves or by an agent or trustee) to acquire:
 - (i) an interest in fully paid ordinary shares (**Phoslock Shares**) in the First Respondent, Phoslock Environmental Technologies Ltd (**Phoslock**):
 - (A) during the period between 11 October 2018 and 17 September 2020 (inclusive) (**Relevant Period**) (**Acquisition Shareholders**); or
 - (B) prior to the Relevant Period, which they retained throughout the Relevant Period (**Retained Shareholders**); or
 - (ii) long exposure to Phoslock Shares by entering into equity swap confirmations in respect of Phoslock Shares during the Relevant Period;

Filed on behalf of (name & role of party) Paul Cayzer

Prepared by (name of person/lawyer) Elliott Smith

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- (b) have suffered loss or damage by reason of the conduct of the Respondents pleaded in this Statement of Claim; and
- (c) were not during any part of the Relevant Period, and are not as at the date of this Statement of Claim, any of the following:
- (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of Phoslock;
 - (ii) a related body corporate (as defined by s 50 of the Corporations Act) of the Phoslock;
 - (iii) an associated entity (as defined by s 50AAA of the Corporations Act) of Phoslock;
 - (iv) an officer or a close associate (as defined by s 9 of the Corporations Act) of the Phoslock; or
 - (v) a Justice, Registrar, District Registrar or Deputy District Registrar of the Federal Court of Australia or the High Court of Australia.

(Group Members)

2. The Applicant:

- (a) is and was at all material times a person capable of suing and being sued;
- (b) during the Relevant Period, purchased, on his own behalf, 74,000 shares in Phoslock for total consideration of \$37,710, which shares he still owns:

Particulars

- i) *Details of the particular acquisitions of Phoslock Shares by the Applicant on his own behalf during the Relevant Period are set out below.*

| Date | Share price (AUD) | Quantity purchased | Total consideration (AUD) |
|--------------|-------------------|--------------------|---------------------------|
| 6 March 2020 | 0.595 | 18,000 | \$10,710 |
| 10 May 2020 | 0.500 | 54,000 | \$27,000 |
| Total | | 74,000 | \$37,710 |

- (c) during the Relevant Period, purchased, as trustee for his self-managed superannuation fund (**SMSF**), 204,000 shares in Phoslock for total consideration of \$94,250, which shares are still owned by the SMSF.

Particulars

- i) *Details of the particular acquisitions of Phoslock Shares by the Applicant as trustee for the Mineral & Chemical Traders Pty Ltd Superannuation Fund during the Relevant Period are set out below.*

| Date | Share price (AUD) | Quantity purchased | Total consideration (AUD) |
|------------------|-------------------|--------------------|---------------------------|
| 28 February 2020 | 0.635 | 50,000 | \$31,750 |
| 7 May 2020 | 0.500 | 54,000 | \$27,000 |
| 18 June 2020 | 0.355 | 100,000 | \$35,500 |

- (d) prior to the Relevant Period, purchased, as trustee for SMSF, 3,876,632 shares in Phoslock for total consideration of \$732,770, which shares are still owned by the SMSF;

Particulars

- i) *Details of the particular acquisitions of Phoslock Shares by the Applicant as trustee for the Mineral & Chemical Traders Pty Ltd Superannuation Fund prior to the Relevant Period are set out below.*

| Date | Share price (AUD) | Quantity purchased | Total consideration (AUD) |
|-----------------|-------------------|--------------------|---------------------------|
| 30 June 2005 | 0.13 | 376,522 | \$47,184 |
| 30 June 2005 | 0.12 | 355,000 | \$42,712 |
| 9 December 2005 | 0.14 | 700,000 | \$98,000 |
| 7 July 2005 | 0.13 | 18,478 | \$2,316 |
| 29 March 2006 | 0.14 | 35,000 | \$4,900 |

| Date | Share price (AUD) | Quantity purchased | Total consideration (AUD) |
|-------------------|-------------------|--------------------|---------------------------|
| 11 August 2006 | 0.16 | 10,000 | \$1,649 |
| 18 August 2006 | 0.16 | 190,000 | \$30,477 |
| 16 August 2006 | 0.17 | 200,000 | \$33,363 |
| 23 November 2006 | 0.28 | 715,800 | \$200,424 |
| 5 March 2007 | 0.40 | 14,200 | \$5,735 |
| 23 November 2006 | 0.28 | 135,000 | \$37,800 |
| 18 August 2008 | 0.15 | 23,869 | \$3,580 |
| 27 February 2009 | 0.15 | 24,197 | \$3,630 |
| 21 August 2009 | 0.17 | 357,136 | \$60,000 |
| 8 June 2016 | 0.07 | 142,858 | \$10,000 |
| 8 June 2016 | 0.07 | 142,858 | \$10,000 |
| 19 September 2017 | 0.18 | 85,714 | \$15,000 |
| 12 July 2018 | 0.36 | 350,000 | \$126,000 |

(e) was and is, in the premises of sub-paragraphs (b) to (d) both an Acquisition Shareholder and a Retained Shareholder.

3. Immediately prior to the commencement of this proceeding, there were and are more than seven Group Members.

A.2 The Respondents

4. The First Respondent (**Phoslock**), at all material times in the Relevant Period, was:

- (a) a public company within the meaning of s 9 of the Corporations Act;
- (b) a disclosing entity within the meaning of s 111AC(1) of the Corporations Act;
- (c) included in the official list of the financial market operated by the Australian Securities Exchange (**ASX**) and by reason thereof Phoslock Shares are:

- (i) ED securities for the purposes of s 111AE of the Corporations Act, and quoted ED securities within the meaning of s 111AM of the Corporations Act;
- (ii) able to be acquired and disposed of by investors and potential investors in Phoslock Shares (**Affected Market**) on the financial market operated by ASX;
- (d) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
- (e) up until 6 December 2018, reported on a financial year basis to 30 June and to 31 December thereafter.

5. The Second Respondent, Laurence Stephen Freedman AM (**Mr Freedman**):

- (a) was a director and Chairman of Phoslock during the Relevant Period;
- (b) as Chairman of Phoslock:
 - (i) made, or participated in making, decisions that affected the whole or a substantial part of the business of Phoslock; and
 - (ii) had the capacity to affect significantly Phoslock's financial position; and
- (c) is and was at all material times:
 - (i) a person for the purposes of s 1041H of the Corporations Act;
 - (ii) a person for the purposes of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - (iii) a person for the purposes of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the **Australian Consumer Law**).
- (d) was at all material times in the Relevant Period an officer of Phoslock within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12; and
- (e) sold 19,258,824 shares in Phoslock for \$25,961,510 on 26 August 2019.

6. The Third Respondent, Robert Paul Schuitema (**Mr Schuitema**):

- (a) was the Managing Director of Phoslock from the start of the Relevant Period until 25 May 2020;
- (b) as the Managing Director of Phoslock:

- (i) made, or participated in making, decisions that affected the whole or a substantial part of the business of Phoslock;
 - (ii) had the capacity to affect significantly Phoslock's financial position;
- and

(c) is and was at all material times:

- (i) a person for the purposes of s 1041H of the Corporations Act;
- (ii) a person for the purposes of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
- (iii) a person for the purposes of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the **Australian Consumer Law**).

(d) was at all material times in the Relevant Period an officer of Phoslock within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12; and

(e) sold 3,200,000 shares in Phoslock for \$4,315,804 on 25 August 2019.

6A. At all material times any information of which each person who was a director or officer of Phoslock as pleaded in paragraphs 5 to 6 above became aware, or which ought reasonably to have come into his or her possession in the course of the performance of his or her respective duties as an officer of Phoslock, was information of which Phoslock was aware (as awareness is defined in ASX Listing Rule 19.12).

7. The Fourth Respondent, KPMG (a firm) (ABN 51 194 660 183) (**KPMG**) was at all material times:

(a) a partnership conducting business within Victoria and New South Wales as accountants, auditors and advisors;

(b) operated under the partnership name "KPMG" (ABN 51 194 660 183), and under r 9.41 of the *Federal Court Rules 2011* (Cth), may be sued in the partnership name; and

(c) a partnership that:

(i) included among its partners practicing in New South Wales (**NSW**) persons who were registered company auditors within the meaning of s 9 and Part 9.2 of the Corporations Act; and

(ii) included Ms Sarah Cain-Frost (nee Cain) (**Ms Cain**), who was at all material times:

- (a) a partner of KPMG;
- (b) a qualified accountant and registered as an auditor under Part 9.2 of the Corporations Act, being registered auditor number 80075;
- (c) the 'lead auditor' within the meaning of s 324AF of the Corporations Act in relation to the audits of Phoslock for the financial year ended 30 June 2018, six months to 31 December 2018, half year ended 30 June 2019, financial year ended 31 December 2019, half-year ended 30 June 2020 and financial year ended 31 December 2020;
- (d) a person for the purposes of s 1041H of the *Corporations Act*;
- (e) a person for the purposes of s 12DA of the *ASIC Act*;
- (f) a person for the purposes of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to the Australian Consumer Law.

(d) was governed, inter alia, by the *Partnership Act 1982* (NSW) and the *Partnership Act 1958* (Vic), such that each partner of KPMG (including Ms Cain):

- (i) is an agent of the firm and each partner of the firm for the purposes of the business of the partnership; and
- (ii) is liable jointly with the other partners for all wrongful acts or omissions of any partner acting in the ordinary course of the business of KPMG.

B. PHOSLOCK'S REPORTING REQUIREMENTS

8. At all relevant times, Phoslock was:

- (a) subject to and bound by Part 2M.3 of the Corporations Act, including being obliged (**Phoslock's Statutory Reporting Obligations**);
 - (i) by ss 292 and 295 of the Corporations Act, to prepare a financial report for a financial year, consisting of the financial statements for the year, the notes to the financial statements, and the directors' declaration about the statements and notes (**Financial Report**), which:
 - (A) pursuant to s 296 of the Corporations Act, to prepare its annual financial reports in accordance with the accounting standards (**Accounting Standards**) made by the Australian Accounting Standards Board (**AASB**);

- (B) gives a true and fair view of the financial position and performance of Phoslock, and the consolidated entity comprising Phoslock and its subsidiaries, as required by s 297 of the Corporations Act;
- (ii) by s 301 of the Corporations Act, to have the financial report for a financial year audited in accordance with Part 2M.3, Division 3 and obtain an auditor's report (**Auditor's Report**);
- (iii) by ss 314 and 315(1) of the Corporations Act, to provide the Financial Report and the Auditor's Report to the members of Phoslock by no later than 21 days before the next Annual General Meeting of the members of Phoslock after the end of the financial year, or 4 months after the end of the financial year (whichever is the earlier);
- (iv) by s 319 of the Corporations Act, to lodge the Financial Report and the Auditor's Report with the Australian Securities and Investments Commission (**ASIC**) within 3 months of the end of the financial year;
- (v) by ss 302 and 303 of the Corporations Act, to prepare a financial report for a half-year, consisting of the financial statements for the half-year the notes to the financial statements and the directors' declaration about the statements and notes (**1H Financial Report**), which:
 - (vi) by s 320 of the Corporations Act, to lodge the 1H Financial Report with ASIC within 75 days after the end of the half-year:
 - (A) complies with accounting standards, as required by s 304 of the Corporations Act; and
 - (B) gives a true and fair view of the financial position and performance of Phoslock, and the consolidated entity comprising Phoslock and its subsidiaries, as required by s 305 of the Corporations Act.
- (b) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**), including being obliged (**Phoslock's ASX Reporting Obligations**):
 - (i) by Listing Rules 4.3A and 4.3B, to give ASX the information set out in Appendix 4E (which must be based upon the same accounting policies as the accounts upon which it is based, and which must comply with all relevant accounting standards) immediately when they are ready to be given to ASX and no later than the time that it lodges any accounts with ASIC, and in any event no later than 2 months after the end of the accounting period;

- (ii) by Listing Rule 4.3D, if it became aware of any circumstance which was likely to materially affect the results or other information contained in the preliminary final report given to ASX under Listing Rule 4.3A, to immediately give ASX an explanation of the circumstances and the effects the circumstances are expected to have on its current or future financial performance or financial position; and
 - (iii) by Listing Rule 4.5, to give ASX a copy of the documents which it must lodge with ASIC under s 319 of the Corporations Act at the same time as it lodges them with ASIC.
- (c) Obligated:
- (i) prior to 26 May 2020, by ss 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes aware of, any information concerning Phoslock that a reasonable person would expect to have a material effect on the price or value of Phoslock Shares, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply);
 - (ii) from 26 May 2020, by ss 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 and Corporations (Coronavirus Economic Response) Determination (No 2) and (No 4) to immediately tell the ASX information that is not generally available (unless the exceptions in ASX Listing Rule 3.1A applied) that:
 - (A) it is, or becomes, aware of, that a reasonable person would expect to have a material effect on the price or value of Phoslock Shares; and
 - (B) it knew or was reckless or negligent with respect to whether it would have a material effect on the price or value of Phoslock Shares.

(Continuous Disclosure Obligations).

9. At all material times each of:

- (a) AASB 101 "Presentation of Financial Reports"; and
- (b) AASB 110 "Events After the Reporting Period",

were Accounting Standards made by the AASB pursuant to s 334 of the Corporations Act and were in force during the whole of the Relevant period.

10. At all material times AASB 101:

- (a) was the accounting standard employed to determine the manner in which Phoslock prepared its financial statements;
- (b) required that, or to the effect that:
 - (i) financial statements shall present fairly the financial position, financial performance and cash flows of an entity;
 - (ii) fair presentation required the faithful representation of the effects of transactions, other events and conditions in accordance with the definitions and recognition criteria for assets, liabilities, income and expenses set out in the Framework for the Preparation and Presentation of Financial Statements (**Framework**); and
 - (iii) management prepare financial statements on a going concern basis, unless management either intends to liquidate the entity or to cease trading or has no realistic alternative but to do so.

Particulars

- a. AASB 101, paragraph 15 and 25.
- b. Framework, paragraphs 83, 85, 92 and 93.

11. At all material times, AASB 110 “Events After the Reporting Period”:

- (a) was the accounting standard employed to determine when an entity should adjust its financial statements for events after a reporting period;
- (b) defined:
 - (i) events after the reporting period as those events, favourable and unfavourable, that occur between the end of the reporting period and the date when the financial statements are authorised for issue, which include adjusting events after the reporting period; and
 - (ii) adjusting events as those events after the reporting period that provide evidence of conditions that existed at the end of the reporting period.
- (c) required that an entity adjust the amounts in its financial statements to reflect adjusting events after the reporting period.

Particulars

- a. AASB 110, paragraphs 3 and 10.

12. At all material times:

- (a) the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to Phoslock Shares for the purposes of s 674(1) of the Corporations Act (**Market**);
- (b) the Market operated by the ASX was a financial market for the purposes of s 767A of the Corporations Act;
- (c) rule 4.5 of the ASX Listing Rules provided that an entity registered in Australia was required to give the ASX a copy of its annual financial report:
 - (i) when it lodged its annual financial report with the Australian Securities and Investments Commission; and
 - (ii) in any event, no later than 3 months after the end of the accounting period.
- (d) as to continuous disclosure:
 - (i) rule 3.1 of the ASX Listing Rules provided that once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must, unless the exceptions in ASX Listing Rule 3.1A apply, immediately tell the ASX that information;
 - ~~(ii) rule 5.1 of the ASX Listing Rules provided that a "mining producing" entity was to give the ASX a report containing details of its mining production and development activities and exploration activities no later than 1 month after the end of each quarter;~~
 - ~~(iii) rule 5.21 of the ASX Listing Rules provided that a mining entity must include in its annual report a mineral resources and ore reserves statement (Annual Reserves Statement) which included:

 - ~~(a) a summary of the results of the entity's annual review of its ore reserves;~~
 - ~~(b) the entity's ore reserves holdings as at the end of the relevant financial year;~~
 - ~~(c) a comparison of the entity's ore reserves holdings as at the end of the relevant financial year against the previous year, including an explanation of any material change from the previous year;~~~~

~~(iv) rule 5.24 of the ASX Listing Rules provided that an Annual Reserves Statement must:~~

~~(a) include a statement that it is a statement that it is based on, and fairly represents, information and supporting documentation prepared by a Competent Person or persons;~~

~~(b) include a statement that the Annual Reserves Statement as a whole has been approved by a named Competent Person or persons;~~

~~(c) only be issued with the prior written consent of the Competent Person or persons that approved the Annual Reserves Statement as to the form and context in which the Annual Reserves Statement appears in the annual report,~~

(ASX Reporting Obligations).

13. At all material times r 19.12 of the ASX Listing Rules provided that an entity becomes aware of information if, and as soon as, an officer has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.

C. DIRECTORS' ROLES

14. At all materials times during the Relevant Period, Mr Freedman:
- (a) made, or participated in making, decisions that affected the whole or a substantial part of the business of Phoslock;
 - (b) had the capacity to affect significantly Phoslock's financial position; and
 - (c) had responsibilities which included but were not limited to:
 - (i) monitoring the financial performance of Phoslock;
 - (ii) overseeing the establishment and maintenance of adequate internal financial controls and effective financial monitoring systems;
 - (iii) ensuring major business risks were identified and effectively managed;
 - (iv) approving the terms of documents published by Phoslock to the ASX, and authorising the publication of such documents; and
 - (v) ensuring that Phoslock met its statutory obligations, including:

- (a) Phoslock's Statutory Reporting Obligations; and
- (b) Phoslock's ASX Reporting Obligations.

15. As a director of Phoslock for the years during the Relevant Period, Mr Freedman was obliged pursuant to s 295 of the Corporations Act to include within the Financial Report a declaration by the directors:

- (a) whether, in the directors' opinion, there were reasonable grounds to believe that Phoslock would be able to pay its debts as and when they become due and payable;
- (b) if Phoslock had included in the notes to the financial statements, in compliance with the accounting standards, an explicit and unreserved statement of compliance with international financial reporting standards that this statement had been included in the notes to the financial statements; and
- (c) whether, in the directors' opinion, the financial statement and notes were in accordance with this Corporations Act, including:
 - (i) section 296 (compliance with accounting standards); and
 - (ii) section 297 (true and fair view).
- (d) that the directors have been given the declarations required by section 295A.

16. As a director of Phoslock for each of the financial half-years ended during the Relevant Period, Mr Freedman was obliged pursuant to s 303 of the Corporations Act to include within the Financial Report a declaration by the directors:

- (a) whether, in the directors' opinion, there were reasonable grounds to believe that Phoslock would be able to pay its debts as and when they become due and payable;
- (b) if Phoslock had included in the notes to the financial statements, in compliance with the accounting standards, an explicit and unreserved statement of compliance with international financial reporting standards that this statement had been included in the notes to the financial statements; and
- (c) whether, in the directors' opinion, the financial statement and notes were in accordance with this Corporations Act, including:
 - (i) section 304 (compliance with accounting standards); and
 - (ii) section 305 (true and fair view).

17. At all material times during the Relevant Period, Mr Schuitema:

- (a) made, or participated in making, decisions that affected the whole or a substantial part of the business of Phoslock;
 - (b) had the capacity to affect significantly Phoslock's financial position; and
 - (c) had responsibilities which included but were not limited to:
 - (i) monitoring the financial performance of Phoslock;
 - (ii) overseeing the establishment and maintenance of adequate internal financial controls and effective financial monitoring systems;
 - (iii) ensuring major business risks were identified and effectively managed;
 - (iv) approving the terms of documents published by Phoslock to the ASX, and authorising the publication of such documents; and
 - (v) ensuring that Phoslock met its statutory obligations, including:
 - (a) Phoslock's Statutory Reporting Obligations; and
 - (b) Phoslock's ASX Reporting Obligations.
18. As a director of Phoslock for the years during the Relevant Period, Mr Schuitema was obliged pursuant to s 295 of the Corporations Act to include within the Financial Report a declaration by the directors:
- (a) whether, in the directors' opinion, there were reasonable grounds to believe that Phoslock would be able to pay its debts as and when they become due and payable;
 - (b) if Phoslock had included in the notes to the financial statements, in compliance with the accounting standards, an explicit and unreserved statement of compliance with international financial reporting standards that this statement had been included in the notes to the financial statements; and
 - (c) whether, in the directors' opinion, the financial statement and notes were in accordance with this Corporations Act, including:
 - (i) section 296 (compliance with accounting standards); and
 - (ii) section 297 (true and fair view).
 - (d) that the directors have been given the declarations required by section 295A.

19. As a director of Phoslock for each of the financial half-year ended during the Relevant Period, Mr Schuitema was obliged pursuant to s 303 of the Corporations Act to include within the Financial Report a declaration by the directors:

- (a) whether, in the directors' opinion, there were reasonable grounds to believe that Phoslock would be able to pay its debts as and when they become due and payable; and
- (b) if Phoslock had included in the notes to the financial statements, in compliance with the accounting standards, an explicit and unreserved statement of compliance with international financial reporting standards that this statement had been included in the notes to the financial statements; and
- (c) whether, in the directors' opinion, the financial statement and notes were in accordance with this Corporations Act, including:
 - (i) section 304 (compliance with accounting standards); and
 - (ii) section 305 (true and fair view).

D. KPMG'S ROLE

C.1 KPMG's Audit Obligations

20. On a date not known to the Applicant with their present state of knowledge, Phoslock retained KPMG for the purpose of:

- (a) auditing, as required by s 301 of the Corporations Act:
 - (i) the Financial Report for FY18 (to 30 June 2018) (**FY18 Financial Report**), (**FY18 KPMG Audit Retainer**);
 - (ii) the Financial Report for FY18 (to 31 December 2018) (**Extended FY18 Financial Report**), (**Extended FY18 KPMG Audit Retainer**) (or alternatively, as required by s 306(1) and (1A) of the Corporations Act);
 - (iii) the Financial Report for FY19 (to 31 December 2019) (**FY19 Financial Report**), (**FY19 KPMG Audit Retainer**); and
 - (iv) the Financial Report for FY20 (to 31 December 2020) (**FY20 Financial Report**), (**FY20 KPMG Audit Retainer**).
- (b) reviewing, as required by s 306(1) and (1A) of the Corporations Act, the 1H Financial Report for 30 June 2019 (**1H19 Financial Report**), (**1H19 KPMG Audit**

Retainer) and the 1H Financial Report for 30 June 2020 (**1H20 Financial Report**), (**1H20 KPMG Audit Retainer**).

