

NOTICE OF FILING

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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: VID1492/2018
File Title: ROBERT MUTCH v ISG MANAGEMENT PTY LTD
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 17/07/2020 3:08:42 PM AEST

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

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Amended Defence

Filed in accordance with the Orders of Justice Bromberg dated 18 June 2020 and 7 July 2020

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

No. VID1492 of 2018

ROBERT MUTCH

Applicant

ISG MANAGEMENT PTY LTD (ACN 142 916 970)

Respondent

To the Second Further Amended Statement of Claim (**2FASOC**) dated ~~1 March 2019~~ 18 June 2020, the Respondent (**ISGM**) says as follows:

1. It does not plead to paragraph 1 as it contains no allegation of fact against it.
 - 1A. It:
 - (a) does not plead to paragraph 1A as it contains no allegations of fact against it; and
 - (b) says that, for the avoidance of doubt, to the extent that paragraph 1A makes reference to facts, ISGM denies those statements of fact.
2. It does not know and cannot admit the allegations in paragraph 2.
3. It admits paragraph 3.

Filed on behalf of ISGM Management Pty Ltd (ACN 142 916 970), Respondent

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Telstra/ISGM Agreement

4. As to paragraph 4, it:
 - (a) says that Telstra and ISGM entered into an agreement on or about 29 September 2011;
 - (b) says further that the agreement between Telstra and ISGM was amended, varied and restated from time to time (the **Telstra/ISGM Agreement**); and
 - (c) otherwise admits paragraph 4.

5. As to paragraph 5, it:
 - (a) says that pursuant to the Telstra/ISGM Agreement, it is and was at all relevant times (inter alia) the provider of outsourced installation and maintenance services (**I&M Services**) to Telstra;

Particulars

- i. Telstra owns the network of cables that run from Telstra exchanges to the network boundary point on each customer's premises, described as the Customer Access Network (**CAN**). Telstra also provides services in relation to telecommunications infrastructure and equipment on its customers' premises.
 - ii. I&M Services principally involve:
 - A. the installation of telephone, asymmetric digital subscriber line (**ADSL**) and broadband cable services to Telstra customers;
 - B. identification and rectification of faults on the CAN and on customer premises;
 - C. disconnection services; and
 - D. work required to connect copper twisted wires that connect Telstra customers' telephone service to equipment in the Telstra exchange in order to create a dial tone or ADSL.
 - (b) refers to and repeats paragraphs 6A to ~~6R~~6S (inclusive) hereof; and
 - (c) otherwise denies paragraph 5.
- 5A. Further to paragraph 5, it says that there were terms of the Telstra/ISGM Agreement to the effect that all persons performing I&M Services on Telstra's network:
 - (a) must have suitable training, skills and accreditations;

Particulars

- i. The term reflects requirements arising under the *Telecommunications Act 1997* (Cth) and the *Telecommunications Cabling Provider Rules 2014* (**Cabling Rules**), namely that:
 - A. in order to lawfully perform I&M Services, a person is required to hold one or more licenses and/or permits, and be registered with a registrar approved by the Australian Communications & Media Authority (**ACMA**); and
 - B. in order to be conferred with relevant licenses and/or permits, a person must complete specific training modules through a Registered Training Organisation (**RTO**) approved by ACMA.
 - ii. Registration with the ACMA approved registrar ensures persons are competent to perform cabling work consistent with the *Australian Standard As/Ca s009:2013 – Installation Requirements for Customer Cabling Wiring Rules* (**Australian Standards**).
- (b) must undergo specific training, as directed by Telstra, relating to:
- (i) use of Telstra’s assets and products;
 - (ii) health and safety issues specific to Telstra’s network; and
 - (iii) use of Telstra’s electronic work management system; and
- (c) must comply with Telstra’s operational procedures when carrying out work on the CAN and on Telstra customers’ premises.
- 5B. Further to paragraphs 5 and 5A, it:
- (a) says that together with I&M Services, additional types of specialised cabling work could be performed by a person on Telstra’s network if they undertook appropriate training and became accredited to perform such work (**Specialised I&M Services**); and
 - (b) says further that a person could only provide I&M Services that they were accredited to perform.

Particulars

- i. Specialised I&M Services include any installation or maintenance work that involves:
 - A. aerial cable;
 - B. co-axial cable;
 - C. underground cable;
 - D. structured cable; and/or
 - E. optical fibre cable.
 - ii. Pursuant to the *Telecommunications Act 1997* (Cth) and the Cabling Rules, persons performing Specialised I&M Services require additional licences and/or permits to those described in the particulars to paragraph 5A(a).
- 5C. Further to paragraphs 5 to 5B (inclusive), it says that the manner in which I&M Services and Specialised I&M Services are performed is, and was at all material times, informed by the *Telecommunications (Customer Service Guarantee) Standard 2011 (CSG)*, which (inter alia):
- (a) contains minimum performance requirements in relation to:
 - (i) making arrangements with customers for connection and fault rectification;
 - (ii) the time taken to connect or rectify a fault; and
 - (iii) the keeping of appointments to make such connections or to rectify faults; and
 - (b) entitles customers to compensation if the time-frames specified in the CSG are not met.

Particulars

The CSG is a legislative instrument made pursuant to the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

- 5D. Further to paragraph 5 to 5C (inclusive), it says that there were terms of the Telstra/ISGM Agreement to the effect that:
- (a) ISGM could enter into subcontracts in relation to provision of the I&M Services;
 - (b) any subcontractor engaged by ISGM to perform I&M Services was required to be incorporated as a proprietary company;
 - (c) any subcontractor engaged by ISGM to perform I&M Services was required to have and maintain an Australian Business Number (**ABN**);

- (d) any subcontractor engaged by ISGM to perform I&M Services was required to be permitted to further subcontract such work to its own contractors or employees;
- (e) any subcontractor engaged by ISGM to perform I&M Services was required to participate in reporting and safety meetings with Telstra, as required by Telstra;
- (f) each subcontractor was required to be engaged by ISGM through a written subcontract signed by authorised representatives of the subcontractor, which was consistent with all requirements necessary to provide for a principal/contractor relationship; and
- (g) the rates payable to ISGM's subcontractors for the performance of I&M Services were to be fixed by Telstra in consultation with ISGM.

6. It admits paragraph 6.

Provision of I&M Services

6A. In accordance with the terms of the Telstra/ISGM Agreement, from about 2011 ISGM entered into agreements:

- (a) with proprietary companies that were, at all material times, incorporated according to law (**Subcontracting Companies**); and
- (a) pursuant to which the Subcontracting Companies were engaged by it to perform the I&M Services (**Standard Agreements**).

6AA. Every Standard Agreement between ISGM and a Subcontracting Company in relation to the provision of I&M Services, executed after February 2015:

- (a) contained an execution clause which provided for the Subcontracting Company to execute the Agreement pursuant to section 127 of the *Corporations Act 2001* (Cth); and
- (b) contained a warranty that the subcontractor engaged by ISGM to perform I&M services was incorporated as a proprietary company.

6AB. Every Standard Agreement between ISGM and a Subcontracting Company in relation to the provision of I&M Services which was executed after February 2015 contained a warranty that the subcontractor has obtained independent professional advice (including legal and financial advice) in relation to the agreement.

6B. The content of the Standard Agreements:

- (a) varied over time; and
- (b) was, from time to time, negotiated as between ISGM and some Subcontracting Companies.

Particulars

Between about 2011 and February 2019, ISGM had and used 12 different versions of the Standard Agreement as follows:

- i. Tickets of Work Standing Offer Agreement (2011);
- ii. Tickets of Work Standing Offer Agreement for Telstra CCT Work (2013);
- iii. Tickets of Work Standing Offer Agreement for Telstra CCT Work (February 2015);
- iv. Tickets of Work Standing Offer Agreement for Telstra Subcontractor Work (October 2015);
- v. Tickets of Work Standing Offer Agreement for Telstra Subcontractor Work (December 2015);
- vi. Tickets of Work Standing Offer Agreement for Telstra Subcontractor Work (February 2016);
- vii. Tickets of Work Standing Offer Agreement for Telstra Subcontractor Work (July 2016);
- viii. I&M Subcontractor Agreement (November 2016);
- ix. I&M Subcontractor Agreement (March 2017);
- x. I&M Subcontractor Agreement (August 2017);
- xi. I&M Subcontractor Agreement (June 2018); and
- xii. I&M Subcontractor Agreement (August 2018).

The negotiations referred to in paragraph 6B(b) herein occurred in a number of different ways including:

- A. directly between ISGM and the Subcontracting Company;
- B. between ISGM and an official or officials of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU), representing one or more Subcontracting Company which had appointed that official to negotiate on its behalf; or
- C. via a legal representative appointed by the Subcontracting Company.

6BA. As a consequence of the negotiations referred to in paragraph 6B(b) herein, the terms of the agreements between ISGM and Subcontracting Companies vary as between

different Subcontracting Companies in respect of clauses which are referred to in the 2FASOC.

