

## NOTICE OF FILING

### Details of Filing

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File Title:	KATHLEEN O'DONNELL v COMMONWEALTH OF AUSTRALIA & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

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.



## **Fourth Further Amended Statement of claim**

*Amended on 20 December 2022 pursuant to order 4 of the order of Murphy J dated  
25 October 2022*

No. VID482 of 2020

Federal Court of Australia  
District Registry: Victoria  
Division: General

**KATHLEEN O'DONNELL**

Applicant

**THE COMMONWEALTH OF AUSTRALIA**

Respondent

### **A PARTIES**

#### **A.1 Applicant**

1 On and since 7 July 2020, the applicant:

1.1 has owned five "Exchange-traded Australian Government Bond" units in the form of an exchange-traded Treasury Index Bond (**eTIB**), each unit:

- (a) with maturity date 21 February 2050;
- (b) with ASX code GSIC50;
- (c) a face value of \$100.00.
- (d) with a coupon interest rate of 1.00% per annum;

Filed on behalf of	Kathleen O'Donnell		
Prepared by	David Barnden		
Law firm	Equity Generation Lawyers		
Tel	03 9607 8300	Fax	03 9088 9445
Email	<a href="mailto:david@equitygenerationlawyers.com">david@equitygenerationlawyers.com</a>		
Address for service	L40 140 William Street, Melbourne VIC 3000		

- (e) with coupon payment dates of 21 February, 21 May, 21 August and 21 November.

**Particulars**

The applicant purchased five eTIB units with code GSIC50 on 3 July 2020 at an average price of \$125.72 per unit, for total consideration of \$628.60. The settlement date was 7 July 2020.

- 1.2 has owned four “Exchange-traded Australian Government Bond” units in the form of an exchange-traded Treasury Bond (**eTB**):

- (a) with maturity date 21 March 2047
- (b) with ASX code GSBE47;
- (c) a face value of \$100.00.
- (d) with a coupon interest rate of 3.00% per annum;
- (e) with coupon payment dates of 21 March and 21 September.

**Particulars**

The applicant purchased four eTB units with code GSBE47 on 3 July 2020 at an average price of \$127.78 per unit, for total consideration of \$521.15. The settlement date was 7 July 2020.

- 1A On the maturity date:

- 1A.1 for an eTIB, the nominal value of the unit will be paid to the holder (being the face value adjusted for inflation by reference to the Consumer Price Index (**CPI**)), unless that nominal value is less than the face value; and

- 1A.2 for an eTB, the face value of the unit will be paid to the holder.

- 1B On each coupon payment date:

- 1B.1 for an eTIB, an interest payment will be made at the coupon interest rate, calculated by reference to the nominal value of the unit (being the face value adjusted for inflation by reference to the CPI as at the coupon payment date), unless that nominal value is less than the face value.

- 1B.2 for an eTB, an interest payment will be made at the coupon interest rate, calculated by reference to the face value of the unit.

- 1C eTIBs and eTBs are traded daily on the ASX at their current market prices determined by the prices offered by purchases and accepted by vendors (the **value of eAGBs**).
- 1D The value of eAGBs will be influenced by:
- 1D.1 the Commonwealth's status and reputation as a reliable, safe and relatively risk-free issuer of sovereign debt securities;
  - 1D.2 the Commonwealth's capacity to discharge its interest and principal obligations under eAGBs;
  - 1D.3 the credit rating of the Commonwealth Government, with the value of eAGBs likely to decrease if and to the extent that the credit rating of the Commonwealth Government decreases below its AAA rating;
  - 1D.4 the coupon interest rate, relative to current market interest rates of other securities the issuers of which have substantially the same credit rating as the Commonwealth Government:
    - (a) which is likely to increase if and to the extent that the coupon interest rate exceeds current market interest rates of the other securities;
    - (b) which is likely to decrease if and to the extent that the coupon interest rate is less than the current market interest rates of the other securities;
  - 1D.5 the time period until the maturity date, with the current value of the eAGB more likely to approach the face value of the relevant eAGB as the maturity date becomes closer;
  - 1D.6 the value of the underlying AGB in the secondary wholesale market (see paragraph 31 below).

## **A.2 Representative Proceeding**

- 2 The applicant brings this proceeding on her own behalf and on behalf of represented persons (**Represented Persons**) pursuant to rule 9.21 of the *Federal Court Rules 2011* (Cth).
- 3 The Represented Persons are all persons who, at any time on or since 7 July 2020 have acquired:
- 3.1 one or more eAGB units in the form of an eTIB with code GSIC50; and/or

3.2 one or more eAGB units in the form of an eTB with code GSBE47;

and continue to hold one or more of those units as at the date of this pleading.

- 4 The applicant and the Represented Persons have the same interest in the proceeding insofar as it relates to the relief sought at paragraph 107 below.

### A.3 Respondent

- 5 The respondent is the Commonwealth of Australia (**Commonwealth**) and is a body politic capable of being sued in its name.

#### Particulars

Constitution, s 75(iii).

- 6 [Deleted in 3FASOC].

- 7 [Deleted in 3FASOC].

- 8 [Deleted in 3FASOC].

- 9 [Deleted in 3FASOC].

- 10 [Deleted in 3FASOC].

- 11 [Deleted in 3FASOC].

- 12 The Australian Office of Financial Management (**AOFM**) is part of the Department of the Treasury (**Treasury**) portfolio.

- 13 The Chief Executive Officer of the AOFM is accountable to the Secretary to the Treasury (**Treasury Secretary**).

- 14 Both the Treasury Secretary and the CEO of the AOFM are accountable to the Treasurer of Australia (the **Treasurer**).

- 15 The Treasurer is a Minister of State and is responsible for the administration of the Treasury.

#### Particulars

Constitution, s 64

- 16 [Deleted in 3FASOC].

- 17 The Treasurer administers the *Commonwealth Inscribed Stock Act 2011* (Cth) (**Inscribed Stock Act**).

**Particulars**

Administrative Arrangements Order, signed 5 December 2019.

**B JURISDICTION**

- 18 The Court has jurisdiction in this matter:

- 18.1 pursuant to ss 12GD, 12GJ and 12HD of the *Australian Securities and Investments Commission 2001* (Cth) (**ASIC Act**) by reason of the matters set out in Part G below;
- 18.2 [Deleted in 3FASOC];
- 18.3 pursuant to s 39B(1A)(c) of the Judiciary Act because the matter arises under a law made by the Parliament, namely the Inscribed Stock Act by reason of the matters set out in paragraphs 19 to 22 below;
- 18.4 alternatively to paragraphs 18.2 and 18.3 above, pursuant to s 1337B(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) because it is a civil matter arising under the Corporations legislation (as defined in s 9 of the Corporations Act), namely:
- 18.5 under or by reason of the Corporations Act because of the matters in paragraphs 43 to 59 below.
- 18.6 under or by reason of the ASIC Act because of the matters set out in Part G below.