Particulars

- i) *The FY18 KPMG Audit Retainer is to be inferred from KPMG's Independent Auditor's Report included in the FY18 Financial Report (**FY18 KPMG Audit Report**).*
- ii) *The Extended FY18 KPMG Audit Retainer is to be inferred from KPMG's Independent Auditor's Report included in the Extended FY18 Financial Report (**Extended FY18 KPMG Audit Report**).*
- iii) *The FY19 KPMG Audit Retainer is to be inferred from KPMG's Independent Auditor's Report included in the FY19 Financial Report (**FY19 KPMG Audit Report**).*
- iv) *The FY20 KPMG Audit Retainer is to be inferred from KPMG's Independent Auditor's Report included in the FY20 Financial Report (**FY20 KPMG Audit Report**).*
- v) *The 1H19 KPMG Audit Retainer is to be inferred from KPMG's Independent Auditor Report included in the 1H19 Financial Report.*
- vi) *The 1H20 KPMG Audit Retainer is to be inferred from KPMG's Independent Auditor's Report included in the 1H20 Financial Report.*
- vii) *Further particulars will be provided after discovery.*

21. As auditor of Phoslock for the years ended 30 June 2018, 31 December 2018, 31 December 2019, 31 December 2020 and the half years ended ~~31 December 2018~~, 30 June 2019 and 30 June 2020 KPMG (through Ms Cain) was obliged (individually, or together, **Statutory Auditing Obligations**):

- (a) pursuant to s 307 of the Corporations Act to form an opinion as to whether:
 - (i) the FY18 Financial Report, the Extended FY18 Financial Report, FY19 Financial Report and the FY20 Financial Report was prepared in accordance with the Corporations Act, including whether they complied with the accounting standards, and whether they gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities); and

- (ii) KPMG had been given all information, explanation and assistance necessary for the conduct of the review and audit.
- (b) pursuant to s 307A of the Corporations Act to conduct the audit of the FY18 Financial Report, Extended FY18 Financial Report, FY19 Financial Report, FY20 Financial Report and the review of the 1H19 Financial Report and the 1H20 Financial Report in accordance with applicable auditing standards;
- (c) pursuant to s 308 of the Corporations Act to:
 - (i) report to the members of Phoslock on whether KPMG was of the opinion that the FY18 Financial Report, Extended FY18 Financial Report, FY19 Financial Report and the FY20 Financial Report was in accordance with the Corporations Act (being the Auditor's Report), including whether they complied with the accounting standards, and whether they gave a true and fair view of the financial position and performance of Phoslock, and:
 - (A) if KPMG was not of that opinion, say in the report why; and
 - (B) if KPMG was of the opinion that the FY18 Financial Report, Extended FY18 Financial Report, FY19 Financial Report or FY20 Financial Report was not in compliance with an accounting standard, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report, or if it is not practicable to quantify the effect fully, say why.
 - (ii) describe in the Auditor's Report:
 - (A) any defect or irregularity in the FY18 Financial Report, Extended FY18 Financial Report, FY19 Financial Report or FY20 Financial Report; and
 - (B) any deficiency, failure or shortcoming in respect of whether KPMG has been given all information, explanation and assistance necessary for the conduct of the audit, whether Phoslock has kept financial records sufficient to enable a financial report to be prepared and audited, and whether Phoslock has kept other records and registers required by the Corporations Act.
 - (iii) if the financial report contained additional information to give a true and fair view of the financial position and performance of Phoslock, state in the Auditor's Report whether the inclusion of that additional information was necessary to give a true and fair view.

- (d) pursuant to s 309 of the Corporations Act to:
- (i) report to the members of Phoslock on whether KPMG was of the opinion that the 1H19 Financial Report and the 1H20 Financial Report was in accordance with the Corporations Act (being the Auditor's Report), including whether it complied with the accounting standards, and whether it gave a true and fair view of the financial position and performance of Phoslock, and:
 - (A) if KPMG was not of that opinion, say in the report why; and
 - (B) if KPMG was of the opinion that the 1H19 Financial Report and the 1H20 Financial Report was not in compliance with an accounting standard, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report, or if it is not practicable to quantify the effect fully, say why.
 - (ii) describe in the Auditor's Report:
 - (A) any defect or irregularity in the 1H19 Financial Report and the 1H20 Financial Report; and
 - (B) any deficiency, failure or shortcoming in respect of whether KPMG has been given all information, explanation and assistance necessary for the conduct of the audit, whether Phoslock has kept financial records sufficient to enable a financial report to be prepared and audited, and whether Phoslock has kept other records and registers required by the Corporations Act.
 - (iii) if the financial report contained additional information to give a true and fair view of the financial position and performance of Phoslock, state in the Auditor's Report whether the inclusion of that additional information was necessary to give a true and fair view.
22. Pursuant to the FY18 KPMG Audit Retainer, Extended FY18 KPMG Audit Retainer, FY19 KPMG Audit Retainer, FY20 KPMG Audit Retainer, 1H19 KPMG Audit Retainer and the 1H20 KPMG Audit Retainer and/or the Statutory Auditing Obligations, KPMG through Ms Cain was obliged to prepare an Auditor's Report in respect of the FY18 Financial Report, Extended FY18 Financial Report, FY19 Financial Report, FY20 Financial Report and 1H19 Financial Report and the 1H20 Financial Report by no later than the date which would enable Phoslock to comply with Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations.

Particulars

- i) *To the extent the obligation arose contractually, the obligation was implied to give business efficacy to the relationship between KPMG and the entities KPMG was required to audit pursuant to the FY18 KPMG Audit Retainer, Extended FY18 KPMG Audit Retainer, FY19 KPMG Audit Retainer, FY20 KPMG Audit Retainer and the 1H19 KPMG Audit Retainer and the 1H20 KPMG Audit Retainer.*
- ii) *To the extent the obligation arose by statute, the Applicant refer to and rely upon Phoslock's Statutory Reporting Obligations, and the mandatory timeframes for lodgement of an Auditor's Report with ASIC, for which s 319 of the Corporations Act provides.*

23. It was a term of the FY18 KPMG Audit Retainer, Extended FY18 KPMG Audit Retainer, FY19 KPMG Audit Retainer, FY20 KPMG Audit Retainer, and/or the 1H19 KPMG Audit Retainer and the 1H20 KPMG Audit Retainer that KPMG would use reasonable skill and care in providing services pursuant to the respective retainer.

Particulars

- i) *The term was implied to give business efficacy to the relationship between KPMG and the entities KPMG was required to audit pursuant to the FY18 KPMG Audit Retainer, Extended FY18 KPMG Audit Retainer, FY19 KPMG Audit Retainer, FY20 KPMG Audit Retainer and/or the 1H19 KPMG Audit Retainer and the 1H20 KPMG Audit Retainer.*

C.2 KPMG Audit Team

24. At all material times, KPMG and Ms Cain employed, engaged to act on their behalf, or directed, consented to or agreed to a number of persons (**KPMG Audit Team**) to carry out work in providing professional accounting and auditing services to Phoslock.

Particulars

- i) *Particulars will be provided after discovery*

25. At all material times, pursuant to sections 769B(4), (6) and (10) of the Corporations Act:
- (a) conduct (including acts or omissions) engaged in or on behalf of the partners of KPMG (including Ms Cain), by:
 - (i) an employee or agent of the partners of KPMG (including Ms Cain), acting within the scope of the actual or apparent authority of that employee or agent; or

- (ii) any other person acting at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the partners of KPMG (including Ms Cain), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is taken, for the purposes of Chapter 7 of the Corporations Act, to have been engaged in also by the partners of KPMG (including Ms Cain);

- (b) the state of mind (including actual knowledge and constructive knowledge (that is, what ought to be known)) of:

- (i) an employee or agent of the partners of KPMG (including Ms Cain), acting within the scope of the actual or apparent authority of that employee or agent; or

- (ii) any other person acting at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the partners of KPMG (including Ms Cain), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is sufficient to establish the state of mind of the partners of KPMG (including Ms Cain) for the purposes of a proceeding under Chapter 7 of the Corporations Act in respect of conduct engaged in by the partners of KPMG (including Ms Cain) or the firm KPMG.

26. At all material times, by reason of the matters pleaded in paragraphs 24 to 25:

- (a) the conduct (including acts or omissions) of persons in the KPMG Audit Team is taken, for the purposes of Chapter 7 of the Corporations Act, to have been engaged in by the partners of KPMG (including Ms Cain); and
- (b) the state of mind (including actual knowledge and constructive knowledge (that is, what ought to be known)) of persons in the KPMG Audit Team is imputed to the partners of KPMG (including Ms Cain) for the purposes of a proceeding under Chapter 7 of the Corporations Act in relation to the conduct of Ms Cain (including conduct which the partners of KPMG (including Ms Cain) are taken to have engaged in by reason of the matters pleaded in sub-paragraph (a) above).

E. PHOSLOCK'S FINANCIAL STATEMENTS

E.1 Relevant events leading up to FY18

27. On 4 May 2017, Phoslock published and lodged with the ASX an announcement that:
- (a) it entered into an arrangement with Beijing BHZQ Environmental Engineering Technology Company Ltd (**BHZQ**) (**BHZQ Deal**); and
 - (b) the BHZQ Deal was forecast to result in Phoslock's annual sales increasing by \$5 million to \$15 million (all currency in this Statement of Claim is in Australian Dollars, unless stated otherwise) per year.
28. At all material times in the Relevant Period, Phoslock represented to the market that its relationship with BHZQ was on an arms-length basis.
29. On or about 16 June 2017, Phoslock granted 65 million share options to key management personnel and others in China.

Particulars

a. FY17 Annual Report, p 61.

30. By the time of the 'FY17 Annual Report' on 16 October 2017, Phoslock relevantly represented that:
- (a) Phoslock's revenue for FY17 was forecast to increase by over 420% to \$22 million over revenue for FY16;
 - (b) at least one of the reasons for this increase in earnings was Phoslock's relationship with BHZQ;
 - (c) Phoslock's relationship with BHZQ followed significant due diligence.

Particulars

a. FY17 Annual Report, pp 4, 6, 15.

E.2 Phoslock's FY18 financial performance

31. On 11 October 2018, Phoslock published and lodged with the ASX announcements including the 'FY18 Annual Report' (**FY18 Financial Results Announcement**).
32. The FY18 Financial Results Announcement comprised documents, among others, titled:
- (a) the FY18 Annual Report, which relevantly included:
 - (i) a Chairman's Report;
 - (ii) a Managing Director's Report;

- (iii) FY18 Financial Report;
- (iv) a 'Directors' Declaration' (the **FY18 Directors' Declaration**); and
- (v) an 'Independent Auditor's Report' (the **FY18 Audit Report**).

33. Mr Freedman gave the Chairman's Report on 25 September 2018, which relevantly represented that:

- (a) sales and revenue had increased almost fourfold in the previous financial year from \$4.2 million to \$16.2 million; and
- (b) revenue was expected to increase by a further 75% to \$27 million to \$30 million in the current financial year.

Particulars

a. FY18 Annual Report, p 4.

34. Mr Schuitema gave the Managing Director's Report on 25 September 2018, which relevantly represented that:

- (a) sales and revenue had increased almost fourfold in the previous financial year from \$4.2 million to \$16.2 million;
- (b) revenue was expected to increase by a further 75% to \$27-30 million in the current financial year;
- (c) net profit before tax (excluding non-cash option expense) to increase to \$7 million - \$10 million for the current financial year and that Phoslock was on track to achieve the forecast.

Particulars

a. FY18 Annual Report, p 8.

35. The FY18 Annual Report recorded that as at 30 June 2018, Phoslock had, relevantly:

- (a) generated a profit from continuing operations before income tax of \$913,579 (**FY18 Operation Profit**);
- (b) generated a total sales and other revenue of \$16,254,499 (**FY18 Revenue**);
- (c) generated segment revenue from its China division of \$13,554,377 (**FY18 China Revenue**), an increase from \$207,419 in FY17;
- (d) generated segment profit before tax from its China division of \$3,214,321 (**FY18 China Profit**), an increase from a loss of \$1,158,032 in FY17;
- (e) had segment assets of \$17,415,750 in its China division (**FY18 China Assets**);

- (f) had segment liabilities of \$6,567,981 in its China division (**FY18 China Liabilities**);
- (g) granted 28,000,000 options to key management personnel subject to vesting conditions including the achievement of Group sales of \$25 million or Net Profit Before Tax (**NPBT**) of \$4 million for the period from 10 April 2017 to 30 June 2019 (**FY18 Management Option Grants**);
- (h) granted 2,450,000 options to employees subject to vesting conditions including the achievement of Group sales of \$25 million or Net Profit Before Tax (**NPBT**) of \$4 million for the period from 10 April 2017 to 30 June 2019 (**FY18 Employment Option Grants**).

Particulars

- i) *The representation referred to in subparagraph (a) above was in writing and made in the FY18 Annual Report at p 28.*
- ii) *The representation referred to in subparagraph (b) above was in writing and made in the FY18 Annual Report at p 44.*
- iii) *The representation referred to in subparagraph (c) above was in writing and made in the FY18 Annual Report at p 55.*
- iv) *The representation referred to in subparagraph (d) above was in writing and made in the FY18 Annual Report at p 55.*
- v) *The representation referred to in subparagraph (e) above was in writing and made in the FY18 Annual Report at p 56.*
- vi) *The representation referred to in subparagraph (f) above was in writing and made in the FY18 Annual Report at p 56.*
- vii) *The representation referred to in subparagraph (g) above was in writing and made in the FY18 Annual Report at p 57.*
- viii) *The representation referred to in subparagraph (h) above was in writing and made in the FY18 Annual Report at p 57.*

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

- 36. On 6 December 2018, Phoslock made an announcement to the ASX advising that it will be changing its financial year end from 30 June to 31 December, effectively immediately.
- 37. On or about 26 March 2019, Phoslock published an investor presentation to the ASX.

Particulars

- i) *The investor presentation was titled 'Business Overview – Institutional Roadshow – March 2019.'*
38. On or about ~~1 April 2019~~ ~~27 March 2019~~, Phoslock published and lodged with the ASX its accounts for the six months to 31 December 2018 to the ASX (**Extended FY18 Annual Report**).
39. The Extended FY18 Annual Report recorded that for the six months ended 31 December 2018, Phoslock had, relevantly:
- (a) generated a profit from continuing operations before income tax and options expenses of \$1,638,784 (**Extended FY18 Operation Profit**);
 - (b) generated a total sales and other revenue of \$9,322,690 (**Extended FY18 Revenue**);
 - (c) generated segment revenue from its China division of \$8,295,363 (**Extended FY18 China Revenue**);
 - (d) generated segment profit before tax from its China division of \$2,125,429 (**Extended FY18 China Profit**);
 - (e) had segment assets of \$21,518,200 in its China division (**Extended FY18 China Assets**);
 - (f) had segment liabilities of \$4,430,967 in its China division (**Extended FY18 China Liabilities**); and
 - (g) during the six months to 31 December 2018, performance vesting criteria for the 65 million performance options have been met (which include the FY18 Management Option Grants and the FY18 Employment Option Grants).

Particulars

- ii) *The representation referred to in subparagraph (a) above was in writing and made in the Extended FY18 Annual Report at p 16.*
- iii) *The representation referred to in subparagraph (b) above was in writing and made in the FY18 Annual Report at p 42.*
- iv) *The representation referred to in subparagraph (c) above was in writing and made in the FY18 Annual Report at p 53.*
- v) *The representation referred to in subparagraph (d) above was in writing and made in the FY18 Annual Report at p 53.*

- vi) *The representation referred to in subparagraph (e) above was in writing and made in the FY18 Annual Report at p 54.*
- vii) *The representation referred to in subparagraph (f) above was in writing and made in the FY18 Annual Report at p 54.*
- viii) *The representation referred to in subparagraph (g) above was in writing and made in the FY18 Annual Report at p 55.*

E.4 Phoslock's FY19 financial performance

40. On or about 23 August 2019, Phoslock provided its accounts for the six months to 30 June 2019 to the ASX (**1H19 Accounts**).
41. The 1H19 Accounts recorded that for the six months ended 30 June 2019, Phoslock had, relevantly:
- (a) generated a profit from continuing operations before income tax of \$1,708,998 (**1H19 Operation Profit**); and
 - (b) generated a total sales and other revenue of \$9,802,611 (**1H19 Revenue**).

Particulars

- i) *The representation referred to in subparagraph (a) above was in writing and made in the 1H19 Accounts at p 1.*
 - ii) *The representation referred to in subparagraph (b) above was in writing and made in the 1H19 Accounts at p 1.*
42. On 31 October 2019, Mr Schuitema advised the ASX that as at 30 September 2019, Phoslock is of the view that:
- (a) FY19 forecast revenue will be in the range of \$27 million to 30 million; and
 - (b) FY19 forecast net profit before tax and before option expense will be in the range of \$6 million to \$8 million.

Particulars

Document titled FY19 ~~48~~ Sales and NPBT Guidance – No Change

43. On 3 December 2019, both Mr Freedman and Mr Schuitema forecasted Phoslock's:
- (a) revenue for FY19 to be in the range of \$27 million to \$30 million; and
 - (b) net profit before tax in the range of \$6 million to \$8 million.

Particulars

ASX announcement titled "Preliminary \$50-70m Sales Forecast FY2020" dated 3 December 2019. An express statement was made as to FY19 sales (revenue), and by the absence of qualification to the 31 October 2019 announcement, an implied statement was made as to net profit before tax being the same as forecast on 31 October 2019.

44. On or about 22 April 2020, Phoslock published and lodged with the ASX announcements including the 'FY19 Annual Report' (**FY19 Financial Results Announcement**).
45. The FY19 Financial Results Announcement comprised documents, among others, titled:
- (a) the FY19 Annual Report, which relevantly included:
 - (i) a Chairman's Report;
 - (ii) a Managing Director's Report;
 - (iii) FY18 Financial Report;
 - (iv) a 'Directors' Declaration' (the **FY19 Directors' Declaration**); and
 - (v) an 'Independent Auditor's Report' (the **FY19 Audit Report**).
46. Mr Freedman gave the Chairman's Report on 20 April 2020, which relevantly represented that:
- (a) sales and revenue had increased in the previous financial by 30% to \$25.1 million; and
 - (b) revenue was expected to increase by 100% to \$50 million to \$70 million in the current financial year.

Particulars

a. FY19 Annual Report, p 5.

47. Mr Schuitema gave the Managing Director's Report on 14 April 2020, which relevantly represented that:
- (a) sales and revenue had increased in the previous financial by 30% to \$25.1 million; and
 - (b) revenue was expected to increase by 100% to \$50 million to \$70 million in the current financial year.

Particulars

a. FY19 Annual Report, p 8.

48. The FY19 Annual Report recorded that as at 31 December 2019, Phoslock had, relevantly:

- (a) generated a profit from continuing operations before income tax of \$3,651,375 (**FY19 Operation Profit**);
- (b) generated a total sales and other revenue of ~~\$24,536,398~~ \$25,112,831 (**FY19 Revenue**);
- (c) generated segment revenue from its China division of \$22,317,562 (**FY19 China Revenue**);
- (d) generated segment profit before tax from its China division of \$5,417,162 (**FY19 China Profit**);
- (e) had segment assets of \$30,674,737 in its China division (**FY19 China Assets**); and
- (f) had segment liabilities of \$8,002,531 in its China division (**FY19 China Liabilities**).

Particulars

- i) *The representation referred to in subparagraph (a) above was in writing and made in the FY19 Annual Report at p 30.*
- ii) *The representation referred to in subparagraph (b) above was in writing and made in the FY19 Annual Report at p 45.*
- iii) *The representation referred to in subparagraph (c) above was in writing and made in the FY19 Annual Report at p 55.*
- iv) *The representation referred to in subparagraph (d) above was in writing and made in the FY19 Annual Report at p 55.*
- v) *The representation referred to in subparagraph (e) above was in writing and made in the FY19 Annual Report at p 56.*
- vi) *The representation referred to in subparagraph (f) above was in writing and made in the FY19 Annual Report at p 56.*

E.5 Phoslock's FY20 financial performance

49. On 26 August 2020, Phoslock made an announcement to ASX on its half year results for six months to 30 June 2020 (**Unaudited 1H20 Accounts**).

50. The Unaudited 1H20 Accounts recorded that for the six months ended 30 June 2020, Phoslock had, relevantly:

- (a) generated a loss from continuing operations before income tax of \$5,141,000 (**Unaudited 1H20 Operation Loss**); and
- (b) generated total sales and other revenue of \$1,232,000 (**Unaudited 1H20 Revenue**).

Particulars

- i) *The representation referred to in subparagraph (a) above was in writing and made in the Unaudited 1H20 Accounts at p 1.*
- ii) *The representation referred to in subparagraph (b) above was in writing and made in the Unaudited 1H20 Accounts at p 1.*

51. On 29 January 2021, Phoslock released its audited results for the half-year ended 30 June 2020 (**Audited 1H20 Accounts**).

52. The Audited 1H20 Accounts recorded that for the six months ended 30 June 2020, Phoslock had, relevantly:

- (a) generated a loss from continuing operations before income tax of \$4,312,000 (reduced down from a loss of \$21,612,000 after taking into account impairment of receivables of \$9,804,000 and impairment ~~impairment~~ of assets of \$7,536,000) (**1H20 Operation Loss**); and
- (b) generated total sales and other revenue of \$2,090,000 (**Audited 1H20 Revenue**).

Particulars

- i) ~~*The representation referred to in subparagraph (a) above was in writing and made in the Audited 1H20 Accounts at p 1.*~~
- ii) ~~*The representation referred to in subparagraph (b) above was in writing and made in the Audited 1H20 Accounts at p 1.*~~

52A. The 1H20 Operation Loss resulted from the impairment of assets associated with Phoslock's Chinese subsidiaries, including BHZQ.

Particulars

See note 24 of the 2020 Annual Report.