Particulars

Examples (referring to the relevant paragraph of the 2FASOC where the provision is pleaded) of clauses which have been negotiated between ISGM and different Subcontracting Companies include:

- i. clause 2.3(d) of the October 2015 Tickets of Work Standing Offer Agreement (paragraph 98 of the 2FASOC), which was amended in relation to Rowe Communications Pty Ltd;
- ii. clause 7(b) of the October 2015 Tickets of Work Standing Offer Agreement (paragraph 108(b) of the 2FASOC), which was amended in relation to Rowe Communications Pty Ltd;
- iii. clause 7(a) of the October 2015 Tickets of Work Standing Offer Agreement (paragraph 108(d) of the 2FASOC), which was amended in relation to 195 Subcontracting Companies which were represented by the CEPU, as well as Rowe Communications Pty Ltd and Telecare Communications Australia Pty Ltd;
- iv. clause 12.5 of the October 2015 Tickets of Work Standing Offer Agreement (paragraph 122 of the 2FASOC), which was amended in relation to the 195 Subcontracting Companies which were represented by the CEPU, as well as Telecare Communications Australia Pty Ltd;
- v. clause 18.3 of the October 2015 Tickets of Work Standing Offer Agreement (paragraph 124(c) of the 2FASOC), which was amended in relation to the 195 Subcontracting Companies who were represented by the CEPU, as well as Telecare Communications Australia Pty Ltd.

6C. Subcontracting Companies engaged by ISGM from time to time were not, or were not necessarily, engaged pursuant to the same version of the Standard Agreement at the same time or times.

Particulars

There was no uniform practice within ISGM, or among Subcontracting Companies, in relation to Subcontracting Companies executing or otherwise entering into new versions of the Standard Agreement as such versions were developed. As and when ISGM developed a new version of the Standard Agreement, that new version may have been (but was not necessarily) sent to some (but not always all) Subcontracting Companies providing services at the relevant time. Of those Subcontracting Companies receiving a new version of the Standard Agreement from time to time, some, but not all of them,

would sign and return it. At 23 April 2019 ~~the present date~~, there remained about:

- i. 11 Subcontracting Companies engaged pursuant to the Ticket of Work Standing Offer Agreement for Telstra CCT Work (2013);
- ii. 611 Subcontracting Companies engaged pursuant to the Ticket of Work Standing Offer Agreement for Telstra Subcontractor Work (October 2015);
- iii. 11 Subcontracting Companies engaged pursuant to the Ticket of Work Standing Offer Agreement for Telstra Subcontractor Work (December 2015);
- iv. 121 Subcontracting Companies engaged pursuant to the Ticket of Work Standing Offer Agreement for Telstra Subcontractor Work (February 2016);
- v. 312 Subcontracting Companies engaged pursuant to the Ticket of Work Standing Offer Agreement for Telstra Subcontractor Work (July 2016);
- vi. 201 Subcontracting Companies engaged pursuant to the I&M Subcontractor Agreement (November 2016);
- vii. 197 Subcontracting Companies engaged pursuant to the I&M Subcontractor Agreement (March 2017);
- viii. 106 Subcontracting Companies engaged pursuant to the I&M Subcontractor Agreement (August 2017);
- ix. 11 Subcontracting Companies engaged pursuant to the I&M Subcontractor Agreement (June 2018); and
- x. 68 Subcontracting Companies engaged pursuant to the I&M Subcontractor Agreement (August 2018).

ISGM further refers to and repeats paragraphs 94A and 163A hereof and the particulars subjoined thereto.

6D. Each of the Subcontracting Companies:

- (a) was incorporated pursuant to the *Corporations Act 2001* (Cth);
- (b) had and maintained an ABN;
- (c) was registered for the purposes of GST;
- (d) had, and maintained at its own cost, public liability insurance, workers' compensation insurance and vehicle insurance;
- (e) was required to ensure that its officers, employees and/or contractors had the necessary skills, training and accreditations to perform the I&M Services on its behalf;

- (f) were responsible for the employment costs of employees engaged by them and for the remuneration of any contractors engaged by them; and
- (g) had at least one Director.

6DA. The Subcontracting Companies consisted of:

- (a) established businesses that had been providing services to other providers prior to being engaged by ISGM in or about November 2011 (**Starting Suppliers**);
- (b) Subcontracting Companies which commenced providing I&M Services to ISGM after in or about November 2011, without one of their founders participating in one of the training programs referred to in paragraph 7 herein (**Inflow Suppliers**); and
- (c) Subcontracting Companies which commenced providing I&M Services to ISGM after in or about November 2011, in circumstances where one or more of their founders had participated in one of the training programs referred to in paragraph 7 herein.

6DB. Some of the Starting Suppliers were incorporated prior to the date on which ISGM was incorporated (1 April 2010).

Particulars

Some examples of Subcontracting Companies that were incorporated prior to ISGM being incorporated are:

- (a) Austel Pty Ltd, incorporated on 14 September 2009;
- (b) B Communicated Pty Ltd, incorporated on 15 March 2007;
- (c) Able Media Pty Ltd, incorporated on 26 May 2005; and
- (d) A C Network Engineering Pty Ltd, incorporated on 22 January 2008.

6DC. The background of Inflow Suppliers prior to providing I&M Services to ISGM was varied, and included:

- (a) established companies which had been providing services to other companies in the telecommunications industry doing work for entities other than Telstra;
- (b) established companies from related industries whose Representatives had similar skills to those required for I&M Services, such as data cabling, electrical services or security system installation;
- (c) new companies established by individuals who had been working in similar industries overseas;

- (d) new Subcontracting Companies established by individuals who previously had been working as Representatives engaged by a different Subcontracting Companies; or
- (e) new companies established by family and friends of the Representatives of other Subcontracting Companies, who would approach ISGM to provide services.

6E. The arrangements by which Subcontracting Companies engaged persons to perform I&M Services on their behalf (**Representatives**):

- (a) were determined solely by each Subcontracting Company; and
- (b) varied as between Subcontracting Companies, with the variations including:
 - i. sole director Subcontracting Companies where the sole director individually performed the I&M Services for and on behalf of the Subcontracting Company;
 - ii. Subcontracting Companies with more than one director and/or officers where the directors and/or officers performed the I&M Services for and on behalf of the Subcontracting Company;
 - iii. Subcontracting Companies with one or more directors that engaged between one and 129 employees to perform the I&M Services for and on behalf of the Subcontracting Company; and
 - iv. Subcontracting Companies with one or more directors that engaged varying numbers of contractors to perform the I&M Services for and on behalf of the Subcontracting Company; and
 - v. Subcontracting Companies with an attached trust vehicle, such as an associated company that is a corporate trustee of a trust.

6F. Some of the Subcontracting Companies:

- (a) during periods of engagement by ISGM, provided services for reward to entities other than ISGM; and/or

Particulars

Particulars of invoices issued by Subcontracting Companies to entities other than ISGM to be provided after discovery by the Applicant and group members.

- (b) had been providing services for reward to entities other than ISGM for some time before entering into a Standard Agreement with ISGM.

Particulars

Prior to the commencement of the Telstra/ISGM Agreement, a number of the Subcontracting Companies had been supplying I&M Services for entities such as Visionstream Pty Ltd, Skilled Group Ltd, Service Stream Ltd, Silcar Pty Ltd and/or BSA Ltd, which entities had previously provided I&M Services to Telstra.

Further, there were a number of Subcontracting Companies that had been providing services that were not I&M Services to private customers (for example, companies that provided electrical services).

6G. When a Subcontracting Company entered into a Standard Agreement, ISGM:

- (a) required the Subcontracting Company to satisfy ISGM that its Representatives had engaged in the requisite training and held the requisite accreditations to perform I&M Services;
- (b) ensured that each Subcontracting Company and/or its Representatives had access to ISGM's electronic Contractor Management System (**CMS**);
- (c) requested that the Subcontracting Company record its Representatives' nominated availability to perform I&M Services up to three months in advance in CMS;
- (d) discussed and agreed on a start location with and for each of the Subcontracting Company's Representatives;

Particulars

The start location informed the areas and/or districts in which work was to be offered to Subcontracting Company's Representatives.

- (e) advised Telstra that the Subcontracting Company was engaged to perform I&M Services; and
- (f) provided Telstra with details about the identity, skills, accreditations and availability of the Subcontracting Company's Representatives.

6H. Upon receipt of the information described in paragraph 6G, Telstra:

- (a) recorded details about each Subcontracting Company and its Representatives, together with their skills and accreditations, in its electronic work allocation system (**Connect**);

- (b) recorded details of each Subcontracting Company's Representatives' nominated availability in Connect;
- (c) provided each of the Subcontracting Company's Representatives with a mobile computer device (**Toughbook**); and

Particulars

From about March 2018, Telstra replaced Connect with an electronic work allocation system styled "Promise", and replaced Toughbooks with Tablets.

