

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

No. S ECI 2021 04360



Case: S ECI 2021 04360

Filed on: 17/12/2024 04:20 PM

**B E T W E E N:**

**WILLIAM LAY**

First Plaintiff

**DANIEL JOSEPH BATCHELOR**

Second Plaintiff

-and-

**NUIX LIMITED (ACN 117 140 235)**

First Defendant

**MACQUARIE CAPITAL (AUSTRALIA) LIMITED (ACN 123 199 548)**

Second Defendant

**DANIEL PHILLIPS**

Third Defendant

**AMENDED DEFENCE**

*(filed pursuant to the orders of the Honourable Justice Nichols made on 2 December 2024)*

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Date of Document: 17 December 2024

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Filed on behalf of: Third Defendant

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The Third Defendant pleads as follows to the Amended Consolidated Statement of Claim filed on 10 December 2024 ~~6 September 2022~~ (ACSOC), using headings and defined terms contained in the ACSOC (unless the context indicates otherwise), but without admitting any factual allegations expressly or impliedly contained in those headings and defined terms.

In answer to the ACSOC, save to the extent that any matter is the subject of an express admission below, the Third Defendant claims and reserves his right to claim the privilege against self-exposure to civil penalties, and pleads as follows:

**A. PRELIMINARY**

**A.1. Plaintiffs and Group Members**

1. The Third Defendant admits paragraph 1(a) of the ACSOC, but otherwise does not know and cannot admit the balance of matters pleaded at paragraph 1.
2. The Third Defendant admits paragraph 2(a) of the ACSOC, but otherwise does not know and cannot admit the balance of matters pleaded at paragraph 2.
3. Paragraph 3 of the ACSOC makes no allegation against the Third Defendant, and he therefore does not know and cannot admit the paragraph.

4. In answer to paragraph 4 of the ACSOC, the Third Defendant:
  - a. admits that there are, as against each Defendant, seven or more persons who have, as against that Defendant, the purported claims set out in the ACSOC;
  - b. says that those purported claims have no merit; and
  - c. otherwise denies the matters alleged.

#### **A.2. Nuix**

5. In answer to paragraph 5 of the ACSOC, the Third Defendant:
  - a. says that:
    - i. Nuix Australia Pty Ltd was incorporated on 15 November 2005 as a proprietary company;
    - ii. on 21 December 2005, Nuix Australia Pty Ltd changed its name to Nuix Pty Ltd;
    - iii. on 6 November 2020, Nuix Pty Ltd became a public company known thereafter as Nuix Ltd and listed on the ASX on 4 December 2020; and
    - iv. a reference in this Defence to “Nuix” is a reference to Nuix Pty Ltd or Nuix Ltd, as applicable; and
  - b. otherwise admits the paragraph.
6. The Third Defendant admits paragraph 6 of the ACSOC.

#### **A.3. Nuix officers**

7. In answer to paragraph 7 of the ACSOC, the Third Defendant:
  - a. says that:
    - i. Jeffrey Laurence Bleich (**Bleich**) has been a non-executive director of Nuix since 11 January 2017;
    - ii. Bleich has been the Chairman of Nuix since 18 November 2020; and
    - iii. Bleich has been an officer of Nuix within the meaning of s 9 of the *Corporations Act 2001* (Cth) (**Corporations Act**) since 11 January 2017; and
  - b. otherwise denies the paragraph.
8. In answer to paragraph 8 of the ACSOC, the Third Defendant:
  - a. says that:
    - i. Rodney Graeme Vawdrey (**Vawdrey**) was a director of Nuix from 20 September 2017 to 3 December 2021;

- ii. Vawdrey was the Managing Director of Nuix from 4 December 2020 to 3 December 2021;
    - iii. Vawdrey was the Group Chief Executive Officer of Nuix from 8 May 2017 to 3 December 2021; and
    - iv. Vawdrey was an officer of Nuix within the meaning of s 9 of the Corporations Act from 20 September 2017 to 3 December 2021; and
  - b. otherwise denies the paragraph.
- 9. In answer to paragraph 9 of the ACSOC, the Third Defendant:
  - a. says that:
    - i. Sir Iain Robert Lobban (**Lobban**) has been a non-executive director of Nuix since 18 November 2020;
    - ii. Lobban has been a member of Nuix's Audit and Risk Management Committee since 18 November 2020; and
    - iii. Lobban has been an officer of Nuix within the meaning of s 9 of the Corporations Act since 18 November 2020; and
  - b. otherwise denies the paragraph.
- 10. In answer to paragraph 10 of the ACSOC, the Third Defendant:
  - a. says that:
    - i. Susan Patricia Thomas (**Thomas**) has been a non-executive director of Nuix since 18 November 2020;
    - ii. Thomas has been the Chair of Nuix's Audit and Risk Management Committee since 18 November 2020; and
    - iii. Thomas has been an officer of Nuix within the meaning of s 9 of the Corporations Act since 18 November 2020; and
  - b. otherwise denies the paragraph.
- 11. In answer to paragraph 11 of the ACSOC, the Third Defendant:
  - a. says that Stephen Doyle (**Doyle**) was the Chief Financial Officer of Nuix from 4 December 2020 to 30 June 2021; and
  - b. otherwise denies the paragraph.
- 12. In answer to paragraph 12 of the ACSOC, the Third Defendant:
  - a. says that:
    - i. he was a non-executive director of Nuix from 9 June 2011 to 31 August 2022;