F. PHOSLOCK'S CAPITAL RAISINGS

53. On 4 July 2018, Phoslock published and lodged with the ASX:
- (a) an announcement entitled 'Capital Raising heavily oversubscribed' (**First Capital Raising Announcement**); and
 - (b) stated, amongst others, that it raised \$5.5 million through a share placement of 15.3 million fully paid ordinary shares at an issue price of 36 cents per share;
 - (c) Mr Freedman stated that the working capital would be to further expand the China business and to undertake more and even larger projects; and
 - (d) a notice under section 708AA(2)(f) of the Corporations Act (**First Capital Raising Notice**).
54. By the First Capital Raising Notice, Phoslock stated to the Affected Market that as at 4 July 2018:
- (a) Phoslock had complied with s 674 of the Corporations Act;
 - (b) there was no 'excluded information' for the purposes of s 708AA(8)-(9) of the Corporations Act; and
 - (c) Phoslock had complied with Chapter 2M of the Corporations Act.
55. On 23 September 2019, Phoslock issued 2,800,113 ordinary 'bonus shares' to all shareholders for nil consideration.
56. On 9 April 2020, Phoslock published and lodged with the ASX:
- (a) an announcement entitled '\$12m New Capital raised from Institutions plus a further \$3m from Directors and Officers' (**Second Capital Raising Announcement**);
 - (b) stated, amongst others, that it raised \$12 million through a share placement of 24 million fully paid ordinary shares at an issue price of 50 cents per share;
 - (c) stated, amongst others, that the funds raised will help facilitate Phoslock's rapidly growing China business; and
 - (d) a notice under section 708AA(2)(f) of the Corporations Act (**Second Capital Raising Notice**).
57. By the Second Capital Raising Notice, Phoslock stated to the Affected Market that as at 9 April 2020 (**Second Capital Raising**):
- (a) Phoslock had complied with s 674 of the Corporations Act;

- (b) there was no 'excluded information' for the purposes of s 708AA(8)-(9) of the Corporations Act; and
 - (c) Phoslock had complied with Chapter 2M of the Corporations Act.
58. On 5 May 2020, Phoslock published and lodged with the ASX (**Third Capital Raising**):
- (a) an announcement entitled 'Transformative Share Purchase Plan raises \$15m' (**Third Capital Raising Announcement**);
 - (b) stated, amongst others, that subscriptions of some \$17 million was received from nearly 1,200 shareholders; and
 - (c) a notice under section 708AA(2)(f) of the Corporations Act (**Third Capital Raising Notice**).
59. By the Third Capital Raising Notice, Phoslock stated to the Affected Market that as at 9 April 2020:
- (a) Phoslock had complied with s 674 of the Corporations Act;
 - (b) there was no 'excluded information' for the purposes of s 708AA(8)-(9) of the Corporations Act; and
 - (c) Phoslock had complied with Chapter 2M of the Corporations Act.
60. On 3 June 2020, Phoslock raised \$2.985 million from issuing 5,700,000 ordinary shares to certain directors and executives of Phoslock and its subsidiaries (**Fourth Capital Raising**).
61. On or about the same day, Phoslock published and lodged with the ASX a notice under section 708AA(2)(f) of the Corporations Act (**Fourth Capital Raising Notice**) which stated to the Affected Market that as at 3 June 2020:
- (a) Phoslock had complied with s 674 of the Corporations Act;
 - (b) there was no 'excluded information' for the purposes of s 708AA(8)-(9) of the Corporations Act; and
 - (c) Phoslock had complied with Chapter 2M of the Corporations Act.

G. THE TRUE POSITION

G.1 Related party contracts

62. At all material times in the Relevant Period, Phoslock:
- (a) carried on business as a supplier of water remediation products and services;
 - (b) [not used] ;

(c) operated in China through a number of wholly owned subsidiaries, including:

- (i) Phoslock (Beijing) Ecological Engineering Technology Co Ltd (Phoslock Beijing); and
 - (ii) Beijing Ecosystime Environmental Science and Technology Co Ltd;
 - (iii) Phoslock (Shanghai) Water Solutions Ltd;
 - (iv) Phoslock (Changxing) Water Solutions Ltd; and
 - (v) Zhejiang Phoslock Environmental Technologies Ltd (between 20 February 2020 and the end of the Relevant Period).
- (together and severally the China Subsidiaries)

(d) ~~[Not used] was heavily reliant on its Chinese operations, and its relationship with BHZQ, for revenue and profit.;~~

(e) ~~Phoslock had several key personnel in China who each had significant responsibilities for the Phoslock's China eSubsidiaries from at least the times identified below between 13 June 2017 to 30 September 2020:~~

- (i) ~~Mr Zhigang Zhang (Mr Zhang), who was a director of Phoslock from 5 December 2018~~ 12 June 2017 to 29 September 2020 and was involved with the Phoslock's China eSubsidiaries from at least 13 June 2017 following the conclusion of the BHZQ Deal strategic agreement between Phoslock and BHZQ;
- (ii) Mr Ningping Ma (Mr Ma), who was a director of Phoslock from December 2018 to 29 September 2020;
- (iii) Mr Tingshan Liu (Mr Liu), who was the General Manager of China Sales and Projects of Phoslock from June 2017 to 29 September 2020; and

(f) ~~[Not used] Messrs Zhang, Ma, Liu had significant responsibilities for Phoslock's China subsidiaries.~~

62A Throughout the Relevant Period:

(a) Phoslock's and/or the China Subsidiaries' key business relationship in China was with BHZQ; and

(b) Phoslock and/or the China Subsidiaries, were ~~was~~ heavily reliant on its Chinese operations, and its relationship with BHZQ, for revenue and profit.

Particulars

- i. The key business relationship commenced around 13 June 2017, when Phoslock entered a strategic agreement with BHZQ
- ii. The annual report for the period ended 31 December 2018 “BHZQ, our strategic partner in China,”
- iii. The annual report for the period ended 31 December 2019 “Strategic Agreement with BHZQ in 2017 which established the dynamic China operations. This has been the major driver of PET’s sales and profits over the last three years;”
- iv. The annual report for the period ended 31 December 2020 “(BHZQ) ... one of the Group’s largest customers)”

63. At all material times throughout the Relevant Period, ~~By no later than 5 December 2018,~~ Mr Zhang had material financial interests in several companies that transacted with Phoslock and/or the China Subsidiaries in China, including:

- (a) BHZQ, 30% of which was indirectly owned by Mr Zhang and Mr Ma;
- (b) Beijing Hualijia Environmental Engineering Technology, which he held a majority share (**BHEET**); and
- (c) Beijing Kelin Hoahua Environmental Technology Development Ltd (**BKHEDT**), which he held a majority share.

Particulars

- i. See note 24 of the 2020 Annual Report, which identified the assets impaired as part of the 1H20 Operations Loss, as being contracts with BHZQ, BHEET and BKHEDT associated with Mr Zhang’s and Mr Ma’s companies
- ii. The applicant does not know the full extent of Mr Zhang’s interests in companies that transacted with Phoslock and may provide further particulars following discovery and interlocutory processes.

64. At all material times throughout the Relevant Period, By no later than 5 December 2018, with Mr Zhang, Mr Ma indirectly owned 30% of BHZQ.

Particulars

The particulars to paragraph 63 are repeated.

65. ~~[Not used] The information set out in paragraphs **Error! Reference source not found.** to 0 above was not known to the Market at all material times.~~
66. ~~[Not used] On 30 September 2020, Mr Zhang and Mr Ma resigned as directors of Phoslock.~~
67. ~~[Not used] At the same time that Phoslock announced the resignations of Mr Zhang and Mr Ma, Phoslock reported the 1H20 Operation Loss.~~
68. ~~[Not used] The 1H20 Operation Loss included an impairment of receivables of \$9,804,000 and impairment of assets of \$7,536,000 associated with Phoslock's Chinese subsidiaries, particularly the contracts associated with Mr Zhang's and Mr Ma's companies, including BHZQ.~~
69. ~~[Not used] On 31 March 2021, Phoslock made adjustments to its FY19 financial performance (**Adjusted FY19 Accounts**), which included, amongst others, that its 'High Tech Enterprise Status' could not be maintained, increasing its tax rate from 15% to 25% and reducing its operating profit before tax by \$3,781,000 from \$2,698,000 profit to \$1,083,000 loss.~~

Particulars

- i) ~~The representation referred to above was in writing and made in the FY20 Annual Report at pp 52 and 55.~~

70. ~~[Not used] Throughout the Relevant Period, the knowledge of Phoslock's officers is imputed to Phoslock.~~

G.2 Potentially suspicious payments

- 70A Throughout the Relevant Period, many of Phoslock's contracts in China had been procured or conducted by business practices involving the making of payments or gifts to officials in China.

Particulars

- i. On 11 March 2018 Mr Schuitema was copied to an email from a Phoslock Beijing manager stating that he gave two gift cards to each of the director

of the labour union and the leader of the police station based in Changxiang for assisting Phoslock Beijing during a labour law dispute with employees.

- ii. On 2 April 2018 a Phoslock Beijing manager sent an email to Mr Schuitema confirming that he intended to give cash, a gift or a card to representatives of China's State Environmental Protection Agency (EPA) to resolve a list of issues raised by the EPA.
- iii. On 10 August 2018 a Phoslock Beijing manager sent an email to Mr Schuitema confirming that he had given a gift card worth RMB 6,000 and bottles of wine worth RMB 9,000 to representatives of the EPA to resolve a wastewater discharging issue raised by the EPA and intended to give similar gifts to "local government leaders".
- iv. On 28 November 2018 a Phoslock Beijing manager sent an email to Mr Schuitema confirming that he intended to gift RMB 35,000 to 40,000 to the leader of the central government, leader of the local government, leader of the police and the leader of the EPA by the end of December 2018.
- v. On 28 April 2019 a Phoslock Beijing manager sent an email to Mr Schuitema complaining about a town leader and village leader demanding a "high commission" and confirming that Phoslock Beijing had already put at least RMB 1 million into the project.
- vi. On 10 September 2019 a Phoslock Beijing manager sent an email to Mr Schuitema confirming that he intended to give RMB 100,000 in gift cards to local government leaders after they agree to enter into a water discharge agreement. The Phoslock Beijing manager confirmed that he had spoken to Mr Zhang about this and that Mr Zhang had warned him "not to say too much via emails".
- vii. On 22 October 2019 Christ Hui of Phoslock sent an email to Mr Freedman, Mr Schuitema and Brenda Shanahan stating that Phoslock would need to pay RMB 3,000 per ton for the "middle man" for each of the Xingyun Lake project and the East Lake project. Mr Hui requested the support of the board of Phoslock to agree to make these payments.

- viii. On 30 December 2019 Mr Hui sent an email to Mr Freedman and Mr Schuitema with the subject "Referral from Liu" stating that Mr Jiang Yuan, a Chinese official, had obtained options in Phoslock from Mr Liu and asking for permission to arrange a position for Mr Hui in Australia and to put him on the payroll in Australia and China, in exchange for Mr Yuan assisting Phoslock Beijing to "get projects from" the Chinese government.
- ix. On 2 April 2020 Mr Schuitema sent an email to Phoslock managers with the subject "Shilongba Funding Schedule" stating that the projects were unlikely to proceed unless commissions were paid to third parties.
- x. On 1 September 2020, KPMG published the "Project Echo, Draft Phase 1 Report", which set out KPMG's preliminary findings in respect of transactions between Phoslock Beijing and various entities where there was no contractual basis for the payment.
- xi. On or about 24 March 2021, KPMG published the Report to the Audit Committee, Consolidated Financial Statements for the year ended 31 December 2020 which stated that KPMG had identified potential payments related to bribery and corruption and had concerns regarding the economic substance of sales transactions with previously undisclosed related parties.
- xii. Further particulars will be provided following discovery

G.4 China Impacted Revenue

70B Throughout the Relevant Period from 5 December 2018, by reason of the matters pleaded in paragraphs 62A, 63 and 70A and 70B above, Phoslock's China revenue (including revenue derived from the China Subsidiaries) depended on:

- a) recovering amounts from companies controlled by Mr Zhang, and
- b) business practices which involved the making of payments or gifts to officials in China in connection with proposed or ongoing contracts.

Particulars

- i. The particulars to paragraphs 62A, 63 and 70A and 70B are repeated.
- ii. Further particulars will be provided following discovery.

G.5 Undisclosed BHZQ Related Party Information

70C Throughout the Relevant Period from 5 December 2018, officers of Phoslock ought in the course of performing their duties have reasonably become aware that two of Phoslock's key personnel in China, had a financial stake in BHZQ (BHZQ Related Party Information).

Particulars

i. Mr Freedman and Mr Schuitema and the other members of the Phoslock Board ought reasonably to have become aware of the BHZQ Related Party Information in the course of carrying out their duties in conducting due diligence into BHZQ, prior to 5 December 2018.

ii. On or about 30 June 2021 the Phoslock group identified that:

1. Mr Zhang had an undisclosed financial stake in BHEET, BHZQ and BKHETD;

2. Mr Ma had an undisclosed financial stake in BHZQ;

3. Mr Liu had an undisclosed financial stake in BKHETD.

and such investigations ought to have been made, and such information identified before, or shortly after, Phoslock and/or the China Subsidiaries commenced to do business with BHZQ, and prior to 5 December 2018.

iii. Further particulars will be provided following discovery.

70D By reason of the matters pleaded in paragraph 70C ~~70B~~ above, throughout the Relevant Period from 5 December 2018, Phoslock was aware (within the meaning of ASX Listing Rule 19.12) of the BHZQ Related Party Information.

70E Phoslock did not disclose the BHZQ Related Party Information to the market at any time in the Relevant Period.

G.5 Undisclosed China Business Practice Information

70F Throughout the Relevant Period, officers of Phoslock ought in the course of performing their duties have reasonably become aware that Phoslock's business practices in China, including through the China Subsidiaries, involving the making of payments or gifts to

officials in China in connection with proposed or ongoing contracts (**China Business Practice Information**).

Particulars

- i. The particulars to paragraph 70A and 70C are repeated. Mr Freedman and Mr Schuitema were aware of the emails there particularised as having been received by them.*
- ii. Mr Freedman and Mr Schuitema ought reasonably to have become aware of the China Business Practice Information by reason of the matters of the matters set out in particular (i).*
- iii. Further particulars will be provided following discovery.*

70G By reason of the matters pleaded in paragraph 70F above, throughout the Relevant Period from 5 December 2018, Phoslock was aware (within the meaning of ASX Listing Rule 19.12) of the China Business Practice Information.

70H Phoslock did not disclose the China Business Practice Information to the market at any time in the Relevant Period.

G.6 Impacted China revenue

70I Further or alternatively, throughout the Relevant Period, officers of Phoslock ought in the course of performing their duties have reasonably become aware that Phoslock's China revenue (including revenue derived from the China Subsidiaries) depended on recovering amounts from companies controlled by Mr Zhang, and on business practices which involved the making of payments or gifts to officials in China in connection with proposed or ongoing contracts (**China Impacted Revenue Information**).

Particulars

- i. The particulars to paragraphs 70A, 70C and 70F are repeated.*
- ii. Further particulars will be provided following discovery.*

70J By reason of the matters pleaded in paragraph 70I above, throughout the Relevant Period from 5 December 2018, Phoslock was aware (within the meaning of ASX Listing Rule 19.12) of the China Impacted Revenue Information.

70K Phoslock did not disclose the China Impacted Revenue Information to the market at any time in the Relevant Period.

71. ~~[Not used] Throughout the Relevant Period, officers of Phoslock was aware of and failed to disclose some or all of the following information to the market (the **China Information**):~~

- ~~(a) [Not used] two of Phoslock's key personnel in China had an undisclosed financial stake in Phoslock's key commercial counterparty, BHZQ;~~
- ~~(b) [Not used] the relationship between BHZQ and Phoslock was not at arms-length;~~
- ~~(c) [Not used] Phoslock was recording revenue on the basis of transactions with vendors that did not exist or that where those vendors had not provided a service or product to the company;~~
- ~~(d) [Not used] the vast majority of Phoslock's contracts in China included suspected bribes to win contracts with, for example, the Xingyun Lake Project;~~
- ~~(e) [Not used] Phoslock's current and forecast revenue depended on recovering amounts from companies controlled by its directors, and from projects that contained suspicious transactions and inappropriate payments made to Chinese government officials;~~
- ~~(f) [Not used] that Phoslock's reduced tax rate for its Beijing subsidiary was not based on accurate information having been supplied to the Chinese government; and~~
- ~~(g) [Not used] that Phoslock had issued options to staff in China without adequate governance.~~

GA. TRUE POSITION – NON-PAYMENT OF RECEIVABLES

GA.1 Non-payment of receivables

71A On 12 December 2017, the CFO and Company Secretary of Phoslock reported to the board of Phoslock (as was the fact) that:

- ~~(a) as at 9 December 2017 \$2.2 million was owed by trade debtors, including \$900,000 from Phoslock Beijing for the HeZhang Project; and~~
- ~~(b) Phoslock's China Subsidiaries were was demanding that Phoslock Beijing pay payment of the receivables before the end of December 2017.~~

71B On 21 March 2018, the CFO and Company Secretary of Phoslock reported to the board of Phoslock (as was the fact) that:

- ~~(a) Phoslock Beijing was owed owed Phoslock \$900,000 as at 11 March 2018;~~

- (b) BHZQ was owed owed \$2.3 million (RMB 12.2 million) for the Xinfeng River project as at 31 December 2017; and
- (c) institutional investors were asking direct questions as to whether Chinese debtors are paying Phoslock Beijing within normal payment terms.

71C On 11 May 2018, the CFO and Company Secretary of Phoslock reported to the board of Phoslock (as was the fact) that:

- (a) Phoslock Beijing had received a payment of \$520,000 from Phoslock Beijing for materials and prepaid freight for the Beijing wetlands project;
- (b) as at 7 May 2018, \$400,000 (RMB 1.8 million) was owed to by Phoslock Beijing for the HeZhang project; and
- (c) BHZQ was owed \$2 million (RMB 9.4 million) for the Xinfeng River project.

71D On 15 June 2018:

- (a) the CFO and Company Secretary of Phoslock reported to the board of Phoslock (as was the fact) that accounts receivables for the Beijing Canals from 31 December 2017 and the Wetland Projects, "both to BHZQ", totalled RMB 43.5 million;
- (b) the Managing Director reported to the board of Phoslock (as was the fact) that Phoslock was "not sure" when accounts receivable for the Beijing Canals project would be received;
- (c) Mr Zhang reported that the receivable from BHZQ to Phoslock Beijing would be paid slowly to Phoslock as the Chinese government was slowly paying BHZQ.

71E On 18 September 2018, the CFO and Company Secretary of Phoslock reported to the board of Phoslock (as was the fact) that accounts receivable owing to by Phoslock Beijing was \$9.7 million (RMB 47.5 million), with BHZQ owing Phoslock Beijing \$9.1 million (RMB 44.6 million) of that amount.

71F On 16 October 2018, the CFO and Company Secretary of Phoslock reported to the board of Phoslock (as was the fact) that:

- (a) a partial repayment of \$2.2 million was received from BHZQ in late September 2018;
- (b) as at 12 October 2018, accounts receivables totalled approximately \$8.3 million;
- (c) accounts receivable from to Phoslock Beijing totalled \$7.5 million (RMB 36.4 million), with BZHQ making up \$7.1 million (RMB 34.6 million).

71G On 21 November 2018:

- (a) the Managing Director of Phoslock reported to the board of Phoslock (as was the fact) that:
- (i) as at 15 November 2018 accounts receivable were approximately \$18 million, with BHZQ owing Phoslock Beijing \$15.5 million (RMB 77 million) of that amount;
 - (ii) this was a major issue with shareholders of Phoslock and KPMG;
 - (iii) everything possible should be done to ensure that the RMB 34 million receivable balance, being the amounts invoiced to BHZQ before 30 June 2018, is paid in full before the ASX 4c was released on 31 January 2019.
- (b) Zhigang Zhang advised that it would be difficult to obtain a large payment from BHZQ before 31 December 2018 as most companies would stop payment at 15 December 2018 until after around 15 February 2019.

71H On 15 January 2019 the Managing Director of Phoslock reported to the board of Phoslock (as was the fact) that:

- (a) as at 31 December 2018, accounts receivable totalled \$17.7 million, with \$16.5 million owed to ~~from~~ Phoslock Beijing;
- (b) Phoslock Beijing and BHZQ had agreed for BHZQ to pay RMB 5 million by 18 January 2019, RMB 20 million by 30 January 2019 and RMB 20 million by the end of February 2019.

71I On 12 February 2019 the Managing Director of Phoslock reported to the board of Phoslock (as was the fact) that:

- (a) Phoslock Beijing had received RMB 45 million from BHZQ on 19 January 2019;
and
- (b) As at 8 February 2019, accounts receivable totalled \$8.2 million, with \$7.3 million owed by Phoslock Beijing.

71J On 26 November 2019 the Managing Director of Phoslock reported to the board of Phoslock (as was the fact) that:

- (a) as at 20 November 2019, accounts receivable were \$7.9 million, with Phoslock Beijing owed ~~ing~~ \$6.1 million (RMB 29.7 million including RMB 10 million BHZQ Promissory Note);

- (b) Phoslock Beijing had received a Promissory Note from BHZQ of RMB 10 million which matured on 24 May 2020.

71K On 3 March 2020, the Managing Director of Phoslock reported to the board of Phoslock (as was the fact) that:

- (a) as at 24 February 2020, Accounts Receivable totalled \$16.5 million;
 (b) accounts receivable to ~~from~~ Phoslock Beijing totalled \$16.1 million.

71L On 31 December 2020, the CFO and Company Secretary of Phoslock reported to the board of Phoslock (as was the fact) that:

- (a) a trade receivable balance due from BHZQ totalling \$2,567,000 was past due, and the probability of collection was deemed "remote";
 (b) \$10,935,000 of receivables would be impaired.

71M On 13 May 2022, the CFO and Company Secretary of Phoslock reported to the board of Phoslock (as was the fact) that:

- (a) on 10 January 2022, the Phoslock Group obtained a settlement of \$1,800,000 of outstanding receivables and recognised a reversal equal to the amount as at 31 December 2021;
 (b) the board continued to impair the outstanding balance of the Xingyun Lake of an allowance of \$6,403,000 as at 31 December 2021 because of the interdependency of the two contracts.

GA.2 Undisclosed Receivables Non-Payment Information

71N Throughout the Relevant Period, officers of Phoslock ought in the course of performing their duties have reasonably become aware that:

- (a) BHZQ was not paying amounts due to Phoslock Beijing and/or Phoslock and/or the China Subsidiaries on the due dates or upon demand;
 (b) the outstanding balance owed by BHZQ to Phoslock Beijing and/or Phoslock and/or the China Subsidiaries had been increasing; and/or
 (c) there was a real likelihood that the receivables owing ~~by~~ to Phoslock Beijing ~~to Phoslock~~ (Phoslock Beijing Receivables) would not be paid.

(China Receivables Non-Payment Information)

Particulars

- i. Mr Freedman, Mr Schuitema and the other members of the Phoslock Board ought reasonably to have become aware of the China Receivables Non-Payment Information in the course of carrying out their duties, including from the information provided to the board pleaded at paragraphs 71A to 71M above.
- ii. The amounts of Phoslock Beijing Receivables which were outstanding varied from time to time, and generally increased in time, as pleaded at paragraphs 71A to 71M above, and this informs the content of sub-paragraphs (i) and (ii).

71O By reason of the matters pleaded in paragraph 71N above, throughout the Relevant Period from 5 December 2018, Phoslock was aware (within the meaning of ASX Listing Rule 19.12) of the China Receivables Non-Payment Information.

71P Phoslock did not disclose the China Receivables Non-Payment Information to the market at any time in the Relevant Period.

