IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

No. S ECI 2023 01835

BETWEEN

JUSTINE LIDGETT

First Plaintiff

CAMERON LIDGETT

Second Plaintiff

AND

DOWNER EDI LIMITED (ACN 003 872 848)

Defendant

AND

KPMG (A FIRM) (ABN 51 194 660 183)

Third Party

AMENDED STATEMENT OF CLAIM

(Filed pursuant to Rule 36.04(1)(a) of the Supreme Court (General Civil Procedure) Rules 2015 (Vic))

Date of Document:	5 August 2024 ~~1 March 2024~~	Solicitors Code:	103351
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PRELIMINARY

If, which is denied, the defendant (**Downer**) is liable for damage to the plaintiffs, then, solely for the purposes of this statement of claim, and without admissions, Downer makes the following allegations.

A. PARTIES

1. Downer has at all relevant times been:

   (a) incorporated in accordance with the *Corporations Act 2001* (Cth) (**Corporations Act**); and

   (b) included in the official list of the financial market operated by the Australian Securities Exchange (**ASX**).

2. The members of the third party (**KPMG**) have at all relevant times:

   (a) carried on business as partners in Victoria; and

   (b) in the course of that business, practised, and professed to practise, as auditors, accountants, and consultants.

AA. DOWNER UTILITIES

2A. Downer Utilities Australia Pty Ltd (ACN 075 194 857) (**Downer Utilities**) has at all relevant times been:

   (a) incorporated in accordance with the Corporations Act; and

   (b) a wholly owned subsidiary of Downer Utilities Holdings Australia Pty Ltd (ACN 125 968 292) (**Downer Utilities Holdings**).

2B. Downer Utilities Holdings has at all relevant times been:

   (a) incorporated in accordance with the Corporations Act; and

   (b) a wholly owned subsidiary of Downer EDI Engineering Power Pty Ltd (ACN 000 983 700) (**Downer Engineering Power**).

2C. Downer Engineering Power has at all relevant times been:

   (a) incorporated in accordance with the Corporations Act; and

   (b) a wholly owned subsidiary of Downer EDI Engineering Holdings Pty Ltd (ACN 121 854 395) (**Downer Engineering Holdings**).

2D. Downer Engineering Holdings has at all relevant times been:

(a) incorporated in accordance with the Corporations Act; and

(b) a wholly owned subsidiary of Downer Group Finance Pty Ltd (ACN 072 473 913) (**Downer Group Finance**).

2E. Downer Group Finance has at all relevant times been:

(a) incorporated in accordance with the Corporations Act; and

(b) a wholly owned subsidiary of Downer Australia Pty Ltd (ACN 081 203 661) (**Downer Australia**).

2F. Downer Australia has at all relevant times been:

(a) incorporated in accordance with the Corporations Act; and

(b) a wholly owned subsidiary of Downer.

2G. Given paragraphs 2A–2F above, Downer Utilities has at all relevant times been:

(a) a "subsidiary" of Downer, as defined by s 46 of the Corporations Act; and

(b) "controlled" by Downer, as defined by s 50AA of the Corporations Act.

B. SHARES IN DOWNER & DOWNER UTILITIES

3. Shares in each of Downer and Downer Utilities have at all relevant times been:

(a) "financial products" within the meaning of s 1041H(1) of the Corporations Act;

(b) "financial products" within the meaning of s 12BAB(1AA) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

(c) given paragraph 3(b) above, "financial services" within the meaning of s 12DA(1) of ASIC Act.

C. RETAINERS & DUTIES OF CARE FOR AUDITS OF FY20–22

C.1 Retainer and duti~~y~~ies of care for audits of FY20

Retainer

4. By agreement made 1 November 2019 (**FY20 Retainer**), Downer retained KPMG to audit, in consideration of fees~~,~~:

(a) the Consolidated Financial Report of Downer and its controlled entities, including Downer Utilities (together, the **Downer Group**); and

(b) the financial report of Downer Utilities,

for the financial year to 30 June 2020 (**FY20**).

Particulars

The FY20 Retainer was in writing, comprising:

i. an engagement letter from KPMG to Downer, dated 9 October 2017, countersigned 20 February 2018 (**FY18 Engagement Letter**) [DOW.2000.0001.2408];

ii. the Terms and Conditions of Business appended, as appendix 1, to the FY18 Engagement Letter; and

iii. an "Annual arrangements" letter from KPMG to Downer, dated 10 October 2019, countersigned 1 November 2019 (**FY20 Arrangements Letter**) [DOW.3000.0058.7364].

5. There were express terms of the FY20 Retainer that KPMG would:

(a) audit the Consolidated Financial Report of the Downer Group and the financial report of Downer Utilities for FY20 in accordance with Australian Auditing Standards (FY18 Engagement Letter, cl 1.1, as updated by the FY20 Arrangements Letter);

(b) "inform the directors, Audit and Risk Committee and/or management, as appropriate, about any misstatements … [KPMG] identif[ied]" (FY18 Engagement Letter, cl 3.3, as updated by the FY20 Arrangements Letter); ~~and~~

(c) report to Downer's shareholders on whether, in KPMG's opinion, the Consolidated Financial Report complied with the Corporations Act, including:

(i) giving a true and fair view of the Downer Group's financial position as at 30 June 2020 and of its financial performance for FY20; and

(ii) complying with Australian Accounting Standards (FY18 Engagement Letter, cl 1.1, as updated by the FY20 Arrangements Letter); and

(d) report to Downer Utilities' shareholder on whether, in KPMG's opinion, the financial report of Downer Utilities complied with the Corporations Act, including:

(i) giving a true and fair view of Downer Utilities' financial position as at 30 June 2020 and of its financial performance for FY20; and

(ii) complying with Australian Accounting Standards (FY18 Engagement Letter, cl 1.1, as updated by the FY20 Arrangements Letter).

6. It was an implied term of the FY20 Retainer that KPMG would exercise reasonable care and skill:

(a) in auditing the Consolidated Financial Report of the Downer Group for FY20; ~~and~~

(b) in forming the opinions described in paragraph 5(c) above;

(c) in auditing the financial report of Downer Utilities for FY20; and

(d) in forming the opinions described in paragraph 5(d) above.

Particulars

The term was implied by law.

Duties of care

7. Further, given paragraphs 2(b), 4(a), and 5(a)–(c) above, KPMG owed Downer a duty to exercise reasonable care and skill:

(a) in auditing the Consolidated Financial Report of the Downer Group for FY20; and

(b) in forming the opinions described in paragraph 5(c) above.

Particulars

The duty was imposed by law.

7A. Given paragraphs 2(b) and 2G above, KPMG should reasonably have anticipated that, if it should report the opinions described in paragraph 5(d) above, Downer would be likely to rely on those opinions in deciding how to exercise its control over, or otherwise deal with its interests in, Downer Utilities.

7B. Given paragraph 2(b) above, if KPMG should report the opinions described in paragraph 5(d), it would be reasonable for Downer to rely on those opinions in deciding how to exercise its control over, or otherwise deal with its interests in, Downer Utilities.

7C. Given paragraphs 2(b), 4(b), 5(a), (b), and (d), 7A, and 7B above, KPMG owed Downer a duty to exercise reasonable care and skill:

(a) in auditing the financial report of Downer Utilities for FY20; and

(b) in forming the opinions described in paragraph 5(d) above.

Particulars

The duty was imposed by law.

C.2 Retainer and dut~~y~~ies of care for audits of FY21

Retainer

8. By agreement made 30 October 2020 (**FY21 Retainer**), Downer retained KPMG to audit, in consideration of fees:~~,~~

   (a) the Consolidated Financial Report of the Downer Group; and

   (b) the financial report of Downer Utilities,

   for the financial year to 30 June 2021 (**FY21**).

Particulars

The FY21 Retainer was in writing, comprising:

i. an engagement letter from KPMG to Downer, dated 20 October 2020, countersigned 30 October 2020 (**FY21 Engagement Letter**) [DOW.1059.0019.8372];

ii. the Terms and Conditions of Business appended, as appendix 1, to the FY21 Engagement Letter; and

iii. an "Annual arrangements" letter from KPMG to Downer, dated 20 October 2020, countersigned 30 October 2020 (**FY21 Arrangements Letter**) [DOW.1059.0003.3496].

9. There were express terms of the FY21 Retainer that KPMG would:

   (a) audit the Consolidated Financial Report of the Downer Group and the financial report of Downer Utilities for FY21 in accordance with Australian Auditing Standards (FY21 Engagement Letter, cl 1.1);

   (b) "inform the directors, Audit and Risk Committee and/or management, as appropriate, about any misstatements … [KPMG] identif[ied]" (FY21 Engagement Letter, cl 3.3); ~~and~~

   (c) report to Downer's shareholders on whether, in KPMG's opinion, the Consolidated Financial Report complied with the Corporations Act, including:

      (i) giving a true and fair view of the Downer Group's financial position as at 30 June 2021 and of its financial performance for FY21; and

(ii) complying with Australian Accounting Standards (FY21 Engagement Letter, cl 1.1); and

(d) report to Downer Utilities' shareholder on whether, in KPMG's opinion, the financial report of Downer Utilities complied with the Corporations Act, including:

(i) giving a true and fair view of Downer Utilities' financial position as at 30 June 2021 and of its financial performance for FY20; and

(ii) complying with Australian Accounting Standards (FY21 Engagement Letter, cl 1.1; FY21 Arrangements Letter, app 1).

10. It was an implied term of the FY21 Retainer that KPMG would exercise reasonable care and skill:

(a) in auditing the Consolidated Financial Report of the Downer Group for FY21; ~~and~~

(b) in forming the opinions described in paragraph 9(c) above;

(c) in auditing the financial report for Downer Utilities for FY21; and

(d) in forming the opinions described in paragraph 9(d) above.

Particulars

The term was implied by law.

Duties of care

11. Further, given paragraphs 2(b), 8(a), and 9(a)–(c) above, KPMG owed Downer a duty to exercise reasonable care and skill:

(a) in auditing the Consolidated Financial Report of the Downer Group for FY21; and

(b) in forming the opinions described in paragraph 9(c) above.

Particulars

The duty was imposed by law.

11A. Given paragraphs 2(b) and 2G above, KPMG should reasonably have anticipated that, if it should report the opinions described in paragraph 9(d) above, Downer would be likely to rely on those opinions in deciding how to exercise its control over, or otherwise deal with its interests in, Downer Utilities.

11B. Given paragraph 2(b) above, if KPMG should report the opinions described in paragraph 9(d), it would be reasonable for Downer to rely on those opinions in deciding how to exercise its control over, or otherwise deal with its interests in, Downer Utilities.

11C. Given paragraphs 2(b), 8(b), 9(a), (b), and (d), 11A, and 11B above, KPMG owed Downer a duty to exercise reasonable care and skill:

(a) in auditing the financial report of Downer Utilities for FY21; and

(b) in forming the opinions described in paragraph 9(d) above.

Particulars

The duty was imposed by law.

C.3 Retainer and duties~~y~~ of care for audits of FY22

Retainer

12. By agreement made 22 October 2021 (**FY22 Retainer**), Downer retained KPMG to audit, in consideration of fees:~~,~~

(a) the Consolidated Financial Report of the Downer Group; and

(b) the financial report of Downer Utilities,

for the financial year to 30 June 2022 (**FY22**).

Particulars

The FY22 Retainer was in writing, comprising:

i. the FY21 Engagement Letter [DOW.1059.0019.8372];

ii. the Terms and Conditions of Business appended, as appendix 1, to the FY21 Engagement Letter; and

iii. an “Annual arrangements” letter from KPMG to Downer, dated 19 October 2021, countersigned 22 October 2021 (**FY22 Arrangements Letter**) (which misdescribed the FY21 Engagement Letter as dated 13 October 2020) [DOW.1059.0005.9253].

13. There were express terms of the FY22 Retainer that KPMG would:

(a) audit the Consolidated Financial Report of the Downer Group and the financial report of Downer Utilities for FY22 in accordance with Australian Auditing

Standards (FY21 Engagement Letter, cl 1.1, as updated by the FY22 Arrangements Letter);

(b) "inform the directors, Audit and Risk Committee and/or management, as appropriate, about any misstatements … [KPMG] identif[ied]" (FY21 Engagement Letter, cl 3.3, as updated by the FY22 Arrangements Letter); ~~and~~

(c) report to Downer's shareholders on whether, in KPMG's opinion, the Consolidated Financial Report complied with the Corporations Act, including:

(i) giving a true and fair view of the Downer ~~the~~ Group's financial position as at 30 June 2022 and of its financial performance for FY22; and

(ii) complying with Australian Accounting Standards (FY21 Engagement Letter, cl 1.1, as updated by the FY22 Arrangements Letter); and

(d) report to Downer Utilities' shareholder on whether, in KPMG's opinion, the financial report of Downer Utilities complied with the Corporations Act, including:

(i) giving a true and fair view of Downer Utilities' financial position as at 30 June 2022 and of its financial performance for FY22; and

(ii) complying with Australian Accounting Standards (FY21 Engagement Letter, cl 1.1, as updated by the FY22 Arrangements Letter).

