FORM 5A

Rule 5.02(1)

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

No. S ECI 2023 01835

BETWEEN

JUSTINE LIDGETT

First Plaintiff

CAMERON LIDGETT

Second Plaintiff

and

DOWNER EDI LIMITED (ACN 003 872 848)

First Defendant

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

Second Defendant

AMENDED CONSOLIDATED WRIT

(*Filed pursuant to Order 1 of the Orders of The Honourable Justice Delany made on 5 December 2024)*

Date of Document:	~~6 November 2023~~26 February 2025	Solicitors Code: 564
Filed on behalf of:	The Plaintiffs	DX: N/A
Prepared by:	Maurice Blackburn Lawyers	Telephone: (02) 8267 0915
	Level 32, 201 Elizabeth St	Ref: 3053099
	Sydney NSW 2000	Email: jschimmel@mauriceblackburn.com.au

TO THE DEFENDANTS

TAKE NOTICE that this proceeding has been brought against you by the plaintiffs for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiffs which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

(a) filing a "Notice of Appearance" with the Prothonotary by submitting the Notice of Appearance for filing electronically in RedCrest or in person at the Principal Registry, 450 Little Bourke Street, Melbourne. See www.supremecourt.vic.gov.au; and

(b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiffs' address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiffs may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

***THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

(a) where you are served with the writ in Victoria, within 10 days after service;

(b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;

(c) where you are served with the writ in Papua New Guinea, within 28 days after service;

(d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;

(e) in any other case, within 42 days after service of the writ.

IF the plaintiffs claim a debt only and you pay that debt, namely, $ and $ for legal costs to the plaintiffs or the plaintiffs' solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED ~~6 November 2023~~ 26 February 2025

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

1. Place of trial: Melbourne.

2. Mode of trial: Judge.

3. This writ was filed for the plaintiffs by Maurice Blackburn Lawyers, Level 32, 201 Elizabeth Street, Sydney, NSW, 2000 as solicitors for the plaintiffs.

4. The address of the plaintiffs is as follows: 59 Dundas Street, Darley, VIC, 3340.

5. The address for service of the plaintiffs is c/- Maurice Blackburn Lawyers, Level 32, 201 Elizabeth Street, Sydney, NSW, 2000.

6. The email address for service of the plaintiffs is: jschimmel@mauriceblackburn.com.au

7. The address of the first defendant is: Triniti Business Campus, 39 Delhi Road, North Ryde, NSW, 2113

8. The address of the second defendant is: Tower Two, Level 36/727 Collins Street, Docklands, VIC 3008

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT

No. S ECI 2023 01835

BETWEEN

JUSTINE LIDGETT

First Plaintiff

CAMERON LIDGETT

Second Plaintiff

and

DOWNER EDI LIMITED (ACN 003 872 848)

First Defendant

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

Second Defendant

AMENDED CONSOLIDATED STATEMENT OF CLAIM

(*Filed pursuant to Order 1 of the Orders of The Honourable Justice Delany made on 5 December 2024)*

Date of Document:	~~3 November 2023~~26 February 2025	Solicitors Code: 564
Filed on behalf of:	The Plaintiffs	DX: N/A
Prepared by:	Maurice Blackburn Lawyers	Telephone: (02) 8267 0915
	Level 32, 201 Elizabeth St	Ref: 3053099
	Sydney NSW 2000	Email: jschimmel@mauriceblackburn.com.au

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A INTRODUCTION

A.1 The Plaintiffs and Group Members

1. This proceeding is commenced as a group proceeding pursuant to Part 4A of the *Supreme Court of Victoria Act 1986* (Vic) by the plaintiffs on their own behalf and on behalf of all persons who or which:

   (a) acquired an interest in ordinary shares in the First ~~d~~Defendant (**Downer Shares** and **Downer** respectively) during the period from 23 July 2019 to 24 February 2023 (**Relevant Period**);

   (b) were not during the Relevant Period, and are not as at the date of this Statement of Claim, any of the following:

      (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of Downer;

      (ii) a related body corporate (as defined by s 50 of the Corporations Act) of Downer;

      (iii) an associated entity (as defined in s 50AAA of the Corporations Act) of Downer;

      (iv) an officer or close associate (as defined in s 9 of the Corporations Act) of Downer;

      (v) the Chief Justice, Justice, Associate Justice, Judicial Registrar, Registrar or Deputy Registrar of the High Court of Australia or the Supreme Court of Victoria; or

      (vi) an officer or employee of, or other legal practitioner engaged by, Maurice Blackburn Pty Limited in relation to this proceeding.

2. The plaintiffs acquired an interest in Downer Shares during the Relevant Period.

Particulars

The plaintiffs acquired 3,000 Downer Shares on 5 December 2022 at a price of $4.99 per Downer Share and brokerage of $29.95.

3. As at the date of the commencement of this proceeding, there are seven or more persons who have claims against Downer and the Second Defendant (**KPMG**) in respect of the matters set out herein.

A.2 Legal obligations to which Downer was subject

4. Downer is and at all material times was:

    (a) a person within the meaning of ss 1041E and 1041H of the Corporations Act;

    (b) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);

    (c) a person within the meaning of s 18 of the Australian Consumer Law set out in Sch 2 to the *Competition and Consumer Act 2010* (Cth) (**CCA**), as applicable pursuant to:

        (i) s 131 of the CCA;

        (ii) s 7 of the *Fair Trading Act (Australian Consumer Law) Act 1992* (ACT);

        (iii) s 28 of the *Fair Trading Act 1987* (NSW);

        (iv) s 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);

        (v) s 16 of the *Fair Trading Act 1989* (Qld);

        (vi) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);

        (vii) s 19 of the *Fair Trading Act 2010* (WA);

        (viii) s 14 of the *Fair Trading Act 1987* (SA); and/or

        (ix) s 27 of the *Consumer Affairs and Fair Trading Act 1990* (NT),

    (individually, or collectively, **the ACL**).

5. Downer is and at all material times was included in the official list of the financial market operated by the Australian Securities Exchange (**ASX**), and by reason thereof:

    (a) Downer Shares are and at all material times were:

        (i) ED securities for the purposes of s 111AE of the Corporations Act;

        (ii) quoted ED securities for the purposes of s 111AM of the Corporations Act; and

        (iii) able to be acquired and disposed of by investors and potential investors on the financial market operated by the ASX (**Affected Market**);

    (b) Downer is and at all material times was:

        (i) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;

(ii) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);

(iii) obliged, by s 111AP(1) and/or s 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes aware of, any information concerning Downer that a reasonable person would expect to have a material effect on the price or value of Downer Shares, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply);

(iv) bound by ss 674(2) or 674A(2) of the Corporations Act as in force from time to time;

(v) bound by ASX Listing Rule 4.3B to give to ASX by no later than the time it lodges the accounts with the Australian Securities and Investments Commission, the information and documents required by ASX Listing Rule 4.3A, namely the information set out in Appendix 4E (with any necessary adaptation), which information and the accounts upon which it is based must use the same accounting policies, and comply with all relevant accounting standards;

(vi) bound by ASX Listing Rule 4.3D, once the entity is or becomes aware of any circumstances which are likely to materially affect the results or other information contained in a preliminary final report given to ASX under Listing Rule 4.3A, to immediately give ASX an explanation of the circumstances and the effects the circumstances are expected to have on the entity's current or future financial performance or financial position.

(**Downer's Continuous Disclosure Obligations**).

6. During the period:

(a) from 26 May 2020 until 24 September 2020, the operation of s 674(2) of the Corporations Act was modified by the *Corporations (Coronavirus Economic Response) Determination (No 2) 2020* (Cth);

(b) from 24 September 2020 until 24 March 2021, the operation of s 674(2) of the Corporations Act was modified by the *Corporations (Coronavirus Economic Response) Determination (No 4) 2020* (Cth);

(c) from 14 August 2021 to the end of the Relevant Period, by reason of the passage of the *Treasury Laws Amendment (2021 Measures No 1) Bill 2021* (Cth), s 674 of the Corporations Act was amended and s 674A was inserted into the Corporations Act.

7. During the Relevant Period, by reason of s 296 of the Corporations Act, Downer's financial reporting for each financial year was required to comply with accounting standards issued by the Australian Accounting Standards Board (**AASB**, and **Accounting Standards**) from time to time.

8. During the Relevant Period, by reason of s 304 of the Corporations Act, Downer's financial reporting for each half-year was required to comply with Accounting Standards issued by AASB from time to time.

9. Amongst other accounting standards, Downer was required to comply with AASB 15 "revenue from contracts with customers" (**AASB 15**).

10. By AASB 15, Downer was only permitted to recognise revenue to the extent that it was highly probable that a significant reversal in the amount of cumulative revenue to be recognised will not occur at a future point in time.

Particulars

> *The Plaintiffs refer to AASB 15 at 56 "constraining estimates of variable consideration" and the words "an entity shall include in the transaction price some or all of an amount of variable consideration estimated in accordance with paragraph 53 only to the extent that it is highly probable that a significant reversal in the amount of cumulative revenue recognised will not occur when the uncertainty associated with the variable consideration is subsequently resolved."*

11. During the Relevant Period, the International Accounting Standards Board (**IASB**) issued International Financial Reporting Standards (**IFRS**) including IFRS 15 "revenue from contracts with customers".

12. By IFRS 15, an entity was only permitted to recognise revenue to the extent that it was highly probable that a significant reversal in the amount of cumulative revenue to be recognised will not occur at a future point in time.

Particulars

> *The plaintiffs refer to IFRS 15 at 56 "constraining estimates of variable consideration" and the words "an entity shall include in the transaction price some or all of an amount of variable consideration estimated in accordance with paragraph 53 only to the extent that it is highly probable that a significant reversal in the amount of cumulative revenue recognised will not occur when the uncertainty associated with the variable consideration is subsequently resolved."*

A.3 Downer's business

13. During the Relevant Period, Downer operated a business providing, inter alia, integrated services to customers in Australia and New Zealand including the design, build and maintenance of assets, infrastructure, and facilities across a range of sectors.

14. During the Relevant Period, Downer's business was organised into divisional segments as follows:

    (a) Transport – including road services, transport services, rail, and rollingstock services such as: road network management, routine road maintenance, asset management systems, spray sealing, asphalt laying, manufacture and supply of bitumen-based products and asphalt products, landfill diversion solutions, intelligent transport systems, design and construction of light rail and heavy rail networks, signalling, track and station works, rail safety technology and bridges;

    (b) Utilities – including power and gas, water, renewable energy and communications services such as: planning, designing, constructing, operating, maintaining, managing and decommissioning power and gas network assets, providing complete water lifecycle solutions for municipal and industrial water users including water and wastewater treatment, network construction and rehabilitation, design, construction and maintenance services for a range of renewable assets in the wind solar and power system storage sectors and end-to-end technology and communications solutions across fibre, copper and radio networks (**Utilities Segment)**;

    (c) Facilities – including the provision of facilities services (such as asset management and cleaning) across a diverse range of industry sectors including defence, education, government, healthcare, resources, leisure and hospitality;

    (d) "Mining", or "Other" (which included the provision of mining services to customers in Australia, Papua New Guinea, South America and South Africa).

Particulars

i. *Half Year Financial Report, 12 February 2020, 3.*

ii. *FY21 Annual Report, 12 August 2021, 68.*

iii. *Half Year Financial Report, 10 February 2022, 9 to 12.*

iv. *Half Year Financial Report, 27 February 2023, 8 to 11.*

A.4 Directors and officers of Downer

15. Grant Fenn (**Fenn**) was:

    (a) the Managing Director and Chief Executive Officer of Downer from July 2010 until 27 February 2023; and

    (b) an officer of Downer within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 at all times from July 2010 until 9 February 2023.

16. Peter Tompkins (**Tompkins**) was:

    (a) the Chief Operating Officer of Downer from June 2021 until 27 February 2023;

    (b) the Managing Director and Chief Executive Officer of Downer from 27 February 2023; and

    (c) an officer of Downer within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 at all times from June 2021.

17. Sergio Cinerari (**Cinerari**) was:

    (a) the Chief Operating Officer – Australian Operations of Downer from January 2011 until about January 2022; and

    (b) an officer of Downer within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 at all material times from January 2011 until January 2022.

18. Michael Ferguson (**Ferguson**) was:

    (a) the Chief Financial Officer of Downer from October 2016; and;

    (b) an officer of Downer within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 at all times from October 2016.

19. James Kafanelis (**Kafanelis**) was:

    (a) the Head of Utilities of Downer from April 2022; and

    (b) an officer of Downer within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 at all times from April 2022.

20. Trevor Cohen (**Cohen**) was:

    (a) the Head of Utilities of Downer from November 2014 until April 2022; and

(b) an officer of Downer within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 at all times from November 2014 until April 2022.

21. Robert Regan (**Regan**) was:

(a) the Group General Counsel and Company Secretary of Downer from 1 January 2019; and

(b) an officer of Downer within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 at all times from 1 January 2019.

22. During the Relevant Period, Downer employed an executive management team to oversee, amongst other things, significant contracts within Downer including in its Utilities Segment (**Contract Executives**)

23. At all material times any information of which each person who was an officer of Downer as pleaded above, including the Contract Executive(s) with oversight of the AusNet Contract (as defined below (**Downer Officers**), became aware, or which ought reasonably to have come into his or her possession in the course of the performance of his or her respective duties as an officer of Downer, was information of which Downer was aware (within the meaning of ASX Listing Rule 19.12).

B DOWNER'S STATEMENTS TO THE MARKET

B.1 23 July 2019 announcement of the AusNet Contract

24. On 23 July 2019, Downer made an announcement to the ASX entitled "Downer Selected to Provide Electricity Distribution Services for AusNet Services in Victoria" (**23 July 2019 Announcement**).

25. In the 23 July 2019~~23~~ Announcement, Downer announced it had entered into a five year contract worth approximately $600 million with options to extend for a further six years (**AusNet Contract**).

26. In the 23 July 2019 Announcement, Downer made the following statements:

> *Downer EDI Limited (Downer) announced today it had been selected by AusNet Services to provide operational and maintenance services on the electricity distribution network in Victoria.*
>
> *The five-year contract is worth approximately $600 million and includes options to extend for a further six years. Under the contract, Downer's services will expand from the current work delivered in AusNet Services' Central region to include the remainder of AusNet Services' electricity distribution network in Victoria's Northern and Eastern regions.*

The contract is expected to commence in September 2019 following the completion of a workforce transition process.

The Chief Executive Officer of Downer, Grant Fenn, said this contract award reinforced Downer as a benchmark end-to-end service provider to owners of utility assets.

"We are pleased to extend our 19-year partnership with AusNet Services for at least a further five years and to now service their entire electricity distribution network in Victoria", Mr Fenn said.

"This contract demonstrates Downer's ability to deliver and service our customers' assets to help them provide cost-effective, safe and reliable energy for our communities."

The scope of work Downer will be delivering includes operations, maintenance, capital works and 24/7 emergency response for AusNet Services' electricity distribution assets.

27. The AusNet Contract was a material and significant contract within Downer.

Particulars

i. *Downer issued a specific ASX release in relation to winning the AusNet Contract, which was marked market sensitive.*

B.2 Capital Raise

28. On 21 July 2020, Downer:

(a) made an announcement to the ASX entitled "creating a stronger Downer and equity raising" and "investor presentation – creating a stronger Downer" (**Capital Raise Announcement**); and

(b) published to the ASX a document entitled "Notification under s 7088AA(2)(f) of the *Corporations Act* (Cth) as modified by ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84 (ASIC Instrument 2016/84)" (**Cleansing Notice**).

29. By the Capital Raise Announcement Downer sought to raise $400 million to strengthen its balance sheet, fund the acquisition of the remaining shares in Spotless and provide flexibility for continued investment in its core business (**Capital Raise**).

30. In the Capital Raise Announcement, Downer made the following statements:

- *Downer expected to report Underlying EBITA of $410 - $420 million and Underlying NPATA of $210 - $220 million for the financial year ended 30 June 2020*

- *Despite the impacts of COVID-19, cash performance improved materially in the second half of the financial year, with operating cash conversion at ~74% of Underlying EBITDA, taking the full year operating cash conversion to ~40%*

…

Downer EDI Limited ("Downer") is implementing a package of initiatives to reshape the business and create a stronger platform for long term, sustainable growth.

…

Through the COVID-19 period, Downer's core Urban Services businesses have demonstrated their strength and resilience – they represent the future of Downer.

After implementing the portfolio initiatives and the equity raising, Downer will be well placed to deliver growth and improving return on capital with:

- *Core Urban Services businesses having demonstrated their strength and resilience…*

…

CEO COMMENTARY

The Chief Executive Officer of Downer, Grant Fenn, said:

During the COVID-19 period we have been focussed on the health and safety of our people and customers and providing essential Urban Services to our communities.

We are very happy with the strong performance of Downer's core Urban Services businesses in the current operating environment. We are focused on continuing to grow our services businesses which require relatively low levels of capital and deliver more predictable revenue in the long term.

…

Following the significant disruption experienced during the COVID-19 period to date, we are seeing a return to more normalised levels of activity across our business, including New Zealand which was materially impacted by the Level 4 restrictions in place during FY20. Transport, Utilities and Facilities (including Hospitality) have been very resilient and are expected to continue trading strongly into the 2021 financial year.

…

FY20 FINANCIAL PERFORMANCE

The table below provides a comparison of the preliminary and unaudited underlying earnings for FY20 versus underlying results for FY19 and reconciliation to statutory NPAT.

[Table appearing on page 5]

Mr Fenn said Downer's core Urban Services businesses had performed well with underlying EBITA only slightly down on the prior year.

…

TRADING UPDATE AND OUTLOOK

…

While the Downer business continues to be impacted by COVID-19, particularly in Hospitality, its diversification across critical services such as road and rail maintenance, public transport, power and gas, water, health and education, defence and government housing and facilities has delivered considerable resilience in earnings and cash flows.

31. In the Cleansing Notice, Downer made the following statements:

As at the date of this notice:

(a) the Company has complied with the provisions of Chapter 2M of the Corporations Act as they apply to the Company;

(b) the Company has complied with section 674 of the Corporations Act; and

(c) there is no "excluded information" within the meaning of sections 708AA(8) and 708AA(9) of the Corporations Act which is required to be disclosed under section 708AA(7)(d) of the Corporations Act.

B.3 12 August 2020 announcements

32. On 12 August 2020, Downer published to the ASX:

(a) its Appendix 4E for the twelve months ended 30 June 2020 (**FY20 Appendix 4E**);

(b) its annual report for the twelve months ended 30 June 2020 (**FY20 Annual Report**);

(c) an announcement entitled “Downer Reports Underlying NPATA of $215.1 million” (**12 August 2020 Announcement**);

(d) a presentation entitled “Downer Full Year Results: Investor Presentation 12 August 2020” (**12 August 2020 Presentation**); and

(e) its Appendix 4G for the twelve months ended 30 June 2020.

33. In the FY20 Appendix 4E, Downer made the following statements:

Results for announcement to the market for the year ended 30 June 2020 ***Appendix 4E***			
	2020 $’m	*2019 $’m*	*% change*
Revenue from ordinary activities	***12,669.4***	*12,789.4*	
Other income	***73.3***	*23.3*	
Total revenue and other income from ordinary activities	***12,742.7***	*12,812.7*	*(0.5%)*
Total revenue including joint ventures and other income	***13,417.9***	*13,448.3*	*(0.2%)*
Earnings before interest and tax	***(41.3)***	*462.2*	*>(100.0%)*
Earnings before interest and tax and amortisation of acquired intangible assets (EBITA)	***30.0***	*532.6*	*(94.4%)*
(Loss) / profit from ordinary activities after tax attributable to members of the parent entity	***(150.3)***	*261.8*	*>(100.0%)*
(Loss) / profit from ordinary activities after tax before amortisation of acquired intangible assets (NPATA)	***(105.8)***	*325.6*	*>(100.0%)*
	2020 cents	*2019 cents*	*% change*
Basic earnings per share	***(26.6)***	*42.9*	*>(100.0%)*
Diluted earnings per share (i)	***(26.6)***	*42.3*	*>(100.0%)*

Net tangible asset backing per ordinary share ***[(ii)]***	***(26.3)***	*9.4*	*>(100.0%)*

[(i)] At 30 June 2020, the ROADS are anti-dilutive and consequently, diluted EPS remained at a loss of 26.6 cents per share.

[(ii)] The Net tangible asset backing per ordinary share as at 30 June 2019 has been restated to reflect the correction of payroll benefit provisions as at 1 July 2018 (Refer Note D1). In addition, the intangibles that are added back have been tax effected.

34. In the FY20 Annual Report, Downer made the following statements:

Highlights

Downer's Urban Services businesses performed well during the 2020 financial year with strong demand for the Group's road, rail, power, gas, water, health, education, defence and government services. Total revenue of $13.4 billion was in line with the prior year. Downer reported a statutory net loss after tax of $155.7 million while underlying NPATA was $215.1 million, with $386.0 million ($320.9 million after tax) of items outside the underlying result.

Total Revenue[2]	***Underlying[1] EBITA***
$13,417.9m	*$416.0m*
Underlying[1] NPATA	***Operating Cash Flow***
$215.1m	*$178.8m*

[1] Underlying EBITA and NPATA are non-IFRS measures that are used by Management to assess the performance of the business. They have been calculated from the statutory measures and underlying EBITA is reconciled to statutory NPAT in the Directors' Report Group Financial Performance section on page 11.

[2] Total revenue is a non-statutory disclosure and includes revenue from joint ventures, other alliances and other income.

…

Consolidated Statement of Profit or Loss and Other Comprehensive Income
for the year ended 30 June 2020

	Note	2020 $'m	2019 $'m
Revenue	*B2*	***12,669.4***	*12,789.4*
…	…	…	…
Total revenue and other income		***12,742.7***	*12,812.7*
…	…	…	…
Earnings before interest and tax		***(41.3)***	*462.2*
…	…	…	…
(Loss) / profit before income tax		***(153.3)***	*379.8*
Income tax expense	*B5(a)*	***(2.4)***	*(103.5)*
(Loss) / profit after income tax		***(155.7)***	*276.3*
(Loss) / profit for the year is attributable to:			
– Non-controlling interest		***(5.4)***	*14.5*
– Members of the parent entity		***(150.3)***	*261.8*
(Loss) / profit for the year		***(155.7)***	*276.3*
…	…	…	…
Total comprehensive (loss) / income for the year		***(175.5)***	*274.5*
Earnings per share (cents)			
– Basic earnings per share	*B4*	***(26.6)***	*42.9*
– Diluted earnings per share [(i)]	*B4*	***(26.6)***	*42.3*

[(i)] *At 30 June 2020, the ROADS are anti-dilutive and consequently, diluted EPS remained at a loss of 26.6 cents per share.*

Consolidated Statement of Financial Position

as at 30 June 2020

	Note	30 June 2020 $'m	Restated (i) 30 June 2019 $'m
ASSETS			
Current assets			
…	…	…	…
Trade receivables and contract assets	C2	**2,315.9**	1,991.5
Total current assets		**3,404.7**	3,164.7
Total assets		**8,672.5**	8,015.4
…	…	…	…
Net assets		**2,620.5**	3,032.8
EQUITY			
…	…	…	…
Retained earnings		**94.3**	481.4
Parent interests		**2,476.3**	2,879.0
…	…	…	…
Total equity		**2,620.5**	3,032.8
…			

…

Statement of compliance

These financial statements represent the consolidated results of Downer EDI Limited (ABN 97 003 872 848). The consolidated Financial Report (Financial Report) is a general purpose financial report which has been prepared in accordance with Australian Accounting Standards (AASBs) adopted by the Australian Accounting Standards Board (AASB) and the Corporations Act 2001 (Cth). The Financial Report complies with

International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB).

The Financial Report was authorised for issue by the Board of Directors on 12 August 2020.

...

Recognition and measurement

Revenue

The Group recognises revenue when a customer obtains control of the goods or services, in accordance with AASB 15 Revenue from Contracts with Customers. Revenue is measured at the fair value of the consideration received or receivable. Determining the timing of the transfer of control – at a point in time or over time – requires judgement. Revenue is recognised if it meets the criteria below.

(i) Rendering of services

The Group primarily generates service revenue from the following activities:

- *Maintenance and management of transport infrastructure*
- *Utilities infrastructure maintenance services (gas, power and water)*
- *Maintenance and installation of infrastructure in the telecommunications sector*
- *Industrial plant maintenance*
- *Contract mining services, mining assets maintenance services, tyre management and blasting*
- *Rolling stock maintenance and rail asset management services*
- *Engineering and consultancy services*
- *Facilities management.*

Typically, under the performance obligations of a service contract, the customer consumes and receives the benefit of the service as it is provided. As such, service revenue is recognised over time as the services are provided.

(ii) Construction contracts

The contractual terms and the way in which the Group operates its construction contracts is predominantly derived from projects containing one performance obligation. Under these performance obligations, customers either simultaneously receive and consume the benefits as the Group performs them or performance creates or enhances an asset that the customer controls as the asset is created or enhanced. Therefore, contracted revenue is recognised over time based on stage of completion of the contract.

(iii) Sale of goods

Revenue is recognised at a point in time when the customer obtains control of goods.

(iv) Other revenue

Other revenue primarily includes rental income.

(v) Other income

Other income for the current year primarily relates to government grants received under the New Zealand Government's Wage Subsidy Scheme available to eligible businesses that were adversely impacted by the COVID-19 pandemic. The Group elects to present these subsidies in "Other income" as allowed under AASB 120 Accounting for Government grants and disclosure of Government assistance.

Contract modifications

For services and construction contracts, revenue from variations and claims is recognised to the extent they are approved or enforceable under the contract. The amount of revenue is then recognised to the extent it is highly probable that a significant reversal of revenue will not occur.

In making this assessment, the Group considers a number of factors including nature of the claim, formal or informal acceptance by the customer of the validity of the claim, stage of negotiations, or the historical outcome of similar claims to determine whether the enforceable and "highly probable" threshold has been met.

Revenue in relation to modifications, such as a change in the scope of the contract, will only be included in the transaction price, when it is approved by the parties to the contract or the modification is enforceable and the amount becomes highly probable.

Modifications may also be recognised when client instruction has been received in line with customary business practice for the customer.

Contract costs (tender costs)

Costs incurred during the tender/bid process are expensed, unless they are incremental to obtaining the contract and the Group expects to recover those costs or where they are explicitly chargeable to the customer regardless of whether the contract is obtained.

Performance obligations and contract duration

Revenue is allocated to each performance obligation and recognised as the performance obligation is satisfied which may be at a point in time or over time.

AASB 15 requires a granular approach to identify the different revenue streams (i.e. performance obligations) in a contract by identifying the different activities that are being undertaken and then aggregating only those where the different activities are significantly integrated or highly interdependent. Revenue will be recognised, on certain contracts over time, as a single performance obligation when the services are part of a series of distinct goods and services that are substantially integrated with the same pattern of transfer.

AASB 15 provides guidance in respect of the term over which revenue may be recognised and is limited to the period for which the parties have enforceable rights and obligations. When the customer can terminate a contract for convenience (without a substantive penalty), the contract term and related revenue is limited to the termination period.

The Group has elected to apply the practical expedient to not adjust the total consideration over the contract term for the effect of a financing component if the period between the transfer of services to the customer and the customer's payment for the services is expected to be one year or less.

Measure of progress

The Group recognises revenue using the measure of progress that best reflects the Group's performance in satisfying the performance obligation within the contracts over time. The different methods of measuring progress include an input method (e.g. costs incurred) or an output method (e.g. milestones reached). The same method of measuring progress will be consistently applied to similar performance obligations.

Variable consideration

Variable consideration that is contingent on the Group's performance, including key performance payments, liquidated damages and abatements that offset revenue under the contract, is recognised only when it is highly probable that a reversal of that revenue will not occur.

