



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

Case: S ECI 2023 01835
Filed on: 28/04/2025 03:36 PM

No. S ECI 2023 01835

BETWEEN

JUSTINE LIDGETT

First Plaintiff

CAMERON LIDGETT

Second Plaintiff

AND

DOWNER EDI LIMITED (ACN 003 872 848)

First Defendant

AND

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

Second Defendant

DEFENCE TO AMENDED CONSOLIDATED STATEMENT OF CLAIM

Date of Document: 28 April 2025

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Unless otherwise specified, this Defence adopts defined terms used in the Amended Consolidated Statement of Claim filed by the Plaintiffs on 26 February 2025 (**ACSOC**). Headings adopted from the ACSOC are for convenience only. As to the allegations in the ACSOC, KPMG says as follows:

A. INTRODUCTION

A.1 The Plaintiffs and Group Members

1. In response to paragraph 1 of the ACSOC, KPMG:
 - (a) admits that the proceeding is commenced as a group proceeding pursuant to Part 4A of the *Supreme Court of Victoria Act 1986* (Vic) by the Plaintiffs in an individual and representative capacity; and
 - (b) otherwise does not admit the paragraph.
2. KPMG does not admit paragraph 2 of the ACSOC.
3. KPMG does not admit paragraph 3 of the ACSOC.

A.2 Legal obligations to which Downer was subject

4. In response to paragraph 4 of the ACSOC, KPMG:
 - (a) admits that Downer was a “person” for the purpose of the provisions pleaded at subparagraphs 4(a)–(c) during the Relevant Period; and
 - (b) otherwise does not admit the paragraph.
5. In response to paragraph 5 of the ACSOC, KPMG:
 - (a) admits that Downer was included in the official list of the financial market operated by the Australian Securities Exchange (ASX) during the Relevant Period;
 - (b) admits the facts alleged in subparagraphs 5(a), 5(b)(i) and 5(b)(ii) during the Relevant Period;
 - (c) admits that during the Relevant Period, Downer was bound by the provisions and Listing Rules pleaded in subparagraphs 5(b)(iii)–5(b)(vi), and relies on those provisions and rules for their full force and effect as in force from time to time during the Relevant Period; and
 - (d) otherwise does not admit the paragraph.
6. In response to paragraph 6 of the ACSOC, KPMG:
 - (a) admits subparagraphs 6(a) and 6(c);

- (b) admits that the operation of s 674(2) of the Corporations Act was modified by the *Corporations (Coronavirus Economic Response) Determination (No 4) 2020* (Cth) between 24 September 2020 and 22 March 2021; and
 - (c) otherwise denies the paragraph.
7. KPMG admits paragraph 7 of the ACSOC.
 8. KPMG admits paragraph 8 of the ACSOC.
 9. KPMG admits paragraph 9 of the ACSOC.
 10. In response to paragraph 10 of the ACSOC, KPMG:
 - (a) says that the part of AASB 15 which paragraph 10 purports to summarise relates only to circumstances where contract revenue relates to variable consideration;

Particulars

AASB 15 (version 4-5), paragraphs 50-54, 56-59.

- (b) says that the part of AASB 15 which paragraph 10 purports to summarise does not describe all of the circumstances in which Downer was permitted to recognise revenue consistently with AASB 15;
 - (c) relies on each version of AASB 15 applicable during the Relevant Period for its full force and effect; and
 - (d) otherwise denies the paragraph.
11. KPMG admits paragraph 11 of the ACSOC.
 12. In response to paragraph 12 of the ACSOC, KPMG:
 - (a) says that the part of IFRS 15 which paragraph 12 purports to summarise relates only to the circumstances where contract revenue relates to variable consideration;

Particulars

IFRS 15, paragraphs 50-54, 56-59.

- (b) says that the part of IFRS 15 which paragraph 12 purports to summarise does not describe all of the circumstances in which an entity is permitted to recognise revenue consistently with IFRS 15;
- (c) relies on IFRS 15 as in force during the Relevant Period for its full terms and effect; and
- (d) otherwise denies the paragraph.

A.3 Downer's business

13. KPMG admits paragraph 13 of the ACSOC.
14. In response to paragraph 14 of the ACSOC, KPMG:
 - (a) admits that during the Relevant Period, Downer's business included operations in the areas of transport, utilities, facilities and mining; and
 - (b) otherwise does not admit the paragraph.

A.4 Directors and officers of Downer

15. In response to paragraph 15 of the ACSOC, KPMG:
 - (a) says that Fenn was a director of Downer from 2 July 2010 to 27 February 2023;
 - (b) admits that Fenn was Managing Director and Chief Executive Officer of Downer from 2 August 2010 to 27 February 2023;
 - (c) admits subparagraph 15(b); and
 - (d) otherwise does not admit the paragraph.
16. In response to paragraph 16 of the ACSOC, KPMG:
 - (a) admits that Tompkins was Chief Operating Officer of Downer from June or July 2021 until 27 February 2023;
 - (b) admits subparagraphs 16(b) and 16(c); and
 - (c) otherwise does not admit the paragraph.
17. In response to paragraph 17 of the ACSOC, KPMG:
 - (a) admits subparagraph 17(b); and
 - (b) otherwise does not admit the paragraph.
18. In response to paragraph 18 of the ACSOC, KPMG:
 - (a) admits that Ferguson was the Chief Financial Officer of Downer and an officer of Downer within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 throughout the Relevant Period; and
 - (b) otherwise does not admit the paragraph.
19. In response to paragraph 19 of the ACSOC, KPMG:
 - (a) admits that Kafanelis was the Head of Utilities of Downer from April 2022;

- (b) admits that Kafanelis was an officer of Downer within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 from April 2022 through to the end of the Relevant Period; and
 - (c) otherwise does not admit the paragraph.
20. In response to paragraph 20 of the ACSOC, KPMG:
- (a) admits subparagraph 20(b); and
 - (b) otherwise does not admit the paragraph.
21. KPMG admits paragraph 21 of the ACSOC.
22. KPMG does not admit paragraph 22 of the ACSOC.
23. In response to paragraph 23 of the ACSOC, KPMG:
- (a) admits the paragraph insofar as it relates to the individuals and periods in respect of which KPMG makes admissions in paragraphs 15–21 above; and
 - (b) otherwise does not admit the paragraph.

B. DOWNER'S STATEMENTS TO THE MARKET

B.1 23 July 2019 announcement of the AusNet Contract

24. KPMG admits paragraph 24 of the ACSOC.
25. KPMG relies on the 23 July 2019 Announcement for its full force and effect and otherwise admits paragraph 25 of the ACSOC.
26. KPMG admits paragraph 26 of the ACSOC.
27. KPMG does not admit paragraph 27 of the ACSOC.

B.2 Capital Raise

28. KPMG admits paragraph 28 of the ACSOC, but for the Cleansing Notice referred to in subparagraph (b), which referred to "s 708AA(2)(f)" not "s 7088AA(2)(f)".
29. KPMG admits paragraph 29 of the ACSOC and relies on the Capital Raise Announcement for its full force and effect.
30. KPMG admits paragraph 30 of the ACSOC and relies on the Capital Raise Announcement for its full force and effect.
31. KPMG admits paragraph 31 of the ACSOC and relies on the Cleansing Notice for its full force and effect.

B.3 12 August 2020 announcements

32. KPMG admits paragraph 32 of the ACSOC.

- 33. KPMG admits paragraph 33 of the ACSOC and relies on the FY20 Appendix 4E for its full force and effect.
- 34. KPMG admits paragraph 34 of the ACSOC and relies on the FY20 Annual Report for its full force and effect.
- 35. KPMG admits paragraph 35 of the ACSOC and relies on the 12 August 2020 Announcement for its full force and effect.
- 36. In response to paragraph 36 of the ACSOC, KPMG:
 - (a) admits paragraph 36, but for the omission of a footnote “2” following “EBITA” in row 5 of column 1 of the table immediately beneath the heading “Underlying financial performance”; and
 - (b) otherwise relies on the 12 August 2020 Presentation for its full force and effect.

B.4 11 February 2021 announcements

- 37. KPMG admits paragraph 37 of the ACSOC.
- 38. In response to paragraph 38 of the ACSOC, KPMG:
 - (a) says that the table at paragraph 38 inaccurately refers to 31 December 2021 instead of 31 December 2019; and
 - (b) otherwise admits the paragraph and relies on the HY21 Appendix 4D for its full force and effect.
- 39. KPMG admits paragraph 39 of the ACSOC and relies on the HY21 Half-year Report for its full force and effect.
- 40. KPMG admits paragraph 40 of the ACSOC and relies on the 11 February 2021 Announcement for its full force and effect.
- 41. KPMG admits paragraph 41 of the ACSOC and relies on the 11 February 2021 Presentation for its full force and effect.

B.5 12 August 2021 announcements

- 42. KPMG admits paragraph 42 of the ACSOC.
- 43. KPMG admits paragraph 43 of the ACSOC and relies on the FY21 Appendix 4E for its full force and effect.
- 44. KPMG admits paragraph 44 of the ACSOC and relies on the FY21 Annual Report for its full force and effect.
- 45. KPMG admits paragraph 45 of the ACSOC and relies on the 12 August 2021 Announcement for its full force and effect.

- 46. KPMG admits paragraph 46 of the ACSOC and relies on the 12 August 2021 Presentation for its full force and effect.

B.6 10 February 2022 announcements

- 47. KPMG admits paragraph 47 of the ACSOC.
- 48. KPMG admits paragraph 48 of the ACSOC and relies on the HY22 Appendix 4D for its full force and effect.
- 49. KPMG admits paragraph 49 of the ACSOC and relies on the HY22 Half-year Report for its full force and effect.
- 50. KPMG admits paragraph 50 of the ACSOC and relies on the 10 February 2022 Announcement for its full force and effect.
- 51. KPMG admits paragraph 51 of the ACSOC and relies on the 10 February 2022 Presentation for its full force and effect.

B.7 17 August 2022 announcements

- 52. KPMG admits paragraph 52 of the ACSOC.
- 53. KPMG admits paragraph 53 of the ACSOC and relies on the FY22 Appendix 4E for its full force and effect.
- 54. KPMG admits paragraph 54 of the ACSOC and relies on the FY22 Annual Report for its full force and effect.
- 55. KPMG admits paragraph 55 of the ACSOC and relies on the 17 August 2022 Announcement for its full force and effect.
- 56. KPMG admits paragraph 56 of the ACSOC and relies on the 17 August 2022 Presentation for its full force and effect.

B.8 3 November 2022 announcements

- 57. KPMG admits paragraph 57 of the ACSOC.
- 58. KPMG admits paragraph 58 of the ACSOC.
- 59. KPMG admits paragraph 59 of the ACSOC and relies on the 3 November 2022 Presentation for its full force and effect.

B.9 8 December 2022 announcements

- 60. KPMG admits paragraph 60 of the ACSOC.
- 61. KPMG admits paragraph 61 of the ACSOC.

62. KPMG admits paragraph 62 of the ACSOC subject to notation of the following errata:
- (a) in the second quoted paragraph, “word” was originally “work”;
 - (b) in the third quoted paragraph, “masking” was originally “marking”;
 - (c) in the fourth quoted paragraph, “presents” was originally “present”;
 - (d) in the fourth quoted paragraph, “the movement” was originally “that movement”; and
 - (e) in the ninth quoted paragraph, “arguments” was originally “argument’s”.

B.10 Price impact of the 8 December 2022 Announcement and/or the 8 December 2022 Call

63. In response to paragraph 63 of the ACSOC, KPMG:
- (a) says that the closing price of Downer Shares was
 - (i) \$4.80 on 7 December 2020;
 - (ii) \$3.82 on 8 December 2022; and
 - (iii) \$3.70 on 9 December 2022; and
 - (b) otherwise denies the paragraph.