14. It was an implied term of the FY22 Retainer that KPMG would exercise reasonable care and skill:

(a) in auditing the Consolidated Financial Report of the Downer Group for FY22; ~~and~~

(b) in forming the opinions described in paragraph 13(c) above;

(c) in auditing the financial report for Downer Utilities for FY22; and

(d) in forming the opinions described in paragraph 13(d) above.

Particulars

The term was implied by law.

Duties of care

15. Further, given paragraphs 2(b), 12(a), and 13(a)–(c) above, KPMG owed Downer a duty to exercise reasonable care and skill:

(a) in auditing the Consolidated Financial Report of the Downer Group for FY22; and

(b) in forming the opinions described in paragraph 13(c) above.

Particulars

The duty was imposed by law.

15A. Given paragraphs 2(b) and 2G above, KPMG should reasonably have anticipated that, if it should report the opinions described in paragraph 13(d) above, Downer would be likely to rely on those opinions in deciding how to exercise its control over, or otherwise deal with its interests in, Downer Utilities.

15B. Given paragraph 2(b) above, if KPMG should report the opinions described in paragraph 13(d), it would be reasonable for Downer to rely on those opinions in deciding how to exercise its control over, or otherwise deal with its interests in, Downer Utilities.

15C. Given paragraphs 2(b), 12(b), 13(a), (b), and (d), 15A, and 15B above, KPMG owed Downer a duty to exercise reasonable care and skill:

(a) in auditing the financial report of Downer Utilities for FY22; and

(b) in forming the opinions described in paragraph 13(d) above.

Particulars

The duty was imposed by law.

D. AUDITING & ACCOUNTING STANDARDS

D.1 ASA 450 (*Evaluation of Misstatements Identified during the Audit*)

16. Australian Auditing Standard ASA 450 (*Evaluation of Misstatements Identified during the Audit*) provided, for FY20–22, that:

(a) "[t]he auditor shall accumulate misstatements identified during the audit, other than those that are clearly trivial" (para 5);

(b) "[t]he auditor shall communicate, unless prohibited by law or regulation, on a timely basis *all misstatements* accumulated during the audit with the appropriate level of management. The auditor shall request management to correct those misstatements" (para 8, italics added);

(c) "[t]he auditor shall determine whether uncorrected misstatements are material, individually or in aggregate. In making this determination, the auditor shall consider:

(i) [t]he size and nature of the misstatements, both in relation to particular classes of transactions, account balances or disclosures and the financial report as a whole, and the particular circumstances of their occurrence; and

(ii) [t]he effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial report as a whole" (para 11); and

(d) "[t]he auditor shall communicate with those charged with governance uncorrected misstatements … The auditor shall request that uncorrected misstatements be corrected" (para 13).

D.2 ASA 700 (*Forming an Opinion and Reporting on a Financial Report*)

17. Australian Auditing Standard ASA 700 (*Forming an Opinion and Reporting on a Financial Report*) provided, for FY20–22, that:

(a) "[t]he auditor shall form an opinion on whether the financial report is prepared, in all material respects, in accordance with the applicable financial reporting framework" (para 10); and

(b) "[i]n order to form that opinion, the auditor shall conclude as to whether the auditor has obtained reasonable assurance about whether the financial report as a whole is free from material misstatement … That conclusion shall take into account … [t]he auditor's conclusion, in accordance with ASA 450 [see para 16(c) above], whether uncorrected misstatements are material, individually or in aggregate" (para 11(b)).

D.3 Definitions in ASA 450 & 700

"Materiality"

18. In each of ASA 450 and 700, for FY20–22, "material" had the meaning given in ASA 320 (*Materiality in Planning and Performing an Audit*), which provided that, "in general, misstatements are considered to be material if they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial report as a whole" (para A2).

"Those charged with governance"

19. In each of ASA 450 and 700, for FY20–22, "those charged with governance" had the meaning given in ASA 260 (*Communication With Those Charged with Governance*), which defined it as "[t]he person(s) … with responsibility for overseeing the strategic

direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process" (para 10(a)).

20. At all relevant times, the persons with responsibility for overseeing the strategic direction of each member of the Downer Group and obligations related to the accountability of that member ~~the Group~~, including overseeing the financial reporting process, were the board of that member, the Audit & Risk Committee of Downer, and otherwise the board of Downer, of which the Audit & Risk Committee was a subset.

21. Given paragraphs 19 and 20 above, "those charged with governance" of each member of the Downer Group, within the meaning of ASA 450 and 700, were the board of that member, the Audit & Risk Committee of Downer, and otherwise the board of Downer.

D.4 AASB 15 (*Revenue from Contracts with Customers*)

22. Australian Accounting Standard AASB 15 (*Revenue from Contracts with Customers*) provided, for FY20–22, that:

    (a) "an entity shall recognise revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services" (para 2);

    (b) "[a]n entity shall recognise revenue when (or as) the entity satisfies a performance obligation by transferring a promised good or service … to a customer" (para 31);

    (c) "[a]n entity transfers control of a good or service over time and, therefore, satisfies a performance obligation and recognises revenue over time, if one of the following criteria is met:

        (i) the customer simultaneously receives and consumes the benefits provided by the entity's performance as the entity performs …; and

        (ii) the entity's performance creates or enhances an asset (for example, work in progress) that the customer controls as the asset is created or enhanced" (para 35);

    (d) "[f]or each performance obligation satisfied over time in accordance with [para 35, quoted in sub-para 22(c) above] an entity shall recognise revenue over time by measuring the progress towards complete satisfaction of that performance obligation" (para 39);

(e) "[w]hen (or as) a performance obligation is satisfied, an entity shall recognise as revenue the amount of the transaction price … that is allocated to that performance obligation" (para 46); and

(f) "[t]he objective when allocating the transaction price is for an entity to allocate the transaction price to each performance obligation … in an amount that depicts the amount of consideration to which the entity expects to be entitled in exchange for transferring the promised goods or services to the customer" (para 73).

E. CONTRACT WITH AUSNET

23. On 22 July 2019, Downer Utilities ~~Australia Pty Ltd (**Downer Utilities**), a subsidiary of Downer,~~ entered into an Operations and Maintenance Services Agreement (**AusNet Contract** or **OMSA**) with AusNet Electricity Services Pty Ltd and AusNet Transmission Group Pty Ltd (together, **AusNet Services**) [DOW.3000.0022.9999; DOW.3000.0021.9999].

24. The term of the AusNet Contract was five years, renewable, at Downer's option, for two terms of three years each (cll 3.1–3.3).

25. On 23 July 2019, Downer announced to the ASX, in reference to the AusNet Contract, that [DOW.3000.0070.9990]:

(a) "[Downer] had been selected by AusNet Services to provide operational and maintenance services on the electricity distribution network in Victoria";

(b) "[t]he five-year contract is worth approximately $600 million and includes options to extend for a further six years";

(c) "[u]nder the contract, Downer's services will expand from the current work delivered in AusNet Services' Central region [under an Electricity Services Contract dated 25 September 2012] to include the remainder of AusNet Services' electricity distribution network in Victoria's Northern and Eastern Regions"; and

(d) "[t]he Chief Executive Officer of Downer, Grant Fenn, said this contract award reinforced Downer as a benchmark end-to-end service provider to owners of utilities assets. "We are pleased to extend our 19-year partnership with AusNet Services for at least a further five years and to now service their entire electricity distribution network in Victoria," Mr Fenn said".

26. Under the AusNet Contract:

    (a) AusNet Services could issue Works Orders to Downer Utilities (cl 7.2(b)(i)); and

    (b) if Downer Utilities accepted and performed any such Works Order, it would be paid according to an agreed schedule of rates, or otherwise as quoted by Downer Utilities and agreed by AusNet Services (cll 7.1(a); 7.3(a), (b), (d), (f); 7.4(a)–(c); 48.1).

27. The AusNet Contract commenced on 1 April 2020.

28. From then, throughout FY20–22, AusNet Services issued, and Downer Utilities accepted, about 20,000 Works Orders a month.

F. OVERSTATEMENTS OF REVENUE FROM AUSNET CONTRACT

F.1 Overstatements of revenue for FY20

Revenue wrongly recognised

29. From 1 April 2020 to 30 June 2020, ~~the~~ Downer Utilities ~~Group~~ recognised $36.911m as revenue from the AusNet Contract.

30. Of that amount, about $2.43m or 6.58% (**FY20 Unaccrued Amount**) should not have been recognised, according to AASB 15, as it comprised:

    (a) amounts recognised for work not yet done, hence for stages of "performance obligations" not yet completed, contrary to paragraphs 31, 35, and 39 of AASB 15 (see paras 22(b)–22(d) above); and

    (b) amounts not recoverable at all, being in excess of the agreed rates for the Works Orders, contrary to paragraphs 2, 46, and 73 of AASB 15 (see paras 22(a), 22(e), and 22(f) above).

Consequent overstatement by Downer Utilities

30A. As a result of the recognition of the FY20 Unaccrued Amount, in its financial report for FY20 [DOW.3000.0071.9583], Downer Utilities' revenue was, according to AASB 15, overstated by about $2.43m (**FY20 Subsidiary Overstatement**).

30B. As a result of the FY20 Subsidiary Overstatement, in its financial report for FY20:

    (a) Downer Utilities' net profit before tax was overstated, according to AASB 15, by about $2.43m or 8.17%; and

(b) Downer Utilities' net profit after tax was overstated, according to AASB 15, by about $1.7m or 8.13%.

30C. Given paragraphs 25, 28, and 30–30B above, the FY20 Subsidiary Overstatement could, given the particular circumstances of its occurrence, have reasonably been expected to influence the economic decisions of users taken on the basis of the financial report as a whole.

30D. Given paragraphs 16(c)(i), 17(b), 18, and 30C above, the FY20 Subsidiary Overstatement was "material" to the financial report within the meaning of ASA 450 and, therefore, of ASA 700.

30E. Given paragraph 30D above, the financial report of Downer Utilities for FY20:

(a) had not, within the meaning of ASA 700 (see para 17(a) above), been "prepared, in all material respects, in accordance with the applicable financial reporting framework"; and

(b) was not, within the meaning of ASA 700 (see para 17(b) above), "as a whole … free from material misstatement".

30F. Further, given paragraphs 30A, 30B, and 30D above, the financial report of Downer Utilities for FY20 did not:

(a) comply with Australian Accounting Standards; or

(b) give a true and fair view of the financial performance of Downer Utilities for FY20.

Consequent overstatement by Downer Group

31. As a result of the recognition of the FY20 Unaccrued Amount ~~those amounts~~, in the Consolidated Financial Report of the Downer Group for FY20, the Group's revenue was, according to AASB 15, overstated by about $2.43m (**FY20 Group Overstatement**).

32. As a result of the FY20 Group Overstatement, in the Consolidated Financial Report for FY20 [DOW.3000.0070.9995]:

(a) the Downer Group's net loss before tax was understated, according to AASB 15, by about $2.43m or 1.59%; and

(b) the Group's net loss after tax was understated, according to AASB 15, by about $1.7m or 1.09%.

33. The plaintiffs have alleged against Downer, in relation to the Consolidated Financial Report of the Downer Group for FY20, that:

(a) the accounts upon which it was based were not prepared in accordance with the applicable Australian Accounting Standards; and

(b) did not give a true and fair view of the financial performance and financial position of Downer<u>.</u>

34. For the purposes of this statement of claim only, and without admission, Downer repeats the plaintiffs' allegations pleaded in paragraph 33 above.

35. In the premises of paragraphs 25, 28, ~~and~~ 30<u>, and 31</u>–34 above, and without admission, the FY20 <u>Group</u> Overstatement could, given the particular circumstances of its occurrence, have reasonably been expected to influence the economic decisions of users taken on the basis of the Consolidated Financial Report as a whole.

36. In the premises of paragraphs 16(c)(i), 17(b), 18, 34 and 35 above, and without admission, the FY20 <u>Group</u> Overstatement was "material" to the Consolidated Financial Report, within the meaning of ASA 450 and, therefore, of ASA 700.

37. In the premises of paragraphs <u>34</u> ~~35~~ and 36 above, and without admission, the Consolidated Financial Report of the Downer Group for FY20:

(a) had not, within the meaning of ASA 700 (see para 17(a) above), been "prepared, in all material respects, in accordance with the applicable financial reporting framework"; and

(b) was not, within the meaning of ASA 700 (see para 17(b) above), "as a whole … free from material misstatement".

38. Further, in the premises of paragraphs 31, 32, 34 and 36 above, the Consolidated Financial Report of the Downer Group for FY20:

(a) did not comply with Australian Accounting Standards; and

(b) without admission, did not give a true and fair view of the financial performance of the Downer Group for FY20.