In addition, where the identified revenue stream is determined to be a series of distinct goods or services that are substantially the same and that have the same pattern of transfer *to the customer (for example maintenance services), variable consideration is recognised in the period/(s) in which the series of distinct goods or services subject to the variable consideration are completed.*

Loss-making contracts

Loss-making contracts are recognised under AASB 137 Provisions, Contingent Liabilities and Contingent Assets as onerous contracts.

35. In the 12 August 2020 Announcement, Downer made the following statements:

DOWNER REPORTS UNDERLYING NPATA OF $215.1 MILLION

Downer EDI Limited (Downer) today announced its financial results for the 12 months to 30 June 2020. The main features of the results are:

- *Total revenue of $13.4 billion, down 0.2% from the prior corresponding period (pcp)*
- *Underlying EBITA (earnings before interest, tax and amortisation) of $416.0 million, down 25.8%*
- *Underlying NPATA (net profit after tax and before amortisation of acquired intangible assets) of $215.1 million, down 36.8%*
- *Statutory NPAT (net profit after tax) loss of $155.7 million*
- *Improved cash performance in the second half of the financial year, with operating cash conversion at 74% of Underlying EBITDA, taking full year cash conversion to 39.5% of Underlying EBITDA*
- *Work-in-hand of $42.2 billion*

All the figures above include 100% contribution from Spotless, before minority interests.

36. In the 12 August 2020 Presentation, Downer made the following statements:

Overview of results

	FY19	***FY20***
Total revenue [1]	*$13.4 billion*	*$13.4 billion*
Underlying EBITA [2,3]	*$560.6 million*	*$416.0 million*
Statutory EBITA [2]	*$532.6 million*	*$30.0 million*

Underlying NPATA [2,3]	*$340.1 million*	*$215.1 million*
Statutory NPATA [2]	*$325.6 million*	*$(105.8) million*
Operating cash flow	*$630.2 million*	*$178.8 million*
Cash conversion	*89.0%*	*39.5%*
Work-in-hand	*$44.3 billion*	*$42.2 billion*

[1] *Total revenue is a non-statutory disclosure and includes revenue from joint ventures, other alliances and other income.*

[2] *Downer calculates EBITA and NPATA by adjusting EBIT and NPAT to add back acquired intangible assets amortisation expense. Group FY20: $71.3m, $49.9m after-tax. (FY19: $70.4m, $49.3m after-tax)*

[3] *The underlying result is a non-IFRS measure that is used by Management to assess the performance of the business. Non-IFRS measures have not been subject to audit or review.*

Underlying financial performance

- *FY20 includes adoption of AASB16 – no material impact on NPATA*
- *Revenue flat, with growth in Transport and Utilities offsetting declines in Facilities and EC&M*
- *Group EBITA margin 3.1%, down 1.1pp:*
  - *loss making construction contracts in EC&M*
  - *completion of Murra Warra and Renewables contracts*
- *No final dividend (deferred interim dividend of 14cps to be paid in September)*

$m	***FY19*** [3]	***FY20*** [3]	***AASB16 impact***	***Pro forma Pre AASB16*** [3]	***Change (%)***
Total revenue [1]	*13,448.3*	*13,417.9*	*-*	*13,417.9*	*(0.2)*

EBITDA	*850.2*	*862.0*	*(175.8)*	*686.2*	*(19.3)*
Depreciation and amortisation	*(289.6)*	*(446.0)*	*151.8*	*(294.2)*	*(1.6)*
EBITA	*560.6*	*416.0*	*(24.0)*	*392.0*	*(30.1)*
Amortisation of acquired intangibles	*(70.4)*	*(71.3)*	*-*	*(71.3)*	*(1.3)*
EBIT	*490.2*	*344.7*	*(24.0)*	*320.7*	*(34.6)*
Net interest expense	*(82.4)*	*(112.0)*	*26.4*	*(85.6)*	*(3.9)*
Profit before tax	*407.8*	*232.7*	*2.4*	*235.1*	*(42.3)*
Tax expense	*(117.0)*	*(67.5)*	*(0.7)*	*(68.2)*	*41.7*
Net profit after tax	*290.8*	*165.2*	*1.7*	*166.9*	*(42.6)*
NPATA [2]	***340.1***	***215.1***	***1.7***	***216.8***	***(36.3)***
EBITA margin	*4.2%*	*3.1%*			*(1.1)pp*
Effective tax rate	*28.7%*	*29.0%*			*(0.3)pp*
ROFE [4]	*13.7%*	*10.2%*			*(3.5)pp*
Dividend declared (cps)	*28.0*	*14.0*			*(50.0)*

[1] Total revenue is a non-statutory disclosure and includes revenue from joint ventures, other alliances and other income.

[2] Downer calculates EBITA and NPATA by adjusting EBIT and NPAT to add back acquired intangible assets amortisation expense. Group FY20: $71.3m, $49.9m after-tax. (FY19: $70.4m, $49.3m after-tax)

[3] The underlying result and underlying pro-forma pre-AASB16 result are non-IFRS measures that are used by Management to assess the performance of the business. Non-IFRS measures have not been subject to audit or review.

[4] ROFE = 12 month rolling underlying EBITA divided by average funds employed (AFE); AFE = Average Opening and Closing Net Debt (excludes lease liability) + Equity.

...

Utilities - $5.2bn work in hand

...

Top 5 Contracts Remaining

...

2. AusNet (power) until 2024 (plus extensions for 6 years)

...

Top 5 Contract Wins in FY20

1. AusNet (power) for 5 years (plus extensions for 6 years)

...

B.4 11 February 2021 announcements

37. On 11 February 2021, Downer published to the ASX:

(a) its Appendix 4D for the six months ended 31 December 2020 (**HY21 Appendix 4D**);

(b) its half year report for the six months ended 31 December 2020 (**HY21 Half-year Report**);

(c) an announcement entitled "Downer Reports Underlying NPATA of $119.1 Million" (**11 February 2021 Announcement**) and

(d) a presentation entitled "Downer Group Investor Presentation Half Year Results" (**11 February 2021 Presentation**).

38. In the HY21 Appendix 4D, Downer made the following statements:

Results for announcement to the market for the half-year ended 31 December 2020

Appendix 4D

	31 Dec 2020 $'m	*31 Dec 2021 $'m*	*% change*

Revenue from ordinary activities	***5,789.7***	*6,506.6*	
Other income	***36.6***	*2.3*	
Total revenue and other income from ordinary activities	***5,826.3***	*6,508.9*	*(10.5%)*
Total revenue including joint ventures and other income	***6,116.0***	*6,838.5*	*(10.6%)*
Earnings before interest and tax	***162.4***	*180.4*	*(10.0%)*
Earnings before interest and tax and amortisation of acquired intangible assets (EBITA)	***195.8***	*214.8*	*(8.8%)*
Profit from ordinary activities after tax attributable to members of the parent entity	***73.9***	*86.3*	*(14.4%)*
Profit from ordinary activities after tax and before amortisation of acquired intangible assets (NPATA)	***99.0***	*115.5*	*(14.3%)*

	31 Dec 2020 cents	*Restated* [(i)] *2021 cents*	*% change*
Basic earnings per share	***10.3***	*13.7*	*(24.8%)*
Diluted earnings per share[(ii)]	***10.2***	*13.7*	*(25.5%)*
Net tangible asset backing per ordinary share	***29.1***	*(0.3)*	*>100.0 %*

(i) Basic and diluted EPS calculations for December 2019 were restated as a result of 106.6 million shares issued from the capital raising announced on 21 July 2020. Under the entitlement offer, 1 new share for each 5.58 outstanding shares were issued at a discounted price of $3.75 per share. As a result of the new shares issued, the weighted average number of ordinary shares (WANOS) to calculate EPS needs to be adjusted by a

theoretical ex-rights price (TERP) factor. The adjustment factor of 0.9817 was utilised to restate the 31 December 2019 WANOS for the basic and diluted EPS calculations.

(ii) *At 31 December 2019, the ROADS were anti-dilutive and consequently, diluted EPS remained at 13.7 cents per share.*

(iii) *The net tangible asset backing per ordinary share as at 31 December 2019 has been restated to reflect the correction of payroll benefit provisions (Refer Note D1 of the Annual Report 30 June 2020). The intangible assets balance have been tax effected.*

39. In the HY21 Half-year Report, Downer made the following statements:

Condensed Consolidated Statement of Profit or Loss and Other Comprehensive Income

for the half-year ended 31 December 2020

	Note	***Dec 2020***	***Dec 2019***
		$'m	***$'m***
Revenue		***5,789.7***	*6,506.6*
…	…	…	…
Total revenue and other income	*B2*	***5,826.3***	*6,508.9*
…	…	**…**	…
Earnings before interest and tax		***162.4***	*180.4*
…		…	…
Profit before income tax		***106.3***	*126.9*
Income tax expense		***(30.7)***	*(35.5)*
Profit after income tax		***75.6***	*91.4*
Profit for the period is attributable to:			
Non-controlling interest		***1.7***	*5.1*
Members of the parent entity		***73.9***	*86.3*
Profit for the period		***75.6***	*91.4*

…		…	…
Total comprehensive income for the period		***78.0***	*88.5*
Earnings per share (cents)			
Basic earnings per share [(ii)]	*B5*	***10.3***	*13.7*
Diluted earnings per share[(i)(ii)]	*B5*	***10.2***	*13.7*

[(i)] At 31 December 2019, the ROADS were anti-dilutive and consequently diluted EPS remained at 13.7 cents per share.

[(ii)] The 31 December 2019 figures have been adjusted to reflect the impact of the equity raising that occurred during the current period.

Condensed Consolidated Statement of Financial Position

as at 31 December 2020

	Note	***Dec 2020 $'m***	***June 2020 $'m***
ASSETS			
Current assets			
…	…	…	…
Trade receivables and contract assets	*D1*	***2,083.7***	*2,315.9*
…	…	…	…
Total assets		***8,256.9***	*8,672.5*
…	…	…	…
Net assets		***2,943.4***	*2,620.5*
EQUITY			
…	…	…	…

	Note	Dec 2020 $'m	June 2020 $'m
Retained earnings		***165.3***	*94.3*
Parent interests		***2,938.1***	*2,476.3*
…	…	…	…
Total equity		***2,943.4***	*2,620.5*

…

Statement of compliance

The condensed consolidated half-year Financial Report (Financial Report) represents the consolidated results of Downer EDI Limited (ABN 97 003 872 848). The Financial Report is a general purpose financial statement which has been prepared in accordance with AASB 134 Interim Financial Reporting and the Corporations Act 2001 (Cth), and with IAS 34 Interim Financial Reporting.

The Financial Report does not include all the information required for an annual financial report and should be read in conjunction with the 2020 Annual Report.

Accounting policies are selected and applied in a manner that ensures the resulting financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transactions or other events is reported. The accounting policies and methods of computation applied in the Financial Report are consistent with those of the previous financial year and corresponding interim period. Note D7 includes the accounting policy for Disposal groups which has become a significant policy during the period.

Amounts in the Financial Report are presented in Australian dollars unless otherwise noted and has been prepared on a historical cost basis, except for revaluation of certain financial instruments.

The Financial Report was authorised for issue by the Directors on 11 February 2021.

40. In the 11 February 2021 Announcement, Downer made the following statements:

DOWNER REPORTS UNDERLYING NPATA OF $119.1 MILLION

Downer EDI Limited (Downer) today announced its financial results for the six months to 31 December 2020. The main features of the results are:

- *Total revenue of $6.1 billion, down 10.6% from the prior corresponding period (pcp).*
- *Statutory EBIT (earnings before interest and tax) of $162.4 million and statutory NPAT (net profit after tax) of $75.6 million.*
- *Underlying EBITA (earnings before interest, tax and amortisation of acquired intangible assets) of $221.0 million, up 2.9% from the pcp; statutory EBITA of $195.8 million.*
- *Underlying NPATA (net profit after tax and before amortisation of acquired intangible assets) of $119.1 million, up 3.1% from the pcp; statutory NPATA of $99.0 million.*
- *Underlying cash conversion of 97.4%; statutory cash conversion of 84.1%.*
- *Gearing reduced to 28.2% (35.5% at 30 June 2020).*
- *Resumption of dividends with interim dividend of 9 cents per share (unfranked).*

41. In the 11 February 2021 Presentation, Downer made the following statements:

Highlights

- *Statutory NPAT of $75.6m (statutory EBIT of $162.4m)*
- *Underlying NPATA[1,2] of $119.1m, up 3.1% ($99.0m statutory)*
- *Underlying EBITA[1,2] of $221.0m, up 2.9% ($195.8m statutory)*
- *Margin improvement of 0.5 percentage points to 3.6%*
- *Cash conversion of 97.4% (84.1% statutory)*
- *Gearing reduced to 28.2% (35.5% at June 20)*
- *Key milestones achieved:*
  - ✓ *100% ownership of Spotless*
  - ✓ *$1.4bn sustainability linked refinancing*

- ✓ *Sale of non-core businesses ($526m[3])*
- ✓ *Market leading sustainability credentials*

- *Resumption of ordinary dividends (9 cents per share – unfranked)*

…

1H21 performance overview

- *Underlying EBITA of $221.0m, up 2.9%, and EBITA margin up 0.5pp to 3.6%*
- *Urban Services businesses have continued to show resilience despite challenging market conditions*
- *Yarra Trams (Transport), Asset Services and Hospitality continue to be materially impacted by COVID-19*
- *Utilities performed strongly despite reduced contribution from NBN*
- *Facilities performed well and positioned to continue with COVID-19 response*
- *Urban Services work-in-hand of $36.2bn*

$m	***1H20***	***2H20***	***1H21***	***Change 1H20%***
…	…	…	…	…
Utilities	*63.0*	*51.6*	*54.1*	*(14.1)*
…	…	…	…	…
Core Urban Services Businesses	***266.6***	***235.6***	***227.9***	***(14.5)***
…	…	…	…	…
Underlying EBITA[1,2]	***214.8***	***201.2***	***221.0***	***2.9***
Items outside of underlying EBITA	*-*	*(386.0)*	*(25.2)*	*(100)*
Statutory EBITA[1]	***214.8***	***(184.8)***	***195.8***	***(8.8)***
Underlying NPATA[1,2]	***115.5***	***99.6***	***119.1***	***3.1***
Statutory NPAT	***91.4***	***(247.1)***	***75.6***	***(17.3)***

[1] Downer calculates EBITA and NPATA by adjusting EBIT and NPAT to add back acquired intangible assets amortisation expense. Group HY21: $33.4m, $23.4m after-tax. (HY20: $34.4m, $24.1m after-tax)

[2] The underlying result is a non-IFRS measure that is used by Management to assess the performance of the business. Non-IFRS measures have not been subject to audit or review.

…

Utilities

$5.2 billion work-in-hand

Top 5 Contracts Remaining

…

2. AusNet (power) until 2024 (plus extensions for 6 years)

…

Underlying financial performance

- *Revenue down in Utilities, Facilities (primarily Hospitality) and Asset Services, offset by growth in Transport*
- *Group EBITA margin 3.6%, up 0.5pp*
- *Resumption of ordinary dividends – interim dividend of 9cps declared*
- *AASB16 reported consistently in both periods*

$m	***HY20***	***HY21[3]***	***Change (%)***
Totalrevenue[1]	*6,838.5*	*6,116.0*	*(10.6)*
EBITDA	*429.3*	*454.5*	*5.9*
Depreciation and amortisation	*(214.5)*	*(233.5)*	*(8.9)*
EBITA[2]	***214.8***	***221.0***	***2.9***
Amortisation of acquired intangibles	*(34.4)*	*(33.4)*	*2.9*
EBIT	*180.4*	*187.6*	*4.0*

$m	*HY20*	*HY21*[3]	*Change (%)*
Net interest expense	*(53.5)*	*(51.8)*	*3.2*
Profit before tax	*126.9*	*135.8*	*7.0*
Tax expense	*(35.5)*	*(40.1)*	*(13.0)*
Net profit after tax	*91.4*	*95.7*	*4.7*
NPATA[2]	***115.5***	***119.1***	***3.1***
EBITAmargin	*3.1%*	*3.6%*	*0.5pp*
Effective taxrate	*28.0%*	*29.5%*	*1.5pp*
ROFE[4]	*12.6%*	*9.9%*	*(2.7)pp*
Dividend declared(cps)	*14.0*	*9.0*	*(5.0)cps*

[1] Total revenue is a non-statutory disclosure and includes revenue from joint ventures, other alliances and other income.

[2] Downer calculates EBITA and NPATA by adjusting EBIT and NPAT to add back acquired intangible assets amortisation expense. Group HY21: $33.4m, $23.4m after-tax. (HY20: $34.4m, $24.1m after-tax)

[3] The underlying result are non-IFRS measures that are used by Management to assess the performance of the business. Non-IFRS measures have not been subject to audit or review.

[4] ROFE = 12 month rolling underlying EBITA divided by average funds employed (AFE); AFE = Average Opening and Closing Net Debt (excludes lease liability) + Equity.

…

Summary of earnings

$m	***EBITA***	***Net interest expense***	***Tax expense***	***NPATA***	***Deduct: Amortisation of acquired intangibles (post-tax)***	***NPAT***
Underlying[3] ***result***	***221.0***	***(51.8)***	***(50.1)***	***119.1***	***(23.4)***	***95.7***

...	...	...	...	...	...	...
Statutory result	***195.8***	***(56.1)***	***(40.7)***	***99.0***	***(23.4)***	***75.6***

...

B.5 12 August 2021 announcements

42. On 12 August 2021, Downer published to the ASX:

    (a) its Appendix 4E for the twelve months ended 30 June 2021 (**FY21 Appendix 4E**);

    (b) its annual report for the twelve months ended 30 June 2021 (**FY21 Annual Report**);

    (c) an announcement entitled "Downer Reports Underlying NPATA of $261.2 million" (**12 August 2021 Announcement**);

    (d) a presentation entitled "Downer Full Year Results Investor Presentation 12 August 2021" (**12 August 2021 Presentation**); and

    (e) its Appendix 4G for the twelve months ended 30 June 2021.

43. In the FY21 Appendix 4E, Downer made the following statements:

Results for announcement to the market for the year ended 30 June 2021 ***Appendix 4E***			
	2021 ***$'m***	*2020* *$'m*	*%* *change*
Revenue from ordinary activities	***11,530.2***	*12,669.4*	
Other income	***53.9***	*73.3*	
Total revenue and other income from ordinary activities	***11,584.1***	*12,742.7*	*(9.1%)*

Total revenue including joint ventures and other income	***12,234.2***	*13,417.9*	*(8.8%)*
Earnings before interest and tax	***334.8***	*(41.3)*	*>100.0%*
Earnings before interest and tax and amortisation of acquired intangible			
assets (EBITA)	***401.0***	*30.0*	*>100.0%*
Profit / (loss) from ordinary activities after tax attributable to members of the parent entity	***181.6***	*(150.3)*	*>100.0%*
Profit / (loss) from ordinary activities after tax before amortisation of acquired intangible assets (NPATA)	***230.0***	*(105.8)*	*>100.0%*

	2021 cents	*2020 cents*	*% change*
Basic earnings per share [(i)]	***25.4***	*(26.1)*	*>100.0%*
Diluted earnings per share [(i) (ii)]	***24.8***	*(26.1)*	*>100.0%*
Net tangible asset backing per ordinary share	***37.1***	*(26.3)*	*>100.0%*

[(i)] Basic and diluted EPS calculation for June 2020 were restated as a result of 106.6 million shares issued from the capital raising as part of the acquisition of the remaining shares in Spotless. Under the entitlement offer, 1 new share for each 5.58 outstanding shares were issued at a discounted price of $3.75 per share. As a result of the new shares issued, the weighted average number of ordinary shares (WANOS) to calculate EPS needs to be adjusted by a theoretical ex-rights price (TERP) factor. The adjustment factor of 0.9817 was utilised to restate the 30 June 2020 WANOS for the basic and diluted EPS calculations.

[(ii)] At 30 June 2020, the ROADS were deemed anti-dilutive and consequently, diluted EPS remained at (26.1) cents per share.

44. In the FY21 Annual Report, Downer made the following statements:

Highlights

Downer's Urban Services businesses performed well during the 2021 financial year, demonstrating their strength and resilience during a year of COVID-19 disruption.

Total revenue was lower than the previous year, primarily due to the divestment of Mining and Laundries businesses, however Downer delivered an increase in earnings, with improved margins, and a very strong cash performance.

Downer reported a statutory net profit after tax of $183.7 million.

This strong overall performance resulted in the Board declaring a final dividend of 12 cents per share, taking total dividends for the year to 21 cents per share, unfranked.

Total Revenue[1]	*8.8% decrease*	*$12,234.2m*
Underlying[2] EBITA Margin	*0.7pp increase*	*3.8%*
Underlying[2] NPATA	*21.4% increase*	*$261.2m*
EBITDA Cash Conversion	*54.9pp increase*	*92.0%*

[1] Total revenue is a non-statutory disclosure and includes revenue from joint ventures, other alliances and other income.

[2] Underlying EBITA and NPATA are non-IFRS measures that are used by Management to assess the performance of the business. They have been calculated from the statutory measures by adding back the impact of ISIs net of tax. Non-IFRS measures have not been subject to audit or review.

…

Consolidated Statement of Profit or Loss and Other Comprehensive Income

for the year ended 30 June 2021

	Note	***2021***	***2020***
		$'m	***$'m***
Revenue	*B2*	***11,530.2***	*12,669.4*
…	…	…	…

	Note	2021	2020
		$'m	***$'m***
Total revenue and other income		***11,584.1***	*12,742.7*
…	…	…	…
Earnings before interest and tax		***334.8***	*(41.3)*
…	…	…	…
Profit/(loss) before income tax		***229.9***	*(153.3)*
Income tax expense	*B5(a)*	***(46.2)***	*(2.4)*
Profit/(loss) after income tax		***183.7***	*(155.7)*
Profit/(loss) for the year that is attributable to:			
– Non-controlling interest		***2.1***	*(5.4)*
– Members of the parent entity		***181.6***	*(150.3)*
Total profit/(loss) for the year		***183.7***	*(155.7)*
…	…	…	…
Total comprehensive income/(loss) for the year		***195.2***	*(175.5)*
Earnings per share (cents)			
Basic earnings per share[(i)]	*B4*	***25.4***	*(26.1)*
Diluted earnings per share[(i)][(ii)]	*B4*	***24.8***	*(26.1)*

[(i)] FY20 figures have been adjusted to reflect the impact of the equity raising as part of the acquisition of the remaining shares in Spotless. Refer to Note B4.

[(ii)] At 30 June 2020, the ROADS were deemed anti-dilutive and consequently, diluted EPS remained at (26.1) cents per share.

…

Consolidated Statement of Financial Position

as at 30 June 2021

	Note	30 June 2021 $'m	Restated [(i)] 30 June 2020 $'m
ASSETS			
Current assets			
…	…	…	…
Trade receivables and contract assets	*C2*	***2,121.0***	*2,315.9*
…	…	…	…
Total current assets		***3,403.2***	*3,404.7*
…	**…**	**…**	…
Total assets		***8,072.1***	*8,647.0*
…		**…**	…
Net assets		***2,957.4***	*2,595.0*
EQUITY			
…	…	***2,802.6***	*2,429.7*
Retained earnings		***181.5***	*68.8*
Parent interests		***2,952.9***	*2,450.8*
…	…	…	…
Total equity		***2,957.4***	*2,595.0*

…

Statement of compliance

These financial statements represent the consolidated results of Downer EDI Limited (ABN 97 003 872 848). The consolidated Financial Report (Financial Report) is a general purpose financial report which has been prepared in accordance with Australian Accounting Standards (AASBs) adopted by the Australian Accounting Standards Board (AASB) and the Corporations Act 2001 (Cth). The Financial Report complies with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB).

The Financial Report was authorised for issue by the Board of Directors on 12 August 2021.

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Recognition and measurement

Revenue

The Group recognises revenue when a customer obtains control of the goods or services, in accordance with AASB 15 Revenue from Contracts with Customers. Revenue is measured at the fair value of the consideration received or receivable. Determining the timing of the transfer of control – at a point in time or over time – requires judgement. Revenue is recognised if it meets the criteria below.

(i) Rendering of services

The Group primarily generates service revenue from the following activities:

- *Maintenance and management of transport infrastructure*
- *Utilities infrastructure maintenance services (gas, power and water)*
- *Maintenance and installation of infrastructure in the telecommunications sector*
- *Industrial plant maintenance*
- *Rollingstock maintenance and rail asset management services*
- *Engineering and consultancy services*
- *Facilities management*
- *Contract mining services, mining assets maintenance services, tyre management and blasting.*

Typically, under the performance obligations of a service contract, the customer consumes and receives the benefit of the service as it is provided. As such, service revenue is recognised over time as the services are provided.

(ii) Construction contracts

The contractual terms and the way in which the Group operates its construction contracts are predominantly derived from projects containing one performance obligation. Under these performance obligations, customers either simultaneously receive and consume the benefits as the Group performs them or performance creates or enhances an asset that the customer controls as the asset is created or enhanced. Therefore, contracted revenue is recognised over time based on stage of completion of the contract.

(iii) Sale of goods

Revenue is recognised at a point in time when the customer obtains control of goods.

(iv) Other revenue

Other revenue primarily includes rental income.

(v) Other income

Other income primarily includes insurance recoveries and government grants.

Insurance recoveries relates to insurance refunds received for claims lodged that met the recoverability criteria of being 'virtually certain' following confirmation of indemnity received from insurers.

Government grants relates to income received under the New Zealand Government's Wage Subsidy Scheme available to eligible businesses that were adversely impacted by the COVID-19 pandemic. The Group elects to present these subsidies in 'Other income' as allowed under AASB 120 Accounting for Government grants and disclosure of Government assistance.

Contract modifications

For services and construction contracts, revenue from variations and claims is recognised to the extent they are approved or enforceable under the contract. The amount of revenue is then recognised to the extent it is highly probable that a significant reversal of revenue will not occur.

In making this assessment, the Group considers a number of factors including nature of the claim, formal or informal acceptance by the customer of the validity of the claim, stage *of negotiations, or the historical outcome of similar claims to determine whether the enforceable and 'highly probable' threshold has been met.*

Revenue in relation to modifications, such as a change in the scope of the contract, will only be included in the transaction price when it is approved by the parties to the contract or the modification is enforceable and the amount becomes highly probable. Modifications may also be recognised when client instruction has been received in line with customary business practice for the customer.

Contract costs (tender costs)

Costs incurred during the tender/bid process are expensed, unless they are incremental to obtaining the contract and the Group expects to recover those costs or where they are explicitly chargeable to the customer regardless of whether the contract is obtained.

Performance obligations and contract duration

Revenue is allocated to each performance obligation and recognised as the performance obligation is satisfied which may be at a point in time or over time.

AASB 15 requires a granular approach to identify the different revenue streams (i.e. performance obligations) in a contract by identifying the different activities that are being undertaken and then aggregating only those where the different activities are significantly integrated or highly interdependent. Revenue will be recognised, on certain contracts over time, as a single performance obligation when the services are part of a series of distinct goods and services that are substantially integrated with the same pattern of transfer.

AASB 15 provides guidance in respect of the term over which revenue may be recognised and is limited to the period for which the parties have enforceable rights and obligations. When the customer can terminate a contract for convenience (without a substantive penalty), the contract term and related revenue is limited to the termination period.

The Group has elected to apply the practical expedient to not adjust the total consideration over the contract term for the effect of a financing component if the period between the transfer of services to the customer and the customer's payment for the service is expected to be one year or less.