**C AUSTRALIAN GOVERNMENT BONDS**

**C.1 Issue of stock under Inscribed Stock Act**

- 19 Section 3 of the Inscribed Stock Act relevantly defines:
- 19.1 “stock” to include “Treasury Bonds”; and
- 19.2 “Treasury Bond” to include a “Treasury Fixed Coupon Bond” and a “Treasury Indexed Bond”.
- 20 Section 4(1)(a) of the Inscribed Stock Act provides that the Governor-General may create stock from time to time for raising money by way of loan.

- 21 Under s 3A(1) of the Inscribed Stock Act, the Treasurer has power to borrow money on behalf of the Commonwealth by issuing stock denominated in Australian currency.
- 22 The power in s 3A(1) of the Inscribed Stock Act has been delegated to officers of AOFM pursuant to s 51JA of the Inscribed Stock Act.

## **C.2 Depository interests under the Inscribed Stock Act**

- 23 Section 3 of the Inscribed Stock Act defines a “depository nominee” as a person who, with the agreement of the Commonwealth, issues to someone else one or more beneficial interests in stock the person:
  - 23.1 owns legally; or
  - 23.2 would own beneficially, apart from the issue of those interests; or
  - 23.3 has a beneficial interest in.
- 24 Section 3 of the Inscribed Stock Act defines “depository interest” as a beneficial interest in stock issued by a depository nominee (as a depository nominee).
- 25 Section 3 of the Inscribed Stock Act defines “depository interest registry operator” to mean a person who has been engaged by a depository nominee to make payments:
  - 25.1 on behalf of the depository nominee; and
  - 25.2 to holders of depository interests issued by the depository nominee; and
  - 25.3 on account of those interests.
- 26 Pursuant to s 13AA of the Inscribed Stock Act, the Consolidated Revenue Fund is appropriated to the extent necessary for the payment of:
  - 26.1 principal secured by stock; and
  - 26.2 interest on that principal; and
  - 26.3 amounts that are to be paid by the Commonwealth to depository nominees or depository interest registry operators for payment by or on behalf of the depository nominees to holders of depository interests, on account of either or both of:
    - (a) principal secured by stock in which the depository interest are beneficial interests; and

(b) interest on that principal.

27 Further, pursuant to s 13A of the Inscribed Stock Act, the Consolidated Revenue Fund is appropriated to the extent necessary for the payment of, among other things:

27.1 the costs and expenses incurred by the Commonwealth that relate directly or indirectly to the issue, management or transfer of depository interests, including but not limited to:

(a) fees charged by depository nominees or depository interest register operators; and

(b) clearing and settlement facility fees; and

27.2 the costs and expenses incurred by the Commonwealth in relation to the making of payments by the Commonwealth referred to in paragraph 26.3 above.

28 Pursuant to s 13C of the Inscribed Stock Act, on behalf of the Commonwealth, the Treasurer may enter into, vary, administer or otherwise give effect to a contract, agreement or arrangement relating, directly or indirectly, to one or more of the following:

28.1 the issue, management or transfer of stock or depository interests;

28.2 the trading of stock or depository interests on a financial market;

28.3 services relating to one or more of the following:

(a) a registry that relates to stock or depository interests;

(b) a clearing and settlement facility;

(c) depository nominees.

### **C.3 AGBs and eAGBs**

29 Pursuant to s 3A(1) of the Inscribed Stock Act, officers of the AOFM, on behalf of the Commonwealth, issue the following stock from time to time:

29.1 Treasury Bonds (**TB**); and

29.2 Treasury Indexed Bonds (**TIB**).

(together, **Australian Government Bonds** or **AGB**)



30 The Commonwealth:

30.1 applied for participant status in the Austraclear System, through application to the ASX on 24 November 2008, to enable and facilitate the issue and trading of AGBs on a wholesale market; and

30.2 was granted approval as a full participant of the Austraclear System on 19 February 2009.

30A The Commonwealth maintains a registered bidders list which, as at 3 May 2021, identified 28 registered bidders.

**Particulars**

The registered bidders as at 3 May 2021 are Australia and New Zealand Banking Group Limited, AMP Capital Investors Limited, Bank of America, Barrenjoey Markets Pty Limited, Bendigo and Adelaide Bank Limited, BNP Paribas, Challenger Life Company Limited, Citigroup Global Markets Australia Pty Limited, Cooperatieve Rabobank U.A. Australia Branch, Commonwealth Bank of Australia, Deutsche Capital Markets Australia Limited, Hongkong and Shanghai Banking Corporation Limited Sydney Branch, Goldman Sachs International, Goldman Sachs Financial Markets Pty Ltd, J.P Morgan Australia Limited, J.P. Morgan Securities Australia Limited, Macquarie Bank Limited, Mizuho Securities Asia Limited, Morgan Stanley Australia Securities Limited, National Australia Bank Limited, Nomura International PLC, Rabobank Australia Limited, Royal Bank of Canada, Toronto-Dominion Australia Limited, Toronto Dominion (South East Asia) Limited, UBS AG Australia Branch and Westpac Banking Corporation.

31 There exists a wholesale market for AGBs, which consists of:

31.1 a primary wholesale market in which:

- (a) the registered bidders referred to in paragraph 30 above participate; and
- (b) in which no other person or entity can participate unless added to the registered bidders list maintained by the Commonwealth; and

31.2 a secondary wholesale market in which institutions described as “market makers” trade directly between themselves and with investors who can participate in the secondary wholesale market for AGBs.

32 Retail investors, such as the applicant, are not able to participate in either component of the wholesale market for AGBs.

33 Retail investors, such as the applicant, are able to obtain “depository interests”, as defined in the Inscribed Stock Act, in AGBs.

34 There are two classes of depository interests available to retail investors:

34.1 an eTB, which is a beneficial interest in a TB;

34.2 an eTIB, which is a beneficial interest in a TIB.

(together **eAGBs**).

#### **C.4 The ASX Services Agreement**

35 The Commonwealth entered into an agreement (**ASX Services Agreement**) with:

35.1 ASX Operations Pty Ltd (ABN 42 004 523 782);

35.2 ASX Limited (ABN 98 008 624 691);

35.3 ASX Clear Pty Ltd (ABN 48 001 314 503);

35.4 ASX Settlement Pty Ltd (ABN 49 008 504 532);

35.5 CHESS Depository Nominees Pty Ltd (ABN 75 071 346 506) (**CHESS DN**);

35.6 Austraclear Limited (ABN 94 002 060 773).

(together, the **ASX Entities** or, where relevant, **ASX**).