B.11 27 February 2023 announcements

64. KPMG admits paragraph 64 of the ACSOC.
65. KPMG admits paragraph 65 of the ACSOC and relies on the First 27 February 2023 Announcement for its full force and effect.
66. KPMG admits paragraph 66 of the ACSOC and relies on the HY23 Appendix 4D for its full force and effect.
67. KPMG admits paragraph 67 of the ACSOC, subject to notation of the following errata:
- (a) in the second quoted paragraph, “Downer announced it had identified” was originally “Downer announced that it had identified”; and
 - (b) in the table under the heading “Condensed Consolidated Statement of Profit or Loss and Other Comprehensive Income for the half-year ended 31 December 2022”:
 - (i) the references to “(Loss) / ” in the first column do not appear in the original; and
 - (ii) the 2021 restated figure for “profit after income tax” of “85.6” should read “85.8”,

and otherwise relies on the HY23 Half-year Report for its full force and effect.

68. KPMG admits paragraph 68 of the ACSOC, but for the word “remain” in the sentence commencing “The market outlook” which should read “remains”, and relies on the Second 27 February 2023 Announcement for its full force and effect.
69. KPMG admits paragraph 69 of the ACSOC and relies on the 27 February 2023 Presentation for its full force and effect.

B.12 Price impact of the 27 February 2023 Disclosure

70. In response to paragraph 70 of the ACSOC, KPMG:
- (a) says that the closing price of Downer Shares was:
 - (i) \$3.96 on 24 February 2023;
 - (ii) \$3.02 on 27 February 2023; and
 - (iii) \$3.16 on 28 February 2023; and
 - (b) otherwise denies the paragraph.

C THE TRUE POSITION

C.1 Features of the AusNet Contract, and its administration

71. In response to paragraph 71 of the ACSOC, KPMG:
- (a) says, in response to subparagraph 71(a), that:
 - (i) clauses 1.1 and 2(a) of the AusNet Contract provided that the agreement commences, in respect of “mobilisation”, on the Contract Date (22 July 2019);
 - (ii) clauses 1.1 and 2(b) provided that agreement in respect of all other Services commences on the Commencement Date, being the date that AusNet Services notifies Downer Utilities that all Conditions Precedent have been satisfied or waived; and
 - (iii) the First 27 February 2023 Announcement stated that “year one of the contract commenced on 1 April 2020”;
 - (b) says, in response to subparagraph 71(b), that clause 2(i) of the AusNet Contract provided that the Electrical Services Contract dated 25 September 2012 between SPI Electricity Pty Ltd and Tenix Australia Pty Ltd will be deemed to have expired on the day immediately preceding the Commencement Date of the AusNet Contract;
 - (c) does not admit subparagraph 71(c);

- (d) says, in response to subparagraphs 71(d)–(g), that under the AusNet Contract:
 - (i) AusNet Services could issue Work Orders to Downer Utilities (clause 7.2(b)(i)); and
 - (ii) if Downer Utilities accepted and performed any such Work Orders, it would be paid according to an agreed schedule of rates, or otherwise as quoted by Downer Utilities and agreed by AusNet Services (clauses 7.1(a), 7.3(a), (b), (d), (f), 7.4(a)–(c) and 48.1);
- (e) in response to subparagraph 72(h), clause 7.9 of the AusNet Contract provided that the parties agreed to comply with “Schedule 19 – Volume Commitment”;
- (f) admits subparagraph 72(i); and
- (g) otherwise does not admit the paragraph.

72. KPMG does not admit paragraph 72 of the ACSOC.

73. KPMG does not admit paragraph 73 of the ACSOC.

C.2 AusNet Contract onerous and loss-making

74. KPMG denies paragraph 74 of the ACSOC.

75. KPMG does not admit paragraph 75 of the ACSOC.

C.3 Misstated Accounts

76. KPMG does not admit paragraph 76 of the ACSOC.

77. KPMG does not admit paragraph 77 of the ACSOC.

78. KPMG does not admit paragraph 78 of the ACSOC.

79. KPMG does not admit paragraph 79 of the ACSOC.

80. KPMG does not admit paragraph 80 of the ACSOC.

81. KPMG does not admit paragraph 81 of the ACSOC.

82. KPMG does not admit paragraph 82 of the ACSOC.

83. KPMG does not admit paragraph 83 of the ACSOC.

84. KPMG does not admit paragraph 84 of the ACSOC.

85. KPMG does not admit paragraph 85 of the ACSOC.

C.4 Misstated Guidance for FY23

86. KPMG does not admit paragraph 86 of the ACSOC.

D MISLEADING OR DECEPTIVE CONDUCT

D.1 AusNet Contract

- 87. KPMG does not admit paragraph 87 of the ACSOC.
- 88. KPMG does not admit paragraph 88 of the ACSOC.
- 89. KPMG does not admit paragraph 89 of the ACSOC.
- 90. KPMG does not admit paragraph 90 of the ACSOC.
- 91. KPMG does not admit paragraph 91 of the ACSOC.
- 92. KPMG does not admit paragraph 92 of the ACSOC.
- 93. KPMG does not admit paragraph 93 of the ACSOC.
- 94. KPMG does not admit paragraph 94 of the ACSOC.

D.2 Capital Raise Representations

- 95. In response to paragraph 95 of the ACSOC, KPMG:
 - (a) admits that in the Capital Raise Announcement issued on 21 July 2020, Downer said “Transport, Utilities and Facilities (excluding Hospitality) have been very resilient and are expected to continue trading strongly into the 2021 financial year”; and
 - (b) otherwise does not admit the paragraph.
- 96. KPMG does not admit paragraph 96 of the ACSOC.
- 97. In response to paragraph 97 of the ACSOC, KPMG:
 - (a) admits the representations pleaded at paragraphs 28 and 31 of the ACSOC, subject to the qualification pleaded in paragraphs 28 and 31 above, were made on 21 July 2020; and
 - (b) otherwise does not admit the paragraph.
- 98. KPMG does not admit paragraph 98 of the ACSOC.
- 99. KPMG does not admit paragraph 99 of the ACSOC.
- 100. KPMG does not admit paragraph 100 of the ACSOC.
- 101. KPMG does not admit paragraph 101 of the ACSOC.
- 102. KPMG does not admit paragraph 102 of the ACSOC.
- 103. KPMG does not admit paragraph 103 of the ACSOC.

D.3 30 June 2020 Financial Representations

104. In response to paragraph 104 of the ACSOC, KPMG:

- (a) says that the FY20 Annual Report stated it was prepared in accordance with Australian Accounting Standards;
- (b) says that the representation pleaded in subparagraph 104(a) of the ACSOC was stated to be a matter of opinion of the Directors of Downer;
- (c) admits that the figures pleaded in subparagraphs 104(b)(i), (ii), (iii) and (v) of the ACSOC appeared in the FY20 Appendix 4E or FY20 Annual Report as statutory figures; and
- (d) otherwise does not admit the paragraph.

105. In response to paragraph 105 of the ACSOC, KPMG:

- (a) repeats paragraph 104 above; and
- (b) otherwise does not admit the paragraph.

106. KPMG does not admit paragraph 106 of the ACSOC.

107. KPMG does not admit paragraph 107 of the ACSOC.

108. KPMG does not admit paragraph 108 of the ACSOC.

109. KPMG does not admit paragraph 109 of the ACSOC.

D.4 31 December 2020 Financial Representations

110. In response to paragraph 110 of the ACSOC, KPMG:

- (a) says that the HY21 Half-year Report stated it was prepared in accordance with AASB 134 *Interim Financial Reporting* and the Corporations Act, and with IAS 34 *Interim Financial Reporting*;
- (b) says that the FY21 Half-year Report stated that, in the opinion of the Directors of Downer, the condensed consolidated half-year financial statements and notes set out at pages 20 to 43 of the FY21 Half-year Report complied with Australian Accounting Standard AASB 134 *Interim Financial Reporting*, the *Corporations Regulations 2001* (Cth) and that the financial statements and notes thereto give a true and fair view of the Group's financial position as at 31 December 2020 and of its performance for the six-month period ended on that date;
- (c) admits that the figures pleaded in subparagraphs 110(b)(ii), (iii), (iv) and (v) of the ACSOC appeared in the HY21 Appendix 4D, HY21 Half-year Report, the

11 February 2021 Announcement, or the 11 February 2021 Presentation as statutory figures; and

(d) otherwise does not admit the paragraph.

111. In response to paragraph 111 of the ACSOC, KPMG:

(a) repeats paragraph 110 above; and

(b) otherwise does not admit paragraph 111.

112. KPMG does not admit paragraph 112 of the ACSOC.

113. KPMG does not admit paragraph 113 of the ACSOC.

114. KPMG does not admit paragraph 114 of the ACSOC.

115. KPMG does not admit paragraph 115 of the ACSOC.

D.5 30 June 2021 Financial Representations

116. In response to paragraph 116 of the ACSOC, KPMG:

(a) says that the FY21 Annual Report stated it was prepared in accordance with Australian Accounting Standards;

(b) says that the representation pleaded in subparagraph 116(a) of the ACSOC was stated to be a matter of opinion of the Directors of Downer;

(c) admits that the figures pleaded in subparagraphs 116(b)(ii), (iii), (iv) and (v) of the ACSOC appeared in the FY21 Annual Report as statutory figures; and

(d) otherwise does not admit the paragraph.

117. In response to paragraph 117 of the ACSOC, KPMG:

(a) repeats paragraph 116 above; and

(b) otherwise does not admit paragraph 117.

118. KPMG does not admit paragraph 118 of the ACSOC.

119. KPMG does not admit paragraph 119 of the ACSOC.

120. KPMG does not admit paragraph 120 of the ACSOC.

121. KPMG does not admit paragraph 121 of the ACSOC.

D.6 31 December 2021 Financial Representations

122. In response to paragraph 122 of the ACSOC, KPMG:

- (a) says that the FY22 Half-year Report stated that it was prepared in accordance with AASB 134 *Interim Financial Reporting* and the Corporations Act, and with IAS 34 *Interim Financial Reporting*;
- (b) says that the FY22 Half-year Report stated that in the opinion of the Directors of Downer, the condensed consolidated half-year financial statements and notes set out at pages 18 to 43 of the FY22 Half-year Report complied with Accounting Standard AASB 134 *Interim Financial Reporting*, the *Corporations Regulations 2001* (Cth) and that the financial statements and notes thereto give a true and fair view of the Group's financial position as at 31 December 2021 and of its performance for the six-month period ended on that date;
- (c) admits that the figures pleaded at subparagraphs 122(b)(ii), (iii), (iv) and (v) of the ACSOC appear in the FY21 Half-year Report as statutory figures; and
- (d) otherwise does not admit the paragraph.

123. In response to paragraph 123 of the ACSOC, KPMG:

- (a) repeats paragraph 122 above; and
- (b) otherwise does not admit paragraph 123.

124. KPMG does not admit paragraph 124 of the ACSOC.

125. KPMG does not admit paragraph 125 of the ACSOC.

126. KPMG does not admit paragraph 126 of the ACSOC.

127. KPMG does not admit paragraph 127 of the ACSOC.

D.7 30 June 2022 Financial Representations

128. In response to paragraph 128 of the ACSOC, KPMG:

- (a) says that the FY22 Annual Report stated that it was prepared in accordance with Australian Accounting Standards;
- (b) says that the representation pleaded in subparagraph 128(a) was stated to be a matter of opinion of the Directors of Downer;
- (c) admits that the figures pleaded at subparagraphs 128(b)(b)(ii), (iii), (iv) and (v) of the ACSOC appear in the FY22 Annual Report as statutory figures; and
- (d) otherwise does not admit the paragraph.

129. In response to paragraph 129 of the ACSOC, KPMG:

- (a) repeats paragraph 128 above; and
- (b) otherwise does not admit paragraph 129.

130. KPMG does not admit paragraph 130 of the ACSOC.

131. KPMG does not admit paragraph 131 of the ACSOC.

132. KPMG does not admit paragraph 132 of the ACSOC.

133. KPMG does not admit paragraph 133 of the ACSOC.

D.8 First FY23 Guidance Representation

134. In response to paragraph 134 of the ACSOC, KPMG:

- (a) repeats paragraphs 52 and 54–56 above;
- (b) admits that on 17 August 2022, Downer stated that “For FY23, Downer expects 10-20% underlying NPATA growth, assuming no material COVID-19, weather, labour or other disruptions” [DOW.3000.0023.9999]; and
- (c) otherwise does not admit the paragraph.

