

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
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Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 123  
Rule 36.21(1)



## Notice of cross-appeal

No. NSD 115 of 2024

Federal Court of Australia  
District Registry: New South Wales  
Division: General

On appeal from the Federal Court

**Larry Crowley**

Appellant

**Worley Limited (ACN 096 090 158)**

Respondent

To the Appellant

The Respondent appeals from part of the judgment or the order as set out in this notice of cross-appeal.

The papers in the cross-appeal will be settled before a Registrar at the time and place to be advised.

Date: 28 February 2024

.....  
Signed by an officer acting with the authority  
of the District Registrar

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Filed on behalf of (name & role of party)	Worley Limited, Respondent		
Prepared by (name of person/lawyer)	Jason Betts		
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The Respondent appeals from part of the judgment of the Federal Court given on 19 December 2023 at Sydney.

### **Details of cross-appeal**

The Respondent cross-appeals from the answers given to Questions 2 to 6 and 12.1 in the Joint List for Determination as set out in order 1 of the orders made by Jackman J on 19 December 2023 and the parts of the judgment of the Federal Court given on 19 December 2023 at Sydney in proceeding NSD 1292 of 2015 (**RJ**) which support those answers.

### **Grounds of cross-appeal**

#### *A. Failure to properly determine the scope of the remitter and the matters binding on the primary court on remitter*

1. In circumstances where the learned primary judge (**Jackman J**) was required (consistently with the principles in *Harvard Nominees v Tiller Pty Ltd (No 4)* (2022) 403 ALR 498; [2022] FCA 105 (**Harvard Nominees**)) to determine the scope of the remitter, what was and was not decided by the Full Court in *Crowley v Worley Limited* (2022) 293 FCR 438; [2022] FCAFC 33 (**AJ**) and the extent to which, in the relevant context (which context included the grounds of appeal, the submissions on appeal and the primary judgment), statements contained in the Full Court's reasons were binding on the primary court on remitter, Jackman J erred in finding at RJ, [121] that he was precluded on the remitter from accepting that the relevant benchmark for questions of liability was any figure in excess of \$322 million in NPAT because the statement of the Full Court in AJ, [136] (also appearing at AJ, [114]) was not the subject of any controversy that fell to be or was decided by the Full Court, in the relevant context of the appeal, where:
  - a. the Appellant pleaded, and WOR admitted, that by making and repeating the FY14 Earnings Guidance Statement, WOR represented to the Affected Market that (a) it expected to achieve NPAT in excess of \$322 million in the financial year ending 30 June 2014; and (b) it had reasonable grounds to expect that it would achieve NPAT in excess of \$322 million in the financial year ending 30 June 2014: Fourth Further Amended Statement of Claim filed on 28 August 2019 (**4FASOC**), [51] and Further Amended Defence filed on 17 April 2019 (**FAD**), [51(c)];
  - b. the Appellant's case was run at trial by reference to the pleaded (and admitted) FY14 Guidance Representation: *Crowley v Worley Limited* [2020] FCA 1522 (**PJ**), [23]-[29];
  - c. the learned primary judge at the initial trial (**Gleeson J**) found that the FY14 Guidance Representation was a representation as to a future matter and



conveyed the representation that WOR “expected to achieve NPAT in excess of \$322 million in FY14”: PJ, [687];

