



IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERICAL COURT
COMMERICAL LIST

Case: S ECI 2020 03281

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BETWEEN

ANTHONY BOGAN AND OTHERS (ACCORDING TO THE SCHEDULE)

Plaintiffs

and

THE ESTATE OF PETER JOHN SMEDLEY DECEASED AND OTHERS
(ACCORDING TO THE SCHEDULE)

Defendants

AMENDED DEFENCE

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

Date of document: ~~4 June~~ 1 July 2021
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PRELIMINARY MATTERS

In answer to the statement of claim dated 14 August 2020 (the SoC):

- (a) the First to Fourth Defendants say that headings used in this Amended Defence (the Defence) below and, unless otherwise stated, or the context requires otherwise, defined terms used in this Defence, are adopted for convenience only and do not constitute any admission; and
- (b) the First to Fourth Defendants say that this Defence has been prepared with only limited access to Arrium documents and this Defence may require amendment after discovery.

A. THE PARTIES

A.1. The Plaintiffs and the Group Members

1. As to paragraph 1 of the SoC:

- (a) the First Defendant denies that Mr Smedley caused any Plaintiff or any Group Member any loss or damage;

- (b) each of the Second to Fourth Defendants deny that they caused any Plaintiff or any Group Member any loss or damage; and
 - (c) the First to Fourth Defendants otherwise do not admit paragraph 1 of the SoC.
2. The First to Fourth Defendants do not admit paragraph 2 of the SoC.
 3. The First to Fourth Defendants do not admit paragraph 3 of the SoC.
 4. The First to Fourth Defendants do not admit paragraph 4 of the SoC.

A.2. The Defendants

5. As to paragraph 5 of the SOC, the First to Fourth Defendants:
 - (a) admit sub-paragraphs (a) - (c) thereof;
 - (b) admit sub-paragraph (d) insofar as it alleges that Mr Smedley was a person as alleged therein at all material times but otherwise do not admit subparagraph (d);
 - (c) admit sub-paragraph (e) thereof;
 - (d) admit sub-paragraph (f) thereof;
 - (e) admit subparagraph (g)(i) thereof;
 - (f) admit sub-paragraph (g)(ii) insofar as it alleges Christine Mary Smedley is the executor of Mr Smedley's estate but otherwise do not admit sub-paragraph (g)(ii) thereof; and
 - (g) admit sub-paragraph (h) thereof.
6. The First to Fourth Defendants admit paragraph 6 of the SoC.
7. The First to Fourth Defendants admit paragraph 7 of the SoC.
8. The First to Fourth Defendants admit paragraph 8 of the SoC.
9. As to paragraph 9 of the SOC, the First to Fourth Defendants:
 - (a) with respect to sub-paragraph (a) thereof:
 - (i) admit that KPMG was a partnership at all material times;
 - (ii) admit that the KPMG provided auditing and accounting services within New South Wales at all material times; and
 - (iii) otherwise do not admit sub-paragraph (a) thereof;

- (b) do not admit sub-paragraph (b) thereof;
- (c) with respect to sub-paragraph (c) thereof:
 - (i) do not admit sub-paragraph (i); and
 - (ii) admit sub-paragraph (ii);
- (d) with respect to sub-paragraph (d) thereof:
 - (i) refer to and rely on the provisions of section 761F of the Corporations Act for their full force and effect; and
 - (ii) otherwise do not admit sub-paragraph (d);
- (e) with respect to sub-paragraph (e) thereof:
 - (i) say that each partner of KPMG (including Anthony (Tony) Wallace Young) was an agent of KPMG for the purposes of the business of the partnership;
 - (ii) say that KPMG is liable for any loss or injury caused by any wrongful act or omission of a partner of KPMG (including Mr Young) acting in the ordinary course of the business of KPMG to any person not being a partner of KPMG; and
 - (iii) otherwise do not admit sub-paragraph (e).

B. ARRIUM

10. As to paragraph 10 of the SoC, the First to Fourth Defendants:

- (a) admit sub-paragraphs (a) - (d) thereof;
- (b) with respect to sub-paragraph (e) thereof:
 - (i) deny that Arrium was subject to and bound by every provision of Part 2M.3 of the Corporations Act;
 - (ii) say that Arrium was subject to and bound by sections 292(1)(a) and (b), 295, 296(1), 297, 298(1), 298(1AA) (as it applied during the Relevant Period), 298(1A) and (2), 299, 299A, 300, 300A, 301(1), 302 - 305, 314(1), 314(1AA) - (1AE), 314(1A), 314 (2) and(3), 315(1), 319 and 320 of the Corporations Act;
 - (iii) otherwise admit sub-paragraphs (e)(i) - (e)(iv) thereof;
 - (iv) in relation to sub-paragraph (e)(v) thereof say that:

- (A) section 302 of the Corporations Act required Arrium to prepare a financial report and directors report complying with section 303 of the Corporations Act for each half-year, have that financial report audited or reviewed in accordance with Division 3 of Part 2M.3, obtain an auditor's report in respect of that audit or review (as the case may be) and lodge the financial report, directors report and auditor's report with ASIC;
- (B) section 305 of the Corporations Act required that the 1H15 Financial Report was required to give a full and fair view of the financial position of either Arrium or the consolidated entity comprising Arrium and its subsidiaries;
- (C) Australian accounting standards AASB101, AASB102, AASB 110, AASB118, AASB136, AASB137 and AASB139 referred to therein applied to annual reporting periods only and not to the 1H15 Financial Report because it was not in respect of an annual reporting period;
- (v) admit sub-paragraph (e)(vi) thereof;
- (vi) refer to and rely on the provisions of Part 2M.3 of the Corporations Act for their full force and effect; and
- (vii) otherwise deny sub-paragraph (e);
- (c) with respect to sub-paragraph (f) thereof:
 - (i) admit that Arrium was subject to and bound by ASX Listing Rules;
 - (ii) admit that Arrium was required, by Listing Rules 4.3A and 4.3B to give ASX the information set out in Appendix 4E;
 - (iii) admit sub-paragraphs (f)(ii) and (iii) thereof;
 - (iv) refer to and rely on the provisions of ASX Listing Rules 4.3A, 4.3B, 4.3D, 4.5 and Appendix 4E for their full force and effect; and
 - (v) otherwise deny sub-paragraph (f); and
- (d) with respect to sub-paragraph (g):
 - (i) say that Arrium was subject to and bound by sections 111AP(1) and 674(1) of the Corporations Act and ASX Listing Rule 3.1;

- (ii) refer to and rely upon sections 111AP(1) and 674(1) of the Corporations Act and ASX Listing Rule 3.1 for their full force and effect; and
- (iii) otherwise deny sub-paragraph (g).

11. As to paragraph 11 of the SoC, the First to Fourth Defendants:

- (a) with respect to sub-paragraph (a) thereof, say Arrium carried on business as a mining, mining consumables, steel and recycling company at all times during the Relevant Period;
- (b) with respect to sub-paragraph (b) thereof, say that the key segments for Arrium's earnings and profit at all material times during the Relevant Period were iron ore mining, mining consumables, steel and recycling;

Particulars

- (1) FY14 Financial Report, 1H15 Financial Report and FY15 Financial Report.
- (c) in respect of sub-paragraph (c) thereof:
 - (i) admit that, in FY2014, as part of Arrium's mining segment, Arrium had the SI Mining Operation and the MBR Mining Operation;
 - (ii) say that, in FY2014, the SI Operation contributed just over 3.8Mt (wet), and the MBR Operations contributed just over 9.5Mt (wet) of Arrium's iron ore volumes; and
 - (iii) otherwise do not admit sub-paragraph (c);

Particulars

- (1) Page 10 FY14 Financial Results Announcement.
- (d) admit the SI Operation included an operative mine at Peculiar Knob and otherwise do not admit sub-paragraph (d) thereof.

C. DIRECTORS' ROLES

12. As to paragraph 12 of the SoC, the First to Fourth Defendants:

- (b) say that Mr Smedley was a director of Arrium from 19 August 2014 to 17 November 2014 but ceased acting as a director on 17 November 2014;
- (c) admit that the Second to Fourth Defendants were directors of Arrium throughout the Relevant Period;

- (d) admit that Mr Smedley (until 17 November 2014 only) and the Second to Fourth Defendants:
 - (i) made, or participated in making, decisions that affected the whole or a substantial part of the business of Arrium; and
 - (ii) had the capacity to affect significantly Arrium's financial position; and
 - (e) otherwise deny paragraph 12.
13. As to paragraph 13 of the SoC:
- (a) the Fourth Defendant does not plead to paragraph 13 as it makes no allegation against him and he was not appointed a director of Arrium until 19 August 2014;
 - (b) the First to Third Defendants:
 - (i) admit paragraph 13 insofar as it contains allegations with respect to the FY14 Financial Report; and
 - (ii) otherwise deny paragraph 13 if and insofar as it makes allegations with respect to any other Financial Report.
14. As to paragraph 14 of the SoC:
- (a) the First Defendant does not plead to paragraph 14 as it makes no allegation against Mr Smedley and he ceased to be a director of Arrium on 17 November 2014;
 - (b) the Second to Fourth Defendants:
 - (i) say that the Fourth Defendant was appointed as a director of Arrium on 19 August 2014;
 - (ii) admit sub-paragraph (a) thereof insofar as it contains allegations with respect to the 1H15 Financial Report;
 - (iii) otherwise deny sub-paragraph (a) if and insofar as it makes allegations with respect to any other Financial Report;
 - (iv) deny sub-paragraph (b) thereof;
 - (v) admit sub-paragraph (c) thereof insofar as it contains allegations with respect to the 1H15 Financial Report; and
 - (vi) otherwise deny sub-paragraph (c) if and insofar as it makes allegations with respect to any other Financial Report.

15. As to paragraph 15 of the SoC:

- (a) the First Defendant does not plead to paragraph 14 as it makes no allegation against Mr Smedley and he ceased to be a director of Arrium on 17 November 2014; and
- (b) the Second to Fourth Defendants:
 - (i) admit paragraph 15 insofar as it contains allegations with respect to the FY15 Financial Report; and
 - (ii) otherwise deny paragraph 15 if and insofar as it makes allegations with respect to any other Financial Report.

16. As to paragraph 16 of the SoC:

- (a) insofar as it concerns the year ended 30 June 2014:
 - (i) the Fourth Defendant does not plead to paragraph 16 as it makes no allegation against him and he was not appointed a director of Arrium until 19 August 2014; and
 - (ii) the First to Third Defendants deny paragraph 16 of the SoC and further say that the declaration to directors required to be given by section 295A of the Corporations Act could have been given by a person who exercised a chief executive function or a chief financial officer function;
- (b) insofar as it concerns the year ended 30 June 2015:
 - (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to those allegations as it concerns events after that date; and
 - (ii) the Second to Fourth Defendants deny paragraph 16 of the SoC insofar as it concerns the year ended 30 June 2015 and further say that the declaration to directors required to be given by section 295A of the Corporations Act could have been given by a person who exercised a chief executive function or a chief financial officer function.