Measure of progress

The Group recognises revenue using the measure of progress that best reflects the Group's performance in satisfying the performance obligation within the contracts over time. The different methods of measuring progress include an input method (e.g. costs incurred) or *an output method (e.g. milestones reached). The same method of measuring progress will be consistently applied to similar performance obligations.*

Variable consideration

Variable consideration that is contingent on the Group's performance, including key performance payments, liquidated damages and abatements that offset revenue under the contract, is recognised only when it is highly probable that a reversal of that revenue will not occur.

In addition, where the identified revenue stream is determined to be a series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer (for example maintenance services), variable consideration is recognised in the period/(s) in which the series of distinct goods or services subject to the variable consideration are completed.

Loss-making contracts

Loss-making contracts are recognised under AASB 137 Provisions, Contingent Liabilities and Contingent Assets as onerous contracts.

Key estimates and judgements: Revenue recognition

Stage of completion

Determining the stage of completion requires an estimate of expenses incurred to date as a percentage of total estimated costs.

Modifications

When a contract modification exists and the Group has an approved enforceable right to payment, revenue in relation to claims and variations is only included in the transaction price when the amount claimable becomes highly probable. Management uses judgement in determining whether an approved enforceable right exists.

Variable consideration

Determining the amount of variable consideration requires an estimate based on either the 'expected value' or the 'most likely amount'. The estimate of variable consideration can only be recognised to the extent it is highly probable that a significant revenue reversal will not occur in future. Changes in these estimates or judgements could have a material impact on the financial statements of the Group.

45. In the 12 August 2021 Announcement, Downer made the following statements:

> ***DOWNER REPORTS UNDERLYING NPATA OF $261.2 MILLION***
>
> *Downer EDI Limited (Downer) today announced its financial results for the 12 months to 30 June 2021. The main features of the results are:*
>
> - *Statutory EBIT (earnings before interest and tax) of $334.8 million and statutory NPAT (net profit after tax) of $183.7 million;*
> - *Underlying EBITA (earnings before interest, tax and amortisation of acquired intangible assets) of $467.3 million, up 12.3% from the pcp; statutory EBITA of $401.0 million;*
> - *Underlying NPATA (net profit after tax and before amortisation of acquired intangible assets) of $261.2 million, up 21.4% from the pcp; statutory NPATA of $230.0 million;*
> - *Underlying cash conversion of 100.8%, statutory cash conversion of 92.0%;*
> - *Gearing reduced to 19.0% (35.7% at 30 June 2020); and*
> - *Final dividend of 12 cents per share (unfranked), total full year dividends of 21 cents per share (unfranked).*

46. In the 12 August 2021 Presentation, Downer made the following statements:

> ***FY21 Highlights***
>
> ✓ *Underlying NPATA[1,2] of $261.2m, up 21.4% ($230.0m statutory)*
>
> ✓ *Underlying EBITA[1,2] of $467.3m, up 12.3% ($401.0m statutory)*
>
> ✓ *Statutory NPAT of $183.7m (statutory EBIT of $334.8m)*
>
> ✓ *Underlying EBITA Margin improvement of 0.7 percentage points*
>
> ✓ *Cash conversion of 100.8% (92.0% statutory)*
>
> ✓ *Net Debt to EBITDA[3] reduced to 1.5x (2.6x at June 2020)*
>
> ✓ *Gearing[3] reduced to 19.0% (35.7% at June 2020)*
>
> ✓ *Underlying EPSA[4] of 36.6cps, up 3.7% (25.4cps statutory Basic EPS)*
>
> ✓ *Final ordinary dividend 12 cents per share (Full year 21cps – unfranked)*

✓ *Delivering on priorities*

[1] Downer calculates EBITA and NPATA by adjusting EBIT and NPAT to add back acquired intangible assets amortisation expense. Group FY21: $66.2m, $46.3m after-tax. (FY20: $71.3m, $49.9m after-tax)

[2] The underlying result is a non-IFRS measure that is used by Management to assess the performance of the business. Non-IFRS measures have not been subject to audit or review.

[3] Net debt to EBITDA ratio includes lease liabilities in Net Debt and is on a post-AASB 16 basis. Gearing ratio does not include lease liabilities in Net Debt and is on a pre-AASB16 basis.

[4] EPSA is calculated based on underlying NPATA adjusted by contributions from minority interests and ROADs dividends paid; dividend by WANOS

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Underlying financial performance

- *Revenue decline of 8.8%, primarily due to declines in non-core revenue segments*
- *Group Underlying EBITA margin 3.8%, up 0.7pp*
- *Interest expense savings from reduction in debt and improved average cost of funds*
- *Underlying effective tax rate of 28.5%*
- *Final dividend of 12cps declared (total dividends for the year of 21cps)*
- *AASB16 reported consistently in both periods*

$m	***FY20***	***FY21***	***Change (%)***
Total revenue	*13,417.9*	*12,234.2*	*(8.8)*
EBITDA	*862.0*	*899.1*	*4.3*
Depreciation and amortisation	*(446.0)*	*(431.8)*	*3.2*
EBITA	*416.0*	*467.3*	*12.3*
Amortisation of acquired intangibles	*(71.3)*	*(66.2)*	*7.2*

$m	*FY20*	*FY21*	*Change (%)*
EBIT	*344.7*	*401.1*	*16.4*
Net interest expense	*(112.0)*	*(100.6)*	*10.2*
Profit before tax	*232.7*	*300.5*	*29.1*
Tax expense	*(67.5)*	*(85.6)*	*(26.8)*
Net profit after tax	***165.2***	***214.9***	***30.1***
NPATA	***215.1***	***261.2***	***21.4***
Underlying EBITA margin	*3.1%*	***3.8%***	*0.7pp*
Effective tax rate	*29.0%*	*28.5%*	*0.5pp*
ROFE	*10.2%*	*12.1%*	*1.9pp*
Dividend declared (cps)	*14.0*	*21.0*	*50.0*

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Utilities

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Top 5 Contracts Remaining

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2. AusNet (power) until 2024 (plus extensions for 6 years)

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B.6 10 February 2022 announcements

47. On 10 February 2022, Downer published to the ASX:

(a) its Appendix 4D for the six months ended 31 December 2021 (**HY22 Appendix 4D**);

(b) its half year report for the six months ended 31 December 2021 (**HY22 Half-year Report**);

(c) an announcement entitled "Downer Reports Underlying NPATA of $97.6 Million)" (**10 February 2022 Announcement**); and

(d) a presentation entitled "Downer Half Year Results Investor Presentation 10 February 2022" (**10 February 2022 Presentation**).

48. In the HY22 Appendix 4D, Downer made the following statements:

Results for announcement to the market

for the half-year ended 31 December 2021

Appendix 4D

	31 Dec 2021 $'m	*31 Dec 2020 $'m*	*% change*
Revenue from ordinary activities	***5,443.3***	*5,789.7*	
Other income	***131.6***	*36.6*	
Total revenue and other income from ordinary activities	***5,574.9***	*5,826.3*	*(4.3%)*
Total revenue including joint ventures and other income	***5,974.9***	*6,116.0*	*(2.3%)*
Earnings before interest and tax	***172.0***	*162.4*	*5.9%*
Earnings before interest and tax and amortisation of acquired intangible assets (EBITA)	***186.2***	*195.8*	*(4.9%)*
Profit from ordinary activities after tax attributable to members of the parent entity	***88.6***	*73.9*	*19.9%*
Profit from ordinary activities after tax and before amortisation of acquired intangible assets (NPATA)	***99.0***	*99.0*	*-*
	31 Dec 2021 cents	*31 Dec 2020 cents*	*% change*
Basic earnings per share	***12.4***	*10.3*	*20.4%*

Diluted earnings per share	***12.3***	*10.2*	*20.6%*
Net tangible asset backing per ordinary share	***31.3***	*29.1*	*7.6%*

49. In the HY22 Half-year Report, Downer made the following statements:

The main features of the result for the six-months ended 31 December 2021 were:

- *Total revenue[1] of $6.0 billion, down 2.3%*
- *Core Urban Services business EBITA of $238.0 million, up 4.4%*
- *Statutory EBITA of $186.2 million, down 4.9% from $195.8 million*
- *EBITA margin of 3.1% down from 3.2% at 31 December 2020*
- *Statutory earnings before interest and tax (EBIT) of $172.0 million, up 5.9% from $162.4 million*
- *Statutory net profit after tax and before amortisation of acquired intangible assets (NPATA) stable at $99.0 million*
- *Statutory net profit after tax (NPAT) of $89.0 million, up 17.7% from $75.6 million.*

Gearing has decreased since 30 June 2021 by 2.5 percentage points (pp) from 19.0% to 16.5% reflecting the strong operating cash flows and proceeds from the divestment program partially offset by the impact of the share buy-back program.

Cash conversion for the period was 85.1% up from 84.1% in the prior corresponding period (pcp), and 91.2% once adjusted for $21.1 million of cash outflows relating to Individually Significant Items (ISIs) recognised in FY20.

Corporate costs increased by $4.2 million or, 8.8%, to $52.0 million mainly due to higher information technology security and insurance costs.

Net finance costs decreased by $10.3 million or, 18.4%, to $45.8 million driven by lower average debt drawn and lower lease interest expense.

Effective tax rate of 29.5% is lower than the statutory corporate tax rate of 30.0% due to the impact of items including non-taxable distributions from joint ventures and lower tax rates in overseas jurisdictions (e.g. New Zealand).

ISIs totalled $4.6 million profit before interest and tax for the period, ($1.4 million profit after-tax). These ISIs relate to:

- *The fair value movement of the Downer Contingent Share Option (DCSO) issued in FY21 as part of the acquisition of the remaining 12.2% interest in Spotless*
- *Divestments and exit costs*
- *Portfolio restructure costs*
- *Bid costs*
- *Gain on sale of PP&E.*

Refer to Note B4 to the Financial Report for further details.

[1] *Total revenue is a non-statutory disclosure and includes revenue, other income and notional revenue from joint ventures and other alliances not proportionately consolidated.*

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Condensed Consolidated Statement of Profit or Loss and Other Comprehensive Income
for the half-year ended 31 December 2021

	Note	***Dec 2021 $'m***	***Dec 2020 $'m***
Revenue		***5,443.3***	*5,789.7*
…	…	…	…
Total revenue and other income	*B2*	***5,574.9***	*5,826.3*
…	…	…	…
Earnings before interest and tax		***172.0***	*162.4*
…	…	…	…
Income tax expense		***(37.2)***	*(30.7)*
Profit after income tax		***89.0***	*75.6*
Profit for the period is attributable to:			
- Non-controlling interest		***0.4***	*1.7*
- Members of the parent entity		***88.6***	*73.9*

Profit for the period		***89.0***	*75.6*
...	...	...	...
Total comprehensive income for the period		***98.7***	*78.0*
Earnings per share (cents)			
Basic earnings per share	*B5*	***12.4***	*10.3*
Diluted earnings per share	*B5*	***12.3***	*10.2*

Condensed Consolidated Statement of Financial Position

as at 31 December 2021

	Note	***Dec 2021***	*Jun 2021*
		$'m	*$'m*
ASSETS			
Current assets			
...	...	...	...
Trade receivables and contract assets	*D1*	***1,897.7***	*2,121.0*
...	...	...	...
...		**...**	...
Total assets		***7,312.8***	*8,072.1*
...	...	...	...
Net assets		***2,891.0***	*2,957.4*
EQUITY			
...	...	...	...
Retained earnings		***183.4***	*181.5*
...	...	...	...

	Note	**Dec 2021**	Jun 2021
		$'m	$'m
Total equity		***2,891.0***	*2,957.4*

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Statement of compliance

The condensed consolidated half-year Financial Report (Financial Report) represents the consolidated results of Downer EDI Limited (ABN 97 003 872 848).

The Financial Report is a general purpose financial statement which has been prepared in accordance with AASB 134 Interim Financial Reporting and the Corporations Act 2001 (Cth), and with IAS 34 Interim Financial Reporting.

The Financial Report does not include all the information required for an annual financial report and should be read in conjunction with the 2021 Annual Report.

Accounting policies are selected and applied in a manner that ensures the resulting financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transactions or other events is reported. The accounting policies and methods of computation applied in the Financial Report are consistent with those of the previous financial year and corresponding interim period.

Amounts in the Financial Report are presented in Australian dollars unless otherwise noted and has been prepared on a historical cost basis, except for revaluation of certain financial instruments.

The Financial Report was authorised for issue by the Directors on 10 February 2022.

50. In the 10 February 2022 Announcement, Downer made the following statements:

The main features of the results are:

- *Total revenue of $6.0 billion, down 2.3% from the prior corresponding period (pcp).*
- *Statutory EBIT (earnings before interest and tax) of $172.0 million and statutory NPAT (net profit after tax) of $89.0 million.*
- *Core Urban Services revenue of $5.6 billion, up 13.3% on the pcp.*

- *Core Urban Services EBITA (earnings before interest, tax and amortisation of acquired intangible assets) of $238.0 million, up 4.4% on the pcp.*

- *Underlying EBITA of $181.6 million, down 17.8% from the pcp; statutory EBITA of $186.2 million.*

- *Underlying NPATA (net profit after tax and before amortisation of acquired intangible assets) of $97.6 million, down 18.1% from the pcp; statutory NPATA of $99.0 million.*

- *Underlying cash conversion of 91.2%; statutory cash conversion of 85.1%.*

- *Net Debt to EBITDA of 1.5x and Gearing of 16.5% (19.0% at 30 June 2021).*

- *Interim dividend of 12 cents per share (unfranked).*

51. In the 10 February 2022 Presentation, Downer made the following statements:

Summary of HY22 financial results

- *Statutory NPAT of $89.0m, up 17.7% (statutory EBIT of $172.0m)*

- *Underlying NPATA[1,2] of $97.6m, down 18.1% ($99.0m statutory)*

- *Underlying EBITA[1,2] of $181.6m, down 17.8% ($186.2m statutory)*

- *Core Urban Services EBITA[1,2] of $238.0m, up 4.4%*

- *Normalised cash conversion of 91.2% (85.1% statutory)*

- *Strong balance sheet - Net Debt to EBITDA[3] well below target range at 1.5x*

- *Gearing[3] reduced to 16.5% (19.0% at June 2021)*

- *Underlying EPSA[4] of 13.6cps, down 18.6% (12.4cps statutory Basic EPS)*

- *Interim ordinary dividend 12 cents per share (unfranked, flat on FY21 final dividend)*

[1] Downer calculates EBITA and NPATA by adjusting EBIT and NPAT to add back acquired intangible assets amortisation expense. Group HY22: $14.2m, $10.0m after-tax. (HY21: $33.4m, $23.4m after-tax).

[2] The underlying result is a non-IFRS measure that is used by Management to assess the performance of the business. Non-IFRS measures have not been subject to audit or review.

[3] *Net debt to EBITDA ratio includes lease liabilities in Net Debt and is on a post-AASB 16 basis. Gearing ratio does not include lease liabilities in Net Debt and is on a pre-AASB16 basis.*

[4] *EPSA is calculated based on underlying NPATA adjusted by contributions from minority interests and ROADs dividends paid; divided by WANOS.*

Group underlying financial performance

- *Revenue[1] 2.3% lower, primarily due to declines in non-core revenue, particularly Mining. Core revenue increased 13.3%.*
- *Group Underlying EBITA margin 3.0%, impacted by COVID-19, particularly Utilities and Hospitality*
- *Interest expense savings from reduction in debt and improved average cost of funds*
- *Underlying effective tax rate of 28.0%*
- *Interim dividend of 12cps declared (unfranked)*

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$m	*HY21[3]*	*HY22[3]*	*Change (%)*
Total revenue[1]	*6,116.0*	*5,974.9*	*(2.3)*
EBITDA	*454.5*	*345.7*	*(23.9)*
Depreciation and amortisation	*(233.5)*	*(164.1)*	*(29.7)*
EBITA[2]	***221.0***	***181.6***	***(17.8)***
Amortisation of acquired intangibles	*(33.4)*	*(14.2)*	*57.5*
EBIT	*187.6*	*167.4*	*(10.8)*
Net interest expense	*(51.8)*	*(45.8)*	*11.6*
Profit before tax	*135.8*	*121.6*	*(10.5)*
Tax expense	*(40.1)*	*(34.0)*	*15.2*
Net profit after tax	***95.7***	***87.6***	***(8.5)***
NPATA[2]	***119.1***	***97.6***	***(18.1)***
Underlying EBITA margin	*3.6%*	*3.0%*	*(0.6pp)*
Effective tax rate	*29.5%*	*28.0%*	*(1.5pp)*
ROFE[4]	*9.9%*	*11.3%*	*1.4pp*

$m	*HY21[3]*	*HY22[3]*	*Change (%)*
Dividend declared(cps)	*9.0*	*12.0*	*33.3*

[1] Total revenue is a non-statutory disclosure and includes revenue from joint ventures, other alliances and other income.

[2] Downer calculates EBITA and NPATA by adjusting EBIT and NPAT to add back acquired intangible assets amortisation expense. Group HY22: $14.2m, $10.0m after-tax. (HY21: $33.4m, $23.4m after-tax).

[3] The underlying result are non-IFRS measures that are used by Management to assess the performance of the business. Non-IFRS measures have not been subject to audit or review. Refer slide 13 for reconciliation to statutory results.

[4] ROFE = 12 month rolling underlying EBITA divided by average funds employed (AFE); AFE = Average Opening and Closing Net Debt (excludes lease liability) + Equity.

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Utilities

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Top 5 Contracts Remaining

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2. AusNet (power) until 2024 (plus extensions for 6 years)

…

B.7 17 August 2022 announcements

52. On 17 August 2022, Downer published to the ASX:

(a) its Appendix 4E for the twelve months ended 30 June 2022 (**FY22 Appendix 4E**);

(b) its annual report for the twelve months ended 30 June 2022 (**FY22 Annual Report**);

(c) an announcement entitled "Downer Reports Underlying NPATA of $225.3 Million and Statutory NPATA of $176.4 Million" (**17 August 2022 Announcement**);

(d) a presentation entitled "Downer Group Investor Presentation for the Year Ended 30 June 2022: 17 August 2022" (**17 August 2022 Presentation**); and

(e) its Appendix 4G for the twelve months ended 30 June 2022.

53. In the FY22 Appendix 4E, Downer made the following statements:

Results for announcement to the market
for the year ended 30 June 2022

Appendix 4E

	2022 $'m	*2021 $'m*	*% change*
Revenue from ordinary activities	***10,989.0***	*11,530.2*	
Other income	***165.5***	*53.9*	
Total revenue and other income from ordinary activities	***11,154.5***	*11,584.1*	*(3.7%)*
Total revenue including joint ventures and other income	***11,987.1***	*12,234.2*	*(2.0%)*
Earnings before interest and tax	***323.2***	*334.8*	*(3.5%)*
Earnings before interest and tax and amortisation of acquired intangible assets (EBITA)	***358.0***	*401.0*	*(10.7%)*
Profit from ordinary activities after tax attributable to members of the parent entity	***151.6***	*181.6*	*(16.5%)*
Profit from ordinary activities after tax and before amortisation of acquired intangible assets (NPATA)	***176.4***	*230.0*	*(23.3%)*

	2022 cents	2021 cents	% change
Basic earnings per share	***21.3***	*25.4*	*(16.1%)*
Diluted earnings per share	***21.2***	*24.8*	*(14.5%)*
Net tangible asset backing per ordinary share	***25.0***	*37.1*	*(32.6%)*

54. In the FY22 Annual Report, Downer made the following statements:

Highlights

Downer's Urban Services businesses performed well in FY22. Despite positive underlying core markets, earnings were weighed down by the disruptive impacts of COVID-19 and severe wet weather on operations.

Downer reported a statutory net profit after tax (NPAT) of $152.0 million, and an underlying NPATA of $225.3 million.

Cash performance remains strong, with cash conversion of 83.9% (underlying cash conversion of 88.9%[1]).

Downer's performance, and the continued strength of the balance sheet, has resulted in the Board declaring a final dividend of 12 cents per share, taking total dividends for the year to 24 cents per share (up 3 cents per share on prior year), unfranked.

Total Revenue[2] *$11,987.1m*	
Statutory EBITA *$358.0m*	***Underlying[3] EBITA*** *$399.2m*
Statutory NPAT *$152.0m*	***Underlying[3] NPATA*** *$225.3m*
Operating Cash Flow *$495.4m*	

[1.] The underlying cash conversion is calculated after adjusting for cash outflows related to FY20 items outside underlying earnings of $22.3 million and bid costs for the Queensland Train Manufacturing Program of $12.7 million.

[2.] Total revenue is a non-statutory disclosure and includes revenue from joint ventures, other alliances and other income.

[3.] Underlying EBITA and NPATA are non-IFRS measures that are used by Management to assess the performance of the business. They have been calculated from the statutory measures and underlying EBITA is reconciled to statutory NPAT in the Directors' Report Group Financial Performance section on pages 12 and 13.

Outlook

For FY23, Downer expects 10-20% underlying NPATA growth, assuming no material COVID-19, weather, labour or other disruptions.

Consolidated Statement of Profit or Loss and Other Comprehensive Income

for the year ended 30 June 2022

	Note	***2022 $'m***	*2021 $'m*
Revenue	*B2*	***10,989.0***	*11,530.2*
…	…	**…**	…
Total revenue and other income		***11,154.5***	*11,584.1*
…	…	…	…
Earnings before interest and tax		***323.2***	*334.8*
…	…	…	…
Profit before income tax		***237.8***	*229.9*
Income tax expense	*B5(a)*	***(85.8)***	*(46.2)*
Profit after income tax		***152.0***	*183.7*
Profit for the year is attributable to:			
– Non-controlling interest		***0.4***	*2.1*

	Note	2022 $'m	2021 $'m
– Members of the parent entity		***151.6***	*181.6*
Profit for the year		***152.0***	*183.7*
…	…	…	…
Total comprehensive income for the year		***170.5***	*195.2*
Earnings per share (cents)			
Basic earnings per share	*B4*	***21.3***	*25.4*
Diluted earnings per share	*B4*	***21.2***	*24.8*

Consolidated Statement of Financial Position

as at 30 June 2022

	Note	2022 $'m	2021 $'m
ASSETS			
Current assets			
…	…	…	…
Trade receivables and contract assets	*C2*	***1,953.0***	*2,121.0*
…	…	…	…
Total current assets		***3,028.0***	*3,403.2*
…	…	…	…
Total assets		***7,461.0***	*8,072.1*
…	…	…	…
Net assets		***2,834.0***	*2,957.4*

	Note	2022 $'m	2021 $'m
EQUITY			
Issued capital	*E5*	***2,660.2***	*2,802.6*
Reserves	*E6*	***12.1***	*(31.2)*
Retained earnings		***161.7***	*181.5*
Parent interests		***2,834.0***	*2,952.9*
Non-controlling interest		–	*4.5*
Total equity		***2,834.0***	*2,957.4*

Statement of compliance

These financial statements represent the consolidated results of Downer EDI Limited (ABN 97 003 872 848).

The consolidated Financial Report (Financial Report) is a general purpose financial report which has been prepared in accordance with Australian Accounting Standards adopted by the Australian Accounting Standards Board (AASB) and the Corporations Act 2001 (Cth). The Financial Report complies with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB).

The Financial Report was authorised for issue by the Board of Directors on 17 August 2022.

…

Recognition and measurement

Revenue

The Group recognises revenue when a customer obtains control of the goods or services, in accordance with AASB 15 Revenue from Contracts with Customers (AASB 15). Revenue is measured at the fair value of the consideration received or receivable. Determining the timing of the transfer of control – at a point in time or over time – requires judgement. Revenue is recognised if it meets the criteria below.

(i) ***Rendering of services***

The Group primarily generates service revenue from the following activities:

- *Maintenance and management of transport infrastructure*
- *Utilities infrastructure maintenance services (gas, power and water)*
- *Maintenance and installation of infrastructure in the telecommunications sector*
- *Industrial plant maintenance*
- *Rollingstock maintenance and rail asset management services*
- *Engineering and consultancy services*
- *Facilities management*
- *Contract mining services, mining assets maintenance services, tyre management and blasting.*

Typically, under the performance obligations of service contracts, the customer consumes and receives the benefit of the service as it is provided. As such, service revenue is recognised over time as the services are provided.

(ii) ***Construction contracts***

The contractual terms and the way in which the Group operates its construction contracts are predominantly derived from projects containing one performance obligation. Under these performance obligations, customers either simultaneously receive and consume the benefits as the Group performs them or performance creates or enhances an asset that the customer controls as the asset is created or enhanced. Therefore, contracted revenue is recognised over time based on stage of completion of the contract.

(iii) ***Sale of goods***

Revenue is recognised at a point in time when the customer obtains control of goods.

(iv) ***Other revenue***

Other revenue primarily includes rental income.

(v) ***Other income***

Other income primarily includes insurance recoveries, government grants and gains on sale of property, plant and equipment.

Insurance recoveries relate to insurance refunds received for claims lodged that met the recoverability criteria of being 'virtually certain' following confirmation of indemnity received from insurers.

Government grants relate to income received under the New Zealand Government's Wage Subsidy Scheme, COVID leave support scheme available to eligible businesses that were adversely impacted by the COVID-19 pandemic as well as in relation to the New Zealand Government's apprentice boost scheme. The Group elects to present these subsidies in 'Other income' as allowed under AASB 120 Accounting for Government grants and disclosure of Government assistance.

Gain on sale of property, plant and equipment primarily relates to the compulsory acquisition of Downer's land at Rosehill. For more details, see Note B3.

Contract modifications

For services and construction contracts, revenue from variations and claims is recognised to the extent they are approved or enforceable under the contract. The amount of revenue is then recognised to the extent it is highly probable that a significant reversal of revenue will not occur.

In making this assessment, the Group considers a number of factors including nature of the claim, formal or informal acceptance by the customer of the validity of the claim, stage of negotiations, or the historical outcome of similar claims to determine whether the enforceable and 'highly probable' threshold has been met.

Revenue in relation to modifications, such as a change in the scope of the contract, will only be included in the transaction price when it is approved by the parties to the contract or the modification is enforceable and the amount becomes highly probable. Modifications may also be recognised when client instruction has been received in line with customary business practice for the customer.

Contract costs (tender costs)

Costs incurred during the tender/bid process are expensed, unless they are incremental to obtaining the contract and the Group expects to recover those costs or where they are explicitly chargeable to the customer regardless of whether the contract is obtained.

Performance obligations and contract duration

Revenue is allocated to each performance obligation and recognised as the performance obligation is satisfied which may be at a point in time or over time.

AASB 15 requires a granular approach to identify the different revenue streams (i.e. performance obligations) in a contract by identifying the different activities that are being undertaken and then aggregating only those where the different activities are significantly integrated or highly interdependent. Revenue will be recognised, on certain contracts over time, as a single performance obligation when the services are part of a series of distinct goods and services that are substantially integrated with the same pattern of transfer.

AASB 15 provides guidance in respect of the term over which revenue may be recognised and is limited to the period for which the parties have enforceable rights and obligations. When the customer can terminate a contract for convenience (without a substantive penalty), the contract term and related revenue is limited to the termination period.

The Group has elected to apply the practical expedient to not adjust the total consideration over the contract term for the effect of a financing component if the period between the transfer of services to the customer and the customer's payment for these services is expected to be one year or less.

Measure of progress

The Group recognises revenue using the measure of progress that best reflects the Group's performance in satisfying the performance obligation within the contracts over time. The different methods of measuring progress include an input method (e.g. costs incurred) or an output method (e.g. milestones reached). The same method of measuring progress will be consistently applied to similar performance obligations.

Variable consideration

Variable consideration that is contingent on the Group's performance, including key performance payments, liquidated damages and abatements that offset revenue under the contract, is recognised only when it is highly probable that a reversal of that revenue will not occur.