135. In response to paragraph 135 of the ACSOC, KPMG:

- (a) repeats paragraphs 52, 54–56 and 134 above; and
- (b) otherwise does not admit the paragraph.

136. KPMG does not admit paragraph 136 of the ACSOC.

137. KPMG does not admit paragraph 137 of the ACSOC.

138. KPMG does not admit paragraph 138 of the ACSOC.

139. In response to paragraph 139 of the ACSOC, KPMG:

- (a) repeats paragraphs 86 and 134–135 above; and
- (b) otherwise does not admit the paragraph.

140. In response to paragraph 140 of the ACSOC, KPMG:

- (a) repeats paragraphs 134–139 above; and
- (b) otherwise does not admit the paragraph.

D.9 Second FY23 Guidance Representation

141. In response to paragraph 141 of the ACSOC, KPMG:

- (a) repeats paragraphs 60–62 above;

- (b) admits that on 8 December 2022, Downer stated that “Downer now expects underlying FY23 NPATA to be between \$120 million - \$23 million assuming no further material COVID-19, weather, labour shortages or other disruptions” [DOW.3000.0048.9997]; and
 - (c) otherwise does not admit the paragraph.
- 142. In response to paragraph 142 of the ACSOC, KPMG:
 - (a) repeats paragraphs 60–62 and 141 above; and
 - (b) otherwise does not admit the paragraph.
- 143. KPMG does not admit paragraph 143 of the ACSOC.
- 144. KPMG does not admit paragraph 144 of the ACSOC.
- 145. KPMG does not admit paragraph 145 of the ACSOC.
- 146. In response to paragraph 146 of the ACSOC, KPMG:
 - (a) repeats paragraphs 86 and 141–142 above; and
 - (b) otherwise does not admit the paragraph.
- 147. In response to paragraph 147 of the ACSOC, KPMG:
 - (a) repeats paragraphs 141–146 above; and
 - (b) otherwise does not admit the paragraph.
- E FALSE OR MISLEADING STATEMENTS**
- 148. In response to paragraph 148 of the ACSOC, KPMG:
 - (a) repeats paragraphs 87–89, 95–97, 104–105, 110–111, 116–117, 122–123, 128–129, 134–135 and 141–142 above;
 - (b) admits that, if it is found that any of the representations listed in paragraph 148 of the ACSOC were made, they were made by Downer; and
 - (c) otherwise does not admit the paragraph.
- 149. KPMG does not admit paragraph 149 of the ACSOC.
- 150. KPMG does not admit paragraph 150 of the ACSOC.
- 151. KPMG does not admit paragraph 151 of the ACSOC.
- 152. KPMG does not admit paragraph 152 of the ACSOC.

F CONTINUOUS DISCLOSURE CONTRAVENTIONS**F.1 AusNet Onerous Contract Information**

- 153. KPMG does not admit paragraph 153 of the ACSOC.
- 154. KPMG does not admit paragraph 154 of the ACSOC.
- 155. In response to paragraph 155 of the ACSOC, KPMG:
 - (a) repeats paragraphs 74 and 153 above; and
 - (b) otherwise does not admit the paragraph.
- 156. KPMG does not admit paragraph 156 of the ACSOC.
- 157. KPMG does not admit paragraph 157 of the ACSOC.
- 158. KPMG does not admit paragraph 158 of the ACSOC.

F.2 Contract Management Information

- 159. KPMG does not admit paragraph 159 of the ACSOC.
- 160. KPMG does not admit paragraph 160 of the ACSOC.
- 161. KPMG does not admit paragraph 161 of the ACSOC.
- 162. KPMG does not admit paragraph 162 of the ACSOC.
- 163. KPMG does not admit paragraph 163 of the ACSOC.
- 164. KPMG does not admit paragraph 164 of the ACSOC.

F.3 AusNet Loss Information

- 165. KPMG does not admit paragraph 165 of the ACSOC.
- 166. KPMG does not admit paragraph 166 of the ACSOC.
- 167. KPMG does not admit paragraph 167 of the ACSOC.
- 168. KPMG does not admit paragraph 168 of the ACSOC.
- 169. KPMG does not admit paragraph 169 of the ACSOC.
- 170. KPMG does not admit paragraph 170 of the ACSOC.

F.4 30 June 2020 True Financial Information

- 171. KPMG does not admit paragraph 171 of the ACSOC.
- 172. KPMG does not admit paragraph 172 of the ACSOC.
- 173. KPMG does not admit paragraph 173 of the ACSOC.
- 174. KPMG does not admit paragraph 174 of the ACSOC.

175. KPMG does not admit paragraph 175 of the ACSOC.

176. KPMG does not admit paragraph 176 of the ACSOC.

F.5 31 December 2020 True Financial Information

177. KPMG does not admit paragraph 177 of the ACSOC.

178. KPMG does not admit paragraph 178 of the ACSOC.

179. KPMG does not admit paragraph 179 of the ACSOC.

180. KPMG does not admit paragraph 180 of the ACSOC.

181. KPMG does not admit paragraph 181 of the ACSOC.

182. KPMG does not admit paragraph 182 of the ACSOC.

F.6 30 June 2021 True Financial Information

183. KPMG does not admit paragraph 183 of the ACSOC.

184. KPMG does not admit paragraph 184 of the ACSOC.

185. KPMG does not admit paragraph 185 of the ACSOC.

186. KPMG does not admit paragraph 186 of the ACSOC.

187. KPMG does not admit paragraph 187 of the ACSOC.

188. KPMG does not admit paragraph 188 of the ACSOC.

F.7 31 December 2021 True Financial Information

189. KPMG does not admit paragraph 189 of the ACSOC.

190. KPMG does not admit paragraph 190 of the ACSOC.

191. KPMG does not admit paragraph 191 of the ACSOC.

192. KPMG does not admit paragraph 192 of the ACSOC.

193. KPMG does not admit paragraph 193 of the ACSOC.

194. KPMG does not admit paragraph 194 of the ACSOC.

F.8 30 June 2022 True Financial Information

195. KPMG does not admit paragraph 195 of the ACSOC.

196. KPMG does not admit paragraph 196 of the ACSOC.

197. KPMG does not admit paragraph 197 of the ACSOC.

198. KPMG does not admit paragraph 198 of the ACSOC.

199. KPMG does not admit paragraph 199 of the ACSOC.

200. KPMG does not admit paragraph 200 of the ACSOC.

F.9 FY23 Guidance Information

201. In response to paragraph 201 of the ACSOC, KPMG:

- (a) says that 3 November 2023 is not within the Relevant Period; and
- (b) otherwise does not admit the paragraph.

202. KPMG does not admit paragraph 202 of the ACSOC.

203. KPMG does not admit paragraph 203 of the ACSOC.

204. KPMG does not admit paragraph 204 of the ACSOC.

205. KPMG does not admit paragraph 205 of the ACSOC.

206. KPMG does not admit paragraph 206 of the ACSOC.

G CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

G.1 Acquisition of Downer Shares

207. KPMG does not admit paragraph 207 of the ACSOC.

G.2 Market-based causation

208. In response to paragraph 208 of the ACSOC, KPMG:

- (a) repeats paragraph 5 above; and
- (b) otherwise does not admit the paragraph.

209. In response to paragraph 209 of the ACSOC, KPMG:

- (a) repeats paragraphs 87–206 above; and
- (b) otherwise does not admit the paragraph.

210. In response to paragraph 210 of the ACSOC, KPMG:

- (a) repeats paragraphs 63, 70, 87–206 and 209 above; and
- (b) otherwise does not admit the paragraph.

211. KPMG does not admit paragraph 211 of the ACSOC.

G.3 Capital Raise

212. In response to paragraph 212 of the ACSOC, KPMG:

- (a) admits that the Capital Raise was undertaken at an offer price of \$3.75 per new Downer Share; and
- (b) otherwise does not admit the paragraph.

213. KPMG does not admit paragraph 213 of the ACSOC.

214. KPMG does not admit paragraph 214 of the ACSOC.

G.4 Reliance

215. KPMG does not admit paragraph 215 of the ACSOC.

G.5 Loss and damage

216. KPMG does not admit paragraph 216 of the ACSOC.

GA CLAIM AGAINST KPMG

217. In response to paragraph 217 of the ACSOC, KPMG:

- (a) in respect of subparagraph 217(a):
 - (i) says that KPMG is and was at all material times a partnership under the *Partnership Act 1892* (NSW) (**NSW Partnership Act**);
 - (ii) says that, in respect of the conduct alleged in the ACSOC, the only proper persons against whom these proceedings may be brought are those persons who were partners during the Relevant Period (as defined in the ACSOC); and
 - (iii) otherwise denies the subparagraph;
- (b) KPMG admits subparagraphs 217(b) and 217(c);
- (c) in respect of subparagraph 217(d):
 - (i) refers to and relies on the provisions of s 761F of the Corporations Act for their full force and effect; and
 - (ii) otherwise denies the subparagraph;
- (d) in respect of subparagraph 217(e):
 - (i) refers to and relies on the provisions of the *Partnership Act 1958* (Vic) (**Victorian Partnership Act**) for their full force and effect;
 - (ii) says that each partner of KPMG during the Relevant Period and at all material times was an agent of KPMG to the extent provided for in s 9 of the Victorian Partnership Act and in s 5 of the NSW Partnership Act for the purpose of the business of the partnership;
 - (iii) says that, in respect of the conduct alleged in the ACSOC:
 - (A) pursuant to s 9(1) of the NSW Partnership Act and/or s 13 of the Victorian Partnership Act, every partner of KPMG is liable jointly with

the other partners for any debts and obligations of the firm incurred while the partner was a partner; and

- (B) pursuant to s 10(1) of the NSW Partnership Act and/or s 14(1) of the Victorian Partnership Act, in the event (which is denied) that any wrongful act or omission of Mr Slapp or Mr Isaac acting in the ordinary course of the business or the firm or with the authority of their co-partners caused loss or injury (which is denied) to any person not being a partner of the firm, KPMG would be liable therefor to the same extent as the partner so acting or omitting to act (which is denied); and

- (iv) otherwise denies the subparagraph.

GA.1 Retainer of KPMG

218. KPMG admits paragraph 218 of the ACSOC.

219. In response to paragraph 219 of the ACSOC, KPMG:

- (a) admits it was an express term of the FY20 Retainer that KPMG would conduct its audit in accordance with Australian Auditing Standards (FY18 Engagement Letter, clause 1.1);
- (b) admits the FY20 Retainer contained the words quoted in subparagraph (b) but says they were expressed to be subject to “the extent that Section 1317AE would prevent [KPMG] from doing so”;
- (c) admits subparagraph 219(c);
- (d) in response to subparagraph 219(d), says there were express terms of the FY20 Retainer that:
 - (i) KPMG was engaged as auditor of Downer and its controlled entities under the Corporations Act (FY18 Engagement Letter, page 1);
 - (ii) Downer Utilities was a controlled entity which the Directors and Management of Downer had determined required a statutory audit (FY20 Arrangements Letter, [2] and Appendix One); and
 - (iii) KPMG’s obligation in respect of controlled entities preparing special purpose financial reports was to:
 - (A) conduct an audit in accordance with the Australian Auditing Standards; and

- (B) report to the Company's members whether in KPMG's opinion the annual special purpose financial report complied with the Corporations Act, including:
 - (1) giving a true and fair view of the Company's financial position as at 30 June 2020 and of its performance for the year ended 30 June 2020 in accordance with the accounting policies determined by the directors; and
 - (2) complying with AASB 101 Presentation of Financial Statements, AASB 107 Cash Flow Statements, AASB 108 Accounting Policies, Changes in Accounting Estimates and Errors, AASB 1048 Interpretation and Application of Standard, AASB 1054 Australian Additional Disclosure, AASB 1031 Materiality and other accounting standards determined by the directors and the *Corporations Regulations 2001* (Cth) as determined by the directors (FY18 Engagement Letter, [1.8] and Appendix Two and FY20 Arrangements Letter);
 - (e) relies on the terms of the FY18 Engagement Letter, including its Appendices, being the Terms and Conditions of Business appended to the FY18 Engagement Letter and Appendix Two, and the FY20 Arrangements Letter for their full force and effect; and
 - (f) otherwise denies the paragraph.
220. In response to paragraph 220 of the ACSOC, KPMG:
- (a) admits subparagraphs 220(a)–(c);
 - (b) says it was an implied term of the FY20 Retainer that KPMG would exercise reasonable care and skill in forming the opinions described in subparagraph 219(d)(iii)(B) above; and
 - (c) otherwise denies the paragraph.
221. KPMG admits paragraph 221 of the ACSOC and says further that the FY21 Retainer was modified on 30 September 2021.