GA.3 Incorrect accounting treatment of Phoslock Beijing Receivables

71Q Contrary to AASB 15, in preparing the FY18 to FY19 Financial Reports, Phoslock recognised Phoslock Beijing Receivables as revenue in circumstances where:

- i. the Phoslock Beijing Receivables remained outstanding;
- ii. Phoslock was aware of the China Receivables Non-Payment Information;
- iii. it was not probable that Phoslock and/or the China Subsidiaries would receive the consideration from Phoslock Beijing.

Particulars

The Applicants refer to and repeat the particulars at paragraph 71N above. To the best of the Applicant's knowledge prior to discovery, Phoslock had the awareness of the China Receivables Non-Payment Information from no later than the dates pleaded in paragraphs 71A, 71B, 7C and/or 71D, each of which preceded the date when Phoslock published the FY18 Financial Report on 25 September 2018.

Further particulars will be provided following discovery and receipt of experts' reports.

71R Contrary to AASB 15, in preparing the FY18 to FY19 Financial Reports, the Phoslock Beijing Receivables that Phoslock recognised or accrued as revenue were not measured at fair value.

Particulars

The Applicants refer to and repeat the particulars at paragraph 71N and 71Q above.

Further particulars will be provided following discovery and receipt of experts' reports.

71S By reason of paragraphs 71Q and 71R above, the revenue reported in the FY18 to FY19 Financial Reports was materially overstated.

71T By reason of paragraphs 71R to 71S above, the profit after income tax reported in the FY18 to FY19 Financial Reports was materially overstated.

71U By reason of paragraphs 71R to 71T above, the FY18 to FY19 Financial Reports did not give a true and fair view of the financial position and performance of Phoslock ~~BLA~~ and did not relevantly comply with the requirements pleaded in paragraph ~~7(a)(i)~~ 8(a)(B) above.

71V In the FY18 to FY19 Financial Reports, no impairment of Phoslock Beijing Receivables was reported.

Particulars

FY18 Financial Report at page 45.

FY19 Financial Report at page 48

71W Contrary to AASB 9, in preparing the FY18 to FY19 Financial Reports, Phoslock failed properly to impair the Phoslock Beijing Receivables.

Particulars

(C) As at 15 June 2018, Phoslock Beijing owed Phoslock RMB 43.5 million.

(D) Phoslock had not been paid those debts for a significant period of time despite demand being made by Phoslock.

(E) Further particulars will be provided following discovery and receipt of experts' reports.

72. ~~[Not used]. The China Information was material price sensitive information.~~

H. PHOSLOCK'S CONTRAVENTION OF ITS CONTINUOUS DISCLOSURE OBLIGATIONS

73. ~~[Not used] By reason of the matters in paragraphs above, the FY18 to FY19 Financial Reports:~~

~~(a) were not prepared in compliance with Australian Accounting Standards and/or the Corporations Act; and~~

~~(b) did not give a true and fair view of Phoslock's financial position and financial performance in each of FY18 to FY19.~~

Particulars

~~The FY18 and FY19 Financial Reports were not prepared in compliance with AASB 9 and 15, and ss 296 and 297 of the Corporations Act.~~

74. ~~[Not used] At all material times in the Relevant Period, Phoslock was aware (within the meaning of ASX Listing Rule 19.12) of the matters pleaded in paragraphs above (the China Information.~~

Particulars

~~i) *Mr Freedman and the other members of the Phoslock Board ought reasonably to have become aware of the China Information in the course of carrying out their duties.*~~

75. As at, and from, 11 October 2018, each and any combination of:

(a) the BHZQ Related Party Information;

(b) the China Business Practices Information;

(c) the Impacted China Revenue Information;

(d) the China Receivables Non-Payment Information

was information that a reasonable person would expect to have a material effect on the price or value of Phoslock Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act as in force prior to 26 May 2020, and as in force

after 26 May 2020 as affected by the Corporations (Coronavirus Economic Response) Determination (No 2) and (No 4).

Particulars

The nature of the **China Information** (being the BHZQ Related Party Information, the China Business Practices Information and/or the China Receivables Non-Payment Information) and China Receivables Non-Payment Information is such that that reasonable person would expect the information to have a material effect on the price or value of Phoslock Shares.

75A Further to paragraph 75, as at and from 26 May 2020, each of:

- (a) the BHZQ Related Party Information;
- (b) the China Business Practices Information;
- (c) the Impacted China Revenue Information;
- (d) the China Receivables Non-Payment Information

was information that Phoslock was negligent with respect to whether it would have a material effect on the price or value of Phoslock shares.

Particulars

The nature of the China Information and China Receivables Non-Payment information is such that that reasonable person would expect the information to have a material effect on the price or value of Phoslock Shares.

A reasonable person in the position of Phoslock would have considered the China Information and China Receivables Non-Payment Information to have material effect on the price or value of Phoslock shares.

Despite Phoslock being aware of the China Information and China Receivables Non-Payment information, it took no steps to consider whether it ought to disclose the information until at least the end of the Relevant Period.

75B As at and from 26 May 2020, each of:

- (a) the BHZQ Related Party Information;
 - (b) the China Business Practices Information;
 - (c) the Impacted China Revenue Information;
 - (d) the China Receivables Non-Payment Information
- was information that was not generally available.

76. By reason of the Continuous Disclosure Obligations and the matters pleaded in paragraphs 75 to 75B, on and from each of the dates pleaded in paragraphs 70C, 70G, 70J and 71O, ~~11 October 2018~~, Phoslock became obliged immediately to tell the ASX respectively:
- (a) the BHZQ Related Party Information;
 - (b) the China Business Practices Information;
 - (c) the Impacted China Revenue Information;
 - (d) the China Receivables Non-Payment Information
77. Phoslock did not inform the ASX of the BHZQ Related Party Information, the China Business Practices Information, the Impacted China Revenue Information and China Receivables Non-Payment Information immediately on 11 October 2018, or at any time prior to 11 October 2018.

Particulars

Paragraphs 70E, 70H, 70K and 71P are repeated

78. By reason of the matters pleaded in paragraphs ~~74~~ 75 to 77, Phoslock contravened ASX Listing Rule 3.1 and s 674(2) and/or ss 674(2) and 674(3) of the Corporations Act.

I. DIRECTORS' CONTRAVENING CONDUCT

I.1 Directors' Representations

79. On or about 11 October 2018, Mr Freedman and Mr Schuitema authorised, or participated in authorising, the making and lodgement by Phoslock with the ASX of the FY18 Financial Results Announcements.

Particulars

- i) *FY18 Financial Results Announcement documents.*
- ii) *Further, Mr Freedman's authorisation is to be inferred from his position as a director, and Chairman, of Phoslock.*

- iii) *Further, Mr Schuitema's authorisation is to be inferred from his position as the Managing Director of Phoslock.*

80. On or about 11 October 2018, by reason of the matters pleaded in paragraphs 31, 32, 33, 34, 35, and 79 above, Mr Freedman and Mr Schuitema:

(a) stated to the members of Phoslock, and to the Affected Market, that in their opinion, the FY18 Financial Report:

- (i) gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities) in FY18; and
- (ii) complied with Australian Accounting Standards,

(FY18 Directors' Opinion to ASX);

(b) represented to the members of Phoslock, and to the Affected Market, that the FY18 Directors' Opinion to ASX was based upon reasonable grounds and was the product of an exercise of reasonable skill and care **(FY18 Directors' Representation to ASX).**

Particulars

- i) *The FY18 Directors' Opinion to ASX was express and was contained in writing in the FY18 Directors' Declaration.*
- ii) *The FY18 Directors' Representation to ASX was implied from the conduct of Mr Freedman in giving the FY18 Directors' Opinion to ASX, coupled with the absence of any or any adequate reservation or qualification to that opinion.*

81. On or about 27 March 2019, Mr Freedman and Mr Schuitema authorised, or participated in authorising, the making and lodgement by Phoslock with the ASX of the Extended FY18 Annual Report.

Particulars

- i) *Extended FY18 Annual Report.*
- ii) *Further, Mr Freedman's authorisation is to be inferred from his position as a director, and Chairman, of Phoslock.*
- iii) *Further, Mr Schuitema's authorisation is to be inferred from his position as the Managing Director of Phoslock.*

82. On or about 27 March 2019, by reason of the matters pleaded in paragraphs 37, 39, and 81 above, Mr Freedman and Mr Schuitema:

(a) stated to the members of Phoslock, and to the Affected Market, that in their opinion, the Extended FY18 Financial Report:

(i) gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities) for the six months to 31 December 2018; and

(ii) complied with Australian Accounting Standards,

(Extended FY18 Directors' Opinion to ASX);

(b) represented to the members of Phoslock, and to the Affected Market, that the FY18 the Directors' Opinion to ASX was based upon reasonable grounds and was the product of an exercise of reasonable skill and care **(Extended FY18 Directors' Representation to ASX).**

Particulars

i) *The Extended FY18 Directors' Opinion to ASX was express and was contained in writing in the FY18 Directors' Declaration.*

ii) *The Extended FY18 Directors' Representation to ASX was implied from the conduct of Mr Freedman and Mr Schuitema in giving the Extended FY18 Directors' Opinion to ASX, coupled with the absence of any or any adequate reservation or qualification to that opinion.*

83. On or about 31 October 2019, by reason of matters pleaded in paragraph 42 above, Mr Schuitema:

(a) stated to members of Phoslock, and to the Affected Market, that in his opinion, Phoslock's FY19 forecast revenue will be in the range of \$27 million to \$30 million **(FY19 Revenue Forecast);**

(b) stated to members of Phoslock, and to the Affected Market, that in his opinion, Phoslock's FY19 forecast net profit before tax and before option expense will be in the range of \$6 million to \$8 million **(FY19 Profit Forecast);** and

(c) represented to the members of Phoslock, and to the Affected Market, that the FY19 Revenue Forecast and FY19 Profit Forecast were based upon reasonable

grounds and were the product of an exercise of reasonable skill and care (**FY19 Director's Forecast**).

84. On or about 3 December 2019, by reason of the matters pleaded in paragraph 43 above, Mr Freedman and Mr Schuitema repeated the FY19 Revenue Forecast, FY19 Profit Forecast, and FY19 Director's Forecast to the members of Phoslock and to the Affected Market.
85. On or about 22 April 2020, Mr Freedman and Mr Schuitema authorised, or participated in authorising, the making and lodgement by Phoslock with the ASX of the FY19 Financial Results Announcements.

Particulars

- i) *FY19 Financial Results Announcement documents.*
 - ii) *Further, Mr Freedman's authorisation is to be inferred from his position as a director, and Chairman, of Phoslock.*
 - iii) *Further, Mr Schuitema's authorisation is to be inferred from his position as the Managing Director of Phoslock.*
86. On or about 22 April 2020, by reason of the matters pleaded in 44, 45, 46, 47, 48, and 85 above, Mr Freedman and Mr Schuitema:
- (a) stated to the members of Phoslock, and to the Affected Market, that in their opinion, the FY19 Financial Report:
 - (i) gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities) in FY19; and
 - (ii) complied with Australian Accounting Standards,

(FY19 Directors' Opinion to ASX);
 - (b) represented to the members of Phoslock, and to the Affected Market, that the FY18 Directors' Opinion to ASX was based upon reasonable grounds and was the product of an exercise of reasonable skill and care (**FY19 Directors' Representation to ASX**).

Particulars

- i) *The FY19 Directors' Opinion to ASX was express and was contained in writing in the FY18 Directors' Declaration.*

- ii) *The FY19 Directors' Representation to ASX was implied from the conduct of Mr Freedman in giving the FY18 Directors' Opinion to ASX, coupled with the absence of any or any adequate reservation or qualification to that opinion.*

I.2 Misleading or deceptive conduct (FY18 report)

86A. By reason of the matters in section G and GA, the FY18 to FY19 Financial Reports:

- (a) were not prepared in compliance with Australian Accounting Standards and/or the Corporations Act; and
- (b) did not give a true and fair view of Phoslock's financial position and financial performance in each of FY18 to FY19.

Particulars

The FY18 and FY19 Financial Reports were not prepared in compliance with AASB 9 and 15, and ss 296 and 297 of the Corporations Act.

87. ~~[Not used] At all material times in the Relevant Period, Mr Freedman and Mr Schuitema ought reasonably to have been aware of the China Information.~~

Particulars

- ~~a. *Mr Freedman and Mr Schuitema ought reasonably to have become aware of the China Information in the course of carrying out their duties.*~~

88. At the time Mr Freedman and/or Mr Schuitema expressed the FY18 Directors' Opinion to ASX and made the FY18 Directors' Representation to ASX, the financial information contained in the FY18 Financial Report was not prepared in compliance with Australian Accounting Standards 9 and 15 and/or did not give a true and fair view of Phoslock by reason of the matters pleaded in paragraphs ~~62 to 78~~ 70A-70K and 71A-71D above.

Particulars

- a. *The particulars to paragraphs ~~62 to 78~~ 70A-70K and 71A-71D are repeated.*

89. As at on or about 11 October 2018, the FY18 Directors' Opinion to ASX was not the product of an exercise of reasonable skill and care by reason of the matters pleaded in paragraph 86A above.

90. As at on or about 11 October 2018, by reason of the matters pleaded in paragraphs ~~87~~ 86A and/or 89, the FY18 Directors' Opinion to ASX was not based upon reasonable grounds.
91. The conduct of Mr Freedman and/or Mr Schuitema in expressing the FY18 Directors' Opinion to ASX and making the FY18 Directors' Representation to ASX was conduct which was:
- (a) in relation to financial products (being Phoslock Shares) or a financial service within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act; and/or
 - (b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
 - (c) in trade or commerce within the meaning of section 2 of the Australian Consumer Law.
92. As at on or about October 2018, by reason of the matters pleaded in paragraphs ~~87~~ 86A, 89 and/or 90, and 91, the conduct of Mr Freedman and/or Mr Schuitema in expressing the FY18 Directors' Opinion to ASX (and in failing to correct or qualify that opinion) was misleading or deceptive or likely to mislead or deceive, in contravention of:
- (a) s 1041H of the Corporations Act;
 - (b) s 12DA(1) of the ASIC Act; and/or
 - (c) s 18 of the Australian Consumer Law,
- (each such contravention of such provisions being a **Directors' FY18 Accounts Contravention**).
93. As at on or about October 2018, by reason of the matters pleaded in paragraphs 89 and/or 90, 91 and 92 the conduct of Mr Freedman and/or Mr Schuitema in making the FY18 Directors' Representation to ASX (and in failing to correct or qualify that representation), was misleading or deceptive or likely to mislead or deceive, and comprised a Directors' FY18 Accounts Contravention.
94. At the time Mr Freedman and/or Mr Schuitema expressed the Extended FY18 Directors' Opinion to ASX and made the Extended FY18 Directors' Representation to ASX, the financial information contained in the Extended FY18 Financial Report was not prepared in compliance with Australian Accounting Standards and/or did not give a true and fair view of Phoslock by reason of the matters pleaded in paragraphs ~~62 to 78~~ 62-71I, 71N-71W above.

Particulars

a. *The particulars to paragraphs 62-71I, 71N-71W are repeated.*

95. As at on or about 27 March 2019, the Extended FY18 Directors' Opinion to ASX was not the product of an exercise of reasonable skill and care by reason of the matters pleaded in paragraphs 62-71I, 71N-71W above.
96. As at on or about 27 March 2019, by reason of the matters pleaded in paragraphs ~~87~~ 88 and ~~95~~, the FY18 Directors' Opinion to ASX was not based upon reasonable grounds.
97. The conduct of Mr Freedman and/or Mr Schuitema in expressing the Extended FY18 Directors' Opinion to ASX and making the Extended FY18 Directors' Representation to ASX was conduct which was:
- (a) in relation to financial products (being Phoslock Shares) or a financial service within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act; and ~~or~~
 - (b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and ~~or~~
 - (c) in trade or commerce within the meaning of section 2 of the Australian Consumer Law.
98. As at on or about 27 March 2019, by reason of the matters pleaded in paragraphs 95 and ~~96~~, and 97, the conduct of Mr Freedman and ~~or~~ Mr Schuitema in expressing the Extended FY18 Directors' Opinion to ASX (and in failing to correct or qualify that opinion) was misleading or deceptive or likely to mislead or deceive, in contravention of:
- (a) s 1041H of the Corporations Act;
 - (b) s 12DA(1) of the ASIC Act; and/or
 - (c) s 18 of the Australian Consumer Law,
- (each such contravention of such provisions being a **Directors' Extended FY18 Accounts Contravention**).
99. As at on or about 27 March 2019, by reason of the matters pleaded in paragraphs ~~87~~, 95 and ~~96~~, 97 and 98 the conduct of Mr Freedman and/or Mr Schuitema in making the Extended FY18 Directors' Representation to ASX (and in failing to correct or qualify that representation), was misleading or deceptive or likely to mislead or deceive, and comprised a Directors' Extended FY18 Accounts Contravention.

I.2A Misleading or deceptive conduct (FY19)

100. At the time Mr Freedman and/or Mr Schuitema expressed the FY19 Directors' Opinion to ASX and made the FY19 Directors' Representation to ASX, the financial information contained in the FY19 Financial Report was not prepared in compliance with Australian Accounting Standards and/or did not give a true and fair view of Phoslock by reason of the matters pleaded in paragraphs 62-71K and 71N-71W ~~62 to 78~~ above.

Particulars

a. The particulars to paragraphs 62-71K and 71N-71W ~~62 to 78~~ are repeated.

101. As at on or about 22 April 2020, the FY19 Directors' Opinion to ASX was not the product of an exercise of reasonable skill and care by reason of the matters pleaded in paragraphs above.

102. As at on or about 22 April 2020, by reason of the matters pleaded in paragraphs ~~87-88~~ 86A and/or 101, the FY18 Directors' Opinion to ASX was not based upon reasonable grounds.

103. The conduct of Mr Freedman and/or Mr Schuitema in expressing the FY19 Directors' Opinion to ASX and making the FY19 Directors' Representation to ASX was conduct which was:

(a) in relation to financial products (being Phoslock Shares) or a financial service within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act; and/or

(b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

(c) in trade or commerce within the meaning of section 2 of the Australian Consumer Law.

104. As at on or about 22 April 2020, by reason of the matters pleaded in paragraphs ~~87~~ 86A, 101 and/or 102, and 103, the conduct of Mr Freedman and/or Mr Schuitema in expressing the FY19 Directors' Opinion to ASX (and in failing to correct or qualify that opinion) was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA(1) of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(each such contravention of such provisions being a **Directors' FY19 Accounts Contravention**).

105. As at on or about 22 April 2020, by reason of the matters pleaded in paragraphs 86A, 101 and/or 102, 103 and 104 the conduct of Mr Freedman and/or Mr Schuitema in making the FY19 Directors' Representation to ASX (and in failing to correct or qualify that representation), was misleading or deceptive or likely to mislead or deceive, and comprised a Directors' FY19 Accounts Contravention.

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

106. By reason of the matters pleaded in paragraphs 31, 32, 79, and 80(a), Mr Freedman and/or Mr Schuitema made a statement or disseminated information, being the FY18 Directors' Opinion to ASX.
107. By reason of the matters pleaded in paragraphs 89 and/or 90, the FY18 Directors' Opinion to ASX was a statement made or information disseminated by Mr Freedman and/or Mr Schuitema which was materially misleading.

Particulars

- i) *The FY18 Directors' Opinion to ASX was a statement (of an opinion), or alternatively, information which was materially misleading because the persons expressing it did not have reasonable grounds for it.*
 - ii) *Mr Freedman and/or Mr Schuitema did not have reasonable grounds for the FY18 Directors' Opinion to ASX for the reasons pleaded in paragraphs 89 and/or 90.*
108. The FY18 Directors' Opinion to ASX was likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares.

Particulars

The nature of the FY18 Directors' Opinion was such that a reasonable shareholder would rely on it in deciding whether to acquire, dispose of or retain Phoslock Shares.

109. By reason of the matters pleaded in paragraph 108, the FY18 Directors' Opinion to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

- i) *Statements or information which were likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares (such as the FY18 Directors Opinion to ASX) were likely to cause the market price for Phoslock Shares to be increased, maintained or stabilised, because it accompanied the FY18 Financial Results Announcement (including the FY18 Financial Report) which:*
- A) *contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraphs 31 to 35, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and*
- B) *did not contain adverse information, namely the information referred to in paragraphs 62-70A,70F,70I,70K,71A-71E,71N,71Q-71W. ~~62 to 72~~*

110. As at 11 October 2018, when expressing the FY18 Directors' Opinion to ASX Mr Freedman and Mr Schuitema ought reasonably to have known that:

- (a) the FY18 Directors' Opinion to ASX was not:
- (i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 89; ~~and/or~~
- (ii) based upon reasonable grounds, as pleaded in paragraph 90; and
- (b) by reason of sub-paragraph (a), the FY18 Directors' Opinion to ASX was materially misleading.

Particulars

- i) *The particulars to paragraphs 70A, 70C and 70F are repeated.*
- ii) *Mr Freedman ~~and~~ Mr Schuitema ought reasonably to have known what a reasonably competent director would have known.*
- iii) *A reasonably competent director acting with reasonable care and skill would have known that the FY18 Directors' Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 89.*

- iv) *A reasonably competent director acting with reasonable care and skill would have known that the FY18 Directors' Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 90.*
- v) *Such a reasonably competent director would thereby have known that the FY18 Directors' Opinion to ASX was materially misleading.*

111. By reason of the matters pleaded in paragraphs 106 to 110, by expressing the FY18 Directors' Opinion to ASX, Mr Freedman and/or Mr Schuitema contravened s 1041E of the Corporations Act (this also being a Directors' s FY18 Accounts Contravention).
112. By reason of the matters pleaded in paragraphs 37, 39, 81, and 82(a), Mr Freedman and/or Mr Schuitema made a statement or disseminated information, being the Extended FY18 Directors' Opinion to ASX.
113. By reason of the matters pleaded in paragraphs 95 and/or 96, the Extended FY18 Directors' Opinion to ASX was a statement made or information disseminated by Mr Freedman and/or Mr Schuitema which was materially misleading.

Particulars

- i) *The Extended FY18 Directors' Opinion to ASX was a statement (of an opinion), or alternatively, information which was materially misleading because the persons expressing it did not have reasonable grounds for it.*
 - ii) *Mr Freedman and/or Mr Schuitema did not have reasonable grounds for the Extended FY18 Directors' Opinion to ASX for the reasons pleaded in paragraphs 95 and/or 96.*
114. The Extended FY18 Directors' Opinion to ASX was likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares.
115. By reason of the matters pleaded in paragraph 114, the Extended FY18 Directors' Opinion to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

- i) *Statements or information which were likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares (such as the Extended FY18 Directors Opinion to ASX) were likely to cause the market price for Phoslock*

Shares to be increased, maintained or stabilised, because it accompanied the Extended FY18 Annual Report which:

A) contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraphs 36 to 39, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and

B) did not contain adverse information, namely the information referred to in paragraphs 62-71I, 71N-71W ~~62 to 72~~.