##### **Particulars**

The agreement is in writing and is titled the Services Agreement in relation to Trading of Government Bond Depository Interests, and is dated 21 March 2013.

The ASX Entities are defined in cl 3.1 of the ASX Services Agreement. “ASX” is defined to mean a reference to each relevant ASX Entity (cl 1.3).

36 Pursuant to the ASX Services Agreement:

36.1 the ASX approved eAGBs for quotation and trading on the market operated by the ASX; and

36.2 the ASX provides to the Commonwealth services to facilitate those processes, for which the Commonwealth is obliged to pay service fees;

36.3 the Commonwealth agreed to comply with the ASX Operating Rules, the ASX Settlement Operating Rules, the Austraclear Regulations and the ASX Clear Operating Rules to the extent that those rules apply to it as a Government Bond Issuer.

**Particulars**

Clauses 5.2, 6.1(a), and 11.1 of the ASX Services Agreement.

- 36A ASX Settlement relevantly operates the Clearing House Electronic Subregister System (**CHESS**) for the purpose of settling transactions in approved financial products (which includes eAGBs), transferring financial products and registering transfers.

**Particulars**

ASX Settlement Operating Rules, cl 2.13 (definition of CHESS).

- 36B CHESS DN:

- 36B.1 was appointed the “Depository Nominee” for the purpose of cl 13.2.2 of the ASX Settlement Operating Rules;

**Particulars**

See cl 8.1 of the ASX Services Agreement.

- 36B.2 holds the legal title to certain AGBs (which fact is recorded in CHESS), which title was vested in it by the Commonwealth;

**Particulars**

See ASX Settlement Operating Rules, cll 13.2.3, 13.4.1.

- 36B.3 issues, with the agreement of the Commonwealth, eAGBs in respect of those AGBs to which it holds legal title;

- 36B.4 by reason of paragraph 36B.3 above is a “depository nominee” within the meaning of the Inscribed Stock Act.

- 36C The Commonwealth:

- 36C.1 pursuant to the ASX Services Agreement and the ASX Settlement Operating Rules, must pay, or cause payment, of any entitlements (including interest, principal and any other payments) in respect an AGB held by CHESS DN to the holder of the relevant eAGB.

**Particulars**

Clauses 2.13 (definition of “Entitlements”) and 13.6A.3 of the ASX Operating Rules.

Clause 8.2(c) of the ASX Services Agreement;

- 36C.2 by reason of paragraph 36C.1 above is a “depository interest registry operator” within the meaning of the Inscribed Stock Act.

36D Pursuant to the ASX Services Agreement, the ASX has appointed market makers to:

36D.1 provide continuous bid and offer prices for all eAGBs; and

36D.2 conduct their market making activities in such a fashion as to provide liquidity in the market for eAGBs.

**Particulars**

Clause 9.1 of the ASX Services Agreement.

The current market makers are the Commonwealth Bank of Australia and JP Morgan, who are also registered bidders who participate in the secondary wholesale market.

**C.5 Computershare Contract**

37 The Commonwealth entered into an agreement (the **Computershare Contract**) with Computershare Fund Services Pty Limited (ABN 18 107 333 308) (**Computershare**) to establish and maintain for the Commonwealth:

37.1 the register for AGBs;

37.2 the register for eAGBs;

**Particulars**

The Computershare Contract is in writing and was executed by the Commonwealth (as represented by the AOFM) and Computershare on or about 13 November 2012

Schedule 2A.1, Item (2) of the Computershare Contract.

Clause 7.1 of the ASX Services Agreement.

Clauses 13.5.1 and 13.5.6 of the ASX Settlement Operating Rules.

38 [Deleted in 4FASOC]

39 [Deleted in 4FASOC]

40 [Deleted in 4FASOC]

41 [Deleted in 4FASOC]

42 Pursuant to the Computershare Contract, the payments to holders of eAGBs referred to in paragraph 36C.1 above are made by the Commonwealth through Computershare.

## **C.6 The Corporations Act**

- 43 For the purposes of Ch 7 of the Corporations Act, an AGB is a “financial product” (as defined in s 764A(1)(a)(j)).
- 44 For the purposes of Ch 7 of the Corporations Act, an eAGB is:
- 44.1 a “CGS depository interest” (as defined in s 761A);
  - 44.2 a “security” (as defined in para (f) in definition of “security” in s 761A); and
  - 44.3 a “financial product” (as defined in s 764A(1)(a)).
- 45 As defined in s 1020AH of the Corporations Act, an “information statement” for a class of CGS depository interests is a document that:
- 45.1 contains a statement that the document is an information statement for that class for the purposes of Div 5C of Pt 7.9 of the Corporations Act;
  - 45.2 contains information about all CGS depository interests of that class (whether or not it also contains information about CGS depository interests of another class);
  - 45.3 is prepared by the Commonwealth; and
  - 45.4 is published on the “CGS depository interest information website”.
- 46 The “CGS depository interest information website” as defined in s 1020AH of the Corporations Act is the website at [www.australiangovernmentbonds.gov.au](http://www.australiangovernmentbonds.gov.au) (the **AGB Website**).

### **Particulars**

Regulation 7.9.61E of the *Corporations Regulations 2001* (Cth) specifies that the CGS depository interest information website is the website at [www.australiangovernmentbonds.gov.au](http://www.australiangovernmentbonds.gov.au)

## **C.7 Publication of information by the Respondent**

- 47 The Commonwealth has prepared an “information statement” (**Information Statement**) within the meaning of s 1020AH of the Corporations Act for each class of eAGBs.

### **Particulars**

The Information Statements for eTBs and eTIBs are both dated 10 February 2015.

- 48 The Information Statement for each class of eAGB is published on the AGB Website (page headed “Investor Information Statements”).

**Particulars**

<https://www.australiangovernmentbonds.gov.au/how-invest/investor-information-statements>

- 49 The AGB Website (page headed “How to invest”) directs potential investors to read:

49.1 the relevant **Term Sheet** for the specific series of the underlying AGB; and

49.2 the relevant **Investor Information Statement**.

**Particulars**

<https://www.australiangovernmentbonds.gov.au/how-invest/>

- 50 The Term Sheet and Information Memorandum for each class of eAGB are published on the AGB Website, and direct links to those documents are provided on page headed “Investor Information Statements”.

**Particulars**

<https://www.australiangovernmentbonds.gov.au/how-invest/investor-information-statements>

- 51 The AGB Website (page headed “Exchange-traded Treasury Bonds”) provides certain information about eTBs.