- (d) required each of the Subcontracting Company's Representatives to complete Telstra's mandatory training, which was necessary to operate on its network.
- 6I. Thereafter, Subcontracting Companies and/or their Representatives, used CMS to identify:
- (a) the days that Representatives were available to perform I&M Services each week;
 - (b) the time periods during which each Representative was available to perform I&M Services each day; and
 - (c) the number of Tickets of Work they wished each Representative to complete on each day that they were available to perform I&M Services.
- 6J. When Telstra received requests for I&M Services from its customers, it:
- (a) scheduled appointment windows that generally fell within the following time periods:
 - (i) 8:00am - 12:00pm;
 - (ii) 10:00am - 2:00pm;
 - (iii) 1:00pm - 5:00pm; and
 - (iv) 5:00pm - 7:00pm,

(customer appointment windows);
 - (b) recorded details of the customer appointment windows and the nature of the I&M Services required in Connect; and
 - (c) on the day scheduled for specific customer appointments, allocated the customer appointments to individual Subcontracting Companies'

Representatives in the form of Tickets of Work which were received via the Representatives' Toughbooks.

- 6K. On any given day, the Subcontracting Companies' Representatives:
- (a) logged onto their Toughbooks shortly before the time they had indicated their availability would commence (if the Representative was nominated as being available on that day);
 - (b) received Tickets of Work allocated by Telstra via their Toughbook; and
 - (c) were able to accept or reject Tickets of Work that had been allocated to them.
- 6L. Upon completion of a Ticket of Work, Subcontracting Companies' Representatives entered details of the work they had completed in their Toughbook, and those details were automatically communicated to Telstra via Connect.
- 6M. Telstra provided details of the work completed pursuant to each Ticket of Work to ISGM and, based on those details, recipient created tax invoices (**RCTIs**) were automatically generated by CMS on a weekly basis.
- 6N. RCTIs in respect of I&M Services:
- (a) were issued in the names of Subcontracting Companies;
 - (b) identified the Subcontracting Companies' ABNs;
 - (c) were tax invoices for the purposes of GST; and
 - (d) included a charge by the Subcontracting Companies in respect of GST.
- 6O. The amounts payable by ISGM to the Subcontracting Companies in respect of each RCTI:
- (a) were paid by ISGM within 7 days of the date of the RCTI; and
 - (b) were reimbursed to ISGM by Telstra.
- 6P. Subcontracting Companies determined the amounts paid to their Representative or Representatives pursuant to the employment, contracting or other arrangements they had with their Representatives and were responsible for those costs, together with any superannuation payments and other statutory and/or award entitlements.

The Applicant

6Q. The Applicant:

- (a) participated in the Apprenticeship Training Program (defined at subparagraph 7(b), hereof) between about November 2013 and June 2014; and
- (b) was the sole director and shareholder of Mutch Better Communications Pty Ltd (**MBC**) from about 17 March 2014.

6R. MBC:

- (a) was incorporated on or about 17 March 2014;
- (b) entered into a Standard Agreement with ISGM in about July 2014 **(2014 Agreement between ISGM and MBC)**;
- (ba) entered into another Standard Agreement with ISGM on or about 1 March 2016 (2016 Agreement between ISGM and MBC);
- (c) provided I&M services to ISGM with the Applicant being the Representative providing those services on its behalf;
- (d) commenced providing I&M services to ISGM on about 29 July 2014; and
- (e) ceased providing services to ISGM in about November 2016.

Particulars

Each of the 2014 Agreement between ISGM and MBC and the 2016 Agreement between ISGM and MBC is in writing, and a copy of each is available for inspection at the offices of ISGM's solicitors.

6S. The 2016 Agreement between ISGM and MBC contained a warranty that the subcontractor has obtained independent professional advice (including legal and financial advice) in relation to the agreement.

Apprenticeship Trainee Program

7. As to paragraph 7, it:

- (a) denies that it engaged in training programs from 2009;
- (b) says that:
 - (i) from about May 2013 to October 2014, in conjunction with Ai Group Apprentice and Trainee Centre (**AiGTS**), JB Hunter Technology Pty Ltd (**JB Hunter**) and Telstra, it was involved in a 26-week training program

that provided training and accreditations to about 336 prospective telecommunications workers (**Apprenticeship Training Program**); and

- (ii) refers to and repeats paragraph 7A hereof.
- (c) says further that:
 - (i) from about May 2016 to March 2017, in conjunction with AiGTS, JB Hunter and Telstra, it was involved in a 17-week training program that provided training and accreditations to a limited number of prospective telecommunications workers; and
 - (ii) from time to time it engaged in other training programs that did not involve both AiGTS and JB Hunter; and
- (d) otherwise denies paragraph 7.

7A. Further to paragraph 7, it says:

- (a) AiGTS' role in the Apprenticeship Training Program involved:
 - (i) designing the program;
 - (ii) advertising the program;
 - (iii) recruiting participants;
 - (iv) conducting aptitude testing;
 - (v) mentoring and monitoring participants; and
 - (vi) employing participants during part of the program;
- (b) JB Hunter's role in the Apprenticeship Training Program involved:
 - (i) the provision of technical training to participants;
 - (ii) the provision of equipment to facilitate the training;
 - (iii) the provision of venues and training facilities; and
 - (iv) conducting assessments;
- (c) ISGM's role in the Apprenticeship Training Program involved:
 - (i) the provision of practical work-experience;
 - (ii) the provision of oral and written information about:
 - A. working on the Telstra Network as a subcontractor upon successful completion of the program;

- B. relevant safety practices; and
 - C. technical products required for use on Telstra's network;
- (d) Telstra's role in the Apprenticeship Training Program involved:
- (i) the provision of funding to facilitate part of the program;
 - (ii) the provision of product advice and instruction; and
 - (iii) the provision of practical work-experience; and
- (da) during the Apprenticeship Training Program, participants received Centrelink entitlements for the first five weeks of the program;
- (db) during the Apprenticeship Training Program, after the first five weeks, participants were employed by AiGTS and paid a trainee wage for the remainder of the program; and
- (e) ISGM did not make any payments to participants during the period in which they undertook the Apprenticeship Training Program.
8. As to paragraph 8, it:
- (a) says that AiGTS' and JB Hunter's delivery of the Apprenticeship Training Program was funded:
 - (i) in part by the Australian Apprenticeships Access Program;
 - (ii) as to the balance, by Telstra;
 - (b) says further that the Apprenticeship Training Program was the only training program described in paragraph 7 that was funded by the Australian Apprenticeships Access Program; ~~and~~
 - (ba) says further that the Apprenticeship Training Program was the only training program described in paragraph 7 herein in which the participants were required to meet Australian Apprenticeships Access Program eligibility requirements in order to participate; and
 - (c) otherwise denies paragraph 8.

Particulars

- i. From about 2009 the Commonwealth government, through the Australian Apprenticeships Access Program, funded a wide range of apprenticeship and trainee programs.
- ii. ISGM does not know and cannot say whether prospective telecommunications workers participated in programs funded by the Australian Apprenticeships Access Program other than

the Apprenticeship Training Program, and if so, when those programs took place.

8AA. Further to paragraph 8 herein:

- (a) approximately 350 individuals graduated from the Apprenticeship Training Program;
- (b) of the graduates from the Apprenticeship Training Program:
 - (i) approximately 332 graduates subsequently commenced performing I&M Services on behalf of a Subcontracting Company of which they were a director; and
 - (ii) approximately 12 graduates subsequently commenced performing I&M Services on behalf of pre-existing Subcontracting Companies.

8A. As to paragraph 8A, it:

- (a) says that the Applicant engaged in the Apprenticeship Training Program between October 2013 and June 2014; and
- (b) otherwise denies paragraph 8A.

Particulars

- i. The Apprenticeship Training Program and the Australian Apprenticeships Access Program were not separate and distinct training programs.
- ii. Rather, the Australian Apprenticeships Access Program provided funding towards the Apprenticeship Training Program that was delivered by AiGTS and/or JB Hunter.

9. As to paragraph 9:

- (a) save that it admits one of the criteria which might cause prospective telecommunications workers to become eligible to participate in the Apprenticeship Training Program was long-term unemployment, it otherwise does not know and cannot admit subparagraph (a); and

Particulars

ISGM was not involved in the process of recruiting participants for the Apprenticeship Training Program, or assessing their eligibility to participate in the program. Those processes were undertaken by AiGTS and/or JB Hunter. As a result, it did not and does not have specific knowledge relating to the funding and eligibility requirements for the Apprenticeship Training Program.

- (b) it does not know and cannot admit subparagraphs (b) to (d).

10. As to paragraph 10, it:

- (a) admits that participants who successfully completed the Apprenticeship Training Program received a Certificate III in Telecommunications Technology; and
- (b) otherwise denies paragraph 10.

10A. As to paragraph 10A:

- (a) it says that the allegations contained in subparagraph (a) are evasive, ambiguous, embarrassing and are liable to be struck out, and under cover of that objection, it denies each and every allegation in subparagraph (a);

Particulars

Mere possession of one or more of the characteristics alleged at paragraph 9(a) of the 2FASOC (which is not admitted), does not give rise to a conclusion that participants in the Apprenticeship Training Program had a limited capacity to understand the matters pleaded at subparagraph 10A(a)(i)-(iv), or, if they did, were vulnerable as alleged.