Particulars

The FY21 Retainer was modified by an addendum letter dated 23 September 2021, countersigned on 30 September 2021 (**FY21 Addendum Letter**).

222. In response to paragraph 222 of the ACSOC, KPMG:

- (a) admits it was an express term of the FY21 Retainer that KPMG would conduct its audit in accordance with Australian Auditing Standards (FY21 Engagement Letter, clause 1.1);
- (b) admits the FY21 Retainer contained the words quoted in subparagraph 222(b) but says they were expressed to be subject to “the extent that Section 1317AE would prevent [KPMG] from doing so”;
- (c) admits subparagraph 222(c);
- (d) in response to subparagraph 222(d), says that there were express terms of the FY21 Retainer that:
 - (i) KPMG was engaged as auditor of Downer and its controlled entities under the Corporations Act (FY21 Engagement Letter, page 1);
 - (ii) Downer Utilities was a controlled entity which the Directors and Management of Downer had determined required a statutory audit (FY21 Arrangements Letter, [2] and Appendix One); and
 - (iii) KPMG’s responsibility was to:
 - (A) conduct an audit of Downer Utilities in accordance with Australian Auditing Standards – Simplified Disclosures Framework; and
 - (B) report to Downer Utilities’ shareholder whether in KPMG’s opinion the annual financial report of Downer Utilities complied with the Corporations Act, including:
 - (1) giving a true and fair view of Downer Utilities’ financial position as at 30 June 2021 and of its performance for the year ended 30 June 2021; and
 - (2) complying with the Australian Accounting Standards – Simplified Disclosures Framework and the *Corporations Regulations 2001* (Cth) (FY21 Addendum Letter, [1.1]);
- (e) relies on the terms of the FY21 Engagement Letter, including its Appendices, being the Terms and Conditions of Business appended to the FY21 Engagement Letter (**FY21 Terms and Conditions**) and Appendix Two, the FY21 Arrangements Letter, and the FY21 Addendum Letter for their full force and effect; and
- (f) otherwise denies the paragraph.

223. In response to paragraph 223 of the ACSOC, KPMG:

- (a) admits subparagraphs 223(a)–(c);
- (b) says it was an implied term of the FY21 Retainer that KPMG would exercise reasonable care and skill in forming the opinions described in subparagraph 222(d)(iii)(B) above; and
- (c) otherwise denies the paragraph.

224. KPMG admits paragraph 224 of the ACSOC.

Particulars

The FY22 Retainer included the FY21 Addendum Letter.

225. In response to paragraph 225 of the ACSOC, KPMG:

- (a) admits it was an express term of the FY22 Retainer that KPMG would conduct its audit in accordance with Australian Auditing Standards (FY21 Engagement Letter, clause 1.1 and FY22 Arrangements Letter);
- (b) admits the FY22 Retainer contained the words quoted in subparagraph 225(b) but says they were expressed to be subject to “the extent that Section 1317AE would prevent [KPMG] from doing so”;
- (c) admits subparagraph 225(c);
- (d) in response to subparagraph 225(d), says that there were express terms of the FY22 Retainer that:
 - (i) KPMG was engaged as auditor of Downer and its controlled entities under the Corporations Act (FY21 Engagement Letter, page 1);
 - (ii) Downer Utilities was a controlled entity which the Directors and Management of Downer had determined required a statutory audit (FY22 Arrangements Letter, [2] and Appendix One); and
 - (iii) KPMG’s responsibility was to:
 - (A) conduct an audit of Downer Utilities in accordance with Australian Auditing Standards – Simplified Disclosures Framework; and

- (B) report to Downer Utilities' shareholder whether in KPMG's opinion the annual financial report of Downer Utilities complied with the Corporations Act, including:
 - (1) giving a true and fair view of Downer Utilities' financial position as at 30 June 2022 and of its performance for the year ended 30 June 2022; and
 - (2) complying with the Australian Accounting Standards – Simplified Disclosures Framework and the *Corporations Regulations 2001* (Cth) (FY21 Addendum Letter, [1.1]);
 - (e) relies on the terms of the FY21 Engagement Letter, including its Appendices, being the FY21 Terms and Conditions and Appendix Two, the FY21 Addendum Letter and the FY22 Arrangements Letter for their full force and effect; and
 - (f) otherwise denies the paragraph.
226. In response to paragraph 226 of the ACSOC, KPMG:
- (a) admits subparagraphs 226(a)–(c);
 - (b) says it was an implied term of the FY22 Retainer that KPMG would exercise reasonable care and skill in forming the opinion described in subparagraph 225(d)(iii)(B) above; and
 - (c) otherwise denies the paragraph.

GA.2 Auditing and Accounting Standards

227. In response to paragraph 227 of the ACSOC, KPMG:
- (a) relies on Australian Auditing Standard ASA 450 (*Evaluation of Misstatements Identified during the Audit*) (**ASA 450**) for its full terms and effect; and
 - (b) otherwise admits the paragraph.
228. In response to paragraph 228 of the ACSOC, KPMG:
- (a) relies on Australian Auditing Standard ASA 700 (*Forming an Opinion and Reporting on a Financial Report*) (**ASA 700**) as in force from time to time during FY20–22 for its full terms and effect; and
 - (b) otherwise admits the paragraph.

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

- (a) admits that paragraph A2 of Australian Auditing Standard ASA 320 (*Materiality in Planning and Performing an Audit*) (**ASA 320**) as in force from time to time during FY20–22 contains the quoted statement;
- (b) relies on ASA 320, ASA 450, ASA 700 and Australian Auditing Standard ASA 800 (*Special Considerations – Audits of Financial Reports Prepared in Accordance with Special Purpose Frameworks*) (**ASA 800**) as in force from time to time for their full terms and effect; and
- (c) otherwise denies the paragraph.

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

- (a) admits that paragraph 10(a) of Australian Auditing Standard ASA 260 (*Communication With Those Charged with Governance*) (**ASA 260**) contains the quoted statement;
- (b) relies on ASA 260, ASA 450, ASA 700 and ASA 800 as in force from time to time for their full terms and effect; and
- (c) otherwise denies the paragraph.

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

- (a) admits that the Audit & Risk Committee of Downer and the Board of Downer were persons with responsibility for overseeing the strategic direction of Downer and obligations related to the accountability of the Group;
- (b) admits that the board of Downer Utilities was responsible for overseeing the strategic direction of Downer Utilities and obligations related to the accountability of Downer Utilities; and
- (c) otherwise does not admit the paragraph.

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

- (a) repeats the pleadings at subparagraphs 231(a) and 231(b) above; and
- (b) otherwise does not admit the paragraph.

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

- (a) says that the criteria identified in subparagraphs 233(c)(i) and (ii) comprise two of three alternative criteria and are not cumulative;
- (b) says that the statement quoted in subparagraph 233(d) cross-refers to paragraphs 35, 36 and 37 of AASB 15;

- (c) relies on AASB 15 as in force from time to time for its full terms and effect; and
- (d) otherwise admits paragraph 233.

GA.3 Contract with AusNet

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

- (a) says that Downer Utilities has been a wholly owned subsidiary of Downer since at least 7 August 2019; and
- (b) otherwise admits paragraph 234.

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

- (a) says that the AusNet Contract was renewable at the option of AusNet Services (not Downer) subject to the terms of the AusNet Contract;
- (b) relies on the AusNet Contract [DOW.3000.0022.9999; DOW.3000.0021.9999] for its full terms and effect; and
- (c) otherwise admits the paragraph.

236. KPMG admits paragraph 236 of the ACSOC.

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

- (a) says that the AusNet Contract commenced in respect of “Mobilisation” only on the “Contract Date”, being 22 July 2019;

Particulars

AusNet Contract, clause 2(a) and clause 1.1, definition of “Contract Date”.

- (b) says that all other Services commenced on the Commencement Date, being the date on which AusNet Services notified Downer Utilities that all Conditions Precedent had been satisfied or waived; and

Particulars

AusNet Contract, clause 2(b) and clause 1.1, definition of “Commencement Date”.

- (c) otherwise does not admit the paragraph.

238. KPMG does not admit paragraph 238 of the ACSOC.

GA.4 Alleged overstatements of revenue for FY20

239. KPMG does not admit paragraph 239 of the ACSOC.

240. KPMG does not admit paragraph 240 of the ACSOC.

241. KPMG does not admit paragraph 241 of the ACSOC.

242. KPMG does not admit paragraph 242 of the ACSOC.

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

(a) says that:

- (i) the Special Purpose Financial Report of Downer Utilities for FY20 was prepared for the purpose of fulfilling the financial reporting responsibilities of the Directors of Downer Utilities under the Corporations Act (Special Purpose Financial Report of Downer Utilities for FY20 [DOW.3000.0071.9583], page 6);
- (ii) the Special Purpose Financial Report of Downer Utilities for FY20 and the accompanying Independent Auditor's Report to the Shareholder of Downer Utilities were expressly stated to be potentially unsuitable for any other purpose (Special Purpose Financial Report of Downer Utilities for FY20 [DOW.3000.0071.9583], page 6);
- (iii) the Special Purpose Financial Report of Downer Utilities for FY20 was expressly intended solely for the shareholder of Downer Utilities (Special Purpose Financial Report of Downer Utilities for FY20 [DOW.3000.0071.9583], page 6);
- (iv) KPMG expressly disclaimed any assumption of responsibility for any reliance on the Independent Auditor's Report to the Shareholder of Downer Utilities or the Financial Report by any other person or for any other purpose than that for which it was prepared (Special Purpose Financial Report of Downer Utilities for FY20 [DOW.3000.0071.9583], page 6);
- (v) Downer Utilities prepared a Special Purpose Financial Report in FY20 because in the opinion of the Directors of Downer Utilities there were unlikely to exist users of the financial report who were unable to command the preparation of reports tailored so as to satisfy specifically all of their information needs (Special Purpose Financial Report of Downer Utilities for FY20 [DOW.3000.0071.9583], page 12); and
- (vi) the shareholder of Downer Utilities was Downer Utilities Holdings Australia Pty Ltd (ACN 125 968 292);

(b) repeats its pleadings at paragraphs 26, 238 and 240–242 above;

- (c) denies that the FY20 Subsidiary Overstatement, if made, could have reasonably been expected to influence the economic decisions of users taken on the basis of the financial report as a whole; and
 - (d) otherwise does not admit the paragraph.
- 244. In response to paragraph 244, KPMG:
 - (a) repeats its pleadings at paragraphs 227, 228, 229 and 243 above; and
 - (b) otherwise denies the paragraph.
- 245. In response to paragraph 245, KPMG:
 - (a) repeats its pleadings at paragraph 244 above;
 - (b) says that the application of ASA 700 to a special purpose financial report is modified by ASA 800; and
 - (c) otherwise denies the paragraph.
- 246. In response to paragraph 246 of the ACSOC, KPMG:
 - (a) repeats its pleadings at paragraphs 241, 242 and 244 above; and
 - (b) otherwise denies the paragraph.
- 247. KPMG does not admit paragraph 247 of the ACSOC.
- 248. KPMG does not admit paragraph 248 of the ACSOC.
- 249. In response to paragraph 249 of the ACSOC, KPMG:
 - (a) repeats its pleadings at paragraphs 26, 238, 240 and 247–248 above;
 - (b) denies that the FY20 Group Overstatement, if made, could have reasonably been expected to influence the economic decisions of users taken on the basis of the Consolidated Financial Report as a whole; and
 - (c) otherwise does not admit the paragraph.
- 250. In response to paragraph 250 of the ACSOC, KPMG:
 - (a) repeats its pleading at paragraphs 227, 228, 229, 247, 248 and 249 above; and
 - (b) otherwise denies the paragraph.
- 251. In response to paragraph 251 of the ACSOC, KPMG:
 - (a) repeats its pleadings at paragraphs 249 and 250 above; and
 - (b) otherwise denies the paragraph.