In addition, where the identified revenue stream is determined to be a series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer (e.g. maintenance services), variable consideration is recognised in the period/(s) in which the series of distinct goods or services subject to the variable consideration are completed.

Loss-making contracts

Loss-making contracts are recognised under AASB 137 Provisions, Contingent Liabilities and Contingent Assets as onerous contracts.

Key estimate and judgement: Revenue recognition

Stage of completion

Determining the stage of completion requires an estimate of expenses incurred to date as a percentage of total estimated costs.

Modifications

When a contract modification exists and the Group has an approved enforceable right to payment, revenue in relation to claims and variations is only included in the transaction price when the amount claimable becomes highly probable. Management uses judgement in determining whether an approved enforceable right exists.

Variable consideration

Determining the amount of variable consideration requires an estimate based on either the 'expected value' or the 'most likely amount'. The estimate of variable consideration can only be recognised to the extent it is highly probable that a significant revenue reversal will not occur in future.

Changes in these estimates or judgements could have a material impact on the financial statements of the Group.

55. In the 17 August 2022 Announcement, Downer made the following statements:

The main features of the results are:

- *Core Urban Services revenue of $11.5 billion, up 10.8% from the prior corresponding period (pcp). Total Group revenue of $12.0 billion, down 2.0% from the pcp.*
- *Statutory EBIT (earnings before interest and tax) of $323.2 million and statutory NPAT (net profit after tax) of $152.0 million.*
- *Core Urban Services EBITA (earnings before interest, tax and amortisation of acquired intangible assets) of $508.1 million, down 3.0% from the pcp.*
- *Underlying EBITA of $399.2 million, down 14.6% from the pcp; statutory EBITA of $358.0 million.*

- *Underlying NPATA (net profit after tax and before amortisation of acquired intangible assets) of $225.3 million, down 13.7% from the pcp; statutory NPATA of $176.4 million.*

- *Underlying cash conversion of 88.9%; statutory cash conversion of 83.9%.*

- *Net Debt to EBITDA of 1.6x and Gearing of 17.7% (19.0% at 30 June 2021).*

- *Final dividend of 12 cents per share (unfranked).*

…

Outlook

For FY23, Downer expects 10-20% underlying NPATA growth, assuming no material COVID-19, weather, labour or other disruptions.

56. In the 17 August 2022 Presentation, Downer made the following statements:

Group underlying financial performance

- *Total revenue 2.0% lower to $12.0bn, primarily due to divestment of non-core businesses*

- *Urban Services revenue[1] increased 10.8% to $11.5bn*

- *Group underlying[3] EBITA margin 3.3%, impacted by severe wet weather and COVID-19*

- *Corporate costs decreased by 2.6% to $100.5m (see supplementary information slide 32)*

- *Net interest expense decreased by $15.2m from reduction in debt and improved average cost of funds*

- *Underlying effective tax rate of 28.0%*

- *Final dividend of 12cps declared (unfranked). Full year FY22 dividends declared of 24cps (unfranked), an increase of 3cps*

$m	***FY22[3]***	***FY21[3]***	***Change***
Total revenue[1]	*11,987.1*	*12,234.2*	*(2.0%)*
EBITDA	*706.6*	*899.1*	*(21.4%)*

$m	*FY22*[3]	*FY21*[3]	*Change*
Depreciation and amortisation	*(307.4)*	*(431.8)*	*(28.8%)*
***EBITA*[2]**	***399.2***	***467.3***	***(14.6%)***
Amortisation of acquired intangibles	*(34.8)*	*(66.2)*	*(47.4%)*
EBIT	*364.4*	*401.1*	*(9.1%)*
Net interest expense	*(85.4)*	*(100.6)*	*(15.1%)*
Profit before tax	*279.0*	*300.5*	*(7.2%)*
Tax expense	*(78.1)*	*(85.6)*	*(8.8%)*
Net profit after tax	***200.9***	***214.9***	***(6.5%)***
***NPATA*[2]**	***225.3***	***261.2***	***(13.7%)***
Underlying EBITA margin	*3.3%*	*3.8%*	*(0.5pp)*
Effective tax rate	*28.0%*	*28.5%*	*(0.5pp)*
ROFE[4]	*11.2%*	*12.1%*	*(0.9pp)*
Dividend declared (cps)	*24.0*	*21.0*	*14.3%*

[1] Urban Services revenue and total revenue are non-statutory disclosures and includes revenue from joint ventures, other alliances and other income

[2] Downer calculates EBITA and NPATA by adjusting EBIT and NPAT to add back acquired intangible assets amortisation expense. Group FY22: $34.8m, $24.4m after-tax. (FY21: $66.2m, $46.3m after-tax)

[3] The underlying result is a non-IFRS measure that is used by Management to assess the performance of the business. Non-IFRS measures have not been subject to audit or review. Refer slide 21 for reconciliation to statutory results

[4] ROFE = 12 month rolling underlying EBITA divided by average funds employed (AFE); AFE = Average Opening and Closing Net Debt (excludes lease liability) + Equity

…

Key messages and outlook

- *Q4 beat expectations, generating a favourable run rate into FY23*
- *Demand remains robust in our markets, across existing contracts and pipeline*
- *Cost to serve still elevated but trending towards more normal levels*
- *Net Debt to EBITDA[1] of 1.6x well below target range of 2.0-2.5x which provides stability, supports the dividend and enables Downer to explore value accretive investment*
- *For FY23, Downer expects 10-20% underlying NPATA growth, assuming no material COVID-19, weather, labour or other disruptions*

[1] Net debt to EBITDA ratio includes lease liabilities in Net Debt and is on a post -AASB 16 basis

...

Top 5 Contracts Remaining

...

2. AusNet (power) until 2024 (plus 6-year extension)

B.8 3 November 2022 announcements

57. On 3 November 2022, Downer:

(a) held its Annual General Meeting for the financial year ended 30 June 2022 (**FY22 AGM**);

(b) published to the ASX:

(i) a transcript of the Chairman's address to shareholders at the FY22 AGM;

(ii) a transcript of the Chief Executives Report at the FY22 AGM (**FY22 CEO Address**); and

(iii) a presentation entitled "Downer Annual General Meeting 3 November 2022) presented at the FY 22 AGM (**3 November 2022 Presentation**).

58. At the FY22 AGM and in the FY22 CEO Address, Fenn made the following statements:

Now, just touching on trading in the first quarter of FY23.

In August, we said that we expected 10 – 20% growth in our underlying FY23 NPATA, assuming no material COVID-19, weather, labour or other disruptions.

I guess it's no shock to highlight the difficult weather conditions that have plagued the past four months, particular in the eastern States and New Zealand. It has been very difficult to get a good run at the extensive amount of work to be delivered across the Group. Very few of our businesses have been unaffected.

It's too early to predict what the weather has in store for us for the remainder of the year and consequently what the impact might be on the Full Year. We hope it improves but time will tell. The irony is that these weather conditions drive significant increases in future demand for our services, boding well for when we get some reasonable weather.

As it stands today, our forecasts continue to support our guidance and we will provide a further update at our Half Year results in February 2023.

59. In the 3 November 2022 Presentation, Downer made the following statements:

Trading update and Group outlook

- *Guidance issued in August 2022: "For FY23, Downer expects 10-20% underlying NPATA growth, assuming no material COVID-19, weather, labour or other disruptions".*
- *Trading conditions in Q1 were more challenging than anticipated, primarily due to the continued wet weather and flooding events down the Australian East Coast, as well as the continued elevated costs to serve associated with the labour market.*
- *Downer remains in the previously communicated guidance range, assuming no further material COVID-19, weather, labour or other disruptions.*
- *Market position, pipeline and demand for our services remains very strong.*

B.9 8 December 2022 announcement

60. On 8 December 2022, Downer:

(a) made an announcement to the ASX entitled "Accounting Irregularities in Utilities and Trading Update" (**8 December 2022 Announcement**);

(b) convened a call in a manner likely to bring the things said during it to the attention of the Affected Market (**8 December 2022 Call**).

61. In the 8 December 2022 Announcement, Downer made the following statements:

Media/ASX and NZX Release - 8 December 2022

ACCOUNTING IRREGULARITIES IN UTILITIES AND TRADING UPDATE

Downer EDI Limited (Downer) announced today that its NPATA guidance for the 2023 financial year has been updated to reflect the following:

<u>Accounting irregularities in Downer's Australian Utilities business</u>

Downer has identified certain accounting irregularities in its Australian Utilities business involving historical misreporting of revenue and work in progress in one of Downer's maintenance contracts.

With oversight by the Board and senior management, a detailed investigation has been initiated and is being treated with the highest priority. The investigation is ongoing, so details are preliminary, but the adjustments appear to relate to the period between September 2019 and November 2022.

Based on information currently available the irregularities are estimated to result in a historical overstatement of pre-tax earnings in the order of $30 million – $40 million at the end of November 2022 accumulated across financial years 2020, 2021, 2022 and 2023. Any potential ongoing impact on earnings is still being determined.

Downer's CEO & Managing Director, Grant Fenn, said that the Company has moved quickly to ensure the immediate issues are addressed and the financial and management capability within the business is strengthened.

<u>Trading update</u>

In August, Downer said that it expected 10 – 20% growth in underlying FY23 NPATA assuming no material COVID-19, weather, labour shortages or other disruptions.

At Downer's Annual General Meeting on 3 November, the CEO Grant Fenn confirmed that difficult weather conditions and elevated cost to serve issues had plagued the first quarter, particularly in Australia's Eastern States and New Zealand with very few of our businesses unaffected. We highlighted that it was too early to predict the impact for the remainder of the year but, as it stood, the forecast continued to support the guidance.

After analysis of the Group's trading for October and November, it has become clear that the guidance is now unlikely to be met.

"Although the business has a general skew to the second-half, we think that the challenge for the last seven months of FY23 has become too large," Mr Fenn said. "Our Road Services and Utilities businesses have been heavily impacted by weather and all businesses have been battling with staff shortages and supply chain issues. These issues are dissipating but not in time for 2023 earnings."

Excluding any prior period impact of the accounting irregularities discussed above, Downer now expects underlying FY23 NPATA to be between $210 million – $230 million assuming no further material COVID-19, weather, labour shortages or other disruptions. A further update will be provided at the half year results in February.

***A conference call for investors in relation to today's announcement will be held at 11am on Thursday 8 December**. Conference call details accompany this announcement.*

62. During the 8 December 2022 Call, Fenn made the following statements:

So the background to this is that a new and expanded maintenance contract with a long-term power customer was entered into in July 2019. And we kicked that contract off working in September 2019. Now historically, a long-term customer and a profitable customer contract, this contract is an extension of a long-term relationship…

Now these work orders are costed as the work is completed. And revenue is based on a schedule that corresponds to the particular type and scope of work to be completed in the word order. Now on Monday evening this week, we were advised that earnings have been overstated on contract due to misreporting of revenue and work in progress since the start of the new contract began. Essentially, revenue had been recognized on individual work orders in advance of cost, and this had the effect of mismatching revenue to costs and overstating contract profitability in each of the reporting periods since the contract began.

On investigation, we believe that the contract has, in fact, been in loss over that time, with unearned work-in-progress and revenue masking the reality of the underperformance…

As you see in the ASX release, and I guess we've -- we highlighted at our AGM and then subsequently at other conferences that with our a difficult first 3 months, October was wet and well waiting on very heavily to see what sort of performance, and could we see our performance in November that would indicate that we can make up to the front end of the position. So having received now our November numbers, which were better, but not adequate, so we're much better, but not adequate to sort of presents us with a position that, that bell wave could be fulfilled. So it's become clear now with that trading and the latest business unit forecast update that the task ahead in the remaining 7 months to the year will be too great and unlikely to be achieved.

Now we've also factored in the '23 impact for the '23 financial year of the impact of the accounting regularities that we've spoken to earlier into that, which forms part of the movement as well…

…

Yes, that's still under investigation. We had a number of changes in that area over the last months, which has helped to uncover this, but we're still investigating those particular matters as we speak. And we talked about particular control aspects to this…

What's very clear now, though, is that those reviews and indeed, the control had not focused in on the point of revenue recognition for these tens of thousands of work orders. And what we've found is that, that revenue recognition is advanced ahead of where it should be. And that, if you like, revenue has been recorded as earned when it in fact is unearned. It's not yet -- it should not yet be booked, and it certainly won't be part. So it's been booked early.

Now what that has done is that – and of course, the scope of work and the volume has been increasing. So what that's done is that because of that early recognition ahead of cost on each of the work orders, for a proportion of work orders that are in the system, there's revenue there and now cost. And what that has done is that in each of these, it's clouded. So you've actually had profitable -- or we've been reporting profitable positions on the contract because of the early recognition of the revenue, which didn't exist…

…

So in all businesses like ours and sort of in all of the businesses that we do, you will be -- at the end of the month or end of the half year and end of the full year, you will be partway through all your jobs, all your existing jobs. And that will mean -- and you will be -- you will not build all of the work that you've got, and you'll be partway through the next milestone. So in this particular situation, the payment milestone is completion of the work order, right?

Now what you normally do, you might build in construction or you'll do it in service contracts, is that you would recognize revenue on that on a -- I'll call it, an appropriate basis, and there's different basis that people can have. But let's say for arguments sake, if you've not spent anything on it, if you spent not much time on it, then why would you recognize most of the revenue part, right? So in this case, the right answer or at least an appropriate answer won't be the only right, an appropriate answer is to recognize the revenue to the extent that you've expanded cost rather than have an arbitrary or a dislocated revenue recognition, right, which has been the situation here. So we have work *orders in the early phase of completion having been given significant revenue recognition, right, earlier than it should.*

Now -- so what you actually find in the work orders that are opened, because of what's been happening here is you've got a series that are, if you like, accelerated revenue. And of course, as those work orders that originally were accelerated in terms of revenue, what you'll find is, towards the back end, they'll actually be decelerated and they won't be earning as much. And you've got increasing volume in here as well…

…

… We had a better November, but what's pretty clear to us is that the November that we had was far improved, but was still under our original budget…

… So on this contract, we have in the years up to the end of financial year '22, we have recognized about $22 million of profit on this contract. So that needs to be reversed in those particular years. And then in the current year, you've got some also, which is in our guidance.

We are still looking at the individual years and how that falls within those individual years for the pre'23 stuff. So that will be part of the investigation. We also now recognize that there has been a loss on those jobs. In fact, over that period, which needs to be included in the write-off, which we're calculating…

… So we will write off more than the profit position…

… And you would say, well, gee, in some cases, things can happen where you recognize revenue ahead of time when you shouldn't, but it will run itself out in the wash and that is true. But when it's -- so there's quite an extent of it here, and in fact, when you're' actually in losses and the extent of that is actually masking it, that's what's occurred…

…

So the WIP, itself and the early recognition of revenue, so the recognition of revenue has been separated from cost, right?…

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

63. Following the release of the 8 December 2022 Announcement and the 8 December 2022 Call, the price of Downer Shares fell substantially.

Particulars

i. *The price of Downer Shares:*

(A) *fell from a closing price of $4.80 on 7 December 2022 to a closing price of $3.82 on 8 December 2022 on a traded volume of 30,165,218.*

(B) *fell from a closing price of $3.82 on 8 December 2022 to a closing price of $3.70 on 9 December 2022 on a traded volume of 18,713,932.*

ii. *Further particulars may be provided following service of the plaintiffs' expert evidence.*

B.11 27 February 2023 announcements

64. On 27 February 2023, Downer published to the ASX:

(a) an announcement entitled "Update on Downer's Utilities contract" (**First 27 February 2023 Announcement**);

(b) its Appendix 4D for the six months ended 31 December 2022 (**HY23 Appendix 4D**);

(c) its half year report for the six months ended 31 December 2022 (**HY23 Half-year Report**);

(d) an announcement entitled "Downer Reports Underlying NPATA of $68.0 Million and Statutory NPATA of $77.3 Million" (**Second 27 February 2023 Announcement**); and

(e) a presentation entitled "Downer Group Investor Presentation for the Half Year ended 31 December 2022" (**27 February 2023 Presentation**)

(together, **27 February 2023 Disclosures**).

65. In the First 27 February 2023 Announcement, Downer made the following statements:

Media/ASX and NZX Release - 27 February 2023

Update on Downer's Utilities contract

On 8 December 2022, Downer announced that it had identified the historical misreporting of revenue and work in progress in one of Downer's maintenance contracts in its Australian Utilities business.

Downer announced today that the privileged and confidential investigation undertaken by lawyers retained by Downer, and forensic accountants engaged to assist the investigation, has now been completed.

Reporting of revenue in respect of all contracts with a material work in progress balance in Australia and New Zealand has been reviewed.

Downer is confident that the misreporting was specific to the contract and not replicated elsewhere.

The Contract

The contract is for the supply of maintenance, new connections, faults and capital works services for a long-term Power Utilities customer applying a schedule of agreed prices for each service type.

There are over 9000 work orders issued in any given month, the vast majority of which are completed within the same month. Some capital related work orders, however, extend across two or more months. The contract has an initial term remaining of 27 months and two extension options of 3 years each.

The contract was signed in July 2019 and, following a transition phase from a preceding long-term contract, year one of the contract commenced on 1 April 2020. The new contract was significantly larger than the preceding contract and incorporated both new geographic service areas and new services, including increased capital works.

The misreporting of the contract earnings since inception resulted in the contract's underlying poor performance, including its deteriorating performance over time, remaining unidentified. Downer is heavily focused on the remediation of the contract and a detailed recovery plan is now being actioned. The new contract management team, along with external business improvement specialists, are working closely with our operations teams and customer to improve contract performance.

Downer has agreed and documented a commercial reset of the contract with the customer and this, coupled with operational improvements, indicates the contract is not onerous.

The Utilities management team responsible for the contract has been replaced.

How did the misreporting occur?

The misreporting of revenue has come about through the misapplication of Downer's revenue recognition policy, by incorrectly assuming that:

1. *work orders were completed (either in full or to an assumed percentage) at each month end, including work orders for which little work had been undertaken. The result was to overstate the extent to which work orders had progressed, and to record revenue prematurely, particularly for work orders that extended across two or more months; and*

2. *costs incurred in excess of the scheduled billable amount related to variations billable to the customer.*

Contributing factors

At the inception of the contract in 2020, contract management carried across a method of recording revenue at month-end that had been applied to a previous contract with the same customer. That earlier contract, however, was different in breadth of service and scale to the new contract, and the need to apply a different methodology was not identified as necessary.

Reported earnings were close to expectations and project performance reporting did not indicate any material issues within the contract.

Changes to the customer's billing system and Downer's works management systems in 2021, effectively masked the underlying issues, and led to the mistaken belief that high Work in Progress was largely the result of billing difficulties caused by the new systems and processes that would ultimately be resolved with the customer and for which there was a detailed management recovery plan.

Impact on prior year results and 1H FY23

Post-tax earnings were overstated by a total of $22.2 million between April 2020 and 30 June 2022, of which $1.7 million relates to FY2020, $8.8 million relates to FY21 and $11.7 million relates to FY22.

Downer will restate comparative financial information to incorporate the correction in underlying results. As part of the 1H FY2023 results announced today, the restated prior period (1H FY2022) post-tax earnings will be reduced by $3.2 million. Note A of Downer's Condensed Consolidated Financial report for the Half Year ended 31 December 2022 shows these adjustments.

Post-tax earnings for the contract for the six months to 31 December 2022 was a loss of $12 million.

Improvements to ensure the misreporting does not occur again

Downer has a comprehensive risk management, internal compliance and control system in place, including a detailed revenue recognition policy, that aligns with AASB15, and must be followed for each contract.

The following additional control measures have been implemented across the Group:

- *The revenue recognition methodology for all new material contracts now also requires the approval of the Tenders and Contracts Committee (TCC) prior to the commencement of the contract. Any subsequent adjustments will also require approval by TCC prior to implementation.*
- *The revenue recognition methodology and application for all new material contracts must now undergo internal audit review within six months of contract start and then periodically as part of the internal audit plan.*

…

66. In the HY23 Appendix 4D, Downer made the following statements:

Results for announcement to the market for the half-year ended 31 December 2022

Appendix 4D

		Restated[(i)]	
	31 Dec 2022 $'m	*31 Dec 2021 $'m*	*% change*
Revenue from ordinary activities	***5,693.1***	*5,438.7*	
Other income	***17.7***	*131.6*	
Total revenue and other income from ordinary activities	***5,710.8***	*5,570.3*	*2.5%*
Total revenue including joint ventures and other income	***6,144.7***	*5,970.3*	*2.9%*

Earnings before interest and tax	***129.8***	*167.4*	*(22.5%)*
Earnings before interest and tax and amortisation of acquired intangible assets (EBITA)	***142.9***	*181.6*	*(21.3%)*
Profit from ordinary activities after tax attributable to members of the parent entity	***68.1***	*85.4*	*(20.3%)*
Profit from ordinary activities after tax and before amortisation of acquired intangible assets (NPATA)	***77.3***	*95.8*	*(19.3%)*

		Restated(i)	
	31 Dec 2022 cents	*31 Dec 2021 cents*	*% change*
Basic earnings per share	***9.3***	*11.9*	*(21.8%)*
Diluted earnings per share(ii)	***9.3***	*11.8*	*(21.2%)*
Net tangible asset backing per ordinary share	***22.6***	*27.5*	*(17.8%)*

(i) December 2021 results have been restated to reflect the impact of historical misreporting of revenue and contract assets in one of Downer's maintenance contracts in its Australian Utilities business.

(ii) At 31 December 2022, the ROADS were deemed anti-dilutive and consequently, remained at 9.3 cents per share.

67. In the HY23 Half-year Report, Downer made the following statements:

The main features of the result for the six-months ended 31 December 2022 were:

- *Total revenue[1] of $6.1 billion, up 2.9%*
- *Statutory EBITA[2] of $142.9 million, down 21.3%; from $181.6 million*
- *Statutory EBITA margin of 2.3% down from 3.0% at 31 December 2021*
- *Statutory earnings before interest and tax (EBIT) of $129.8 million, down 22.5%; from $167.4 million*

- *Statutory net profit after tax and before amortisation of acquired intangible assets (NPATA) of $77.3 million, down 19.3%; from $95.8 million*

- *Statutory net profit after tax (NPAT) of $68.1 million, down 20.6%; from $85.8 million.*

…

Despite the strong revenue growth, EBITA has been negatively impacted by unprecedented wet weather, labour shortages and productivity including contract and project losses in Utilities.

…

On 8 December 2022, Downer announced it had identified the historical misreporting of revenues and work in progress in one of its maintenance contracts in its Australian Utilities business.

The contract is for the supply and maintenance, new connections, faults and capital works services.

As a result of the historical misreporting, post-tax earnings were overstated by a total of $22.2 million between April 2020 and 30 June 2022, of which $1.7 million relates to FY20, $8.8 million relates to FY21 and $11.7 million relates to FY22. Post tax earnings for the contract for the six months to 31 December 2022 was a loss of $12 million.

Downer is confident that the misreporting was specific to the contract and not replicated elsewhere.

…

OUTLOOK

On 8 December 2022, Downer announced that it had revised its guidance for FY23 as trading for October and November indicated that guidance was unlikely to be met. Guidance was restated as $210 million - $230 million NPATA assuming no further material COVID-19, weather, labour shortages or other disruptions and excluding any prior period impact from the Utilities revenue recognition issue.

Since 8 December, as part of the half year reporting process, Downer has conducted a detailed re-forecast review and considers it appropriate to further adjust the guidance for the following items:

- *Losses associated with the Utilities power maintenance contract. Whilst the contract is not considered onerous, further losses will impact H2 until the contract reset and recovery plan take effect ($12 million post tax);*

- *Heightened risk of Water project losses due to unrecoverable prolongation costs as storms and flooding continue to impact completion ($12 million post tax);*

- *A slowdown in Government minor capital works based on recent customer feedback ($8 million post tax); and*

- *The impact of recent floods and storms in the North Island of New Zealand have materially impacted current operations and whilst we expect this to present opportunities in FY24, the 2H23 pipeline has been impacted ($8 million post tax).*

Downner now expects underlying FY23 NPATA to be between $170 million - $190 million assuming no further material COVID-19, weather, labour shortages or other disruptions, and excluding restructuring costs.

…

Condensed Consolidated Statement of Profit or Loss and Other Comprehensive Income
for the half-year ended 31 December 2022

	Note	***Dec 2022 $'m***	***Restated(i) Dec 2021 $'m***
Revenue		***5,693.1***	*5,438.7*
…	*…*	***…***	*…*
Total revenue and other income	*B2*	***5,710.8***	*5,570.3*
…	*…*	***…***	*…*
Earnings before interest and tax		***129.8***	*167.4*
…	*…*	*…*	*…*
(Loss) / profit before income tax		***89.5***	*121.6*
Income tax expense		***(21.4)***	*(35.8)*
(Loss) / profit after income tax		***68.1***	*85.6*

	Note	Dec 2022 $’m	Restated(i) Dec 2021 $’m
(Loss) / profit for the year is attributable to:			
– Non-controlling interest		-	0.4
– Members of the parent entity		**68.1**	85.4
(Loss) / profit for the year		**68.1**	85.8
…	…	…	…
Total comprehensive (loss) / income for the year		**79.5**	95.5
Earnings per share (cents)			
– Basic earnings per share	B5	**9.3**	11.9
– Diluted earnings per share (i)	B5	**9.3**	11.8

(i) December 2021 results have been restated (Refer to Note A for further details).

Condensed Consolidated Statement of Financial Position

as at 31 December 2022

	Note	Dec 2022 $’m	Restated (i) June 2022 $’m
ASSETS			
Current assets			
…	…	**…**	…
Trade receivables and contract assets	C2	**1,911.2**	1,921.2
…	…	…	…
Total current assets		**2,883.6**	2,996.2

	Note	Dec 2022 $'m	Restated (i) June 2022 $'m
...		...	...
Total assets		***7,291.3***	*7,429.2*
...	...	...	...
Net assets		***2,787.2***	*2,811.8*
EQUITY			
...	...	...	...
Retained earnings		***121.2***	*139.5*
...	...	...	...
Total equity		***2,787.2***	*2,811.8*
...			

...

Restatement of comparative balances

Downer has identified certain accounting adjustments in its Australian Utilities business involving historical misreporting of revenue and contract assets in one of Downer's maintenance contracts.

68. In the Second 27 February 2023 Announcement, Downer made the following statements:

Downer EDI Limited (Downer) today announced its financial results for the 6 months to 31 December 2022. The main features of the results are:

- *Urban Services revenue of $6.1 billion, up 8.9% from the prior corresponding period (pcp). Total Group revenue of $6.1 billion, up 2.9% on the pcp.*
- *Statutory EBIT (earnings before interest and tax) of $129.8 million and statutory NPAT (net profit after tax) of $68.1 million*

- *Underlying EBITA (earnings before interest, tax and amortisation of acquired intangible assets) of $133.6 million, down 24.5% from the pcp; statutory EBITA of $142.9 million.*

- *Underlying NPATA (net profit after tax and before amortisation of acquired intangible assets) of $68.0 million, down 28.0% from the pcp; statutory NPATA of $77.3 million.*

- *Included in the result was a post-tax loss of $12 million in relation to the Utilities maintenance contract described in today's ASX Release: Update on Downer's Utilities contract.*

- *Net Debt to EBITDA of 2.3x and Gearing of 24.8% (17.8% at 30 June 2022).*

- *Interim dividend of 5 cents per share (unfranked).*

The Chief Executive Officer of Downer, Grant Fenn, said it had been a challenging period for the business in the first half of the 2023 financial year.

"Significant parts of our business have been heavily impacted by rain, storms and flooding whilst labour mix and productivity remain an issue. Our cash conversion at 8.5% was way off our normal half end position due to some meaty subcontractor payments on completion of our Sydney Growth Train Project and a few large customer receipts expected in late H1 that were received in H2", Mr Fenn said.