D. KPMG's ROLE

D.1 KPMG's Audit Obligations

17. As to paragraph 17 of the SoC:

- (a) insofar as it concerns the 2014 Financial Report:

- (i) the Fourth Defendant does not plead to paragraph 17 as it makes no allegation against him and he was not appointed a director of Arrium until 19 August 2014; and
- (ii) the First to Third Defendants:
 - (A) say that, on or about 4 December 2013, Arrium's directors, acting on behalf of Arrium and identified entities which were controlled entities of Arrium under the Corporations Act at that time, engaged KPMG as auditors of those entities, which engagement was effective for services performed for the annual financial reporting period ending 30 June 2014 and the half-year financial reporting period ending 31 December 2013 (the **2013 KPMG Retainer**); and

Particulars

- (1) The terms of the 2013 KPMG Retainer are contained in a letter from KPMG to the Third Defendant dated 4 December 2013.
- (B) rely on the terms of the 2013 KPMG Retainer respectively for their full force and effect.
- (b) insofar as it concerns the FY15 Financial Report and the 1H15 Financial Report:
 - (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to those allegations as it concerns events after that date; and
 - (ii) the Second to Fourth Defendants:
 - (A) say that, on or about 3 December 2014, Arrium's directors, acting on behalf of Arrium and identified entities which were controlled entities of Arrium under the Corporations Act at that time, engaged KPMG as auditors of those entities, which engagement was effective for services performed for the annual financial reporting period ending 30 June 2015 and the half-year financial reporting period ending 31 December 2014 (the **2014 KPMG Retainer**); and

Particulars

- (1) The terms of the 2014 KPMG Retainer are contained in a letter from KPMG to the Third Defendant dated 3 December 2014.

- (B) rely on the terms of the 2014 KPMG Retainer respectively for their full force and effect.

18. As to paragraph 18 of the SoC:

- (a) with respect to sub-paragraph (a)(i) thereof insofar as it concerns the year ended 30 June 2014 and the 2014 Financial Report:
 - (i) the Fourth Defendant does not plead to those allegations as they do not make an allegation against him and he was not appointed a director of Arrium until 19 August 2014; and
 - (ii) the First to Third Defendants:
 - (A) refer to and rely upon the provisions of section 307(a) of the Corporations Act for their full force and effect; and
 - (B) admit sub-paragraph (a)(i) insofar as it makes allegations with respect to KPMG's obligations as auditor of the FY14 Financial Report;
- (b) with respect to sub-paragraph (a)(i) thereof insofar as it concerns the half-year ended 31 December 2014, the year ended 30 June 2015 and the 2015 Financial Report:
 - (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to those allegations insofar as they concern events after that date; and
 - (ii) the Second to Fourth Defendants:
 - (A) refer to and rely upon the provisions of section 307(a) of the Corporations Act for their full force and effect;
 - (B) admit sub-paragraph (a)(i) insofar as it makes allegations with respect to KPMG's obligations as auditor of the FY15 Financial Report; and
 - (C) deny sub-paragraph (a)(i) if and insofar as it makes allegations with respect to KPMG's services in relation to the 1H15 Financial Report where, under the 2014 KPMG Retainer, KPMG undertook a review, rather than an audit, of that financial report;
- (c) with respect to sub-paragraph (a)(ii) thereof insofar as it concerns the year ended 30 June 2014 and the 2014 Financial Report:

- (i) the Fourth Defendant does not plead to those allegations as they do not make an allegation against him and he was not appointed a director of Arrium until 19 August 2014; and
- (ii) the First to Third Defendants:
 - (A) refer to and rely upon the provisions of section 307(b) of the Corporations Act for their full force and effect; and
 - (B) admit sub-paragraph (a)(ii) insofar as it makes allegations with respect to KPMG's obligations as auditor of the FY14 Financial Report;
- (d) with respect to sub-paragraph (a)(ii) thereof insofar as it concerns the year ended 30 June 2015 and the FY15 Financial Report and if and insofar as it concerns the half-year ended 31 December 2014 year and the 1H15 Financial Report:
 - (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and
 - (ii) the Second to Fourth Defendants:
 - (A) refer to and rely upon the provisions of section 307(b) of the Corporations Act for their full force and effect;
 - (B) admit sub-paragraph (a)(ii) insofar as it makes allegations with respect to KPMG's obligations as auditor of the FY15 Financial Report; and
 - (C) deny sub-paragraph (a)(ii) if and insofar as it makes allegations with respect to KPMG's services in relation to the 1H15 Financial Report where, under the 2014 KPMG Retainer, KPMG undertook a review, rather than an audit, of that financial report;
- (e) with respect to sub-paragraph (b) thereof insofar as it concerns the year ended 30 June 2014 and the 2014 Financial Report:
 - (i) the Fourth Defendant does not plead to those allegations as they do not make an allegation against him and he was not appointed a director of Arrium until 19 August 2014; and
 - (ii) the First to Third Defendants:
 - (A) refer to and rely upon the provisions of section 307A of the Corporations Act for their full force and effect; and

- (B) admit sub-paragraph (b) in respect of the audit of the FY14 Financial Report;
- (f) with respect to sub-paragraph (b) thereof insofar as it concerns the year ended 30 June 2015 and the audit of the FY15 Financial Report and if and insofar as it concerns the half-year ended 31 December 2014 and the review of the 1H15 Financial Report:
 - (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and
 - (ii) the Second to Fourth Defendants:
 - (A) refer to and rely upon the provisions of section 307A of the Corporations Act for their full force and effect;
 - (B) admit sub-paragraph (b) in respect of the audit of the FY15 Financial Report; and
 - (C) say that the Australian Auditing Standards referenced in sub-paragraph (b) applied to an audit of a financial report and were not applicable to the review of the 1H15 Financial Report;
- (g) with respect to sub-paragraphs (c) (i) and (ii) thereof insofar as they concern the year ended 30 June 2014 and the FY14 Financial Report;
 - (i) the Fourth Defendant does not plead to those allegations as they do not make an allegation against him and he was not appointed a director of Arrium until 19 August 2014; and
 - (ii) the First to Third Defendants:
 - (A) refer to and rely upon the provisions of section 308 of the Corporations Act for their full force and effect; and
 - (B) admit sub-paragraphs (c)(i) and (ii) insofar as they make allegations with respect to KPMG's obligations as auditor of the FY14 Financial Report;
- (h) with respect to sub-paragraphs (c) (i) and (ii) thereof insofar as they concern the year ended 30 June 2015 and the FY15 Financial Report and if and insofar as they concern the half year ended 31 December 2014 and the 1H15 Financial Report:

- (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and
- (ii) the Second to Fourth Defendants:
 - (A) refer to and rely upon the provisions of section 308 of the Corporations Act for their full force and effect;
 - (B) admit sub-paragraphs (c)(i) and (ii) insofar as they make allegations with respect to KPMG's obligations as auditor of the FY15 Financial Report; and
 - (C) deny sub-paragraphs (c)(i) and (ii) if and insofar as they make allegations with respect to KPMG's services in relation to the 1H15 Financial Report where, under the 2014 KPMG Retainer, KPMG undertook a review, rather than an audit, of that financial report;
- (i) with respect to sub-paragraph (c)(iii) thereof insofar as it concerns the year ended 30 June 2014 and the 2014 Financial Report:
 - (i) the Fourth Defendant does not plead to those allegations as they do not make an allegation against him and he was not appointed a director of Arrium until 19 August 2014; and
 - (ii) the First to Third Defendants:
 - (A) refer to and rely upon the provisions of section 308(3B) of the Corporations Act for their full force and effect; and
 - (B) admit sub-paragraph (c)(iii) insofar as it makes allegations with respect to KPMG's obligations as auditor of the FY14 Financial Report;
- (j) with respect to sub-paragraph (c)(iii) thereof insofar as it concerns the year ended 30 June 2015 and the FY15 Financial Report and if and insofar as it concerns the half-year ended 31 December 2014 year and the 1H15 Financial Report:
 - (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and
 - (ii) the Second to Fourth Defendants:

- (A) refer to and rely upon the provisions of section 308(3B) of the Corporations Act for their full force and effect;
 - (B) admit sub-paragraph (c)(iii) insofar as it makes allegations with respect to KPMG's obligations as auditor of the FY15 Financial Report; and
 - (C) deny sub-paragraph (c)(iii) if and insofar as it makes allegations with respect to KPMG's services in relation to the 1H15 Financial Report where, under the 2014 KPMG Retainer, KPMG undertook a review, rather than an audit, of that financial report;
- (k) with respect to sub-paragraphs (d)(i) and (ii) which concern the half-year ended 31 December 2014 and the 1H15 Financial Report:
 - (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and
 - (ii) the Second to Fourth Defendants:
 - (A) refer to and rely upon the provisions of section 309 of the Corporations Act for their full force and effect; and
 - (B) say that KPMG performed a review, rather than an audit, of the 1H15 Financial Report; and
- (l) with respect to sub-paragraph (d)(iii):
 - (i) if and insofar as it concerns the year ended 30 June 2014 and the 2014 Financial Report:
 - (A) the Fourth Defendant does not plead to those allegations as they do not make an allegation against him and he was not appointed a director of Arrium until 19 August 2014; and
 - (B) the First to Third Defendants:
 - (1) refer to and rely upon the provisions of section 308(3B) of the Corporations Act for their full force and effect; and
 - (2) admit sub-paragraph (d)(iii) insofar as it makes allegations with respect to KPMG's obligations as auditor of the FY14 Financial Report; and

- (i) if and insofar as it concerns the year ended 30 June 2015 and the 2015 Financial Report:
 - (A) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and
 - (B) the Second to Fourth Defendants:
 - (1) refer to and rely upon the provisions of section 308(3B) of the Corporations Act for their full force and effect;
 - (2) admit sub-paragraph (c)(iii) insofar as it makes allegations with respect to KPMG's obligations as auditor of the FY15 Financial Report; and
- (ii) insofar as it concerns the half-year ended 31 December 2014 year and the 1H15 Financial Report:
 - (A) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and
 - (B) the Second to Fourth Defendants deny sub-paragraph (d)(iii) in circumstances where, under the 2014 KPMG Retainer, KPMG undertook a review, rather than an audit, of the 1H15 Financial Report; and
- (m) the First to Fourth Defendants otherwise deny paragraph 18.

19. As to paragraph 19 of the SoC:

- (a) with respect to KPMG's audit of the FY14 Financial Report,:
 - (i) the Fourth Defendant does not plead to those allegations as they do not make an allegation against him and he was not appointed a director of Arrium until 19 August 2014; and
 - (ii) the First to Third Defendants:
 - (A) say that KPMG was obligated to prepare an auditor's report in respect to that financial report in accordance with the timetable set out in the 2013 KPMG Retainer (or as otherwise may have been agreed between Arrium

and KPMG) so as to enable Arrium to comply with section 319 of the Corporations Act; and

- (B) refer to and reply upon each of the terms of the 2013 KPMG Retainer and the provisions of section 319 of the Corporations Act for their full force and effect;

(b) with respect to KPMG's audit of the FY15 Financial Report:

- (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and

- (ii) the Second to Fourth Defendants:

- (A) say that KPMG was obligated to prepare an auditor's report in respect to that financial report in accordance with the timetable set out in the 2014 KPMG Retainer (or as otherwise may have been agreed between Arrium and KPMG) so as to enable Arrium to comply with section 319 of the Corporations Act; and

- (B) refer to and reply upon each of the terms of the 2014 KPMG Retainer and the provisions of section 319 of the Corporations Act for their full force and effect; and

(c) with respect to KPMG's review of the 1H15 Financial Report:

- (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and

- (ii) the Second to Fourth Defendants:

- (A) say that KPMG was obligated to prepare a report in respect of its review of that financial report in accordance with the timetable set out in the 2014 KPMG Retainer (or as otherwise may have been agreed between Arrium and KPMG) so as to enable Arrium to comply with section 320 of the Corporations Act; and

- (B) refer to and reply upon each of the terms of the 2014 KPMG Retainer and the provisions of section 320 of the Corporations Act for their full force and effect.