- (b) it says that the allegations contained in subparagraph (b) are evasive, ambiguous, embarrassing and are liable to be struck out, and under cover of that objection, it denies each and every allegation contained in subparagraph (b); and

Particulars

Mere possession of one or more of the characteristics alleged at paragraph 9(a) of the 2FASOC (which is not admitted), does not give rise to a conclusion that participants in the Apprenticeship Training Program were not in any reasonable position to negotiate in respect of the matters pleaded at subparagraph (b)(i)-(iii).

- (c) further to subparagraph (b), it:
 - (i) refers to and repeats paragraphs 5D(g), 6A and 6P;
 - (ii) says that the Applicant and all participants in the Apprenticeship Training Program were encouraged by ISGM to seek independent legal advice before entering into a Standard Agreement with ISGM;
 - (iii) says that the Applicant and all participants in the Apprenticeship Training Program were encouraged by ISGM to seek business and financial advice from independent providers before entering into a Standard Agreement with ISGM;
 - (iv) says that participants that completed the Apprenticeship Training Program:
 - A. incorporated a company to provide I&M Services for ISGM; or

- B. commenced working for an established subcontracting company that was already providing I&M Services for ISGM; or
- C. did not commence providing I&M Services for ISGM whether as a representative of a subcontracting company or otherwise, at all; and

(v) says further that the Applicant and all participants were free to discontinue the Apprenticeship Training Program at any stage and for any reason during the Program, and many did.

10B. It denies paragraph 10B and repeats paragraphs 7A, 9(a) and 10A hereof.

10C. It denies each and every allegation contained in paragraph 10C and repeats paragraphs 7A, 9(b) and 10A hereof.

2011 Tickets of Work Standing Offer Agreement

11. As to paragraph 11, it:

- (a) says that from about September 2011, it entered into Standard Agreements with Subcontracting Companies (**2011 Tickets of Work Standing Offer Agreement**);
- (b) refers to and repeats paragraphs 6A to ~~6R~~6P hereof (inclusive);
- (c) says further that it did not enter into the 2011 Tickets of Work Standing Offer Agreement with MBC; ~~and~~
- (ca) says that, the services provided to it pursuant to the 2011 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses;
- (cb) says further that services provided pursuant to the 2011 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies;
- (cc) denies that the 2011 Tickets of Work Standing Offer Agreement gave rise to rights or obligations as between ISGM and Subcontracting Companies' Representatives and/or group members (as defined at paragraph 1A of the 2FASOC); and
- (d) otherwise denies paragraph 11.

12. As to paragraph 12, it: says as follows:

- (a) the two agreements dealt with the same kind of services, but were in different terms to one another;
- (b) clause 7.2(a)(iv) of the 2013 Tickets of Work Standing Offer Agreement provided a requirement for the Subcontracting Company to have and maintain all tools, equipment and machinery required to perform the I&M Services (other than any

tools, equipment or machinery required to be provided by ISGM), which was not a term of the 2011 Tickets of Work Standing Offer Agreement;

- (c) it admits paragraph 12(a);
- (d) the 2013 Tickets of Work Standing Offer Agreement added a new clause 20.10, which provided that the Subcontracting Company indemnifies ISGM from any loss arising from a breach of confidentiality obligations;
- (e) it admits paragraph 12(b);
- (f) it says that Schedule 3 of the 2013 Tickets of Work Standing Offer Agreement dealt with State-based security for payments legislation and other means of recovering debts;
- (g) it will rely upon the 2011 Tickets of Work Standing Offer Agreement at trial for its full terms and effect; and
- (h) it otherwise denies paragraph 12.
- ~~(a) — says that, the services provided to it pursuant to the 2011 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses;~~

Particulars

~~Clause 28 of the 2011 Tickets of Work Standing Offer Agreement.~~

- ~~(b) — repeats paragraphs 6A-6R hereof (inclusive); and~~
- ~~(c) — otherwise denies paragraph 12.~~

2013 Tickets of Work Standing Offer Agreement

13. As to paragraph 13, it:

- (a) says that, from about October 2013, it entered into Standard Agreements with Subcontracting Companies (**2013 Tickets of Work Standing Offer Agreement**);
- (b) refers to and repeats paragraphs 6A to ~~6R-6S~~ hereof (inclusive);
- (c) says further that ~~it entered into the 2013 Tickets of Work Standing Offer Agreement with MBC in around July 2014~~ the 2014 Agreement between ISGM and MBC was based on the 2013 Tickets of Work Standing Offer Agreement;
- (d) says that the parties to the 2014 Agreement between ISGM and MBC were ISGM and MBC;
- (e) says that the Applicant was not a party to the 2014 Agreement between ISGM and MBC; and

- (f) says that the Applicant was not a party to any agreement based on the 2013 Tickets of Work Standing Offer Agreement.

the 2014 Agreement between ISGM and MBC was based on the 2013 Tickets of Work Standing Offer Agreement;

- (i) ~~with-MBC was the only other party to that agreement in around July 2014;~~

Particulars

- i. The Standard Form of the 2013 Tickets of Work Standing Offer Agreement is in writing in a document styled Ticket of Work Standing Offer Agreement for Telstra CCT Work and is available for inspection at the offices of ISGM's solicitors.
 - ii. ~~The 2013 Tickets of Work Standing Offer 2014 Agreement~~ between ISGM and MBC is in writing and is available for inspection at the offices of ISGM's solicitors.
- (g) says further that services provided pursuant to the 2013 Tickets of Work Standing Offer Agreement were provided by MBC and Subcontracting Companies;
- (h) denies that the 2013 Tickets of Work Standing Offer Agreement, by its terms, contained rights or obligations as between ISGM and:
- (i) the Applicant;
 - (ii) Representatives of Subcontracting Companies; or
 - (iii) group members (as defined at paragraph 1A of the 2FASOC); and
- (i) otherwise denies paragraph 13.

13A. Further to paragraph 13, it says that:

- (a) the services provided to it pursuant to the 2013 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses; and

Particulars

Clause 28.1(a) of the 2013 Tickets of Work Standing Offer Agreement.

- (b) it repeats paragraphs 6A to ~~6R6S~~ hereof (inclusive).

14. As to paragraph 14, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial and reference to its full terms and effect, it:

- (a) admits that clause 2.1 contained terms relating to Subcontracting Companies to the effect stated; and
- (b) otherwise denies paragraph 14.

15. As to paragraph 15, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial and reference to its full terms and effect, it:
 - (a) admits that clause 2.2 and each of sub-clauses (a)-(e), (g) and (i) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 15.
16. As to paragraph 16, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 2.3(d) contained terms relating to Subcontracting Companies to the effect stated;
 - (b) says that clause 2.3(a) contained a term to the effect that ISGM was not obliged to procure Subcontracting Companies to carry out the I&M Services during the term of the agreement;
 - (c) says further that clause 2.3(c) contained a term to the effect that ISGM did not promise or represent that it will procure any services, or any particular volume of services for Subcontracting Companies under the agreement; and
 - (d) otherwise denies paragraph 16.
17. As to paragraph 17, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 2.4 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 17.
18. As to paragraph 18, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 3 and each of sub-clauses (a) and (b) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 18.
19. As to paragraph 19, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4.1 contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 19.

20. As to paragraph 20, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.3 and each of sub-clauses (a)-(g) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 20.
21. As to paragraph 21, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.4 and each of sub-clauses (a)-(c) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 21.
22. As to paragraph 22, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.5 contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 22.
23. As to paragraph 23, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.6 and each of sub-clauses (b)-(f) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 23.
24. As to paragraph 24, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.7 contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 24.
25. As to paragraph 25, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.8 and each of sub-clauses (b)-(f) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 25.
26. As to paragraph 26, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:

- (a) admits that clause 7.2 and each of sub-clauses (a)-(j) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 26.
- 27. As to paragraph 27, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 7.3 and each of sub-clauses (a) and (b) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 27.
- 28. As to paragraph 28, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 8 and each of sub-clauses (a) and (b) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 28.
- 29. As to paragraph 29, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 9.2 and each of sub-clauses (a) and (b) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 29.
- 30. As to paragraph 30, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 9.3(d) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 30.
- 31. As to paragraph 31, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 9.4(b) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 31.
- 32. As to paragraph 32, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.1 and each of sub-clauses (a)-(d) contained terms relating to Subcontracting Companies to the effect stated; and

- (b) otherwise denies paragraph 32.
- 33. As to paragraph 33, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.2 contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 33.
- 34. As to paragraph 34, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11.1 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 34.
- 35. As to paragraph 35, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11.2 and each of sub-clauses (a)-(h) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 35.
- 36. As to paragraph 36, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11.3 contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 36.
- 37. As to paragraph 37, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11.4 and each of sub-clauses (a)-(c) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 37.
- 38. As to paragraph 38, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11.4 and each of sub-clauses (a)-(d) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 38.