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

- (a) repeats its pleadings at paragraphs 247–251 above; and
- (b) otherwise does not admit the paragraph.

GA.5 Alleged overstatements of revenue for FY21

253. KPMG does not admit paragraph 253 of the ACSOC.

254. KPMG does not admit paragraph 254 of the ACSOC.

255. KPMG does not admit paragraph 255 of the ACSOC.

256. KPMG does not admit paragraph 256 of the ACSOC.

257. In response to paragraph 257 of the ACSOC, KPMG:

- (a) says that the financial report of Downer Utilities for FY21 was prepared for the purpose of fulfilling the financial reporting responsibilities of the Directors of Downer Utilities;
- (b) repeats its pleadings at paragraphs 26, 238, 241, 244 and 254–256 above;
- (c) denies that the FY21 Subsidiary Overstatement, if made, could have reasonably been expected to influence the economic decisions of users taken on the basis of the financial report as a whole; and
- (d) otherwise does not admit the paragraph.

258. In response to paragraph 258 of the ACSOC, KPMG:

- (a) repeats its pleadings at paragraphs 227, 228, 229 and 257 above; and
- (b) otherwise denies the paragraph.

259. In response to paragraph 259 of the ACSOC, KPMG:

- (a) repeats its pleadings at paragraph 258 above; and
- (b) otherwise denies the paragraph.

260. In response to paragraph 260 of the ACSOC, KPMG:

- (a) repeats its pleadings at paragraphs 255, 256 and 258 above; and
- (b) otherwise does not admit the paragraph.

261. KPMG does not admit paragraph 261 of the ACSOC.

262. KPMG does not admit paragraph 262 of the ACSOC.

263. In response to paragraph 263 of the ACSOC, KPMG:
- (a) says that in its report to the Audit & Risk Committee on 29 July 2021, KPMG identified that the aggregate impact of unadjusted audit differences would decrease post tax profit by \$5.9 million;
 - (b) says that these audit differences did not have a material impact on the Consolidated Financial Report for FY21;
 - (c) says that none of these audit differences related to revenue to which AASB 15 would have applied; and
 - (d) otherwise does not admit the paragraph.
264. In response to paragraph 264 of the ACSOC, KPMG:
- (a) repeats its pleadings at paragraphs 262 and 263 above; and
 - (b) otherwise does not admit the paragraph.
265. In response to paragraph 265 of the ACSOC, KPMG:
- (a) repeats its pleadings at paragraphs 26, 238, 247, 250, 254, 261, 262 and 264 above;
 - (b) denies that the FY21 Group Overstatement, if made, could have reasonably been expected to influence the economic decisions of users taken on the basis of the Consolidated Financial Report as a whole; and
 - (c) otherwise does not admit the paragraph.
266. In response to paragraph 266 of the ACSOC, KPMG:
- (a) repeats its pleading at paragraphs 227, 228, 230, 261 and 265 above; and
 - (b) otherwise denies the paragraph.
267. In response to paragraph 267 of the ACSOC, KPMG:
- (a) repeats its pleading at 266 above; and
 - (b) otherwise does not admit the paragraph.
268. In response to paragraph 268 of the ACSOC, KPMG:
- (a) repeats its pleadings at paragraphs 261, 262, 264 and 266 above; and
 - (b) otherwise does not admit the paragraph.

GA.6 Alleged overstatements of revenue for FY22

269. KPMG does not admit paragraph 269 of the ACSOC.

270. KMPG does not admit paragraph 270 of the ACSOC.
271. KMPG does not admit paragraph 271 of the ACSOC.
272. KMPG does not admit paragraph 272 of the ACSOC.
273. In response to 273 of the ACSOC, KPMG:
- (a) says that the financial report of Downer Utilities for FY22 was prepared for the purpose of fulfilling the financial reporting responsibilities of the Directors of Downer Utilities;
 - (b) repeats its pleadings at paragraphs 26, 238, 242, 244, 261, 266 and 270–272 above;
 - (c) denies that the FY22 Subsidiary Overstatement, if made, could have reasonably been expected to influence the economic decisions of users taken on the basis of the financial report as a whole; and
 - (d) otherwise does not admit the paragraph.
274. In response to paragraph 274 of the ACSOC, KPMG:
- (a) repeats its pleadings at paragraphs 227, 228, 230 and 273 above; and
 - (b) otherwise denies the paragraph.
275. In response to paragraph 275 of the ACSOC, KPMG:
- (a) repeats its pleadings at 274 above; and
 - (b) otherwise denies the paragraph.
276. In response to paragraph 276 of the ACSOC, KPMG:
- (a) repeats its pleadings at paragraphs 271, 272 and 274 above; and
 - (b) otherwise does not admit the paragraph.
277. KMPG does not admit paragraph 277 of the ACSOC.
278. KMPG does not admit paragraph 278 of the ACSOC.
279. In response to paragraph 279 of the ACSOC, KPMG:
- (a) repeats its pleadings at paragraphs 26, 238, 242, 244, 261, 266, 270, 277 and 278 above; and
 - (b) otherwise does not admit the paragraph.
280. In response to paragraph 280 of the ACSOC, KPMG:
- (a) repeats its pleading at paragraphs 227, 228, 230, 277 and 279 above; and

(b) otherwise does not admit the paragraph.

281. In response to paragraph 281 of the ACSOC, KPMG:

(a) repeats its pleading at paragraph 280 above; and

(b) otherwise does not admit the paragraph.

282. In response to paragraph 282 of the ACSOC, KPMG:

(a) repeats its pleadings at paragraphs 277, 278 and 280 above; and

(b) otherwise does not admit the paragraph.

GA.7 Audits for FY20

Audit of Downer Utilities

283. KPMG admits paragraph 283 of the ACSOC.

284. In response to paragraph 284 of the ACSOC, KPMG:

(a) relies on the FY20 Independent Auditor's Report to the Shareholder of Downer Utilities (Special Purpose Financial Report of Downer Utilities for FY20 [DOW.3000.0071.9583] at pages 5-7) in its entirety;

(b) says that in the FY20 Independent Auditor's Report to the Shareholder of Downer Utilities, KPMG:

(i) gave an opinion that the accompanying Financial Report of Downer Utilities was in accordance with the Corporations Act, including:

(A) giving a true and fair view of the Downer Utilities' Group's financial position as at 30 June 2020 and of its financial performance for the year ended on that date; and

(B) complying with Australian Accounting Standards to the extent described in Note A1 and the *Corporations Regulations 2001* (Cth);

(ii) included an emphasis of matter with respect to the basis of preparation and restriction on use of the Special Purpose Financial Report as pleaded at paragraph 243(a) above; and

(iii) noted that its objective was to obtain reasonable assurance about whether the Financial Report as a whole was free from material misstatement, whether due to fraud or error; and

(c) otherwise denies the paragraph.

285. KPMG admits paragraph 285 of the ACSOC insofar as it relates to the matters referred to in paragraph 284(b) above and otherwise denies the paragraph.

286. KPMG admits paragraph 286 of the ACSOC insofar as it relates to the matters referred to in paragraph 284(b) above and otherwise denies the paragraph.

287. KPMG denies paragraph 287 of the ACSOC and says further that:

- (a) the scope of KPMG's duty to exercise reasonable care and skill was defined by the express terms of the FY20 Retainer;
- (b) KPMG's duty to exercise reasonable care and skill did not extend to identifying all misstatements, including material misstatements, in the FY20 Downer Utilities Special Purpose Financial Report; and
- (c) further or in the alternative:
 - (i) KPMG acted in a manner that, at all relevant times, was widely accepted in Australia by peer professional opinion as competent professional practice; and
 - (ii) accordingly, pursuant to s 50(1) of the *Civil Liability Act 2002* (NSW) and/or s 59 of the *Wrongs Act 1958* (Vic) and/or any equivalent provision in any other State or Territory, KPMG was not negligent and/or is not liable in negligence.

288. In response to paragraph 288 of the ACSOC, KPMG:

- (a) says the opinion it gave was in the terms set out at subparagraph 284(b) above;
- (b) says that opinion must be read as part of the FY20 Independent Auditor's Report to the Shareholder of Downer Utilities in its entirety, including particularly the emphasis of matter;
- (c) admits that in expressing that opinion, KPMG represented that it:
 - (i) had exercised reasonable care and skill in forming that opinion; and
 - (ii) "believe[s] that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion"; and
- (d) otherwise denies the paragraph.

289. In response to paragraph 289 of the ACSOC, KPMG:

- (a) says the FY20 Independent Auditor's Report to the Shareholder of Downer Utilities was made to the shareholder of Downer Utilities;

Particulars

Special Purpose Financial Report of Downer Utilities for FY20
[DOW.3000.0071.9583] at page 5.

- (b) says that the FY20 Independent Auditor's Report to the Shareholder of Downer Utilities was made pursuant to obligations arising from the FY20 Retainer, Corporations Act and Australian Auditing Standards;
- (c) repeats paragraph 243(a) above; and
- (d) otherwise denies the paragraph.

290. In response to paragraph 290 of the ACSOC:

- (a) in response to subparagraph 290(a), KPMG:
 - (i) repeats paragraphs 288 and 289 above;
 - (ii) admits that it conducted an audit of the Special Purpose Financial Report of Downer Utilities for FY20 in the course of trade or commerce;
 - (iii) says that the representations pleaded at subparagraph 288(c) above were made pursuant to the statutory duty found in the Corporations Act at s 307; and
 - (iv) otherwise denies the sub-paragraph;
- (b) in response to subparagraph 290(b), KPMG:
 - (i) repeats paragraphs 288 and 289 above;
 - (ii) says that the representations pleaded at subparagraph 288(c) above were made in relation to financial products within the meaning of s 1041H(1) of the Corporations Act; and
 - (iii) otherwise denies the sub-paragraph; and
- (c) in response to subparagraph 290(c), KPMG:
 - (i) repeats paragraphs 288 and 289 above;
 - (ii) says that the representations pleaded at subparagraph 288(c) above were made in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and

(iii) otherwise denies the sub-paragraph.

291. KPMG denies paragraph 291 of the ACSOC and repeats paragraph 287 above.

292. KPMG denies paragraph 292 of the ACSOC.

Audit of Downer Group

293. KPMG admits paragraph 293 of the ACSOC.

294. KPMG denies paragraph 294 of the ACSOC and says further that:

- (a) the scope of KPMG's duty to exercise reasonable care and skill was defined by the express terms of the FY20 Retainer;
- (b) KPMG's duty to exercise reasonable care and skill did not extend to identifying all misstatements, including material misstatements, in the Consolidated Financial Report of the Downer Group for FY20; and
- (c) further or in the alternative:
 - (i) KPMG acted in a manner that, at all relevant times, was widely accepted in Australia by peer professional opinion as competent professional practice; and
 - (ii) accordingly, pursuant to s 50(1) of the *Civil Liability Act 2002* (NSW) and/or s 59 of the *Wrongs Act 1958* (Vic) and/or any equivalent provision in any other State or Territory, KPMG was not negligent and/or is not liable in negligence.