"The market outlook in our Transport, Utilities and Facilities businesses remain strong, which is evident in the 9% growth in Urban Services revenue delivered in the half. Whilst we are in the right markets and we have the right capabilities, economic conditions, particularly around labour and productivity, continue to impact the business and the recovery from the economic effects of COVID-19 has been difficult and continues.

…

Outlook

On 8 December 2022, Downer announced that it had revised its guidance for FY23 as trading for October and November indicated that guidance was unlikely to be met. Guidance was restated as $210 - $230 million NPATA assuming no further material COVID-19, weather, labour shortages or other disruptions and excluding any prior impact from the Utilities revenue recognition issue.

Since 8 December, as part of the half year reporting process, Downer has conducted a detailed re-forecast review and considers it appropriate to further adjust guidance for the following items:

- *Losses associated with the Utilities power maintenance contract. Whilst the contract is not considered onerous, further losses will impact H2 until the contract reset and recovery plan take effect ($12 million post tax);*

- *Heightened risk of Water project losses due to unrecoverable prolongation costs as storms and flooding continue to impact completion ($12 million post tax);*

- *A slowdown in Government minor capital works based on recent customer feedback ($8 million post tax); and*

- *The recent floods and storms in the North Island of New Zealand, which have materially impacted current operations and whilst we expect this to present opportunities in FY24, the 2H23 pipeline has been impacted ($8 million post tax).*

Downer now expects underlying FY23 NPATA to be between $170 million - $190 million assuming no further material COVID-19, weather, labour shortages or other disruptions, and excluding restructuring costs.

…

69. In the 27 February 2023 Presentation, Downer made the following statements:

Update on Downer's Utilities contract

- *External lawyers and forensic accountants have now completed a confidential and privileged investigation*

- *Downer has determined*
  - "root cause" and contributing factors
  - through broader workbook review that the issue is isolated to one contract

- *Post tax earnings were overstated by approximately $1.7m in FY20, $8.8m in FY21 and $11.7m in FY22. Comparative financial information has been restated to incorporate the correction in the financial results. Post tax earnings impact in 1H23 period was a loss of $12m*

- *A detailed contract recovery plan is being actioned. In addition, negotiations with the customer have resulted in a commercial reset of the contract. The contract is not considered onerous*

- *New contract and executive management team in place*

- *Additional control measures have been implemented across the Group*

…

Summary of HY23 financial results

Profit after tax and EPS	*Operational performance*	*Balance sheet and dividend*
$68.1m Statutory NPAT	*$133.6m Underlying EBITA*[1,3]	*2.3x Net Debt to EBITDA*[4]
↓ 20.6%	*↓ 24.5%*	*1.7x at June 2022*
Statutory EBIT of $129.8m	*Statutory EBITA $142.9m*	
$68.0m Underlying NPATA[1,3]	*$23.9m Adjusted Operating cash*	*24.8% Gearing*[4]
↓ 28.0%	*8.5% conversion*	*17.8% at June 2022*
9.3 cps Underlying EPSA[3,5]	*$6.1bn Revenue*[2]	*5 cps Interim ordinary dividend (unfranked)*
↓ 3.9 cps	*↑ 2.9%*	*12cps HY22*
9.3 cps statutory Basic EPS		

1H22 results have been restated to reflect the impact of historical misreporting of revenue and contract assets in one of Downer's maintenance contracts in its Australian Utilities business ($4.6m, $3.2m after-tax)

[1]Downer calculates EBITA and NPATA by adjusting EBIT and NPAT to add back acquired intangible assets amortisation expense. Group HY23: $13.1m, $9.2m after-tax. (HY22: $14.2m, $10.0m after-tax)

[2]Total revenue is a non-statutory disclosure and includes revenue from joint ventures, other alliances and other income

[3]The underlying result is a non-IFRS measure that is used by Management to assess the performance of the business. Non-IFRS measures have not been subject to audit or review. Refer slide 15 for reconciliation to statutory results

[4]*Net debt to EBITDA ratio includes lease liabilities in Net Debt and is on a post -AASB 16 basis. Gearing ratio does not include lease liabilities in Net Debt and is on a pre-AASB16 basis*

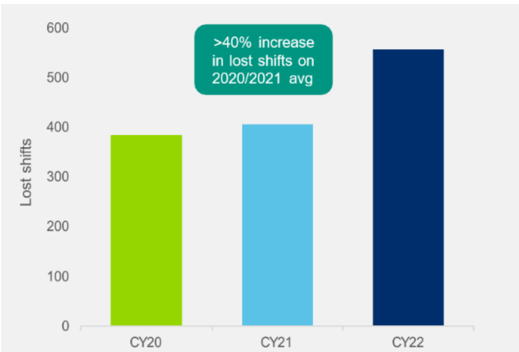
[5]*EPSA is calculated based on underlying NPATA adjusted by contributions from minority interests and ROADs dividends paid; divided by WANOS*

1H23 has been very challenging

Issue	***Impact and experience***
Unprecedented weather impacts	▪ *40% increase in lost shifts and reduced product volumes within Road Services (Transport)* ▪ *Site closures, delays and productivity impacts in Water projects* ▪ *Lower worker utilisation across all outdoor activities (e.g. Metering Services)*
Labour challenges	▪ *Reliant on increased use of outsourced labour (subcontractors and agency hire) to fulfill service obligations* ▪ *Increased overtime used to fill resource gaps* ▪ *Offshore recruiting initiatives for specific skilled roles* ▪ *EBA renewals all within expected range, and well within CPI escalators* ▪ *Downer continues to be ranked highly (#7) in top 10 employers by Randstad's Employer Brand Research*

Weather & labour pressures impacting costs and productivity

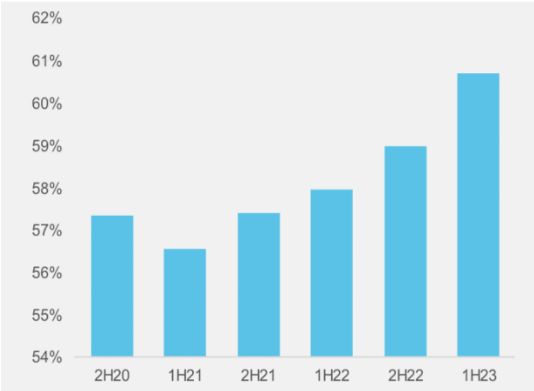
Sydney and Brisbane lost shifts – Road Services



- *Road Services in both Australia and New Zealand heavily impacted – bituminous products cannot be laid when it is raining (product specifications, structural issues and safety risks)*

- *Lost work shifts have reduced in Australia in calendar 2023 but are expected to further deteriorate in New Zealand*

Outsourced labour usage elevated[1]



- *Increased use of outsourced labour (subcontractors and agency hire) to fulfill contractual obligations*

- *Outsourced labour is more expensive resulting in an impact on margins – typically labour hire can be up to 15% more expensive*

- *Conditions persisting into 2H23*

[1]Trailing 12-months subcontractor and temporary staff costs as a percentage of total payroll and subcontractor costs, (excludes unallocated costs and divested businesses).

…

Outlook

FY23 has proven difficult to provide accurate guidance given weather and changing economic conditions:

- *17 August 2022 – Guidance for FY23*
    - *10-20% underlying NPATA growth subject to COVID-19, weather, labour, and other disruptions*

- *3 November 2022 – AGM*
    - *Forecasts continue to support guidance*

- *8 December 2022 – Trading Update*
    - *Trading for October and November indicates that guidance is unlikely to be met*
    - *Guidance reset to $210m - $230m NPATA (excluding impact of Utilities contract issue)*

Change in guidance

<table>
<tr><td>$210-230m</td><td>8 December 2022</td><td>Excluding any prior period impact of the accounting irregularities, Downer now expects underlying FY23 NPATA to be between $210 million – $230 million assuming no further material COVID-19, weather, labour shortages or other disruptions</td></tr>
<tr><td rowspan="4">($40m)</td><td>Utilities Power Maintenance contract ($12m)</td><td>• Losses associated with the power maintenance contract not included in the 8 December guidance
• Whilst not onerous, further losses will impact H2 until the contract reset and recovery plan take effect</td></tr>
<tr><td>Other Utilities project risks ($12m)</td><td>• Heightened risk of Water project loss from unrecoverable prolongation costs as storms and flooding continue to impact completion
• Risks have materialised since 8 December</td></tr>
<tr><td>Expected slowdown in Govt minor capital works ($8m)</td><td>• Slowdown in Government minor capital works based on recent customer feedback</td></tr>
<tr><td>NZ storm impact ($8m)</td><td>• Recent floods and storms in the North Island have materially impacted the New Zealand business
• We expect this to present opportunities in FY24, however 2H23 pipeline has been impacted</td></tr>
<tr><td>$170-190m</td><td>27 February 2023</td><td>Downer now expects underlying FY23 NPATA to be between $170 million – $190 million assuming no further material COVID-19, weather, labour shortages or other disruptions, and excluding restructuring costs</td></tr>
</table>

B.12 Price impact of the 27 February 2023 Disclosures

70. Following the release of the 27 February 2023 Disclosures, the price of Downer Shares fell substantially.

Particulars

i. *The price of Downer Shares fell from a closing price of $3.96 on 24 February 2023 to a closing price of $3.02 on 27 February 2023 on a traded volume of 25,570,150.*

ii. *Further particulars may be provided following service of the plaintiffs' expert evidence.*

C THE TRUE POSITION

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

71. The AusNet Contract had the following features:

(a) year one of the contract commenced on 1 April 2020;

(b) the contract was replacing a significant smaller long-term contract with AusNet following a transition phase (**Former AusNet Contract**);

(c) the contract was significantly larger than the Former AusNet Contract and incorporated both new geographic service areas and new services, including increased capital works;

(d) Downer was required to perform the Scope of Works across AusNet's electricity distribution network in Victoria via Downer's employees and/or contractors;

(e) Downer would perform the Scope of Works (or any of it) on request from AusNet by AusNet issuing a work order to Downer which was duly completed by Downer's employees and/or contractors;

(f) Downer would be remunerated according to an agreed schedule of prices referred to in the AusNet Contract for each service type;

(g) Downer could not pass on costs incurred in excess of the scheduled billable amount to the customers as variations;

(h) Downer would receive more than 9,000 work orders or more from AusNet in any given month (**Works Orders**);

(i) The Works Orders:

(i) could be issued and completed within the same month; or

(ii) in relation to those which concerned capital works, could extend across two or more months.

72. During the Relevant Period:

(a) revenue recognition, WIP and the accounting function relating to the AusNet Contract were being managed in a bespoke system within Downer's control and governance structure, outside of its usual contract management system;

(b) Downer recognised revenue in respect of the AusNet Contract on individual Works Orders in advance of cost;

(c) Downer's control systems did not uncover the early recognition of revenue in the AusNet Contract for a long time;

(d) Downer and/or Downer's control function reviewed the AusNet Contract on numerous occasions at a detailed level and those reviews and/or the control function had not focussed on revenue recognition for the Works Orders within the AusNet Contract;

(e) Downer had not required the revenue recognition methodology for all new material contracts to be approved by the Tenders and Contracts Committee prior to the commencement of the subject contract;

(f) Downer had not required the revenue recognition methodology and application of revenue for the AusNet Contract to undergo internal audit review.

73. On and from the commencement of the AusNet Contract:

(a) Downer recognised revenue in respect of the AusNet Contract on individual Works Orders in advance of cost which had the effect of mismatching revenue to costs and overstating contract profitability in each of the reporting periods after the AusNet Contract began; and

(b) Downer's internal controls did not prevent this from occurring,

(**Contract Management Information**).

C.2 AusNet Contract onerous and loss-making

74. During the Relevant Period, alternatively during the period from 23 July 2019 to 8 December 2022, the AusNet Contract was an onerous contract in that the unavoidable costs to Downer of meeting its obligations under the contract exceeded the economic benefits expected to be received by Downer under the contract (**AusNet Onerous Contract Information**).

Particulars

i. *Transcript of 8 December 2022 Call at 3, 6, 8.*

ii. *Transcript of 23 February 2023 Call at 1.*

iii. *Relief agreement between Downer and AusNet entered into on or about 24 February 2023.*

75. During the period from 1 April 2020 to 27 February 2023, the AusNet Contract was loss-making (**AusNet Loss Information**).

Particulars

i. *Transcript of 8 December 2022 Call at 3, 6, 8.*

ii. *Transcript of 23 February 2023 Call at 1.*

iii. *Relief agreement between Downer and AusNet entered into on or about 24 February 2023.*

iv. *27 February 2023 Announcement.*

C.3 Misstated Accounts

Twelve months ended 30 June 2020

76. For the twelve months ending 30 June 2020, Downer had in accordance with the Accounting Standards:

(a) total revenue and other income (not including include share of net profit and joint ventures and associates) (**Total Revenue**) of $12,740.2~~7~~6 million;

(b) earnings before interest and tax (**EBIT**) of ($43.7~~3~~7) million;

(c) earnings before interest and tax and amortisation of acquired intangible assets (**EBITA**) of ~~$32.4~~$27.6 million; and

(d) profit from ordinary activities after tax before amortisation of acquired intangible assets (**NPATA**) of ($107.5) million; and

(e) profit after tax (**NPAT**) of ($157.4) million,

(**30 June 2020 True Financial Information**).

77. By reason of the 30 June 2020 True Financial Information, the accounts upon which the FY20 Appendix 4E were based, and contained in the FY20 Annual Report, were not prepared in accordance with Accounting Standards, and did not give a true and fair view of the financial performance and financial position of Downer.

Six months ended 31 December 2020

78. For the six months ending 31 December 2020, Downer had in accordance with the Accounting Standards:

(a) Total Revenue ~~less than $5,789.7~~ of $5,817.4 million;

(b) EBIT less than $162.4 million;

(c) EBITA less than $195.8 million; and

(d) NPATA less than $99 million,

(**31 December 2020 True Financial Information**).

Particulars

i. Downer has not restated its HY21 results, and the impact of the accounting misstatements has only been announced in respect of FY21, not HY21.

ii. Further particulars will be provided following service of the plaintiffs' expert evidence.

79. By reason of the 30 June 2020 True Financial Information, and 31 December 2020 True Financial Information, the accounts upon which the HY21 Appendix 4D were based, and contained in the HY21 Half Year Report, were not prepared in accordance with Accounting Standards, and did not give a true and fair view of the financial performance and financial position of Downer.

Twelve months ended 30 June 2021

80. For the twelve months ending 30 June 2021, Downer had in accordance with the Accounting Standards:

(a) Total Revenue of $11,571.~~53~~4 million;

(b) EBIT of $322.~~23~~1 million;

(c) EBITA of ~~$221.2~~$338.3 million;

(d) NPATA of $221.~~2~~1 million; and

(e) NPAT of $174.~~9~~8 million,

(**30 June 2021 True Financial Information**).

81. By reason of the 30 June 2020 True Financial Information, 31 December 2020 True Financial Information, and 30 June 2021 True Financial Information, the accounts upon which the FY21 Appendix 4E were based, and contained in the FY21 Annual Report, were not prepared in accordance with Accounting Standards, and did not give a true and fair view of the financial performance and financial position of Downer.

Six months ended 31 December 2021

82. For the six months ending 31 December 2021, Downer had in accordance with the Accounting Standards:

(a) Total Revenue of $5,570.3 million;

(b) EBIT of $167.4 million;

(c) EBITA of $181.6 million;

(d) NPATA of $95.8 million; and

(e) NPAT of $85.8 million,

(**31 December 2021 True Financial Information**).

83. By reason of the 30 June 2020 True Financial Information, 31 December 2020 True Financial Information, 30 June 2021 True Financial Information, and 31 December 2021 True Financial Information, the accounts upon which the HY22 Appendix 4D were based, and contained in the

HY22 Half Year Report, were not prepared in accordance with the Accounting Standards, and did not give a true and fair view of the financial performance and financial position of Downer.

Twelve months ended 30 June 2022

84. For the twelve months ending 30 June 2022, Downer had in accordance with the Accounting Standards:

(a) Total Revenue of $11,137.7~~9~~6 million;

(b) EBIT of $306.49 million;

(c) EBITA of $341.~~29~~31 million;

(d) NPATA of $164.76 million; and

(e) NPAT of $140.37 million,

(**30 June 2022 True Financial Information**).

85. By reason of the 30 June 2020 True Financial Information, 31 December 2020 True Financial Information, 30 June 2021 True Financial Information, 31 December 2021 True Financial Information, and 30 June 2022 True Financial Information, the accounts upon which the FY22 Appendix 4E were based, and contained in the FY22 Annual Report, were not prepared in accordance with Accounting Standards, and did not give a true and fair view of the financial performance and financial position of Downer.

C.4 Misstated Guidance for FY23

86. Downer’s actual financial performance was such that Downer’s underlying NPATA for FY23 was unlikely to be between $210 million and $230 million, alternatively $247.8 million and $270.3 million, assuming no material COVID-19, weather, labour or other disruption (**FY23 Guidance Information**).

Particulars

i. Transcript of 8 December 2022 Call at 3, 5-6, 11, 13.

ii Transcript of 27 February 2023 Call at 8-9.

iii. Further particulars to be provided following discovery.

D MISLEADING OR DECEPTIVE CONDUCT

D.1 AusNet Contract

87. By reason of the matters pleaded in paragraphs 24 to 26 above, on 23 July 2019, Downer represented to the Affected Market that it expected that:

(a) the economic benefits it received under the AusNet Contract would exceed the costs of performing its obligations under the AusNet Contract; and/or

(b) the AusNet Contract would have a material positive impact on Downer's financial performance (together and separately, the **AusNet Contract Representation**).

Particulars

i. *The AusNet Contract Representation was implied from the statements in the 23 July 2019 Announcement.*

88. Further, by reason of the matters pleaded in paragraphs 24 to 26 above, on 23 July 2019, Downer represented to the Affected Market that it had a reasonable basis for making the AusNet Contract Representation (**AusNet Contract Basis Representation**).

Particulars

i. *The AusNet Contract Basis Representation was implied from making of the AusNet Contract Representation*

89. Alternatively, by reason of the matters pleaded in paragraphs 32 and 36 above, on 12 August 2020, Downer made the AusNet Contract Representation and the AusNet Contract Basis Representation.

Particulars

i. *The AusNet Contract Representation was partly express and partly implied.*

A. *To the extent that the AusNet Contract Representation was express, it was contained within statements in the 12 August 2020 Presentation.*

B. *To the extent that the AusNet Contract Representation was implied, it was implied from the statements in the 12 August 2020 Presentation and the absence of anything to modify, qualify or contradict those statements.*

ii. *The AusNet Contract Basis Representation was implied from making of the AusNet Contract Representation*

90. From 23 July 2019 until 8 December 2022, alternatively from 12 August 2020 until 8 December 2022, Downer continued to make the AusNet Contract Representation and the AusNet Contract Basis Representation.

Particulars

i. *The continuing representation is implied by Downer not saying anything during that period to modify, qualify or contradict the AusNet Contract Representation and the AusNet Contract Basis Representation.*

91. The making and failing to correct and/or qualify the AusNet Contract Representation and the AusNet Contract Basis Representation was conduct engaged in by Downer:

(a) in trade or commerce; and

(b) in relation to Downer Shares.

92. As at and from 23 July 2019, alternatively 12 August 2020, Downer did not have reasonable grounds for making the AusNet Contract Representation and the AusNet Contract Basis Representation.

Particulars

i. *Insofar as the AusNet Contract Representation was a representation with respect to future matters, s 12BB of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the ACL are relied upon.*

ii. *Further, Downer did not have reasonable grounds in the circumstances pleaded in paragraphs 74 and 75 above.*

93. As at and from 23 July 2019, alternatively 12 August 2020, by making and/or failing to correct and/or qualify the AusNet Contract Representation and/or the AusNet Contract Basis Representation in the circumstances pleaded in paragraphs 74 and 75 above, Downer engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

94. By reason of the matters pleaded in:

(a) paragraphs 87 to 92 above; and/or

(b) paragraphs 87 to 91 and 93 above,

Downer contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (each being a **Misleading Conduct Contravention**).

D.2 Capital Raise Representations

95. By reason of the matters pleaded in paragraphs 28 and 30 above, on 21 July 2020, Downer represented to the Affected Market that:

(a) in the future, Downer would be well placed to deliver growth with its Utilities Segment having demonstrated strength and resilience and an attractive medium and long-term growth outlook in its Utilities Segment; and/or

(b) the Utilities Segment had been very resilient and was expected to continue trading strongly into the 2021 financial year,

(**Capital Raise Representation**).

96. Further, by reason of the matters pleaded in paragraphs 28 and 30 above, on 21 July 2020, Downer represented to the Affected Market that it had a reasonable basis for making the Capital Raise Representations (**Capital Raise Basis Representation**).

97. By reason of the matters pleaded in paragraphs 28 and 31 above, Downer represented to the Affected Market on and from 21 July 2020 that there was no information concerning Downer that a reasonable person would expect to have a material effect on the price or value of Downer Shares which Downer had not disclosed to the ASX prior to releasing the Cleansing Notice, and that Downer had complied with s 674 of the Corporations Act (**Capital Raise Cleansing Notice Representations**).

98. From 21 July 2020 until 8 December 2022, Downer continued to make the Capital Raise Representations, the Capital Raise Basis Representation and the Capital Raise Cleansing Notice Representations.

Particulars

i. *The continuing representations are implied by Downer not saying anything during that period to modify, qualify or contradict the Capital Raise Representations, the Capital Raise Basis Representations and the Capital Raise Cleansing Notice Representations.*

99. The making and failing to correct and/or qualify the Capital Raise Representations, the Capital Raise Basis Representation and the Capital Raise Cleansing Notice Representations was conduct engaged in by Downer:

(a) in trade or commerce; and

(b) in relation to Downer Shares.

100. As at and from 21 July 2020, by making and/or failing to correct and/or qualify the Capital Raise Representations and/or the Capital Raise Basis Representation in the circumstances pleaded in Parts C.2 and/or C.3 above, Downer engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

101. As at and from 21 July 2020, Downer did not have reasonable grounds for making the Capital Raise Representation and the Capital Raise Basis Representation.

Particulars

i. *Insofar as the Capital Raise Representation or the Capital Raise Basis Representation was a representation with respect to future matters, s 12BB of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the ACL are relied upon.*

ii. *Further, Downer did not have reasonable grounds in the circumstances pleaded in Parts C.2 and/or C.3 above.*

102. As at and from 21 July 2020, by making and/or failing to correct and/or qualify the Capital Raise Cleansing Notice Representations in the circumstances pleaded in Parts F.2 and/or F.3 below, Downer engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

103. By reason of the matters pleaded in:

(a) paragraphs 95 to 100 above; and/or

(b) paragraphs 95 to 99 and 101 above;

(c) paragraphs 95 to 99 and 102,

Downer contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (each being a **Misleading Conduct Contravention**).

D.3 30 June 2020 Financial Representations

104. By reason of the matters pleaded in paragraphs 32 to 36 above, on 12 August 2020, Downer represented to the Affected Market that:

(a) Downer's financial results for the twelve months ending 30 June 2020 had been prepared in accordance with Accounting Standards and gave a true and fair view of the financial performance and position of Downer;

(b) for the twelve months ending 30 June 2020 Downer had in accordance with Accounting Standards:

(i) Total Revenue of $12,669.4 million;

(ii) EBIT of ($41.3) million;

(iii) EBITA of $30 million;

(iv) NPATA of ($150.8) million; and

(v) NPAT of ($155.7) million,

(**30 June 2020 Financial Representations**).

Particulars

i. *The 30 June 2020 Financial Representations were express: they were contained in the FY20 Appendix 4E, FY20 Annual Report, 12 August 2020 Announcement and the 12 August 2020 Presentation.*

105. Further, by reason of the matters pleaded in paragraphs 32 to 36 above, on 12 August 2020, Downer represented to the Affected Market that it had a reasonable basis for making the 30 June 2020 Financial Representations (**30 June 2020 Financial Basis Representation**).

Particulars

i. *The 30 June 2020 Financial Basis Representations were implied from making of the 30 June 2020 Financial Representations.*

106. From 12 August 2020 until 8 December 2022, Downer continued to make the 30 June 2020 Financial Representations and the 30 June 2020 Financial Basis Representation.

Particulars

i. *The continuing representations are implied by Downer not saying anything during that period to modify, qualify or contradict the 30 June 2020 Financial Representations and the 30 June 2020 Financial Basis Representation.*

107. The making and failing to correct and/or qualify the 30 June 2020 Financial Representations and the 30 June 2020 Financial Basis Representation was conduct engaged in by Downer:

(a) in trade or commerce; and

(b) in relation to Downer Shares.

108. As at and from 12 August 2020, by making and/or failing to correct and/or qualify 30 June 2020 Financial Representations and/or the 30 June 2020 Financial Basis Representations in the circumstances pleaded in paragraphs 76 and 77 above, Downer engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

109. By reason of the matters pleaded in paragraphs 104 to 108 above, Downer contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (each being a **Misleading Conduct Contravention**).

D.4 31 December 2020 Financial Representations

110. By reason of the matters pleaded in paragraphs 37 to 41 above, on 11 February 2021, Downer represented to the Affected Market that:

(a) Downer's financial results for the six months ending 31 December 2020 had been prepared in accordance with Accounting Standards and gave a true and fair view of the financial performance and position of Downer;

(b) for the six months ending 31 December 2020 Downer had in accordance with Accounting Standards:

(i) Total Revenue of $5,826.3 million;

(ii) EBIT of $162.4 million;

(iii) EBITA of $195.8 million;

(iv) NPATA of $99 million; and

(v) NPAT of $75.6 million,

(**31 December 2020 Financial Representations**).

Particulars

i. The 31 December 2020 Financial Representations were express: they were contained in the HY21 Appendix 4D, HY21 Half-year Report, 11 February 2021 Announcement and the 11 February 2021 Presentation.

111. By reason of the matters pleaded in paragraphs 37 to 41 above, on 11 February 2021, Downer represented to the Affected Market that it had a reasonable basis for making the 31 December 2020 Financial Representations (**31 December 2020 Financial Basis Representation**).

Particulars

i. The 31 December 2020 Financial Basis Representation were implied from making of the 31 December 2020 Financial Representations.

112. From 11 February 2021 until 8 December 2022, Downer continued to make the 31 December 2020 Financial Representations and 31 December 2020 Financial Basis Representation.

Particulars

i. The continuing representations are implied by Downer not saying anything during that period to modify, qualify or contradict the 31 December 2020

Financial Representations and the 31 December 2020 Financial Basis Representation.

113. The making and failing to correct and/or qualify the 31 December 2020 Financial Representations and the 31 December 2020 Financial Basis Representations was conduct engaged in by Downer:

(a) in trade or commerce; and

(b) in relation to Downer Shares.

114. As at and from 11 February 2021, by making and/or failing to correct and/or qualify 31 December 2020 Financial Representations and/or the 31 December 2020 Financial Basis Representations in the circumstances pleaded in paragraphs 78 and 79 above, Downer engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

115. By reason of the matters pleaded in paragraphs 110 to 114 above, Downer contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (each being a **Misleading Conduct Contravention**).

D.5 30 June 2021 Financial Representations

116. By reason of the matters pleaded in paragraphs 42 to 46 above, on 12 August 2021, Downer represented to the Affected Market that:

(a) Downer's financial results for the twelve months ending 30 June 2021 had been prepared in accordance with Accounting Standards and gave a true and fair view of the financial performance and position of Downer;

(b) for the twelve months ending 30 June 2021 Downer had in accordance with Accounting Standards:

(i) Total Revenue of $11,584.1 million;

(ii) EBIT of $334.8 million;

(iii) EBITA of $401.0 million;

(iv) NPATA of $230.0 million; and

(v) NPAT of $183.7 million,

(**30 June 2021 Financial Representations**).