39. As to paragraph 39, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 13.1 and each of sub-clauses (a)-(i) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 39.
40. As to paragraph 40, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clauses 17.1 and 17.3 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 40.
41. As to paragraph 41, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clauses 18.1, 18.2, 18.3 and 18.4 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 41.
42. As to paragraph 42, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clauses 20.1 and 20.2 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 42.
43. As to paragraph 43, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 21 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 43.
44. As to paragraph 44, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 24 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 44.
45. As to paragraph 45, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:

- (a) admits that clause 25.1(a) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 45.
46. As to paragraph 46, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 25.2 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 46.
47. As to paragraph 47, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 25.3 and each of sub-clauses (a)-(c) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 47.
48. As to paragraph 48, subject to production of the 2013 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 25.5(b) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 48.

2013 Field Operations Manual

49. As to paragraph 49, it:
- (a) denies that it issued the 2013 Field Operations Manual:
 - (i) to the Applicant;
 - (ii) to Representatives of Subcontracting Companies; or
 - (iii) to group members (as defined at paragraph 1A of the 2FASOC);
 - (b) says that the 2013 Field Operations Manual was incorporated into, and formed part of the 2013 Tickets of Work Standing Offer Agreement;

Particulars

The 2013 Field Operations Manual was Schedule 2 to the 2013 Tickets of Work Standing Offer Agreement.

- (c) says further that a hard copy of the 2013 Field Operations Manual was provided to:
 - (i) MBC; and
 - (ii) Subcontracting Companies; and
- (d) otherwise denies paragraph 49.

49A. As to paragraph 49A, it:

- (a) says that Subcontracting Companies were required to comply with the 2013 Field Operations Manual;
- (b) says that Subcontracting Companies were required to ensure that their Representatives complied with the 2013 Field Operations Manual; and
- (c) otherwise denies paragraph 49A.

49B. Further to paragraph 49A, it says that the 2013 Field Operations Manual contained operational procedures and practices that ensured the I&M Services were provided safely and in accordance with:

- (a) legislative and regulatory requirements; and
- (b) Telstra's requirements under the Telstra/ISGM Agreement.

Particulars

The respondent refers to and repeats paragraphs 5A, 5B and 5C.

- 50. As to paragraph 50, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4 contained requirements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 50.
- 51. As to paragraph 51, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4.1 contained statements and requirements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 51.
- 52. As to paragraph 52, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 4.1.4 contained statements and requirements relating to Subcontracting Companies, ISGM and Telstra to the effect stated; and
 - (b) otherwise denies paragraph 52.
- 53. As to paragraph 53, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4.2.1 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 53.
- 54. As to paragraph 54, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4.2.2 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 54.
- 55. As to paragraph 55, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4.2.4 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 55.
- 56. As to paragraph 56, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4.2.5 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 56.
- 57. As to paragraph 57, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4.2.6 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 57.
- 58. As to paragraph 58, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4.2.11 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and

- (b) otherwise denies paragraph 58.
59. As to paragraph 59, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.4.1 contained requirements and statements relating to Subcontracting Companies, ISGM and Telstra to the effect stated; and
 - (b) otherwise denies paragraph 59.
60. As to paragraph 60, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.4.2 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 60.
61. As to paragraph 61, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 5 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 61.
62. As to paragraph 62, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 5.1 contained requirements and statements relating to Subcontracting Companies and Telstra to the effect stated; and
 - (b) otherwise denies paragraph 62.
63. As to paragraph 63, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 5.1.1 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 63.
64. As to paragraph 64, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 5.1.2 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 64.

65. As to paragraph 65, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 7 contained requirements relating to ISGM to the effect stated; and
 - (b) otherwise denies paragraph 65.
66. As to paragraph 66, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 8.1 contained statements and requirements relating to Subcontracting Companies and Telstra to the effect stated; and
 - (b) otherwise denies paragraph 66.
67. As to paragraph 67, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 8.2 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 67.
68. As to paragraph 68, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 8.3 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 68.
69. As to paragraph 69, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 9.2.2 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 69.
70. As to paragraph 70, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 10 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 61.
71. As to paragraph 71, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 10.3 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 71.
- 72. As to paragraph 72, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.4 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 72.
- 73. As to paragraph 73, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) denies the allegations in subparagraphs (b)(ii) and (f);
 - (b) subject to those denials, admits that clause 10.5 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (c) otherwise denies paragraph 73.
- 74. As to paragraph 74, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.7 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 74.
- 75. As to paragraph 75, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.8 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 75.
- 76. As to paragraph 76, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.9 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 76.
- 77. As to paragraph 77, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 10.10 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 77.
- 78. As to paragraph 78, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.11 contained requirements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 78.
- 79. As to paragraph 79, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.12 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 79.
- 80. As to paragraph 80, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.14 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 80.
- 81. As to paragraph 81, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.15 contained requirements and statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 81.
- 82. As to paragraph 82, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.16 contained requirements and statements relating to Subcontracting Companies to the effect stated; and
 - (b) says that clause 10.16 also contained a statement to the effect that the relationship between ISGM and Subcontracting Companies was that of principal and independent contractor;
 - (c) otherwise denies paragraph 82.

83. As to paragraph 83, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 10.17 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 83.
84. As to paragraph 84, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 10.18 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 84.
85. As to paragraph 85, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 10.19 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 85.
86. As to paragraph 86, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 10.21 contained statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 86.
87. As to paragraph 87, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 10.21 sub-section 1 contained statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 87.
88. As to paragraph 88, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 10.21 sub-section 2 contained statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 88.
89. As to paragraph 89, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) denies the reference to clause 4.2 in subparagraph (a) and says that the reference was to clause 5.2;
 - (b) denies the reference to clause 4.1 in subparagraph (d) and says that the reference was to clause 5.1;
 - (c) subject to those denials, admits that clause 10.21 sub-section 5 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (d) otherwise denies paragraph 89.
90. As to paragraph 90, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) denies the reference to clause 5.2 in subparagraph (b) and says that the reference was to clause 6.2;
 - (b) denies the reference to clause 5.1 in subparagraph (c) and says that the reference was to clause 6.1;
 - (c) subject to those denials, admits that clause 10.21 sub-section 6 contained requirements relating to Subcontracting Companies, ISGM and Telstra to the effect stated; and
 - (d) otherwise denies paragraph 90.
91. As to paragraph 91, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 10.22 contained requirements relating to Subcontracting Companies to the effect stated;
 - (b) says that clause 10.22 also contained a statement that Telstra is responsible for the Conduct of Works on any given work site; and
 - (c) otherwise denies paragraph 91.
92. As to paragraph 92, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 10.29 contained statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 92.
93. As to paragraph 93, subject to production of the 2013 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 10.33 contained requirements relating to Subcontracting Companies and ISGM to the effect stated; and
- (b) otherwise denies paragraph 93.

February 2015 Tickets of Work Standing Offer Agreement

93A. As to paragraph 93A, it:

- (a) says that from about 10 February 2015, it entered into Standard Agreements with Subcontracting Companies (**February 2015 Tickets of Work Standing Offer Agreement**);
- (b) refers to and repeats paragraphs 6A to 6P hereof (inclusive);
- (c) says that, the services provided to it pursuant to the February 2015 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses;
- (d) says further that it did not enter into the February 2015 Tickets of Work Standing Offer Agreement with MBC;
- (e) says further that services provided pursuant to the February 2015 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies;
- (f) denies that the February 2015 Tickets of Work Standing Offer Agreement gave rise to rights or obligations as between ISGM and Subcontracting Companies' Representatives and/or group members (as defined at paragraph 1A of the 2FASOC); and
- (g) otherwise denies paragraph 93A.

93B. As to paragraph 93B, it says as follows:

- (a) it will rely upon the February 2015 Tickets of Work Standing Offer Agreement at trial for its full terms and effect; and
- (b) it otherwise admits paragraph 93B.

93C. As to paragraph 93C, it says as follows:

- (a) it admits paragraphs 93C(a) and (b);
- (b) the two agreements dealt with the same kind of services, but were in different terms to one another;
- (c) clause 1.1(a) of the October 2015 Tickets of Work Standing Offer Agreement was amended so that the Subcontracting Company bears the cost of obtaining insurance, police checks and all accreditation necessary for its role under the Agreement;

- (d) the October 2015 Tickets of Work Standing Offer Agreement added subclause 1.1(a)(iii) which provided that the Subcontracting Company must provide evidence to ISGM of the Subcontracting Company's accreditations/licences necessary to perform the I&M Services under the Agreement;
- (e) the October 2015 Tickets of Work Standing Offer Agreement added clause 1.3 referred to in paragraph 95(a) herein;
- (f) at several clauses, including clause 2.2 and others, the October 2015 Tickets of Work Standing Offer Agreement was amended to refer to the Subcontractor's Representatives and to contain obligations upon on either ISGM or the Subcontracting Company in relation to the Subcontractor's Representatives;
- (g) the October 2015 Ticketers of Work Standing Offer Agreement amended clause 3, including by providing that the Subcontracting Company would bear the cost of ensuring that its Representatives are appropriately trained to meet Network specifications and requirements;
- (h) the October 2015 Agreement amended clause 4.4 to provide, amongst other things, the matters referred to in paragraph 103 herein;
- (i) it admits paragraph 93C(c);
- (j) it amended clause 8.2 by adding clauses 8.2(a)(x), 8.2(m)(v) and 8.2(p) relating to the Subcontracting Company maintaining all licences required by law;
- (k) it admits paragraph 93C(d), (e) and (f);
- (l) the October 2015 Tickets of Work Standing Offer Agreement added clauses 12.2(i) and 12.3(b) to the effect pleaded in paragraphs 119 and 120 herein;
- (m) the October 2015 Tickets of Work Standing Offer Agreement added clause 14, to the effect pleaded in paragraph 123 herein;
- (n) the October 2015 Tickets of Work Standing Offer Agreement added clause 15(a)(iii) relating to an indemnity in relation to any loss or damage caused by the Subcontracting Company;
- (o) the October 2015 Tickets of Work Standing Offer Agreement amended clause 17.1 (previously clause 16.1), relating to workers' compensation insurance provided by the Subcontracting Company;
- (p) the October 2015 Tickets of Work Standing Offer Agreement added clause 18.2(b) relating to evidence of regulator notification being provided by the Subcontracting Company to ISGM;