295. In response to paragraph 295 of the ACSOC, KPMG:

- (a) relies on the FY20 Independent Auditor's Report to the Shareholders of Downer (Consolidated Financial Report of the Downer Group for FY20 [DOW.3000.0070.9995] at pages 52-58) in its entirety;
- (b) says that in the FY20 Independent Auditor's Report to the Shareholders of Downer, KPMG:
 - (i) gave an opinion that the Consolidated Financial Report of the Downer Group for FY20 complied with the Corporations Act, including:
 - (A) giving a true and fair view of the Group's financial position as at 30 June 2020 and of its financial performance for the year ended on that date; and
 - (B) complying with Australian Accounting Standards and the *Corporations Regulations 2001* (Cth); and

- (ii) noted that its objective was to obtain reasonable assurance about whether the Consolidated Financial Report of the Downer Group for FY20 as a whole was free from material misstatement, whether due to fraud or error; and
 - (c) otherwise denies the paragraph.
296. KPMG admits paragraph 296 of the ACSOC insofar as it relates to the matters referred to in paragraph 295(b) above and otherwise denies the paragraph.
297. KPMG admits paragraph 297 of the ACSOC insofar as it relates to the matters referred to in paragraph 295(b) above and otherwise denies the paragraph.
298. KPMG denies paragraph 298 of the ACSOC and repeats paragraph 294 above.
299. In response to paragraph 299 of the ACSOC, KPMG:
- (a) says the opinion it gave was in the terms set out at subparagraph 295(b) above;
 - (b) says that opinion must be read as part of the FY20 Independent Auditor's Report to the Shareholders of Downer in its entirety;
 - (c) admits that in expressing that opinion, KPMG represented that it:
 - (i) had exercised reasonable care and skill in forming that opinion; and
 - (ii) "believe[s] that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion"; and
 - (d) otherwise denies the paragraph.
300. In response to paragraph 300 of the ACSOC, KPMG:
- (a) says that the FY20 Independent Auditor's Report to the Shareholders of Downer was made to shareholders of Downer;

Particulars

Consolidated Financial Report of the Downer Group for FY20
[DOW.3000.0070.9995] at page 52.

- (b) says that the FY20 Independent Auditor's Report to the Shareholders of Downer was made pursuant to obligations arising from the FY20 Retainer, Corporations Act and Australian Auditing Standards; and
 - (c) otherwise denies the paragraph.
301. In response to paragraph 301 of the ACSOC:
- (a) in respect of subparagraph 301(a), KPMG:
 - (i) repeats paragraphs 299 and 300 above;

- (ii) admits that it conducted an audit of the Consolidated Financial Report of the Downer Group for FY20 in the course of trade or commerce;
 - (iii) says that the representations pleaded at subparagraph 299(c) above were made pursuant to the statutory duty found in the Corporations Act at s 307; and
 - (iv) otherwise denies the sub-paragraph;
- (b) in respect of subparagraph 301(b), KPMG:
 - (i) repeats paragraphs 299 and 300 above;
 - (ii) says that the representations pleaded at subparagraph 299(c) above were made in relation to financial products within the meaning of s 1041H(1) of the Corporations Act; and
 - (iii) otherwise denies the sub-paragraph; and
- (c) in respect of subparagraph 301(c), KPMG:
 - (i) repeats paragraphs 299 and 300 above;
 - (ii) says that the representations pleaded at subparagraph 299(c) above were made in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
 - (i) otherwise denies the paragraph.

302. KPMG denies paragraph 302 of the ACSOC and repeats paragraph 294 above.

303. KPMG denies paragraph 303 of the ACSOC.

GA.8 Audits for FY21

Audit of Downer Utilities

304. KPMG admits paragraph 304 of the ACSOC.

305. In response to paragraph 305 of the ACSOC, KPMG:

- (a) relies on the FY21 Independent Auditor's Report to the Shareholders of Downer Utilities (General Purpose Financial Report of Downer Utilities for FY21 [DOW.3000.0071.9584] at pages 5-6) in its entirety;

- (b) says that in the FY21 Independent Auditor's Report to the Shareholders of Downer Utilities, KPMG:
 - (i) gave an opinion that the accompanying Financial Report of Downer Utilities was in accordance with the Corporations Act, including:
 - (A) giving a true and fair view of the Downer Utilities' Group's financial position as at 30 June 2021 and of its financial performance for the year ended on that date; and
 - (B) complying with Australian Accounting Standards – Simplified Disclosures and the *Corporations Regulations 2001* (Cth); and
 - (ii) noted that its objective was to obtain reasonable assurance about whether the Financial Report as a whole was free from material misstatement, whether due to fraud or error; and
 - (c) otherwise denies the paragraph.
306. KPMG admits paragraph 306 of the ACSOC insofar as it relates to the matters referred to in paragraph 305(b) above and otherwise denies the paragraph.
307. KPMG admits paragraph 307 of the ACSOC insofar as it relates to the matters referred to in paragraph 305(b) above and otherwise denies the paragraph.
308. KPMG denies paragraph 308 of the ACSOC and says further that:
- (a) the scope of KPMG's duty to exercise reasonable care and skill was defined by the express terms of the FY21 Retainer (including the FY21 Addendum Letter);
 - (b) KPMG's duty to exercise reasonable care and skill did not extend to identifying all misstatements, including material misstatements, in the Consolidated Financial Report of the Downer Group for FY21; and
 - (c) further or in the alternative:
 - (i) KPMG acted in a manner that, at all relevant times, was widely accepted in Australia by peer professional opinion as competent professional practice; and
 - (ii) accordingly, pursuant to s 5O(1) of the *Civil Liability Act 2002* (NSW) and/or s 59 of the *Wrongs Act 1958* (Vic) and/or any equivalent provision in any other State or Territory, KPMG was not negligent and/or is not liable in negligence.

309. In response to paragraph 309, KPMG:

- (a) says the opinion it gave was in the terms set out at subparagraph 305(b) above;
- (b) says that opinion must be read as part of the FY21 Independent Auditor's Report to the Shareholders of Downer Utilities in its entirety, including particularly the emphasis of matter;
- (c) admits that in expressing that opinion, KPMG represented that it:
 - (i) had exercised reasonable care and skill in forming that opinion; and
 - (ii) "believe[s] that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion"; and
- (d) otherwise denies the paragraph.

310. In response to paragraph 310, KPMG:

- (a) says the FY21 Independent Auditor's Report to the Shareholders of Downer Utilities was made to the shareholder of Downer Utilities;

Particulars

General Purpose Financial Report of Downer Utilities for FY21
[DOW.3000.0071.9584] at page 5.

- (b) says that the FY21 Independent Auditor's Report to the Shareholders of Downer Utilities was made pursuant to obligations arising from the FY21 Retainer (including the FY21 Addendum Letter), Corporations Act and Australian Auditing Standards;
- (c) says that the financial report of Downer Utilities for FY21 was prepared for the purpose of fulfilling the financial reporting responsibilities of the Directors of Downer Utilities; and
- (d) otherwise denies the paragraph.

311. In response to paragraph 311 of the ACSOC:

- (a) in respect of subparagraph 311(a):
 - (i) repeats paragraphs 309 and 310 above;
 - (ii) admits that it conducted an audit of the General Purpose Financial Report of Downer Utilities for FY21 in the course of trade or commerce;
 - (iii) says that the representations pleaded at subparagraph 309(c) above were made pursuant to the statutory duty found in the Corporations Act at s 307; and

- (iv) otherwise denies the sub-paragraph;
- (b) in respect of subparagraph 311(b):
 - (i) repeats paragraphs 309 and 310 above;
 - (ii) says that the representations pleaded at subparagraph 309(c) above were made in relation to financial products within the meaning of s 1041H(1) of the Corporations Act; and
 - (iii) otherwise denies the sub-paragraph; and
- (c) in respect of subparagraph 311(c):
 - (i) repeats paragraphs 309 and 310 above;
 - (ii) says that the representations pleaded at subparagraph 309(c) above were made in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and
 - (iii) otherwise denies the sub-paragraph.

312. KPMG denies paragraph 312 of the ACSOC and repeats paragraph 308 above.

313. KPMG denies paragraph 313 of the ACSOC.

Audit of Downer Group

314. KPMG admits paragraph 314 of the ACSOC.

315. KPMG denies paragraph 315 of the ACSOC, and says further that:

- (a) the scope of KPMG's duty to exercise reasonable care and skill was defined by the express terms of the FY21 Retainer;
- (b) KPMG's duty to exercise reasonable care and skill did not extend to identifying all misstatements, including material misstatements, in the Consolidated Financial Report of the Downer Group for FY21; and
- (c) further or in the alternative:
 - (i) KPMG acted in a manner that, at all relevant times, was widely accepted in Australia by peer professional opinion as competent professional practice; and
 - (ii) accordingly, pursuant to s 5O(1) of the *Civil Liability Act 2002* (NSW) and/or s 59 of the *Wrongs Act 1958* (Vic) and/or any equivalent provision in any other State or Territory, KPMG was not negligent and/or is not liable in negligence.

316. In response to paragraph 316, KPMG:

- (a) relies on the FY21 Independent Auditor's Report to the Shareholders of Downer (Consolidated Financial Report of the Downer Group for FY21 [DOW.3000.0070.9997] at pages 53-59) in its entirety;
- (b) says that in the FY21 Independent Auditor's Report to the Shareholders of Downer, KPMG:
 - (i) gave an opinion that the Consolidated Financial Report of the Downer Group for FY21 complied with the Corporations Act, including:
 - (A) giving a true and fair view of the Group's financial position as at 30 June 2021 and of its financial performance for the year ended on that date; and
 - (B) complying with Australian Accounting Standards and the *Corporations Regulations 2001* (Cth); and
 - (ii) noted that its objective was to obtain reasonable assurance about whether the Consolidated Financial Report of the Downer Group for FY21 as a whole was free from material misstatement, whether due to fraud or error; and
- (c) otherwise denies the paragraph.

317. KPMG admits paragraph 317 of the ACSOC insofar as it relates to the matters referred to in paragraph 316(b) above and otherwise denies the paragraph.

318. KPMG admits paragraph 318 of the ACSOC insofar as it relates to the matters referred to in paragraph 316(b) above and otherwise denies the paragraph.

319. KPMG denies paragraph 319 of the ACSOC and repeats paragraph 315 above.

320. In response to paragraph 320 of the ACSOC, KPMG:

- (a) says the opinion it gave was in the terms set out at subparagraph 316(b) above;
- (b) says that opinion must be read as part of the FY21 Independent Auditor's Report to the Shareholders of Downer in its entirety;
- (c) admits that in expressing that opinion, KPMG represented that it:
 - (i) had exercised reasonable care and skill in forming that opinion; and
 - (ii) "believe[s] that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion"; and
- (d) otherwise denies the paragraph.

321. In response to paragraph 321 of the ACSOC, KPMG:

- (a) says that the FY21 Independent Auditor's Report to the Shareholders of Downer was made to shareholders of Downer;

Particulars

Consolidated Financial Report of the Downer Group for FY21
[DOW.3000.0070.9997] at page 53.

- (b) says that the FY21 Independent Auditor's Report to the Shareholders of Downer was made pursuant to obligations arising from the FY21 Retainer, the Corporations Act and Australian Auditing Standards; and
- (c) otherwise denies the paragraph.

322. In response to paragraph 322 of the ACSOC:

- (a) in respect of subparagraph 322(a):
 - (i) repeats paragraphs 320 and 321 above;
 - (ii) admits that it conducted an audit of the Consolidated Financial Report of Downer Utilities for FY21 in the course of trade or commerce;
 - (iii) says that the representations pleaded at subparagraph 320(c) above were made pursuant to the statutory duty found in the Corporations Act at s 307; and
 - (iv) otherwise denies the sub-paragraph;
- (b) in respect of subparagraph 322(c):
 - (i) repeats paragraphs 320 and 321 above;
 - (ii) says that the representations pleaded at subparagraph 320(c) above were made in relation to financial products within the meaning of s 1041H(1) of the Corporations Act; and
 - (iii) otherwise denies the sub-paragraph; and
- (c) in respect of subparagraph 322(c):
 - (i) repeats paragraph 320 and 321 above;
 - (ii) says that the representations pleaded at subparagraph 320(c) above were made in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
 - (iii) otherwise denies the sub-paragraph.