Particulars

i. *The 30 June 2020 Financial Representations were express: they were contained in the FY21 Appendix 4E, FY21 Annual Report, 12 August 2021 Announcement and the 12 August 2021 Presentation.*

117. Further, by reason of the matters pleaded in paragraphs 42 to 46 above, on 12 August 2021, Downer represented to the Affected Market that it had a reasonable basis for making the 30 June 2021 Financial Representations (**30 June 2021 Financial Basis Representation**).

Particulars

i. *The 30 June 2021 Financial Basis Representation were implied from making of the 30 June 2021 Financial Representations.*

118. From 12 August 2021 until 8 December 2022, Downer continued to make the 30 June 2021 Financial Representations and the 30 June 2021 Financial Basis Representation.

Particulars

i. *The continuing representations are implied by Downer not saying anything during that period to modify, qualify or contradict the 30 June 2021 Financial Representations and the 30 June 2021 Financial Basis Representation.*

119. The making and failing to correct and/or qualify the 30 June 2021 Financial Representations and the 30 June 2021 Financial Basis Representation was conduct engaged in by Downer:

(a) in trade or commerce; and

(b) in relation to Downer Shares.

120. As at and from 12 August 2021, by making and/or failing to correct and/or qualify the 30 June 2021 Financial Representations and/or the 30 June 2021 Financial Basis Representations in the circumstances pleaded in paragraphs 80 and 81 above, Downer engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

121. By reason of the matters pleaded in paragraphs 116 to 120 above, Downer contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (each being a **Misleading Conduct Contravention**).

D.6 31 December 2021 Financial Representations

122. By reason of the matters pleaded in paragraphs 47 to 51 above, on 10 February 2022, Downer represented to the Affected Market that:

(a) Downer's financial results for the six months ending 31 December 2021 had been prepared in accordance with Accounting Standards and gave a true and fair view of the financial performance and position of Downer;

(b) for the six months ending 31 December 2021 Downer had in accordance with Accounting Standards:

(i) Total Revenue of $5,574.9 million;

(ii) EBIT of $172 million;

(iii) EBITA of $186.2 million;

(iv) NPATA of $99 million; and

(v) NPAT of $89.0 million,

(**31 December 2021 Financial Representations**).

Particulars

i. The 31 June 2021 Financial Representations were express: they were contained in the HY22 Appendix 4D, HY22 Half-year Report, 10 February 2022 Announcement and the 10 February 2022 Presentation.

123. Further, by reason of the matters pleaded in paragraphs 47 to 51 above, on 10 February 2022, Downer represented to the Affected Market that it had a reasonable basis for making the 31 December 2021 Financial Representations (**31 December 2021 Financial Basis Representation**).

Particulars

i. The 31 December 2021 Financial Basis Representation were implied from making of the 31 December 2021 Financial Representations.

124. From 10 February 2022 until 8 December 2022, Downer continued to make the 31 December 2021 Financial Representations and the 31 December 2021 Financial Basis Representation.

Particulars

i. The continuing representations are implied by Downer not saying anything during that period to modify, qualify or contradict the 31 December 2021 Financial Representations and the 31 December 2021 Financial Basis Representation.

125. The making and failing to correct and/or qualify the 31 December 2021 Financial Representations and the 31 December 2021 Financial Basis Representation was conduct engaged in by Downer:

(a) in trade or commerce; and

(b) in relation to Downer Shares.

126. As at and from 10 February 2022, by making and/or failing to correct and/or qualify the 31 December 2021 Financial Representations and/or the 31 December 2021 Financial Basis Representation in the circumstances pleaded in paragraphs 82 and 83 above, Downer engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

127. By reason of the matters pleaded in paragraphs 122 to 126 above, Downer contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (each being a **Misleading Conduct Contravention**).

D.7 30 June 2022 Financial Representations

128. By reason of the matters pleaded in paragraphs 52 to 56 above, on 17 August 2022, Downer represented to the Affected Market that:

(a) Downer's financial results for the twelve months ending 30 June 2022 had been prepared in accordance with the Accounting Standards and gave a true and fair view of the financial performance and position of Downer;

(b) for the twelve months ending 30 June 2020 Downer had in accordance with Accounting Standards:

(i) Total Revenue of $11,154.5 million;

(ii) EBIT of $323.2 million;

(iii) EBITA of $358.0 million;

(iv) NPATA of $176.4 million; and

(v) NPAT of $152.0 million,

(**30 June 2022 Financial Representations**).

Particulars

i. The 30 June 2020 Financial Representations were express: they were contained in the FY22 Appendix 4E, FY22 Annual Report, 17 August 2021 Announcement and the 17 August 2021 Presentation.

129. Further, by reason of the matters pleaded in paragraphs 52 to 56 above, on 17 August 2022, Downer represented to the Affected Market that it had a reasonable basis for making the 30 June 2022 Financial Representations (**30 June 2022 Financial Basis Representation**).

Particulars

i. The 30 June 2022 Financial Basis Representation were implied from making of the 30 June 2022 Financial Representations.

130. From 17 August 2022 until 8 December 2022, Downer continued to make the 30 June 2022 Financial Representations and the 30 June 2022 Financial Basis Representation.

Particulars

i. The continuing representations are implied by Downer not saying anything during that period to modify, qualify or contradict the 30 June 2022 Financial Representations and the 30 June 2022 Financial Basis Representation.

131. The making and failing to correct and/or qualify the 30 June 2022 Financial Representations and the 30 June 2022 Financial Basis Representation was conduct engaged in by Downer:

(a) in trade or commerce; and

(b) in relation to Downer Shares.

132. As at and from 17 August 2022, by making and/or failing to correct and/or qualify the 30 June 2022 Financial Representations and/or the 30 June 2022 Financial Basis Representation in the circumstances pleaded in paragraphs 84 and 85 above, Downer engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

133. By reason of the matters pleaded in paragraphs 128 to 132 above, Downer contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (each being a **Misleading Conduct Contravention**).

D.8 First FY23 Guidance Representation

134. By reason of the matters pleaded in paragraphs 52 and 54 to 56 above, on 17 August 2022, Downer represented to the Affected Market that its underlying NPATA for FY23 was likely to be between \$247.8 million to \$270.3 million assuming no material COVID-19, weather, labour or other disruptions (**First FY23 Guidance Representation**).

Particulars

i. The First FY23 Guidance Representation was partly express and partly implied.

A. *To the extent that the First FY23 Guidance Representation was express, it was contained within statements in the FY22 Annual Report, 17 August 2022 Announcement, 17 August 2022 Presentation.*

B. *To the extent that the First FY23 Guidance Representation was implied, it was implied from the statements in the FY22 Annual Report, 17 August 2022 Announcement, 17 August 2022 Presentation and the absence of anything to modify, qualify or contradict those statements.*

135. Further, by reason of the matters pleaded in paragraphs 52 and 54 to 56 above, on 17 August 2022, Downer represented to the Affected Market that it had a reasonable basis for making the First FY23 Guidance Representation (**First FY23 Guidance Basis Representation**).

Particulars

i. *The First FY23 Guidance Basis Representation was implied from making of the First FY23 Guidance Representation.*

136. From 17 August 2022 until 8 December 2022, Downer continued to make the First FY23 Guidance Representation and the First FY23 Guidance Basis Representation.

Particulars

i. *The First FY23 Guidance Representation and the First FY23 Guidance Basis Representation were repeated at the FY22 AGM and in the FY22 CEO Address.*

ii. *The continuing representation is implied by Downer not saying anything during that period to modify, qualify or contradict the First FY23 Guidance Representation and the First FY23 Guidance Basis Representation.*

137. The making and failing to correct and/or qualify the First FY23 Guidance Representation and the First FY23 Guidance Basis Representation was conduct engaged in by Downer:

(a) in trade or commerce; and

(b) in relation to Downer Shares.

138. As at and from 17 August 2022, alternatively 3 November 2022, Downer did not have reasonable grounds for making the First FY23 Guidance Representation and the First FY23 Guidance Basis Representation.

Particulars

i. *The First FY23 Guidance Representation was a representation with respect to future matters, and s 12BB of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the ACL are relied upon.*

ii. *Further, Downer did not have reasonable grounds in the circumstances pleaded in Parts C.1, C.2, C.3 and/or C.4 above*

139. As at and from 17 August 2022, alternatively 3 November 2022, by making and/or failing to correct and/or qualify the First FY23 Guidance Representation and/or the First FY23 Guidance Basis Representation in the circumstances pleaded in paragraph 86 above, Downer engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

140. By reason of the matters pleaded in:

(a) paragraphs 134 to 138 above; and/or

(b) paragraphs 134 to 137 and 139,

Downer contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (each being a **Misleading Conduct Contravention**).

D.9 Second FY23 Guidance Representation

141. By reason of the matters pleaded in paragraphs 60 to 62 above, on 8 December 2022, Downer represented to the Affected Market that its underlying NPATA for FY23 was likely to be between $210 million to $230 million assuming no further material COVID-19, weather, labour or other disruptions (**Second FY23 Guidance Representation**).

Particulars

i. *The Second FY23 Guidance Representation was partly express and partly implied.*

A. *To the extent that the Second FY23 Guidance Representation was express, it was contained within statements in the 8 December 2022 Announcement and the 8 December 2022 Call.*

B. *To the extent that the Second FY23 Guidance Representation was implied, it was implied from the statements in the 8 December 2022 Announcement and the 8 December 2022 Call and the absence of anything to modify, qualify or contradict those statements.*

142. Further, by reason of the matters pleaded in paragraphs 60 to 62 above, on 8 December 2022, Downer represented to the Affected Market that it had a reasonable basis for making the Second FY23 Guidance Representation (**Second FY23 Guidance Basis Representation**).

Particulars

i. *The Second FY23 Guidance Basis Representation was implied from making of the Second FY23 Guidance Representation.*

143. From 8 December 2022 until 27 February 2023, Downer continued to make the Second FY23 Guidance Representation and the Second FY23 Guidance Basis Representation.

Particulars

i. *The continuing representation is implied by Downer not saying anything during that period to modify, qualify or contradict the Second FY23 Guidance Representation and the Second FY23 Guidance Basis Representation.*

144. The making and failing to correct and/or qualify the Second FY23 Guidance Representation and the Second FY23 Guidance Basis Representation was conduct engaged in by Downer:

(a) in trade or commerce; and

(b) in relation to Downer Shares.

145. As at and from 8 December 2022, Downer did not have reasonable grounds for making the Second FY23 Guidance Representation and the Second FY23 Guidance Basis Representation.

Particulars

i. *The First FY23 Guidance Representation was a representation with respect to future matters, and s 12BB of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the ACL are relied upon.*

ii. *Further, Downer did not have reasonable grounds in the circumstances pleaded in Parts C.1, C.2, C.3 and/or C.4 above.*

146. As at and from 8 December 2022, by making and/or failing to correct and/or qualify the Second FY23 Guidance Representation and/or the Second FY23 Guidance Basis Representation in the circumstances pleaded in paragraph 86 above, Downer engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

147. By reason of the matters pleaded in:

(a) paragraphs 141 to 145 above; and/or

(b) paragraphs 141 to 144 and 146 above,

Downer contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (each being a **Misleading Conduct Contravention**).

E FALSE OR MISLEADING STATEMENTS

148. Further or alternatively, each of the:

(a) AusNet Contract Representation;

(b) AusNet Contract Basis Representation;

(c) Capital Raise Representations;

(d) Capital Raise Basis Representations;

(e) Cleansing Notice Representations;

(f) 30 June 2020 Financial Representations;

(g) 30 June 2020 Financial Basis Representations;

(h) 31 December 2020 Financial Representations;

(i) 31 December 2020 Financial Basis Representations;

(j) 30 June 2021 Financial Representations;

(k) 30 June 2021 Financial Basis Representations;

(l) 31 December 2021 Financial Representations;

(m) 31 December 2021 Financial Basis Representations;

(n) 30 June 2022 Financial Representations;

(o) 30 June 2022 Financial Basis Representations;

(p) First FY23 Guidance Representation;

(q) First FY23 Guidance Basis Representation;

(r) Second FY23 Guidance Representation; and

(s) Second FY23 Guidance Basis Representation,

(together and severally, the **Representations**), were statements made by, or information disseminated by, Downer.

149. By reason of the matters that each of the Representations were said to be misleading or deceptive or likely to misleading or deceive each was false in a material particular or materially misleading.

150. The Representations were likely to:

(a) induce persons in this jurisdiction to apply for Downer Shares; and/or

(b) induce persons in this jurisdiction to dispose of or acquire Downer Shares; and/or

(c) have the effect of increasing, reducing, maintain or stabilising the price for trading in Downer Shares.

151. When Downer made the Representations, it ought reasonably to have known that the statements were false in a material particular or materially misleading.

Particulars

i. The Plaintiffs refer to the matters pleaded and particularised in paragraphs 153, 159, 165, 171, 177, 183, 189, 195, 201 below.

152. By reason of the matters pleaded in paragraphs 148 to 151 above, Downer contravened s 1041E of the Corporations Act by making the Representations (each being a **False Statements Contravention**).

F CONTINUOUS DISCLOSURE CONTRAVENTIONS

F.1 AusNet Onerous Contract Information

153. During the Relevant Period, Downer was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the AusNet Onerous Contract Information.

Particulars

i. The AusNet Onerous Contract Information ought reasonably to have been known to Fenn by reason of: (a) his role as Managing Director and Chief Executive Officer of Downer; (b) the AusNet Contract was an expansion of an existing contract with AusNet Services to the remainder of Victoria; (c) Downer had been providing services to AusNet Services for 19 years; (d) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (e) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract.

ii. The AusNet Onerous Contract Information ought reasonably to have been known to Ferguson by reason of: (a) his role as Chief Financial Officer of Downer; (b) the AusNet Contract was an expansion of an existing contract with AusNet

Services to the remainder of Victoria; (c) Downer had been providing services to AusNet Services for 19 years; (d) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (e) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract.

iii. *The AusNet Onerous Contract Information ought reasonably to have been known to Tompkins during the period from June 2021 until 8 December 2023 by reason of: (a) his role as Chief Operating Officer; (b) the AusNet Contract was an expansion of an existing contract with AusNet Services to the remainder of Victoria; (c) Downer had been providing services to AusNet Services for 19 years; (d) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (e) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract.*

iv. *The AusNet Onerous Contract Information ought reasonably to have been known to Cinerari by reason of: (a) his role as Chief Operating Officer – Australian Operations of Downer; (b) the AusNet Contract was an expansion of an existing contract with AusNet Services to the remainder of Victoria; (c) Downer had been providing services to AusNet Services for 19 years; (d) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (e) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract.*

v. *The AusNet Onerous Contract Information ought reasonably to have been known to Cohen by reason of: (a) his role as Head of Utilities of Downer; (b) the AusNet Contract was an expansion of an existing contract with AusNet Services to the remainder of Victoria; (c) Downer had been providing services to AusNet Services for 19 years; (d) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (e) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract.*

vi. *Further particulars may be provided following discovery.*

154. The AusNet Onerous Contract Information was information that:

(a) until 8 December 2022 was not generally available within the meaning of s 674(2) of the Corporations Act; and

(b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Downer Shares within the meaning of s 674(2) of the Corporations Act.

155. Pursuant to ASX Listing Rule 3.1, Downer became obliged to tell the ASX the AusNet Onerous Contract Information immediately and from the date that Downer had, or obtained that information as pleaded in paragraph 153 above.

156. Downer did not communicate the AusNet Onerous Contract Information to the ASX until 8 December 2022.

157. Downer was negligent with respect to whether the AusNet Onerous Contract Information would, if it were generally available, have a material effect on the price or value of Downer Shares within the meaning of Rule 3.1 of the ASX Listing Rules, s 674(2) and/or s 674A(2) of the Corporations Act.

Particulars

i. The nature of the AusNet Onerous Contract Information was such that a reasonable director or officer in the position of a director or officer of Downer ought to have realised that this was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.

ii. Each of Fenn, Ferguson, Tompkins, Cinerari and Cohen ought to have known during the period 26 May 2020 until 24 March 2021 that if the AusNet Onerous Contract Information was generally available, it would have a material effect on the price or value of Downer Shares because: (a) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; (b) the AusNet Contract was the subject of the 23 July 2019 Announcement; and (c) the AusNet Contract was described in the FY20 Annual Report as the first "Top 5 Contract Wins" for the Utilities business and as a "Top 5 Contracts Remaining" for the Utilities business in the FY20 Annual Report, 11 February 2021 Presentation, 12 August 2021 Presentation, 10 February 2022 Presentation and 17 August 2022 Presentation.

iii. Further or alternatively, Downer failed to ensure that it had systems or processes that ensured that its directors and officers considered whether information that it was aware of (including the AusNet Onerous Contract Information) was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.

iv. Further particulars may be provided following discovery.

158. In the circumstances pleaded in paragraphs 153 to 157 above, Downer contravened s 674(2) and/or s 674A(2) of the Corporations Act during the Relevant Period until 8 December 2022 (being a **Continuous Disclosure Contravention**).

F.2 Contract Management Information

159. During the Relevant Period, from 1 April 2020, Downer was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the Contract Management Information.

Particulars

i. *The Contract Management Information ought reasonably to have been known to Fenn by reason of: (a) his role as Managing Director and Chief Executive Officer of Downer; (b) the AusNet Contract was an expansion of an existing contract with AusNet Services to the remainder of Victoria; (c) Downer had been providing services to AusNet Services for 19 years; (d) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (e) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract. This ought to have led Fenn to ascertain the reason for the lack of profitability of the AusNet Contract, how long that had been occurring, and that Downer's internal controls had not prevented the misstatement of profitability of the contract.*

ii. *The Contract Management Information ought reasonably to have been known to Ferguson by reason of: (a) his role as Chief Financial Officer of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (c) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract. This ought to have led Ferguson to ascertain the reason for the lack of profitability of the AusNet Contract, how long that had been occurring, and that Downer's internal controls had not prevented the misstatement of profitability of the contract.*

iii. *The Contract Management Information ought reasonably to have been known to Tompkins during the period from June 2021 until 8 December 2023 by reason of: (a) his role as Chief Operating Officer; (b) the AusNet Contract was an expansion of an existing contract with AusNet Services to the remainder of Victoria; (c) Downer had been providing services to AusNet Services for 19 years; (d) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (e) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract. This ought to have led Tompkins to ascertain the reason for the lack of profitability of the AusNet Contract, how long that had been occurring, and that Downer's internal controls had not prevented the misstatement of profitability of the contract.*

iv. *The Contract Management Information ought reasonably to have been known to Cinerari by reason of: (a) his role as Chief Operating Officer – Australian Operations of Downer; (b) the AusNet Contract was an expansion of an existing contract with AusNet Services to the remainder of Victoria; (c) Downer had been providing services to AusNet Services for 19 years; (d) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (e) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract. This ought to have led Cinerari to ascertain the reason for the lack of profitability of the AusNet Contract, how long that had been occurring, and that Downer's internal controls had not prevented the misstatement of profitability of the contract.*

v~~V~~. *The Contract Management Information ought reasonably to have been known to Cohen by reason of: (a) his role as Head of Utilities of Downer; (b) the AusNet Contract was an expansion of an existing contract with AusNet Services to the remainder of Victoria; (c) Downer had been providing services to AusNet Services for 19 years; (d) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (e) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract. This ought to have led Cohen to ascertain the reason for the lack of profitability of the AusNet Contract, how long that had been occurring, and that Downer's internal controls had not prevented the misstatement of profitability of the contract.*

vi. *The Contract Management Information ought reasonably to have been known to the Contract Executive with oversight of the AusNet Contract by reason of: (a) holding that role; (b) the AusNet Contract was an expansion of an existing contract with AusNet Services to the remainder of Victoria; (c) Downer had been providing services to AusNet Services for 19 years; and (e) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract. This ought to have led the Contract Executive to ascertain the reason for the lack of profitability of the AusNet Contract, how long that had been occurring, and that Downer's internal controls had not prevented the misstatement of profitability of the contract.*

vii. *Further particulars may be provided following discovery.*

160. The Contract Management Information was information that:

(a) until 27 February 2023, alternatively 8 December 2022 was not generally available within the meaning of s 674(2) of the Corporations Act; and

(b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Downer Shares within the meaning of s 674(2) of the Corporations Act.

161. Pursuant to ASX Listing Rule 3.1, Downer became obliged to tell the ASX the Contract Management Information immediately and from the date that Downer had, or obtained that information as pleaded in paragraph 156 above.

162. Downer did not communicate the Contract Management Information to the ASX until 27 February 2023, alternatively 8 December 2022.

163. Downer was negligent with respect to whether the Contract Management Information would, if it were generally available, have a material effect on the price or value of Downer Shares within the meaning of Rule 3.1 of the ASX Listing Rules, s 674(2) and/or s 674A(2) of the Corporations Act.

Particulars

i. The nature of the Contract Management Information was such that a reasonable director or officer in the position of a director or officer of Downer ought to have realised that this was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.

ii. Further or alternatively, Downer failed to ensure that it had systems or processes that ensure that its directors and officers considered whether information that it was aware of (including the Contract Management Information) was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.

iii. Further particulars may be provided following discovery.

164. In the circumstances pleaded in paragraphs 159 to 163 above, Downer contravened s 674(2) and/or 674A(2) of the Corporations Act during the Relevant Period from 1 April 2020 until 27 February 2023, alternatively 8 December 2022 (being a **Continuous Disclosure Contravention**).

F.3 AusNet Loss Information

165. During the Relevant Period from 1 April 2020, Downer was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the AusNet Loss Information.

Particulars

i. *The AusNet Loss Information ought reasonably to have been known to Fenn by reason of: (a) his role as Managing Director and Chief Executive Officer of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (c) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract.*

ii. *The AusNet Loss Information ought reasonably to have been known to Ferguson by reason of: (a) his role as Chief Financial Officer of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (c) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract..*

iii. *The AusNet Loss Information ought reasonably to have been known to Tompkins during the period from June 2021 until 8 December 2023 by reason of: (a) his role as Chief Operating Officer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (c) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract.*

iv. *The AusNet Loss Information ought reasonably to have been known to Cinerari by reason of: (a) his role as Chief Operating Officer – Australian Operations of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (c) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract.*

v. *The AusNet Loss Information ought reasonably to have been known to Cohen by reason of: (a) his role as Head of Utilities of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; and (c) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract.*

vi. *The Contract Management Information ought reasonably to have been known to the Contract Executive with oversight of the AusNet Contract by reason of: (a) holding that role; (b) the AusNet Contract was an expansion of an existing contract with AusNet Services to the remainder of Victoria; (c) Downer had been providing services to AusNet Services for 19 years; and (e) from about 1 April 2020 Downer started to make a loss in performing the AusNet Contract.*

vii. *Further particulars may be provided following discovery.*

166. The AusNet Loss Information was information that:

(a) until 8 December 2022 was not generally available within the meaning of s 674(2) of the Corporations Act; and

(b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Downer Shares within the meaning of s 674(2) of the Corporations Act.

167. Pursuant to ASX Listing Rule 3.1, Downer became obliged to tell the ASX the AusNet Loss Information immediately and from the date that Downer had, or obtained that information as pleaded in paragraph 165 above.

168. Downer did not communicate the AusNet Loss Information to the ASX until 8 December 2022.

169. Downer was negligent with respect to whether the AusNet Loss Information would, if it were generally available, have a material effect on the price or value of Downer Shares within the meaning of Rule 3.1 of the ASX Listing Rules, s 674(2) and/or s 674A(2) of the Corporations Act.

Particulars

i. The nature of the AusNet Loss Information was such that a reasonable director or officer in the position of a director or officer of Downer ought to have realised that this was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.

ii. Each of Fenn, Ferguson, Tompkins, Cinerari and Cohen ought to have known during the period 26 May 2020 until 24 March 2021 that if the AusNet Loss Information was generally available, it would have a material effect on the price or value of Downer Shares because: (a) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; (b) the AusNet Contract was the subject of the 23 July 2019 Announcement; and (c) the AusNet Contract was described in the FY20 Annual Report as the first "Top 5 Contract Wins" for the Utilities business and as a "Top 5 Contracts Remaining" for the Utilities business in the FY20 Annual Report, 11 February 2021 Presentation, 12 August 2021 Presentation, 10 February 2022 Presentation and 17 August 2022 Presentation.

iii. Further or alternatively, Downer failed to ensure that it had systems or processes that ensure that its directors and officers considered whether information that it was aware of (including the AusNet Loss Information) was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.

iv. *Further particulars may be provided following discovery.*

170. In the circumstances pleaded in paragraphs 165 to 168 above, Downer contravened s 674(2) and/or 674A(2) of the Corporations Act during the Relevant Period until 8 December 2022 (being a **Continuous Disclosure Contravention**).

F.4 30 June 2020 True Financial Information

171. During the Relevant Period from 12 August 2020, Downer was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the 30 June 2020 True Financial Information.

Particulars

i. *The 30 June 2020 True Financial Information ought reasonably to have been known to Fenn by reason of: (a) his role as Managing Director and Chief Executive Officer of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; (c) the revenue from the AusNet Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract; (d) Downer's financial report was required under the Corporations Act to be prepared in accordance with accounting standards and give a true and fair view of Downer's financial performance; and (e) the directors of Downer, which included Fenn, were required under the Corporations Act to make a declaration that the financial statements and notes in the annual report complied with the Corporations Act.*

ii. *The 30 June 2020 True Financial Information ought reasonably to have been known to Ferguson by reason of: (a) his role as Chief Financial Officer of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; (c) the revenue from the AusNet Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract; (d) Downer's financial report was required under the Corporations Act to be prepared in accordance with accounting standards and give a true and fair view of Downer's financial performance; and (e) the directors of Downer were required under the Corporations Act to make a declaration that the financial statements and notes in the annual report complied with the Corporations Act.*

iii. *The 30 June 2020 True Financial Information ought reasonably to have been known to Cinerari by reason of: (a) his role as Chief Operating Officer – Australian Operations of Downer; (b) the AusNet Contract was a significant* *contract with revenue of approximately $170 million per annum; (c) the revenue from the AusNet Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract; (d) Downer's financial report was required under the Corporations Act to be prepared in accordance with accounting standards and give a true and fair view of Downer's financial performance; and (e) the directors of Downer were required under the Corporations Act to make a declaration that the financial statements and notes in the annual report complied with the Corporations Act.*

iv. Further particulars may be provided following discovery.

172. The 30 June 2020 True Financial Information was information that:

(a) until 27 February 2023, alternatively 8 December 2022 was not generally available within the meaning of s 674(2) of the Corporations Act; and

(b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Downer Shares within the meaning of s 674(2) of the Corporations Act.

173. Pursuant to ASX Listing Rule 3.1, Downer became obliged to tell the ASX the 30 June 2020 True Financial Information immediately and from the date that Downer had, or obtained that information as pleaded in paragraph 171 above.

174. Downer did not communicate the 30 June 2020 True Financial Information to the ASX until 27 February 2023, alternatively 8 December 2022.

175. Downer was negligent with respect to whether the 30 June 2020 True Financial Information would, if it were generally available, have a material effect on the price or value of Downer Shares within the meaning of Rule 3.1 of the ASX Listing Rules, s 674(2) and/or s 674A(2) of the Corporations Act.