F.2 Overstatement<u>s</u> of revenue for FY21

<u>Revenue wrongly recognised</u>

39. In FY21, ~~the~~ Downer <u>Utilities</u> ~~Group~~ recognised $175.99m as revenue from the AusNet Contract.

40. Of that amount, about $12.63m or 7.18% <u>(**FY21 Unaccrued Amount**)</u> should not have been recognised, according to AASB 15, as it comprised:

(a) amounts recognised for work not yet done, hence for stages of "performance obligations" not yet completed, contrary to paragraphs 31, 35, and 39 of AASB 15 (see paras 22(b), and 22(d) above); and

(b) amounts not recoverable at all, being in excess of the agreed rates for the Works Orders, contrary to paragraphs 2, 46, and 73 of AASB 15 (see paras 22(a), 22(e), and 22(f) above).

Consequent overstatement by Downer Utilities

40A. As a result of the recognition of the FY21 Unaccrued Amount, in its financial report for FY21 [DOW.3000.0071.9584], Downer Utilities' revenue was, according to AASB 15, overstated by about $12.63m (**FY21 Subsidiary Overstatement**).

40B. As a result of the FY21 Subsidiary Overstatement, in its financial report for FY21:

(a) Downer Utilities' net profit before tax was overstated, according to AASB 15, by about $12.63m or 107.09%; and

(b) Downer Utilities' net profit after tax was overstated, according to AASB 15, by about $8.9m or 105.85%.

40C. Given paragraphs 25, 28, 30A, 30D, and 40–40B above, the FY21 Subsidiary Overstatement could, given the particular circumstances of its occurrence, have reasonably been expected to influence the economic decisions of users taken on the basis of the financial report as a whole.

40D. Given paragraphs 16(c), 17(b), 18, and 40C above, the FY21 Overstatement was "material" to the financial report within the meaning of ASA 450 and, therefore, of ASA 700.

40E. Given paragraph 40D above, the financial report of Downer Utilities for FY21:

(a) had not, within the meaning of ASA 700 (see para 17(a) above), been "prepared, in all material respects, in accordance with the applicable financial reporting framework"; and

(b) was not, within the meaning of ASA 700 (see para 17(b) above), "as a whole … free from material misstatement".

40F. Further, given paragraphs 40A, 40B, and 40D above, the financial report of Downer Utilities for FY21 did not:

(a) comply with Australian Accounting Standards; or

(b) give a true and fair view of the financial performance of Downer Utilities for FY21.

Consequent overstatement by Downer Group

41. As a result of the recognition of the FY21 Unaccrued Amount ~~those amounts~~, in the Consolidated Financial Report of the Downer Group for FY21 [DOW.3000.0070.9997], the Group's revenue was, according to AASB 15, overstated by about $12.63m (**FY21 Group Overstatement**).

42. As a result of the FY21 Group Overstatement, in the Consolidated Financial Report for FY21:

(a) the Downer Group's net profit before tax was overstated, according to AASB 15, by about $12.63m or 5.49%; and

(b) the Group's net profit after tax was overstated, according to AASB 15, by about $8.9m or 4.84%.

43. As a result of misstatements, other than the FY20 Group Overstatement, in the Consolidated Financial Report for FY20 (**Acknowledged FY20 Group Overstatements**), in the Consolidated Financial Report for FY21:

(a) the Downer Group's net profit before tax was further overstated, according to AASB 15, by $8.5m or 3.7%; and

(b) the Group's net profit after tax was further overstated, according to AASB 15, by $5.9m or 3.21%.

Particulars

These overstatements were acknowledged by KPMG in its report to the Audit & Risk Committee on 29 July 2021 (pp 2 & 14) [DOW.1059.0020.6027].

44. Given paragraphs 42 and 43 above, as a result of the FY21 Group Overstatement and the Acknowledged FY20 Group Overstatements, in the Consolidated Financial Report for FY21:

(a) the Downer Group's net profit before tax was overstated, according to AASB 15, by $21.13m or 9.19%; and

(b) the Group's net profit after tax was overstated, according to AASB 15, by $14.8m or 8.1%.

45. Given paragraphs 25, 28, 31, 36, 40, 41–42, and 44 above, the FY21 Group Overstatement could, given the particular circumstances of its occurrence, have

reasonably been expected to influence the economic decisions of users taken on the basis of the Consolidated Financial Report as a whole.

46. Given paragraphs 16(c), 17(b), 18, and 45 above, the FY21 Group Overstatement was "material" to the Consolidated Financial Report for FY21, within the meaning of ASA 450 and, therefore, of ASA 700.

47. Given paragraph 46 above, the Consolidated Financial Report of the Downer Group for FY21:

   (a) had not, within the meaning of ASA 700 (see para 17(a) above), been "prepared, in all material respects, in accordance with the applicable financial reporting framework"; and

   (b) was not, within the meaning of ASA 700 (see para 17(b) above), "as a whole … free from material misstatement".

48. Further, given paragraphs 41, 42, 44, and 46 above, the Consolidated Financial Report of the Downer Group for FY21 did not:

   (a) comply with Australian Accounting Standards; or

   (b) give a true and fair view of the financial performance of the Downer Group for FY21.

F.3 Overstatements of revenue for FY22

Revenue wrongly recognised

49. In FY22, ~~the~~ Downer Utilities ~~Group~~ recognised $171.5m as revenue from the AusNet Contract.

50. Of that amount, about $16.7m or 9.74% (**FY22 Unaccrued Amount**) should not have been recognised, according to AASB 15, as it comprised:

   (a) amounts recognised for work not yet done, hence for stages of "performance obligations" not yet completed, contrary to paragraphs 31, 35, and 39 of AASB 15 (see paras 22(b)–22(d) above); and

   (b) amounts not recoverable at all, being in excess of the agreed rates for the Works Orders, contrary to paragraphs 2, 46, and 73 of AASB 15 (see paras 22(a), 22(e), 22(f) above).

Consequent overstatement by Downer Utilities

50A. As a result of the recognition of the FY22 Unaccrued Amount, in its financial report for FY22 [DOW.3000.0071.9582], Downer Utilities' revenue was, according to AASB 15, overstated by about $16.7m (**FY22 Subsidiary Overstatement**).

50B. As a result of the FY22 Subsidiary Overstatement, in its financial report for FY22:

(a) Downer Utilities' net loss before tax was understated, according to AASB 15, by about $16.7m or 39.14%; and

(b) Downer Utilities' net loss after tax was understated, according to AASB 15, by about $11.6m or 40.52%.

50C. Given paragraphs 25, 28, 30A, 30D, 40A, 40D, and 50–50B above, the FY22 Subsidiary Overstatement could, given the particular circumstances of its occurrence, have reasonably been expected to influence the economic decisions of users taken on the basis of the financial report as a whole.

50D. Given paragraphs 16(c), 17(b), 18, and 50C above, the FY22 Subsidiary Overstatement was "material" to the financial report within the meaning of ASA 450 and, therefore, of ASA 700.

50E. Given paragraph 50D above, the financial report of Downer Utilities for FY22:

(a) had not, within the meaning of ASA 700 (see para 17(a) above), been "prepared, in all material respects, in accordance with the applicable financial reporting framework"; and

(b) was not, within the meaning of ASA 700 (see para 17(b) above), "as a whole … free from material misstatement".

50F. Further, given paragraphs 50A, 50B, and 50D above, the financial report of Downer Utilities for FY22 did not:

(a) comply with Australian Accounting Standards; or

(b) give a true and fair view of the financial performance of Downer Utilities for FY22.

Consequent overstatement by Downer Group

51. As a result of the recognition of the FY22 Unaccrued Amount ~~those amounts~~, in the Consolidated Financial Report of the Downer Group for FY22 [DOW.3000.0023.9999], the Group's revenue was, according to AASB 15, overstated by about $16.7m (**FY22 Group Overstatement**).

52. As a result of the FY22 Group Overstatement, in the Consolidated Financial Report for FY22:

    (a) the Downer Group's net profit before tax was overstated, according to AASB 15, by about $16.7m or 7.02%, and

    (b) the Group's net profit after tax was overstated, according to AASB 15, by about $11.6m or 7.63%.

53. Given paragraphs 25, 28, 31, 36, 41, 46, 50, 51, and 52 above, the FY22 Group Overstatement could, given the particular circumstances of its occurrence, have reasonably been expected to influence the economic decisions of users taken on the basis of the Consolidated Financial Report as a whole.

54. Given paragraphs 16(c), 17(b), 18, and 53 above, the FY22 Group Overstatement was "material" to the Consolidated Financial Report, within the meaning of ASA 450 and, therefore, of ASA 700.

55. Given paragraph 54 above, the Consolidated Financial Report of the Downer Group for FY22:

    (a) had not, within the meaning of ASA 700 (see para 17(a) above), been "prepared, in all material respects, in accordance with the applicable financial reporting framework"; and

    (b) was not, within the meaning of ASA 700 (see para 17(b) above), "as a whole … free from material misstatement".

56. Further, given paragraphs 51, 52, and 54 above, the Consolidated Financial Report of the Downer Group for FY22 did not:

    (a) comply with Australian Accounting Standards; or

    (b) give a true and fair view of the financial performance of the Downer Group for FY22.

G. AUDITS FOR FY20–22

G.1 Audits for FY20

Audit of financial report of Downer Utilities

56A. KPMG audited the financial report of Downer Utilities for FY20.

56B. In breach of the FY20 Retainer (see para 6(c) above), and in breach of its duty of care (see para 7C(a) above), KPMG did not exercise reasonable care and skill in auditing the financial report of Downer Utilities for FY20.

Particulars

See Schedule 1.

56C. On 16 September 2020, KPMG reported to Downer Utilities' shareholder that, in KPMG's opinion, the financial report of Downer Utilities for FY20 complied with the Corporations Act, including:

(a) giving a true and fair view of Downer Utilities' financial position as at 30 June 2020 and of its financial performance for FY20; and

(b) complying with Australian Accounting Standards

(**FY20 Subsidiary Audit Opinions**) [DOW.3000.0071.9583].

56D. The FY20 Subsidiary Audit Opinions were reported by email.

Particulars

Particulars will be provided after discovery.

56E. Given paragraph 56D above, the FY20 Subsidiary Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

56F. In breach of the FY20 Retainer (see para 6(d) above), and in breach of its duty of care (see para 7C(b) above), KPMG did not exercise reasonable care and skill in forming the FY20 Subsidiary Audit Opinions.

Particulars

Downer repeats paragraphs 17, 30E, and 30F above, and paragraphs 0–9 of Schedule 1.

56G. Given paragraph 2(b) above, KPMG, in expressing the FY20 Subsidiary Audit Opinions, represented that it:

(a) had exercised reasonable care and skill in forming those Opinions; and

(b) had reasonable grounds for those Opinions

(**FY20 Subsidiary Audit Representations**).

56H. The FY20 Subsidiary Audit Representations were made:

(a) to provide Downer Utilities' shareholder with information, about the financial position and performance of Downer Utilities, which would be material to the shareholder's decision on how to deal with its shares in Downer Utilities; and

(b) to provide Downer with information, about the financial position and performance of Downer Utilities, which would be material to Downer's decision of how to exercise its control over, or otherwise deal with its interests in, Downer Utilities.

56I. Given paragraphs 2 and 56H above, the FY20 Subsidiary Audit Representations were made in trade or commerce.

56J. Given paragraph 56H(a) above, the FY20 Subsidiary Audit Representations were made in relation to shares in Downer Utilities.

56K. Given paragraphs 3(a) and 56J above, the FY20 Subsidiary Audit Representations were made in relation to financial products within the meaning of s 1041(1) of the Corporations Act.

56L. Given paragraphs 3(c) and 56J above, the FY20 Subsidiary Audit Representations were made in relation to financial services within the meaning of s 12DA(1) of the ASIC Act.

56M. Contrary to the FY20 Subsidiary Audit Representations, KPMG:

(a) had not exercised reasonable care and skill in forming the FY20 Subsidiary Audit Opinions; and

(b) did not have reasonable grounds for the FY20 Subsidiary Audit Opinions.

Particulars

Downer repeats the particulars to paragraph 56F above.

56N. Given paragraphs 56E, 56G, 56I, and 56M above, the FY20 Subsidiary Audit Representations were misleading or deceptive contrary to s 18(1) of the Australian

Consumer Law, construed in accordance with s 6(3) of the CCA, applied as a law of the Commonwealth by s 131(1) of the CCA (**ACL (Cth)**).

56O. Given paragraphs 56G, 56K, and 56M above, the FY20 Subsidiary Audit Representations were misleading or deceptive contrary to s 1041H(1) of the Corporations Act.

56P. Given paragraphs 56G, 56I, 56L, and 56M above, the FY20 Subsidiary Audit Representations were misleading or deceptive contrary to s 12DA(1) of the ASIC Act.

Audit of Consolidated Financial Report of Downer Group

57. KPMG audited the Consolidated Financial Report of the Downer Group for FY20.

58. In breach of the FY20 Retainer (see para 6(a) above), and in breach of its duty of care (see para 7(a) above), KPMG did not exercise reasonable care and skill in auditing the Consolidated Financial Report of the Downer Group for FY20.

Particulars

See Schedule 1.