116. As at 27 March 2019, when expressing the Extended FY18 Directors' Opinion to ASX Mr Freedman and/or Mr Schuitema ought reasonably to have known that:

(a) the Extended FY18 Directors' Opinion to ASX was not:

- (i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 95; and/or
- (ii) based upon reasonable grounds, as pleaded in paragraph 96; and

(b) by reason of sub-paragraph (a), the FY18 Directors' Opinion to ASX was materially misleading.

Particulars

- i) *Mr Freedman and/or Mr Schuitema ought reasonably to have known what a reasonably competent director would have known.*
- ii) *A reasonably competent director acting with reasonable care and skill would have known that the FY18 Directors' Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 95.*
- iii) *A reasonably competent director acting with reasonable care and skill would have known that the FY18 Directors' Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 96.*

- iv) *Such a reasonably competent director would thereby have known that the Extended FY18 Directors' Opinion to ASX was materially misleading.*

117. By reason of the matters pleaded in paragraphs 94 to 99 and 116 by expressing the Extended FY18 Directors' Opinion to ASX, Mr Freedman and/or Mr Schuitema contravened s 1041E of the Corporations Act (this also being a Directors' Extended FY18 Accounts Contravention).
118. By reason of the matters pleaded in paragraphs 44, 45, 85, and 86(a), Mr Freedman and/or Mr Schuitema made a statement or disseminated information, being the FY19 Directors' Opinion to ASX.
119. By reason of the matters pleaded in paragraphs 101 and/or 102, the FY19 Directors' Opinion to ASX was a statement made or information disseminated by Mr Freedman and/or Mr Schuitema which was materially misleading.

Particulars

- i) *The FY19 Directors' Opinion to ASX was a statement (of an opinion), or alternatively, information which was materially misleading because the persons expressing it did not have reasonable grounds for it.*
 - ii) *Mr Freedman and/or Mr Schuitema did not have reasonable grounds for the FY19 Directors' Opinion to ASX for the reasons pleaded in paragraphs 101 and/or 102.*
120. The FY19 Directors' Opinion to ASX was likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares.
121. By reason of the matters pleaded in paragraph 120, the FY19 Directors' Opinion to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

- i) *Statements or information which were likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares (such as the FY19 Directors Opinion to ASX) were likely to cause the market price for Phoslock Shares to be increased, maintained or stabilised, because it accompanied the FY19 Financial Results Announcement (including the FY19 Financial Report) which:*

- A) *contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraphs 44 to 48, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and*
- B) *did not contain adverse information, namely the information referred to in paragraphs 62-71K,71N-71W. ~~62 to 72~~*

122. As at 22 April 2020, when expressing the FY19 Directors' Opinion to ASX Mr Freedman and ~~Mr~~ Mr Schuitema ought reasonably to have known that:

- (a) the FY19 Directors' Opinion to ASX was not:
- (i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 101; and/or
 - (ii) based upon reasonable grounds, as pleaded in paragraph 102; and
- (b) by reason of sub-paragraph (a), the FY19 Directors' Opinion to ASX was materially misleading.

Particulars

- i) *Mr Freedman and ~~Mr~~ Mr Schuitema ought reasonably to have known what a reasonably competent director would have known.*
 - ii) *A reasonably competent director acting with reasonable care and skill would have known that the FY19 Directors' Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 101.*
 - iii) *A reasonably competent director acting with reasonable care and skill would have known that the FY18 Directors' Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 102.*
 - iv) *Such a reasonably competent director would thereby have known that the FY19 Directors' Opinion to ASX was materially misleading.*
123. By reason of the matters pleaded in paragraphs 106 to 110, by expressing the FY19 ~~the~~ Directors' Opinion to ASX, Mr Freedman and ~~Mr~~ Mr Schuitema contravened s 1041E of the Corporations Act (this also being a Directors' s FY18 Accounts Contravention).

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

124. By reason of the matters pleaded in paragraphs 31, 32, 79, and 80(a), Mr Freedman and/or Mr Schuitema made a statement or disseminated information, being the FY18 Directors' Representation to ASX.
125. By reason of the matters pleaded in paragraphs 88 ~~87~~ to 93, the FY18 Directors' Representation to ASX was a statement made or information disseminated by Mr Freedman and/or Mr Schuitema which was materially misleading.

Particulars

- i) *The FY18 Directors' Representation to ASX was a statement, or alternatively, information which was materially misleading because of the matters pleaded in paragraphs 88 ~~87~~ to 93.*
- ii) *Mr Freedman and/or Mr Schuitema did not have reasonable grounds for the FY18 Directors' ~~Opinion~~ Representation to ASX for the reasons pleaded and particularised in paragraphs 88 ~~87~~ to 93.*
126. The FY18 Directors' Representation to ASX was likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares.
127. By reason of the matters pleaded in paragraph 126, the FY18 Directors' Representation to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

- i) *Statements or information which were likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares (such as the FY18 Directors' ~~Opinion~~ Representation to ASX) were likely to cause the market price for Phoslock Shares to be increased, maintained or stabilised, because it accompanied the FY18 Financial Results Announcement (including the FY18 Financial Report) which:*
- A) *contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraphs 31 to 35, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to*

Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and

B) did not contain adverse information, namely the information referred to in paragraphs 62-70A, 70F, 70I, 70K, 71A-71E, 71N, 71Q-71W. ~~62 to 72~~

128. As at 11 October 2018, when making the FY18 Directors' Representation to ASX Mr Freedman and/or Mr Schuitema ought reasonably to have known that:

(a) the FY18 Directors' Opinion to ASX was not:

(i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 89; and/or

(ii) based upon reasonable grounds, as pleaded in paragraph 90; and

(b) by reason of sub-paragraph (a), the FY18 Directors' Representation to ASX was materially misleading.

Particulars

i) *A reasonably competent director acting with reasonable care and skill would have known that the FY18 Directors' Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 89.*

ii) *A reasonably competent director acting with reasonable care and skill would have known that the FY18 Directors' Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 90.*

iii) *Such a reasonably competent director would thereby have known that the FY18 Directors' Representation ~~Opinion~~ to ASX was materially misleading.*

129. By reason of the matters pleaded in paragraphs 124 to 128, by making the FY18 Directors' Representation to ASX, Mr Freedman and/or Mr Schuitema contravened s 1041E of the Corporations Act (this also being a Directors' FY18 Accounts Contravention).

130. By reason of the matters pleaded in paragraphs 37, 39, 81, and 82(a), Mr Freedman and/or Mr Schuitema made a statement or disseminated information, being the Extended FY18 Directors' Representation to ASX.

131. By reason of the matters pleaded in paragraphs 86A ~~88~~ 87, 95 to 99, the Extended FY18 Directors' Representation to ASX was a statement made or information disseminated by Mr Freedman and/or Mr Schuitema which was materially misleading.

Particulars

- i) *The Extended FY18 Directors' Representation to ASX was a statement, or alternatively, information which was materially misleading because of the matters pleaded in paragraphs 88 87, 95 to 99.*
- ii) *Mr Freedman and/or Mr Schuitema did not have reasonable grounds for the Extended FY18 Directors' Representation ~~Opinion~~ to ASX for the reasons pleaded and particularised in paragraphs 88 87, 95 to 99.*

132. The Extended FY18 Directors' Representation to ASX was likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares.

133. By reason of the matters pleaded in paragraph 132, the Extended FY18 Directors' Representation to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

- i) *Statements or information which were likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares (such as the Extended FY18 Directors Opinion to ASX) were likely to cause the market price for Phoslock Shares to be increased, maintained or stabilised, because it accompanied the Extended FY18 Annual Report which:*
 - A) *contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraphs 36 to 39, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and*
 - B) *did not contain adverse information, namely the information referred to in paragraphs 62-70A, 70F, 70I, 70K, 71A-71E, 71N, 71Q-71W. ~~72 to 72.~~*

134. As at 27 March 2019, when making the Extended FY18 Directors' Representation to ASX Mr Freedman and/or Mr Schuitema ought reasonably to have known that:

- (a) the Extended FY18 Directors' Opinion to ASX was not:
- (i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 95; and/or
 - (ii) based upon reasonable grounds, as pleaded in paragraph 96; and
- (b) by reason of sub-paragraph (a), the Extended FY18 Directors' Representation to ASX was materially misleading.

Particulars

- i) *A reasonably competent director acting with reasonable care and skill would have known that the Extended FY18 Directors' Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 95.*
 - ii) *A reasonably competent director acting with reasonable care and skill would have known that the Extended FY18 Directors' Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 96.*
 - iii) *Such a reasonably competent director would thereby have known that the Extended FY18 Directors' Opinion to ASX was materially misleading.*
135. By reason of the matters pleaded in paragraphs 130 to 134, by making the Extended FY18 Directors' Representation to ASX, Mr Freedman and/or Mr Schuitema contravened s 1041E of the Corporations Act (this also being a Directors' Extended FY18 Accounts Contravention).
136. By reason of the matters pleaded in paragraphs 44, 45, 85, and 86(a), Mr Freedman and/or Mr Schuitema made a statement or disseminated information, being the FY19 Directors' Representation to ASX.
137. By reason of the matters pleaded in paragraphs 88 ~~87~~, 100 to 105, the FY19 Directors' Representation to ASX was a statement made or information disseminated by Mr Freedman and/or Mr Schuitema which was materially misleading.

Particulars

- i) *The FY19 Directors' Representation to ASX was a statement, or alternatively, information which was materially misleading because of the matters pleaded in paragraphs 86 ~~88~~ ~~87~~, 100 to 105.*

- ii) *Mr Freedman and/or Mr Schuitema did not have reasonable grounds for the FY19 ~~FY18~~ Directors' Opinion to ASX for the reasons pleaded and particularised in paragraphs ~~88-87~~, 100 to 105.*

138. The FY19 Directors' Representation to ASX was likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares.
139. By reason of the matters pleaded in paragraph 138, the FY19 Directors' Representation to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

- i) *Statements or information which were likely to be relied upon by Phoslock shareholders in deciding whether to acquire, dispose of or retain Phoslock Shares (such as the FY19 ~~FY18~~ Directors Opinion to ASX) were likely to cause the market price for Phoslock Shares to be increased, maintained or stabilised, because it accompanied the FY19 Financial Results Announcement (including the FY19 Financial Report) which:*
 - A) *contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraphs 44 to 48, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and*
 - B) *did not contain adverse information, namely the information referred to in paragraphs 62-71K, 71N-71W ~~62 to 72~~.*
140. As at 22 April 2020, when making the FY19 Directors' Representation to ASX Mr Freedman and/or Mr Schuitema ought reasonably to have known that:
- (a) the FY19 Directors' Opinion to ASX was not:
 - (i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 101; and/or
 - (ii) based upon reasonable grounds, as pleaded in paragraphs 102; and

(b) by reason of sub-paragraph (a), the FY19 Directors' Representation to ASX was materially misleading.

Particulars

- i) *A reasonably competent director acting with reasonable care and skill would have known that the FY19 Directors' Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 101.*
- ii) *A reasonably competent director acting with reasonable care and skill would have known that the FY19 Directors' Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 102.*
- iii) *Such a reasonably competent director would thereby have known that the FY19 ~~FY18~~ Directors' Opinion to ASX was materially misleading.*

141. By reason of the matters pleaded in paragraphs 136 to 140, by making the FY19 ~~FY18~~ Directors' Representation to ASX, Mr Freedman and/or Mr Schuitema contravened s 1041E of the Corporations Act (this also being a Directors' FY19 Accounts Contravention).

I.5 Continuing nature of the Directors' FY18 Accounts Misleading Conduct Contraventions

142. Each of the Directors' FY18 Accounts Contraventions was a continuing contravention which of its nature continued during the Relevant Period until such time as the inaccuracy or the falsity of the representations underlying the contraventions was revealed to the Affected Market at the conclusion of the Relevant Period.

143. Each of the Directors' Extended FY18 Accounts Contraventions was a continuing contravention which of its nature continued during the Relevant Period until such time as the inaccuracy or the falsity of the representations underlying the contraventions was revealed to the Affected Market at the conclusion of the Relevant Period.

144. Each of the Directors' FY19 Accounts Contraventions was a continuing contravention which of its nature continued during the Relevant Period until such time as the inaccuracy or the falsity of the representations underlying the contraventions was revealed to the Affected Market at the conclusion of the Relevant Period.

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

145. By reason of the matters pleaded in paragraphs 62 to 71K and 71N to 71W ~~62 to 72~~ the making of the statements pleaded in paragraphs 53 to 54, 56 to 57, 58 to 59, 60 to 61 (the **Capital Raising Representations**) was misleading or deceptive, or likely to mislead or deceive.
146. On or about 4 July 2018, Mr Freedman and/or Mr Schuitema authorised, or participated in authorising, the making and lodgement by Phoslock with the ASX of the:
- (a) First Capital Raising Announcement; and
 - (b) First Capital Raising Notice.

Particulars

- i) *Mr Freedman's authorisation is to be inferred from his position as a director, and Chairman, of Phoslock and his statement in the Capital Raising Announcement that:*
 - ii) *Mr Schuitema's authorisation is to be inferred from his position as a director and Managing Director of Phoslock.*
147. On or about 9 April 2020, Mr Freedman and/or Mr Schuitema authorised, or participated in authorising, the making and lodgement by Phoslock with the ASX of the Second Capital Raising Notice.

Particulars

- i) *The particulars to paragraph 146 are repeated.*
148. On or about 5 May 2020, Mr Freedman and/or Mr Schuitema authorised, or participated in authorising, the making and lodgement by Phoslock with the ASX of the Third Capital Raising Notice.

Particulars

- i) *The particulars to paragraph 146 are repeated.*
149. On or about 3 June 2020, Mr Freedman authorised, or participated in authorising, the making and lodgement by Phoslock with the ASX of the Fourth Capital Raising Notice.

Particulars

- i) *The particulars to paragraph 146 are repeated.*

150. By reason of the matters pleaded in paragraphs 146 to 149, Mr Freedman and/or Mr Schuitema authorised, or participated in authorising, the making and publication of the Capital Raising Representations.
151. The conduct pleaded in paragraphs 53 to 61 (including the making of the Capital Raising Representations) was conduct engaged in by Mr Freedman and/or Mr Schuitema:
- (a) in relation to financial products (being Phoslock Shares), within the meaning of ss 1041H(1) and 1041H(2)(b) of the Corporations Act;
 - (b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
 - (c) in trade or commerce, within the meaning of s 18 of the Australian Consumer Law.
152. By reason of the matters pleaded in paragraphs 146 to 151, Mr Freedman and/or Mr Schuitema in authorising, or participating in authorising, the making and publication of the Capital Raising Representations, contravened:
- (a) s 1041H of the Corporations Act;
 - (b) s 12DA(1) of the ASIC Act; and/or
 - (c) s 18 of the Australian Consumer Law,
- (the **Directors' Capital Raising Contraventions**).
153. The Directors' Capital Raising Contraventions were continuing contraventions which of their nature continued during the Relevant Period until such time as the inaccuracy or the falsity of the representations underlying the contraventions was revealed to the Affected Market at the conclusion of the Relevant Period (which did not occur prior to completion of the Capital Raising).

J. KPMG'S CONTRAVENING CONDUCT

J.1 KPMG's Representations in FY18

154. On or about 11 October 2018, by reason of the matters pleaded in paragraphs 31 and 32, Ms Cain and KPMG (through Ms Cain):
- (a) stated to the members of Phoslock, and to the Affected Market, that in their opinion, the FY18 Financial Report:
 - (i) gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities) in FY18; and

(ii) complied with Australian Accounting Standards,

(FY18 KPMG Opinion to ASX);

(b) represented to the members of Phoslock, and to the Affected Market, that the FY18 KPMG Opinion to ASX was based upon reasonable grounds and was the product of an exercise of reasonable skill and care (**FY18 KPMG Representation to ASX**).

Particulars

- i) *The FY18 KPMG Opinion to ASX was express and was contained in writing in the FY18 Audit Report.*
- ii) *The FY18 KPMG Representation to ASX was implied from the conduct of KPMG (through Ms Cain) in giving the FY18 KPMG Opinion to ASX, coupled with the absence of any or any adequate reservation or qualification to that opinion.*

J.2 Misleading or deceptive conduct in FY18

J.2.1. Misleading or deceptive conduct in respect of the FY18 KPMG Opinion to ASX

155. At the time Ms Cain and KPMG (through Ms Cain) expressed the FY18 KPMG Opinion to ASX and made the FY18 KPMG Representation to ASX, the financial information contained in the FY18 Financial Report was not prepared in compliance with Australian Accounting Standards and/or did not give a true and fair view of Phoslock by reason of the matters pleaded in paragraphs 62-70A,70F,70I,70K,71A-71E,71N,71Q-71W ~~62 to 72~~ above.

156. As at 11 October 2018, the FY18 KPMG Opinion to ASX was not the product of an exercise of reasonable skill and care by reason of the matters pleaded in paragraphs 62-70A,70F,70I,70K,71A-71E,71N,71Q-71W ~~72~~ above.

Particulars

- i) *KPMG failed to ascertain ~~that~~ the accuracy of the FY18 Financial Results Announcement, including the FY18 Annual Report, FY18 Operation Profit, FY18 Revenue, FY18 China Revenue, FY18 China Profit, FY18 China Assets (refer to paragraphs 31, 32, 35) and thereby breached ASA200, ASA220, ASA240, ASA260, ASA300, ASA315, ASA330, ASA450, ASA500, ASA540, ASA550, ASA560, ASA570, ASA 600, ASA 700, ASA701, ASA705 and ASA706.*

- ii) *KPMG failed to design or perform audit procedures so as to obtain sufficient appropriate audit evidence upon which to justify the value of the FY18 Operation Profit, FY18 Revenue, FY18 China Revenue, FY18 China Profit, FY18 China Assets and thereby breached ASA300, ASA315, ASA330, ASA450, ASA500, ASA540 and ASA 550.*
- iii) *KPMG failed to obtain sufficient appropriate audit evidence upon which to justify the value of the FY18 Operation Profit, FY18 Revenue, FY18 China Revenue, FY18 China Profit, FY18 China Assets and thereby breached ASA500, ~~and~~ ASA540 and ASA550.*
- iv) *KPMG failed to conduct the audit of the FY18 Financial Report in relation to the valuation of the FY18 Operation Profit, FY18 Revenue, FY18 China Revenue, FY18 China Profit, FY18 China Assets, with a sufficient level of professional scepticism, recognising that circumstances may exist that cause the financial report to be materially misstated and thereby breached ASA200.*
- v) *KPMG issued an incorrect audit opinion and thereby breached ASA200, ASA700, ASA701, and ASA705.*

157. As at 11 October 2018, by reason of the matters pleaded in paragraphs 155 and/or 156, the FY18 KPMG Opinion to ASX was not based upon reasonable grounds.

158. The conduct of Ms Cain and KPMG (through Ms Cain) in expressing the FY18 KPMG Opinion to ASX and making the FY18 KPMG Representation to ASX was conduct which was:

- (a) in relation to financial products (being Phoslock Shares) or a financial service within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act; and/or
- (b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
- (c) in trade or commerce within the meaning of section 2 of the Australian Consumer Law.

159. As at 11 October 2018, by reason of the matters pleaded in paragraphs 156 and/or 157, and 158, the conduct of Ms Cain in expressing the FY18 KPMG Opinion to ASX (and in failing to correct or qualify that opinion) was misleading or deceptive or likely to mislead or deceive, in contravention of:

- (a) s 1041H of the Corporations Act;

(b) s 12DA(1) of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(each such contravention of such provisions being a **KPMG FY18 Accounts Contravention**).

160. Further, or alternatively, as at 11 October 2018 the conduct of Ms Cain in expressing the FY18 KPMG Opinion to ASX (and in failing to correct or qualify that opinion):

(a) was conduct which was, by reason of the matters pleaded in paragraphs 156 and/or 157, misleading or deceptive or likely to mislead or deceive;

(b) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each other partner of KPMG as pleaded in paragraph 25(a);

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of expressing the FY18 KPMG Opinion to ASX (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act; and

(d) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of KPMG,

(each such contravention of such provisions also being a KPMG FY18 Accounts Contravention).

J.2.2 *Misleading or deceptive conduct in respect of the FY18 KPMG Representation to ASX*

161. As at 11 October 2018, by reason of the matters pleaded in paragraphs 156 and/or 157, the conduct of Ms Cain in making the FY18 KPMG Representation to ASX (and in failing to correct or qualify that representation), was misleading or deceptive or likely to mislead or deceive, and comprised a KPMG FY18 Accounts Contravention.

162. Further, or alternatively, as at 11 October 2018 the conduct of Ms Cain in making the FY18 KPMG Representation to ASX (and in failing to correct or qualify that representation):

(a) was conduct which was, by reason of the matters pleaded in 156 and/or 157, misleading or deceptive or likely to mislead or deceive;

(b) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of KPMG, as pleaded in paragraph 25(a);

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of making the FY18 KPMG Representation to ASX (and the omission of failing to correct or qualify that representation), within the meaning of s 761F(1)(b) of the Corporations Act; and

(d) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of KPMG,

(each such contravention of such provisions also being a KPMG FY18 Accounts Contravention).

J.2.3 Section 1041E liability in respect of the FY18 KPMG Opinion to ASX

163. By reason of the matters pleaded in paragraphs 31, 32 and 154(a), Ms Cain and KPMG (through Ms Cain) made a statement or disseminated information, being the FY18 KPMG Opinion to ASX.

164. By reason of the matters pleaded in paragraphs 156 and/or 157, the FY18 KPMG Opinion to ASX was a statement made or information disseminated by Ms Cain (and KPMG (through Ms Cain)) which was materially misleading.

Particulars

i) *The FY18 KPMG Opinion to ASX was a statement (of an opinion), or alternatively, information which was materially misleading because the person expressing it did not have reasonable grounds for it.*

ii) *Ms Cain did not have reasonable grounds for the FY18 KPMG Opinion to ASX for the reasons pleaded and particularised in paragraphs 156 and/or 157.*

165. The FY18 KPMG Opinion to ASX was likely to be relied upon by Phoslock in deciding whether to:

(a) release the FY18 Financial Results Announcement to the ASX; or

- (b) not release to the ASX a financial report which contained information or statements to the effect of the matters pleaded in paragraph 35.