20. As to paragraph 20 of the SoC:

(a) in respect of the 2013 KPMG Retainer:

(i) the Fourth Defendant does not plead to those allegations as they do not make an allegation against him and he was not appointed a director of Arrium until 19 August 2014; and

(ii) the First to Third Defendants:

(A) say that the 2013 Retainer provided, in section 3.1, that:

- (1) KPMG's audits were to be conducted in accordance with Australian Accounting Standards, including complying with relevant ethical requirements relating to audit engagements and planning and performing the audits to obtain reasonable assurance whether the relevant financial report is free from material misstatement;
- (2) the procedures selected depended upon KPMG's judgment, including the assessment of the risks of material misstatement of the financial report;
- (3) KPMG's audits were to be planned and performed to obtain reasonable assurance that financial reports are free of material misstatement;
- (4) if, under section 295(3)(c) of the Corporations Act, additional information is included in the financial report to give a true and fair view, KPMG would undertake additional procedures in order to form their opinion on whether the additional information included was necessary;

(B) say that the 2013 Retainer provided, in section 3.2, that KPMG would review the interim consolidated financial report in accordance with Australian Standard on Review Engagements ASRE 2410 *Review of a Financial Report Performed by the Independent Auditor of the Entity* and would continue to perform all of their responsibilities in their capacity as auditor;

(C) say that the 2013 Retainer provided, in section 3.3, that KPMG would inform Arrium's directors, Audit and Compliance Committee and/or

management, as appropriate, about, *inter alia*, any misstatements or material errors identified except to the extent that section 1317AE of the Corporation Act (as it then was) would prevent them from doing so; and

- (D) say that the 2013 Retainer provided, in section 6, that, in providing the services to Arrium, KPMG would, at all times, use reasonable endeavours to meet the service level criteria agreed with Arrium and as set out in Appendix Three to the 2013 KPMG Retainer;
- (E) refer to and rely on the terms of the 2013 KPMG Retainer for their full force and effect; and
- (F) say that it was also a term of the 2013 KPMG Retainer, implied in order to give business efficacy to the contractual relationship thereby created, that KPMG would use reasonable skill and care in providing services pursuant to the respective retainers; and

(b) in respect of the 2014 KPMG Retainer:

- (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and
- (ii) the Second to Fourth Defendants:

- (A) say that the 2014 KPMG Retainer provided, in section 3.1, that:
 - (1) KPMG's audits were to be conducted in accordance with Australian Accounting Standards, including complying with relevant ethical requirements relating to audit engagements and planning and performing the audits to obtain reasonable assurance whether the relevant financial report is free from material misstatement;
 - (2) the procedures selected depended upon KPMG's judgment, including the assessment of the risks of material misstatement of the financial report;
 - (3) KPMG's audits were to be planned and performed to obtain reasonable assurance that financial reports are free of material misstatement; and

- (4) if, under section 295(3)(c) of the Corporations Act, additional information is included in the financial report to give a true and fair view, KPMG would undertake additional procedures in order to form their opinion on whether the additional information included was necessary;
- (B) say that the 2014 Retainer provided, in section 3.2, that KPMG would review the interim consolidated financial report in accordance with Australian Standard on Review Engagements ASRE 2410 *Review of a Financial Report Performed by the Independent Auditor of the Entity* and would continue to perform all of their responsibilities in their capacity as auditor;
- (C) say that the 2014 Retainer provided, in section 3.3, that KPMG would inform Arrium's directors, Audit and Compliance Committee and/or management, as appropriate, about, *inter alia*, any misstatements or material errors identified except to the extent that section 1317AE of the Corporation Act (as it then was) would prevent them from doing so; and
- (D) say that the 2014 Retainer provided, in section 6, that, in providing the services to Arrium, KPMG would, at all times, use reasonable endeavours to meet the service level criteria agreed with Arrium and as set out in Appendix Three to the 2014 KPMG Retainer;
- (E) refer to and rely on the terms of the 2014 KPMG Retainer for their full force and effect; and
- (F) say that it was also a term of the 2014 KPMG Retainer, implied in order to give business efficacy to the contractual relationship thereby created, that KPMG would use reasonable skill and care in providing services pursuant to the respective retainers.

D.2 KPMG Audit Team

21. As to paragraph 21 of the SoC:

- (a) insofar as it concerns the 2013 KPMG Retainer and the audit of the 2014 Financial Report:

- (i) the Fourth Defendant does not plead to those allegations as they do not make an allegation against him and he was not appointed a director of Arrium until 19 August 2014; and
- (ii) the First to Third Defendants:
 - (A) repeat paragraphs 17 and 18 of this Defence with respect to the 2013 KPMG Retainer and the audit of the 2014 Financial Report; and
 - (B) otherwise admit paragraph 21; and
- (b) insofar as it concerns the 2014 KPMG Retainer, the review of the 1H15 Financial Report and the audit of the FY15 Financial Report:
 - (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and
 - (ii) the Second to Fourth Defendants:
 - (A) repeat paragraphs 17 and 18 of this Defence with respect to the 2014 KPMG Retainer, the review of the 1H15 Financial Report and the audit of the FY15 Financial Report; and
 - (B) otherwise admit paragraph 21.

22. As to paragraph 22 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 22 insofar as it makes allegations in respect of any part of the Relevant Period prior to 19 August 2014 as he was not appointed a director of Arrium until 19 August 2014;
- (b) the First to Third Defendants admit paragraph 22 insofar as it makes allegations in respect of any part of the Relevant Period up to and including 18 August 2014;
- (c) the First to Fourth Defendants admit paragraph 22 insofar as it makes allegations in respect of that part of the Relevant Period which was on or after 19 August 2014 (being the date of the Fourth Defendant's appointment as a director of Arrium) and ending on or before 17 November 2014 (being the date of Mr Smedley's resignation as a director of Arrium);
- (d) the First Defendant does not plead to paragraph 22 insofar as it makes allegations in respect of any part of the Relevant Period after 17 November 2014 given Mr Smedley's resignation as a director of Arrium on 17 November 2014; and

- (e) the Second to Fourth Defendants admit paragraph 22 insofar as it makes allegations in respect of any part of the Relevant Period after 17 November 2014 (being the date of Mr Smedley's resignation as a director of Arrium).

23. As to paragraph 23 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 23 insofar as it makes allegations in respect of any part of the Relevant Period prior to 19 August 2014 as he was not appointed a director of Arrium until 19 August 2014;
- (b) insofar as it makes allegations in respect of any part of the Relevant Period up to and including 18 August 2014, the First to Third Defendants:
 - (i) refer to and repeat paragraphs 21(a) and 22(b) of this Defence; and
 - (ii) otherwise do not admit paragraph 23;
- (c) insofar as it makes allegations in respect of that part of the Relevant Period which was on or after 19 August 2014 (being the date of the Fourth Defendant's appointment as a director of Arrium) and ending on or before 17 November 2014 (being the date of Mr Smedley's resignation as a director of Arrium), the First to Fourth Defendants:
 - (i) refer to and repeat paragraphs 21(a) and 22(c) of this Defence; and
 - (ii) otherwise do not admit paragraph 23;
- (d) insofar as it makes allegations in respect of any part of the Relevant Period after 17 November 2014 (being the date of Mr Smedley's resignation as a director of Arrium):
 - (i) the First Defendant does not otherwise plead to the allegations given Mr Smedley's resignation as a director of Arrium on 17 November 2014;
 - (ii) the Second to Fourth Defendants:
 - (A) refer to and repeat paragraphs 21(b)(ii) and 22(e) of this Defence; and
 - (B) otherwise do not admit paragraph 23.

D.3. KPMG's Audit Work

24. As to paragraph 24 of the SoC:

- (a) with respect to sub-paragraph (a) thereof which concerns the audit of the 2014 Financial Report:

- (i) the Fourth Defendant does not plead to sub-paragraph (a) as it makes allegations in respect of the period prior to 19 August 2014 and he was not appointed a director of Arrium until 19 August 2014;
- (ii) the First to Third Defendants:
 - (A) refer to and rely upon the terms of the 2013 KPMG Retainer for their full force and effect;
 - (B) say that KPMG audited the FY14 Financial Report;
 - (C) say that, by no later than 19 August 2014:
 - (1) KPMG had access to existing board papers and board minutes, documents as described in sub-paragraph (h), source information, budgets, models and guidance relevant to the impairment of assets, records as described in sub-paragraph (j), information as described in sub-paragraph (k), details of Arrium's banking covenants and compliance with those banking covenants, all other books and information of Arrium and its controlled entities (together, **Arrium Information**) so as to enable KPMG to perform the audit of the FY14 Financial Report; and
 - (2) KPMG did access Arrium Information for those purposes to the extent KPMG considered necessary;
 - (D) say that they expect that KPMG also had the ability to access KPMG's working papers in respect of half-year reviews and audits previously conducted by KPMG for Arrium for the purposes of KPMG's audit of the FY14 Financial Report but do not know whether and, if so, to what extent, KPMG did, in fact, access those working papers for that purpose;
 - (E) say that members of the KPMG Audit Team (including Mr Young) attended at premises at which Arrium Information (including Arrium business records) was held and/or able to be accessed in the course, and for the purposes, of the performance of KPMG's audit of the FY14 Financial Report; and
 - (F) say that KPMG could, and did, request information, explanations and other assistance from directors, officers and/or employees of Arrium

and/or controlled entities to the extent KPMG considered it necessary to perform KPMG's audit of the FY14 Financial Report;

- (b) with respect to sub-paragraphs (b) and (c) thereof which concern the review of the 1H15 Financial Report and the audit of the 2015 Financial Report respectively:
 - (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concerns event after that date; and
 - (ii) the Second to Fourth Defendants:
 - (A) refer to and rely upon the terms of the 2014 KPMG Retainer for their full force and effect;
 - (B) say that KPMG reviewed the 1H15 Financial Report and audited the FY15 Financial Report;
 - (C) say that by no later than 18 February 2015 (rather than 2014) with respect to KPMG's review of the 1H15 Financial Report and 19 August 2015 with respect to KPMG's audit of the FY15 Financial Report:
 - (1) KPMG had access to Arrium Information so as to enable KPMG to perform KPMG's review of the 1H15 Financial Report and KPMG's audit of the FY15 Financial Report (as the case may be);
 - (2) KPMG did access Arrium Information for those purposes to the extent KPMG considered necessary;
 - (D) say that they expect that KPMG also had the ability to access KPMG's working papers in respect of half-year reviews and audits previously conducted by KPMG for Arrium for the purposes of KPMG's review of the 1H15 Financial Report and KPMG's audits of the FY15 Financial Report (as the case may be) but do not know whether and, if so, to what extent, KPMG did, in fact, access those working papers for any of those purposes;
 - (E) say that members of the KPMG Audit Team (including Mr Young) attended at premises at which Arrium Information (including Arrium business records) was held and/or able to be accessed in the course, and for the purposes, of the performance of KPMG's review of the 1H15

Financial Report and KPMG's audit of the FY15 Financial Report (as the case may be); and

- (F) say that KPMG could, and did, request information, explanations and other assistance from directors, officers and/or employees of Arrium and/or controlled entities to the extent KPMG considered it necessary to perform KPMG's review of the 1H15 Financial Report and KPMG's audit of the FY15 Financial Report (as the case may be).