59. On 12 August 2020, KPMG reported to Downer's shareholders that, in KPMG's opinion, the Consolidated Financial Report of the Downer Group for FY20 complied with the Corporations Act, including:

(a) giving a true and fair view of the Group's financial position as at 30 June 2020 and of its financial performance for FY20; and

(b) complying with Australian Accounting Standards

(**FY20 Group Audit Opinions**) [DOW.3000.0070.9995].

59A. The FY20 Group Audit Opinions were reported via the internet.

Particulars

On 11 August 2020, KPMG emailed the FY20 Group Audit Opinions to Downer [DOW.1059.0003.9162; DOW.1059.0003.9163]. On 12 August 2020, at or shortly before 8:17 am, Downer lodged the FY20 Group Audit Opinions on the extranet site, ASX Online, provided by the ASX for the lodgement of announcements (**ASX Online**). On 12 August 2020, at 8:17 am, the ASX published the FY20 Group Audit Opinions, on its website, to Downer's shareholders.

59B. Given paragraph 59A above, the FY20 Group Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the CCA.

60. In breach of the FY20 Retainer (see para 6(b) above), and in breach of its duty of care (see para 7(b) above), KPMG did not exercise reasonable care and skill in forming the FY20 Group Audit Opinions.

Particulars

Downer repeats paragraphs 17, 37, and 38 above, and paragraphs ~~1~~0–9 of Schedule 1.

61. Given paragraph 2(b) above, KPMG, in expressing the FY20 Group Audit Opinions, represented that it:

(a) had exercised reasonable care and skill in forming those Opinions; and

(b) had reasonable grounds for those Opinions

(**FY20 Group Audit Representations**).

62. The FY20 Group Audit Representations were made to provide shareholders and potential shareholders in Downer with information, about the financial position and performance of the Downer Group, which would be material to their decisions on how to deal with shares in Downer.

63. Given paragraphs 2 and 62 above, the FY20 Group Audit Representations were made in trade or commerce.

64. Given paragraph 62 above, the FY20 Group Audit Representations were made in relation to shares in Downer.

65. Given paragraphs 3(a) and 64 above, the FY20 Group Audit Representations were made in relation to financial products within the meaning of s 1041(1) of the Corporations Act.

66. Given paragraphs 3(c) and 64 above, the FY20 Group Audit Representations were made in relation to financial services within the meaning of s 12DA(1) of the ASIC Act.

67. Contrary to the FY20 Group Audit Representations, KPMG:

(a) had not exercised reasonable care and skill in forming the FY20 Group Audit Opinions; and

(b) did not have reasonable grounds for the FY20 Group Audit Opinions.

Particulars

Downer repeats the particulars to paragraph 60 above.

68. Given paragraphs 59B, 61, 63, and 67 above, the FY20 Group Audit Representations were misleading or deceptive contrary to s 18(1) of the ACL (Cth) ~~Australian Consumer Law set out in Sch 2 to the *Competition and Consumer Act 2010* (Cth)~~.

69. Given paragraphs 61, 65, and 67 above, the FY20 Group Audit Representations were misleading or deceptive contrary to s 1041H(1) of the Corporations Act.

70. Given paragraphs 61, 63, 66, and 67 above, the FY20 Group Audit Representations were misleading or deceptive contrary to s 12DA(1) of the ASIC Act.

G.2 Audits for FY21

Audit of financial report of Downer Utilities

70A. KPMG audited the financial report of Downer Utilities for FY21.

70B In breach of the FY21 Retainer (see para 10(c) above), and in breach of its duty of care (see para 11C(a) above), KPMG did not exercise reasonable care and skill in auditing the financial report of Downer Utilities for FY21.

Particulars

See Schedule 2.

70C. On 30 September 2021, KPMG reported to Downer Utilities' shareholder that, in KPMG's opinion, the financial report of Downer Utilities for FY21 complied with the Corporations Act, including:

(a) giving a true and fair view of Downer Utilities' financial position as at 30 June 2021 and of its financial performance for FY21; and

(b) complying with Australian Accounting Standards

(**FY21 Subsidiary Audit Opinions**) [DOW.3000.0071.9584].

70D. The FY21 Subsidiary Audit Opinions were reported by email.

Particulars

The FY21 Subsidiary Audit Opinions were emailed by KPMG to Taryn Smith, Financial Controller of the Downer Group (**Smith**), on 30 September 2021 [DOW.3000.0072.2179; DOW.3000.0072.2182].

70E. Given paragraph 70D above, the FY21 Subsidiary Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the CCA.

70F. In breach of the FY21 Retainer (see para 10(d) above), and in breach of its duty of care (see para 11C(b) above), KPMG did not exercise reasonable care and skill in forming the FY21 Subsidiary Audit Opinions.

Particulars

Downer repeats paragraphs 17, 40E, and 40F above, and paragraphs 1–16 of Schedule 2.

70G. Given paragraph 2(b) above, KPMG, in expressing the FY21 Subsidiary Audit Opinions, represented that it:

(a) had exercised reasonable care and skill in forming those Opinions; and

(b) had reasonable grounds for those Opinions

(**FY21 Subsidiary Audit Representations**).

70H. The FY21 Subsidiary Audit Representations were made:

(a) to provide Downer Utilities' shareholder with information, about the financial position and performance of Downer Utilities, which would be material to the shareholder's decision on how to deal with its shares in Downer Utilities; and

(b) to provide Downer with information, about the financial position and performance of Downer Utilities, which would be material to Downer's decision of how to exercise its control over, or otherwise deal with its interests in, Downer Utilities.

70I. Given paragraphs 2 and 70H above, the FY21 Subsidiary Audit Representations were made in trade or commerce.

70J. Given paragraph 70H(a) above, the FY21 Subsidiary Audit Representations were made in relation to shares in Downer Utilities.

70K. Given paragraphs 3(a) and 70J above, the FY21 Subsidiary Audit Representations were made in relation to financial products within the meaning of s 1041(1) of the Corporations Act.

70L. Given paragraphs 3(c) and 70J above, the FY21 Subsidiary Audit Representations were made in relation to financial services within the meaning of s 12DA(1) of the ASIC Act.

70M. Contrary to the FY21 Subsidiary Audit Representations, KPMG:

(a) had not exercised reasonable care and skill in forming the FY21 Subsidiary Audit Opinions; and

(b) did not have reasonable grounds for the FY21 Subsidiary Audit Opinions.

Particulars

Downer repeats the particulars to paragraph 70F above.

70N. Given paragraphs 70E, 70G, 70I, and 70M above, the FY21 Subsidiary Audit Representations were misleading or deceptive contrary to s 18(1) of the ACL (Cth).

70O. Given paragraphs 70G, 70K, and 70M above, the FY21 Subsidiary Audit Representations were misleading or deceptive contrary to s 1041H(1) of the Corporations Act.

70P. Given paragraphs 70G, 70I, 70L, and 70M above, the FY21 Subsidiary Audit Representations were misleading or deceptive contrary to s 12DA(1) of the ASIC Act.

Audit of Consolidated Financial Report of Downer Group

71. KPMG audited the Consolidated Financial Report of the Downer Group for FY21.

72. In breach of the FY21 Retainer (see paragraph 10(a)), and in breach of its duty of care (see paragraph 11(a) above), KPMG did not exercise reasonable care and skill in auditing the Consolidated Financial Report of the Downer Group for FY21.

Particulars

See Schedule 2.

~~**G.3 Audit opinion**~~

73. On 12 August 2021, KPMG reported to Downer's shareholders that, in KPMG's opinion, the Consolidated Financial Report of the Downer Group for FY20 complied with the Corporations Act, including:

(a) giving a true and fair view of the Group's financial position as at 30 June 2021 and of its financial performance for FY21; and

(b) complying with Australian Accounting Standards

(**FY21 Group Audit Opinions**) [DOW.3000.0070.9997].

73A. The FY21 Group Audit Opinions were reported via the internet.

Particulars

On 11 August 2021, KPMG emailed the FY21 Group Audit Opinions to Downer [DOW.1059.0015.7802; DOW.1059.0015.7803]. On 12 August 2021, at or shortly before 8:35 am, Downer lodged them on ASX Online. On 12 August 2021, at 8:35 am, the ASX published them, on its website, to Downer's shareholders [DOW.3000.0072.2190; DOW.3000.0072.2191].

73B. Given paragraph 73A above, the FY21 Group Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the CCA.

74. In breach of the FY21 Retainer (see para 10(b) above), and in breach of its duty of care (see para 11(b) above), KPMG did not exercise reasonable care and skill in forming the FY21 Group Audit Opinions.

Particulars

Downer repeats paragraphs 17, 47, and 48 above, and paragraphs 1–16 of Schedule 2.

75. Given paragraph 2(b) above, KPMG, in expressing the FY21 Group Audit Opinions, represented that it:

(a) had exercised reasonable care and skill in forming those Opinions; and

(b) had reasonable grounds for those Opinions

(**FY21 Group Audit Representations**).

76. The FY21 Group Audit Representations were made to provide shareholders and potential shareholders in Downer with information, about the financial position and performance of the Downer Group, which would be material to their decisions on how to deal with shares in Downer.

77. Given paragraphs 2 and 76 above, the FY21 Group Audit Representations were made in trade or commerce.

78. Given paragraph 76 above, the FY21 Group Audit Representations were made in relation to shares in Downer.

79. Given paragraphs 3(a) and 78 above, the FY21 Group Audit Representations were made in relation to financial products within the meaning of s 1041(1) of the Corporations Act.

80. Given paragraphs 3(c) and 78 above, the FY21 Group Audit Representations were made in relation to financial services within the meaning of s 12DA(1) of the ASIC Act.

81. Contrary to the FY21 Group Audit Representations, KPMG:

(a) had not exercised reasonable care and skill in forming the FY21 Group Audit Opinions; and

(b) did not have reasonable grounds for the FY21 Group Audit Opinions.

Particulars

Downer repeats the particulars to paragraph 74 above.

82. Given paragraphs 73B, 75, 76, and 81 above, the FY21 Group Audit Representations were misleading or deceptive contrary to s 18(1) of the ACL (Cth) ~~Australian Consumer Law~~.

83. Given paragraphs 75, 79, and 81 above, the FY21 Group Audit Representations were misleading or deceptive contrary to s 1041H(1) of the Corporations Act.

84. Given paragraphs 75, 76, 80, and 81 above, the FY21 Group Audit Representations were misleading or deceptive contrary to s 12DA(1) of the ASIC Act.

G.4 Audit for FY22

Audit of financial report of Downer Utilities

84A. KPMG audited the financial report of Downer Utilities for FY22.

84B. In breach of the FY22 Retainer (see para 14(c) above), and in breach of its duty of care (see para 15C(a) above), KPMG did not exercise reasonable care and skill in auditing the financial report of Downer Utilities for FY22.

Particulars

See Schedule 3.

84C. On 17 October 2022, KPMG reported to Downer Utilities' shareholder that, in KPMG's opinion, the financial report of Downer Utilities for FY22 complied with the Corporations Act, including:

(a) giving a true and fair view of Downer Utilities' financial position as at 30 June 2022 and of its financial performance for FY21; and

(b) complying with Australian Accounting Standards

(**FY22 Subsidiary Audit Opinions**) [DOW.3000.0071.9582].

Particulars

Although the FY22 Subsidiary Audit Opinions were signed on 14 October 2022, they were not reported to Downer Utilities' shareholder until 17 October 2022, as described in paragraph 84D below.

84D. The FY22 Subsidiary Audit Opinions were reported by email.

Particulars

The FY22 Subsidiary Audit Opinions were emailed by KPMG to Smith and to Carol Keok, Finance Manager, Corporate, of the Downer Group, on 17 October 2022 [DOW.3000.0072.2195; DOW.3000.0072.2198].

84E. Given paragraph 84D above, the FY22 Subsidiary Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the CCA.

84F. In breach of the FY22 Retainer (see para 14(d) above), and in breach of its duty of care (see para 15C(b) above), KPMG did not exercise reasonable care and skill in forming the FY22 Subsidiary Audit Opinions.

Particulars

Downer repeats paragraphs 17, 50E, and 50F above, and paragraphs 1–17 of Schedule 3.

84G. Given paragraph 2(b) above, KPMG, in expressing the FY22 Subsidiary Audit Opinions, represented that it:

(a) had exercised reasonable care and skill in forming those Opinions; and

(b) had reasonable grounds for those Opinions

(**FY22 Subsidiary Audit Representations**).

84H. The FY22 Subsidiary Audit Representations were made:

(a) to provide Downer Utilities' shareholder with information, about the financial position and performance of Downer Utilities, which would be material to the shareholder's decision on how to deal with its shares in Downer Utilities; and

(b) to provide Downer with information, about the financial position and performance of Downer Utilities, which would be material to Downer's decision of how to exercise its control over, or otherwise deal with its interests in, Downer Utilities.

84I. Given paragraphs 2 and 84H above, the FY22 Subsidiary Audit Representations were made in trade or commerce.

84J. Given paragraph 84H(a) above, the FY22 Subsidiary Audit Representations were made in relation to shares in Downer Utilities.