Particulars

- i) *This was inherently likely.*

166. By reason of the matters pleaded in paragraph 165, the FY18 KPMG Opinion to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

- i) *Statements or information which were likely to be relied upon by Phoslock in deciding whether and in what form to release the FY18 Financial Results Announcement (including the FY18 Financial Report) were also likely to cause the market price for Phoslock Shares to be increased, maintained or stabilised, because the FY18 Financial Results Announcement (including the FY18 Financial Report):*

- A) *contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraph 35, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and*
- B) *did not contain adverse information, namely the information referred to in paragraphs 62-70A,70F,70I,70K,71A-71E,71N,71Q-71W above.*

167. As at 11 October 2018, when expressing the FY18 KPMG Opinion to ASX Ms Cain ought reasonably to have known that:

- (a) the FY18 KPMG Opinion to ASX was not:

- (i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 156; and/or
- (ii) based upon reasonable grounds, as pleaded in paragraph 157; and

- (b) by reason of sub-paragraph (a), the FY18 KPMG Opinion to ASX was materially misleading.

Particulars

- i) *Ms Cain ought reasonably to have known what a reasonably competent auditor would have known.*
- ii) *A reasonably competent auditor acting with reasonable care and skill would have known that the FY18 KPMG Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 156.*
- iii) *A reasonably competent auditor acting with reasonable care and skill would have known that the FY18 KPMG Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 157.*
- iv) *Such a reasonably competent auditor would thereby have known that the FY18 KPMG Opinion to ASX was materially misleading.*

168. By reason of the matters pleaded in paragraphs 163 to 167, by expressing the FY18 KPMG Opinion to ASX, Ms Cain and KPMG (through Ms Cain) contravened s 1041E of the Corporations Act (this also being a KPMG FY18 Accounts Contravention).

169. Further, or alternatively, as at 11 October 2018, the conduct of Ms Cain in expressing the FY18 KPMG Opinion to ASX (and in failing to correct or qualify that opinion):

(a) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each other partner of KPMG as pleaded in paragraph 25(a);

(b) by reason of sub-paragraph (a), gave rise to a contravention of s 1041E of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of expressing the FY18 KPMG Opinion to ASX (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act; and

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041E of the Corporations Act by every other partner of KPMG,

(each such contravention of such provisions also being a KPMG FY18 Accounts Contravention).

J.2.4 Section 1041E liability in respect of the FY18 KPMG Representation to ASX

170. By reason of the matters pleaded in paragraphs 31, 32 and 154(b), Ms Cain and KPMG (through Ms Cain) made a statement or disseminated information, being the FY18 KPMG Representation to ASX.

171. By reason of the matters pleaded in paragraphs 156 and/or 157, the FY18 KPMG Representation to ASX was a statement made or information disseminated by Ms Cain (and KPMG (through Ms Cain)) which was materially misleading.

Particulars

- i) *The FY18 KPMG Representation to ASX was a statement, or alternatively, information which was materially misleading because of the matters pleaded in paragraphs 155 to 157.*
- ii) *Ms Cain did not have reasonable grounds for the FY18 KPMG Opinion to ASX for the reasons pleaded and particularised in paragraphs 155 to 157.*

172. The FY18 KPMG Representation to ASX was likely to be relied upon by Phoslock in deciding whether to:

- (a) release the FY18 Financial Results Announcement to the ASX; or
- (b) not release to the ASX a financial report which contained information or statements to the effect of the matters pleaded in paragraph 35.

Particulars

- i) *This was inherently likely.*

173. By reason of the matters pleaded in paragraph 172, the FY18 KPMG Representation to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

- i) *Statements or information which were likely to be relied upon by Phoslock in deciding whether and in what form to release the FY18 Financial Results Announcement (including the FY18 Financial Report) were also likely to cause the market price for Phoslock Shares to be increased, maintained or stabilised, because the FY18 Financial Results Announcement (including the FY18 Financial Report):*

- A) *contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraph 35, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and*
- B) *did not contain adverse information, namely the information referred to in paragraphs 62-70A, 70F, 70I, 70K, 71A-71E, 71N, 71Q-71W-62 to 72 above.*

174. As at 11 October 2018, when making the FY18 KPMG Representation to ASX Ms Cain ought reasonably to have known that:

- (a) the FY18 KPMG Opinion to ASX was not:
 - (i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 156; and/or
 - (ii) based upon reasonable grounds, as pleaded in paragraph 157; and
- (b) by reason of sub-paragraph (a), the FY18 KPMG Representation to ASX was materially misleading.

Particulars

- i) *Ms Cain ought reasonably to have known what a reasonably competent auditor would have known.*
- ii) *A reasonably competent auditor acting with reasonable care and skill would have known that the FY18 KPMG Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 156.*
- iii) *A reasonably competent auditor acting with reasonable care and skill would have known that the FY18 KPMG Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 157.*
- iv) *Such a reasonably competent auditor would thereby have known that the FY18 KPMG Representation to ASX was materially misleading.*

175. By reason of the matters pleaded in paragraphs 170 to 174, by making the FY18 KPMG Representation to ASX, Ms Cain and KPMG (through Ms Cain) contravened s 1041E of the Corporations Act (this also being a KPMG FY18 Accounts Contravention).
176. Further, or alternatively, as at 11 October 2018 the conduct of Ms Cain in making the FY18 KPMG Representation to ASX (and in failing to correct or qualify that opinion):
- (a) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken pleaded in paragraph 25(a);
 - (b) by reason of sub-paragraph (a), gave rise to a contravention of s 1041E of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of expressing the FY18 KPMG Representation to ASX (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act; and
 - (c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041E of the Corporations Act by every other partner of KPMG,
- (each such contravention of such provisions also being a KPMG FY18 Accounts Contravention).

J.3 Continuing nature of the KPMG FY18 Accounts Contraventions

177. Each of the KPMG FY18 Accounts Contraventions was a continuing contravention which of its nature continued during the Relevant Period until such time as the inaccuracy or the falsity of the representations underlying the contraventions was revealed to the Affected Market.

J.4 KPMG's Representations in Extended FY18

178. On or about 27 February 2019, by reason of the matters pleaded in paragraphs 36 to 39, Ms Cain and KPMG (through Ms Cain):
- (a) stated to the members of Phoslock, and to the Affected Market, that in their opinion, the Extended FY18 Annual Report:
 - (i) gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities) in the Extended FY18; and
 - (ii) complied with Australian Accounting Standards,
- (Extended FY18 KPMG Opinion to ASX);**

(b) represented to the members of Phoslock, and to the Affected Market, that the Extended FY18 KPMG Opinion to ASX was based upon reasonable grounds and was the product of an exercise of reasonable skill and care (**Extended FY18 KPMG Representation to ASX**).

Particulars

- i) *The Extended FY18 KPMG Opinion to ASX was express and was contained in writing in the Extended FY18 Annual Report.*
- ii) *The Extended FY18 KPMG Representation to ASX was implied from the conduct of KPMG (through Ms Cain) in giving the Extended FY18 KPMG Opinion to ASX, coupled with the absence of any or any adequate reservation or qualification to that opinion.*

J.5 Misleading or deceptive conduct in Extended FY18

J.5.1 Misleading or deceptive conduct in respect of the Extended FY18 KPMG Opinion to ASX

179. At the time Ms Cain and KPMG (through Ms Cain) expressed the Extended FY18 KPMG Opinion to ASX and made the Extended FY18 KPMG Representation to ASX, the financial information contained in the Extended FY18 Annual Report was not prepared in compliance with Australian Accounting Standards and/or did not give a true and fair view of Phoslock by reason of the matters pleaded in paragraphs 62-71I,71N-71W ~~62 to 72~~ above.

180. As at 27 February 2019, the Extended FY18 KPMG Opinion to ASX was not the product of an exercise of reasonable skill and care by reason of the matters pleaded in paragraphs 62-71I,71N-71W ~~62 to 72~~ above.

Particulars

- (i) *KPMG failed to ascertain ~~that~~ the accuracy of the Extended FY18 Annual Report, including the Extended FY18 Operation Profit, Extended FY18 Revenue, Extended FY18 China Revenue, Extended FY18 China Profit, Extended FY18 China Assets (refer to paragraphs 36 to 39) and thereby breached ASA200, ASA220, ASA240, ASA260, ASA300, ASA315, ASA330, ASA450, ASA500, ASA540, ASA550, ASA560, ASA570, ASA600, ASA 700, ASA701, ASA705 and ASA706.*
- (ii) *KPMG failed to design or perform audit procedures so as to obtain sufficient appropriate audit evidence upon which to justify the value*

of the Extended FY18 Operation Profit, Extended FY18 Revenue, Extended FY18 China Revenue, Extended FY18 China Profit, Extended FY18 China Assets and thereby breached ASA300, ASA315, ASA330, ASA450, ASA500, ASA540 and ASA550.

- (iii) KPMG failed to obtain sufficient appropriate audit evidence upon which to justify the value of the Extended FY18 Operation Profit, Extended FY18 Revenue, Extended FY18 China Revenue, Extended FY18 China Profit, Extended FY18 China Assets and thereby breached ASA500, ~~and~~ ASA540 and ASA550.*
- (iv) KPMG failed to conduct the audit of the Extended FY18 Financial Report in relation to the valuation of the Extended FY18 Operation Profit, Extended FY18 Revenue, Extended FY18 China Revenue, Extended FY18 China Profit, Extended FY18 China Assets , with a sufficient level of professional scepticism, recognising that circumstances may exist that cause the financial report to be materially misstated and thereby breached ASA200.*
- (v) KPMG issued an incorrect audit opinion and thereby breached ASA200, ASA700, ASA701, and ASA705.*

181. As at 27 February 2019, by reason of the matters pleaded in paragraphs 179 and/or 180, the Extended FY18 KPMG Opinion to ASX was not based upon reasonable grounds.
182. The conduct of Ms Cain and KPMG (through Ms Cain) in expressing the Extended FY18 KPMG Opinion to ASX and making the Extended FY18 KPMG Representation to ASX was conduct which was:
- (a) in relation to financial products (being Phoslock Shares) or a financial service within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act; and/or
 - (b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
 - (c) in trade or commerce within the meaning of section 2 of the Australian Consumer Law.
183. As at 27 February 2019, by reason of the matters pleaded in paragraphs 180 and/or 181, and 182, the conduct of Ms Cain in expressing the Extended FY18 KPMG Opinion

to ASX (and in failing to correct or qualify that opinion) was misleading or deceptive or likely to mislead or deceive, in contravention of:

(d) s 1041H of the Corporations Act;

(e) s 12DA(1) of the ASIC Act; and/or

(f) s 18 of the Australian Consumer Law,

(each such contravention of such provisions being a **KPMG Extended FY18 Accounts Contravention**).

184. Further, or alternatively, as at 27 February 2019 the conduct of Ms Cain in expressing the Extended FY18 KPMG Opinion to ASX (and in failing to correct or qualify that opinion):

(a) was conduct which was, by reason of the matters pleaded in paragraphs 180 and/or 181, misleading or deceptive or likely to mislead or deceive;

(b) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each other partner of KPMG as pleaded in paragraph 25(a);

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of expressing the Extended FY18 KPMG Opinion to ASX (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act; and

(d) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of KPMG,

(each such contravention of such provisions also being a KPMG Extended FY18 Accounts Contravention).

J.5.2 *Misleading or deceptive conduct in respect of the Extended FY18 KPMG Representation to ASX*

185. As at 27 February 2019, by reason of the matters pleaded in paragraphs 180 and/or 181, the conduct of Ms Cain in making the Extended FY18 KPMG Representation to ASX (and in failing to correct or qualify that representation), was misleading or deceptive or likely to mislead or deceive, and comprised a KPMG Extended FY18 Accounts Contravention.

186. Further, or alternatively, as at 27 February 2019 the conduct of Ms Cain in making the Extended FY18 KPMG Representation to ASX (and in failing to correct or qualify that representation):

(a) was conduct which was, by reason of the matters pleaded in 180 and/or 181, misleading or deceptive or likely to mislead or deceive;

(b) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of KPMG, as pleaded in paragraph 25(a);

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of making the Extended FY18 KPMG Representation to ASX (and the omission of failing to correct or qualify that representation), within the meaning of s 761F(1)(b) of the Corporations Act; and

(d) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of KPMG,

(each such contravention of such provisions also being a KPMG Extended FY18 Accounts Contravention).

J.5.3 Section 1041E liability in respect of the Extended FY18 KPMG Opinion to ASX

187. By reason of the matters pleaded in paragraphs 36 to 39 and 178(a) Ms Cain and KPMG (through Ms Cain) made a statement or disseminated information, being the Extended FY18 KPMG Opinion to ASX.

188. By reason of the matters pleaded in paragraphs 180 and/or 181, the Extended FY18 KPMG Opinion to ASX was a statement made or information disseminated by Ms Cain (and KPMG (through Ms Cain)) which was materially misleading.

Particulars

- i) *The Extended FY18 KPMG Opinion to ASX was a statement (of an opinion), or alternatively, information which was materially misleading because the person expressing it did not have reasonable grounds for it.*

- ii) *Ms Cain did not have reasonable grounds for the Extended FY18 KPMG Opinion to ASX for the reasons pleaded and particularised in paragraphs 180 and/ or 181.*

189. The Extended FY18 KPMG Opinion to ASX was likely to be relied upon by Phoslock in deciding whether to:

- (a) release the Extended FY18 Annual Report to the ASX; or
- (b) not release to the ASX a financial report which contained information or statements to the effect of the matters pleaded in paragraph 39.

Particulars

- i) *This was inherently likely.*

190. By reason of the matters pleaded in paragraph 189, the Extended FY18 KPMG Opinion to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

- i) *Statements or information which were likely to be relied upon by Phoslock in deciding whether and in what form to release the Extended FY18 Annual Report (including the Extended FY18 Financial Report) were also likely to cause the market price for Phoslock Shares to be increased, maintained or stabilised, because the Extended FY18 Annual Report (including the Extended FY18 Financial Report):*

- A) *contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraphs 36 to 39, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and*
- B) *did not contain adverse information, namely the information referred to in paragraphs 62-71I,71N-71W ~~62 to 72~~ above.*

191. As at 27 February 2019, when expressing the Extended FY18 KPMG Opinion to ASX Ms Cain ought reasonably to have known that:

- (a) the Extended FY18 KPMG Opinion to ASX was not:
- (i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 180; and/or
 - (ii) based upon reasonable grounds, as pleaded in paragraph 181; and
- (b) by reason of sub-paragraph (a), the Extended FY18 KPMG Opinion to ASX was materially misleading.

Particulars

- i) *Ms Cain ought reasonably to have known what a reasonably competent auditor would have known.*
 - ii) *A reasonably competent auditor acting with reasonable care and skill would have known that the Extended FY18 KPMG Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 180.*
 - iii) *A reasonably competent auditor acting with reasonable care and skill would have known that the Extended FY18 KPMG Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 181.*
 - iv) *Such a reasonably competent auditor would thereby have known that the Extended FY18 KPMG Opinion to ASX was materially misleading.*
192. By reason of the matters pleaded in paragraphs 187 to 191, by expressing the Extended FY18 KPMG Opinion to ASX, Ms Cain and KPMG (through Ms Cain) contravened s 1041E of the Corporations Act (this also being a KPMG Extended FY18 Accounts Contravention).
193. Further, or alternatively, as at 27 February 2019 the conduct of Ms Cain in expressing the Extended FY18 KPMG Opinion to ASX (and in failing to correct or qualify that opinion):
- (a) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each other partner of KPMG as pleaded in paragraph 25(a);
 - (b) by reason of sub-paragraph (a), gave rise to a contravention of s 1041E of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of

the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of expressing the Extended FY18 KPMG Opinion to ASX (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act; and

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041E of the Corporations Act by every other partner of KPMG,

(each such contravention of such provisions also being a KPMG Extended FY18 Accounts Contravention).

J.5.4 Section 1041E liability in respect of the Extended FY18 KPMG Representation to ASX

194. By reason of the matters pleaded in paragraphs 36 to 39 and 178(b), Ms Cain and KPMG (through Ms Cain) made a statement or disseminated information, being the Extended FY18 KPMG Representation to ASX.

195. By reason of the matters pleaded in paragraphs 180 and/or 181, the Extended FY18 KPMG Representation to ASX was a statement made or information disseminated by Ms Cain (and KPMG (through Ms Cain)) which was materially misleading.

Particulars

- i) *The Extended FY18 KPMG Representation to ASX was a statement, or alternatively, information which was materially misleading because of the matters pleaded in paragraphs 179 to 181.*
- ii) *Ms Cain did not have reasonable grounds for the Extended FY18 KPMG Opinion to ASX for the reasons pleaded and particularised in paragraphs 179 to 181.*

196. The Extended FY18 KPMG Representation to ASX was likely to be relied upon by Phoslock in deciding whether to:

(a) release the Extended FY18 Annual Report to the ASX; or

(b) not release to the ASX a financial report which contained information or statements to the effect of the matters pleaded in paragraph 39.

Particulars

- i) *This was inherently likely.*

197. By reason of the matters pleaded in paragraph 196, the Extended FY18 KPMG Representation to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

i) *Statements or information which were likely to be relied upon by Phoslock in deciding whether and in what form to release the Extended FY18 Annual Report (including the Extended FY18 Financial Report) were also likely to cause the market price for Phoslock Shares to be increased, maintained or stabilised, because the Extended FY18 Annual Report (including the Extended FY18 Financial Report):*

- A) *contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraphs 36 to 39, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and*
- B) *did not contain adverse information, namely the information referred to in paragraphs 62-71I, 71N-71W ~~62 to 72~~ above.*

198. As at 27 February 2019, when making the Extended FY18 KPMG Representation to ASX Ms Cain ought reasonably to have known that:

(a) the Extended FY18 KPMG Opinion to ASX was not:

- (i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 180; and/or
- (ii) based upon reasonable grounds, as pleaded in paragraph 181; and

(b) by reason of sub-paragraph (a), the Extended FY18 KPMG Representation to ASX was materially misleading.

Particulars

i) *Ms Cain ought reasonably to have known what a reasonably competent auditor would have known.*

- ii) *A reasonably competent auditor acting with reasonable care and skill would have known that the Extended FY18 KPMG Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 180.*
- iii) *A reasonably competent auditor acting with reasonable care and skill would have known that the Extended FY18 KPMG Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 181.*
- iv) *Such a reasonably competent auditor would thereby have known that the Extended FY18 KPMG Representation to ASX was materially misleading.*

199. By reason of the matters pleaded in paragraphs 194 to 198, by making the Extended FY18 KPMG Representation to ASX, Ms Cain and KPMG (through Ms Cain) contravened s 1041E of the Corporations Act (this also being a KPMG Extended FY18 Accounts Contravention).

200. Further, or alternatively, as at 27 February 2019 the conduct of Ms Cain in making the Extended FY18 KPMG Representation to ASX (and in failing to correct or qualify that opinion):

(a) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each other partner of KPMG as pleaded in paragraph 25(a);

(b) by reason of sub-paragraph (a), gave rise to a contravention of s 1041E of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of expressing the Extended FY18 KPMG Representation to ASX (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act; and

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041E of the Corporations Act by every other partner of KPMG,

(each such contravention of such provisions also being a KPMG Extended FY18 Accounts Contravention).

J.6 Continuing nature of the KPMG Extended FY18 Accounts Contraventions

201. Each of the KPMG Extended FY18 Accounts Contraventions was a continuing contravention which of its nature continued during the Relevant Period until such time as the inaccuracy or the falsity of the representations underlying the contraventions was revealed to the Affected Market.

J.7 KPMG's Representations in FY19

202. On or about 24 March 2020, by reason of the matters pleaded in paragraphs 44 to 48, Ms Cain and KPMG (through Ms Cain):

(a) stated to the members of Phoslock, and to the Affected Market, that in their opinion, the FY19 Financial Report:

(iii) gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities) in FY19; and

(iv) complied with Australian Accounting Standards,

(FY19 KPMG Opinion to ASX);

(b) represented to the members of Phoslock, and to the Affected Market, that the FY19 KPMG Opinion to ASX was based upon reasonable grounds and was the product of an exercise of reasonable skill and care (**FY19 KPMG Representation to ASX**).

Particulars

v) *The FY19 KPMG Opinion to ASX was express and was contained in writing in the FY19 Financial Results Announcement.*

vi) *The FY19 KPMG Representation to ASX was implied from the conduct of KPMG (through Ms Cain) in giving the FY19 KPMG Opinion to ASX, coupled with the absence of any or any adequate reservation or qualification to that opinion.*

J.8 Misleading or deceptive conduct in FY19

J.8.1 Misleading or deceptive conduct in respect of the FY19 KPMG Opinion to ASX

203. At the time Ms Cain and KPMG (through Ms Cain) expressed the FY19 KPMG Opinion to ASX and made the FY19 KPMG Representation to ASX, the financial information contained in the FY19 Financial Report was not prepared in compliance with Australian

Accounting Standards and/or did not give a true and fair view of Phoslock by reason of the matters pleaded in paragraphs 62-71K,71N-71W ~~62 to 72~~ above.

204. As at 24 March 2020, the FY19 KPMG Opinion to ASX was not the product of an exercise of reasonable skill and care by reason of the matters pleaded in paragraphs 62-71K,71N-71W ~~62 to 72~~ above.

Particulars

- (i) *KPMG failed to ascertain ~~that~~ the accuracy of the FY19 Annual Report, including the FY19 Operation Profit, FY19 Revenue, FY19 China Revenue, FY19 China Profit, FY19 China Assets (refer to paragraphs 44 to 48) and thereby breached ASA200, ASA220, ASA240, ASA260, ASA300, ASA315, ASA330, ASA450, ASA500, ASA540, ASA550, ASA560, ASA570, ASA 700, ASA701, ASA705 and ASA706.*
- (ii) *KPMG failed to design or perform audit procedures so as to obtain sufficient appropriate audit evidence upon which to justify the value of the FY19 Operation Profit, FY19 Revenue, FY19 China Revenue, FY19 China Profit, FY19 China Assets and thereby breached ASA300, ASA315, ASA330, ASA450, ASA500, ASA540, ASA550 and ASA650.*
- (iii) *KPMG failed to obtain sufficient appropriate audit evidence upon which to justify the value of the FY19 Operation Profit, FY19 Revenue, FY19 China Revenue, FY19 China Profit, FY19 China Assets and thereby breached ASA500, ~~and~~ ASA540 and ASA550.*
- (iv) *KPMG failed to conduct the audit of the FY19 Financial Report in relation to the valuation of the FY19 Operation Profit, FY19 Revenue, FY19 China Revenue, FY19 China Profit, FY19 China Assets, with a sufficient level of professional scepticism, recognising that circumstances may exist that cause the financial report to be materially misstated and thereby breached ASA200.*
- (v) *KPMG issued an incorrect audit opinion and thereby breached ASA200, ASA700, ASA701, and ASA705.*

205. As at 24 March 2020, by reason of the matters pleaded in paragraphs 203 and/or 204, the FY19 KPMG Opinion to ASX was not based upon reasonable grounds.