25. As to paragraph 25 of the SoC:

- (a) insofar as it concerns conduct pleaded in paragraph 24 of the SoC with respect to the FY14 Financial Report:
 - (i) the Fourth Defendant does not plead to those allegations as they do not make an allegation against him and he was not appointed a director of Arrium until 19 August 2014; and
 - (ii) the First to Third Defendants:
 - (A) refer to and repeat paragraph 24(a) of this Defence; and
 - (B) say that KPMG (including Mr Young) engaged in that conduct pursuant to the 2013 KPMG Retainer and for the purposes of KPMG's audit of the FY14 Financial Report; and
- (b) insofar as it concerns conduct pleaded in paragraph 24 of the SoC with respect to the 1H15 Financial Report or the FY15 Financial Report:
 - (i) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and
 - (ii) the Second to Fourth Defendants:
 - (A) refer to and repeat paragraph 24(b) of this Defence; and
 - (B) say that KPMG (including Mr Young) engaged in that conduct pursuant to the 2014 KPMG Retainer and for the purposes of KPMG's review of the 1H15 Financial Report and KPMG's audit of the FY14 Financial Report (as the case may be).

E. ARRIUM'S FY14 FINANCIAL STATEMENTS

26. The First to Fourth Defendants admit paragraph 26 of the SoC.
27. The First to Fourth Defendants admit paragraph 27 of the SoC.
28. As to paragraph 28 of the SoC:
- (a) the First to Third Defendants admit paragraph 28; and
 - (b) the Fourth Defendant:
 - (i) admits paragraph 28; but
 - (ii) says that the resolution of the directors of Arrium pursuant to which the FY14 Directors Declaration was made in respect of the FY14 Financial Report was passed prior to his appointment as a director of Arrium on 19 August 2014.
29. As to paragraph 29 of the SoC, the First to Fourth Defendants say that:
- (a) Mr Young signed the FY14 Audit Report for KPMG and himself in respect of the audited FY14 Financial Report on or about 19 August 2014; and
 - (b) Arrium was authorised to, and did, provide that signed FY14 Audit Report to its members and lodge it with ASIC and the ASX as part of the FY14 Financial Report.

30. The First to Fourth Defendants admit paragraph 30 of the SoC.

F. IMPAIRMENT OF ARRIUM'S ASSETS IN FY14

F.1. FY14 Impairment Indicators

F.1.1. Market Capitalisation Impairment Indicator

31. The First to Fourth Defendants admit paragraph 31 of the SoC

F.1.2. Market Decline Impairment Indicator

32. As to paragraph 32 of the SoC:
- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014;
 - (b) the First Defendant says that Mr Smedley resigned as a director of Arrium on 17 November 2014; and

- (c) subject to (a) (in the case of the Fourth Defendant) and (b) (in the case of the First Defendant), the First to Fourth Defendants:
 - (i) admit that the market price for iron ore had declined as at each of 30 June 2014, 31 December 2014 and 30 June 2015 compared to the preceding 6 months;
 - (ii) say that the FY14 Financial Results Announcement (page 4) stated that, as at 30 June 2014, the average Platts 62% CFR index price for the year was down 3% on the prior year average;
 - (iii) say that, as at 31 December 2014, Platts average market index price (62% Fe) for the preceding 6 months was down 39% on the average for the corresponding half-year period ending 3 December 2013;

Particulars

- (1) Page 3 Arrium's ASX Appendix 4D Half-year Financial Report announced 17 February 2015.
- (iv) say that the FY15 Financial Results Announcement (page 6) stated that, as at 30 June 2015, the Platts average market index price (62% Fe) was down 41% on the prior year average; and
- (v) otherwise deny paragraph 32.

F.1.3. SI Mine Low Net Cash Proceeds Impairment Indicator

33. As to paragraph 33:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014;
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants:
 - (i) say that the Arrium Mining Quarterly Production Report for the quarter ended 30 June 2014 stated that Arrium's average price for iron ore was US\$85/t CFR (dmt) in the quarter to 30 June 2014;
 - (ii) say that the Arrium Mining Quarterly Production Report for the quarter ended 30 June 2014 stated that Arrium's average price for iron ore was A\$92/t CFR (dmt) in the quarter to 30 June 2014;
 - (iii) say that the FY14 Financial Results Announcement stated that Arrium's average price for iron ore for FY14 was A\$123/dmt;

- (iv) say that the FY14 Financial Results Announcement stated that Arrium's total cash cost for its mining segment for FY14 was A\$73/dmt, including loaded cash cost, royalties, sales and marketing and corporate costs, adjustment for moisture content and freight, and excluding capitalised costs (infrastructure, pre-stripping and mining licences), depreciation and amortisation charges in respect of those costs; and
- (v) otherwise deny paragraph 33.

Particulars

- (1) Arrium Mining Quarterly Production Report for the quarter ended 30 June 2014;
- (2) FY14 Financial Results Announcement, "Strong FY14 Results through Successful Strategy Execution", page 4; and
- (3) FY14 Financial Results Announcement, "FY14 Results Presentation", pages 10 and 55.

34. The First to Fourth Defendants do not admit paragraph 34 of the SoC.

35. As to paragraph 35 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants:
 - (i) say that the Reserves and Resources Statement stated that, as at 30 June 2014, the total hematite ore reserves at Southern Iron was 19.7Mt, represented by the Peculiar Knob and the Hawks Nest Deposits of Buzzard and Tui; and

Particulars

- (1) Reserves and Resources Statement, 2014 Annual Report, page 132.
- (ii) otherwise deny paragraph 35.

36. As to paragraph 36 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014;
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants:
 - (i) repeat paragraphs 11, 33, 34 and ~~36-35(b)~~ of this Defence; and

- (ii) otherwise deny paragraph 36.

37. As to paragraph 37 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 37.

38. As to paragraph ~~37~~38 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 38.

F.1.4. Falling Demand Impairment Indicator

39. As to paragraph 39 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants:
 - (i) say that the FY14 Financial Results Announcement stated that the total revenue for Arrium's mining consumables segment was \$1,538 million in FY14, down 2% on the prior year largely due to lower sales in Australasia;
 - (ii) say that the FY14 Financial Results Announcement stated that there was also weaker demand for rail wheels and grinding media sold by Arrium's mining consumables segment in Australasia; and
 - (iii) otherwise deny paragraph 39.

Particulars

- (1) FY14 Financial Results Announcement, "Arrium Limited Operating and Financial Review 2014", page 3.
- (2) FY14 Financial Results Announcement, "Strong FY14 Results through Successful Strategy Execution", pages 1 to 2.

F.2. Impairment testing for FY2014

40. As to paragraph 40 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 40.

41. As to paragraph 41 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014;
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants:
 - (i) refer to and repeat paragraphs 31 to 38 of the Defence;
 - (ii) say that the carrying amount of Arrium's net assets being more than its market capitalisation was an indicator of impairment with respect to the FY14 Mining Assets, FY14 Mining Consumables Assets, FY14 Steel Assets and FY14 Recycling Assets as at 30 June 2014 (**FY14 Market Capitalisation Indicator**); and
 - (iii) otherwise deny paragraph 41.

42. As to paragraph 42 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants:
 - (i) refer to and rely on the terms of paragraph 9 of AASB 136 for their full force and effect;
 - (ii) say that the existence of the FY14 Market Capitalisation Indicator required Arrium to estimate the recoverable amount of FY14 Mining Assets, FY14 Mining Consumables Assets, FY14 Steel Assets and FY14 Recycling Assets as at 30 June 2014; and
 - (iii) otherwise deny paragraph 42.

43. As to paragraph 43 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 43.

F.3. Required impairment charges in FY14

44. As to paragraph 44 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 44.

45. As to paragraph 45 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 45.

46. As to paragraph 46 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 46.

47. As to paragraph 47 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 47.

48. As to paragraph 48 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and

- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 48.

F.4. Arrium's contravention of its Continuous Disclosure Obligations

49. As to paragraph 49 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 49.

50. As to paragraph 50 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 50.

51. As to paragraph 51 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 51.

52. As to paragraph 52 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants:
 - (i) admit that Arrium did not inform the ASX of what is pleaded to be the FY14 Impairment Information in those terms; and
 - (ii) repeat paragraphs 46 - 51 of this Defence and further say that neither Arrium, Mr Smedley or the Second to Fourth Defendants were obliged to inform the ASX of that information in those terms.

53. As to paragraph 53 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 53.

G. SEPTEMBER 2014 CAPITAL RAISING

54. As to paragraph 54 of the SoC, the First to Fourth Defendants:

- (a) admit sub-paragraph (a) thereof:
- (b) admit sub-paragraph (b) thereof save that the presentation was entitled "Equity Capital Raising 15 September 2014"; and
- (c) admit sub-paragraph (c) thereof save that the notice published and lodged with ASX on 15 September 2014 was entitled "Arrium Limited Notice under section 708AA(2)(F) of the Corporations Act 2001 (Cth)".

55. As to paragraph 55 of the SoC, the First to Fourth Defendants:

- (a) in respect of sub-paragraph (b) thereof, say that the Capital Raising Announcement stated that:
 - (i) the net proceeds of the capital raising would be used to repay debt, in line with the company's stated priority of debt reduction; and
 - (ii) the raising would strengthen the company's balance sheet and provide it with a more appropriate capital structure for the current environment; and
- (b) otherwise admit paragraph 55.

56. As to paragraph 56 of the SoC, the First to Fourth Defendants:

- (a) say that Arrium's earnings before tax from continuing operations for the year ended 30 June 2014 were stated in the Capital Raising Presentation to be \$412.7 million;

Particulars

- (1) Capital Raising Presentation, page 37.
- (b) say that Arrium's assets as at 30 June 2014 were stated in the Capital Raising Presentation to be \$8,002 million; and

Particulars

- (1) Capital Raising Presentation, pages 28 and 36.
 - (c) otherwise admit paragraph 56.
57. As to paragraph 57 of the SoC, the First to Fourth Defendants:
- (a) with respect to sub-paragraph (c) thereof, say that Arrium stated that it had complied with the provisions of Chapter 2M of the Corporations Act as they applied to Arrium; and
 - (b) otherwise admit paragraph 57.
58. As to paragraph 58 of the SoC, the First to Fourth Defendants:
- (a) say that Arrium published an announcement on 18 September 2014 entitled "Arrium Limited Retail Entitlement Offer" which reproduced the Capital Raising Presentation;
 - (b) repeat paragraph 56 of this Defence; and
 - (c) otherwise admit paragraph 58.
59. As to paragraph 59 of the SoC, the First to Fourth Defendants:
- (a) say that, on 18 September 2014, Arrium announced completion of the institutional component of its fully underwritten equity raising, with the result that:
 - (i) approximately \$367 million was raised through the institutional entitlement offer; and
 - (ii) approximately \$98 million was raised through the institutional placement; and
 - (b) otherwise admit paragraph 59.
60. The First to Fourth Defendants admit paragraph 60 of the SoC.
61. As to paragraph 61 of the SoC, the First to Fourth Defendants:
- (a) with respect to sub-paragraph (c), say that Arrium stated that it had complied with the provisions of Chapter 2M of the Corporations Act as they applied to Arrium; and
 - (b) otherwise admit paragraph 61.
62. As to paragraph 62 of the SoC, the First to Fourth Defendants:
- (a) with respect to sub-paragraph (b), say that Arrium's ASX announcement entitled "Retail Entitlement Offer" dated 13 October 2014 stated that Arrium will offer for sale under the

Retail Shortfall Bookbuild (as defined in that announcement) entitlements to take up approximately 590.8 million new shares, which represents those entitlements attributable to renouncing and ineligible retail shareholders; and

- (b) otherwise admits paragraph 62.

63. The First to Fourth Defendants admit paragraph 63 of the SoC.

64. The First to Fourth Defendants admit paragraph 64 of the SoC.

H. ARRIUM'S 1H15 FINANCIAL STATEMENTS

65. As to paragraph 65 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein insofar as they concern events after that date; and

- (b) the Second to Fourth Defendants admit paragraph 65.