84K. Given paragraphs 3(a) and 84J above, the FY22 Subsidiary Audit Representations were made in relation to financial products within the meaning of s 1041(1) of the Corporations Act.

84L. Given paragraphs 3(c) and 84J above, the FY22 Subsidiary Audit Representations were made in relation to financial services within the meaning of s 12DA(1) of the ASIC Act.

84M. Contrary to the FY22 Subsidiary Audit Representations, KPMG:

(a) had not exercised reasonable care and skill in forming the FY22 Subsidiary Audit Opinions; and

(b) did not have reasonable grounds for the FY22 Subsidiary Audit Opinions.

Particulars

Downer repeats the particulars to paragraph 84F above.

84N. Given paragraphs 84E, 84G, 84I, and 84M above, the FY22 Subsidiary Audit Representations were misleading or deceptive contrary to s 18(1) of the ACL (Cth).

84O. Given paragraphs 84G, 84K, and 84M above, the FY22 Subsidiary Audit Representations were misleading or deceptive contrary to s 1041H(1) of the Corporations Act.

84P. Given paragraphs 84G, 84I, 84L, and 84M above, the FY22 Subsidiary Audit Representations were misleading or deceptive contrary to s 12DA(1) of the ASIC Act.

Audit of Consolidated Financial Report of Downer Group

85. KPMG audited the Consolidated Financial Report of the Downer Group for FY22.

86. In breach of the FY22 Retainer (see para 14(a)), and in breach of its duty of care (see para 15(a)), KPMG did not exercise reasonable care and skill in auditing the Consolidated Financial Report of the Downer Group for FY22.

Particulars

See Schedule 3.

87. On 17 August 2022, KPMG reported to Downer's shareholders that, in KPMG's opinion, the Consolidated Financial Report of the Downer Group for FY22 complied with the Corporations Act, including:

(a) giving a true and fair view of the Group's financial position as at 30 June 2022 and of its financial performance for FY22; and

(b) complying with Australian Accounting Standards

(**FY22 Group Audit Opinions**) [DOW.3000.0023.9999].

87A. The FY22 Group Audit Opinions were reported via the internet.

Particulars

On 16 August 2022, KPMG emailed the FY22 Group Audit Opinions to Downer [DOW.1050.0001.6803; DOW.1050.0001.6804]. On 17 August 2022, at or shortly before 8:22 am, Downer lodged them on ASX Online. On 17 August 2022, at 8:22 am, the ASX published them, on its website, to the public [DOW.3000.0072.2192; DOW.3000.0072.2193].

87B. Given paragraph 87A above, the FY22 Group Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the CCA.

88. In breach of the FY22 Retainer (see para 14(b) above), and in breach of its duty of care (see para 15(b) above), KPMG did not exercise reasonable care and skill in forming the FY22 Group Audit Opinions.

Particulars

Downer repeats paragraphs 17, 55, and 56 above, and paragraphs 1–17 of Schedule 3.

89. Given paragraph 2(b) above, KPMG, in expressing the FY22 Group Audit Opinions, represented that it:

(a) had exercised reasonable care and skill in forming those Opinions; and

(b) had reasonable grounds for those Opinions

(**FY22 Group Audit Representations**).

90. The FY22 Group Audit Representations were made to provide shareholders and potential shareholders in Downer with information, about the financial position and performance of the Downer Group, which would be material to their decisions on how to deal with shares in Downer.

91. Given paragraphs 2 and 90 above, the FY22 Group Audit Representations were made in trade or commerce.

92. Given paragraph 90 above, the FY22 Group Audit Representations were made in relation to shares in Downer.

93. Given paragraphs 3(a) and 92 above, the FY22 Group Audit Representations were made in relation to financial products within the meaning of s 1041(1) of the Corporations Act.

94. Given paragraphs 3(c) and 92 above, the FY22 Group Audit Representations were made in relation to financial services within the meaning of s 12DA(1) of the ASIC Act.

95. Contrary to the FY22 Group Audit Representations, KPMG:

(a) had not exercised reasonable care and skill in forming the FY22 Group Audit Opinions; and

(b) did not have reasonable grounds for the FY22 Group Audit Opinions.

Particulars

Downer repeats the particulars to paragraph 88 above.

96. Given paragraphs 87B, 89, 90, and 95 above, the FY22 Group Audit Representations were misleading or deceptive contrary to s 18(1) of the ACL (Cth) ~~Australian Consumer Law~~.

97. Given paragraphs 89, 93, and 95 above, the FY22 Group Audit Representations were misleading or deceptive contrary to s 1041H(1) of the Corporations Act.

98. Given paragraphs 89, 90, 94, and 95 above, the FY22 Group Audit Representations were misleading or deceptive contrary to s 12DA(1) of the ASIC Act.

H. LOSS

H.1 Alleged false, misleading, or deceptive conduct

“Capital Raise Cleansing Notice Representations”

99. If Downer made the “Capital Raise Cleansing Notice Representations” alleged by the plaintiffs in paragraph 97 of their consolidated statement of claim (**CSOC**), it was

because KPMG had committed each of the breaches described in paragraphs 56B, 56D, 58 and 60 above (**FY20 KPMG Breaches**).

100. As a result, if Downer is liable for having made, or failed to correct or qualify, the "Capital Raise Cleansing Notice Representations", either as alleged in paragraphs 102, 103, and 216 and any of prayers 1–3 of the CSOC, or as alleged in paragraphs 152 and 216 and prayer 1 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY20 KPMG Breaches.

"30 June 2020 Financial Representations"

101. If Downer made the "30 June 2020 Financial Representations" alleged in paragraph 104 of the CSOC, or the "30 June 2020 Financial Basis Representation" alleged in paragraph 105, it was because of each of the FY20 KPMG Breaches, and each of the contraventions described in paragraphs 56L–56N and 68–70 above (**FY20 KPMG Contraventions**).

102. As a result, if Downer is liable for having made, or failed to correct or qualify, either the "30 June 2020 Financial Representations" or the "30 June 2020 Financial Basis Representation", either as alleged in paragraphs 108, 109, and 216, and any of prayers 1–3 of the CSOC, or as alleged in paragraphs 152 and 216 and prayer 1 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY20 KPMG Breaches and each of the FY20 KPMG Contraventions.

"31 December 2020 Financial Representations"

103. If Downer made the "31 December 2020 Financial Representations" alleged in paragraph 110 of the CSOC, or the "31 December 2020 Financial Basis Representation" alleged in paragraph 111, it was because of each of the FY20 KPMG Breaches and each of the FY20 KPMG Contraventions.

104. As a result, if Downer is liable for having made, or failed to correct or qualify, either the "31 December 2020 Financial Representations" or the "31 December 2020 Financial Basis Representation", either as alleged in paragraphs 114, 115, and 216, and any of prayers 1–3 of the CSOC, or as alleged in paragraphs 152 and 216 and prayer 1 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY20 KPMG Breaches and each of the FY20 KPMG Contraventions.

"30 June 2021 Financial Representations"

105. If Downer made the "30 June 2021 Financial Representations" alleged in paragraph 116 of the CSOC, or the "30 June 2021 Financial Basis Representation" alleged in paragraph

117, it was because KPMG had committed each of the breaches described in paragraphs 70B, 70D, 72 and 74 above (**FY21 KPMG Breaches**), and each of the contraventions described in paragraphs 70L–70N and 82–84 above (**FY21 KPMG Contraventions**).

106. As a result, if Downer is liable for having made, or failed to correct or qualify, either the “30 June 2021 Financial Representations” or the “30 June 2021 Financial Basis Representation”, either as alleged in paragraphs 120, 121, and 216 and any of prayers 1–3 of the CSOC, or as alleged in paragraphs 152 and 216 and prayer 1 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY21 KPMG Breaches and each of the FY21 KPMG Contraventions.

“31 December 2021 Financial Representations”

107. If Downer made the “31 December 2021 Financial Representations” alleged in paragraph 122 of the CSOC, or the “31 December 2021 Financial Basis Representation” alleged in paragraph 123, it was because of each of the FY21 KPMG Breaches and each of the FY21 KPMG Contraventions.

108. As a result, if Downer is liable for having made, or failed to correct or qualify, either the “31 December 2021 Financial Representations” or the “31 December 2021 Financial Basis Representation”, either as alleged in paragraphs 126, 127, and 216 and any of prayers 1–3 of the CSOC, or as alleged in paragraphs 152 and 216 and prayer 1 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY21 KPMG Breaches and each of the FY21 KPMG Contraventions.

“30 June 2022 Financial Representations”

109. If Downer made the “30 June 2022 Financial Representations” alleged in paragraph 128 of the CSOC, or the “30 June 2022 Financial Basis Representation” alleged in paragraph 129, it was because KPMG had committed each of the breaches described in paragraphs 84B, 84D, 86 and 88 above (**FY22 KPMG Breaches**), and each of the contraventions described in paragraphs 84L–84N and 96–98 above (**FY22 KPMG Contraventions**).

110. As a result, if Downer is liable for having made, or failed to correct or qualify, either the “30 June 2022 Financial Representations” or the “30 June 2022 Financial Basis Representation”, either as alleged in paragraphs 132, 133, and 216 and any of prayers 1–3 of the CSOC, or as alleged in paragraphs 152 and 216 and prayer 1 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY22 KPMG Breaches and each of the FY22 KPMG Contraventions.

"First FY23 Guidance Representations"

111. If Downer made the "First FY23 Guidance Representation" alleged in paragraph 134 of the CSOC, or the "First FY23 Guidance Basis Representation" alleged in paragraph 135, it was because KPMG had committed each of the FY22 KPMG Breaches and each of the FY22 KPMG Contraventions.

112. As a result, if Downer is liable for having made, or failed to correct or qualify, either the "First FY23 Guidance Representation" or the "First FY23 Guidance Basis Representation", either as alleged in paragraphs 139, 140, and 216 and any of prayers 1–3 of the CSOC, or as alleged in paragraphs 152 and 216 and prayer 1 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY22 KPMG Breaches and each of the FY22 KPMG Contraventions.

"Second FY23 Guidance Representations"

113. If Downer made the "Second FY23 Guidance Representation" alleged in paragraph 141 of the CSOC, or the "Second FY23 Guidance Basis Representation" alleged in paragraph 142, it was because KPMG had committed each of the FY22 KPMG Breaches and each of the FY22 KPMG Contraventions.

114. As a result, if Downer is liable for having made, or failed to correct or qualify, either the "Second FY23 Guidance Representation" or the "Second FY23 Guidance Basis Representation", either as alleged in paragraphs 146, 147, and 216 and any of prayers 1–3 of the CSOC, or as alleged in paragraphs 152 and 216 and prayer 1 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY22 KPMG Breaches and each of the FY22 KPMG Contraventions.

H.2 Alleged failures of continuous disclosure

"Contract Management Information"

115. If Downer failed, contrary to the Corporations Act, to disclose the "Contract Management Information" to the ASX as alleged in paragraphs 73 and 160–4 of the CSOC, it was because KPMG had committed the FY20, FY21, and FY22 KPMG Breaches and the FY20, FY21, and FY22 KPMG Contraventions.

116. As a result, if Downer is liable for that contravention as alleged in paragraph 216 and prayer 4 of the CSOC, the amount of that liability is a loss suffered as a result of the FY20, FY21, and FY22 KPMG Breaches and the FY20, FY21, and FY22 KPMG Contraventions.

"AusNet Loss Information"

117. If Downer failed, contrary to the Corporations Act, to disclose the "AusNet Loss Information" to the ASX as alleged in paragraphs 75 and 166–170 of the CSOC, it was because KPMG had committed the FY20, FY21, and FY22 KPMG Breaches and the FY20, FY21, and FY22 KPMG Contraventions.

118. As a result, if Downer is liable for that contravention as alleged in paragraph 216 and prayer 4 of the CSOC, the amount of that liability is a loss suffered as a result of the FY20, FY21, and FY22 KPMG Breaches and the FY20, FY21, and FY22 KPMG Contraventions.

"30 June 2020 True Financial Information"

119. If Downer failed, contrary to the Corporations Act, to disclose the "30 June 2020 True Financial Information" to the ASX as alleged in paragraphs 76 and 172–176 of the CSOC, it was because KPMG had committed each of the FY20 KPMG Breaches and each of the FY20 KPMG Contraventions.

120. As a result, if Downer is liable for that contravention as alleged in paragraph 216 and prayer 4 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY20 KPMG Breaches and each of the FY22 KPMG Contraventions.

"31 December 2020 True Financial Information"

121. If Downer failed, contrary to the Corporations Act, to disclose the "31 December 2020 True Financial Information" to the ASX as alleged in paragraphs 78 and 178–182 of the CSOC, it was because KPMG had committed each of the FY20 KPMG Breaches and each of the FY20 KPMG Contraventions.

122. As a result, if Downer is liable for that contravention as alleged in paragraph 216 and prayer 4 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY20 KPMG Breaches and each of the FY20 KPMG Contraventions.