206. The conduct of Ms Cain and KPMG (through Ms Cain) in expressing the FY19 KPMG Opinion to ASX and making the FY19 KPMG Representation to ASX was conduct which was:
- (a) in relation to financial products (being Phoslock Shares) or a financial service within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act; and/or
 - (b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
 - (c) in trade or commerce within the meaning of section 2 of the Australian Consumer Law.
207. As at 24 March 2020, by reason of the matters pleaded in paragraphs 204 and/or 205, and 206, the conduct of Ms Cain in expressing the FY19 KPMG Opinion to ASX (and in failing to correct or qualify that opinion) was misleading or deceptive or likely to mislead or deceive, in contravention of:
- (g) s 1041H of the Corporations Act;
 - (h) s 12DA(1) of the ASIC Act; and/or
 - (i) s 18 of the Australian Consumer Law,
- (each such contravention of such provisions being a **KPMG FY19 Accounts Contravention**).
208. Further, or alternatively, as at 24 March 2020 the conduct of Ms Cain in expressing the FY19 KPMG Opinion to ASX (and in failing to correct or qualify that opinion):
- (a) was conduct which was, by reason of the matters pleaded in paragraphs 204 and/or 205, misleading or deceptive or likely to mislead or deceive;
 - (b) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each other partner of KPMG as pleaded in paragraph 25(a);
 - (c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of expressing the Extended FY18 KPMG Opinion to ASX (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act; and

(d) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of KPMG, (each such contravention of such provisions also being a KPMG FY19 Accounts Contravention).

J.8.2 *Misleading or deceptive conduct in respect of the FY19 KPMG Representation to ASX*

209. As at 24 March 2020, by reason of the matters pleaded in paragraphs 204 and/or 205, the conduct of Ms Cain in making the FY19 KPMG Representation to ASX (and in failing to correct or qualify that representation), was misleading or deceptive or likely to mislead or deceive, and comprised a KPMG FY19 Accounts Contravention.

210. Further, or alternatively, as at 24 March 2020 the conduct of Ms Cain in making the FY19 KPMG Representation to ASX (and in failing to correct or qualify that representation):

(a) was conduct which was, by reason of the matters pleaded in 204 and/or 205, misleading or deceptive or likely to mislead or deceive;

(b) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of KPMG, as pleaded in paragraph 25(a);

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of making the Extended FY18 KPMG Representation to ASX (and the omission of failing to correct or qualify that representation), within the meaning of s 761F(1)(b) of the Corporations Act; and

(d) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of KPMG,

(each such contravention of such provisions also being a KPMG FY19 Accounts Contravention).

J.8.3 *Section 1041E liability in respect of the FY19 KPMG Opinion to ASX*

211. By reason of the matters pleaded in paragraphs 44 to 48 and 202(a) Ms Cain and KPMG (through Ms Cain) made a statement or disseminated information, being the FY19 KPMG Opinion to ASX.

212. By reason of the matters pleaded in paragraphs 204 and/or 205, the FY19 KPMG Opinion to ASX was a statement made or information disseminated by Ms Cain (and KPMG (through Ms Cain)) which was materially misleading.

Particulars

- i) *The FY19 KPMG Opinion to ASX was a statement (of an opinion), or alternatively, information which was materially misleading because the person expressing it did not have reasonable grounds for it.*
- ii) *Ms Cain did not have reasonable grounds for the FY19 KPMG Opinion to ASX for the reasons pleaded and particularised in paragraphs 204 and/or 205.*

213. The FY19 KPMG Opinion to ASX was likely to be relied upon by Phoslock in deciding whether to:

- (a) release the FY19 Financial Results Announcement to the ASX; or
- (b) not release to the ASX a financial report which contained information or statements to the effect of the matters pleaded in paragraph 48.

Particulars

- i) *This was inherently likely.*

214. By reason of the matters pleaded in paragraph 213, the FY19 KPMG Opinion to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

- i) *Statements or information which were likely to be relied upon by Phoslock in deciding whether and in what form to release the FY19 Financial Results Announcement (including the FY19 Financial Report) were also likely to cause the market price for Phoslock Shares to be increased, maintained or stabilised, because the FY19 Financial Results Announcement (including the FY19 Financial Report):*
 - A) *contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraphs 44 to 48, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and*

fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and

B) did not contain adverse information, namely the information referred to in paragraphs 62-71K, 71N-71W ~~62 to 72~~ above.

215. As at 24 March 2020, when expressing the FY19 KPMG Opinion to ASX Ms Cain ought reasonably to have known that:

(a) the FY19 KPMG Opinion to ASX was not:

(i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 204; and/or

(ii) based upon reasonable grounds, as pleaded in paragraph 205; and

(b) by reason of sub-paragraph (a), the Extended FY18 KPMG Opinion to ASX was materially misleading.

Particulars

i) *Ms Cain ought reasonably to have known what a reasonably competent auditor would have known.*

ii) *A reasonably competent auditor acting with reasonable care and skill would have known that the Extended FY18 KPMG Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 204.*

iii) *A reasonably competent auditor acting with reasonable care and skill would have known that the Extended FY18 KPMG Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 205.*

iv) *Such a reasonably competent auditor would thereby have known that the Extended FY18 KPMG Opinion to ASX was materially misleading.*

216. By reason of the matters pleaded in paragraphs 211 to 215, by expressing the FY19 KPMG Opinion to ASX, Ms Cain and KPMG (through Ms Cain) contravened s 1041E of the Corporations Act (this also being a KPMG FY19 Accounts Contravention).

217. Further, or alternatively, as at 24 March 2020 the conduct of Ms Cain in expressing the FY19 KPMG Opinion to ASX (and in failing to correct or qualify that opinion):

(a) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each other partner of KPMG as pleaded in paragraph 25(a);

(b) by reason of sub-paragraph (a), gave rise to a contravention of s 1041E of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of expressing the Extended FY18 KPMG Opinion to ASX (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act; and

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041E of the Corporations Act by every other partner of KPMG,

(each such contravention of such provisions also being a KPMG FY19 Accounts Contravention).

J.8.4 Section 1041E liability in respect of the Extended FY18 KPMG Representation to ASX

218. By reason of the matters pleaded in paragraphs 44 to 48 and 202(b), Ms Cain and KPMG (through Ms Cain) made a statement or disseminated information, being the FY19 KPMG Representation to ASX.

219. By reason of the matters pleaded in paragraphs 204 and/or 205, the FY19 KPMG Representation to ASX was a statement made or information disseminated by Ms Cain (and KPMG (through Ms Cain)) which was materially misleading.

Particulars

- i) *The FY19 KPMG Representation to ASX was a statement, or alternatively, information which was materially misleading because of the matters pleaded in paragraphs 203 to 205.*
- ii) *Ms Cain did not have reasonable grounds for the Extended FY18 KPMG Opinion to ASX for the reasons pleaded and particularised in paragraphs 203 to 205.*

220. The FY19 KPMG Representation to ASX was likely to be relied upon by Phoslock in deciding whether to:

- (a) release the FY19 Financial Results Announcement to the ASX; or

(b) not release to the ASX a financial report which contained information or statements to the effect of the matters pleaded in paragraph 48.

Particulars

iii) *This was inherently likely.*

221. By reason of the matters pleaded in paragraph 220, the FY19 KPMG Representation to ASX was likely to have the effect of increasing, maintaining or stabilising the price for trading in Phoslock Shares on the ASX.

Particulars

i) *Statements or information which were likely to be relied upon by Phoslock in deciding whether and in what form to release the FY19 Financial Results Announcement (including the FY19 Financial Report) were also likely to cause the market price for Phoslock Shares to be increased, maintained or stabilised, because the FY19 Financial Results Announcement (including the FY19 Financial Report):*

A) *contained positive information about Phoslock's financial performance and financial position, namely the matters pleaded in paragraphs 44 to 48, and the market would assume that the financial information so presented complied with Accounting Standards and presented a true and fair view of the financial performance and position of the consolidated entity comprising Phoslock and its subsidiaries, having regard to Phoslock's Statutory Reporting Obligations and Phoslock's ASX Reporting Obligations; and*

B) *did not contain adverse information, namely the information referred to in paragraphs 62-71K, 71N-71W ~~62 to 72~~ above.*

222. As at 24 March 2020, when making the FY19 KPMG Representation to ASX Ms Cain ought reasonably to have known that:

(a) the FY19 KPMG Opinion to ASX was not:

(i) the product of an exercise of reasonable skill and care, as pleaded in paragraph 204; and/or

(ii) based upon reasonable grounds, as pleaded in paragraph 205; and

(b) by reason of sub-paragraph (a), the FY19 KPMG Representation to ASX was materially misleading.

Particulars

- ii) *Ms Cain ought reasonably to have known what a reasonably competent auditor would have known.*
- iii) *A reasonably competent auditor acting with reasonable care and skill would have known that the FY19 KPMG Opinion to ASX was not the product of an exercise of reasonable skill and care, as pleaded in paragraph 204.*
- iv) *A reasonably competent auditor acting with reasonable care and skill would have known that the FY19 KPMG Opinion to ASX was not based upon reasonable grounds as pleaded in paragraph 205.*
- v) *Such a reasonably competent auditor would thereby have known that the FY19 KPMG Representation to ASX was materially misleading.*

223. By reason of the matters pleaded in paragraphs 218 to 222, by making the FY19 KPMG Representation to ASX, Ms Cain and KPMG (through Ms Cain) contravened s 1041E of the Corporations Act (this also being a KPMG Extended FY18 Accounts Contravention).

224. Further, or alternatively, as at 24 March 2020 the conduct of Ms Cain in making the FY19 KPMG Representation to ASX (and in failing to correct or qualify that opinion):

(a) was conduct engaged in on behalf of, and as agent of, every other partner of KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each other partner of KPMG as pleaded in paragraph 25(a);

(b) by reason of sub-paragraph (a), gave rise to a contravention of s 1041E of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(1)(b) of the Corporations Act to be a contravention by Ms Cain, being a partner of KPMG who was party to the act of expressing the Extended FY18 KPMG Representation to ASX (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act; and

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041E of the Corporations Act by every other partner of KPMG,

(each such contravention of such provisions also being a KPMG FY19 Accounts Contravention).

J.9 Continuing nature of the KPMG FY19 Accounts Contraventions

225. Each of the KPMG FY19 Accounts Contraventions was a continuing contravention which of its nature continued during the Relevant Period until such time as the inaccuracy or the falsity of the representations underlying the contraventions was revealed to the Affected Market.

K. CONTRAVENING CONDUCT CAUSED LOSS

K.1 What happened after the contraventions

226. ~~On and a~~ After the end of the Relevant Period, ~~the price of Phoslock Shares declined substantially on occasions after~~ the Affected Market was informed of the matters pleaded in paragraphs 227 to 233F ~~233~~ below.

Particulars

- i) *The price of Phoslock Shares fell from \$.245 on 17 September 2020 to \$.08 on 16 September 2022 being the next trading day after the suspension in trading was lifted.*
- ii) *Phoslock ASX announcement and webinar dated 15 November 2021*
- iii) *Phoslock ASX announcement dated 16 September 2022*
- iv) *Further particulars may be provided following discovery and receipt of experts' reports.*

227. On 17 September 2020, Phoslock entered a trading halt.

228. On 20 September 2020, Phoslock went into voluntary suspension.

229. On 21 September 2020, the ASX released an announcement that Phoslock had been suspended from quotation immediately under Listing Rule 7.12, pending release of an announcement regarding the outcome of an ongoing independent investigation into accounting irregularities concerning Phoslock's China operations (**September 2020 Announcement**).

230. On 8 October 2020, Phoslock made an ASX announcement that its auditors, KPMG, had reported its preliminary findings into suspected accounting irregularities relating to Phoslock's China operations (**China Activities**), relevantly:

- (a) false accounting and falsification of invoices and service contracts where Phoslock or its subsidiaries were the recipients;

- (b) potential improper tax reporting;
- (c) misappropriation of funds;
- (d) previously undisclosed related party transactions have taken place; and
- (e) further investigations were required to determine the full extent of these and possible further irregularities.

231. On 26 October 2020, Phoslock made an ASX announcement on its trading update for the September 2020 quarter.

232. On 21 November 2020, Phoslock made an ASX announcement regarding the investigation into the China Activities, amongst other things.

233. On 28 January 2021, Phoslock made an ASX announcement regarding the investigation into the China Activities, amongst other things.

233A Between 28 January 2021 and 16 September 2022, Phoslock provided the ASX with various updated about the investigation into the China Activities, amongst other things.

Particulars

Phoslock ASX announcement and webinar dated 15 November 2021

Phoslock ASX announcement dated 16 September 2022

233B The effect of the announcements in paragraph 233A was to relevantly disclose, among other things:

- (a) the BHZQ Related Party Information;
- (b) the China Business Practices Information;
- (c) the Impacted China Revenue Information;
- (d) the China Receivables Non-Payment Information.

Particulars

Phoslock ASX announcement and webinar dated 16 November 2021

Phoslock ASX announcement dated 16 September 2022

233C On Friday 16 September 2022, Phoslock the suspension of trading in Phoslock shares was lifted by the ASX.

233D On 16 September 2022, Phoslock's shares traded at \$.08.

233E On 23 September 2022, Phoslock's shares traded at \$.061.

233F A material cause of the reduction in the value of Phoslock's shares between 17 September 2020 and 16 September 2022 were the various updates provided to the ASX about the information in paragraph 233B above.

K.2 What would have happened but for the contraventions

234. Had the Directors' FY18 Accounts Contravention ~~and~~ or the KPMG FY18 Accounts Contraventions, ~~or any of them,~~ not occurred, the FY18 Financial Report would have:

- (a) contained an adverse audit opinion and therefore required Phoslock under ss 296 and 297 of the Corporations Act to restate its financial statements such that they gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities) in FY18, and complied with Australian Accounting Standards; or
- (b) been issued in a form which gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities) in FY18 and complied with Australian Accounting Standards.

Particulars

- i) *A true and fair view of the financial position and performance of Phoslock would have recorded the matters particularised in paragraphs 62-70A, 70F, 70I, 70K, 71A-71E, 71N, 71Q-71W ~~62 to 72~~ above.*

235. By reason of the matters pleaded in paragraph 234, had the Directors' FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, ~~and~~ or the KPMG ~~Extended~~ FY18 Accounts Contraventions, ~~or any of them,~~ not occurred, the Capital Raising would not have occurred or completed as pleaded in paragraphs 56 to 61, or at all.

Particulars

- i) *The Second, Third, and Fourth, Capital Raisings, and in particular, the offer price and volume of shares offered, was predicated upon:*
 - A) *the content of the FY18 Financial Report; and*
 - B) *the Capital Raising Representations.*

236. Further and alternatively, had the Directors' Extended FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, ~~and~~ or the KPMG Extended FY18 Accounts Contraventions ~~or any of them,~~ not occurred, the Extended FY18 Financial Report would have:

- (a) contained an adverse audit opinion and therefore required Phoslock under ss 296 and 297 of the Corporations Act to restate its financial statements such that they gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities) in Extended FY18, and complied with Australian Accounting Standards; or
- (b) been issued in a form which gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities) in Extended FY18 and complied with Australian Accounting Standards.

Particulars

- i) *A true and fair view of the financial position and performance of Phoslock would have recorded the matters particularised in paragraphs 62-71I, 71N-71W ~~62 to 72~~ above.*

237. By reason of the matters pleaded in paragraph 236, had the Directors' Extended FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, ~~and or the~~ KPMG Extended FY18 Accounts Contraventions ~~or any of them~~, not occurred, the Capital Raising would not have occurred or completed as pleaded in paragraphs 56 to 61, or at all.

Particulars

- i) *The Second, Third, and Fourth, Capital Raisings, and in particular, the offer price and volume of shares offered, was predicated upon:*
 - A) *the content of the Extended FY18 Financial Report; and*
 - B) *the Capital Raising Representations.*

238. Further and alternatively, had the Directors' FY19 Accounts Contraventions, ~~and or~~ KPMG FY19 Accounts Contraventions, ~~or any of them~~, not occurred, the FY19 Financial Report would have:

- (a) contained an adverse audit opinion and therefore required Phoslock under ss 296 and 297 of the Corporations Act to restate its financial statements such that they gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and its controlled entities) in FY19, and complied with Australian Accounting Standards; or
- (b) been issued in a form which gave a true and fair view of the financial position and performance of Phoslock (and of the consolidated group comprising Phoslock and

its controlled entities) in FY19 and complied with Australian Accounting Standards.

Particulars

- i) *A true and fair view of the financial position and performance of Phoslock would have recorded the matters particularised in paragraphs 62-71K, 71N-71W ~~62 to 72~~ above.*

239. By reason of the matters pleaded in paragraph 238, had the Directors' FY19 Accounts Contraventions, Directors' Capital Raising Contraventions, ~~and~~ or KPMG FY19 Accounts Contraventions, ~~or any of them~~, not occurred, the Capital Raising would not have occurred or completed as pleaded in paragraphs 56 to 61, or at all.

Particulars

- i) *The Second, Third, and Fourth, Capital Raisings, and in particular, the offer price and volume of shares offered, was predicated upon:*
- A) *the content of the FY19 Financial Report; and*
- B) *the Capital Raising Representations.*

K.3 Causation: acquisitions in the Capital Raising

240. The Applicant and some Group Members acquired an interest in Phoslock Shares in the Second and/or Third and/or Fourth Capital Raisings in a market of investors or potential investors in Phoslock Shares:

- (a) regulated by, inter alia, Chapter 6D of the Corporations Act;
- (b) where the offer price of Phoslock Shares in the Capital Raising would reasonably be expected by potential investors in Phoslock Shares to have been reasonably determined by Phoslock to represent a fair market value for Phoslock Shares, based on:
- (i) the anticipated number of Phoslock Shares to be issued;
- (ii) Phoslock's then current market capitalisation;
- (iii) Phoslock's historical financial performance; and/or
- (iv) Phoslock's expected financial performance;
- (c) alternatively to (b), where the offer price for the Second, Third, and Fourth Capital Raisings were in fact determined by Phoslock by reference to the then prevailing market price for Phoslock Shares;

- (d) where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Phoslock Shares (namely the China Information and China Receivables Non-Payment Information and matters pleaded in paragraphs 62-71K and 71N-71W ~~62 to 72~~; and
- (e) where misleading or deceptive conduct had occurred, namely (from 11 October 2018) the conduct the subject of the Directors' FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY18 Accounts Contraventions, (or any of them) that a reasonable person would expect to have a material effect on the price or value of Phoslock Shares, in that:
 - (i) if they had not been made no investors or potential investors in Phoslock Shares would have been in a position to read or rely upon them; and/or
 - (ii) if they had not been made, investors or potential investors in Phoslock Shares would have been in a position where they learned of the China Information and China Receivables Non-Payment Information and matters pleaded in paragraphs 62-71K, 71N-71W ~~62 to 72~~.

241. Each of the Directors' FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY18 Accounts Contraventions, caused or materially contributed to:

- (a) the market price of Phoslock Shares being substantially greater than their true value and/or the market price that would have prevailed but for the Directors' FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY18 Accounts Contraventions; and
- (b) the offer price for Phoslock Shares under the Second, Third, and Fourth Capital Raisings being substantially higher than the offer price that would have pertained but for those Directors' FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY18 Accounts Contraventions,

such that the price at which Phoslock Shares were acquired in the Second, Third, and Fourth Capital Raisings were substantially greater than their true value and/or the market price that would otherwise have prevailed.

Particulars

- i) *The extent to which the Directors' FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY18 Accounts Contraventions, caused or materially contributed to:*
- A) *the offer price under the Second, Third, and Fourth Capital Raising to be substantially greater than their true value and/or the market price that would otherwise have prevailed (that is, inflated) during the Relevant Period; and*
- B) *the offer price to be substantially greater than the price that would otherwise have prevailed (that is, inflated),*
- is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding;*

242. Further, or in the alternative, in the decision to acquire an interest in Phoslock Shares in the Second ~~and/or~~ Third ~~and/or~~ Fourth Capital Raising, the Applicant and some Group Members relied directly or indirectly on:

- (a) the FY18 Directors' Opinion to ASX;
- (b) the FY18 Directors' Representation to ASX;
- (c) the FY18 KPMG Opinion to ASX;
- (d) the FY18 KPMG Representation to ASX; and/or
- (e) the Capital Raising Representations.

Particulars

- i) *The Applicant relied upon each of the FY18 Directors' Opinion to the ASX, the FY18 Directors' Representation to ASX, the FY18 KPMG Opinion to the ASX, the FY18 KPMG Representation to ASX, and the Capital Raising Representations.*
- ii) *The identities of all those Group Members who relied directly on any or each of the FY18 Directors' Opinion to the ASX, the FY18 Directors' Representation to ASX, the FY18 KPMG Opinion to the ASX, the FY18 KPMG Representation to ASX, the Capital Raising Representations are not known within the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination*

of those individual Group Members' claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

243. The Applicant and some Group Members acquired an interest in Phoslock Shares in the Second ~~and/or~~ Third ~~and/or~~ Fourth Capital Raisings in a market of investors or potential investors in Phoslock Shares:
- (a) regulated by, inter alia, Chapter 6D of the Corporations Act;
 - (b) where the offer price of Phoslock Shares in the Capital Raising would reasonably be expected by potential investors in Phoslock Shares to have been reasonably determined by Phoslock to represent a fair market value for Phoslock Shares, based on:
 - (i) the anticipated number of Phoslock Shares to be issued;
 - (ii) Phoslock's then current market capitalisation;
 - (iii) Phoslock's historical financial performance; and
 - (iv) Phoslock's expected financial performance;
 - (c) alternatively to (b), where the offer price for the Second, Third, and Fourth Capital Raisings were in fact determined by Phoslock by reference to the then prevailing market price for Phoslock Shares;
 - (d) where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Phoslock Shares (namely the China Information, China Receivables Non-Payment Information—and matters pleaded in paragraphs 62-71K,71N-71W ~~62 to 72~~); and
 - (e) where misleading or deceptive conduct had occurred, namely (from 27 March 2019) the conduct the subject of the Directors' Extended FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, ~~and~~ or the KPMG Extended FY18 Accounts Contraventions, ~~(or any of them)~~ that a reasonable person would expect to have a material effect on the price or value of Phoslock Shares, in that:

- (i) if they had not been made no investors or potential investors in Phoslock Shares would have been in a position to read or rely upon them; and/or
- (ii) if they had not been made, investors or potential investors in Phoslock Shares would have been in a position where they learned of the China Information, China Receivables Non-Payment Information and matters pleaded in paragraphs 62-71K,71N-71W 62 to 72.