66. As to paragraph 66 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and

- (b) the Second to Fourth Defendants:

- (i) with respect to sub-paragraph (a) thereof, say that the January 2015 Announcement stated that export iron ore sales had a history of being a significant contributor to Arrium's earnings and cash generation;
- (ii) with respect to sub-paragraph (b) thereof, say that the January 2015 Announcement stated that Arrium was re-designing its South Australian based mining operation to provide a sustainable, cash flow positive business in a low iron ore price environment;
- (iii) with respect to sub-paragraph (e) thereof, say that the January 2015 Presentation stated that Arrium would target an approximately 27% reduction in average loaded cash cost and an approximately 20% reduction in total cash cost post re-design;
- (iv) with respect to sub-paragraph (g) thereof, say that the January 2015 Announcement stated that Arrium expected restructuring cash costs from the

mothballing of the Southern Iron operation (as referred to in that announcement) would be approximately \$70 million during FY15; and

- (v) otherwise admit paragraph 66.

67. As to paragraph 67 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendant admit paragraph 67.

68. As to paragraph 68 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) with respect to sub-paragraph (c)(ii) thereof, say that the 1H15 Financial Report included a report entitled "Independent Auditor's Review Report" (the **1H15 Review Report**); and
 - (ii) otherwise admit paragraph 68.

69. As to paragraph 69 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants admit paragraph 69.

70. As to paragraph 70 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants say that:
 - (i) on 18 February 2015, Mr Young signed the 1H15 Review Report in respect of the 1H15 Financial Report; and

- (ii) Arrium was authorised to, and did, provide that signed 1H15 Report to its members and lodge it with ASIC and the ASX as part of the 1H15 Financial Report.

71. As to paragraph 71 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants admit paragraph 71.

I. IMPAIRMENT OF ARRIUM'S ASSETS IN 1H15

I.1. Impairment testing for 1H15

72. As to paragraph 72 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants admit paragraph 72.

73. As to paragraph 73 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat paragraphs 31, 32 and 39 of this Defence;
 - (ii) say that the carrying amount of Arrium's net assets being more than its market capitalisation was an indicator of impairment with respect to the 1H15 Mining Assets, 1H15 Mining Consumables Assets, 1H15 Steel Assets and 1H15 Recycling Assets as at 31 December 2014 (the **1H15 Market Capitalisation Indicator**); and
 - (iii) otherwise deny paragraph 73.

74. As to paragraph 74 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) refer to and rely on the terms of paragraph 9 of AASB 136 for their full force and effect;
 - (ii) say that the existence of the 1H15 Market Capitalisation Indicator required Arrium to estimate the recoverable amount of 1H15 Mining Assets, 1H15 Mining Consumables Assets, 1H15 Steel Assets and 1H15 Recycling Assets as at 31 December 2014; and
 - (iii) otherwise deny paragraph 74.

75. As to paragraph 75 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 75.

1.2. Required impairments charges in 1H15

76. As to paragraph 76 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 76.

77. As to paragraph 77 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 77.

78. As to paragraph 78 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 78.

79. As to paragraph 79 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 79.

80. As to paragraph 80 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 80.

J. ARRIUM'S FY15 FINANCIAL STATEMENTS

81. As to paragraph 81 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants admit paragraph 81.

82. As to paragraph 82 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants admit paragraph 82.

83. As to paragraph 83 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants admit paragraph 83.

84. As to paragraph 84 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants say that:
 - (i) Mr Young signed the FY15 Audit Report for KPMG and himself in respect of the audited FY15 Financial Report on or about 19 August 2015; and
 - (ii) Arrium was authorised to, and did, provide that signed FY15 Audit Report to its members and lodge it with ASIC and the ASX as part of the FY15 Financial Report.

85. As to paragraph 85 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) with respect to sub-paragraph (j), say that the FY15 Financial Report recorded that, as at 30 June 2015, Arrium had total segment assets of \$318.1 million within its recycling segment; and
 - (ii) otherwise admit paragraph 85.

K. IMPAIRMENT OF ARRIUM'S ASSETS IN FY15

K.1. Impairment testing for FY15

86. As to paragraph 86 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants admit paragraph 86.

87. As to paragraph 87 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat paragraphs 31 and 32 of this Defence;
 - (ii) say that the carrying amount of Arrium's net assets being more than its market capitalisation was an indicator of impairment with respect to the FY15 Mining Assets, FY15 Mining Consumables Assets, FY15 Steel Assets and FY15 Recycling Assets as at 30 June 2015 (the **FY15 Market Capitalisation Indicator**); and
 - (iii) otherwise deny paragraph 87.

88. As to paragraph 88 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) refer to and rely on the terms of paragraph 9 of AASB 136 for their full force and effect;
 - (ii) say that the existence of the FY15 Market Capitalisation Indicator required Arrium to estimate the recoverable amount of FY15 Mining Assets, FY15 Mining Consumables Assets, FY15 Steel Assets and FY15 Recycling Assets as at 30 June 2015; and
 - (iii) otherwise deny paragraph 88.

89. As to paragraph 89 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 89.

K.2. Required impairments charges in FY15

90. As to paragraph 90 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 90.

91. As to paragraph 91 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 91.

92. As to paragraph 92 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 92.

93. As to paragraph 93 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 93.

94. As to paragraph 94 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 94.

L. DIRECTORS' CONTRAVENING CONDUCT

L.1. Directors' Misleading or Deceptive Representations in FY14

L.1.1. Directors' Representations

95. As to paragraph 95 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 95 as it makes no allegations against him; and
- (b) the First to Third Defendants admit paragraph 95.

96. As to paragraph 96 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 96 as it makes no allegations against him; and
- (b) the First to Third Defendants:
 - (i) repeat paragraphs 26 - 28 and 95 of this Defence;
 - (ii) refer to and rely on the terms of the FY14 Financial Report and FY14 Directors' Declaration for their full force and effect; and
 - (iii) otherwise do not admit paragraph 96.

L.1.2. Misleading or deceptive conduct

97. As to paragraph 97 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 97 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 97.

98. As to paragraph 98 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 98 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 98.

99. As to paragraph 99 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 99 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 99.

100. As to paragraph 100 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 100 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 100.

101. As to paragraph 101 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 101 as it makes no allegations against him; and
- (b) the First to Third Defendants do not admit paragraph 101.

102. As to paragraph 102 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 102 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 102.

103. As to paragraph 103 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 103 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 103.

L.1.3. Section 1041E liability in respect of the FY14 Directors' Opinion to ASX

104. As to paragraph 104 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 104 as it makes no allegations against him; and

- (b) the First to Third Defendants:
 - (i) repeat sub-paragraph 28(a) and paragraph 96 of this Defence; and
 - (ii) otherwise do not admit paragraph 104.

105. As to paragraph 105 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 105 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 105.

106. As to paragraph 106 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 106 as it makes no allegations against him; and
- (b) the First to Third Defendants do not admit paragraph 106.

107. As to paragraph 107 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 107 as it makes no allegations against him; and
- (b) the First to Third Defendants do not admit paragraph 107.

108. As to paragraph 108 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 108 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 108.

109. As to paragraph 109 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 109 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 109.

L.1.4 Section 1041E liability in respect of the FY14 Directors' Representation to ASX

110. As to paragraph 110 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 110 as it makes no allegations against him; and

- (b) the First to Third Defendants:
 - (i) repeat sub-paragraph 28(a) and paragraph 96 of this Defence; and
 - (ii) otherwise do not admit paragraph 110.

111. As to paragraph 111 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 111 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 111.

112. As to paragraph 112 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 112 as it makes no allegations against him; and
- (b) the First to Third Defendants do not admit paragraph 112.

113. As to paragraph 113 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 113 as it makes no allegations against him; and
- (b) the First to Third Defendants do not admit paragraph 113.

114. As to paragraph 114 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 114 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 114.

115. As to paragraph 115 of the SoC:

- (a) the Fourth Defendant does not plead to paragraph 115 as it makes no allegations against him; and
- (b) the First to Third Defendants deny paragraph 115.

L.1.5. Continuing nature of the Directors' FY14 Accounts Misleading Conduct Contraventions

116. The First to Fourth Defendants deny paragraph 116 of the SoC.

L.2. Directors' liability in respect of the Capital Raising

L.2.1 Directors' liability in respect of the Capital Raising Representations

- 117. The First to Fourth Defendants deny paragraph 117 of the SoC.
- 118. The First to Fourth Defendants do not admit paragraph 118 of the SoC.
- 119. The First to Fourth Defendants do not admit paragraph 119 of the SoC.
- 120. The First to Fourth Defendants do not admit paragraph 120 of the SoC.
- 121. The First to Fourth Defendants do not admit paragraph 121 of the SoC.
- 122. The First to Fourth Defendants do not admit paragraph 122 of the SoC.
- 123. The First to Fourth Defendants deny paragraph 123 of the SoC.

L.2.2 Continuing nature of the Directors' Capital Raising Contraventions

- 124. The First to Fourth Defendants deny paragraph 124 of the SoC.

L.3. Directors' Misleading or Deceptive Representations in 1H15

L.3.1 Directors' Representations

- 125. As to paragraph 125 of the SoC:
 - (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
 - (b) the Second to Fourth Defendants do not admit paragraph 125.
- 126. As to paragraph 126 of the SoC:
 - (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
 - (b) the Second to Fourth Defendants:
 - (i) repeat sub-paragraph 69(ab) of this Defence;
 - (ii) refer to and rely on the terms of the 1H15 Financial Report and 1H15 Directors' Declaration for their full force and effect; and
 - (iii) otherwise do not admit paragraph 126.

L.3.2. Misleading or deceptive conduct

127. As to paragraph 127 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 127.

128. As to paragraph 128 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 128.

129. As to paragraph 129 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 129.

130. As to paragraph 130 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 130.

131. As to paragraph 131 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 131.

132. As to paragraph 132 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 132.

133. As to paragraph 133 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 133.

L.3.3. Section 1041E liability in respect of the 1H15 Directors' Opinion to ASX

134. As to paragraph 134 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat sub-paragraph 69(ab) and paragraph 126(b) of the Defence; and
 - (ii) otherwise do not admit paragraph 134.

135. As to paragraph 135 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 135.

136. As to paragraph 136 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 136.

137. As to paragraph 137 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 137.

138. As to paragraph 138 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 138.

139. As to paragraph 139 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 139.

L.3.4. Section 1041E liability in respect of the 1H15 Directors' Representation to ASX

140. As to paragraph 140 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat sub-paragraph 69(~~ba~~) and paragraph 126(~~b~~) of this Defence; and
 - (ii) otherwise do not admit paragraph 140.

141. As to paragraph 141 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 141.

142. As to paragraph 142 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 142.

143. As to paragraph 143 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 143.

144. As to paragraph 144 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 144.

145. As to paragraph 145 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 145.

L.3.5. Continuing nature of the Directors' IH15 Accounts Misleading Conduct Contraventions

146. As to paragraph 146 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 146.

L.4. Directors' Misleading or Deceptive Representations in FY15

L.4.1. Directors' Representations

147. As to paragraph 147 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 147.

148. As to paragraph 148 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat paragraph 83(ab) of this Defence;
 - (ii) refer to and rely upon the terms of the FY15 Financial Report and FY15 Directors' Declaration for their full force and effect; and
 - (iii) otherwise do not admit paragraph 148.