"30 June 2021 True Financial Information"

123. If Downer failed, contrary to the Corporations Act, to disclose the "30 June 2021 True Financial Information" to the ASX as alleged in paragraphs 80 and 184–188 of the CSOC, it was because KPMG had committed each of the FY21 KPMG Breaches and each of the FY21 KPMG Contraventions.

124. As a result, if Downer is liable for that contravention as alleged in paragraph 216 and prayer 4 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY21 KPMG Breaches and each of the FY21 KPMG Contraventions.

"31 December 2021 True Financial Information"

125. If Downer failed, contrary to the Corporations Act, to disclose the "31 December 2021 True Financial Information" to the ASX as alleged in paragraphs 82 and 190–3 of the CSOC, it was because KPMG had committed each of the FY21 KPMG Breaches and each of the FY21 KPMG Contraventions.

126. As a result, if Downer is liable for that contravention as alleged in paragraph 216 and prayer 4 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY21 KPMG Breaches and each of the FY21 KPMG Contraventions.

"30 June 2022 True Financial Information"

127. If Downer failed, contrary to the Corporations Act, to disclose the "30 June 2022 True Financial Information" to the ASX as alleged in paragraphs 84 and 196–200 of the CSOC, it was because KPMG had committed each of the FY22 KPMG Breaches and each of the FY22 KPMG Contraventions.

128. As a result, if Downer is liable for that contravention as alleged in paragraph 216 and prayer 4 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY22 KPMG Breaches and each of the FY22 KPMG Contraventions.

"FY23 Guidance Information"

129. If Downer failed, contrary to the Corporations Act, to disclose the "FY23 Guidance Information" to the ASX as alleged in paragraphs 86 and 202–6 of the CSOC, it was because KPMG had committed each of the FY22 KPMG Breaches and each of the FY22 KPMG Contraventions.

130. As a result, if Downer is liable for that contravention as alleged in paragraph 216 and prayer 4 of the CSOC, the amount of that liability is a loss suffered as a result of each of the FY22 KPMG Breaches and each of the FY22 KPMG Contraventions.

Therefore Downer claims:

A Damages

B Further or alternatively, compensation under s 236(1) of the ACL (Cth) ~~Australian Consumer Law~~

C Further or alternatively, compensation under s 1041I(1) of the Corporations Act

D Further or alternatively, compensation under s 12GF(1) of the ASIC Act

E Interest

F Costs

G Any other relief thought fit

N Owens

A J Weinstock

P Meagher

N Wootton

Dated: 5 August 2024 ~~4 March 2024~~

Gilbert + Tobin

Gilbert + Tobin

Solicitors for Downer EDI Limited

Schedule 1

Particulars to paragraphs 56B & 58 (conduct of audits for FY20)

0 Around 22 July 2019, when Downer Utilities entered into the AusNet Contract, Michael Lanigan, Finance Manager, Transport and Infrastructure, of the Downer Group (**Lanigan**), told Nicola Buddee, Director, Audit, Assurance & Risk Consulting, of KPMG (**Buddee**), that Downer Utilities had entered into the Contract.

0A By email to Lanigan, dated 25 September 2019, Buddee recalled, "At year end you mentioned that Downer has entered into a new arrangement with Ausnet … I'm keen for us to get our head around the new arrangements" [DOW.3000.0057.3021].

1 In its External Audit Plan of 15 October 2019, KPMG identified "revenue recognition … and WIP" ("work in progress", being unbilled amounts recognised as revenue) as high "[r]elative risk[s]" and ~~a~~ "Potential Key Audit Matters" (p 7) [DOW.1059.0014.2436].

1A On 25 November 2019, Sean Stewart, General Manager, Finance, Utilities, of the Downer Group (**Stewart**), emailed Buddee an "Audit Risk Committee Paper", entitled "Audit and Accounting Issues For the half year ending 31 December 2019" [DOW.3000.0021.3180, DOW.3000.0021.3181]. In the Paper, it was said of the AusNet Contract that "the first of the initial 5 year contract terms [would be] commencing 1 April 2020 … The customer has provided estimated volumes for the initial term and based on these volumes the value of the initial term … is $0.7b" (p 6).

1B In a report to the Audit & Risk Committee on 29 November 2019, KPMG observed that "[s]ince 30 June there has been an increase in the level of contracts with accounting risk in the recognised position" (p 3) [DOW.1059.0005.0569].

1C On 22 April 2020, two days after the AusNet Contract had commenced, Cameron Slapp, partner of KPMG, told a meeting of the Audit & Risk Committee that "[a]n assessment of financial reporting risk … identified three key areas", including "[c]ontract risk, such as revenue recognition and recoverability of receivables and work in progress" [DOW.3000.0030.2605_0002].

1D By email of 28 April 2020, James Stone, Senior Manager, Audit & Assurance, of KPMG (**Stone**), reported to Hein Scholtz, who had taken over from Stewart as General Manager, Finance, Utilities, of the Downer Group (**Scholtz**), that KPMG's "contract selection criteria" included "**High WIP contracts** (is defined as contracts with >$5m of WIP, or contracts with total contract value > $5m of claims/billings to date), we select again contracts expected to overall be > $10m" (bold in original) [DOW.3000.0057.5108].

1E By email of 13 May 2020, 1:58 pm, Stone told Scholtz and Stewart, who was now Financial Controller, Utilities, of the Downer Group, that there were "**6** projects which we have selected based on **the size of the WIP balance**, as we would previously we need to understand how the WIP is recoverable and when it is likely to be **recovered**" (bold in original) [DOW.1061.0003.4545]. Attached to the email was a spreadsheet, entitled "Utilities FY20 April contract selections", which listed six contracts "selected [for audit testing] as a result of … having large WIP balances > $5m and we need to have a discussion regarding the expected recoverability of the WIP position and the audit evidence we can obtain for these contracts." One of those contracts was "UED", with a WIP balance of $9.2m [DOW.1061.0003.4546].

1F In reply, on 13 May 2020 at 2:19 pm, Stewart asked, "Can you provide the BU for UED WIP balance – I think this will be Ausnet OMSA as we are only doing little bits of work for UED" [DOW.1061.0003.4547].

1G On 15 May 2020, Stone emailed Scholtz and Stewart an agenda for a meeting to be held between Downer Utilities and KPMG on 18 May 2020 [DOW.3000.0057.5111; DOW.3000.0057.5112]. In the agenda, it was proposed that there be a "[d]iscussion of margin recognition" on seven contracts, including the AusNet Contract.

2 By email of 19 May 2020, KPMG wrote to Scholtz ~~Downer~~, "~~[p]~~Please provide detailed WIP balance breakdowns for OMSA $9.2m … Provide the May invoices for $6.8m of April WIP which will be billed. Provide a tracking schedule or other ability to reconcile the May invoices to the April WIP" [DOW.1002.0015.8343].

3 In reply, on 22 May 2020, Priya Maganty, Finance Manager, Transport and Infrastructure, of the Downer Group (**Maganty**), wrote "that not all of the WIP that has been generated in April-20 will necessarily be billed in May; we will have some WIP that is re-generated depending on when the work is completed", suggesting that some of the WIP had been recognised for work not yet completed [DOW.1002.0015.8343].

4 Attached to that reply was an Excel Workbook entitled "WIP April 20 OMSA", which included a spreadsheet, entitled "WIP April 20-Manual", which listed 174 Works Orders for which WIP, totalling $0.543m, ~~which~~ had been recognised for 100% of the unbilled amount of the agreed rates, however little cost had been incurred. On 84 of these Works Orders, the cost was less than half the sum of the amount billed and the WIP, together recognised as revenue, suggesting that revenue had been recognised for work not yet done [DOW.1002.0015.8346].

4A In a report to the Audit & Risk Committee on 19 June 2020, KPMG observed that “[s]ince 31 December there has been an increase in the level of contracts with accounting risk in the recognised position” (p 3) [DOW.1059.0004.1424].

4B At 30 June 2020, after the AusNet Contract had been in force only three months, WIP on the Contract was recognised at $8.137m, as acknowledged by KPMG in a report to the Audit & Risk Committee on 17 February 2023 (p 4) [DOW.1070.0002.8200]. Meanwhile, at 30 June 2020, Downer Utilities’ “contract assets”, defined as “primarily relat[ing] to [its] rights to consideration for work performed but not billed”, were recognised at $158.815m, as reported in the financial report for FY20 (p 21) [DOW.3000.0071.9583]. Accordingly, at 30 June 2020, after the AusNet Contract had been in force only three months, WIP on the Contract was already 5.12% of the contract assets.

5 On 9 July 2020, KPMG emailed Scholtz and Stewart ~~Downer~~ a spreadsheet, entitled ~~“30 April~~ “Utilities FY20 June contract selections” (**June 20 Contracts Spreadsheet**), which listed the AusNet Contract as one of six “selected [for audit testing] as a result of … having large WIP balances, expected to be > $5m and we need to have a discussion regarding the expected recoverability of the WIP position and the audit evidence we can obtain for these contracts” [DOW.3000.0057.4882; DOW.3000.0057.4883].

6 When selecting contracts for testing, according to its report on the Consolidated Financial Report for FY20, KPMG had “included factors which indicated to us a greater level of judgement was required by the Group when assessing the revenue recognition” (pp 53–4) [DOW.3000.0070.9995].

6A On 12 July 2020, Rudy Lay, Financial Reporting Manager, Utilities, of the Downer Group (**Lay**), emailed KPMG an “Operations Summary Report” for the AusNet Contract, in which WIP, as at 31 May 2020, was graphed at about $7m [DOW.3000.0018.1006].

6B On 14 July 2020, KPMG emailed Scholtz, Stewart, and others an updated version of the June 20 Contracts Spreadsheet, which still listed the AusNet Contract as one of six “selected [for audit testing] as a result of … having large WIP balances, expected to be > $5m and we need to have a discussion regarding the expected recoverability of the WIP position and the audit evidence we can obtain for these contracts” [DOW.3000.0057.4885; DOW.3000.0057.4886].

6C In its financial report for FY20, Downer Utilities recognised “[r]evenue recognition” as a “[k]ey estimate and judgement”, explaining that “[d]etermining the stage of completion require[d] an estimate of expenses incurred to date as a percentage of total estimated costs" (p 17) [DOW.3000.0071.9583].

7 Likewise, ~~I~~in the Consolidated Financial Report for FY20, Downer recognised "[r]evenue recognition" as one of the Group's ~~its~~ "[k]ey estimates and judgments", explaining that "[d]etermining the stage of completion require[d] an estimate of expenses incurred to date as a percentage of total estimated costs" (p 73) [DOW.3000.0070.9995].

8 In its report on the Consolidated Financial Report, KPMG confirmed that "[r]evenue recognition [was] a key audit matter" (p 53) [DOW.3000.0070.9995].

9 Given paragraphs 30D and 36 and particulars ~~1~~0–8 above, if KPMG had exercised reasonable care and skill in auditing the revenue recognised from the AusNet Contract, it would have discovered the FY20 Subsidiary Overstatement and, therefore, the FY20 Group Overstatement.

10 Had it discovered either the FY20 Subsidiary Overstatement or the FY20 Group Overstatement, KPMG, exercising reasonable care and skill:

(a) would have reported the Overstatement either to the directors or to the Audit & Risk Committee or to management, as required by the FY20 Retainer (see para 5(b) above);

(b) in any case, would have reported the Overstatement to management as required by ASA 450 (see para 16(b) above) and as promised in its interim status report to the Audit & Risk Committee on 15 April 2020, where it had promised to report any error worth more than $1m (p 5) [DOW.1059.0017.0881];

(c) would have requested that management correct the error, as required by ASA 450 (see para 16(b) above); and

(d) had management not corrected the error, would have reported it either to the Audit & Risk Committee or otherwise to the board and requested that they correct it, as required by ASA 450, interpreted in accordance with ASA 260 (see paras 16(d) and 21 above).

11 Further particulars may be provided after discovery.

Schedule 2

Particulars to paragraphs 56B & 72 (conduct of audits for FY21)

1 In its External Audit Plan of 13 October 2020, KPMG identified "revenue recognition … and WIP" as high "[r]elative risk[s]" and "Potential Key Audit Matters" (p 4) [DOW.1059.0006.6154].

1A On 30 October 2020, KPMG emailed Michael Ferguson, Chief Financial Officer of the Downer Group (**Ferguson**), and Vivian Tam, Deputy Chief Financial Officer of the Downer Group (**Tam**), an "Audit Strategy Presentation" for a meeting to be held with the General Managers, Finance, of the Downer Group on 2 November 2020 [DOW.3000.0070.8728, DOW.3000.0070.8729]. In the Presentation, it was recognised as a "[c]ore principle" that an entity should "[r]ecognise revenue to depict the transfer of promised goods or services to customers in an amount that reflects consideration to which the entity expects to be entitled in exchange for those goods or service[s]" (**Core Revenue Principle**) (p 8).

1B On 11 November 2020, at 9:00 am, KPMG emailed Ferguson and Tam an "Audit Strategy Presentation" for a meeting of the Downer Strategy Committee, to be held on 12 November 2020 [DOW.3000.0070.9372, DOW.3000.0070.9373]. In that Presentation, too, was the Core Revenue Principle recognised (p 4).