- d. the finding in paragraph 1.c was not the subject of the Appellant’s Notice of Appeal filed on 19 November 2020 (**NOA**) and the NOA proposed that Question 9 be answered in the same terms as PJ, [687]: “Yes, to the extent only that it conveyed the representation that WOR expected to achieve NPAT in excess of \$322 million in FY14”; and
  - e. the parties agreed that Question 1 in the Joint List should be answered as follows: “Yes, to the extent only that it conveyed the representation that WOR expected to achieve NPAT in excess of \$322 million in FY14”, which agreed position Jackman J adopted as correct: RJ, [48].
2. Alternatively to ground 1, and in the circumstances referred to in paragraphs 1.a. to 1.e, the statements of the Full Court referred to in ground 1 (AJ, [136] and [114]) were plainly wrong, and Jackman J was not bound to follow them.
  3. In circumstances where Jackman J was required (consistently with the principles in *Harvard Nominees*) to determine the scope of the remitter, what was and was not decided by the Full Court in the AJ and the extent to which, in the relevant context (which context included the grounds of appeal, the submissions on appeal and the primary judgment), statements contained in the Full Court’s reasons were binding on the primary court on remitter, Jackman J erred in finding that his Honour was bound to follow:
    - a. (RJ, [74] and [76]): the statement at AJ, [76(5)] that Gleeson J had found that the 27 May 2013 Draft Budget was “ambitious” because this was not the subject of any controversy that fell to be or was decided by the Full Court, in the relevant context of the appeal, where:
      - i. Gleeson J found that the 27 May 2013 draft budget was not “ambitious” (PJ, [196]); and
      - ii. that finding was not the subject of the NOA;
    - b. (RJ, [85]): the statement by the Full Court at AJ, [129] that “FY13 was a buoyant market” because this was not the subject of any controversy that fell to be or was decided by the Full Court, in the relevant context of the appeal, where Gleeson J had not made, and the evidence did not support, such a finding but rather:
      - i. the Appellant pleaded (and WOR admitted) that WOR had twice downgraded its earning guidance on two previous occasions in FY2013: 4FASOC, [23] and FAD, [23(h)(i) and (ii)];



- ii. the Appellant pleaded (and WOR admitted) that in FY2013, WOR experienced challenging conditions in a number of its key markets: 4FASOC, [24(a)]; FAD, [24(b)]; PJ, [419(1)];
  - iii. Gleeson J made findings (undisturbed by the Full Court), accepting the evidence of Mr Wood, that FY13 was an “incredibly turbulent period” in which it was difficult to budget and forecast: PJ, [129]-[130]; and
  - iv. those findings were not the subject of the NOA;
- c. (RJ, [86]): the statement by the Full Court at AJ, [129] that FY14 was a “flat or falling” market because this was not the subject of any controversy that fell to be or was decided by the Full Court, in the relevant context of the appeal, where Gleeson J had not made, and the evidence did not support, such a finding, but rather:
- i. the Appellant had pleaded as set out in paragraphs 3.b.i and 3.b.ii;
  - ii. Gleeson J had made the findings at paragraph 3.b.iii and those findings were not the subject of the NOA;
  - iii. Gleeson J made findings in relation to the complexity of WOR’s business, in both geographical and sector diversity (PJ, [90], [93], [95]) and accepted Mr Wood’s undisputed evidence as to the condition of WOR’s various markets in early 2013, which were all performing differently (PJ, [130]); and
  - iv. the findings referred to in 3.c.iii were not the subject of the NOA (other than to embrace PJ, [95] as correct in ground 2(a)(i) of the NOA).
- d. (RJ, [88]): the statement by the Full Court at AJ[129] that “blue sky revenue is a function of market buoyancy” because this was not the subject of any controversy that fell to be or was decided by the Full Court, in the relevant context of the appeal where:
- i. the Appellant had pleaded as set out in paragraphs 3.b.i and 3.b.ii; and
  - ii. Gleeson J had made the findings at paragraphs 3.b.iii and 3.c.iii and those findings were not the subject of the NOA.
4. Alternatively to ground 3, on the whole of the evidence, including the undisturbed findings of Gleeson J, and in the other circumstances referred to in paragraphs 3.b.i to 3.b.iv and 3.c.iii to 3.c.iv, the statements of the Full Court referred to in paragraphs 3.a to 3.d (AJ, [76(5)] and [129]) were plainly wrong, and Jackman J was not bound to follow them.