L.4.2. Misleading or deceptive conduct

149. As to paragraph 149 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 149.

150. As to paragraph 150 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 150.

151. As to paragraph 151 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 151.

152. As to paragraph 152 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 152.

153. As to paragraph 153 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 153.

154. As to paragraph 154 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 154.

155. As to paragraph 155 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 155.

L.4.3. Section 1041E liability in respect of the FY15 Directors' Opinion to ASX

156. As to paragraph 156 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat paragraph 83(~~a~~b) and paragraph 148(b) of this Defence; and
 - (ii) otherwise do not admit paragraph 156.

157. As to paragraph 157 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 157.

158. As to paragraph 158 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 158.

159. As to paragraph 159 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 159.

160. As to paragraph 160 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 160.

161. As to paragraph 161 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 161.

L.4.4. Section 1041E liability in respect of the FY15 Directors' Representation to ASX

162. As to paragraph 162 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat paragraphs 83(~~a~~b) and 148(b) of this Defence; and
 - (ii) otherwise do not admit paragraph 162.

163. As to paragraph 163 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 163.

164. As to paragraph 164 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 164.

165. As to paragraph 165 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 165.

166. As to paragraph 166 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 166.

167. As to paragraph 167 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 167.

L.4.5. Continuing nature of the Directors' FY15 Accounts Misleading Conduct Contraventions

168. As to paragraph 168 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 168.

M. KPMG'S CONTRAVENING CONDUCT

M.1. KPMG's Representations in FY14

169. As to paragraph 169 of the SoC, the First to Fourth Defendants:

- (a) refer to and repeat paragraphs 26, 27 and 29 of this Defence;
- (b) admit that Mr Young and KPMG (through Mr Young) stated the FY14 KPMG Opinion and made the FY14 KPMG Representation to ASX and to the members of Arrium as alleged in each case;
- (c) otherwise do not admit paragraph 169.

M.2. Misleading or deceptive conduct in FY14

M.2.1. Misleading or deceptive conduct in respect of the FY14 KPMG Opinion to ASX

170. As to paragraph 170 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 170.

171. As to paragraph 171 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First Defendant says that Mr Smedley relied upon the FY14 KPMG Opinion to ASX as the product of an exercise of reasonable skill and care by KPMG; and
- (c) the Second to Fourth Defendants say that they understood and believed the FY14 KPMG Opinion to ASX to be the product of an exercise of reasonable skill and care by KPMG and relied upon it as such; and
- (d) the First to Fourth Defendants otherwise deny paragraph 171.

172. As to paragraph 172 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First Defendant says that Mr Smedley relied upon the FY14 KPMG Opinion to ASX as being based upon reasonable grounds; and
- (c) the Second to Fourth Defendants say that they understood and believed the FY14 KPMG Opinion to ASX to be based upon reasonable grounds and relied upon it as such; and
- (d) the First to Fourth Defendants otherwise deny paragraph 172.

173. As to paragraph 173 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants:
 - (i) do not admit that KPMG provided a financial service within the meaning of section 1041H of the Corporations Act and/or section 12DA of the ASIC Act insofar as that may be dependent upon whether that service was an "exempt service" within the meaning of regulation 2.1.29 of the Corporations Regulations 2001; and

- (ii) otherwise admit paragraph 173.

174. As to paragraph 174 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 174.

175. As to paragraph 175 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 175.

M.2.2. Misleading or deceptive conduct in respect of the FY14 KPMG Representation to ASX

176. As to paragraph 176 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 176.

177. As to paragraph 177 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 177.

M.2.3. Section 1041E liability in respect of the FY14 KPMG Opinion to ASX

178. As to paragraph 178 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014;
- (b) the First to Fourth Defendants repeat paragraphs 29 and 169 of this Defence; and
- (c) otherwise do not admit paragraph 178.

179. As to paragraph 179 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and

- (b) the First to Fourth Defendants deny paragraph 179.

180. As to paragraph 180 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants admit paragraph 180.

181. As to paragraph 181 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants do not admit paragraph 181.

182. As to paragraph 182 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 182.

183. As to paragraph 183 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 183.

184. As to paragraph 184 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 184.

M.2.4. Section 1041E liability in respect of the FY14 KPMG Representation to ASX

185. As to paragraph 185 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014;
- (b) the First to Fourth Defendants repeat paragraphs 29 and 169 of this Defence; and
- (c) otherwise do not admit paragraph 185.

186. As to paragraph 186 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 186.

187. As to paragraph 187 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants admit paragraph 187.

188. As to paragraph 188 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants do not admit paragraph 188.

189. As to paragraph 189 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 189.

190. As to paragraph 190 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 190.

191. As to paragraph 191 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014;
- (b) the First to Fourth Defendants admit sub-paragraph (a); and
- (c) the First to Fourth Defendants otherwise deny paragraph 191.

M.3. Continuing nature of the KPMG FY14 Accounts Contraventions

192. As to paragraph 192 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) the First to Fourth Defendants deny paragraph 192.

M4. KPMG's Representations in 1H15

193. As to paragraph 193 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat paragraphs 67, 68 and 70 of this Defence;
 - (ii) refer to and rely upon the terms of the 1H15 Review Report for their full force and effect;
 - (iii) admit (b) insofar as it concerns members of Arrium; and
 - (iv) otherwise do not admit paragraph 193.

M.5. Misleading or deceptive conduct in 1H15

M.5.1. Misleading or deceptive conduct in respect of the 1H15 KPMG Opinion to ASX

194. As to paragraph 194 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 194.

195. As to paragraph 195 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) say that the Australian Auditing Standards referenced apply to audits of annual and interim financial reports and were not applicable to the 1H15 Review Report;

- (ii) say that they understood and believed the 1H15 KPMG Opinion to ASX to be the product of an exercise of reasonable skill and care by KPMG and relied upon it as such; and
- (iii) otherwise deny paragraph 195.

196. As to paragraph 196 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 196.

197. As to paragraph 197 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) do not admit that KPMG provided a financial service within the meaning of section 1041H of the Corporations Act and/or section 12DA of the ASIC Act insofar as that may be dependent upon whether that service was an "exempt service" within the meaning of regulation 2.1.29 of the Corporations Regulations 2001; and
 - (ii) otherwise admit paragraph 197.

198. As to paragraph 198 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 198.

199. As to paragraph 199 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:

- (i) admit sub-paragraph (b); and
- (ii) otherwise deny paragraph 199.

M.5.2. Misleading or deceptive conduct in respect of the 1H15 KPMG Representation to ASX

200. As to paragraph 200 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 200.

201. As to paragraph 201 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) admit sub-paragraph (b); and
 - (ii) otherwise deny paragraph 201.

M.5.3. Section 1041E liability in respect of the 1H15 KPMG Opinion to ASX

202. As to paragraph 202 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat paragraphs 70 and 193 to this Defence; and
 - (ii) otherwise do not admit paragraph 202.

203. As to paragraph 203 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 203.

204. As to paragraph 204 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants admit paragraph 204.

205. As to paragraph 205 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 205.

206. As to paragraph 206 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) say that they understood and believed the 1H15 KPMG Opinion to ASX to be the product of an exercise of reasonable skill and care by KPMG and to be based upon reasonable grounds and relied upon it as such; and
 - (ii) otherwise deny paragraph 206.

207. As to paragraph 207 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 207.

208. As to paragraph 208 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:

- (i) admit sub-paragraph (~~b~~a); and
- (ii) otherwise deny paragraph 208.

M.5.4. Section 1041E liability in respect of the 1H15 KPMG Representation to ASX

209. As to paragraph 209 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat paragraphs 70 and 193 to this Defence; and
 - (ii) otherwise do not admit paragraph 209.

210. As to paragraph 210 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 210.

211. As to paragraph 211 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants admit paragraph 211.

212. As to paragraph 212 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 212.

213. As to paragraph 213 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) say that they understood and believed the 1H15 KPMG Opinion to ASX to be the product of an exercise of reasonable skill and care by KPMG and to be based upon reasonable grounds and relied upon it as such; and
 - (ii) otherwise deny paragraph 213.

214. As to paragraph 214 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 214.

215. As to paragraph 215 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) admit sub-paragraph (a); and
 - (ii) otherwise deny paragraph 215.

M.6. Continuing nature of the KPMG 1H15 Accounts Contraventions

216. As to paragraph 216 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 216.

M.7. KPMG's Representations in FY15

217. As to paragraph 217 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat paragraphs 81, 82 and 84 of this Defence;
 - (ii) refer to and rely upon the terms of the FY15 Audit Report for their full force and effect;
 - (iii) admit (b) insofar as it concern members of Arrium; and
 - (iv) otherwise do not admit paragraph 217.

M.8. Misleading or deceptive conduct in FY15

M.8.1. Misleading or deceptive conduct in respect of the FY15 KPMG Opinion to ASX

218. As to paragraph 218 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 218.

219. As to paragraph 219 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) say that they understood and believed the FY15 KPMG Opinion to ASX to be the product of an exercise of reasonable skill and care by KPMG and relied upon it as such; and
 - (ii) otherwise deny paragraph 219.

220. As to paragraph 220 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 220.

221. As to paragraph 221 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) do not admit that KPMG provided a financial service within the meaning of section 1041H of the Corporations Act and/or section 12DA of the ASIC Act insofar as that may be dependent upon whether that service was an "exempt service" within the meaning of regulation 2.1.29 of the Corporations Regulations 2001; and
 - (ii) otherwise admit paragraph 221.

222. As to paragraph 222 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 222.

223. As to paragraph 223 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) admit sub-paragraph (b); and
 - (ii) otherwise deny paragraph 223.

M.8.2. Misleading or deceptive conduct in respect of the FY15 KPMG Representation to ASX

224. As to paragraph 224 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 224.

225. As to paragraph 225 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) admit sub-paragraph (b); and
 - (ii) otherwise deny paragraph 225.

M.8.3. Section 1041E liability in respect of the FY15 KPMG Opinion to ASX

226. As to paragraph 226 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat paragraphs 84 and 217 to this Defence; and
 - (ii) otherwise do not admit paragraph 226.

227. As to paragraph 227 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 227.

228. As to paragraph 228 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants admit paragraph 228.

229. As to paragraph 229 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 229.

230. As to paragraph 230 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) say that they understood and believed the FY15 KPMG Opinion to ASX to be the product of an exercise of reasonable skill and care by KPMG and to be based on reasonable grounds and relied upon it as such; and
 - (ii) otherwise deny paragraph 230.

231. As to paragraph 231 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 231.

232. As to paragraph 232 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:

- (i) admit sub-paragraph (a); and
- (ii) otherwise deny paragraph 232.

M.8.4. Section 1041E liability in respect of the FY15 KPMG Representation to ASX

233. As to paragraph 233 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) repeat paragraphs 84 and 217 to this Defence; and
 - (ii) otherwise do not admit paragraph 233.

234. As to paragraph 234 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 234.

235. As to paragraph 235 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants admit paragraph 235.

236. As to paragraph 236 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants do not admit paragraph 236.

237. As to paragraph 237 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) say that they understood and believed the FY15 KPMG Opinion to ASX to be the product of an exercise of reasonable skill and care by KPMG and to be based upon reasonable grounds and relied upon it as such; and
 - (ii) otherwise deny paragraph 237.

238. As to paragraph 238 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 238.

239. As to paragraph 239 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants:
 - (i) admit sub-paragraph (a); and
 - (ii) otherwise deny paragraph 239.

M.9. Continuing nature of the KPMG FY15 Accounts Contraventions

240. As to paragraph 240 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 240.

N. CONTRAVENING CONDUCT CAUSED LOSS

N.1. What happened after the contraventions

241. As to paragraph 241 of the SoC, the First to Fourth Defendants:

- (a) say that the purported facts pleaded involve evaluative matters for consideration; and
- (b) otherwise do not admit paragraph 241.