1C By email of 11 November 2020, 2:34 pm, Stone asked Lay [DOW.1061.0003.4746]:

> [C]an you please investigate there is ~$13.3m of WIP that sits in a Contract management Utilities subledger … Can you please share what contracts sit behind that $13.3m and if it relates to any contracts that have material WIP which does not just relate to general billings a month or two in arrears [bold in original] …

1D On 11 November 2020, at 3:45 pm, Lay replied, "The $13.3m is part of the overall $13.9 Ausnet – OMSA WIP balance. Generally corresponds to current month revenue, with cash collected the following months" [DOW.1061.0003.4746].

1E On 11 November 2020, at 3:55 pm, Stone wrote back, "Can you please ask the business for the Ausnet – OMSA WIP balance to provide a breakdown of the WIP and highlight any aged items for us to discuss" [DOW.3000.0057.2788].

2 By email of 12 November 2020, KPMG sent Scholtz, Stewart, and others ~~Downer~~ an agenda for a meeting to be held 13 November 2020 (**13 Nov 20 Agenda**) [DOW.3000.0057.3404; DOW.3000.0057.3405]. In the 13 Nov 20 ~~a~~Agenda, the AusNet

Contract was listed as one of five “previously discussed and still identified as a risk … Risk flagged due to; **High WIP $13.9**” (bold in original).

3 Also attached to the email was a spreadsheet, entitled ~~“31 Oct~~ “Utilities FY21 October contract_selections”, which listed the AusNet Contract as one of seven to be tested [DOW.3000.0057.3406].

3A On 16 November 2020, in reply to Stone’s email of 11 November 2020, 3:55 pm (see particular 1E above), Lay emailed Stone a table, described as an “OMSA breakdown”, in which the WIP, recognised at $13.924m, was broken down, not by Works Order, but by age [DOW.3000.0057.2788].

3B In a report to the Audit & Risk Committee on 27 November 2020, KPMG advised that “[r]evenue recognition [was] a key financial statement risk” (p 20) [DOW.1059.0016.8656].

4 By email of 12 January 2021, KPMG requested “the breakdown of WIP that sits in a Contract management Utilities subledger. This is largely/should be OMSA/Ausnet” [DOW.3000.0057.4956].

5 Attached to that email was the proposed agenda for a meeting to be held 14 January 2021 (**14 Jan 21 Agenda**) [DOW.3000.0057.4958]. In the ~~proposed~~ 14 Jan 21 ~~a~~Agenda, as in the 13 Nov 20 Agenda, the AusNet Contract was ~~again~~ identified as one of five “previously discussed and still identified as a risk … Risk flagged due to; **High WIP**” (bold in original).

6 Also attached to the email was a spreadsheet, entitled ~~“31 Dec~~ “Utilities FY21 December contract_selections” (**Dec 20 Contracts Spreadsheet**), in which the AusNet Contract was again listed as one of seven to be tested [DOW.3000.0057.4957]. “As part of our procedures”, it was explained, “we will obtain evidence of … OMSA/Ausnet as we have performed at 30 June 2020 we will request information to satisfy ourselves that the WIP for these contracts is recoverable and a function of the 1 or 2 month billing/approval cycle”. However, the WIP on the AusNet Contract was not quantified.

7 When selecting contracts for testing, according to its report on the Consolidated Financial Report for FY21 [DOW.3000.0070.9997], KPMG had “included factors which indicated to us a greater level of judgement was required by the Group when assessing the revenue recognition” (p 55).

7A On 13 January 2021, KPMG emailed Scholtz, Stewart, and others [DOW.1001.0002.3921]:

(a) an updated version of the 14 Jan 21 Agenda, in which the AusNet Contract was listed as one of five “for KPMG to obtain information WIP > $5m” [DOW.1001.0002.3922]; and

(b) an updated version of the Dec 20 Contracts Spreadsheet [DOW.1001.0002.3923], in which:

(i) the WIP on the AusNet Contract, not quantified in the original version of the Spreadsheet, was now quantified, as at 31 December 2020, at $17.5m; and

(ii) the AusNet Contract was listed as one of six of which KPMG said, “[W]e will satisfy ourselves through obtaining WIP breakdown schedules that this relates to billing and is recoverable. A detailed discussion is not required.”

8 By email of 18 January 2021, KPMG requested, for the AusNet Contract, a “[b]reakdown of WIP for December 20” [DOW.1061.0001.2373].

9 In reply, on 18 January 2021, Maganty, now Finance and Commercial Manager, Distribution Networks, Utilities, of the Downer Group, emailed KPMG an Excel Workbook, entitled “WIP – OMSA Dec-20”, which included a spreadsheet, entitled “December 20 WIP”, which listed [DOW.1061.0001.2373; DOW.1061.0001.2374]:

(a) 1,934 Works Orders for which WIP, totalling $6.838m, had been recognised for 100% of the unbilled amount of the agreed rates, even though the cost incurred on those Works Orders was less than half the sum of the amount billed and the WIP, together recognised as revenue, suggesting that revenue had been recognised for work not yet done; and

(b) 502 Works Orders for which WIP, totalling $1.681m, had been recognised even as it exceeded the agreed rates, so that the excess, amounting to ~~$~~$1.545m, was not recoverable at all.

9A In a report to the Audit & Risk Committee on 29 January 2021, KPMG observed that, “[a]t 31 December 2020, there [was] accounting risk in meeting the highly probable revenue recognition threshold for certain claim positions. We assessed a net downside risk of $12.1m”, which did not include any of the WIP recognised on the AusNet Contract (pp 3, 10) [DOW.1059.0002.7574].

10 On 7 May 2021, KPMG emailed Scholtz, Stewart, and Lay ~~Downer~~ a draft agenda for a meeting to be held with Downer Utilities on 11 May 2021 [DOW.3000.0057.4938; DOW.3000.0057.4939]. In the draft agenda, the AusNet Contract was identified as one of five “for KPMG to obtain information to cover standard WIP positions”.

10A On 12 May 2021, Stewart emailed Stone a table, described as an "OMSA WIP Breakdown", in which the WIP, recognised at $18.906m, was broken down in various ways, but not by Works Order [DOW.3000.0057.4281].

10B In a report to the Audit & Risk Committee on 18 June 2021, KPMG observed that, "[a]t 30 April 2020, there [was] accounting risk in meeting the highly probable revenue recognition threshold for certain claim positions. We assessed a net downside risk of $22.8m", which did not include any of the WIP recognised on the AusNet Contract (pp 4, 10) [DOW.1059.0006.3044].

11 By email of 12 July 2021, KPMG requested a "WIP breakdown as at June 21 with invoicing details" [DOW.3000.0057.3360; DOW.3000.0057.3361].

12 In reply, on 13 July 2021, Maganty ~~Downer~~ emailed KPMG an Excel Workbook ~~spreadsheet,~~ entitled "OMSA WIP June21" (**June 21 WIP Workbook**), which included a summary spreadsheet, entitled "257-OMSA" (**June 21 Summary Spreadsheet**), in which WIP was recognised at $27.821m. Of this amount, $15.109m, described as "Monthly WIP", was broken down by Works Order in a supporting spreadsheet, entitled "WIP Jun21", but it was not explained how the WIP for any Works Order had been calculated [DOW.1058.0013.8638; DOW.1058.0013.8640].

12A The WIP of $27.821m, recognised in the June 21 Summary Spreadsheet, was recognised as at 30 June 2021. At that date, Downer Utilities' "contract assets" (see Sch 1, particular 4B), as reported in the financial report for FY21, stood at $159.083m (p 19) [DOW.3000.0071.9584]. Accordingly, at 30 June 2021, the WIP on the AusNet Contract was 17.49% of the contract assets.

12B By email of 22 July 2021, Stone wrote to Rongrong Wang, Finance Analyst, Utilities, of the Downer Group [DOW.1061.0002.1475]:

> We are currently undertaking our testing on the final 30 June 2021 balance sheet including trade receivables and WIP. Please find attached the samples selected. Can you please coordinate the pulling together of the information requested please?
>
> …
>
> For the WIP we are also testing the recoverability of the WIP by getting the latest correspondence/acceptance or signed payment claim and want to gain an understanding on when the WIP will be billed.

Attached to the email was a spreadsheet in which KPMG requested certain documents and information about seven samples of "Trade Receivables", one sample of "Aged

Trade Debtors", and five samples of "WIP" [DOW.1061.0002.1476]. None of the samples of WIP had arisen out of the AusNet Contract.

12C In a report to the Audit & Risk Committee on 29 July 2021, KPMG observed that, "[a]t 30 June 2021, there [was] accounting risk in meeting the highly probable revenue recognition threshold for certain claim positions. We assessed a net downside risk of $29.6m", which did not include any of the WIP recognised on the AusNet Contract (pp 4, 9) [DOW.3000.0071.9599_0071].

13 Appended to that report was ~~On 29 July 2021, KPMG presented the Audit & Risk Committee with~~ a draft opinion, proposed to be issued by KPMG on the Consolidated Financial Report for FY21, acknowledging that "[r]ecognition of revenue [was] a key audit matter" (app 1, p 18~~3~~) [DOW.3000.0071.9599_0071~~1059.0020.6027~~].

13A On 4 August 2021, Maganty emailed KPMG an Excel Workbook, entitled "OMSA WIP Billing July21", which contained all the data contained in the June 21 WIP Workbook, as described in particular 12 above [DOW.1002.0013.8167, DOW.1002.0013.8168]. As in that Workbook, so in this one, although the "Monthly WIP" of $15.109m was broken down by Works Order, it was not explained how the WIP for any Works Order had been calculated.

13B In its financial report for FY21, Downer Utilities recognised "[r]evenue recognition" as a "[k]ey estimate and judgement", explaining that "[d]etermining the stage of completion require[d] an estimate of expenses incurred to date as a percentage of total estimated costs" (p 16) [DOW.3000.0071.9584].

14 Likewise, ~~I~~in the Consolidated Financial Report for FY21, Downer recognised that "[r]evenue recognition" was one of its "[k]ey estimates and judgments", explaining that "[d]etermining the stage of completion [of work] requires an estimate of expenses incurred to date as a percentage of total estimated costs" (p 73) [DOW.3000.0070.9997].

15 In its report on the Consolidated Financial Report, KPMG confirmed that "[r]evenue recognition [was] a key audit matter" (p 54) [DOW.3000.0070.9997].

16 Given paragraphs 40D and 46 and particulars 1–15 above, in circumstances where ~~after~~ the FY20 Subsidiary Overstatement and the FY20 Group Overstatement had already been made, if KPMG had exercised reasonable care and skill in auditing the revenue recognised from the AusNet Contract in FY21, it would have discovered the FY21 Subsidiary Overstatement and, therefore, the FY21 Group Overstatement.

17 Had it discovered <u>either</u> the FY21 <u>Subsidiary</u> Overstatement <u>or the FY21 Group Overstatement</u>, KPMG, exercising reasonable care and skill:

(a) would have reported the Overstatement either to the directors or to the Audit & Risk Committee or to management, as required by the FY21 Retainer (see para 9(b) above);

(b) in any case, would have reported the Overstatement to management as required by ASA 450 (see para 16(b) above) and as represented in its report to the Audit & Risk Committee on 29 July 2021, where it said it had reported “audit differences greater than … $0.75m” (p 2) [DOW.1059.0020.6027];

(c) would have requested that management correct the Overstatement, as required by ASA 450 (see para 16(b) above); and

(d) had management not corrected the Overstatement, would have reported it either to the Audit & Risk Committee or otherwise to the board and requested that they correct it, as required by ASA 450, interpreted in accordance with ASA 260 (see paras 16(d) and 21 above).

18 Further particulars may be provided after discovery.

Schedule 3

Particulars to paragraphs 84B & 86 (conduct of audits for FY22)

1 In its Audit Plan of 13 October 2021, KPMG identified "[r]evenue recognition" as one of two "primary audit focusses" (p 2), and identified "revenue recognition … and WIP" as high "[r]elative risk[s]" and "Potential Key Audit Matters" (p 4) [DOW.1059.0005.9925].

2 On 12 November 2021, KPMG emailed Scholtz, Stewart, Maganty, and others ~~Downer~~ an agenda for a meeting to be held with Downer Utilities on 15 November 2021 [DOW.3000.0057.1803; DOW.3000.0057.1804]. In the agenda, the AusNet Contract was identified as one of seven "ongoing/known risk contracts" due to its "**High and aged WIP**" (bold in original).

3 By email of 22 November 2021, KPMG requested a "[b]reakdown of WIP at 31-Oct-21 and ageing of items" [DOW.3000.0057.1797; DOW.3000.0057.1798].

4 In reply, on 29 November 2021, Stewart ~~Downer~~ emailed KPMG a table, entitled "OMSA Total WIP – October 21", in which WIP was recognised at $25.625m, including $4.019m that was over 90 days old. None of this was broken down by Works Order [DOW.3000.0019.6701].