5. In circumstances where Jackman J was required (consistently with the principles in *Harvard Nominees*) to determine the scope of the remitter, what was and was not decided by the Full Court in the AJ and the extent to which, in the relevant context (which context included the grounds of appeal, the submissions on appeal and the primary judgment), statements contained in the Full Court's reasons were binding on the primary court on remitter, Jackman J erred in finding at RJ, [51] that he was bound on the remitter to accept that:

- a. WOR's historical performance against budget or its revisions to earnings guidance in FY13 (incorrectly applying AJ, [102] and [103]) (**Historical Performance Case**); and
- b. the amount of Blue Sky revenue in the FY14 Budget, except in respect of the ANZ Region and the SWO Location (in the USAC Region) (incorrectly applying AJ, [130]) (**Blue Sky Case**),

were matters that deprived WOR of reasonable grounds because these were not the subject of any controversy that fell to be or were decided by the Full Court in the relevant context, where:

- c. the scope of the Appellant's case fell to be determined by the matters pleaded in the 4FASOC, as summarised by Gleeson J at PJ, [32]-[46];
- d. in accordance with *Banque Commerciale SA (en liq) v Akhil Holdings Ltd* (1990) 169 CLR 279; [1990] HCA 11 at 286–287, WOR consistently noted throughout the trial that it was conducting the trial on the basis that the Appellant was being held to his pleaded case; and
- e. the scope of the Appellant's pleaded case, including whether that case included the Historical Performance Case and the Blue Sky Case, was not the subject of the NOA.

6. Alternatively to ground 5, and in the circumstances referred to in paragraphs 5.c to 5.e, the statements of the Full Court referred to in ground 5 above (AJ, [102], [103] and [130]), were plainly wrong, and Jackman J was not bound to follow them.

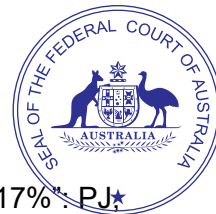
#### *B. Management Adjustments case*

7. Further or alternatively to the matters in paragraph 3.a and ground 4 above, Jackman J erred in finding at RJ, [76] that the adjustments of \$68 million in NPAT (that is, \$100 million less the uncontroversial foreign exchange adjustment of \$32 million) (**Management Adjustments**) made to the 27 May 2013 Draft Budget were prima facie unreasonable, and thereby impermissibly shifted the onus of proof to WOR to dispositively prove that the Management Adjustments were reasonable when it had



already discharged the evidentiary onus with respect to the existence of some reasonable grounds for the Management Adjustments.

8. Jackman J erred in finding at RJ, [76] that the Management Adjustments (other than the adjustments made in relation to the MENAI and ASCH Regions) lacked reasonable grounds on and from 14 August 2013 because his Honour failed to have proper regard to, and give appropriate weight to, some or all of the following:
- a. in relation to the “first round management adjustments” (other than the adjustments made in relation to the MENAI and ASCH Regions in the amount of \$6.6 million) in the amount of \$24.446 million in operational EBIT (or \$17.36 million NPAT applying the formula of 71% adopted by Jackman J in RJ, [253]), Jackman J erred at RJ, [76] in failing to take into account or give appropriate weight to the following undisturbed findings of Gleeson J, which he was bound to accept on remitter as they were undisturbed by the Full Court:
    - i. Between 29 and 31 May 2013, Mr Bradie (WOR’s Group Managing Director of Operations) conducted a round of calls to discuss the detailed location budgets with each region: PJ, [198];
    - ii. Mr Bradie’s review calls might have identified adjustments for specific locations but the regions were left to find the adjustments to be made across all locations within their purview: PJ, [203];
    - iii. Senior management did not demand adjustments to operational EBIT and adjustments were not “imposed” by senior management: PJ, [324]; and
    - iv. Locations were not “pushed too hard” in any single location or more generally: PJ, [329].
  - b. in relation to the “second round management adjustments” (other than the adjustments made in relation to the MENAI and ASCH Regions in the amount of \$6.7 million) in the amount of \$7.4 million in operational EBIT (or \$5.254 million NPAT applying the formula of 71% adopted by Jackman J in RJ [253]), Jackman J erred at RJ, [76] in failing to take into account or give appropriate weight to the following undisturbed findings of Gleeson J, which he was bound to accept on remitter as they were undisturbed by the Full Court:
    - i. Mr Wood (CEO of WOR) considered that the draft FY14 Budget as at 31 May 2013 was “unacceptable and unrealistic as it sought to justify a decrease in



operational ... EBIT of 1% with an increase in functional costs of 17%". PJ, [215];