**Particulars**

<https://www.australiangovernmentbonds.gov.au/bond-types/exchange-traded-treasury-bonds>

- 52 The AGB Website (page headed “Exchange-traded Treasury Indexed Bonds”) provides certain information about eTIBs.

**Particulars**

<https://www.australiangovernmentbonds.gov.au/bond-types/exchange-traded-treasury-indexed-bonds>

- 53 The Commonwealth is responsible for the publication, maintenance and updating of:

53.1 the Information Statements;

53.2 the Term Sheets;

53.3 the Information Memoranda; and

53.4 the AGB Website.

(the **Disclosure Documents**).

**Particulars**

<https://www.australiangovernmentbonds.gov.au/how-invest/investor-information-statements>

## **C.8 Contents of information published by the Respondent**

### ***C.8.1 Information Statements***

54 The Information Statement for eTBs:

54.1 directs the reader to the relevant Term Sheet for the specific series of the underlying TB;

54.2 directs the reader to the relevant Information Memorandum for each class of underlying TB;

54.3 includes a summary of certain risks which prospective investors should consider when deciding whether to invest in eTBs;

54.4 identifies those risks as:

- (a) changes in market price; and
- (b) conversion by the Australian Government;

54.5 does not identify any other risks associated with investing in eTBs.

55 The Information Statement for eTIBs:

55.1 directs the reader to the relevant Term Sheet for the specific series of the underlying TIB;

55.2 directs the reader to the relevant Information Memorandum for each class of underlying TIB;

55.3 includes a summary of certain risks which prospective investors should consider when deciding whether to invest in eTIBs;

55.4 identifies those risks as:

- (a) changes in market price;

- (b) deflation; and
- (c) conversion by the Australian Government;

55.5 does not identify any other risks associated with investing in eTIBs.

### **C.8.2 AGB Website**

56 The webpage referred to in paragraph 51 above:

- 56.1 includes a sub-heading “Risks of eTBs”;
- 56.2 states below that sub-heading risks associated with investing in eTBs, which it states should be considered when deciding to invest in eTBs;
- 56.3 identifies the following risks:
  - (a) “Changes in market price”;
  - (b) “Conversion by Australian Government”;
- 56.4 does not identify any other risks.

57 The webpage referred to in paragraph 52 above:

- 57.1 includes a sub-heading “Risks of eTIBs”;
- 57.2 states below that sub-heading risks associated with investing in eTIBs, which it states should be considered when deciding to invest in eTIBs
- 57.3 identifies the following risks:
  - (a) “Changes in market price”;
  - (b) “Deflation”;
  - (c) “Conversion by Australian Government”;
- 57.4 does not identify any other risks.

### **C.8.3 Term Sheets**

58 The Term Sheet for each series of AGB does not disclose any risks associated with investing in AGBs.



#### ***C.8.4 Information Memoranda***

- 59 The Information Memorandum for each class of AGB does not disclose any risks associated with investing in AGBs.

### **D CLIMATE CHANGE RISKS**

- 60 On and since 7 July 2020 (the **material times**), there has existed a significant likelihood that the climate is changing, and will continue to change, as the result of anthropogenic influences (**Climate Change**).

- 60A It is an objective of the Paris Agreement, made on 12 December 2015, ratified by the Commonwealth on 10 November 2016 and entered into force in Australia on 9 December 2016, to strengthen the global response to the threat of Climate Change, including by holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels (**Paris Objective**), recognizing that this would significantly reduce the risks and impacts of Climate Change.

#### **Particulars**

Paris Agreement, Article 1(a).

### **D.1 Physical Risks**

- 61 At the material times, it has been projected that Australia will experience the following **Physical Impacts** as a result of Climate Change over the coming decades, including before the maturity dates of the eAGBs held by the applicant:
- 61.1 continued warming, with more extremely hot days and fewer extremely cool days;
  - 61.2 a decrease in cool season rainfall across many regions of the south and east, likely leading to more time spent in drought;
  - 61.3 a longer fire season for the south and east and an increase in the number of dangerous fire weather days;
  - 61.4 more intense short-duration heavy rainfall events, and serious flooding events, throughout the country;
  - 61.5 fewer tropical cyclones, but a greater proportion projected to be of high intensity, with ongoing large variations from year to year;

- 61.6 fewer east coast lows particularly during the cooler months of the year, and for events that do occur, sea level rise will increase the severity of some coastal impacts;
- 61.7 more frequent, extensive, intense and longer-lasting marine heatwaves leading to increased risk of more frequent and severe bleaching events for coral reefs, including the Great Barrier and Ningaloo reefs;
- 61.8 continued warming and acidification of its surrounding oceans;
- 61.9 ongoing sea level rise;
- 61.10 more frequent extreme sea level events, which were once per hundred year events becoming, over time, annual events.

#### Particulars

The *State of the Climate 2020* Report is published by the Commonwealth (the CSIRO and the Bureau of Meteorology) and identifies the matters above: see summary at page 3.

The *State of the Climate 2022* Report is published by the Commonwealth (the CSIRO and the Bureau of Meteorology) and identifies expected future changes in Australia's weather and climate: see summary at page 3.

The *Intergenerational Report 2021* is published by the Commonwealth, and was circulated by the Treasurer, the Minister responsible for the Department of Treasury.

The *Intergenerational Report 2021* recognises that climate change presents a significant challenge to the natural environment: see at 57-58.

Particulars derived from further Reports will be provided as and when those reports are published (**further particulars**).

- 62 At the material times, the Commonwealth receives, directly and indirectly, revenue (including taxes) from:
  - 62.1 the agricultural industry;
  - 62.2 the tourism industry;
  - 62.3 industries and communities located on Australia's coastlines;
  - 62.4 industries and communities located in areas that are at risk of being affected by bushfires or bushfire smoke;
  - 62.5 industries and communities located in areas that are at risk of being affected by drought or heatwave;

- 62.6 industries and communities located in areas that are at risk of being affected by short-duration heavy rainfall events and serious flooding events;
- 62.7 industries and communities located in areas that are at risk of being affected by tropical cyclones and east coast lows;
- 62.8 the resources industry (including the fossil fuel industry);
- 62.9 the financial industry, including the insurance industry;
- 62.10 the export industries;
- 62.11 the construction industry;

and from individuals employed by, or associated with, those industries and communities (collectively, **Vulnerable Industries**).

62A At the material times, the Vulnerable Industries contribute a significant amount to, and/or a significant proportion of, Australia's annual gross domestic product (**GDP**).