4A In a report to the Audit & Risk Committee on 8 December 2021, KPMG observed that, "[a]t 31 October 2021, there [was] accounting risk in meeting the highly probably threshold for certain claim positions. We have assessed a downside risk of $18.6m," which did not include any of the WIP recognised on the AusNet Contract (pp 4, 12) [DOW.1019.0001.5870].

5 By email of 18 January 2022, KPMG requested a "[b]reakdown of the WIP/accrued revenue as at 31-Dec-21. Please provide timing of expected billings. Please provide amount invoiced in January for 31-Dec-21 position" [DOW.3000.0057.1746; DOW.3000.0057.1747].

6 In reply, on 21 January 2022, Stewart ~~Downer~~ emailed KPMG a spreadsheet, entitled "WIP Networks Dec21-Audit", in which WIP was recognised at $32.409m, including $5.583m that was over 90 days old [DOW.3000.0020.9363; DOW.3000.0020.9364]. None of this was broken down by Works Order.

7 On 2 February 2022, Stewart ~~Downer~~ emailed KPMG a further spreadsheet, entitled "WIP Networks Dec21-Jan-22 Billing", showing that of the $32.409m of WIP recognised at December 2021 (see particular 6 above), only $11.107m or 34% had been billed in

January 2022, suggesting that WIP had been recognised for work not yet done [DOW.3000.0019.6949; DOW.3000.0019.6950].

7A In a report to the Audit & Risk Committee on 27 January 2022, KPMG observed that, "[a]t 31 December 2021, there [was] accounting risk in meeting the highly probable threshold for certain claim positions. We have assessed a downside risk of $24.0m," which did not include any of the WIP recognised on the AusNet Contract (pp 4, 10) [DOW.1059.0015.0173].

7B On 10 May 2022, at 10:57 am, KPMG emailed Scholtz, Stewart, and others the agenda for a meeting to be held with Downer Utilities at 2:00 pm that day [DOW.1032.0001.0024, DOW.1032.0001.0025]. In the agenda, the AusNet Contract was listed as one of four "with high WIP (>5m)".

7C On 13 May 2022, at 8:59 am, Stewart emailed KPMG an "Operations Summary Report" for the AusNet Contract, in which WIP, as at 31 March 2022, was graphed at about $30m [DOW.3000.0020.9006].

7D On 13 May 2022, at 11:49 am, Stewart emailed KPMG a spreadsheet in which WIP, as at 30 April 2022, was recognised at $33.651m — 80% more than the amount, $18.687m, at which it had been recognised a year earlier [DOW.3000.0020.9074, DOW.3000.0020.9080].

7E By an exchange of emails on 30 May 2022, Rhys Hopkins, Director, Audit, Assurance & Risk Consulting, of KPMG (**Hopkins**), agreed with Stewart that, on 21 June 2022, KPMG would provide a "revenue training session" to finance staff at the Downer Group (**Revenue Training Session**) [DOW.3000.0057.1941].

7F By email of 31 May 2022, Stewart told Hopkins that, in the Revenue Training Session, "I think we should cover … [c]onsiderations when commencing a new contract ie how should we recognise revenue? Distinct performance obligations … payments for overhead plus schedule of rates for work orders under a single contract etc" [DOW.3000.0057.1941].

7G In a report to the Audit & Risk Committee on 17 June 2022, KPMG advised that "[t]here are certain contracts where we consider the divisional contract positions to be 'optimistic' and not consistent with the threshold set by accounting standards for recognition of revenue." The AusNet Contract was not one of these contracts (see pp 4–5) [DOW.3000.0071.9605]. Accordingly, KPMG advised that "[r]ecognition" of the WIP on the AusNet Contract, at $34.4m, was “acceptable”, and “**[t]he current level of accounting recognition appears appropriate**” (p 26) (bold in original).

8 The Revenue Training Session took place ~~O~~on 21 June 2022.~~, KPMG acknowledged,~~ ~~i~~In the Session, Hopkins presented a “Revenue recognition refresher” in which the Core Revenue Principle was repeated, and it was acknowledged ~~provided to Downer’s finance staff,~~ that “[r]evenue recognition [was] a key financial statement risk” (pp 2, 5) [DOW.3000.0021.0795; DOW.3000.0021.0796].

9 On 2 August 2022, Maganty ~~Downer~~ emailed KPMG an Excel Workbook, entitled “OMSA GSC WIP Detail Jun22”, which included a spreadsheet, entitled “OMSA WIP” (**June 22 WIP Spreadsheet**), which listed 22,453 Works Orders for which WIP had been recognised at $38.825m [DOW.3000.0020.8945; DOW.3000.0020.8946]. Although the WIP was broken down by Works Order, it was not explained how the WIP had been calculated for any Works Order.

9A The WIP of $38.825m, recognised in the June 22 WIP Spreadsheet, was recognised as at 30 June 2022. At that date, Downer Utilities’ “contract assets” (see Sch 1, particular 4B), as reported in the financial report for FY22, stood at $132.219m, (p 20) [DOW.3000.0071.9582]. Accordingly, at 30 June 2022, the WIP on the AusNet Contract was 29.36% of the contract assets.

10 By email of 3 August 2022, KPMG requested further information (**Works Order RFI**) about three of the Works Orders, numbered 111412395, 111463035, and 111441356, listed in the June 22 ~~“OMSA~~ WIP~~”~~ ~~s~~Spreadsheet [DOW.3000.0020.9042; DOW.3000.0020.9043].

10A In a report to the Audit & Risk Committee on 5 August 2022, KPMG advised that “[t]here are certain contracts where we consider the divisional contract positions to be ‘optimistic’ and not consistent with the threshold set by accounting standards for recognition of revenue.” The AusNet Contract was not one of these contracts (pp 4–5) [DOW.1013.0002.1811].

10B Appended to that report was a draft opinion, proposed to be issued by KPMG on the Consolidated Financial Report for FY22, acknowledging that “[r]ecognition of revenue [was] a key audit matter” (app 1, p 27) [DOW.1013.0002.1811].

11 On 9 August 2022, ~~I~~in reply to the Works Order RFI, Stewart ~~on 9 August 2022, Downer~~ emailed KPMG an Excel Workbook entitled “OMSA WIP Detail June 22 KPMG”, which disclosed that [DOW.3000.0020.9063; DOW.3000.0020.9066]:

(a) for Works Order 111412395, for which WIP had been recognised at $4,239.28, the WIP was 60% of the agreed rate; yet “0” hours of “[a]ctual work” had been done;

(b) for Works Order 111463035, for which WIP had been recognised at $1,221.74, the WIP was 60% of the agreed rate; yet “0” hours of “[a]ctual work” had been done; and

(c) for Works Order 111441356, for which WIP had been recognised at $15,946.53, the WIP was 192% of the agreed rate.

12 On 11 August 2022, Scholtz ~~Downer~~ emailed KPMG another Excel Workbook, entitled “OMSA JUN WIP Detail 110822”, which included a spreadsheet entitled “June 22 WIP Cals 060722” (**June 22 WIP Cals Spreadsheet**), which listed 25,712 Works Orders for which WIP had been recognised at $39.480m [DOW.1001.0001.4940; DOW.1001.0001.4941]. For each of these Works Orders, there was recorded:

(a) the agreed rate (described as “SAP Sell Rate”, SAP being the software used by AusNet to issue the Works Order);

(b) a percentage, ranging from 40% to 100%;

(c) if the percentage was less than 100% (and, in many cases, even if it was 100%), an “Operation Status” equated to the percentage;

(d) a “WO Start Date”; and

(e) the age of the WIP.

13 From these data, it could be seen that:

(a) for each of the 25,712 Works Orders listed in the spreadsheet (apart from 191 that would be identified two days later by KPMG, as described in paragraph 15 below), the WIP was recognised at the agreed rate multiplied by the percentage;

(b) for 16,088 of the Works Orders, accounting for $18.122m of the WIP, the “Operation Status” was given as “SCHD TRAN” or “SCPD TRAN”, each of which, which would be translated two days later, as described in paragraph 14 below, was equated to 60% of the agreed rate;

(c) for 6,653 of the Works Orders, accounting for $9.026m of the WIP, the “WO Start Date” was after 30 June 2022; yet, for each of these, the WIP was recognised at 60% or more of the agreed rate, and for 2,632 of them, accounting for $0.653m of the WIP, the WIP was recognised at 100% of the agreed rate;

(d) for 12,068 of the Works Orders, accounting for $15.199m of the WIP, the WIP was recognised at 100% of the agreed rate; yet for only 1,602 of these, accounting for $4.097m of the WIP, did the “Operation Status” include “BCOM”, which would be translated two days later, as described in paragraph 14 below; and

(e) for 3,808 of the Works Orders, accounting for $8.705m of the WIP, the WIP was aged over six months; and for 1,633 of these, accounting for $3.3m of the WIP, the WIP was aged over 12 months.

14 On 12~~3~~ August 2022, ~~at 9:03 am,~~ Schlotz ~~Downer~~ emailed KPMG a spreadsheet, entitled “WIP Descriptions”, which translated the “Operation Statuses” used in the June 22 WIP Cals Spreadsheet (see particulars 13(b) and 13(d) above) [DOW.1001.0001.2588; DOW.1001.0001.2589]. In this spreadsheet:

(a) “SCHD TRAN” was translated as “Scheduled, Transferred to Downer system”;

(b) “SCPD TRAN” was translated as “Scoped, Transferred to Downer system”; and

(c) “BCOM” was translated as “Business complete”. So, of the $15.199m of WIP recognised in the June 22 WIP Cals Spreadsheet at 100% of the agreed rate, as described in particular 13(d) above, $11.1m was recognised without the status, “Business complete”.

15 By email 13 August 2022, 12:54 pm, KPMG wrote to Schtotz ~~Downer~~ [DOW.1001.0001.2561]:

> **WIP journal calculation**
>
> - We have recalculated the expected WIP balance per the [June 22 WIP Cals Spreadsheet]. Our recalculation has been of SAP sell rate * percentage complete, has identified that there are 191 line items where the calculation identified a variance versus the WIP recognised.
> - Of these 70 WOs recognise a greater value for WIP than that per the calculation. This totals $951,395. There appears to be a formula adjustment within the tab to increase the WIP by 4.5% for each of these Wos. …
> - What is the 4.5% with respect to as it has not been identified in our conversations on the calculations?
> - …
>
> **Percentage complete definitions**
>
> - SCHD and SCOPED revenue is recognised at 60% per the file

- This recognises $17.0m of WIP based on this on this status.
- How do you consider the 60% to be the appropriate percentage for these types of WO status. This may require additional conversations to help understand from our side.

15A On 13 August 2022, at 8:48 pm, Scholtz answered some of the questions in that email, but not those ones [DOW.1001.0004.6027].

16 On 29 August 2022, after it had reported on the Consolidated Financial Report, KPMG emailed Smith ~~Downer~~ a spreadsheet entitled “Downer list of audit misstatements”, which acknowledged that revenue from the AusNet Contract, in the Consolidated Financial Report, had been overstated by $6m [DOW.1016.0001.0582; DOW.1016.0001.0583].

17 Given paragraphs 50D and 54 and particulars 1–16 above, in circumstances where ~~after~~ the FY20 Subsidiary Overstatement, the FY20 Group Overstatement, the FY21 Subsidiary Overstatement, and the FY21 Group Overstatement~~s~~ had already been made, if KPMG had exercised reasonable care and skill in auditing the revenue recognised from the AusNet Contract in FY22, it would have discovered the FY22 Subsidiary Overstatement and, therefore, the FY22 Group Overstatement.

18 Had it discovered either the FY22 Subsidiary Overstatement or the FY22 Group Overstatement, KPMG, exercising reasonable care and skill:

(a) would have reported the Overstatement either to the directors or to the Audit & Risk Committee or to management, as required by the FY22 Retainer (see para 13(b) above);

(b) in any case, would have reported the Overstatement both to management, as required by ASA 450 (see para 16(b) above), and to the Audit & Risk Committee, as promised in the Audit Plan of 13 October 2021, where KPMG had promised to “report to the … A&RC all unadjusted audit differences greater than $2.0m” (p 2) [DOW.1059.0015.5545];

(c) would have requested that management correct the Overstatement, as required by ASA 450 (see para 16(b) above); and

(d) had management not corrected the Overstatement, would have reported the uncorrected Overstatement either to the Audit & Risk Committee or otherwise to the board and requested that they correct it, as required by ASA 450, interpreted in accordance with ASA 260 (see paras 16(d) and 21 above).

19 Further particulars may be provided after discovery.

1. This notice was filed for the defendant by Crispian Lynch, solicitor, of Gilbert + Tobin, Level 25, 101 Collins Street Melbourne, VIC 3000.

2. The address of the defendant is 39 Delhi Road, North Ryde NSW 2113.

3. The address for service of the defendant is Gilbert + Tobin, Level 25, 101 Collins Street Melbourne, VIC 3000.

3A. The email address for service of the defendant is clynch@gtlaw.com.au and downer@gtlaw.com.au

4. The address of the third party is KPMG, Tower Two, Collins Square, 727 Collins Street, Melbourne VIC 3008