- ii. the challenge set by Mr Wood (including in relation to the "second round management adjustments") was an attack on overhead structures: PJ, [226]; and
  - iii. the "second round adjustments" were not a product of "finding ways to pump up the numbers": PJ, [232], [334]-[335];
- c. in relation to the amount of \$23.4 million NPAT in overhead reduction made as part of the Management Adjustments (**Overheads Adjustment**), Jackman J erred in failing to take into account or give appropriate weight to:
- i. his finding at RJ, [250]-[252] that the Overheads Adjustment was not shown to lack reasonable grounds and his finding at RJ, [251] and RJ, [252] that the Overheads Adjustment satisfied the parameters of a P50 budget;
  - ii. Gleeson J's finding at PJ, [340] that WOR did not lack a reasonable basis for the Overheads Adjustment (which Jackman J correctly found he was bound by on the remitter); and
  - iii. that the Appellant did not submit that the Overhead Adjustments were unreasonable as recorded in RJ, [250] and PJ, [336].

*C. Errors in findings of knowledge of WOR and individuals within WOR*

9. Jackman J erred in finding at RJ, [105] that Mr Holt was aware of defects in the FY14 Budget and the process adopted in preparing it which meant that the chance of achieving the FY14 Budget was substantially less than a 50% likelihood, because he failed to have proper regard to, or give appropriate weight to, some or all of the following undisturbed findings of Gleeson J:
- a. it was Mr Holt who, as CFO, prepared the FY14 Budget and presented it to the Board for approval: PJ, [309];
  - b. Mr Holt attended the joint Board, Executive Committee (**ExCo**) and the CEO's Committee (**CEOC**) meeting where he presented the draft FY14 Budget, which contemplated NPAT of \$352 million, the draft Budget was the subject of presentations to and discussions with the Board over two days on 26-27 June 2013: PJ, [265]-[270];





- c. The Appellant had not pleaded a case, and the evidence did not establish, ~~that~~ the Board was not duly sceptical, and did not challenge the FY14 Budget or the budget process as presented by Mr Holt in any meaningful way: PJ, [271]-[276], [649];
- d. Mr Holt drafted and tabled the first iteration of the draft FY14 Guidance Representation, proposing to the Board that WOR announce to the ASX that WOR was “expect[ed] to achieve increased earnings in FY2014”: PJ, [298]-[300];
- e. on its face and properly construed in its context, including:
  - i. the Holt Memo Interview Notes;
  - ii. the evidence of Mr Wood referred to at PJ, [577], [580], [586] and [593]-[596];
  - iii. the evidence of Mr Wood that at the time of the initial trial in September 2019, WOR’s budget process remained largely unaltered: T610.38–T611.10; and
  - iv. the findings made by Gleeson J as to the purpose of the review conducted by Mr Holt, the outcome of which was summarised in the Holt Memorandum (PJ, [577] and [595]-[597]),

the Holt Memorandum did not reflect any view by Mr Holt or other members of senior management at the time the FY14 Budget was formulated and approved that the budget process or the FY14 Budget itself was not reasonable and did not provide reasonable grounds for the FY14 Guidance Representation, but, rather, reflected (relevantly) general observations untethered to the FY14 Budget and conclusions drawn by Mr Holt after 20 November 2013 with respect to potential flaws in the budget process.