62B There is a real, rather than a remote, risk that, before the maturity dates of the eAGBs held by the applicant, the Physical Impacts will significantly reduce the economic output of the Vulnerable Industries and, therefore, cause over the period before the maturity dates of the eAGBs held by the applicant:

- 62.12 a significant decline in Australia's annual GDP, and annual GDP growth rate; and
- 62.13 a significant decline in revenue from the Vulnerable Industries.

### **Particulars**

The *Intergenerational Report 2021* recognises that "a healthy environment provides essential inputs into Australia's productive capacity and directly influences potential GDP": at 57. It also recognises that "[a] reduction in real GDP associated with climate change would have a fiscal impact through reducing taxation revenue, as well as increasing pressure on expenditure": at 59.

The *Intergenerational Report 2021* recognises that climate change is expected to have physical effects on Australia's economy, including by reducing taxation revenue: at page 59. It recognises that the agricultural sector and the financial industry is particularly vulnerable to physical effects, and that the impacts of climate change are already being felt by the agricultural sector: at 60: at pages 59-60.

A draft of that report, in discussing the effect of Climate Change on Australia's GDP, recognised that "[w]hile climate change can have both positive and negative effects on the economy, on balance it is expected to have

a negative effect both on the global and Australian economy”: [TRS.0001.0004.0371] at p7.

On 25 October 2022, the Commonwealth delivered the Federal Budget, including a document titled *Budget Strategy and Outlook: Budget Paper No. 1 (October 2022 Budget Paper No 1)*. That paper recognises that higher average temperatures and an increasing number of very hot days could reduce the number of working days in some industries and increase the cost of business-as-usual work in others. It recognises that this could also lead to a decrease in the productivity of land and labour and increase the rate of capital depreciation: at 105. It recognises that this would result in decreased economic activity, thereby reducing government revenue.

The paper also recognises that as extreme weather events become more frequent, the direct economic costs will impact Australia’s fiscal position by putting downward pressure on tax revenue: at 105.

In November 2022, the Australian Prudential Regulation Authority (APRA) released a report titled *Information Paper: Climate Vulnerability Assessment Results*, which discusses, among other things, the impact of climate change on the financial sector.

Further particulars will be provided.

- 63 There is a real, rather than a remote, risk that, before the maturity dates of the eAGBs held by the applicant, by reason of the Physical Impacts, the Commonwealth will be required to spend additional expenditure to:

- 63.1 mitigate the negative effects of the Physical Impacts on the economic output of the Vulnerable Industries;
- 63.2 to respond to emergency weather events of the kind referred to in paragraph 61 above (that is, extreme temperature days; drought events; fire events; rainfall events; cyclone events; bleaching events; extreme sea level events), including to:
  - (a) assist industries and individuals adversely affected by those events, which adverse effects include effects on human health;
  - (b) fund recovery and reconstruction projects; and
  - (c) fund additional emergency services;

### **Particulars**

A draft of the *Intergenerational Report 2021* recognised that “physical impacts of the changing climate, the need to adapt to these impacts, and the transition to lower emissions economies around the world will have a significant impact on the global and Australian economy” and that “the cost of preparing, responding, recovering, adapting and building resilience to the effects of climate change will be a multigenerational issue. There will be increasing demand on services and finances of the Commonwealth Government to manage climate change impacts. For instance, the cost of dealing with natural hazards is likely to put pressure on budgets for all levels

of government, while investing in infrastructure that is resilient to climate change may cost more in the short term”: [TRS.0001.0004.0371] at pp 5, 7.

Commentary on a draft noted that “Insurers are already reducing their exposure to high risk properties in high risk regions (e.g. strata properties in north Queensland) and insurance does generally not cover coastal erosion, which is expected to intensify and become a bigger problem. This will lead to increased expenditure for the Commonwealth Government in terms of disaster recovery and rebuilding”. It also noted that “the Commonwealth Government is likely to face increased fiscal costs associated with health care. Extreme heat and bad air quality will lead to more asthma, chronic illness and mental illness. Increasing costs for medication and services to treat these illness will be borne by the Commonwealth”: [TRS.0007.0001.4365] at p 4. It further noted that “[i]ncreased spending on adaptation of current infrastructure, housing stock, agriculture and ecosystems will also be necessary to reduce future losses, health implications and damage”: at p5.

The October 2022 Budget Paper No 1 recognises that there are fiscal risks associated with the direct physical impacts of climate change, such as the fiscal impact of responding to extreme weather events, which are likely to increase in severity and frequency: at 104.

It also recognises that extreme weather events will impact expenditure as the Commonwealth works with the States and Territories to repair and replace damaged infrastructure or provide disaster relief, and this will put upward pressure on expenditure: at 105.

Further particulars will be provided.

64 [Deleted in 4FASOC].

64B [Deleted in 4FASOC].

64C The risks identified in paragraphs 62B and 63 above are **Physical Risks**.

## **D.2 Transition Risks**

### ***D.2.1 Australia’s Commitments***

65 The Commonwealth ratified the United Nations Framework Convention on Climate Change (UNFCCC) on 30 December 1992.

66 The Commonwealth ratified the Paris Agreement on 10 November 2016.

67 [Removed in FASOC]

68 Under Article 4(2) of the Paris Agreement, the Commonwealth is obliged to prepare, communicate and maintain successive nationally determined contributions that it intends to achieve, and pursue domestic mitigation measures with the aim of achieving the objectives of such contributions.

69 Pursuant to Article 4(2), the Commonwealth’s nationally determined contribution:

- 69.1 between November 2016 and 16 June 2022, was to reduce greenhouse gas (GHG) emissions by 26 to 28 per cent below 2005 levels by 2030;
- 69.2 from 28 October 2021, is to achieve net zero GHG emissions by 2050; and
- 69.3 from 16 June 2022, is to reduce GHG emissions by 43 per cent below 2005 levels by 2030;

**(Australia’s Paris Commitment).**

**Particulars**

Australia’s Nationally Determined Contribution, 2015.

Australia’s Nationally Determined Contribution: Communication 2021.

Australia’s Nationally Determined Contribution: Communication 2022.

Letter from the Prime Minister of Australia and the Minister for Climate Change and Energy to Ms Patricia Espinosa, Executive Secretary of the United Nations Framework Convention on Climate Change.

*Climate Change Act 2022* (Cth), s 10(1).

70 Pursuant to Article 4(2), the Commonwealth is obliged to pursue domestic mitigation measures with the aim of achieving Australia’s Paris Commitment.