242. The First to Fourth Defendants admit paragraph 242 of the SoC.

243. The First to Fourth Defendants admit paragraph 243 of the SoC.

244. The First to Fourth Defendants admit paragraph 244 of the SoC.

245. The First to Fourth Defendants do not admit paragraph 245 of the SoC.

N.2. What would have happened but for the contraventions

246. As to paragraph 246 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014;
- (b) the First to Fourth Defendants:
 - (i) say that the alleged Directors' Capital Raising Contraventions (which are denied) are not alleged to have occurred until on or about 15 September 2014 which was after the date of finalisation and issue of the FY14 Financial Report; and
 - (ii) deny paragraph 246.

247. As to paragraph 247 of the SoC:

- (a) the Fourth Defendant says he was not appointed a director of Arrium until 19 August 2014; and
- (b) subject to (a) in the case of the Fourth Defendant, the First to Fourth Defendants deny paragraph 247.

248. As to paragraph 248 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and

- (b) subject to (a) in the case of the Fourth Defendant, the Second to Fourth Defendants:
 - (i) deny paragraph 248;
 - (ii) say further that sections 302 and 303 of the Corporations Act relate to an obligation to prepare a half-year financial report; and
 - (iii) further rely on the provisions of sections 304 and 305 of the Corporations Act for their full force and effect.

249. As to paragraph 249 of the SoC:

- (a) the First to Fourth Defendants say that Mr Smedley ceased to be a director of Arrium on 17 November 2014 and the First Defendant does not otherwise plead to the allegations therein as they concern events after that date; and
- (b) the Second to Fourth Defendants deny paragraph 249.

N.3. Causation: acquisitions in the Capital Raising

250. As to paragraph 250 of the SoC, the First to Fourth Defendants:

- (a) admits sub-paragraph (a) to the extent that it is established that the Second Plaintiff or Group Members acquired relevant interests in Arrium Shares in the Capital Raising during the Relevant Period;
- (b) in respect of sub-paragraphs (b) and (c), say that the offer price of Arrium Shares would reasonably be expected to have been informed or affected by material information disclosed to the ASX and by other publicly available information (amongst other factors affecting the price at which Arrium Shares were traded); and
- (c) otherwise deny paragraph 250.

251. As to paragraph 251 of the SoC, the First to Fourth Defendants:

- (a) ~~The First to Fourth Defendants~~ deny paragraph 251; and
- (a)(b) say further that, insofar as it is alleged that loss or damage can be claimed by the Plaintiffs or Group Members who are not proved individually to have relied in fact on the impugned conduct of Mr Smedley or any of the Second to Fourth Defendants (as the case may be), that allegation is contrary to law, and no such loss or damage can be awarded without proof of such individual reliance. ~~of the SoC.~~

252. The First to Fourth Defendants do not admit paragraph 252 of the SoC.

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

253. As to paragraph 253, the First to Fourth Defendants:

- (a) admit sub-paragraphs (a) and (b) if and to the extent that it is established that the First Plaintiff or any Group Member acquired relevant interests in Arrium Shares on the financial market operated by ASX during the Relevant Period;
- (b) in respect of sub-paragraph (c), say that the price or value of Arrium Shares would reasonably be expected to have been informed or affected by material information disclosed to the ASX and by other publicly available information (amongst other factors affecting the price at which those shares were traded); and
- (c) otherwise deny paragraph 253.

254. As to paragraph 254 of the SoC, the First to Fourth Defendants:

- (a) ~~the First to Fourth Defendants~~ deny paragraph 254; and
- (b) say~~s~~ further that, insofar as it is alleged that loss or damage can be claimed by the Plaintiffs or Group Members who are not proved individually to have relied in fact on the impugned conduct of Mr Smedley or any of the Second to Fourth Defendants (as the case may be), that allegation is contrary to law, and no such loss or damage can be awarded without proof of such individual reliance.

255. The First to Fourth Defendants deny paragraph 255 of the SoC.

256. The First to Fourth Defendants do not admit paragraph 256 of the SoC.

N.5. Loss or damage suffered by the Plaintiffs and Group Members

257. The First to Fourth Defendants deny paragraph 257 of the SoC.

O. COMMON QUESTIONS OF LAW OR FACT

258. The First to Fourth Defendants do not plead to paragraph 258 of the SoC as it contains no allegations against them.

259. The First to Fourth Defendants do not plead to paragraph 259 of the SoC as it contains no allegations against them.

260. The First to Fourth Defendants do not plead to paragraph 260 of the SoC as it contains no allegations against them.

261. The First to Fourth Defendants do not plead to paragraph 261 of the SoC as it contains no allegations against them.
262. The First to Fourth Defendants do not plead to paragraph 262 of the SoC as it contains no allegations against them.
263. The First to Fourth Defendants do not plead to paragraph 263 of the SoC as it contains no allegations against them.
264. The First to Fourth Defendants do not plead to paragraph 264 of the SoC as it contains no allegations against them.
265. The First to Fourth Defendants do not plead to paragraph 265 of the SoC as it contains no allegations against them.
266. The First to Fourth Defendants deny that the Plaintiffs and Group Members are entitled to the relief claimed, or any relief at all.

P. RELIEF FROM LIABILITY

267. The proceedings against the First to Fourth Defendants are civil proceedings against:
- (a) the First Defendant for alleged negligence, default or breach of duty of Mr Smedley in his capacity as an officer of Arrium during part or all of the Relevant Period (that is, up to Mr Smedley's resignation as a director of Arrium on 17 November 2014); and
 - (b) the Second to Fourth Defendants for alleged negligence, default or breach of duty in their capacity as an officer of Arrium during the Relevant Period as the case may be.
268. At all material times, each of Mr Smedley and each of the Second to Fourth Defendants acted honestly.
269. In all the circumstances of the case, if (which is denied) any of the First to Fourth Defendants are liable to any Plaintiff or Group Member, then they ought fairly be excused for any negligence, default or breach of duty.
270. In the premises of paragraphs 268 to 269 of this Defence, pursuant to section 1317S and/or section 1318 of the Corporations Act, the Court should wholly, or alternatively partly, relieve each of the First to Fourth Defendants from any such liability.

R. PROPORTIONATE LIABILITY

271. In respect of alleged contraventions of section 1041E and 1041H of the Corporations Act, section 12DA of the ASIC Act and section 18 of the Australian Consumer Law by any of the First to

Fourth Defendants (each a **Claim**), if (which is denied) any of the First to Fourth Defendants are liable to any Plaintiff or Group Member for any loss or damage that is the subject of a Claim (**Claimed Loss**), the First to Fourth Defendants say as follows at paragraphs 272 to 280 of this Defence:

- (a) without derogating from their other responses to the SoC in this Defence;
- (b) without admission of any liability to any Plaintiff or Group Member; and
- (c) only for the purposes of their defences insofar as they relate to the reduction of any liability any of the First to Fourth Defendants may have for Claimed Loss so as to reflect the responsibility of any other persons for that Claims Loss.

272. The Claims are apportionable as follows pursuant to the following legislation (together, the **Proportionate Liability Legislation**):

- (a) Claims in respect of any alleged contravention of section 1041H of the Corporations Act are apportionable pursuant to Division 2A of Part 7.10 of the Corporations Act;
- (b) Claims in respect of any alleged contravention of section 12DA of the ASIC Act are apportionable pursuant to Subdivision GA of Division 2 of Part 2 of the ASIC Act;
- (c) Claims in respect of any alleged contravention of section 18 of the Australian Consumer Law are apportionable pursuant to:
 - (i) Part VIA of the *Competition and Consumer Act 2010* (Cth) (**CCA**); and/or
 - (ii) the following state or territory legislation (together, the **State and Territory Proportionate Liability Legislation**):
 - (A) Part 4 of the *Civil Liability Act 2002* (NSW) (**NSW CLA**);
 - (B) Part IVAA of the *Wrongs Act 1958* (Vic) (**Vic Wrongs Act**);
 - (C) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT) (**ACT CLA**);
 - (D) Part 1F of the *Civil Liability Act 2002* (WA) (**WA CLA**);
 - (E) Part 2 of the *Civil Liability Act 2003* (Qld) (**Qld CLA**);
 - (F) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA) (**SA LRA**);
 - (G) Part 9A of the *Civil Liability Act 2002* (Tas) (**Tas CLA**); and/or
 - (H) the *Proportionate Liability Act 2005* (NT); and

- (d) Claims in respect of any alleged contravention of section 1041E of the Corporations Act are apportionable pursuant to the State and Territory Proportionate Liability Legislation as applied by section 79 of the *Judiciary Act 1903* (Cth) (**Judiciary Act**).

R.1 FY14 Financial Report

273. In respect of the FY14 Financial Report, KPMG is to be considered a concurrent wrongdoer within the meaning of, and for the purposes of, the Proportionate Liability Legislation, along with the First to Third Defendants, by reason of:
- (a) the matters pleaded in paragraphs 169 to 192 of the SoC;
 - (b) the matters pleaded in paragraph 246 of the SOC insofar as they concern the KPMG FY14 Accounts Contraventions; and
 - (c) KPMG being a person whose acts or omissions caused or also caused the Claimed Loss.
274. In the premises, the liability (if any) of any of the First to Third Defendants to the Plaintiffs and any Group Member in respect of the FY14 Financial Report is limited by the Proportionate Liability Legislation to an amount reflecting that proportion of Claimed Loss that the Court considers is just, just and equitable or fair and equitable (as the case may be according to the terms of each piece of Proportionate Liability Legislation) having regard to the extent of any responsibility of any of the First to Third Defendants, and of KPMG, for that Claimed Loss.

R.2 Capital Raising

275. In respect of the Capital Raising, KPMG is to be considered a concurrent wrongdoer within the meaning of, and for the purposes of, the Proportionate Liability Legislation, along with the First to Fourth Defendants, by reason of:
- (a) the matters pleaded in paragraphs 169 to 192 and of the SoC;
 - (b) the matters pleaded in paragraphs 246 and 247 of the SOC insofar as they concern the KPMG FY14 Accounts Contraventions;
 - (c) the reliance placed by Arrium, the directors of Arrium and/or each of the First to Fourth Defendants' upon the FY14 KPMG Opinion to ASX and/or the FY14 KPMG Representation to ASX but for which:
 - (i) no FY14 Directors' Opinion to ASX and/or FY14 Directors' Representation to ASX would have been authorised, made or disseminated, with the consequence that no Plaintiff or Group Member or the Affected Market could, or would, have

been misled or deceived into acquiring any Arrium Shares by reason thereof or at all;

- (ii) no Capital Raising Announcement, Capital Raising Presentation, First Capital Raising Notice, Retail Offer Booklet and/or Second Capital Raising Notice utilising, based or premised upon the FY14 Financial Report would have been authorised, made or lodged by Arrium with the ASX, with the consequence that no Plaintiff or Group Member or the Affected Market could, or would, have been misled or deceived into acquiring any Arrium Shares by reason thereof or at all;
- (iii) no Capital Raising Representations utilising, based or premised upon the FY14 Financial Report would have been authorised, made or published, with the consequence that no Plaintiff or Group Member could, or would, have been misled or deceived into acquiring any Arrium Shares by reason thereof or at all; and/or
- (iv) no Capital Raising would have occurred or been completed utilising, based or premised upon the FY14 Financial Report, with the consequence that no Plaintiff or Group Member could, or would, have been misled or deceived into acquiring any Arrium Shares or could or would have suffered loss or damage by reason of having made such an acquisition or at all; and

(d) KPMG being a person whose acts or omissions caused or also caused the Claimed Loss.