- (q) the October 2015 Tickets of Work Standing Offer Agreement amended clause 18.3 (previously 17.3), including in relation to the clauses referred to in paragraph 124 herein;
- (r) the October 2015 Tickets of Work Standing Offer Agreement added clause 18.7(a) relating to asbestos handling;
- (s) the October 2015 Tickets of Work Standing Offer Agreement added clause 29.1(b), stating that the parties do not intend to create an employment relationship between ISGM and the Subcontracting Company's Representatives and that the parties do not intend to create a relationship of principal and agent between ISGM and the Subcontracting Company or its Representatives;
- (t) the October 2015 Tickets of Work Standing Offer Agreement added clause 29.15, being an "entire agreement" clause;
- (u) the October 2015 Tickets of Work Standing Offer Agreement added a definition to clause 30 (previously clause 29) of "ISGM Representative";
- (v) the October 2015 Tickets of Work Standing Offer Agreement inserted Schedule 4, being a subcontractor's statement applicable under New South Wales legislation; and
- (w) it otherwise denies paragraph 93C.

October 2015 Tickets of Work Standing Offer Agreement

94. As to paragraph 94, it:

- (a) says that, from about October 2015 it entered into Standard Agreements with Subcontracting Companies (**October 2015 Tickets of Work Standing Offer Agreement**);
- (b) refers to and repeats paragraphs 6A to ~~6R~~6S hereof (inclusive);
- (c) ~~says further that it entered into the 2015 Tickets of Work Standing Offer Agreement, with MBC, on or about 1 March 2016~~ the 2016 Agreement between ISGM and MBC was based on the October 2015 Tickets of Work Standing Offer Agreement;
- (d) says that the parties to the 2016 Agreement between ISGM and MBC were ISGM and MBC;
- (e) says that the Applicant was not a party to the 2016 Agreement between ISGM and MBC; and
- (f) says that the Applicant was not a party to any agreement based on the October 2015 Tickets of Work Standing Offer Agreement.

Particulars

- i. The Standard Form of the October 2015 Tickets of Work Standing Offer Agreement is in writing in a document styled "Ticket of Work Standing Offer Agreement for Telstra Subcontractor Work" and is available for inspection at the offices of ISGM's solicitors.
 - ii. ~~The 2015 Tickets of Work Standing Offer~~ 2016 Agreement between ISGM and MBC is in writing and is available for inspection at the offices of Respondent's solicitors.
 - (g) says further that services provided pursuant to the October 2015 Tickets of Work Standing Offer Agreement were provided by MBC and Subcontracting Companies;
 - (h) denies that the October 2015 Tickets of Work Standing Offer Agreement gave rise to rights or obligations as between ISGM and;
 - (i) the Applicant;
 - (ii) Representatives of Subcontracting Companies; or
 - (iii) group members (as defined at paragraph 1A of the 2FASOC); and
 - (i) otherwise denies paragraph 94.
- 94A. Further to paragraph 94, it says that it entered into Standard Agreements that were not the October 2015 Tickets of Work Standing Offer Agreement with some Subcontracting Companies, on and/or from:
- (a) 10 February 2015;
 - (b) 18 December 2015;
 - (c) 1 February 2016; and
 - (d) 18 July 2016.
- 94B. It says further, that:
- (j) the services provided to it pursuant to the October 2015 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses; and

Particulars

- Clause 29.1(a) of the October 2015 Tickets of Work Standing Offer Agreement.
- (k) repeats paragraphs 6A-~~6R~~6S hereof (inclusive).

95. As to paragraph 95, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 1.3 and each of sub-clauses (a) and (b) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 95.
96. As to paragraph 96, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 2.1 and contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 96.
97. As to paragraph 97, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 2.2 and each of sub-clauses (a)-(f), (h), (j) and (k) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 97.
98. As to paragraph 98, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 2.3(d) contained terms relating to Subcontracting Companies to the effect stated;
 - (b) says that clause 2.3(a) contained a term to the effect that ISGM was not obliged to procure Subcontracting Companies to carry out the I&M Services during the term of the agreement;
 - (c) says further that clause 2.3(c) contained a term to the effect that ISGM did not promise or represent that it will procure any services, or any particular volume of services for Subcontracting Companies under the agreement; and
 - (d) otherwise denies paragraph 98.
99. As to paragraph 99, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 2.4 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 99.

100. As to paragraph 100, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.3 and each of sub-clauses (a) to (c) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 100.
101. As to paragraph 101, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.1 contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 101.
102. As to paragraph 102, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.3 contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 102.
103. As to paragraph 103, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.4 and each of sub-clauses (a) to (c), (e), (f), (h) and (j) contained terms relating to Subcontracting Companies and ISGM to the effect stated;
 - (b) says further that sub-clause (i) contained a term that the Subcontracting Companies are solely responsible for the employment of their Representatives, all employment costs of their Representatives, and the payment of superannuation to any of the Representatives they employ; and
 - (c) otherwise denies paragraph 103.
104. As to paragraph 104, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.5 contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 104.
105. As to paragraph 105, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:

- (a) denies subparagraph (b) and says that pursuant to clause 4.6(b) ISGM may issue reasonable directions relating to any aspect of the performance of the Services;
 - (b) admits that clause 4.6 and each of sub-clauses (a) and (c)-(f) contained terms relating to Subcontracting Companies to the effect stated; and
 - (c) otherwise denies paragraph 105.
106. As to paragraph 106, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.7 contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 106.
107. As to paragraph 107, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 4.8 and each of sub-clauses (b)-(f) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 107.
108. As to paragraph 108, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 7 and each of sub-clauses (a)-(d) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 108.
109. As to paragraph 109, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 8.2 and each of sub-clauses (a)-(k) and (p) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 109.
110. As to paragraph 110, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 8.3 and each of sub-clauses (a) and (b) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 110.
111. As to paragraph 111, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:

- (a) admits that clause 9 and each of sub-clauses (a) and (b) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 111.
- 112. As to paragraph 112, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.2 and each of sub-clauses (a) and (b) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 112.
- 113. As to paragraph 113, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.3(d) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 113.
- 114. As to paragraph 114, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.4 and each of sub-clauses (b) and (g) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 114.
- 115. As to paragraph 115, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.5 and each of sub-clauses (a)-(f) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 115.
- 116. As to paragraph 116, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11.1 contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 116.
- 117. As to paragraph 117, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11.2 contained terms relating to Subcontracting Companies to the effect stated; and

- (b) otherwise denies paragraph 117.
118. As to paragraph 118, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) says save that clause 12.1 is expressed to be subject to clause 12, it otherwise admits that clause 12.1 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 118.
119. As to paragraph 119, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 12.2 and each of sub-clauses (a)-(i) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 119.
120. As to paragraph 120, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 12.3 and each of sub-clauses (a) and (b) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 120.
121. As to paragraph 121, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 12.4 and each of sub-clauses (a)-(c) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 121.
122. As to paragraph 122, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 12.5 and each of sub-clauses (a)-(d) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 122.
123. As to paragraph 123, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) says that further to the matters pleaded at subparagraph (i), clause 14.1(i) required Subcontracting Companies to comply, in respect of their Representatives, with workers' compensation, payroll tax, PAYG tax instalments,

superannuation contributions and any other payments in respect of public holidays, annual leave, parental leave, personal/carer's leave, long-service leave, redundancy or termination payments, or other payments in respect of the Representative's termination;

- (b) admits that clause 14 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (c) otherwise denies paragraph 123.
124. As to paragraph 124, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 18.1 and each of sub-clauses (a) and (b) contained terms relating to Subcontracting Companies to the effect stated;
 - (b) admits that clause 18.3 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (c) otherwise denies paragraph 124.
125. As to paragraph 125, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 19 and each of the sub-clauses referred to in paragraph 125 contained terms relating to Subcontracting Companies, Telstra and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 125.
126. As to paragraph 126, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 21 and each of the sub-clauses referred to in paragraph 126 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 126.
127. As to paragraph 127, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 22 and each of sub-clauses (a) and (c) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 127.
128. As to paragraph 128, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:

- (a) admits that clause 25 contained terms relating to Subcontracting Companies, Telstra and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 128.
129. As to paragraph 129, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 26.1(a) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 129.
130. As to paragraph 130, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 26.2 contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 130.
131. As to paragraph 131, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 26.3 and each of sub-clauses (a)-(c) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 131.
132. As to paragraph 132, subject to production of the October 2015 Tickets of Work Standing Offer Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 26.5(b) contained terms relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 132.