**Particulars**

Australia’s Nationally Determined Contribution: Communication 2022 states that the Australian Government is implementing a “substantial and rigorous suite of new policies across the economy to drive the transition to net zero”, including:

- A. A \$20 billion investment in Australia’s electricity grid, complemented by an additional \$300 million to deliver community batteries and solar banks across Australia;
- B. Investment of up to \$3 billion for the National Reconstruction Fund;
- C. A “Powering the Regions Fund”;
- D. The introduction of declining emissions baselines for Australia’s major emitters;
- E. A “National Electric Vehicle Strategy”;
- F. The application of new standardised and internationally-aligned reporting requirements for climate risks and opportunities for large businesses; and
- G. A commitment to reduce the emissions of Commonwealth Government agencies to net zero by 2030 (excluding defence and security agencies).

Further particulars will be provided.

71 [Deleted in 4FASOC].

72 [Deleted in 4FASOC].

73 [Deleted in 4FASOC].

74 There is a real, rather than a remote, risk that, before the maturity dates of the eAGBs held by the applicant, the Commonwealth will be required to spend significant additional expenditure to implement Australia's Paris Commitment.

**Particulars**

The *Intergenerational Report 2021* recognises that transition effects relate to the impacts of global and domestic efforts to reduce greenhouse gas emissions, which includes the costs of Australia's mitigation efforts: at 59.

Further particulars will be provided.

75 [Deleted in 4FASOC].

75A As a result of other signatories to the Paris Agreement implementing their own commitments under Article 4(2), global demand for exports of Australia's fossil fuel will decrease, or is likely to decrease, progressively until 2050.

**Particulars**

The *Intergenerational Report 2021* recognises that 129 countries have committed to net-zero emissions by 2050, including key trading partners such as Japan and South Korea, while China has committed to carbon neutrality by 2060. In 2019-20, these 3 countries accounted for 87 per cent of Australia's LNG export value, 74 per cent of Australia's thermal coal export value and 55 per cent of Australia's metallurgical coal export value.

Further particulars will be provided.

75B There is a real, rather than remote, risk that, before the maturity dates of the eAGBs held by the applicant, by reason of the reduction in global demand referred to in paragraph 75A:

75B.1 fossil fuel commodity prices will decrease;

75B.2 accordingly, the Commonwealth will receive significantly less revenue from the fossil fuel and export industries (referred to in paragraphs 62.8 and 62.10 above).

**Particulars**

The *Intergenerational Report 2021* recognises that revenue sources such as fuel excise and mining royalties could be affected by changes in demand and consumption related to a global transition away from fossil fuel use: at 60. It

also recognises that, if commitments to net zero by 2050 by other countries are fully implemented, those commitments will likely reduce demand for unabated fossil fuels over some decades: at 60.

Further particulars will be provided.

75C The risks identified in paragraphs 74 and 75B above are **Transition Risks**.

## **E EFFECT OF RISKS ON eAGBs**

75D The existence of the Physical Risks and/or the Transition Risks means that there is a real, rather than remote, risk that before the maturity dates of the eAGBs held by the applicant, there will be:

75D.1 significantly increased budget deficits (by reason of reduced revenue and increased expenditure) relative to Australia's annual GDP; and

75D.2 having regard to paragraph 75D.1 above, a significant increase in government borrowing, and accordingly a significant increase in government debt (relative to Australia's annual GDP;

**(Climate Change Debt Risk).**

### **Particulars**

The October 2022 Budget Paper No 1 contains a section styled "Fiscal impacts of climate change", which refers to various of the Physical Risks and the Transition Risks as well as the "Fiscal risks associated with climate change". The documents states that "Climate change can impact government budgets through a number of avenues. These include the physical impacts of climate change, the impacts of policy responses to reduce emissions or adapt to climate impacts, and the resulting changes to Australia's industry mix. Each of these has the potential to affect receipts, payments, and the Government's balance sheet. They also have the potential to influence general economic outcomes which may in turn impact the Budget.": pp 103-104.

Further particulars will be provided.

76 By reason of paragraph 75D above, there is a real, rather than remote, risk that, before the maturity dates of the eAGBs held by the applicant, there will be:

76.1 a material and negative impact on the Commonwealth's status and reputation as a reliable, safe and relatively risk-free issuer of sovereign debt securities;

76.2 a higher risk of the Commonwealth not having the capacity to discharge its interest and principal obligations under the eAGBs held by the applicant and by the other persons holding eAGBs at the material times;



76.3 a material and negative impact on Commonwealth's capacity to maintain its AAA status as an issuer of sovereign debt securities; and

76.4 a likelihood of the Commonwealth having to pay higher interest rates than would otherwise be the case in respect of any new issue of AGBs.

**(Climate Change Sovereign Risk)**

77 The matters in paragraphs 76.1 to 76.4 above, separately and cumulatively, are factors that are, or are likely to be, material to:

77.1 the value of AGBs on the wholesale market for AGBs, and consequentially, have a material effect on the value of eAGBs on the ASX, including those held by the applicant and the Represented Persons;

77.2 alternatively, the value of eAGBs on the ASX, including those held by the Applicant and the Represented Persons.

77A By reason of the matters in paragraphs 1D, 75D, 76 and 77 above, information about:

77A.1 the Physical Risks and Transition Risks;

77A.2 Climate Change Debt Risk; and/or

77A.3 Climate Change Sovereign Risk;

is information that:

77A.4 will inform holders of eAGBs about real, rather than remote, risks associated with holding the eAGBs that persons would reasonably require for the purpose of persons, including the applicant and the Represented Persons, making a decision whether to acquire, continue to hold, or to dispose of eAGBs; and/or

77A.5 might reasonably be expected to have a material influence on:

(a) decisions by holders of eAGBs, including the applicant and the Represented Persons, as to whether to hold or dispose of their current interests in eAGBs; and

(b) decisions by potential investors of eAGBs as to whether to purchase eAGBs.

(the information referred to in paragraphs 77A.1, 77A.2 and 77A.3 constitutes **Material Climate Change Information**).

77B At the material times, the respondent:

- 77B.1 was aware of the Physical Risks and the Transition Risks, alternatively ought to have been aware of those risks;
- 77B.2 was aware of Climate Change Debt Risk, alternatively ought to have been aware of that risk; and
- 77B.3 was aware of Climate Change Sovereign Risk, alternatively ought to have been aware of that risk.

**Particulars for paragraph 77B.1 and 77B.2**

The applicant refers to the *State of the Climate 2020* and the *State of the Climate 2022* reports referred to in the particulars to paragraph 61 above.

The applicant refers to the *Intergenerational Report 2021* and the October 2022 Federal Budget paper particularised in paragraph 75D above.

The applicant also refers to drafts of the *Intergenerational Report 2021*, including [TRS.0001.0004.0371], [TRS.0001.0004.0591]; [TRS.0001.0004.1252], [TRS.0001.0004.1281]; [TRS.0007.0001.4365].

The applicant refers to paragraphs 60 to 75C which was information in the public domain and the subject of research by climate change experts and economists who were able to assess and become aware of Physical Risks and Transition Risks from that information.