- ii. he was a member of Nuix's Audit and Risk Management Committee from at least 18 November 2020 to 31 August 2022; and
- iii. he was an officer of Nuix within the meaning of s 9 of the Corporations Act from 9 June 2011 to 31 August 2022; and

b. otherwise admits the paragraph.

13. In answer to paragraph 13 of the ACSOC, the Third Defendant:

- a. repeats paragraphs 7 to 12 above;
- b. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- c. denies the allegations in the paragraph.

#### **A.4. Macquarie Capital**

14. The Third Defendant admits paragraph 14 of the ACSOC.

15. In answer to paragraph 15 of the ACSOC, the Third Defendant:

- a. admits paragraph 15(a);
- b. otherwise does not admit the paragraph.

### **B. NUIX SECURITIES MARKET**

#### **B.1. Initial Public Offering**

16. The Third Defendant admits paragraph 16 of the ACSOC.

17. In answer to paragraph 17 of the ACSOC, the Third Defendant:

- a. says that, on the Prospectus Date, Nuix issued the Prospectus;
- b. says that the Prospectus related to:
  - i. an initial public offering of fully paid ordinary shares by Nuix; and
  - ii. the sale of existing fully paid ordinary shares by Nuix SaleCo Limited;
- c. relies on the contents of the Prospectus as if it were pleaded herein in full; and
- d. otherwise does not admit the paragraph.

18. The Third Defendant admits paragraph 18 of the ACSOC.

19. In answer to paragraph 19 of the ACSOC, the Third Defendant:

- a. relies on the contents of the Prospectus as if it were pleaded herein in full;
- b. repeats paragraph 17(b) above;
- c. otherwise does not admit the paragraph.

## **B.2. Secondary (on market) trading**

20. In answer to paragraph 20 of the [ACSOC](#), the Third Defendant:
- a. admits that, between 4 December 2020 and 29 June 2021, Nuix's shares were:
    - i. listed on a financial market operated by the ASX;
    - ii. ED securities within the meaning of s 111AE of the Corporations Act;
    - iii. quoted ED securities within the meaning of s 111AM of the Corporations Act; and
    - iv. financial products within the meaning of the Corporations Act; and
  - b. otherwise denies the paragraph.
21. In answer to paragraph 21 of the [ACSOC](#), the Third Defendant:
- a. admits that between, 4 December 2020 and 29 June 2021, Nuix was:
    - i. a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act; and
    - ii. subject to and bound by the ASX Listing Rules; and
  - b. otherwise denies the paragraph.
22. In answer to paragraph 22 of the [ACSOC](#), the Third Defendant:
- a. admits that, between 4 December 2020 and 22 March 2021, s 674(2) of the Corporations Act applied to Nuix, as modified by:
    - i. the Corporations (Coronavirus Economic Response) Determination (No. 2) 2020; and
    - ii. the Corporations (Coronavirus Economic Response) Determination (No. 4) 2020;
  - b. admits that, between 23 March 2021 and 29 June 2021, s 674(2) of the Corporations Act applied to Nuix; and
  - c. otherwise denies the paragraph.

## **C. LEAD UP TO IPO**

### **C.1. Nuix Management Information**

#### **C.1.1. 'Red lights' on Nuix products**

23. In answer to paragraph 23 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**C.1.2. Engineering staff and R&D**

24. In answer to paragraph 24 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
25. In answer to paragraph 25 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**C.1.3. Nature of FY20 earnings result**

26. In answer to paragraph 26 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**C.1.4. Inability accurately to forecast financial performance**

27. In answer to paragraph 27 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
28. In answer to paragraph 28 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
29. In answer to paragraph 29 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
30. In answer to paragraph 30 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
31. In answer to paragraph 31 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**C.1.5. Castagna's influence over Nuix management**

32. In answer to paragraph 32 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
33. In answer to paragraph 33 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**C.1.5.1. Knowledge of Nuix and MCAL as at Prospectus Date**

34. In answer to paragraph 34 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**C.2. Nuix Structural Information****C.2.1. Customer shift towards consumption-based pricing**

35. In answer to paragraph 35 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
36. In answer to paragraph 36 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
37. In answer to paragraph 37 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
38. In answer to paragraph 38 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**C.2.2. Knowledge of Nuix as at Prospectus Date**

39. In answer to paragraph 39 of the [ACSOC](#), the Third Defendant:

- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- b. denies the allegations in the paragraph.