10. By reason of the matters in 9, Jackman J erred in finding at RJ, [146] that Mr Holt was aware, and held the opinion, throughout the Relevant Period that WOR did not have a reasonable basis for making the FY2014 Earnings Guidance Statement.
11. Jackman J erred in finding at RJ, [110] that Mr Bradie thought that it was more likely than not that the FY14 Budget would not be achieved because he failed to have proper regard to, or give appropriate weight to, some or all of the following:
  - a. The eight regional managing directors reported to Mr Bradie, and Mr Bradie reported directly to Mr Wood, the CEO: PJ, [97]-[98].
  - b. Mr Bradie was likely to have thought that the FY14 Budget was achievable: RJ, [110];



- c. Mr Bradie was determined to do his best to achieve the FY14 Budget, believing that that could be done: RJ, [110];
  - d. Between 29 May 2013 and 31 May 2013, Mr Bradie conducted a round of calls with each region (PJ, [198(1)]) and identified adjustments to be made by regions in excess of the adjustments ultimately made by locations (PJ, [201]-[203]);
  - e. On 11 and 12 June 2013, Mr Bradie sent emails to the regions requesting amendments (PJ, [233]) in excess of the adjustments ultimately made by locations (PJ, [243]). The reason specified in the request for adjustments was, in many cases, “drop in GM/hour; “drop in GM versus revenue”; or “overheads increase” (PJ, [237]); and
  - f. Mr Bradie attended the joint Board, ExCo and CEOC meeting over two days on 26-27 June 2013 where he participated in presentations to, and discussions with, the Board with respect to the draft FY14 Budget, which contemplated NPAT of \$352 million: PJ, [265]-[270].
12. By reason of the matters in 11, Jackman J erred in finding at RJ, [146] that Mr Bradie was aware, and held the opinion, throughout the Relevant Period that WOR did not have a reasonable basis for making the FY2014 Earnings Guidance Statement.
  13. Jackman J erred in finding that Mr Daly and Mr Allen’s knowledge of matters relevant to the FY14 Guidance Representation was properly attributable to WOR because he failed to have proper regard for or give appropriate weight to the fact there were three relevant management committees of WOR (the Board, the Executive Committee (**ExCo**) and the CEO’s Committee (**CEOC**)) (PJ, [96]–[100]), of which neither Mr Daly nor Mr Allen were members and they did not have any direct responsibility to deliver any aspect of the FY14 Budget.
  14. Jackman J erred in finding at RJ, [113] that Mr Daly was aware that there was a lack of reasonable grounds for the FY14 Budget, because he failed to have proper regard to, or give appropriate weight to, some or all of the following:
    - a. Mr Daly thought that the forecasts were achievable: RJ, [113];
    - b. the email sent by Mr Daly to Mr Holt on 7 August 2013 and quoted by Jackman J at RJ, [112] indicated that there was a view within the business, with which Mr Daly agreed, to the effect that the FY14 Budget targets were a “stretch” but did not indicate or imply that he or anyone else considered them to be unreasonable or unlikely to be achieved;