The Intergovernmental Panel on Climate Change (IPCC), an international body that was jointly established by the World Meteorological Organization and the United Nations Environment Programme, has published a series of reports assessing the most recent scientific research on climate change. Those reports outline various of the Physical Risks and the Transition Risks.

The Task Force on Climate-Related Financial Disclosures, *Recommendations of the Task Force on Climate-related Financial Disclosures* (Final Report, June 2017) is a widely available document concerning the disclosure of climate-related financial information for businesses. In the Government Response (dated March 2018) to Recommendations made by the Senate Economics reference Committee, tabled 21 April 2017 (“Carbon risk: a burning issue”), the Government noted the recommendation to implement the recommendations of the Task Force. The Government welcomed the release of the Final Report and encouraged all stakeholders to carefully consider the recommendations. The Government did not consider further law reform was required, because the disclosure requirements in the *Corporations Act 2001* (Cth) are “principles-based and do not impede the implementation of the Taskforce’s recommendations”.

In around May 2019, the Climate Council published a report titled *Compound Costs: How Climate Change is Damaging Australia’s*

*Economy*. The report concludes, among other things, that “Climate change is a major threat to Australia’s financial stability, and poses substantial systemic economic risks” and “economic damage to Australia’s property and agricultural sectors will be very significant”.

In October 2019, the Reserve Bank of Australia published the *Financial Stability Review: October 2019*. Among other things, that document contained an overview of the “Financial Stability Risks From Climate Change”, including “physical”, “transition” and “liability” risks.

In March 2020, the Climate Change Authority, a Commonwealth statutory agency, published a report titled *Prospering in a Low-Emissions World: An Updated Climate Policy Toolkit for Australia*. The report said, among other things: “Among developed countries, Australia is one of the most vulnerable to the impacts of climate change ... Climate change poses significant risks to our economy, communities and the natural environment”. The report refers to a number of studies, including a study estimating the costs of climate change across the whole Australian economy to be in the hundreds of billions of dollars in 2030 and more than \$5 trillion in cumulative damages by 2100, “even excluding many costs of flood, fire and environmental losses”.

In July 2021, the United Kingdom Office for Budget Responsibility published the *Fiscal risks report 2021*. Chapter 3 of that report is headed “Climate change” and addresses, among other things, “the potential physical economic and fiscal risks to the UK from different paths for global warming” and “the potential implications of making the transition to net zero emissions for public spending and revenues”.

On 24 August 2022, Jonathan Kearns, Head of Domestic Markets at the Reserve Bank of Australia, gave a speech titled “Climate Change Risk in the Financial System”. Among other things, Mr Kearns discussed various of the Physical Risks and the Transition Risks. Mr Kearns also said: “Physical and transition risks from climate change have implications for financial stability”; “High-quality and comparable disclosures are important to allow investors and counterparties to have confidence in how firms are managing their climate-related financial risks.”; and, in the section “Financial regulators and climate change financial risk”, noted that the Council of Financial Regulators seeks to “ensure that financial institutions and other firms produce and disclose high-quality, consistent information about the climate-related risks I described earlier and that they carefully manage those risks.”

In October 2022, the Reserve Bank of Australia published the *Financial Stability Review: October 2022*. Among other things, that document said: “Climate change remains a key long-term risk for the financial system that will need to be carefully managed by financial institutions and monitored by regulatory agencies. The Australian financial system is vulnerable to physical risks through direct losses on assets from climate events, and transition risks that arise from changes to policies and the economy in the move towards lower emissions.”; and “climate change and extreme weather events have the potential to affect economies and societies on a global scale, and

thereby present a systemic challenge for private institutions and policymakers”.

On 1 December 2022, the Annual Climate Change Statement was tabled in the Commonwealth Parliament. Among other things, the Annual Climate Change Statement refers to various of the Physical Risks and the Transition Risks.

Having regard to the matters in paragraphs 12 to 15 above, the knowledge of officers and agents within the AOFM, obtained in the course of their duties, are attributable to the Treasury Secretary and the CEO of the AOFM. The knowledge of officers and agents within the Treasury, obtained in the course of their duties, are attributable to the Treasury Secretary and the Treasurer. The knowledge of the Treasury Secretary and the CEO of the AOFM, and the Treasurer, obtained in the course of their duties (including as attributed to them), are attributable to the Commonwealth.

Further particulars will be provided.

### **Particulars for paragraph 77B.3**

The applicant refers to the particulars for paragraph 77B.1 and 77B.2 and says further that expert economists are able to assess and become aware of the Climate Change Sovereign Risk from information in the public domain.

Australia has joined the Coalition for Climate Resilient Investment, working with the investment sector to better consider physical climate risks and create resilient investment solutions: *Intergenerational Report 2021* at 64.

The Commonwealth’s financial regulators (including ASIC) have recognised that climate change is exposing the financial system to risks that will rise over time. To respond to these risks, regulators are working on strengthening the identification and management of climate-related risk and improving disclosure: *Intergenerational Report 2021* at 61.

On or around 9 June 2021, in response to a question concerning climate risk disclosure by sovereign bond issuers, the CEO of the AOFM said that the AOFM was getting “a range of responses particularly from the European investors that ranges from curiosity to finger waving to a bollocking”. The CEO said there that the issuer rating rather than the instrument rating in particular will be something that might take on more prominence. He also said that there would be an increased focus from fixed income investors about what governments are doing to react to the challenges ahead, and that the AOFM had discussed the efforts of S&P Global Ratings to incorporate environmental, social and governance risks into their sovereign ratings. He said that as that develops “all countries including Australia will have to make sure that they’re aware of what the criteria are and how we are going to sit relative to other countries. Because sovereign issuer ratings through the core ratings agency process will tend to gather more attention than other measures”: see Exhibit DLB-5 to the Affidavit of David Barnden.

Having regard to the matters in paragraphs 12 to 15 above, the knowledge of officers and agents within the AOFM, obtained in the course of their duties, are attributable to the Treasury Secretary and

the CEO of the AOFM. The knowledge of officers and agents within the Treasury, obtained in the course of their duties, are attributable to the Treasury Secretary and the Treasurer. The knowledge of the Treasury Secretary and the CEO of the AOFM, and the Treasurer, obtained in the course of their duties (including as attributed to them), are attributable to the Commonwealth.

Further particulars will be provided.

78 [Deleted in FASOC].

79 [Deleted in FASOC].

## **F [DELETED IN 3FASOC]**

80 [Deleted in 3FASOC].

81 [Deleted in 3FASOC].

82 [Deleted in 3FASOC].

83 [Deleted in 3FASOC].