323. KPMG denies paragraph 323 of the ACSOC and repeats paragraph 315 above.

324. KPMG denies paragraph 324 of the ACSOC.

GA.9 Audits for FY22

Audit of Downer Utilities

325. KPMG admits paragraph 325 of the ACSOC.

326. In response to paragraph 326 of the ACSOC, KPMG:

- (a) relies on the FY22 Independent Auditor's Report to the Shareholder of Downer Utilities (General Purpose Financial Report of Downer Utilities for FY22 [DOW.3000.0071.9582] at pages 5-6) in its entirety;
 - (b) says that in the FY22 Independent Auditor's Report to the Shareholder of Downer Utilities, KPMG:
 - (i) gave an opinion that the accompanying Financial Report of Downer Utilities was in accordance with the Corporations Act, including:
 - (A) giving a true and fair view of the Downer Utilities' Group's financial position as at 30 June 2022 and of its financial performance for the year ended on that date; and
 - (B) complying with Australian Accounting Standards – Simplified Disclosures and the *Corporations Regulations 2001* (Cth); and
 - (ii) noted that its objective was to obtain reasonable assurance about whether the Financial Report as a whole was free from material misstatement, whether due to fraud or error; and
 - (c) otherwise denies the paragraph.
327. KPMG admits paragraph 327 of the ACSOC insofar as it relates to the matters referred to in paragraph 326(b) above and otherwise denies the paragraph.
328. KPMG admits paragraph 328 of the ACSOC insofar as it relates to the matters referred to in paragraph 326(b) above and otherwise denies the paragraph.
329. KPMG denies paragraph 329 of the ACSOC and says that:
- (a) the scope of KPMG's duty to exercise reasonable care and skill was defined by the express terms of the FY22 Retainer;
 - (b) KPMG's duty to exercise reasonable care and skill did not extend to identifying all misstatements, including material misstatements, in the Consolidated Financial Report of the Downer Group for FY22; and

- (c) further or in the alternative:
 - (i) KPMG acted in a manner that, at all relevant times, was widely accepted in Australia by peer professional opinion as competent professional practice; and
 - (ii) accordingly, pursuant to s 50(1) of the *Civil Liability Act 2002* (NSW) and/or s 59 of the *Wrongs Act 1958* (Vic) and/or any equivalent provision in any other State or Territory, KPMG was not negligent and/or is not liable in negligence.

330. In response to paragraph 330 of the ACSOC, KPMG:

- (a) says the opinion it gave was in the terms set out at subparagraph 326(b) above;
- (b) says that opinion must be read as part of the FY22 Independent Auditor's Report to the Shareholder of Downer Utilities in its entirety, including particularly the emphasis of matter;
- (c) admits that in expressing that opinion, KPMG represented that it:
 - (i) had exercised reasonable care and skill in forming that opinion; and
 - (ii) "believe[s] that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion"; and
- (d) otherwise denies the paragraph.

331. In response to paragraph 331 of the ACSOC, KPMG:

- (a) says the FY22 Independent Auditor's Report to the Shareholder of Downer Utilities was made to the shareholder of Downer Utilities;

Particulars

General Purpose Financial Report of Downer Utilities for FY22
[DOW.3000.0071.9582] at page 5.

- (b) says that the FY22 Independent Auditor's Report to the Shareholder of Downer Utilities was made pursuant to obligations arising from the FY22 Retainer, FY21 Addendum, Corporations Act and Australian Auditing Standards;
- (c) says that the FY22 Downer Utilities Financial Report was prepared for the purpose of fulfilling the financial reporting responsibilities of the Directors of Downer Utilities; and
- (d) otherwise denies the paragraph.

332. In response to paragraph 332 of the ACSOC:

- (a) in respect of subparagraph 332(a):
 - (i) repeats paragraphs 330 and 331 above;
 - (ii) admits that it conducted an audit of the Financial Report of Downer Utilities for FY22 in the course of trade or commerce;
 - (iii) says that the representations pleaded at subparagraph 330(c) above were made pursuant to the statutory duty found in the Corporations Act at s 307; and
 - (iv) otherwise denies the sub-paragraph;
- (b) in respect of subparagraph 332(b):
 - (i) repeats paragraphs 330 and 331 above;
 - (ii) says that the representations pleaded at subparagraph 330(c) above were made in relation to financial products within the meaning of s 1041H(1) of the Corporations Act; and
 - (iii) otherwise denies the sub-paragraph; and
- (c) in respect of subparagraph 332(b):
 - (i) repeats paragraphs 330 and 331 above;
 - (ii) says that the representations pleaded at subparagraph 330(c) above were made in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
 - (iii) otherwise denies the sub-paragraph.

333. KPMG denies paragraph 333 of the ACSOC and repeats paragraph 329 above.

334. KPMG denies paragraph 334 of the ACSOC.

Audit of Downer Group

335. KPMG admits paragraph 335 of the ACSOC.

336. KPMG denies paragraph 336 of the ACSOC and says further that:

- (a) the scope of KPMG's duty to exercise reasonable care and skill was defined by the express terms of the FY22 Retainer;
- (b) KPMG's duty to exercise reasonable care and skill did not extend to identifying all misstatements, including material misstatements, in the Consolidated Financial Report of the Downer Group for FY22; and

- (c) further or in the alternative:
 - (i) KPMG acted in a manner that, at all relevant times, was widely accepted in Australia by peer professional opinion as competent professional practice; and
 - (ii) accordingly, pursuant to s 50(1) of the *Civil Liability Act 2002* (NSW) and/or s 59 of the *Wrongs Act 1958* (Vic) and/or any equivalent provision in any other State or Territory, KPMG was not negligent and/or is not liable in negligence.

337. In response to paragraph 337, KPMG:

- (a) relies on the FY22 Independent Auditor's Report to the Shareholders of Downer (Consolidated Financial Report of the Downer Group for FY22 [DOW.3000.0023.9999] at pages 53-59) in its entirety;
- (b) says that in the FY22 Independent Auditor's Report to the Shareholders of Downer, KPMG:
 - (i) gave an opinion that the Consolidated Financial Report of the Downer Group for FY22 complied with the Corporations Act, including:
 - (A) giving a true and fair view of the Group's financial position as at 30 June 2022 and of its financial performance for the year ended on that date; and
 - (B) complying with Australian Accounting Standards and the *Corporations Regulations 2001* (Cth); and
 - (ii) noted that its objective was to obtain reasonable assurance about whether the Consolidated Financial Report of the Downer Group for FY22 as a whole was free from material misstatement, whether due to fraud or error; and
- (c) otherwise denies the paragraph.

338. KPMG admits paragraph 338 of the ACSOC insofar as it relates to the matters referred to in paragraph 337(b) above and otherwise denies the paragraph.

339. KPMG admits paragraph 339 of the ACSOC insofar as it relates to the matters referred to in paragraph 337(b) above and otherwise denies the paragraph.

340. KPMG denies paragraph 340 of the ACSOC and repeats paragraph 336 above.

341. In response to paragraph 341 of the ACSOC, KPMG:

- (a) says that the opinion it gave was in the terms set out at subparagraph 337(b) above;

- (b) says that opinion must be read as part of the FY22 Independent Auditor's Report in its entirety;
- (c) admits that in expressing that opinion, KPMG represented that it:
 - (i) had exercised reasonable care and skill in forming that opinion; and
 - (ii) "believe[s] that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion"; and
- (d) otherwise denies the paragraph.

342. In response to paragraph 342, KPMG:

- (a) says that the FY22 Independent Auditor's Report to the Shareholders of Downer was made to shareholders of Downer;

Particulars

Consolidated Financial Report of the Downer Group for FY22
[DOW.3000.0023.9999] at page 53.

- (b) says that the FY22 Independent Auditor's Report to the Shareholders of Downer was made pursuant to obligations arising from the FY22 Retainer, Corporations Act and Australian Auditing Standards; and
- (c) otherwise denies paragraph 342.

343. In response to paragraph 343 of the ACSOC:

- (a) in respect of subparagraph 343(a):
 - (i) repeats paragraphs 341 and 342 above;
 - (ii) admits that it conducted an audit of the Consolidated Financial Report of the Downer Group for FY22 in the course of trade or commerce;
 - (iii) says that the representations pleaded at subparagraph 341(c) above were made pursuant to the statutory duty found in the Corporations Act at s 307; and
 - (iv) otherwise denies the sub-paragraph;
- (b) in respect of subparagraph 343(b):
 - (i) repeats paragraph 341 and 342 above;
 - (ii) says that the representations pleaded at subparagraph 341(c) above were made in relation to financial products within the meaning of s 1041H(1) of the Corporations Act; and

- (iii) otherwise denies the sub-paragraph; and
- (c) in respect of subparagraph 343(c):
 - (i) repeats paragraphs 341 and 342 above;
 - (ii) says that the representations pleaded at subparagraph 341(c) above were made in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
 - (iii) otherwise denies the sub-paragraph.

344. KPMG denies paragraph 344 of the ACSOC and repeats paragraph 336 above.

345. KPMG denies paragraph 345 of the ACSOC.

GA.10 Causation and loss

Market based causation

346. In response to paragraph 346 of the ACSOC, KPMG:

- (a) repeats paragraph 5 above;
- (b) admits subparagraphs 346(a)–(b); and
- (c) denies subparagraphs 346(c)–(g).

347. In response to paragraph 347 of the ACSOC, KPMG:

- (a) repeats paragraphs 63 and 70 above;
- (b) does not admit that the market's reaction to the 8 December 2022 Announcement, the 8 December 2022 call and/or the 27 February 2023 Disclosures caused or materially contributed to the alleged price decline; and
- (c) otherwise denies the paragraph.

Reliance

348. In response to paragraph 348 of the ACSOC, KPMG:

- (a) repeats paragraphs 284, 288, 295, 299, 305, 309, 316, 320, 326, 330, 337 and 341 above;
- (b) denies that KPMG made misleading or deceptive representations; and
- (c) otherwise does not admit the paragraph.

Loss

349. KPMG denies paragraph 349 of the ACSOC.

AA. RELIEF FROM LIABILITY

350. The proceedings against KPMG are civil proceedings for alleged negligence, default or breach of duty in KPMG's capacity as auditor of Downer and Downer Utilities for FY20–FY22.
351. At all material times, KPMG acted honestly.
352. In all the circumstances of the case, if (which is denied) KPMG is or may be liable in respect of the Plaintiffs' allegations of negligence, default or breach of duty, KPMG ought fairly be excused for any negligence, default or breach of duty.
353. In the premises of paragraphs 350 to 352 above, pursuant to s 1318 of the Corporations Act, the Court should wholly, or alternatively partly, relieve KPMG from liability on such terms as the Court thinks fit.

BB. PROFESSIONAL STANDARDS SCHEME**BB.1 The Scheme**

354. At all material times, the Chartered Accountants Australia and New Zealand Professional Standards Scheme was a scheme operating under the *Professional Standards Act 1994* (NSW) (**the PSA**).
355. At all material times, KPMG was a Participant of the Scheme.

Particulars

Each partner at KPMG is a member of Chartered Accountants Australia New Zealand (**CA ANZ**) who holds a Certificate of Public Practice, or is an Affiliate Member of CA ANZ in accordance with the CA ANZ By-Laws.

356. It was a term of the Scheme that a Participant against whom a proceeding is brought relating to occupational liability (as defined in the PSA) resulting in Damages (as defined in the Scheme) exceeding \$2,000,000 in connection with auditing services and in respect of which the Fee is \$2,500,000 or more is not liable in damages in relation to that claim above \$75,000,000.

Particulars

Scheme, clauses 3.1, 3.2, 3.3 and 4.1.

BB.2 FY20

357. The Fee (as defined in the Scheme) for the services performed in relation to the audit of the Consolidated Financial Report of the Downer Group for FY20 and the audit of the financial report of Downer Utilities for FY20 exceeded \$2,500,000.

Particulars

FY20 Arrangements Letter, clause 5.

358. By reason of ss 28 and 29(2) of the PSA, ss 137 of the CCA and paragraphs 354 to 357 above, any liability of KPMG arising in connection with the performance of the FY20 Retainer as claimed in the ACSOC is limited to \$75,000,000.