December 2015 Tickets of Work Standing Offer Agreement

132A. As to paragraph 132A, it:

- (a) says that from about 18 December 2015, it entered into Standard Agreements with Subcontracting Companies (**December 2015 Tickets of Work Standing Offer Agreement**);
- (b) refers to and repeats paragraphs 6A to 6P hereof (inclusive);
- (c) says that, the services provided to it pursuant to the December 2015 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses;

- (d) says further that it did not enter into the December 2015 Tickets of Work Standing Offer Agreement with MBC;
- (e) says further that services provided pursuant to the December 2015 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies;
- (f) denies that the December 2015 Tickets of Work Standing Offer Agreement gave rise to rights or obligations as between ISGM and Subcontracting Companies' Representatives and/or group members (as defined at paragraph 1A of the 2FASOC); and
- (g) otherwise denies paragraph 132A.

132B. As to paragraph 132B, it says as follows:

- (a) it will rely upon the December 2015 Tickets of Work Standing Offer Agreement at trial for its full terms and effect;
- (b) it admits paragraphs 132B(a) and (b);
- (c) save to say that clauses 18.3(c)(iii)(a) and (b) were concerned with the Subcontracting Company's rights against ISGM, rather than a worker's rights against ISGM, it admits paragraph 132B(c);
- (d) it admits paragraph 132B(d); and
- (e) it otherwise admits paragraph 132B.

February 2016 Tickets of Work Standing Offer Agreement

132C. As to paragraph 132C, it:

- (a) says that from about 1 February 2016, it entered into Standard Agreements with Subcontracting Companies (**February 2016 Tickets of Work Standing Offer Agreement**);
- (b) refers to and repeats paragraphs 6A to 6P hereof (inclusive);
- (c) says that, the services provided to it pursuant to the February 2016 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses;
- (d) says further that it did not enter into the February 2016 Tickets of Work Standing Offer Agreement with MBC;
- (e) says further that services provided pursuant to the February 2016 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies;
- (f) denies that the February 2016 Tickets of Work Standing Offer Agreement gave rise to rights or obligations as between ISGM and Subcontracting Companies'

Representatives and/or group members (as defined at paragraph 1A of the 2FASOC); and

- (g) otherwise denies paragraph 132C.

132D. As to paragraph 132D, it says as follows:

- (a) it will rely upon the February 2016 Tickets of Work Standing Offer Agreement at trial for its full terms and effect; and
- (b) it otherwise admits paragraph 132D.

July 2016 Tickets of Work Standing Offer Agreement

132E. As to paragraph 132E, it:

- (a) says that from about 18 July 2016, it entered into Standard Agreements with Subcontracting Companies (**July 2016 Tickets of Work Standing Offer Agreement**):
- (b) refers to and repeats paragraphs 6A to 6P hereof (inclusive);
- (c) says further that it did not enter into the July 2016 Tickets of Work Standing Offer Agreement with MBC;
- (d) says further that services provided pursuant to the July 2016 Tickets of Work Standing Offer Agreement were provided by Subcontracting Companies;
- (e) denies that the July 2016 Tickets of Work Standing Offer Agreement gave rise to rights or obligations as between ISGM and Subcontracting Companies' Representatives and/or group members (as defined at paragraph 1A of the 2FASOC); and
- (f) otherwise denies paragraph 132E.

132F. As to paragraph 132F, it says as follows:

- (a) it will rely upon the July 2016 Tickets of Work Standing Offer Agreement at trial for its full terms and effect; and
- (b) it otherwise admits paragraph 132F.

2015 Field Operations Manual

133. As to paragraph 133, it:

- (a) denies that it issued the 2015 Field Operations Manual:
- (i) to the Applicant;
- (ii) Representatives of Subcontracting Companies; or

- (iii) to group members (as defined at paragraph 1A of the 2FASOC);
- (b) says that the 2015 Field Operations Manual was incorporated into, and formed part of the October 2015 Tickets of Work Standing Offer Agreement;

Particulars

The 2015 Field Operations Manual was Schedule 3 to the October 2015 Tickets of Work Standing Offer Agreement.

- (c) says further that the 2015 Field Operations Manual was:
 - (i) provided electronically to:
 - (A) MBC; and
 - (B) Subcontracting Companies; and
 - (ii) available on CMS; and
- (d) otherwise denies paragraph 133.

133A. As to paragraph 133A, it:

- (a) says that Subcontracting Companies were required to comply with the 2015 Field Operations Manual;
- (b) says that Subcontracting Companies were required to ensure that their Representatives were aware of and complied with the 2015 Field Operations Manual; and

Particulars

Clause 4.1 of the 2015 Field Operations Manual.

- (c) otherwise denies paragraph 133A.

133B. Further to paragraph 133A, it says that the 2015 Field Operations Manual contained operational procedures and practices that ensured the I&M Services were provided safely and in accordance with:

- (a) legislative and regulatory requirements; and
- (b) Telstra's requirements under the Telstra/ISGM Agreements.

Particulars

The respondent refers to and repeats paragraphs 5A, 5B and 5C.

134. As to paragraph 134, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 4.1 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 134.
- 135. As to paragraph 135, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4.4 contained statements and requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 135.
- 136. As to paragraph 136, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4.5 contained statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 136.
- 137. As to paragraph 137, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) denies subparagraph (b) to the extent that it asserts a term that incorrect amounts were payable as a debt by the Subcontractor to the worker;
 - (b) says instead that clause 4.6.1 provided that incorrect amounts were payable as a debt by the Subcontractor to ISGM;
 - (c) subject to subparagraphs (a) and (b), it admits that clause 4.6 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (d) otherwise denies paragraph 137.
- 138. As to paragraph 138, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 5.1 contained requirements and statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 138.
- 139. As to paragraph 139, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 5.2 and each sub-clause referred to in paragraph 139 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 139.
- 140. As to paragraph 140, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 5.4 contained requirements relating to Subcontracting Companies with respect to their Representatives to the effect stated; and
 - (b) otherwise denies paragraph 140.
- 141. As to paragraph 141, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 6.1 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 141.
- 142. As to paragraph 142, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 6.1.1 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 142.
- 143. As to paragraph 143, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 6.1.2 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 143.
- 144. As to paragraph 144, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 6.1.6 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 144.
- 145. As to paragraph 145, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 7.5 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 145.
- 146. As to paragraph 146, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 8.2 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 146.
- 147. As to paragraph 147, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 8.3 contained requirements relating to Subcontracting Companies and their Representatives to the effect stated; and
 - (b) otherwise denies paragraph 147.
- 148. As to paragraph 148, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.7 contained requirements relating to Subcontracting Companies and their Representatives to the effect stated; and
 - (b) otherwise denies paragraph 148.
- 149. As to paragraph 149, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.7.1 contained requirements relating to ISGM to the effect stated; and
 - (b) otherwise denies paragraph 149.
- 150. As to paragraph 150, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.8 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 150.
- 151. As to paragraph 151, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.10 contained statements and requirements relating to Subcontracting Companies and ISGM to the effect stated; and

- (b) otherwise denies paragraph 151.
- 152. As to paragraph 152, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.11 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 152.
- 153. As to paragraph 153, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.12 contained statements and requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 153.
- 154. As to paragraph 154, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.13 contained statements and requirements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 154.
- 155. As to paragraph 155, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.14 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 155.
- 156. As to paragraph 156, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10.15 contained statements and requirements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 156.
- 157. As to paragraph 157, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11 contained statements and requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 157.

158. As to paragraph 158, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 11.1 contained requirements relating to ISGM to the effect stated; and
 - (b) otherwise denies paragraph 158.
159. As to paragraph 159, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 11.2 contained statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 159.
160. As to paragraph 160, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 11.3 contained statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 160.
161. As to paragraph 161, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 12.1 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 161.
162. As to paragraph 162, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 16 contained statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 162.
- 162A. Further to paragraphs 133 to 162 (inclusive), it says that the 2015 Field Operations Manual was amended and reissued to Subcontracting Companies from time to time between October 2015 and the issuing of the 2016 Field Operations Manual.

Particulars

- i. The 2015 Field Operations Manual was amended and issued to new Subcontracting Companies between 13 November 2015 and 5 April 2016.

- ii. The 2015 Field Operations Manual was amended and reissued to all Subcontracting Companies on or about 5 April 2016 and 2 September 2016.

November 2016 I&M Subcontractor Agreement

163. As to paragraph 163, it:

- (a) says that, from about 14 November 2016, it entered into Standard Agreements with Subcontracting Companies (**November 2016 I&M Subcontractor Agreement**);

Particulars

The Standard Form of the November 2016 I&M Subcontractor Agreement is in writing in a document styled "I&M Subcontractor Agreement" and is available for inspection at the offices of ISGM's solicitors.