- c. no other contemporaneous documentary evidence was identified by Jackman J as supporting the inference that Mr Daly considered the FY14 Budget targets were unlikely to be achieved;
  - d. Mr Daly did not have direct responsibility to deliver any aspect of the FY14 Budget, and was not interviewed by Mr Holt for the purpose of the Holt Memorandum; and
  - e. drawing adverse inferences against WOR as to Mr Daly's state of mind on the basis that of a finding at RJ, [113] that "Mr Daly remained an employee of WOR at the time of the initial hearing", when Gleeson J had made an undisturbed finding which bound him on the remitter to the effect that the current employment of Mr Daly at the time of trial was unknown: PJ, [70(2)].
15. Jackman J erred in finding at RJ, [115] that Mr Allen was aware by 14 August 2013 that the FY14 Budget lacked reasonable grounds because he failed to have proper regard to, or give appropriate weight to, some or all of the following:
  - a. the email, which was the only piece of evidence referred to by his Honour as a foundation for the inference, was written on 11 June 2013 when the FY14 Budget was still under development – that is, before the second round of management adjustments (the subject of undisturbed findings by Gleeson J at PJ [247], [333]-[335]) and the CEOC overhead savings (the subject of undisturbed findings by Gleeson J at PJ, [248], [252], [255] and [257]), and more than two months before the FY14 Budget was finalised and approved by the Board;
  - b. properly construed, the email did not indicate or imply that Mr Allen thought that the then draft budget or the final FY14 Budget was unrealistic, either at the time the email was written or as at 14 August 2013; and
  - c. Mr Allen did not have direct responsibility to deliver any aspect of the FY14 Budget, and was not interviewed by Mr Holt for the purpose of the Holt Memorandum.
16. Further or alternatively to the matters in 9 to 15, Jackman J erred in:
  - a. failing to make a finding as to whose knowledge was properly attributable to WOR for the purposes of determining WOR (as the representor) was aware of matters that falsified the opinion constituted by the FY14 Guidance Representation (RJ, [102], [116]); alternatively,
  - b. finding that the opinions of one or more of Mr Holt, Mr Bradie, Mr Allen and Mr Daly were properly attributable to WOR and established that WOR (as the



representor) was aware of matters that falsified the opinion constituted by the FY14 Guidance Representation (RJ, [102], [116]),

in circumstances where:

- c. Gleeson J made undisturbed findings that the Board considered that the opinion constituted by the FY Guidance Representation was held on reasonable grounds, being the FY14 Budget (PJ, [646]) and held that opinion in circumstances where:
  - i. the Board approved the FY14 Budget on 13 August 2013, having had the opportunity to discuss it with and challenge management on it over a period of two days on 26-27 June 2013: PJ, [258], [265]-[270], [297]-[302], [309];
  - ii. the Board, through the Audit & Risk Committee, was very careful in its choice of language in its earnings guidance: PJ, [305]; and
  - iii. the FY14 Earnings Guidance Statement expressed the opinion that “we expect our geographic and sector diversification to deliver increased earnings in FY2014”;
- d. Mr Wood (who was a member of the Board) was “comfortable” with the FY14 Budget and he held the opinion that the FY14 Budget was reasonable: PJ, [311] and [314];
- e. Mr Ashton, the Regional Managing Director for MENAI, who was interviewed by Mr Holt for the purpose of compiling the Holt Memorandum, was “confident that the MENAI FY14 Budget was reasonable”: PJ, [312], [314]; and
- f. Mr Lucey, the Regional Managing Director for ASCH, who was interviewed by Mr Holt for the purpose of compiling the Holt Memorandum, was “comfortable” that the ASCH budget for FY14 was reasonable: PJ, [313], [314];

and:

- g. each of the members of the Board, and Mr Wood, and Mr Ashton, and Mr Lucey was an officer or senior employee of WOR whose knowledge was properly attributable to WOR upon ordinary agency principles and held opinions contrary to those attributed by Jackman J to WOR; and
- h. Mr Allen and Mr Daly were more junior officers of the company (not being members of the Board, ExCo or CEOC), with no direct responsibility to deliver any aspect of the FY14 Budget.



17. By reason of the matters in 16, Jackman J erred in finding at RJ, [116] that WOR was aware of matters that falsified the FY14 Guidance Representation and that it lacked reasonable grounds for the FY14 Guidance Representation.
18. Further, by reason of the matters in 16, Jackman J erred in finding at RJ, [152] that WOR was “aware” of the within the meaning of ASX Listing Rule 19.12 of the FY2014 Guidance Material Information at all times throughout the Relevant Period.