BB.3 FY21

359. The Fee (as defined in the Scheme) for the services performed in relation to the audit of the Consolidated Financial Report of the Downer Group for FY21 and the audit of the financial report of Downer Utilities for FY21 exceeded \$2,500,000.

Particulars

FY21 Arrangements Letter, clause 5.

360. By reason of ss 28 and 29(2) of the PSA, s 137 of the CCA and paragraphs 354 to 356 and 359 above, any liability of KPMG arising in connection with the performance of the FY21 Retainer as claimed in the ACSOC is limited to \$75,000,000.

BB.4 FY22

361. The Fee (as defined in the Scheme) for the services performed in relation to the audit of the Consolidated Financial Report of the Downer Group for FY22 and the audit of the financial report of Downer Utilities for FY22 exceeded \$2,500,000.

Particulars

FY22 Arrangements Letter, clause 6.

362. By reason of ss 28 and 29(2) of the PSA, s 137 of the CCA and paragraphs 354 to 356 and 361 above, any liability of KPMG arising in connection with the performance of the FY22 Retainer as claimed in the ACSOC is limited to \$75,000,000.

CC. PROPORTIONATE LIABILITY**CC.1 Downer**

363. In the event KPMG is found liable to the Plaintiffs or any Group Member for any loss or damage in respect of alleged contraventions of s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL by KPMG (the **Misleading or Deceptive Conduct**

Claims), which is not admitted, it says as follows at paragraphs 364 to 368, in the alternative and without admission.

364. The Misleading or Deceptive Conduct Claims are apportionable claims within the meaning of:
- (a) in respect of any alleged contravention of s 1041H of the Corporations Act, s 1041L(1) of the Corporations Act;
 - (b) in respect of any alleged contravention of s 12DA of the ASIC Act, s 12GP(1) of the ASIC Act; and
 - (c) in respect of any alleged contravention of s 18 of the ACL:
 - (i) s 87CB(1) of the CCA;
 - (ii) s 107B of the *Civil Law (Wrongs) Act 2002* (ACT);
 - (iii) s 34(1) of the *Civil Liability Act 2002* (NSW);
 - (iv) s 24AF(1) of the *Wrongs Act 1958* (Vic);
 - (v) s 28(1) of the *Civil Liability Act 2003* (Qld);
 - (vi) s 43A(1) of the *Civil Liability Act 2002* (Tas);
 - (vii) s 5A1 of the *Civil Liability Act 2002* (WA);
 - (viii) s 3(2)(a) of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA); and/or
 - (ix) s 4(2) of the *Proportionate Liability Act 2005* (NT).
365. In respect of the Misleading or Deceptive Conduct Claims, Downer is a “concurrent wrongdoer” within the meaning of:
- (a) in respect of any alleged contravention of s 1041H of the Corporations Act, s 1041L(3) of the Corporations Act;
 - (b) in respect of any alleged contravention of s 12DA of the ASIC Act, s 12GP(3) of the ASIC Act; and
 - (c) in respect of any alleged contravention of s 18 of the ACL:
 - (i) s 87CB(3) of the CCA;
 - (ii) s 107D(1) of the *Civil Law (Wrongs) Act 2002* (ACT);
 - (iii) s 34(2) of the *Civil Liability Act 2002* (NSW);
 - (iv) s 24AH of the *Wrongs Act 1958* (Vic);
 - (v) s 30(1) of the *Civil Liability Act 2003* (Qld);

- (vi) s 43A(2) of the *Civil Liability Act 2002* (Tas);
- (vii) s 5A1 of the *Civil Liability Act 2002* (WA);
- (viii) s 3(2)(b) of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA); and/or
- (ix) s 6(1) of the *Proportionate Liability Act 2005* (NT),

by reason of:

- (d) the Misleading Conduct Contraventions, False Statement Contraventions and/or Continuous Disclosure Contraventions as defined and pleaded at paragraphs 87 to 206 of the ACSOC, to the extent that one or more of those contraventions are established; and/or
 - (e) the following matters:
 - (i) for each of FY20, FY21 and FY22, the Directors of Downer made declarations including that:
 - (A) the financial statements and notes set out in the Consolidated Financial Reports of the Downer Group for FY20-FY22 were in accordance with the Corporations Act, including:
 - (1) complying with Australian Accounting Standards, the *Corporations Regulations 2001* (Cth) and other mandatory professional reporting requirements; and
 - (2) the financial statements and notes to the financial statements give a true and fair view of the financial position and performance of Downer and the consolidated entity;
 - (B) the Directors had been given the declarations required by s 295A of the Corporations Act; and
 - (C) the financial statements were in compliance with International Financial Reporting Standards, as noted in Note A to the financial statements,
- (together and separately, the **Director Group Representations**);

Particulars

Consolidated Financial Report of the Downer Group for FY20 [DOW.3000.0070.9995] at page 125; Consolidated Financial Report of the Downer Group for FY21 [DOW.3000.0070.9997] at page 131; Consolidated Financial Report of the Downer Group for FY22 [DOW.3000.0023.9999] at page 125.

- (ii) contrary to the Director Group Representations, the financial statements and notes set out in the Consolidated Financial Reports of the Downer Group for FY20–FY22:
 - (A) were not in accordance with the Corporations Act;
 - (B) did not comply with Australian Accounting Standards; and
 - (C) did not give a true and fair view of the financial position and performance of Downer;
- (iii) for each of FY20, FY21 and FY22, the CEO and CFO of Downer made declarations under s 295A of the Corporations Act that:
 - (A) the financial records of Downer for the financial year were properly maintained in accordance with s 286 of the Corporations Act;
 - (B) the financial statements, and the notes referred to in s 295(3)(b) of the Corporations Act, for the financial year complied with Australian Accounting Standards;
 - (C) the financial statements and notes for the financial year gave a true and fair view;
 - (D) the consolidated entity disclosure statement required by s 295(3A) of the Corporations Act was true and correct; and
 - (E) any other matters that were prescribed by the regulations for the purposes of this paragraph in relation to the financial statements and the notes for the financial year were satisfied,
 (together and separately, the **CEO and CFO Group Representations**);
- (iv) contrary to the CEO and CFO Group Representations, in each of FY20, FY21 and FY22:
 - (A) the financial records of Downer had not been properly maintained in accordance with s 286 of the Corporations Act;
 - (B) the financial statements did not comply with Australian Accounting Standards; and
 - (C) the financial statements for the financial year did not give a true and fair view;

- (v) for each of FY20, FY21 and FY22, the CEO and CFO of Downer issued a letter to KPMG (each, a **Management Representation Letter**) where they represented that:
- (A) they had fulfilled their responsibilities, as set out in the terms of the respective audit engagement letters, for the preparation of the financial report that gives a true and fair view in accordance with applicable AASBs and the Corporations Act;
 - (B) they had provided KPMG with:
 - (1) access to all information of which they were aware that was relevant to the preparation of the financial report such as records, documentation and other matters;
 - (2) additional information that KPMG had requested from them for the purpose of the audit; and
 - (3) unrestricted access to persons within the entity from whom KPMG determined it necessary to obtain audit evidence;
 - (C) they acknowledged their responsibility for such internal control as they determined necessary for the preparation of the financial report that is free from material misstatement whether due to fraud or error. In particular, they acknowledged their responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud and error;
 - (D) the effects of uncorrected misstatements as set out at Appendix 2 of the FY20 Management Representation Letter were immaterial, both individually and in the aggregate, to the financial report as a whole; and
 - (E) in respect of FY20 and FY21, except as disclosed in the financial statements, there were no significant matters that had arisen that would require a restatement of the comparative figures,
- (together and separately, the **Downer Letter Representations**).

Particulars

Management Representation Letter for FY20 dated 12 August 2020 at 1, 3, 5, 9, 53; Management Representation Letter for FY21 dated 12 August 2021 at 1, 3, 5, 9, 54; Management representation Letter for FY22 dated 17 August 2022 at 1, 3, 5, 9.

- (vi) contrary to the Management Representation Letters, for each of FY20, FY21 and FY22:
 - (A) management had not fulfilled its responsibilities as set out in the terms of the audit engagement letters, for the preparation of the financial report that gives a true and fair view in accordance with applicable AASBs and the Corporations Act; and
 - (B) management had not provided KPMG with access to all information of which they were aware that was relevant to the preparation of the financial report;
- (vii) the Director Group Representations, the CEO and CFO Group Representations and the Downer Letter Representations were made:
 - (A) in trade or commerce;
 - (B) in relation to financial products; and/or
 - (C) in relation to financial services; and
- (viii) by reason of the matters pleaded at paragraphs subparagraphs 365(e)(ii), (iv) (vi) and (vii) above, the Director Group Representations, the CEO and CFO Group Representations and the Downer Letter Representations were misleading or deceptive contrary to:
 - (A) s 1041H(1) of the Corporations Act;
 - (B) s 12DA(1) of the ASIC Act; and
 - (C) s 18 of the ACL.

366. In the premises, KPMG's liability (if any) to the Plaintiffs and each Group Member in respect of the Misleading or Deceptive Conduct Claims is limited by:

- (a) in respect of any alleged contravention of s 1041H of the Corporations Act, s 1041N(1) of the Corporations Act;
- (b) in respect of any alleged contravention of s 12DA of the ASIC Act, s 12GR(1) of the ASIC Act; and
- (c) in respect of any alleged contravention of s 18 of the ACL:
 - (i) s 87CD(1) of the CCA;
 - (ii) s 107F(1) of the *Civil Law (Wrongs) Act 2002* (ACT);
 - (iii) s 35(1) of the *Civil Liability Act 2002* (NSW);
 - (iv) s 24AI(1) of the *Wrongs Act 1958* (Vic);

- (v) s 31(1) of the *Civil Liability Act 2003* (Qld);
- (vi) s 43B(1) of the *Civil Liability Act 2002* (Tas);
- (vii) s 5AK(1) of the *Civil Liability Act 2002* (WA);
- (viii) s 8 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA); and/or
- (ix) s 13(1) of the *Proportionate Liability Act 2005* (NT),

to an amount reflecting that proportion of any loss or damage that is the subject of the Misleading or Deceptive Conduct Claims that the Court considers is just, just and equitable, or fair and equitable (as the case may be) having regard to the extent of KPMG's responsibility for that loss or damage that is the subject of the Misleading or Deceptive Conduct Claims.

CC.2 Advisers

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

- (a) any Plaintiff or Group Member was advised by an adviser in relation to purchases of Downer Shares in respect of which that Plaintiff or Group Member now makes the Misleading or Deceptive Conduct 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 loss or damage that is the subject of the Misleading or Deceptive Conduct Claims in respect of that Plaintiff or Group Member.

Particulars

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

368. In the premises, each of KPMG and any adviser referred to in the preceding paragraph is, in relation to the Misleading or Deceptive Conduct Claims by any Plaintiff or Group Member referred to in that paragraph, a concurrent wrongdoer within the meaning of:

- (a) in respect of any alleged contravention of s 1041H of the Corporations Act, s 1041L(3) of the Corporations Act;
- (b) in respect of any alleged contravention of s 12DA of the ASIC Act, s 12GP(3) of the ASIC Act; and

- (c) in respect of any alleged contravention of s 18 of the ACL:
- (i) s 87CB(3) of the CCA;
 - (ii) s 107D of the *Civil Law (Wrongs) Act 2002* (ACT);
 - (iii) s 34(2) of the *Civil Liability Act 2002* (NSW);
 - (iv) s 24AH of the *Wrongs Act 1958* (Vic);
 - (v) s 30(1) of the *Civil Liability Act 2003* (Qld);
 - (vi) s 43A(2) of the *Civil Liability Act 2002* (Tas);
 - (vii) s 5A1 of the *Civil Liability Act 2002* (WA);
 - (viii) s 3(2)(b) of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA); and/or
 - (ix) s 6(1) of the *Proportionate Liability Act 2005* (NT).

P Herzfeld

J Roy

M Mellos

Dated: 28 April 2025

ALLENS