244. Each of the Directors' Extended FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG Extended FY18 Accounts Contraventions, caused or materially contributed to:

- (a) the market price of Phoslock Shares being substantially greater than their true value and/or the market price that would have prevailed but for the Directors' Extended FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG Extended FY18 Accounts Contraventions; and
- (b) the offer price for Phoslock Shares under the Second, Third, and Fourth Capital Raisings being substantially higher than the offer price that would have pertained but for those Directors' Extended FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG Extended FY18 Accounts Contraventions,

such that the price at which Phoslock Shares were acquired in the Second, Third, and Fourth Capital Raisings were substantially greater than their true value and/or the market price that would otherwise have prevailed.

Particulars

- i) *The extent to which the Directors' Extended FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG Extended FY18 Accounts Contraventions, caused or materially contributed to:*
 - A) *the offer price under the Second, Third, and Fourth Capital Raising to be substantially greater than their true value and/or the market price that would otherwise have prevailed (that is, inflated) during the Relevant Period; and*
 - B) *the offer price to be substantially greater than the price that would otherwise have prevailed (that is, inflated),*

is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding;

245. Further, or in the alternative, in the decision to acquire an interest in Phoslock Shares in the Second and/or Third and/or Fourth Capital Raising, the Applicant and some Group Members relied directly or indirectly on:

- (a) the Extended FY18 Directors' Opinion to ASX;
- (b) the Extended FY18 Directors' Representation to ASX;
- (c) the Extended FY18 KPMG Opinion to ASX;
- (d) the Extended FY18 KPMG Representation to ASX;
- (e) the Capital Raising Representations.

Particulars

- i) *The Applicant relied upon each of the Extended FY18 Directors' Opinion to the ASX, the Extended FY18 Directors' Representation to ASX, the Extended FY18 KPMG Opinion to the ASX, the Extended FY18 KPMG Representation to ASX, and the Capital Raising Representations.*
- ii) *The identities of all those Group Members who relied directly on any or each of the Extended FY18 Directors' Opinion to the ASX, the Extended FY18 Directors' Representation to ASX, the Extended FY18 KPMG Opinion to the ASX, the Extended FY18 KPMG Representation to ASX, the Capital Raising Representations are not known within the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

246. The Applicant and some Group Members acquired an interest in Phoslock Shares in the Second and/or Third and/or Fourth Capital Raisings in a market of investors or potential investors in Phoslock Shares:

- (a) regulated by, inter alia, Chapter 6D of the Corporations Act;
 - (b) where the offer price of Phoslock Shares in the Second, Third, and Fourth Capital Raisings would reasonably be expected by potential investors in Phoslock Shares to have been reasonably determined by Phoslock to represent a fair market value for Phoslock Shares, based on:
 - (i) the anticipated number of Phoslock Shares to be issued;
 - (ii) Phoslock's then current market capitalisation;
 - (iii) Phoslock's historical financial performance; and
 - (iv) Phoslock's expected financial performance;
 - (c) alternatively to (b), where the offer price for the Second, Third, and Fourth Capital Raisings were in fact determined by Phoslock by reference to the then prevailing market price for Phoslock Shares;
 - (d) where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Phoslock Shares (namely the China Information, China Receivables Non-Payment Information and matters pleaded in paragraphs 62-71K,71N-71W, 62 to 72); and
 - (e) where misleading or deceptive conduct had occurred, namely (from 22 April 2020) the conduct the subject of the Directors' FY19 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY19 Accounts Contraventions, (or any of them) that a reasonable person would expect to have a material effect on the price or value of Phoslock Shares, in that:
 - (i) if they had not been made no investors or potential investors in Phoslock Shares would have been in a position to read or rely upon them; and/or
 - (ii) if they had not been made, investors or potential investors in Phoslock Shares would have been in a position where they learned of the China Information, China Receivables Non-Payment Information and matters pleaded in paragraphs 62-71K,71N-71W).
247. Each of the Directors' FY19 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY19 Accounts Contraventions, caused or materially contributed to:

- (a) the market price of Phoslock Shares being substantially greater than their true value and/or the market price that would have prevailed but for the Directors' FY19 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY19 Accounts Contraventions; and
- (b) the offer price for Phoslock Shares under the Capital Raising being substantially higher than the offer price that would have pertained but for those Directors' FY19 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY19 Accounts Contraventions,

such that the price at which Phoslock Shares were acquired in the Second, Third, and Fourth Capital Raisings were substantially greater than their true value and/or the market price that would otherwise have prevailed.

Particulars

i) *The extent to which the Directors' FY19 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY19 Accounts Contraventions, caused or materially contributed to:*

A) *the offer price under the Second, Third, and Fourth Capital Raisings to be substantially greater than their true value and/or the market price that would otherwise have prevailed (that is, inflated) during the Relevant Period; and*

B) *the offer price to be substantially greater than the price that would otherwise have prevailed (that is, inflated),*

is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding;

248. Further, or in the alternative, in the decision to acquire an interest in Phoslock Shares in the Second and/or Third and/or Capital Raising, the Applicant and some Group Members relied directly or indirectly on:

- (a) the FY19 Directors' Opinion to ASX;
- (b) the FY19 Directors' Representation to ASX;
- (c) the FY19 KPMG Opinion to ASX;
- (d) the FY19 KPMG Representation to ASX; and/or
- (e) the Capital Raising Representations.

Particulars

- i) *The Applicant relied upon each of the FY19 Directors' Opinion to the ASX, the FY19 Directors' Representation to ASX, the FY19 KPMG Opinion to the ASX, the FY19 KPMG Representation to ASX, and the Capital Raising Representations.*
- ii) *The identities of all those Group Members who relied directly on any or each of the FY19 Directors' Opinion to the ASX, the FY19 Directors' Representation to ASX, the FY19 KPMG Opinion to the ASX, the FY19 KPMG Representation to ASX, the Capital Raising Representations are not known within the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

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

249. The Applicant and some Group Members acquired an interest in Phoslock Shares in a market of investors or potential investors in Phoslock Shares:
- (a) operated by the ASX;
 - (b) regulated by, inter alia, sections 674(2) of the Corporations Act and ASX Listing Rule 3.1 and 4.5;
 - (c) where the price or value of Phoslock Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and ASX Listing Rules 3.1 and 4.5, including the FY18 Financial Report, the Extended FY18 Financial Report and FY19 Financial Report;
 - (d) where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Phoslock Shares, namely the China Information, China

Receivables Non-Payment Information and matters pleaded in paragraphs 62-71W ~~62 to 72~~; and

(e) where misleading or deceptive conduct had occurred, namely (from 11 October 2018) the conduct the subject of the Directors' FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY18 Accounts Contraventions, (from 27 March 2019) the conduct the subject of the Directors' Extended FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG Extended FY18 Accounts Contraventions, (from 22 April 2022) the conduct the subject of the Directors' FY19 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY19 Accounts Contraventions, (or any of them) that a reasonable person would expect to have a material effect on the price or value of Phoslock Shares, in that:

- (i) if they had not been made no investors or potential investors in Phoslock Shares would have been in a position to read or rely upon them; and/or
- (ii) if they had not been made, investors or potential investors in Phoslock Shares would have been in a position where they learned of the China Information, Receivables Information and matters pleaded in paragraphs 62-71W is repeated;

250. In the Relevant Period, each of the contraventions caused or materially contributed to the market price of Phoslock Shares being substantially greater than their true value and/or the market price that would have prevailed but for the Directors' FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, KPMG FY18 Accounts Contraventions, Directors' Extended FY18 Accounts Contraventions, KPMG Extended FY18 Accounts Contraventions, Directors' FY19 Accounts Contraventions, and/or KPMG FY19 Accounts Contraventions (together, **Contraventions**), in that:

- (a) the market price of Phoslock Shares was substantially greater than their true value and/or the market price that would have prevailed but for the Contraventions referred to above; and
- (b) the offer price for Phoslock Shares under the Capital Raising was substantially higher than the Offer Price that would have pertained but for those Directors' FY18 Accounts Contraventions, Directors' Capital Raising Contraventions, and KPMG FY18 Accounts Contraventions,

such that the market price at which Phoslock Shares were traded on the ASX (both shares issued prior to and as part of the Capital Raising) was at all times in the Relevant

Period substantially greater than their true value and/or the market price that would otherwise have prevailed.

Particulars

- i) *The extent to which the contraventions caused or materially contributed to the market price of Phoslock Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed (that is, inflated) during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding.*
 - ii) *The decline in the market price of Phoslock Shares on and after 17 September 2020 (as pleaded in paragraph 226 above) is a proxy for the measure of part (but not all) of the inflation in the price of Phoslock Shares during the Relevant Period in that this decline:*
 - (A) *was caused or materially contributed to by the market's reaction to the information communicated to the Affected Market in the September 2020 Announcement, the Directors' FY18 Accounts Contraventions, the Directors' Capital Raising Contraventions, the KPMG FY18 Accounts Contraventions, the Directors' Extended FY18 Accounts Contraventions, the KPMG Extended FY18 Contraventions, the Directors' FY19 Accounts Contraventions, and/or the KPMG FY19 Contraventions; and*
 - (B) *would, to the extent it removed inflation from the price of Phoslock, have occurred, or substantially occurred, earlier, were it not for those contraventions, and the extent to which inflation was removed from the price of Phoslock Shares, and would have been removed at earlier points in time during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing expert evidence.*
251. Further, or alternatively, were it not for the Contraventions the market price of Phoslock Shares would have declined to their true value and/or a lower market price on a date prior to the September 2020 Announcement.
252. Further, or in the alternative, in the decision to acquire ~~an~~ one or more interests in Phoslock Shares the Applicant and some Group Members relied directly or indirectly on:
- (a) the FY18 Directors' Opinion to ASX;

- (b) the FY18 Directors' Representation to ASX;
- (c) the FY18 KPMG Opinion to ASX;
- (d) the FY18 KPMG Representation to ASX;
- (e) the Extended FY18 Directors' Opinion to ASX;
- (f) the Extended FY18 Directors' Representation to ASX;
- (g) the Extended FY18 KPMG Opinion to ASX;
- (h) the Extended FY18 KPMG Representation to ASX;
- (i) the FY19 Directors' Opinion to ASX;
- (j) the FY19 Directors' Representation to ASX;
- (k) the FY19 KPMG Opinion to ASX;
- (l) the FY19 KPMG Representation to ASX; and/or
- (m) the Capital Raising Representations.

Particulars

- i) *The identities of all those Group Members who relied directly on any or each of the pleaded representations are not known within the current state of the Applicant's knowledge and will be provided following the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

K.5 Causation: Retained Shareholders

253. Further or in the alternative, some or all of the Retained Shareholders retained their Phoslock Shares, in reliance upon one or more of:

- (a) the FY18 Directors' Opinion to ASX;
- (b) the FY18 Directors' Representation to ASX;
- (c) the FY18 KPMG Opinion to ASX;
- (d) the FY18 KPMG Representation to ASX;
- (e) the Extended FY18 Directors' Opinion to ASX;
- (f) the Extended FY18 Directors' Representation to ASX;
- (g) the Extended FY18 KPMG Opinion to ASX;

- (h) the Extended FY18 KPMG Representation to ASX;
- (i) the FY19 Directors' Opinion to ASX;
- (j) the FY19 Directors' Representation to ASX;
- (k) the FY19 KPMG Opinion to ASX;
- (l) the FY19 KPMG Representation to ASX; and/or
- (m) the Capital Raising Representations.

Particulars

- ii) *The identities of all those Retained Shareholders who relied directly on any or each of pleaded representations will be provided following the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

254. By reason of paragraph 253 above, some or all of the Retained Shareholders lost the opportunity to avoid the losses attributable to the decline in the value of Phoslock Shares following the disclosure to the market of the Contraventions referred to in paragraph 250 above.

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

255. By reason of the matters pleaded in paragraphs 226 to 233 and matters pleaded at:

- (a) paragraphs 234 to 239; and/or
- (b) paragraphs 240 to 248; and/or
- (c) paragraphs 249 to 252; and/or
- (d) paragraphs 253 to 254,

the Applicant and Group Members have suffered loss and damage by and resulting from the Contraventions (or any one or combination of them).

Particulars

- i) *The loss suffered by the Applicant will be calculated by reference to:*

- A) *the difference between the price at which Phoslock Shares were acquired by the Applicant during the Relevant Period and the true value of that interest; or*
- B) *the difference between the price at which the Applicant acquired an interest in Phoslock Shares and the market price that would have prevailed had the Contraventions not occurred; or*
- C) *alternatively, the days during the Relevant Period where the traded price of Phoslock Shares fell as a result of the disclosure information which had not previously been disclosed because of the Contraventions, and the quantum of that fall; or*
 - A) *alternatively, the difference between the price at which Phoslock Shares were acquired by the Applicant and the price in left in hand, including following the events pleaded in paragraphs 226 to 233;*
 - B) *With respect to Retained Shareholders, the value of the opportunity they lost to avoid the losses attributable to the decline in the value of Phoslock Shares following the disclosure to the market of the Contraventions.*
- ii) *Particulars of the losses of Group Members are not known within the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the Applicants' claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

L. PHOSLOCK'S CONDUCT CONTRARY TO THE INTERESTS OF ITS MEMBERS

256. [Not used] ~~Further, by reason of the facts giving rise to the China Information, the conduct of the affairs of, and/or the actual acts or omissions by or on behalf of, Phoslock during the Relevant Period has been contrary to the interests of its members as a whole, within the meaning of s 232 of the Corporations Act.~~

Particulars

- ~~A) two of Phoslock's key personnel in China had an undisclosed financial stake in Phoslock's key commercial counterparty, BHZQ;~~
- ~~B) the relationship between BHZQ and Phoslock was not at arms-length;~~
- ~~C) Phoslock was recording revenue on the basis of transactions with vendors that did not exist or that had not provided a service or product to the company;~~
- ~~D) the vast majority of Phoslock's contracts in China included suspected bribes to win contracts with, for example, the Xingyun Lake Project;~~
- ~~E) Phoslock's current and forecast revenue depended on recovering amounts from companies controlled by its directors, and from projects that contained suspicious transactions and inappropriate payments made to Chinese government officials;~~
- ~~F) that Phoslock's reduced tax rate for its Beijing subsidiary was not based on accurate information having been supplied to the Chinese government;~~
- ~~G) that Phoslock had issued options to staff in China without adequate governance.~~

~~Each of the matters in A-G above were matters that prejudiced the interests of members as a whole, by virtue of the fact that but for them:~~

- ~~H) the regulatory investigations may not have occurred to the same extent, if at all; and~~
- ~~I) regulatory and reputational harm that Phoslock suffered may not have occurred to the same extent, if at all; and~~
- ~~J) the decline in value of Phoslock Shares held by Phoslock's members in the Relevant Period to date and/or in the future would have likely been less than is and/or likely will be the case.~~

257. [Not used] Further, by reason of Contraventions (or any one or combination of the Contraventions), the conduct of Phoslock's affairs during the Relevant Period has been

contrary to the interests of the members of Phoslock as a whole, within the meaning of s 232 of the Corporations Act.

Particulars

i) ~~The Contraventions were contrary to the interests of Phoslock's members as a whole because, but for them:~~

~~A) the regulatory investigations may not have occurred to the same extent, if at all; and~~

~~B) regulatory and reputational harm that Phoslock suffered may not have occurred to the same extent, if at all; and~~

~~C) the decline in value of Phoslock Shares held by Phoslock's members in the Relevant Period to date and/or in the future would have likely been less than is and/or likely will be the case.~~

ii) ~~Further particulars may be provided following discovery.~~

258. [Not used] ~~By reason of the matters alleged in paragraphs 256 and 257 above, the Plaintiff and Group Members (including Acquisition Shareholders and Retained Shareholders) who:~~

~~(a) remain members of Phoslock; or~~

~~(b) ceased to be members of Phoslock because they sold their Phoslock Shares following the matters alleged in paragraphs 256 and above known to the Affected Market,~~

~~have suffered loss or damage.~~

M. ENTITLEMENT TO RELIEF

259. The Applicant claims on his own behalf and on behalf of the Group Members the relief set out in the Originating Application filed therein.

N. COMMON QUESTIONS OF FACT OR LAW

1. Whether Phoslock was aware of the China Information (being the BHZQ Related Party Information, the China Business Practices Information and/or the Impacted China Revenue Information) or the China Receivables Non-Payment Information.

2. Whether the China Information or the China Receivables Non-Payment Information ~~or the Receivables Information~~ was:


(a) material information; and

- (b) not generally available,
within the meaning of ASX Listing Rule 3.1 or Chapter 6CA of the Corporations Act.
3. Whether Phoslock was obliged to disclose, but failed to disclose, the China Information or the China Receivables Non-Payment Information such that Phoslock contravened ASX Listing Rule 3.1 and s 674(2) and/or ss 674(2) and 674(3) of the Corporations Act.
4. Whether:
- (a) the FY18 Financial Report;
 - (b) the Extended FY18 Financial Report; and
 - (c) the FY19 Financial Report,
- were not prepared in compliance with Australian Accounting Standards and/or the Corporations Act, and did not give a fair view of Phoslock's financial position and financial performance in FY18, Extended FY18, and FY19 respectively.
5. Whether Mr Freedman and/or Mr Schuitema contravened section 1041H of the Corporations Act or section 12DA(1) of the ASIC Act or s 18 of the ACL by making, maintaining and/or failing to qualify:
- (a) the FY18 Directors' Opinion to ASX;
 - (b) the FY18 Directors' Representation to ASX;
 - (c) the Extended FY18 Directors' Opinion to ASX;
 - (d) the Extended FY18 Directors' Representation to ASX;
 - (e) the FY19 Directors' Opinion to ASX; and/or
 - (f) the FY19 Directors' Representation to ASX.
6. Whether Phoslock, Mr Freedman or Mr Schuitema contravened s1041H of the Corporations Act, s 12DA of the ASIC Act, or s 18 of the ACL by making, maintaining or failing to qualify the representations that the:
- (a) accounts gave a true and fair view of the financial position and performance of Phoslock in FY18 to FY19; and
 - (b) that the opinion was based upon reasonable grounds and was the product of an exercise of reasonable skill and care.
7. Whether Phoslock or Mr Freedman or Mr Schuitema ought reasonably to have known that the representations in questions 5 and/or 6 were misleading in a material particular.

8. Whether Mr Freedman and/or Mr Schuitema contravened section 1041E of the Corporations Act by making:
 - (a) the FY18 Directors' Opinion to ASX;
 - (b) the FY18 Directors' Representation to ASX;
 - (c) the Extended FY18 Directors' Opinion to ASX;
 - (d) the Extended FY18 Directors' Representation to ASX;
 - (e) the FY19 Directors' Opinion to ASX; and/or
 - (f) the FY19 Directors' Representation to ASX.
9. Whether Phoslock or Mr Freedman or Mr Schuitema contravened s1041E of the Corporations Act, s 12DB of the ASIC Act, or s 29 of the ACL by making, maintaining or failing to qualify the representations in questions 6 and/or 8.
10. Whether KPMG contravened section 1041H of the Corporations Act or section 12DA(1) of the ASIC Act or s 18 of the ACL by making, maintaining and/or failing to qualify:
 - (a) the FY18 KPMG Opinion to ASX;
 - (b) the FY18 KPMG Representation to ASX;
 - (c) the Extended FY18 KPMG Opinion to ASX;
 - (d) the FY18 KPMG Representation to ASX;
 - (e) the FY19 KPMG Opinion to ASX; and/or
 - (f) the FY19 KPMG Representation to ASX.
11. Whether KPMG contravened s1041H of the Corporations Act, s12DA of the ASIC Act, or s 18 of the ACL by making, maintaining or failing to qualify the representations that the:
 - (a) accounts gave a true and fair view of the financial position and performance of Phoslock in FY18 and FY19 and complied with Australian Accounting Standards; and
 - (b) the opinion was based upon reasonable grounds and was the product of an exercise of reasonable skill and care.
12. Whether KPMG ought reasonably to have known that the representations in questions 10 and/or 11 were misleading in a material particular.

13. Whether KPMG contravened section 1041E of the Corporations Act by making:
- the FY18 KPMG Opinion to ASX;
 - the FY18 KPMG Representation to ASX;
 - the Extended FY18 KPMG Opinion to ASX;
 - the FY18 KPMG Representation to ASX;
 - the FY19 KPMG Opinion to ASX; and/or
 - the FY19 KPMG Representation to ASX.
14. Whether KPMG contravened s1041E of the Corporations Act, s12DB of the ASIC Act, or s 29 of the ACL by making, maintaining or failing to qualify the representations in questions 11 and/or 13.
15. Whether the contraventions alleged had the effect that the price of acquisition for Phoslock Shares was greater than their true value and/or the market price that would have prevailed but for the contraventions occurring and if so:
- whether statutory compensation is recoverable by the Applicant and some or all of the Group Members?
 - the correct measure of the statutory compensation for which the Respondents may be liable to the Applicant and some or all of the Group Members?
16. ~~[Not used] Whether the conduct of the affairs of, and/or the actual acts or omissions by or on behalf of, Phoslock during the Relevant Period has been contrary to the interests of its members as a whole, within the meaning of s 232 of the Corporations Act?~~
17. Whether any, and if so what, relief other than monetary relief should be granted in favour of the Applicant and some or all of the Group Members?

Date: 8 September 2025 ~~21 March 2025~~



Signed by Elliott Smith

Lawyer for the Applicant

This Further Amended Statement of Claim was prepared and settled by Thomas Bagley

Certificate of lawyer

I Elliott Smith certify to the Court that, in relation to the Further Amended Statement of Claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 8 September 2025

A handwritten signature in black ink, appearing to be 'Elliott Smith', written over a horizontal dotted line.

Signed by Elliott Smith

Lawyer for the Applicant

Schedule

No: VID1072/2024

Federal Court of Australia
District Registry: Victoria Registry
Division: General

Second Respondent LAURENCE FREEDMAN

Third Respondent ROBERT SCHUIITEMA

Fourth Respondent KPMG (A FIRM)

CROSS CLAIM

Cross-Claimant KPMG (A FIRM)

Cross Respondent PHOSLOCK ENVIRONMENTAL TECHNOLOGIES LTD
(ACN 099 555 290)

Second Cross Respondent LAURENCE FREEDMAN

Third Cross Respondent ROBERT SCHUIITEMA

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.