*D. Performance case*

19. Jackman J erred in finding at RJ, [124] that there was no longer a reasonable basis for the FY14 Budget after 14 August 2013 because his Honour:
  - a. failed to have proper regard to, and give appropriate weight to, his Honour’s finding at RJ, [117] that the email from Mr Bradie to Mr Wood and Mr Holt on 21 September 2013 that referred to the need for a “major reset out of CEOC/ExCo referred to Mr Wood and Mr Bradie holding the opinion that a change in the business operations of WOR could be implemented as at that date in order to achieve the FY14 Budget;
  - b. failed to have proper regard to, and give appropriate weight to, the fact that each of the finance reports and forecasts referred to at RJ, [117]-[123] showed that WOR’s financial performance for FY14 was still in line with guidance of NPAT in excess of \$322 million (as to which, WOR refers to grounds 1 and 2 above); and
  - c. erred in construing the finding of Gleeson J at PJ [463] as a finding that the Appellant had not established that it was beyond WOR’s ability to achieve an NPAT in the order of \$352 million when:
    - i. having regard to the evidence referred to by her Honour in the antecedent paragraphs and the question with which Gleeson J was concerned (namely, whether WOR had reasonable grounds for maintaining and repeating the FY14 Guidance Statement after 14 August 2013), properly construed PJ, [463] embodied a finding that there were reasonable grounds as at 21 September 2013 to expect that WOR would meet its FY Budget; and
    - ii. that finding had not been disturbed, such that Jackman J was bound it.

**Orders sought**

1. The Cross-Appeal be allowed.
2. Order 1 of the orders made on 19 December 2023 be varied such that Questions 2 to 6 and 12.1 in the Joint List of Issues for Determination be answered as set out in Annexure A to this Notice of Cross-Appeal.
3. The Appellant pay the Respondent's costs.

**Respondent's address**

The Respondent's address for service is:

Place: Herbert Smith Freehills, ANZ Tower, Level 34, 161 Castlereagh Street, Sydney NSW 2000

Email: [Jason.betts@hsf.com](mailto:Jason.betts@hsf.com)

The Respondent's address is Level 17, 141 Walker Street, North Sydney, New South Wales 2060.

**Service on the Appellant**

It is intended to serve this notice of appeal on all Appellants.

Date: 28 February 2024

A handwritten signature in black ink, appearing to read 'Jason Betts'.

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Signed by Jason Betts  
Lawyer for the Respondent



## Annexure A

### Respondent's Proposed Variation the answers to the questions asked in the Joint List of Issues for Determination

Question 2: At any time throughout the period from 14 August 2013 to 19 November 2013 (**Relevant Period**), alternatively in the period from 9 October 2013, 10 October 2013 or 15 October 2013 to the end of the Relevant Period:

2.1 in so far as the FY2014 Guidance Representation was a representation as to present matters, was it misleading or deceptive, or likely to mislead or deceive; and

2.2 in so far as the FY2014 Guidance Representation was a representation as to future matters, was it made without a reasonable basis?

Answer: No

Question 3: By making the FY2014 Guidance Representation, did WOR engage in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of any of the pleaded statutes (**Misleading or Deceptive Conduct**) during all or any part of the Relevant Period (and if so, when) (**FY2014 Guidance Representation Contravention**)?

Answer: No

Question 4: By making the FY2014 Earnings Guidance Statement, did WOR engage in Misleading or Deceptive Conduct during all or any part of the Relevant Period (and if so, when) (**FY2014 Guidance Statement Contravention**)?

Answer: No

Question 5: At any time during the Relevant Period, was it the fact that WOR did not have a reasonable basis for making the FY2014 Earnings Guidance Statement (**FY2014 Guidance Material Information**)?

Answer: No

Question 6: If the answer to question 5 is "yes", was WOR "aware" within the meaning of ASX Listing Rule 19.12 of the FY2014 Guidance Material Information at any time during the Relevant Period (and if so, when)?

Answer: Not applicable

Question 12.1: Did WOR contravene section 674(2) of the Corporations Act by not informing the ASX of the FY2014 Guidance Material Information on 14 August 2013, 21 September 2013, 9 October 2013 or 15 October 2013 (**FY2014 Guidance Material Information Contravention**)?

Answer: No