### **C.3. US Political Risk Information**

- 40. In answer to paragraph 40 of the [ACSOC](#), the Third Defendant:
  - a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
- 41. In answer to paragraph 41 of the [ACSOC](#), the Third Defendant:
  - a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
- 42. In answer to paragraph 42 of the [ACSOC](#), the Third Defendant:
  - a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

### **C.4. Prospectus Financial Forecasts Information**

- 43. In answer to paragraph 43 of the [ACSOC](#), the Third Defendant:
  - a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

#### ***C.4.1. Knowledge of Nuix as at Prospectus Date***

- 44. In answer to paragraph 44 of the [ACSOC](#), the Third Defendant:
  - a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

## **D. IPO CONTRAVENTIONS**

### **D.1. Prospectus Growth Forecasts**

- 45. In answer to paragraph 45 of the [ACSOC](#), the Third Defendant:
  - a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

### **D.2. Prospectus Omissions**

- 46. In answer to paragraph 46 of the [ACSOC](#), the Third Defendant:
  - a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and



b. denies the allegations in the paragraph.

47. In answer to paragraph 47 of the ACSOC, the Third Defendant:

a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and

b. denies the allegations in the paragraph.

48. In answer to paragraph 48 of the ACSOC, the Third Defendant:

a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and

b. denies the allegations in the paragraph.

### **D.3. Misleading or deceptive conduct**

49. In answer to paragraph 49 of the ACSOC, the Third Defendant:

a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and

b. denies the allegations in the paragraph.

## **E. IPO CONTRAVENTIONS – LOSSES AND LIABILITIES**

### **E.1. Causation and losses**

50. In answer to paragraph 50 of the ACSOC, the Third Defendant:

a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and

b. denies the allegations in the paragraph.

### **E.2. Nuis liability**

51. In answer to paragraph 51 of the ACSOC, the Third Defendant:

a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and

b. denies the allegations in the paragraph.

### **E.3. Liability of MCAL and Phillips**

52. In answer to paragraph 52 of the ACSOC, the Third Defendant:

a. repeats paragraph 12 above;

b. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and

c. denies the allegations in the paragraph.

53. In answer to paragraph 53 of the ACSOC, the Third Defendant:

a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and

b. denies the allegations in the paragraph.

54. In answer to paragraph 54 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**F. SECONDARY MARKET – DECEMBER 2020**

**F.1. Continuing effect of Prospectus – continuous disclosure contraventions**

55. In answer to paragraph 55 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
56. In answer to paragraph 56 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
57. In answer to paragraph 57 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
58. In answer to paragraph 58 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
59. In answer to paragraph 59 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
60. In answer to paragraph 60 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
61. In answer to paragraph 61 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**F.2. Continuing effect of Prospectus – misleading conduct**

62. In answer to paragraph 62 of the [ACSOC](#), the Third Defendant:

- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- b. denies the allegations in the paragraph.

## **G. SECONDARY MARKET – POST-DECEMBER DEVELOPMENTS**

### **G.1. Nuix corporate governance**

63. The Third Defendant admits paragraph 63 of the ACSOC.
64. In answer to paragraph 64 of the ACSOC, the Third Defendant:
  - a. relies on the contents of the Code of Conduct as if it were pleaded herein in full;
  - b. says that the Code of Conduct applied only to Nuix's employees; and
  - c. otherwise admits the paragraph.
65. The Third Defendant admits paragraph 65 of the ACSOC.
66. In answer to paragraph 66 of the ACSOC ~~of the CSOC~~, the Third Defendant:
  - a. relies on the contents of the STP as if it were pleaded herein in full; and
  - b. otherwise does not admit the paragraph.
67. In answer to paragraph 67 of the ACSOC, the Third Defendant:
  - a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
68. In answer to paragraph 68 of the ACSOC, the Third Defendant:
  - a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
69. In answer to paragraph 69 of the ACSOC, the Third Defendant:
  - a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

### **G.2. STP implementation – Doyle dealings in Nuix shares**

70. The Third Defendant does not plead to paragraph 70 of the ACSOC as the paragraph contains no allegations against him.
71. In answer to paragraph 71 of the ACSOC, the Third Defendant:
  - a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**G.2.1. False or misleading conduct – Corporate Governance systems**

72. In answer to paragraph 72 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
73. In answer to paragraph 73 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**G.2.2. Misleading or deceptive conduct – Corporate Governance systems**