Particulars

i. The nature of the 30 June 2020 True Financial Information was such that a reasonable director or officer in the position of a director or officer of Downer ought to have realised that this was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.

ii. Each of Fenn, Ferguson and Cinerari ought to have known that if the 30 June 2020 True Financial Information was generally available it would have a material effect on the price or value of Downer Shares because Downer's *revenue, EBIT, EBITA, NPATA and NPAT has a bearing on the price or value of the Downer Shares.*

iii. *Further or alternatively, Downer failed to ensure that it had systems or processes that ensure that its directors and officers considered whether information that it was aware of (including the 30 June 2020 True Financial Information) was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.*

iv. *Further particulars may be provided following discovery.*

176. In the circumstances pleaded in paragraphs 171 to 175 above, Downer contravened s 674(2) and/or 674A(2) of the Corporations Act during the Relevant Period 27 February 2023, alternatively 8 December 2022 (being a **Continuous Disclosure Contravention**).

F.5 31 December 2020 True Financial Information

177. During the Relevant Period from 11 February 2021, Downer was aware (within the meaning of r 19.12 of the ASX Listing Rules) of 31 December 2020 True Financial Information.

Particulars

i. *The 31 December 2020 True Financial Information ought reasonably to have been known to Fenn by reason of: (a) his role as Managing Director and Chief Executive Officer of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; (c) the revenue from the AusNet Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract; (d) Downer's financial report was required under the Corporations Act to be prepared in accordance with accounting standards and give a true and fair view of Downer's financial performance; and (e) the directors of Downer, which included Fenn, were required under the Corporations Act to make a declaration that the financial statements and notes in the half year report complied with the Corporations Act.*

ii. *The 31 December 2020 True Financial Information ought reasonably to have been known to Ferguson by reason of: (a) his role as Chief Financial Officer of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; (c) the revenue from the AusNet Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract; (d) Downer's financial* *report was required under the Corporations Act to be prepared in accordance with accounting standards and give a true and fair view of Downer's financial performance; and (e) the directors of Downer were required under the Corporations Act to make a declaration that the financial statements and notes in the half year report complied with the Corporations Act.*

iii. *The 31 December 2020 True Financial Information ought reasonably to have been known to Cinerari by reason of: (a) his role as Chief Operating Officer – Australian Operations of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; (c) the revenue from the AusNet Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract; (d) Downer's financial report was required under the Corporations Act to be prepared in accordance with accounting standards and give a true and fair view of Downer's financial performance; and (e) the directors of Downer were required under the Corporations Act to make a declaration that the financial statements and notes in the half year report complied with the Corporations Act.*

iv. *Further particulars may be provided following discovery.*

178. The 31 December 2020 True Financial Information was information that:

(a) until 27 February 2023, alternatively 8 December 2022 was not generally available within the meaning of s 674(2) of the Corporations Act; and

(b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Downer Shares within the meaning of s 674(2) of the Corporations Act.

179. Pursuant to ASX Listing Rule 3.1, Downer became obliged to tell the ASX the 31 December 2020 True Financial Information immediately and from the date that Downer had, or obtained that information as pleaded in paragraph 177 above.

180. Downer did not communicate the 31 December 2020 True Financial Information to the ASX until 27 February 2023, alternatively 8 December 2022.

181. Downer was negligent with respect to whether the 31 December 2020 True Financial Information would, if it were generally available, have a material effect on the price or value of Downer Shares within the meaning of Rule 3.1 of the ASX Listing Rules, s 674(2) and/or s 674A(2) of the Corporations Act.

Particulars

i. *The nature of the 31 December 2020 True Financial Information was such that a reasonable director or officer in the position of a director or officer of Downer ought to have realised that this was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.*

ii. *Each of Fenn, Ferguson, Cinerari and Cohen ought to have known that if the 31 December 2020 True Financial Information was generally available, it would have a material effect on the price or value of Downer Shares because Downer's revenue, EBIT, EBITA, NPATA and NPAT has a bearing on the price or value of the Downer Shares.*

iii. *Further or alternatively, Downer failed to ensure that it had systems or processes that ensure that its directors and officers considered whether information that it was aware of (including the 31 December 2020 True Financial Information) was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.*

iv. *Further particulars may be provided following discovery.*

182. In the circumstances pleaded in paragraphs 177 to 181 above, Downer contravened s 674(2) and/or 674A(2) of the Corporations Act during the Relevant Period until 27 February 2023, alternatively 8 December 2022 (being a **Continuous Disclosure Contravention**).

F.6 30 June 2021 True Financial Information

183. During the Relevant Period from 12 August 2021, Downer was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the 30 June 2021 True Financial Information.

Particulars

i. *The particulars at 171 above are repeated save that the reference to "30 June 2020 True Financial Information" is replaced with "30 June 2021 True Financial Information" and "12 August 2020" is replaced with "12 August 2021".*

ii. *The 30 June 2021 True Financial Information ought reasonably to have been known to Tompkins by reason of: (a) his role as Chief Operating Officer of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; (c) the revenue from the AusNet*

Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract; (d) Downer's financial report was required under the Corporations Act to be prepared in accordance with accounting standards and give a true and fair view of Downer's financial performance; and (e) the directors of Downer were required under the Corporations Act to make a declaration that the financial statements and notes in the annual report complied with the Corporations Act.

iii. *Further particulars may be provided following discovery.*

184. The 30 June 2021 True Financial Information was information that:

(a) until 27 February 2023, alternatively 8 December 2022 was not generally available within the meaning of s 674(2) of the Corporations Act; and

(b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Downer Shares within the meaning of s 674(2) of the Corporations Act.

185. Pursuant to ASX Listing Rule 3.1, Downer became obliged to tell the ASX the 30 June 2021 True Financial Information immediately and from the date that Downer had, or obtained that information as pleaded in paragraph 183 above.

186. Downer did not communicate the 30 June 2021 Financial Information to the ASX until 27 February 2023, alternatively 8 December 2022.

187. Downer was negligent with respect to whether the 30 June 2021 True Financial Information would, if it were generally available, have a material effect on the price or value of Downer Shares within the meaning of Rule 3.1 of the ASX Listing Rules, s 674(2) and/or s 674A(2) of the Corporations Act.

Particulars

i. *The nature of the 30 June 2021 True Financial Information was such that a reasonable director or officer in the position of a director or officer of Downer ought to have realised that this was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.*

ii. *Each of Fenn, Ferguson, Cinerari, Cohen and Tompkins ought to have known that if the 30 June 2021 True Financial Information was generally available, it would have a material effect on the price or value of Downer Shares because*

Downer's revenue, EBIT, EBITA, NPATA and NPAT has a bearing on the price or value of the Downer Shares.

iii. *Further or alternatively, Downer failed to ensure that it had systems or processes that ensure that its directors and officers considered whether information that it was aware of (including the 30 June 2021 True Financial Information) was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.*

iv. *Further particulars may be provided following discovery.*

188. In the circumstances pleaded in paragraphs 183 to 187 above, Downer contravened s 674(2) and/or 674A(2) of the Corporations Act during the Relevant Period until 27 February 2023, alternatively 8 December 2022 (being a **Continuous Disclosure Contravention**).

F.7 31 December 2021 True Financial Information

189. During the Relevant Period from 10 February 2022, Downer was aware (within the meaning of r 19.12 of the ASX Listing Rules) of 31 December 2021 True Financial Information.

Particulars

i. *The particulars at 177 above are repeated save that the reference to "31 December 2020 True Financial Information" is replaced with "31 December 2021 True Financial Information".*

ii. *The 31 December 2021 True Financial Information ought reasonably to have been known to Tompkins by reason of: (a) his role as Chief Operating Officer of Downer; (b) the AusNet Contract was a significant contract with revenue of approximately $170 million per annum; (c) the revenue from the AusNet Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract; (d) Downer's financial report was required under the Corporations Act to be prepared in accordance with accounting standards and give a true and fair view of Downer's financial performance; and (e) were required under the Corporations Act to make a declaration that the financial statements and notes in the half year report complied with the Corporations Act.*

iii. *Further particulars may be provided following discovery.*

190. The 31 December 2021 True Financial Information was information that:

(a) until 27 February 2023, alternatively 8 December 2022 was not generally available within the meaning of s 674(2) of the Corporations Act; and

(b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Downer Shares within the meaning of s 674(2) of the Corporations Act.

191. Pursuant to ASX Listing Rule 3.1, Downer became obliged to tell the ASX the 31 December 2021 Financial Information immediately and from the date that Downer had, or obtained that information as pleaded in paragraph 189 above.

192. Downer did not communicate the 31 December 2021 True Financial Information to the ASX until 27 February 2023, alternatively 8 December 2022.

193. Downer was negligent with respect to whether the 31 December 2021 True Financial Information would, if it were generally available, have a material effect on the price or value of Downer Shares within the meaning of Rule 3.1 of the ASX Listing Rules, s 674(2) and/or s 674A(2) of the Corporations Act.

Particulars

i. *The nature of the 31 December 2021 True Financial Information was such that a reasonable director or officer in the position of a director or officer of Downer ought to have realised that this was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.*

ii. *Each of Fenn, Ferguson, Cinerari, Cohen and Tompkins ought to have known that if the 31 December 2021 True Financial Information was generally available, it would have a material effect on the price or value of Downer Shares because Downer's revenue, EBIT, EBITA, NPATA and NPAT has a bearing on the price or value of the Downer Shares.*

iii. *Further or alternatively, Downer failed to ensure that it had systems or processes that ensure that its directors and officers considered whether information that it was aware of (including the 31 December 2021 True Financial Information) was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.*

iv. *Further particulars may be provided following discovery.*

194. In the circumstances pleaded in paragraphs 189 to 192 above, Downer contravened s 674(2) and/or 674A(2) of the Corporations Act during the Relevant Period until 27 February 2023, alternatively 8 December 2022 (being a **Continuous Disclosure Contravention**).

F.8 30 June 2022 True Financial Information

195. During the Relevant Period from 17 August 2022, Downer was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the 30 June 2022 True Financial Information.

Particulars

i. *The particulars at 183 above are repeated save that the reference to "30 June 2021 True Financial Information" is replaced with "30 June 2022 True Financial Information" and "Cohen" is replaced with "Kafanelis".*

ii. *Further particulars may be provided following discovery.*

196. The 30 June 2022 True Financial Information was information that:

(a) until 27 February 2023, alternatively 8 December 2022 was not generally available within the meaning of s 674(2) of the Corporations Act; and

(b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Downer Shares within the meaning of s 674(2) of the Corporations Act.

197. Pursuant to ASX Listing Rule 3.1, Downer became obliged to tell the ASX the 30 June 2022 True Financial Information immediately and from the date that Downer had, or obtained that information as pleaded in paragraph 195 above.

198. Downer did not communicate the 30 June 2022 True Financial Information to the ASX until 27 February 2023, alternatively 8 December 2022.

199. Downer was negligent with respect to whether the 30 June 2022 True Financial Information would, if it were generally available, have a material effect on the price or value of Downer Shares within the meaning of Rule 3.1 of the ASX Listing Rules, s 674(2) and/or s 674A(2) of the Corporations Act.

Particulars

i. *The nature of the 30 June 2022 True Financial Information was such that a reasonable director or officer in the position of a director or officer of Downer ought to have realised that this was information that was objectively likely to* *influence investors or potential investors who were considering whether to buy or sell Downer Shares.*

ii. *Each of Fenn, Ferguson, Cinerari, Kafanelis and Tompkins ought to have known that if the 30 June 2022 True Financial Information was generally available, it would have a material effect on the price or value of Downer Shares because Downer's revenue, EBIT, EBITA, NPATA and NPAT has a bearing on the price or value of the Downer Shares.*

iii. *Further or alternatively, Downer failed to ensure that it had systems or processes that ensure that its directors and officers considered whether information that it was aware of (including the 30 June 2022 True Financial Information) was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.*

iv. *Further particulars may be provided following discovery.*

200. In the circumstances pleaded in paragraphs 195 to 199 above, Downer contravened s 674(2) and/or 674A(2) of the Corporations Act during the Relevant Period until 27 February 2023, alternatively 8 December 2022 (being a **Continuous Disclosure Contravention**).

F.9 FY23 Guidance Information

201. During the Relevant Period from 3 November 2023, Downer was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the FY23 Guidance Information.

Particulars

i. *The FY23 Guidance Information ought reasonably to have been known to Fenn by reason of: (a) his role as Managing Director and Chief Executive Officer of Downer; (b) the revenue from the AusNet Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract would result in a reduction of between $8m to $10 million from Downer's NPATA results for FY23; (c) receipt of detailed financial information across the business including "flash reporting" on working day four after month end and a reforecast of forecasts 3-4 weeks from month end: Transcript of 27 February 2023 Call at 9.*

ii. *The FY23 Guidance Information ought reasonably to have been known to Ferguson by reason of: (a) his role as Chief Financial Officer of Downer; (b) the revenue from the AusNet Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract* *would result in a reduction of between $8m to $10 million from Downer's NPATA results for FY23; and (c) receipt of detailed financial information across the business including "flash reporting" on working day four after month end and a reforecast of forecasts 3-4 weeks from month end: Transcript of 27 February 2023 Call at 9.*

iii. *The FY23 Guidance Information ought reasonably to have been known to Tompkins by reason of: (a) his role as Chief Operating Officer of Downer; (b) the revenue from the AusNet Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract would result in a reduction of between $8m to $10 million from Downer's NPATA results for FY23; and (c) receipt of detailed financial information across the business including "flash reporting" on working day four after month end and a reforecast of forecasts 3-4 weeks from month end: Transcript of 27 February 2023 Call at 9.*

iv. *The FY23 Guidance Information ought reasonably to have been known to Cinerari by reason of: (a) his role as Chief Operating Officer – Australian Operations of Downer; (b) the revenue from the AusNet Contract had to be accounted for in accordance with the requirements of AASB 15 which applied to Downer and the AusNet Contract would result in a reduction of between $8m to $10 million from Downer's NPATA results for FY23; and (c) receipt of detailed financial information across the business including "flash reporting" on working day four after month end and a reforecast of forecasts 3-4 weeks from month end: Transcript of 27 February 2023 Call at 9.*

v. *Further particulars may be provided following discovery.*

202. The FY23 Guidance Information was information that:

(a) until 27 February 2023, alternatively 8 December 2022 was not generally available within the meaning of s 674(2) of the Corporations Act; and

(b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Downer Shares within the meaning of s 674(2) of the Corporations Act.

203. Pursuant to ASX Listing Rule 3.1, Downer became obliged to tell the ASX the FY23 Guidance Information immediately and from the date that Downer had, or obtained that information as pleaded in paragraph 201 above.

204. Downer did not communicate the FY23 Guidance Information to the ASX until 27 February 2023, alternatively 8 December 2022.

205. Downer was negligent with respect to whether the FY23 Guidance Information would, if it were generally available, have a material effect on the price or value of Downer Shares within the meaning of Rule 3.1 of the ASX Listing Rules, s 674(2) and/or s 674A(2) of the Corporations Act.

Particulars

i. The nature of the FY23 Guidance Information was such that a reasonable director or officer in the position of a director or officer of Downer ought to have realised that this was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.

ii. Further or alternatively, Downer failed to ensure that it had systems or processes that ensure that its directors and officers considered whether information that it was aware of (including the FY23 Guidance Information) was information that was objectively likely to influence investors or potential investors who were considering whether to buy or sell Downer Shares.

iii. Further particulars may be provided following discovery.

206. In the circumstances pleaded in paragraphs 201 to 205 above, Downer contravened s 674(2) and/or 674A(2) of the Corporations Act during the Relevant Period until 27 February 2023, alternatively 8 December 2022 (being a **Continuous Disclosure Contravention**).

G CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

G.1 Acquisition of Downer Shares

207. During the Relevant Period, the plaintiffs and the Group Members acquired interests in Downer Shares.

Particulars

i. Paragraph 2 above is repeated.

ii. Particulars of acquisitions by Group Members will be provided after the trial of the plaintiffs' claim.

G.2 Market-based causation

208. The plaintiffs and the Group Members acquired their interests in Downer Shares in a market of investors or potential investors in Downer Shares:

(a) operated by the ASX;

(b) regulated by, inter alia, the ASX Listing Rules and section 674(2) of the Corporations Act;

(c) where Downer had the obligations pleaded in paragraph 5 above;

(d) where the price or value of Downer Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and section 674(2) of the Corporations Act;

(e) where:

(i) material information had not been disclosed at the time it ought to have been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of Downer Shares, namely:

(A) the information the subject of the Continuous Disclosure Contraventions; and/or

(B) the Representations,

(individually and together, the **Material Information**);

(ii) misleading or deceptive conduct had been engaged in (namely the conduct the subject of the Misleading Conduct Contraventions) that a reasonable person would expect to have a material effect on the price or value of Downer Shares, in that if it had not been engaged in no investors or potential investors in Downer Shares would have been in a position to be induced, or affected, by the Representations

(iii) statements had been made or information disseminated (namely the Representations) that was false in a material particular or materially misleading that a reasonable person would expect to have a material effect on the price or value of Downer Shares, in that if it those statements had not been made or information disseminated in no investors or potential investors in Downer Shares would have been in a position to be induced, or affected, by the Representations.

209. In the Relevant Period, the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions and/or the False Statement Contraventions (and each of them) (**Market Contraventions**) caused the market price of Downer Shares to be, or materially contributed to the market price of Downer Shares being, substantially greater than:

(a) their true value; and/or

(b) the market price that would have prevailed but for the Market Contraventions;

from the respective dates that those Market Contraventions commenced, as pleaded in this Statement of Claim.

Particulars

i. The extent to which the Market Contraventions caused the price for Downer Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed during the Relevant Period will be provided following expert evidence.

210. The declines in the price of Downer Shares pleaded in paragraphs 63 and 70 above was caused or materially contributed to by:

(a) the market's reaction to:

(i) the 8 December 2022 Announcement and/or the 8 December 2022 Call; and/or

(ii) the 27 February 2023 Disclosures; and

(b) the Market Contraventions.

Particulars

i. The extent to which the Market Contraventions caused the price for Downer Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed during the Relevant Period will be provided following expert evidence.

211. Further, or alternatively, if Downer had:

(a) disclosed to the market the Material Information at any time in the Relevant Period; and/or

(b) not engaged in the conduct the subject of the Misleading Conduct Contraventions,

the price of Downer Shares would have fallen substantially.

Particulars

i. *The extent to which the price for Downer Shares would have fallen will be provided following expert evidence.*

G.3 Capital Raise

212. The Capital Raise was undertaken:

(a) at an offer price of $3.75 per new Downer Share, being a price fixed by reference to the market price of Downer Shares, which traded in a market with the features pleaded in paragraph 208 (**Offer Price**); and

(b) at a price which, by reason of the matters pleaded in paragraph 208:

(i) would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) and/or 674A(2) of the Corporations Act and ASX Listing Rule 3.1 (and by s 708AA of the Corporations Act in respect of rights issues such as the Entitlement Offer);

(ii) was set in circumstances where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Downer Shares (namely the information the subject of the Continuous Disclosure Contraventions); and

(iii) was set in circumstances where the Misleading Contraventions and/or False Statements Contraventions had occurred, being conduct involving making, and failing to correct or qualify representations or statements that a reasonable person would expect to have a material effect on the price or value of Downer Shares, in that if they had not been made no investors or potential investors in Downer Shares would have been in a position to read or rely upon them;

(c) in a way that enabled eligible shareholders to exercise and take up entitlements (on a 1 for 5.58 basis) by applying and paying application monies (being the number of Downer Shares applied for multiplied by the Offer Price) during the periods identified in paragraph 125, with such amounts being **Application Monies**.

213. By reason of the matters pleaded in paragraphs 208 to 211 above, had the Market Contraventions not occurred, or ceased prior to the commencement of the Capital Raise, the Capital Raise would have been conducted at a lower price than the Offer Price, and the Plaintiffs and Group Members who participated in the Capital Raise would have either acquired the same number of Downer Shares for a lower total consideration, or alternatively a greater number of Downer Shares for the same total consideration.

214. Further or alternatively to paragraph 213 above, had the Market Contraventions ceased prior to the commencement of the Capital Raise, or during the offer period of the Capital Raise, then Downer would have:

(a) immediately cancelled or withdrawn the Capital Raise;

(b) alternatively, immediately suspended the Capital Raise pending the making of a supplementary disclosure:

(i) to disclose the material information which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Downer Shares (namely the information the subject of the Continuous Disclosure Contraventions);

(ii) to correct or qualify representations or statements that a reasonable person would expect to have a material effect on the price or value of Downer Shares (namely the Misleading Contraventions and/or False Statement Contraventions); and

(iii) with allowance for a sufficient period of time to elapse to enable eligible institutional and retail shareholders to consider that supplementary disclosure.

(c) alternatively to subparagraph (b), after a period of time if it did not cancel or withdraw the Capital Raise following the period of its suspension, varied the Capital Raise, or substituted for it a new entitlement offer (**Varied Capital Raise**), which repriced the Offer Price to a price which was fixed by reference to the lower market price which would have prevailed by reason of the cessation of the Market Contraventions;

(d) further, if Downer either withdrew or suspended the Capital Raise part way through the offer period:

(i) then, if it withdrew the Capital Raise, Downer would have refunded Application Monies paid for entitlements taken up to date;

(ii) if it suspended the Capital Raise to make supplementary disclosure (including pending consideration of whether it would promulgate a Varied Capital Raise), Downer would have:

(1) offered eligible institutional or retail shareholders the opportunity to withdraw any acceptance of the Capital Raise to date; and/or

(2) held Application Monies paid for entitlements taken up to date pursuant to the Capital Raise in trust or escrow pending consideration of whether supplementary disclosure would necessitate promulgation of a Varied

Capital Raise at different pricing (and consideration of whether, if so, any Application Monies needed to be refunded in whole or part);

(e) if Downer promulgated a Varied Capital Raise, Downer would have:

(i) offered eligible institutional or retail shareholders the opportunity to withdraw any acceptance of the earlier Capital Raise, and not to participate in the Varied Capital Raise, and have their Application Monies refunded; and/or

(ii) held Application Monies paid for entitlements taken up pursuant to the Capital Raise by persons who were content to have them applied to entitlements offered pursuant to the Varied Capital Raise in trust or escrow pending application of that amount to entitlements offered under the Varied Capital Raise at different pricing (pursuant to which some such persons would have acquired the same number of Downer Shares as they earlier subscribed for under the unvaried Capital Raise for a total lower consideration and receive a surplus of Application Monies already paid).

G.4 Reliance

215. Further, or in the alternative, in the decision to acquire Downer Shares:

(a) the plaintiffs and some Group Members would not have acquired Downer Shares at the prices and in the volumes that they did, if the Material Information had been disclosed to them and/or the ASX;

(b) some Group Members acquired Downer Shares at the prices and in the volumes that they did in reliance upon some or all of the Representations (and/or Downer not having corrected or qualified such representations).

Particulars

i. The plaintiffs would not have acquired the Downer Shares at the price that they did, if the Material Information had been disclosed to them and/or the ASX.

ii The identity of all those Group Members which or who relied directly on any or all of the representations referred to in the paragraph above are not within the current state of the plaintiffs' knowledge and cannot be ascertained unless and until those advising the plaintiffs take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the plaintiffs' claims and identification of common issues at an *initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

G.5 Loss and damage

216. The plaintiffs and the Group Members suffered loss and damage resulting from the Market Contraventions.

Particulars

i. *The loss suffered by the plaintiffs will be calculated by reference to:*

   A. *the difference between the price at which they acquired their interest in the Downer Shares and the true value of that interest;*

   B. *alternatively, the difference between the price at which they acquired their interest in the Downer Shares and whatever is 'left in hand', or has been realised upon a sale;*

   C. *alternatively, the difference between the price at which they acquired their interest in the Downer Shares and whatever is 'left in hand', or has been realised upon a sale modified to take into account any part of the movement in the market price of the shares which did not 'result from' the contravening conduct;*

   D. *alternatively, the difference between the price at which they acquired their interest in the Downer Shares and the price that would have prevailed but for the Market Contraventions;*

   E. *in addition to the loss in A to D, the loss of the opportunity to achieve a reasonable rate of return on the monies used to purchase the interest in the Downer Shares.*

ii. *Further particulars in relation to the plaintiffs' losses will be provided after the service of evidence in chief.*

iii. *Particulars of the losses of Group Members are not known within the current state of the plaintiffs' knowledge and cannot be ascertained unless and until those advising the plaintiffs take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the plaintiffs' claim and identified common issues at an initial* *trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

GA CLAIM AGAINST KPMG

217. KPMG at all material times:

(a) is and was a partnership and the Plaintiffs are entitled to bring this proceeding against the partners of KPMG in the partnership name;

(b) carried on business, practised, and professed to practise, as auditors, accountants, and consultants under the partnership name "KPMG";

(c) included among its partners and employees persons who were registered company auditors including Cameron Slapp (**Slapp**) and Stephen Isaac (**Isaac**), each of whom was at all material times:

(i) partners of KPMG;

(ii) persons for the purposes of s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the ACL;

(d) was, by reason of s 761F of the Corporations Act, a person for the purposes of Chapter 7 of the Corporations Act, such that any contravention of a provision of the Corporations Act (including s 1041H of the Corporations Act) that would otherwise be a contravention by KPMG is taken to have been a contravention by each partner of KPMG who:

(i) aided, abetted, counselled or procured the relevant act or omission; or

(ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner); and

(e) was governed, inter alia, by the *Partnership Act 1958* (Vic) such that each partner of KPMG (including Slapp and Isaac):

(i) is an agent of the firm and each partner of the firm for the purposes of the business of the partnership; and

(ii) is liable jointly with the other partners for all wrongful acts or omissions of any partner acting in the ordinary course of the business of KPMG.

GA.1 Retainer of KPMG

218. By agreement made 1 November 2019 (**FY20 Retainer**), Downer retained KPMG to audit the:

(a) Consolidated Financial Report of Downer and its controlled entities, including Downer Utilities Australia Pty Ltd (ACN 075 194 857) (**Downer Utilities**) (together, the **Downer Group**); and

(b) financial report of Downer Utilities,

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

Particulars

The FY20 Retainer was in writing, comprising:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) in forming the opinions described in paragraph 219(c) above;

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

(d) in forming the opinions described in paragraph 219(d) above.

Particulars

The term was implied by law.

221. By agreement made 30 October 2020 (**FY21 Retainer**), Downer retained KPMG to audit the:

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

(b) financial report of Downer Utilities,

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

Particulars

The FY21 Retainer was in writing, comprising:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) in forming the opinions described in paragraph 222(c) above;

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

(d) in forming the opinions described in paragraph 222(d) above.

Particulars

The term was implied by law.

224. By agreement made 22 October 2021 (**FY22 Retainer**), Downer retained KPMG to audit:

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

(b) the financial report of Downer Utilities, for the financial year to 30 June 2022 (**FY22**).

Particulars

The FY22 Retainer was in writing, comprising:

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

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

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

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

(a) audit the Consolidated Financial Report of the Downer Group and the financial report of Downer Utilities for FY22 in accordance with Australian Auditing Standards (FY21 Engagement Letter, cl 1.1, as updated by the FY22 Arrangements Letter);

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

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

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

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

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

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

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

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

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

(b) in forming the opinions described in paragraph 225(c) above;

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

(d) in forming the opinions described in paragraph 225(d) above.

Particulars

The term was implied by law.

GA.2 Auditing and Accounting Standards

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

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

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

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

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

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

(d) "[t]he auditor shall communicate with those charged with governance uncorrected misstatements … The auditor shall request that uncorrected misstatements be corrected" (paragraph 12).

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

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

(b) "[i]n order to form that opinion, the auditor shall conclude as to whether the auditor has obtained reasonable assurance about whether the financial report as a whole is free from material misstatement … That conclusion shall take into account … [t]he auditor's conclusion, in accordance with ASA 450 [see 227(c) above], whether uncorrected misstatements are material, individually or in aggregate" (paragraph 11(b)).