276. In the premises, the liability (if any) of any of the First to Fourth Defendants to the Plaintiffs and any Group Member in respect of the Capital Raising is limited by the Proportionate Liability Legislation to an amount reflecting that proportion of Claimed Loss that the Court considers is just, just and equitable or fair and equitable (as the case may be according to the terms of each piece of Proportionate Liability Legislation) having regard to the extent of any responsibility of any of the First to Fourth Defendants, and of KPMG, for that Claimed Loss.

1H15 Financial Report and FY15 Financial Report

277. In respect of each of the 1H15 Financial Report and the FY15 Financial Report, KPMG is to be considered a concurrent wrongdoer within the meaning of the Proportionate Liability Legislation, along with the Second to ~~Third~~ Fourth Defendants, by reason of:

- (a) the matters pleaded in paragraphs 193 to 240 of the SoC;

- (b) the matters pleaded in paragraph 248 of the SOC (insofar as they concern the KPMG 1H15 Accounts Contraventions) and paragraph 249 of the SoC (insofar as they concern the KPMG FY15 Accounts Contraventions); and
- (c) KPMG being a person whose acts or omissions caused the Claimed Loss.

278. In the premises, the liability (if any) of any of the Second to Fourth Defendants to the Plaintiffs and any Group Member in respect of the 1H15 Financial Report and/or the FY15 Financial Report is limited by the Proportionate Liability Legislation to an amount reflecting that proportion of Claimed Loss that the Court considers is just, just and equitable or fair and equitable (as the case may be according to the terms of each piece of Proportionate Liability Legislation) having regard to the extent of any responsibility of any of the Second to Fourth Defendants, and of KPMG, for that Claimed Loss.

R2. Advisers

279. If (which is not presently known to the First to Fourth Defendants):

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

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

Particulars

- (1) Further particulars may be provided following discovery in respect of the Claims by the Plaintiffs and, prior to the trial of each Group Member's Claims, by that Group Member.

280. In the premises:

- (a) on the one hand:
 - (i) each of the First to Third Defendants, in respect of any Claimed Loss referable to the FY14 Financial Report;
 - (ii) each of the First to Fourth Defendants, in respect of any Claimed Loss referable to the Capital Raising; and

- (iii) each of the Second to Fourth Defendants, in respect of any loss referable to the 1H15 Financial Report and/or the FY15 Financial Report (as the case may be); and

(b) on the other hand, any adviser referred to in paragraph 279 of this Defence, is, in relation to the Claims by any Plaintiff or Group Member referred to in paragraph 279 of this Defence who received any such negligent advice from that adviser, a concurrent wrongdoer within the meaning of the Proportionate Liability Legislation.

S. CONTRIBUTORY NEGLIGENCE

281. The claims in respect of the contravention of section 18 of the Australian Consumer Law alleged against the First to Fourth Defendants in the SoC (**ACL Claims**) are for harm resulting from negligence within the meaning of:

- (a) section 5A of the NSW CLA;
- (b) section 44 of the Vic Wrongs Act;
- (c) section 41 of the ACT CLA.
- (d) section 5A of the WA CLA;
- (e) section 4 of the Qld CLA;
- (f) section 3 of the *Civil Liability Act 1936* (SA) (**SA CLA**); and/or
- (g) section 10 of the Tas CLA.

282. If (which is not presently known to the First to Fourth Defendants) the decision of any Plaintiff or Group Member to purchase Arrium Shares, in respect of which that Plaintiff or Group Member now makes claims based on alleged contraventions of section 1041E of the Corporations Act, section 1041H of the Corporations Act, section 12DA of the ASIC Act and/or section 18 of the Australian Consumer Law, involved a failure by that Plaintiff or Group Member to take reasonable care, then, by reason of:

- (a) section 1041I of the Corporations Act in respect of the alleged contraventions of section 1041H of the Corporations Act;
- (b) section 12GF of the ASIC Act in respect of the alleged contraventions of section 12DA of the ASIC Act;
- (c) section 137B of the CCA in respect of the contravention of the alleged contraventions of section 18 of the Australian Consumer Law ; and

- (d) further and alternatively in respect of the alleged contravention of section 18 of the Australian Consumer Law, the following Australian state or territory legislation with respect to contributory negligence (together, the **State and Territory Contributory Negligence Legislation**):
- (i) section 9(1) of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW), insofar as section 18 of the Australian Consumer Law is applied in New South Wales by section 28 of the *Fair Trading Act 1987* (NSW);
 - (ii) section 26 of the Vic Wrongs Act, insofar as section 18 of the Australian Consumer Law is applied in Victoria by section 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
 - (iii) section 102 of the ACT CLA, insofar as section 18 of the Australian Consumer Law is applied in the Australian Capital Territory by section 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);
 - (iv) section 4(1) of the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* (WA), insofar as section 18 of the Australian Consumer Law is applied in Western Australia by section 19 of the *Fair Trading Act 2010* (WA);
 - (v) section 10(1) of the *Law Reform Act 1995* (Qld), insofar as section 18 of the Australian Consumer Law is applied in Queensland by section 16 of the *Fair Trading Act 2010* (Qld);
 - (vi) section 7 of the SA LRA, insofar as section 18 of the Australian Consumer Law is applied in South Australia by section 14 of the *Fair Trading Act 2010* (SA);
 - (vii) section 4(1) of the *Wrongs Act 1954* (Tas), insofar as section 18 of the Australian Consumer Law is applied in Tasmania by section 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas); and
 - (viii) section 16(1) of the *Law Reform (Miscellaneous Provisions) Act 1956* (NT), insofar as section 18 of the Australian Consumer Law is applied in the Northern Territory by section 19 of the *Consumer Affairs and Fair Trading Act 1990* (NT); and
- (e) the State and Territory Contributory Negligence Legislation as applied by section 79 of the Judiciary Act in respect of any alleged contravention of section 1041E of the Corporations Act,

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

Particulars

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

T. INAPPROPRIATE TO EXTEND LIABILITY TO FIRST TO FOURTH DEFENDANTS

283. In respect of the ACL Claims:

- (a) having regard to the subject matter, scope and purpose of sections 18 and 236 of the Australian Consumer Law, it is not appropriate for the scope of the liability of any of the First to Fourth Defendants to extend to any loss or damage claimed, within the meaning of:
 - (i) section 5D of the NSW CLA;
 - (ii) section 51 of the Vic Wrongs Act;
 - (iii) section 45 of the ACT CLA;
 - (iv) section 5C of the WA CLA;
 - (v) section 11 of the Qld CLA;
 - (vi) section 34 of the SA CLA; and/or
 - (vii) section 13 of the Tas CLA; and
- (b) accordingly, none of the First to Fourth Defendants are liable under section 236 of the Australian Consumer Law for any such loss or damage.

284. Further or alternatively, at all material times throughout the Relevant Period:

- (a) the risk that the FY14 Financial Report, the Capital Raising Announcement, the Capital Raising Presentation, the First Capital Raising Notice, the Retail Offer Booklet, the Second Capital Raising Notice, the 1H15 Financial Report and/or the FY15 Financial Report might contain a material misstatement was an obvious risk within the meaning of the following sections of the following legislation (the **Obvious Risk Sections**):
 - (i) section 5F of the NSW CLA;

- (ii) section 53 of the Vic Wrongs Act;
 - (iii) section 5F of the WA CLA;
 - (iv) section 13 of the Qld CLA;
 - (v) section 36 of the SA CLA; and/or
 - (vi) section 15 of the Tas CLA;
- (b) further, or alternatively, the risk that such a material misstatement might not be detected by a director in the position of each of the First to Fourth Defendants at any given time was an obvious risk within the meaning of the Obvious Risk Sections;
- (c) further or alternatively, the risk that, at any given time, the price of Arrium Shares on ASX might be:
- (i) affected by an error in the FY14 Financial Report, the Capital Raising Announcement, the Capital Raising Presentation, the First Capital Raising Notice, the Retail Offer Booklet, the Second Capital Raising Notice, the 1H15 Financial Report and/or the FY15 Financial Report; and/or
 - (ii) be different from the true value of Arrium Shares,
- was an obvious risk within the meaning of the Obvious Risk Sections;
- (d) further or alternatively, the risk that the price of Arrium Shares on ASX might fluctuate to a significant degree was an obvious risk within the meaning of the Obvious Risk Sections; and
- (e) accordingly, pursuant to section 5G of the NSW CLA and/or section 54 of the Vic Wrongs Act and/or section 5N of the WA CLA and/or section 14 of the Qld CLA and/or section 37 of the SA CLA and/or section 16 of the Tas CLA (as the case may be), for the purposes of any claim in respect of the contravention of section 18 of the Australian Consumer Law alleged against any of the First to Fourth Defendants in the SoC, it is to be presumed that the Plaintiffs and Group Members were aware of the risks referred to in sub-paragraphs (a) to (d) above; and
- (f) for that reason, no loss or damage can be recovered pursuant to section 236 of the Australian Consumer Law.

285. Further or alternatively, at all material times throughout the Relevant Period:

- (a) the risk that the FY14 Financial Report, the Capital Raising Announcement, the Capital Raising Presentation, the First Capital Raising Notice, the Retail Offer Booklet, the Second Capital Raising Notice, the 1H15 Financial Report and/or the FY15 Financial Report might contain a material misstatement was an inherent risk within the meaning of the following sections of the following legislation (the **Inherent Risk Sections**):
 - (i) section 5I of the NSW CLA;
 - (ii) section 55 of the Vic Wrongs Act;
 - (iii) section 5P of the WA CLA;
 - (iv) section 16 of the Qld CLA; and/or
 - (v) section 39 of the SA CLA;
- (b) the risk that, at any given time, the price of Arrium Shares on ASX might be:
 - (i) affected by an error in the FY14 Financial Report, the Capital Raising Announcement, the Capital Raising Presentation, the First Capital Raising Notice, the Retail Offer Booklet, the Second Capital Raising Notice, the 1H15 Financial Report and/or the FY15 Financial Report; and/or
 - (ii) different from the true value of Arrium Shares,

was an inherent risk within the meaning of the Inherent Risk Sections;
- (c) the risk that the price of Arrium Shares on ASX might fluctuate to a significant degree was an inherent risk within the meaning of the Inherent Risk Sections; and
- (d) accordingly, pursuant to the Inherent Risk Sections, none of the First to Fourth Defendants are liable under section 236 of the Australian Consumer Law for any loss alleged in the SoC to have been suffered as a result of the materialisation of a risk referred to in sub-paragraphs (a) to (c) above.

U. **NORMATIVE CAUSATION**

286. Further and in answer to each of the Claims made:

- (a) having regard to the subject matter, scope and purpose of sections 1041H and 1041I of the Corporations Act, it is not appropriate for the scope of the liability of any of the First to Fourth Defendants to extend to any loss or damage claimed;

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

Date: ~~4 June~~ 1 July 2021



.....
Mark Chapple
Baker McKenzie
Solicitor for the First to Fourth Defendants
1 July 2021

SCHEDULE OF PARTIES**ANTHONY BOGAN**

First Plaintiff

MICHAEL THOMAS WALTON

Second Plaintiff

and

THE ESTATE OF PETER JOHN SMEDLEY DECEASED

First Defendant

ANDREW GERARD ROBERTS

Second Defendant

PETER GRAEME NANKERVIS

Third Defendant

JEREMY CHARLES ROY MAYCOCK

Fourth Defendant

KPMG (A FIRM) ABN 51 194 660 183

Fifth Defendant