84 [Deleted in 3FASOC].

## **G ASIC ACT**

85 Subject to exceptions that are not presently relevant, s 12DA(1) provides that a person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.

86 Subject to exceptions that are not presently relevant, Div 2 of Pt 2 of the ASIC Act (including s 12DA) binds the Crown in right of the Commonwealth in so far as the Crown in right of the Commonwealth carries on a business, either directly or by an authority of the Commonwealth.

### **Particulars**

ASIC Act, s 12AD(1), (5).

87 The Commonwealth, through the Treasurer, the AOFM or otherwise, carries on the business arranging for the issue and trading of eAGBs, and the payment of entitlements to holders of eAGBs, because it:

87.1 [Deleted in 4FASOC];

87.2 arranges for eAGBs to be issued on a continuous and repetitive basis;

- 87.3 arranges for the payment of entitlements in respect of eAGBs to be made on continuous and repetitive basis;
- 87.4 engages in those activities in the same way as a listed corporation might issue corporate bonds which are to be traded on the Australian Securities Exchange, and pays entitlements in respect of those bonds;
- 87.5 has entered into commercial arrangements with third parties to facilitate those activities;
- 87.6 has arranged for the eAGBs to be traded on the Australian Securities Exchange in common with other financial products, including corporate bonds.
- 88 For the purposes of Div 2 of Pt 2 of the ASIC Act (including s 12DA), a “financial product” is a “financial service”.

**Particulars**

ASIC Act, s 12BAB(1AA).

- 89 An eAGB is a “financial product” for the purposes of Div 2 of Pt 2 of the ASIC Act.

**Particulars**

ASIC Act, ss 12BAA(1) and (7)(a), (i).

- 90 At the material times, the Commonwealth, through the Treasurer, the AOFM or otherwise, has been providing a financial service for the purposes of Div 2 of Pt 2 of the ASIC Act because:

- 90.1 through the conduct referred to in paragraphs 29 to 42 above, it has arranged, and continues to arrange, for eAGBs to be issued; and
- 90.2 therefore, it has been dealing, and continues to deal, in a financial product.

**Particulars**

ASIC Act, ss 12BAB(1)(b), (1AA), (7)(b) and (8).

- 91 At the materials times, the Commonwealth, through the Treasurer, the AOFM or otherwise, has published the Disclosure Documents in relation to eAGBs.
- 92 The information referred to in paragraph 91 above was published for the purpose of informing retail investors about eAGBs, which investors would ordinarily have the benefit of a Product Disclosure Statement provided under Div 2 of Pt 7.9 of the Corporations Act in relation to a financial product.

93 It is a requirement of a Product Disclosure Statement that it include information about:

93.1 any significant risks associated with holding the product as a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the financial product; and

93.2 subject to presently irrelevant exceptions, any other information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product.

**Particulars**

Corporations Act, ss 1013D(1)(c), 1013E.

94 At the material times, through the publication of the Disclosure Documents, the Commonwealth, through the Treasurer, the AOFM or otherwise, has disclosed Material Information, being information that might reasonably be expected to have a material influence on:

94.1 decisions by current holders of eAGBs, including the applicant and the Represented Persons, as to whether to hold or dispose of their current interests in eAGBs; and

94.2 decisions by potential investors of eAGBs as to whether to purchase eAGBs

95 At the material times, the Commonwealth, through the Treasurer, the AOFM or otherwise, has not published in the Disclosure Documents any Material Climate Change Information.

95A By reason of the matters set out in paragraphs 80 to 94 above, at the material times there was a reasonable expectation by the applicant, the Represented Persons, and potential investors in eAGBs that the Commonwealth, through the Treasurer, the AOFM or otherwise, would disclose in the Disclosure Documents the Material Climate Change Information.

96 Further or alternatively, at the material times, by reason of the Commonwealth's:

96.1 disclosure of certain Material Information in the Disclosure Documents;

96.2 in combination with the omission of providing any Material Climate Change Information in the Disclosure Documents;

the Commonwealth represented that the Material Information relating to eAGBs was only that information contained in the Disclosure Documents.

97 By reason of the matters at paragraphs 85 to 96 above, the Commonwealth, through the Treasurer, the AOFM or otherwise, has engaged, and continues to engage, in conduct that:

97.1 misleading or deceptive; and/or

97.2 likely to mislead or deceive.

98 At the material times, the Commonwealth, through the Treasurer, the AOFM or otherwise, has engaged, and is continuing to engage, in the conduct referred to in paragraph 97 above “in trade or commerce” within the meaning of s 12DA(1) of the ASIC Act, by reason of the matters specified at paragraphs 87 and 90 to 91 above.

99 In the premises, at the material times, the Commonwealth has contravened, and is continuing to contravene, the prohibition in s 12DA(1) of the ASIC Act.

100 The applicant on her own behalf seeks the injunctive relief specified below pursuant to s 12GD(1)(a) of the ASIC Act.

## **H [DELETED IN 3FASOC]**

101 [Deleted in 3FASOC].

102 [Deleted in 3FASOC].

103 [Deleted in 3FASOC].

104 [Deleted in 3FASOC].

105 [Deleted in 3FASOC].

106 [Deleted in 3FASOC].

## **I RELIEF**

107 The applicant on her own behalf and as representing the Represented Persons seeks:

107.1 declarations that between 7 July 2020 and the date of this pleading, the Commonwealth breached, and continued to breach, s 12DA(1) of the ASIC Act because of its failure to disclose any Material Climate Change Information in the Disclosure Documents;

107.2 [Deleted in 3FASOC];

107.3 such further or other orders, including orders as to costs, as the Court deems fit.



108 The applicant on her own behalf seeks:

108.1 declarations that, since 7 July 2020, the Commonwealth has breached, and continues to breach, s 12DA(1) of the ASIC Act because of its failure to disclose any Material Climate Change Information in the Disclosure Documents;

108.2 [Deleted in 3FASOC].;

108.3 [Deleted in 3FASOC];

108.4 an injunction restraining the Commonwealth and its officers, including the Treasury Secretary and the AOFM CEO, from further issuing, or being involved in the issuing of, eAGBs until they provide in the Disclosure Documents such information as the Court directs as necessary to inform in accordance with law the applicant and potential investors in eAGBs about Material Climate Change Information;

108.5 such further or other orders, including orders as to costs, as the Court deems fit.

This Fourth Further Amended Statement of Claim was settled by Ron Merkel KC and Thomas Wood of counsel.

#### **Certificate of lawyer**

I, David Barnden, certify to the Court that, in relation to the fourth further amended statement of claim filed on behalf of the applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 20 December 2022



.....  
Signed by David Barnden

Lawyer for the applicant