74. In answer to paragraph 74 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**G.3. February 2021**

75. In answer to paragraph 75 of the [ACSOC](#), the Third Defendant:
- a. admits that Nuix released to the ASX the February Update on 26 February 2021;
  - b. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - c. denies the allegations in the paragraph.
76. In answer to paragraph 76 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
77. In answer to paragraph 77 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
78. In answer to paragraph 78 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
79. In answer to paragraph 79 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**G.4. April 2021**

80. In answer to paragraph 80 of the [ACSOC](#), the Third Defendant:
- a. admits that Nuix released to the ASX the April Update on 21 April 2021;
  - b. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - c. denies the allegations in the paragraph.
81. In answer to paragraph 81 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
82. In answer to paragraph 82 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
83. In answer to paragraph 83 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
84. In answer to paragraph 84 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**G.5. May 2021**

85. In answer to paragraph 85 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
86. In answer to paragraph 86 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
87. In answer to paragraph 87 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
88. In answer to paragraph 88 of the [ACSOC](#), the Third Defendant:

- a. admits that Nuix released to the ASX the First May Update on 18 May 2021;
  - b. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - c. denies the allegations in the paragraph.
89. In answer to paragraph 89 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
90. In answer to paragraph 90 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
91. In answer to paragraph 91 of the [ACSOC](#), the Third Defendant:
- a. admits that Nuix released to the ASX the Second May Update on 31 May 2021;
  - b. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - c. denies the allegations in the paragraph.
92. In answer to paragraph 92 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
93. In answer to paragraph 93 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
94. In answer to paragraph 94 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
95. In answer to paragraph 95 of the [ACSOC](#), the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

#### **G.6. 29 June – final corrective disclosure**

96. In answer to paragraph 96 of the [ACSOC](#), the Third Defendant:
- a. admits that the articles particularised were published on 29 June 2021; and

b. otherwise does not admit the content of those publications.

97. In answer to paragraph 97 of the ACSOC, the Third Defendant:

- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- b. denies the allegations in the paragraph.

## **H. SECONDARY MARKET – POST-DECEMBER CONTRAVENTIONS**

### **H.1. Continuous disclosure**

98. In answer to paragraph 98 of the ACSOC, the Third Defendant:

- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- b. denies the allegations in the paragraph.

99. In answer to paragraph 99 of the ACSOC, the Third Defendant:

- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- b. denies the allegations in the paragraph.

100. In answer to paragraph 100 of the ACSOC, the Third Defendant:

- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- b. denies the allegations in the paragraph.

101. In answer to paragraph 101 of the ACSOC, the Third Defendant:

- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- b. denies the allegations in the paragraph.

102. In answer to paragraph 102 of the ACSOC, the Third Defendant:

- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- b. denies the allegations in the paragraph.

103. In answer to paragraph 103 of the ACSOC, the Third Defendant:

- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- b. denies the allegations in the paragraph.

104. In answer to paragraph 104 of the ACSOC, the Third Defendant:

- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- b. denies the allegations in the paragraph.

**H.2. False or misleading statements**

105. In answer to paragraph 105 of the ACSOC, the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
106. In answer to paragraph 106 of the ACSOC, the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**H.3. Misleading or deceptive conduct**

107. In answer to paragraph 107 of the ACSOC, the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
108. In answer to paragraph 108 of the ACSOC, the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.
109. In answer to paragraph 109 of the ACSOC, the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**I. LOSS AND DAMAGE – SECONDARY MARKET CONTRAVENTIONS**

110. In answer to paragraph 110 of the ACSOC, the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.

**J. LIABILITY – SECONDARY MARKET CONTRAVENTIONS****J.1. Nui's liability**

111. The Third Defendant does not plead to paragraph 111 of the ACSOC, as the paragraph does not make any allegation against him.

**J.2. Phillips' involvement**

112. In answer to paragraph 112 of the ACSOC, the Third Defendant:
- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
  - b. denies the allegations in the paragraph.



113. In answer to paragraph 113 of the ACSOC, the Third Defendant:

- a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and
- b. denies the allegations in the paragraph.

**K. COMMON QUESTIONS**

114. The Third Defendant does not plead to paragraph 114 of the ACSOC as it makes no allegation against him, however in doing so he makes no admission as to the appropriateness of the common questions identified.

**L. OTHER MATTERS**

115. Third Defendant reserves the right to advance in his case additional material in support of his defence, the details whereof will be disclosed by amending this paragraph after the hearing in relation to contravention in Federal Court proceeding NSD 827 of 2022.

**PATRICK KNOWLES SC**

**ELIZABETH STEER**

**NICOLA GOLLAN**

Dated: ~~30 May 2023~~ 17 December 2024

*Mangioni Biggs+Co*

**Watson Mangioni Lawyers**

**Mangioni Biggs+Co**

Solicitors for the Third Defendant