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

230. In each of ASA 450 and 700, for FY20-22, "those charged with governance" had the meaning given in ASA 260 (*Communication With Those Charged with Governance*), which defined it as "[t]he person(s) … with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process" (paragraph 10(a)).

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

232. Given paragraphs 230 and 231 above, "those charged with governance" of each member of the Downer Group, within the meaning of ASA 450 and 700, were the board of that member, the Audit & Risk Committee of Downer, and otherwise the board of Downer.

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

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

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

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

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

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

(d) "[f]or each performance obligation satisfied over time in accordance with [paragraph 35, quoted in paragraph 233(c) above] an entity shall recognise revenue over time by measuring the progress towards complete satisfaction of that performance obligation" (paragraph 39);

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

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

GA.3 Contract with AusNet

234. On 22 July 2019, Downer Utilities, a wholly owned subsidiary of Downer, entered into the AusNet Contract with AusNet Electricity Services Pty Ltd and AusNet Transmission Group Pty Ltd (together, **AusNet Services**) [DOW.3000.0022.9999; DOW.3000.0021.9999].

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

236. Under the AusNet Contract:

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

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

237. The AusNet Contract commenced on 1 April 2020.

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

GA.4 Overstatements of revenue for FY20

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

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

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

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

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

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

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

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

243. Given paragraphs 26, 238, and 240 to 242 above, the FY20 Subsidiary Overstatement could, given the particular circumstances of its occurrence, have reasonably been expected to influence the economic decisions of users taken on the basis of the financial report as a whole.

244. Given paragraphs 227(c)(i), 228(b), 229, and 243 above, the FY20 Subsidiary Overstatement was "material" to the financial report within the meaning of ASA 450 and, therefore, of ASA 700.

245. Given paragraph 244 above, the financial report of Downer Utilities for FY20:

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

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

246. Further, given paragraphs 241, 242 and 244 above, the financial report of Downer Utilities for FY20 did not:

(a) comply with Australian Accounting Standards; or

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

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

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

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

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

249. In the premises of paragraphs 26, 238, 240, and 247 and 248 above, the FY20 Group Overstatement could, given the particular circumstances of its occurrence, have reasonably been expected to influence the economic decisions of users taken on the basis of the Consolidated Financial Report as a whole.

250. In the premises of paragraphs 227(c)(i), 228(b), 229, 248 and 249 above, the FY20 Group Overstatement was "material" to the Consolidated Financial Report, within the meaning of ASA 450 and, therefore, of ASA 700.

251. In the premises of paragraphs 249 and 250 above, the Consolidated Financial Report of the Downer Group for FY20:

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

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

252. Further, in the premises of paragraphs 247 to 251 above, the Consolidated Financial Report of the Downer Group for FY20:

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

(b) did not give a true and fair view of the financial performance of the Downer Group for FY20.

GA.5 Overstatements of revenue for FY21

253. In FY21, Downer Utilities recognised $175.99m as revenue from the AusNet Contract.

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

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

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

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

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

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

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

257. Given paragraph 26, 238, 241, 244, and 254 to 256 above, the FY21 Subsidiary Overstatement could, given the particular circumstances of its occurrence, have reasonably been expected to influence the economic decisions of users taken on the basis of the financial report as a whole.

258. Given paragraphs 227(c), 228(b), 229, and 257 above, the FY21 Subsidiary Overstatement was "material" to the financial report within the meaning of ASA 450 and, therefore, of ASA 700.

259. Given paragraph 258 above, the financial report of Downer Utilities for FY21:

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

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

260. Further, given paragraphs 255, 256, and 258 above, the financial report of Downer Utilities for FY21 did not:

(a) comply with Australian Accounting Standards; or

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

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

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

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

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

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

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

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

Particulars

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

264. Given paragraphs 262 and 263 above, as a result of the FY21 Group Overstatement and the Acknowledged FY20 Group Overstatements, in the Consolidated Financial Report for FY21:

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

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

265. Given paragraphs 26, 238, 247, 250, 254, 261, 262, and 264 above, the FY21 Group Overstatement could, given the particular circumstances of its occurrence, reasonably been expected to influence the economic decisions of users taken on the basis of the Consolidated Financial Report as a whole.

266. Given paragraphs 227(c), 228(b), 230, and 265 above, the FY21 Group Overstatement was "material" to the Consolidated Financial Report for FY21, within the meaning of ASA 450 and, therefore, of ASA 700.

267. Given paragraph 266 above, the Consolidated Financial Report of the Downer Group for FY21:

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

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

268. Further, given paragraphs 261, 262, 264 and 266 above, the Consolidated Financial Report of the Downer Group for FY21 did not:

(a) comply with Australian Accounting Standards; or

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

GA.6 Overstatements of revenue for FY22

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

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

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

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

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

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

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

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

273. Given paragraphs 26, 238, 242, 244, 261, 266, and 270 to 272 above, the FY22 Subsidiary Overstatement could, given the particular circumstances of its occurrence, have reasonably been expected to influence the economic decisions of users taken on the basis of the financial report as a whole.

274. Given paragraphs 227(c), 228(b), 230, and 273 above, the FY22 Subsidiary Overstatement was "material" to the financial report within the meaning of ASA 450 and, therefore, of ASA 700.

275. Given paragraph 274 above, the financial report of Downer Utilities for FY22:

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

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

276. Further, given paragraphs 271, 272 and 274 above, the financial report of Downer Utilities for FY22 did not:

(a) comply with Australian Accounting Standards; or

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

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

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

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

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

279. Given paragraphs 26, 238, 242, 244, 261, 266, 270, 277 and 278 above, the FY22 Group Overstatement could, given the particular circumstances of its occurrence, have reasonably been expected to influence the economic decisions of users taken on the basis of the Consolidated Financial Report as a whole.

280. Given paragraphs 227(c), 228(b), 230, and 279 above, the FY22 Group Overstatement was "material" to the Consolidated Financial Report, within the meaning of ASA 450 and, therefore, of ASA 700.

281. Given paragraph 280 above, the Consolidated Financial Report of the Downer Group for FY22:

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

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

282. Further, given paragraphs 277, 278 and 280 above, the Consolidated Financial Report of the Downer Group for FY22 did not:

(a) comply with Australian Accounting Standards; or

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

GA.7 Audits for FY20

Audit of Downer Utilities – Reasonable care and skill representation

283. KPMG audited the financial report for Downer Utilities for FY20.

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

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

(b) complying with Australian Accounting Standards

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

285. The FY20 Subsidiary Audit Opinions were reported by email.

Particulars

Particulars will be provided after discovery.

286. Given paragraph 285 above, the FY20 Subsidiary Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the CCA.

287. KPMG did not exercise reasonable care and skill in forming the FY20 Subsidiary Audit Opinions.

Particulars

Paragraphs 228, 245 and 246 above are repeated, and paragraphs 0-9 of Schedule 1.

288. Given paragraph 217(b) above, KPMG, in expressing the FY20 Subsidiary Audit Opinions, represented that it:

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

(b) had reasonable grounds for those opinions,

(FY20 Subsidiary Audit Representations).

289. The FY20 Subsidiary Audit Representations were made:

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

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

290. The FY20 Subsidiary Audit Representations were made:

(a) in trade or commerce.

(b) in relation to financial products; and/or

(c) in relation to financial services.

291. Contrary to the FY20 Subsidiary Audit Representations, KPMG:

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

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

Particulars

The Plaintiffs repeat the particulars to paragraph 287 above.

292. Given paragraphs 286, 288, 290 and 291 above, the FY20 Subsidiary Audit Opinions and FY20 Subsidiary Audit Representations were misleading or deceptive contrary to:

(a) s 18(1) of the ACL;

(b) s 1041H(1) of the Corporations Act;

(c) s 12DA(1) of the ASIC Act.

Audit of Downer Group – Reasonable care and skill representation

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

294. KPMG did not exercise reasonable care and skill in auditing the Consolidated Financial Report of the Downer Group for FY20.

Particulars

See Schedule 1.

295. On 12 August 2020, KPMG (and/or Slapp and Isaac) reported to Downer and to investors and potential investors in Downer Shares that, in KPMG's opinion, the Consolidated Financial Report of the Downer Group for FY20 complied with the Corporations Act, including:

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

(b) complying with Australian Accounting Standards (**FY20 Group Audit Opinions**).

296. The FY20 Group Audit Opinions were reported via the internet.

Particulars

On 11 August 2020, KPMG emailed the FY20 Group Audit Opinions to Downer [DOW.1059.0003.9162; DOW.1059.0003.9163].

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

297. Given paragraph 296 above, the FY20 Group Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the CCA.

298. KPMG did not exercise reasonable care and skill in forming the FY20 Group Audit Opinions.

Particulars

Paragraphs 227, 250, and 251 above are repeated, and paragraphs 0–9 of Schedule 1.

299. KPMG, in expressing the FY20 Group Audit Opinions, represented that it:

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

(b) had reasonable grounds for those opinions,

(**FY20 Group Audit Representations**).

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

301. The FY20 Group Audit Representations were made:

(a) in trade or commerce.

(b) in relation to financial products; and/or

(c) in relation to financial services.

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

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

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

Particulars

The particulars to paragraph 298 above are repeated.

303. Given paragraphs 297, 299, 301 and 302 above, the FY20 Group Audit Opinions and the FY20 Group Audit Representations were misleading or deceptive contrary to:

(a) s 18(1) of the ACL;

(b) s 1041H(1) of the Corporations Act;

(c) s 12DA(1) of the ASIC Act.

GA.8 Audits for FY21

Audit of Downer Utilities – Reasonable care and skill representation

304. KPMG audited the financial report for Downer Utilities for FY21.

305. On 30 September 2021, KPMG (and/or Isaac) reported to Downer Utilities' shareholder that, in KPMG's opinion, the financial Report of Downer Utilities for FY21 complied with the Corporations Act, including:

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

(b) complying with Australian Accounting Standards

(**FY21 Subsidiary Audit Opinions**).

306. The FY21 Subsidiary Audit Opinions were reported by email.

Particulars

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

307. Given paragraph 306 above, the FY21 Subsidiary Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the CCA.

308. KPMG did not exercise reasonable care and skill in forming the FY21 Subsidiary Audit Opinions.

Particulars

Paragraphs 228, 258 and 259 above are repeated, and paragraphs 1-16 of Schedule 2.

309. Given paragraph 217(b) above, KPMG, in expressing the FY21 Subsidiary Audit Opinions, represented that it:

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

(b) had reasonable grounds for those opinions,

(**FY21 Subsidiary Audit Representations**).

310. The FY21 Subsidiary Audit Representations were made:

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

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

311. The FY21 Subsidiary Audit Representations were made:

(a) in trade or commerce.

(b) in relation to financial products; and/or

(c) in relation to financial services.

312. Contrary to the FY21 Subsidiary Audit Representations, KPMG:

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

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

Particulars

The Plaintiffs repeat the particulars to paragraph 308 above.

313. Given paragraphs 307, 309, 311 and 312 above, the FY21 Subsidiary Audit Opinions and FY21 Subsidiary Audit Representations were misleading or deceptive contrary to:

(a) s 18(1) of the ACL;

(b) s 1041H(1) of the Corporations Act;

(c) s 12DA(1) of the ASIC Act.

Audit of Downer Group – Reasonable care and skill representation

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

315. KPMG did not exercise reasonable care and skill in auditing the Consolidated Financial Report of the Downer Group for FY21.

Particulars

See Schedule 2.

316. On 12 August 2021, KPMG reported to Downer and to investors and potential investors in Downer Shares that, in KPMG's opinion, 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 FY21; and

(b) complying with Australian Accounting Standards (**FY21 Group Audit Opinions**).

317. The FY21 Group Audit Opinions were reported via the internet.

Particulars

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

318. Given paragraph 317 above, the FY21 Group Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the CCA.

319. KPMG did not exercise reasonable care and skill in forming the FY21 Group Audit Opinions.

Particulars

Paragraphs 228, 267, and 268 above are repeated, and paragraphs 1–16 of Schedule 2.

320. Given paragraph 217(b) above, KPMG, in expressing the FY21 Group Audit Opinions, represented that it:

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

(b) had reasonable grounds for those opinions,

(**FY21 Group Audit Representations**).

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

322. The FY21 Group Audit Representations were made:

(a) in trade or commerce.

(b) in relation to financial products; and/or

(c) in relation to financial services.

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

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

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

Particulars

The particulars to paragraph 319 above are repeated.

324. Given paragraphs 297, 299, 301 and 302 above, each of the FY21 Group Audit Opinions and the FY21 Group Audit Representations were misleading or deceptive contrary to:

(a) s 18(1) of the ACL;

(b) s 1041H(1) of the Corporations Act;

(c) s 12DA(1) of the ASIC Act.

GA.9 Audits for FY22

Audit of Downer Utilities – Reasonable care and skill representation

325. KPMG audited the financial report for Downer Utilities for FY22.

326. On 17 October 2022, KPMG (and/or Isaac) reported to Downer Utilities' shareholder that, in KPMG's opinion, the financial report of Downer Utilities for FY22 complied with the Corporations Act, including:

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

    (b) complying with Australian Accounting Standards

    (**FY22 Subsidiary Audit Opinions**).

327. The FY22 Subsidiary Audit Opinions were reported by email.

Particulars

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

328. Given paragraph 327 above, the FY22 Subsidiary Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the CCA.

329. KPMG did not exercise reasonable care and skill in forming the FY22 Subsidiary Audit Opinions.

Particulars

Paragraphs 228, 275 and 276 above are repeated, and paragraphs 1-17 of Schedule 3.

330. Given paragraph 217(b) above, KPMG, in expressing the FY22 Subsidiary Audit Opinions, represented that it:

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

    (b) had reasonable grounds for those opinions,

    (**FY22 Subsidiary Audit Representation**).

331. The FY22 Subsidiary Audit Representations were made:

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

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

332. The FY22 Subsidiary Audit Representations were made:

(a) in trade or commerce.

(b) in relation to financial products; and/or

(c) in relation to financial services.

333. Contrary to the FY22 Subsidiary Audit Representations, KPMG:

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

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

Particulars

The Plaintiffs repeat the particulars to paragraph 329 above.

334. Given paragraphs 328, 330, 333 and 334 above, the FY22 Subsidiary Audit Opinions and FY22 Subsidiary Audit Representations were misleading or deceptive contrary to:

(a) s 18(1) of the ACL;

(b) s 1041H(1) of the Corporations Act;

(c) s 12DA(1) of the ASIC Act.

Audit of Downer Group – Reasonable care and skill representation

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

336. KPMG did not exercise reasonable care and skill in auditing the Consolidated Financial Report of the Downer Group for FY22.

Particulars

See Schedule 3.

337. On 17 August 2022, KPMG reported to Downer and to investors and potential investors in Downer Shares that, in KPMG's opinion, 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 2022 and of its financial performance for FY22; and

(b) complying with Australian Accounting Standards,

(**FY22 Group Audit Opinions**).

338. The FY22 Group Audit Opinions were reported via the internet.

Particulars

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

339. Given paragraph 338 above, the FY22 Group Audit Opinions were reported by "the use of … telephonic services" within the meaning of s 6(3) of the CCA.

340. KPMG did not exercise reasonable care and skill in forming the FY22 Group Audit Opinions.

Particulars

Paragraphs 228, 281 and 282 above are repeated, and paragraphs 1-17 of Schedule 3.

341. Given paragraph 217(b) above, KPMG, in expressing the FY22 Group Audit Opinions, represented that it:

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

(b) had reasonable grounds for those opinions,

(**FY22 Group Audit Representations**).

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

343. The FY22 Group Audit Representations were made:

(a) in trade or commerce.

(b) in relation to financial products; and/or

(c) in relation to financial services.

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

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

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

Particulars

The particulars to paragraph 340 above are repeated.

345. Given paragraphs 339, 341, 343 and 344 above, the FY22 Group Audit Opinions and FY22 Group Audit Representations were misleading or deceptive contrary to:

(a) s 18(1) of the ACL;

(b) s 1041H(1) of the Corporations Act;

(c) s 12DA(1) of the ASIC Act.

GA.10 Causation and loss

Market based causation

346. At all material times, Downer Shares traded in a market of investors and potential investors in Downer Shares:

(a) operated by the ASX;

(b) regulated by, inter alia, s 674(2) and/or 674A(2) of the Corporations Act and ASX Listing Rules 3.1, 4.3A, 4.3D and 4.5;

(c) where the price or value of Downer Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with s 674(2) and/or 674A(2) of the Corporations Act and ASX Listing Rules 3.1, 4.3A, 4.3D and 4.5 including:

(i) the FY20 Appendix 4E;

(ii) the FY20 Annual Report;

(iii) the FY21 Appendix 4E;

(iv) the FY21 Annual Report;

(v) the FY22 Appendix 4E; and

(vi) the FY22 Annual Report;

(d) where misleading or deceptive statements had been made by KPMG which were published in, or concurrently with:

(i) the FY20 Appendix 4E and FY20 Annual Report, namely the FY20 Group Audit Opinions and FY20 Group Audit Representations;

(ii) the FY21 Appendix 4E and FY21 Annual Report, namely the FY21 Group Audit Opinions and FY21 Group Audit Representations;

(iii) the FY22 Appendix 4E and FY22 Annual Report, namely the FY22 Group Audit Opinions and FY22 Group Audit Representations;

(e) where the following misleading or deceptive representations:

(i) the FY20 Subsidiary Audit Opinions and FY20 Subsidiary Audit Representations;

(ii) the FY20 Group Audit Opinions and FY20 Group Audit Representations;

(iii) the FY21 Subsidiary Audit Opinions and FY21 Subsidiary Audit Representations;

(iv) the FY21 Group Audit Opinions and FY21 Group Audit Representations;

(v) the FY22 Subsidiary Audit Opinions and FY22 Subsidiary Audit Representations;

(vi) the FY22 Group Audit Opinions and FY22 Group Audit Representations,

(together and separately, **KPMG's Misleading Representations**) resulted in Downer lodging with the ASX its:

(vii) FY20 Appendix 4E;

(viii) FY20 Annual Report;

(ix) FY21 Appendix 4E;

(x) FY21 Annual Report;

(xi) FY22 Appendix 4E; and

(xii) FY22 Annual Report,

(f) but for those misleading or deceptive representations Downer would not have announced to the ASX its financial results for FY20, FY21 and FY22 in the form in which they were announced, and no investors or potential investors in Downer Shares would have been in a position to receive or rely upon that information, which a reasonable person would expect to have a material effect on the price or value of Downer Shares;

(g) further or alternatively, had those misleading or deceptive representations not been made:

(i) KPMG would have informed Downer of the matters pleaded respectively in GA.4, GA.5 and/or GA.6, or sufficient of those matters to show that the FY20, HY21, FY21, HY22 and FY22 financial results if released in the form in which they were in fact released would not comply with Accounting Standards and give a true and fair view of the financial performance and position of Downer; and

(ii) the true position would have been revealed to the market by Downer either:

(A) at the times that Downer respectively announced its FY20, HY21, FY21, HY22 and FY22 financial results (such that each of the FY20 Appendix 4E, FY20 Annual Report, FY21 Appendix 4E, FY21 Annual Report, FY22 Appendix 4E and FY22 Annual Report contained financial statements that did comply with Accounting Standards and give a true and fair view of the financial performance and position of Downer, including by correcting any overstatements in previously published financial statements); or

(B) promptly upon Downer being informed by KPMG of those matters, pursuant to and in accordance with Listing Rules 3.1 (to the extent the information involved correction of information contained in any of the FY20 Appendix 4E, FY20 Annual Report, FY21 Appendix 4E, FY21 Annual Report, FY22 Appendix 4E and FY22 Annual Report) and/or 4.3D 1 (to the extent the information involved correction of information contained in any of the FY20 Appendix 4E, FY21 Appendix 4E, or FY22 Appendix 4E).

Particulars

Particulars to be provided following service of the plaintiffs' expert evidence.

347. The declines in the price of Downer Shares pleaded in paragraphs 63 and 70 above were caused or materially contributed to by:

(a) the market's reaction to:

(i) the 8 December 2022 Announcement and/or the 8 December 2022 Call; and/or

(ii) the 27 February 2023 Disclosures; and

(b) KPMG's Misleading Representations;

and would, to the extent that they removed inflation from the price of Downer Shares, have occurred earlier, and/or have been of lesser magnitude than when they in fact occurred, if KPMG had not engaged in KPMG's Misleading Representations.

Reliance

348. Further or in the alternative, in deciding to acquire an interest in Downer Shares, some group members relied directly or indirectly upon KPMG's Misleading Representations.

Particulars

i. The identity of all those Group Members which or who relied directly on any or all of the representations referred to in the paragraph above are not within the current state of the plaintiffs' knowledge and cannot be ascertained unless and until those advising the plaintiffs take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the plaintiffs' claims and identification of common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

Loss

349. By reason of the matters pleaded in paragraphs 346, 347 and/or 348 above the plaintiffs and group members have suffered loss or damage by reason of KPMG's Misleading Representations.

Particulars

i. The loss suffered by the plaintiffs will be calculated by reference to:

A. the difference between the price at which they acquired their interest in the Downer Shares and the true value of that interest;

B. alternatively, the difference between the price at which they acquired their interest in the Downer Shares and whatever is 'left in hand', or has been realised upon a sale;

C. alternatively, the difference between the price at which they acquired their interest in the Downer Shares and whatever is 'left in hand', or has been realised upon a sale modified to take into account any part of the movement in the market price of the shares which did not 'result from' the contravening conduct;

D. alternatively, the difference between the price at which they acquired their interest in the Downer Shares and the price that would have prevailed but for KPMG's Misleading Representations;

E. in addition to the loss in A to D, the loss of the opportunity to achieve a reasonable rate of return on the monies used to purchase the interest in the Downer Shares.

ii. Further particulars in relation to the plaintiffs' losses will be provided after the service of evidence in chief.

iii. Particulars of the losses of Group Members are not known within the current state of the plaintiffs' knowledge and cannot be ascertained unless and until those advising the plaintiffs take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the plaintiffs' claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

H COMMON QUESTIONS

The questions of law or fact common to the claims of the plaintiffs and group members are:

1. Whether Downer made during the Relevant Period the Representations.

1A. Whether KPMG made the KPMG Misleading Representations.

2. Whether the following occurred during the Relevant Period:

   (a) the AusNet Onerous Contract Information;

   (b) the Contract Management Information;

(c) the AusNet Loss Information;

(d) the 30 June 2020 True Financial Information;

(e) the 31 December 2020 True Financial Information;

(f) the 30 June 2021 True Financial Information;

(g) the 31 December 2021 True Financial Information;

(h) the 30 June 2022 True Financial Information; and

(i) the FY23 Guidance Information,

((a) to (i), individually and together being the **Non-disclosed Information**).

3. Whether Downer ought reasonably to have known that the Representations were false in a material particular or materially misleading.

4. Whether Downer contravened s 1041H of the Corporations Act, 1041E of the Corporations Act, s 12DA of the ASIC Act and s 18 of the ACL by making, maintaining and/or failing to qualify the Representations.

4A. Whether KPMG contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the ACL by making, maintaining and/or failing to qualify the KPMG Misleading Representations.

5. Whether Downer knew or ought to have known during the Relevant Period of the Non-disclosed Information, or any of it.

6. Whether during the Relevant Period the Non-disclosed Information was information a reasonable person would expect to have a material effect on the value of Downer Shares.

7. Whether during the Relevant Period the Non-disclosed Information, or any of it, was not generally available.

8. Whether Downer was negligent with respect to whether the Non-disclosed Information, or any of it, would, if it were generally available, have a material effect on the price or value of Downer Shares.

9. Whether during the Relevant Period Downer was obliged to disclose to the ASX the Non-disclosed Information, or any of it, and contravened s 674(2) and/or 674A(2) of the Corporations Act by failing to do so.

10. Whether any of the Market Contraventions caused the price or value of Downer Shares to be higher during the Relevant Period than they would have been had the Market Contraventions not occurred, and if so, to what extent or by what amount.

10A. Whether any of KPMG's Misleading Representations caused the price or value of Downer Shares to be higher during the Relevant Period than they would have been had KPMG's Misleading Representations not occurred, and if so, to what extent or by what amount.

11. Whether any, and if so, what relief other than monetary relief should be granted in favour of the plaintiffs and Group Members.

AND THE PLAINTIFFS CLAIM on their own behalf and on behalf of Group Members:

1. An order pursuant to s 1041I of the Corporations Act that the First Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the First Defendant in contravention of s 1041H of the Corporations Act and/or s 1041E of the Corporations Act.

1A. An order pursuant to s 1041I of the Corporations Act that the Second Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Second Defendant in contravention of s 1041H of the Corporations Act.

2. An order pursuant to s 12GF of the ASIC Act that the First Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the First Defendant in contravention of s 12DA(1) of the ASIC Act.

2A. An order pursuant to s 12GF of the ASIC Act that the Second Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Second Defendant in contravention of s 12DA(1) of the ASIC Act.

3. An order pursuant to s 236 of the ACL that the First Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the First Defendant in contravention of s 18 of the ACL.

3A. An order pursuant to s 236 of the ACL that the Second Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the Second Defendant in contravention of s 18 of the ACL.

4. An order pursuant to s 1317HA(1) and/or s 1325 of the Corporations Act that the First Defendant pay compensation to the Plaintiffs and Group Members for damage caused by the conduct of the First Defendant in contravention of s 674(2) and/or s 674A(2) of the Corporations Act.

5. Interest pursuant to statute on any damages, compensation or monetary sum awarded.

6. Costs.

Dated: ~~3 November 2023~~ 26 February 2025

Signed by Julian Schimmel
Lawyer for the Plaintiffs

W A D Edwards
R J May
~~**J K S Entwisle**~~
Counsel for the Plaintiffs

Maurice Blackburn Lawyers
Solicitors for the Plaintiffs

Schedule 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Further particulars may be provided after discovery.

Schedule 2

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

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

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

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

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

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

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

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

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

3 Also attached to the email was a spreadsheet, entitled "Utilities FY21 October contract selections", which listed the AusNet Contract as one of seven to be tested [DOW.3000.0057.3406].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Appended to that report was a draft opinion, proposed to be issued by KPMG on the Consolidated Financial Report for FY21, acknowledging that "[r]ecognition of revenue [was] a key audit matter" (app 1, p 18) [DOW.3000.0071.9599_0071].

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

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

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

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

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

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

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

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

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

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

18 Further particulars may be provided after discovery.

Schedule 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7G In a report to the Audit & Risk Committee on 17 June 2022, KPMG advised that "[t]here are certain contracts where we consider the divisional contract positions to be 'optimistic' and not consistent with the threshold set by accounting standards for recognition of revenue." The AusNet Contract was not one of these contracts (see pp 4–5) [DOW.3000.0071.9605_0080]. Accordingly, KPMG advised that "[r]ecognition" of the WIP on the AusNet Contract, at $34.4m, was "acceptable", and "**[t]he current level of accounting recognition appears appropriate**" (p 26) (bold in original).

8 The Revenue Training Session took place on 21 June 2022. In the Session, Hopkins presented a "Revenue recognition refresher" in which the Core Revenue Principle was repeated, and it was acknowledged that "[r]evenue recognition [was] a key financial statement risk" (pp 2, 5) [DOW.3000.0021.0795; DOW.3000.0021.0796].

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) a "WO Start Date"; and

(e) the age of the WIP.

13 From these data, it could be seen that:

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

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

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

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

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

14 On 13 August 2022, Maganty emailed KPMG a spreadsheet, entitled "WIP Descriptions", which translated the "Operation Statuses" used in the June 22 WIP Cals Spreadsheet (see particulars 13(b) and 13(d) above) [DOW.1001.0001.2588; DOW.1001.0001.2589]. In this spreadsheet:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Further particulars may be provided after discovery.