- (b) refers to and repeats paragraphs 6A to ~~6R~~6P hereof (inclusive);
 - (c) says further that it did not enter into the November 2016 I&M Subcontractor Agreement with MBC;
 - (d) says further that services provided pursuant to the November 2016 I&M Subcontractor Agreement were provided by Subcontracting Companies;
 - (e) denies that the November 2016 I&M Subcontractor Agreement gave rise to rights or obligations as between ISGM and Subcontracting Companies' Representatives and/or group members (as defined at paragraph 1A of the 2FASOC); and
 - (f) otherwise denies paragraph 163.
- 163A. Further to paragraph 163, it says that it entered into Standard Agreements that were not the November 2016 I&M Subcontractor Agreement with some Subcontracting Companies, on and/or from about:
- (a) 6 March 2017;
 - (b) 11 August 2017;
 - (c) 22 June 2018; and
 - (d) 7 August 2018;

163B. It says further that:

- (a) the services provided to it pursuant to the November 2016 I&M Subcontractor Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses; and

Particulars

Clause 28.1(a) of the November 2016 I&M Subcontractor Agreement.

- (b) repeats paragraphs 6A-6R hereof (inclusive).
164. As to paragraph 164, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 2.1 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 164.
165. As to paragraph 165, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 2.2 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 165.
166. As to paragraph 166, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 2.4 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 166.
167. As to paragraph 167, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 3.1 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 167.
168. As to paragraph 168, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 3.2(a) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 168.
169. As to paragraph 169, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:

- (a) admits that clause 3.3 contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 169.
- 170. As to paragraph 170, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 3.4 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 170.
- 171. As to paragraph 171, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 3.5 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 171.
- 172. As to paragraph 172, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 4(d) contained terms relating to ISGM and Subcontracting Companies to the effect stated;
 - (b) says that clause 4 also contained terms to the effect that:
 - (i) Subcontracting Companies may delegate the services to their employees without the consent of ISGM;
 - (ii) Subcontracting Companies are solely responsible for:
 - (A) the employment of, and all costs relating to, its employees (including wages, salaries, annual leave, parental leave, personal/carer's leave, long service leave, superannuation, redundancy or termination payments); and
 - (B) the engagement of their Subcontractor Representatives (other than their employees) under an appropriate subcontract that complies with the November 2016 I&M Subcontractor Agreement and the payment of all fees and other charges in respect of those Subcontractor Representatives; and
 - (c) otherwise denies paragraph 172.
- 173. As to paragraph 173, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:

- (a) admits that clause 5(d) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 173.
- 174. As to paragraph 174, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 10 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 174.
- 175. As to paragraph 175, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 175.
- 176. As to paragraph 176, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 12.2 and each of sub-clauses (b) and (g) contained terms relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 176.
- 177. As to paragraph 177, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 13.1(a)-(e) contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 177.
- 178. As to paragraph 178, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 13.2 and sub-clauses (a) and (b) contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 178.
- 179. As to paragraph 179, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
 - (a) admit that clause 13.3 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and

- (b) otherwise denies paragraph 179.
180. As to paragraph 180, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 13.4 and each of sub-clauses (a) and (b) contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
- (b) otherwise denies paragraph 180.
181. As to paragraph 181, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) says that further to the matters pleaded at subparagraph (h), clause 15(h) required Subcontracting Companies to comply, in respect of their Representatives, with workers' compensation, payroll tax, PAYG tax instalments, superannuation contributions and any other payments in respect of public holidays, annual leave, parental leave, personal/carer's leave, long-service leave, redundancy or termination payments, or other payments in respect of the Representative's termination;
- (b) admits that clause 15 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
- (c) otherwise denies paragraph 181.
182. As to paragraph 182, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 19.1 and each of sub-clauses (a) and (b) contained terms relating to Subcontracting Companies to the effect stated; and
- (b) otherwise denies paragraph 182.
183. As to paragraph 183, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 19.2 and each of sub-clauses (a) and (b) contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
- (b) otherwise denies paragraph 183.
184. As to paragraph 184, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 20 and each of the sub-clauses referred to in paragraph 184 contained terms relating to ISGM and Subcontracting Companies to the effect stated;

- (b) says that clause 20.1(c) provided that ISGM can only exercise the powers conferred on it by clause 20.1 reasonably, and in order to protect ISGM's legitimate interests; and
 - (c) otherwise denies paragraph 184.
185. As to paragraph 185, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 22 and each of the sub-clauses referred to in paragraph 185 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 185.
186. As to paragraph 186, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 24 contained terms relating to ISGM and Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 186.
187. As to paragraph 187, subject to production of the November 2016 I&M Subcontractor Agreement at trial, and reference to its full terms and effect, it:
- (a) admits that clause 27.1 and each of sub-clauses (b)-(d) contained terms relating to ISGM and Subcontracting Companies to the effect stated;
 - (b) says that sub-clause 27.1(a) provided that, subject to clause 27.1(b), all variations to the November 2016 I&M Subcontractor Agreement must be agreed in writing by both parties; and
 - (c) otherwise denies paragraph 187.

March 2017 I&M Subcontractor Agreement

187A. As to paragraph 187A, it:

- (a) says that, from about 6 March 2017, it entered into Standard Agreements with Subcontracting Companies (March 2017 I&M Subcontractor Agreement);

Particulars

The Standard Form of the March 2017 I&M Subcontractor Agreement is in writing in a document styled "I&M Subcontractor Agreement" and is available for inspection at the offices of ISGM's solicitors.

- (b) refers to and repeats paragraphs 6A to 6P hereof (inclusive);

- (c) says that, the services provided to it pursuant to the March 2017 I&M Subcontractor Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses;
- (d) says further that it did not enter into the March 2017 I&M Subcontractor Agreement with MBC;
- (e) says further that services provided pursuant to the March 2017 I&M Subcontractor Agreement were provided by Subcontracting Companies;
- (f) denies that the March 2017 I&M Subcontractor Agreement gave rise to rights or obligations as between ISGM and Subcontracting Companies' Representatives and/or group members (as defined at paragraph 1A of the 2FASOC); and
- (g) otherwise denies paragraph 163.

187B. As to paragraph 187B, it says as follows:

- (a) it will rely upon the March 2017 I&M Subcontractor Agreement at trial for its full terms and effect; and
- (b) it otherwise admits paragraph 187B.

August 2017 I&M Subcontractor Agreement

187C. As to paragraph 187C, it:

- (a) says that, from about 11 August 2017, it entered into Standard Agreements with Subcontracting Companies (**August 2017 I&M Subcontractor Agreement**);

Particulars

The Standard Form of the August 2017 I&M Subcontractor Agreement is in writing in a document styled "I&M Subcontractor Agreement" and is available for inspection at the offices of ISGM's solicitors.

- (b) refers to and repeats paragraphs 6A to 6P hereof (inclusive);
- (c) says that, the services provided to it pursuant to the August 2017 I&M Subcontractor Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses;
- (d) says further that it did not enter into the August 2017 I&M Subcontractor Agreement with MBC;
- (e) says further that services provided pursuant to the August 2017 I&M Subcontractor Agreement were provided by Subcontracting Companies;

- (f) denies that the August 2017 I&M Subcontractor Agreement gave rise to rights or obligations as between ISGM and Subcontracting Companies' Representatives and/or group members (as defined at paragraph 1A of the 2FASOC); and
- (g) otherwise denies paragraph 187C.

187D. As to paragraph 187D, it says as follows:

- (a) it will rely upon the the August 2017 I&M Subcontractor Agreement at trial for its full terms and effect;
- (b) clause 26 of the August 2017 I&M Subcontractor Agreement (which was added by the August 2017 I&M Subcontractor Agreement) contained provisions relating to the Subcontracting Company's employees, including in relation to the Subcontracting Company's workplace policies, practices and compliance with its obligations under the *Fair Work Act 2009* (Cth) (**FW Act**) and *Fair Work Regulations 2009* (Cth);
- (c) it otherwise admits paragraph 187D.

June 2018 I&M Subcontractor Agreement

187E. As to paragraph 187E, it:

- (a) says that, from about 22 June 2018, it entered into Standard Agreements with Subcontracting Companies (**June 2018 I&M Subcontractor Agreement**);

Particulars

The Standard Form of the June 2018 I&M Subcontractor Agreement is in writing in a document styled "I&M Subcontractor Agreement" and is available for inspection at the offices of ISGM's solicitors.

- (b) refers to and repeats paragraphs 6A to 6P hereof (inclusive);
- (c) says that, the services provided to it pursuant to the June 2018 I&M Subcontractor Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses;
- (d) says further that it did not enter into the June 2018 I&M Subcontractor Agreement with MBC;
- (e) says further that services provided pursuant to the June 2018 I&M Subcontractor Agreement were provided by Subcontracting Companies;
- (f) denies that the June 2018 I&M Subcontractor Agreement gave rise to rights or obligations as between ISGM and Subcontracting Companies' Representatives and/or group members (as defined at paragraph 1A of the 2FASOC); and

- (g) otherwise denies paragraph 187E.

187F. As to paragraph 187F, it says as follows:

- (a) it will rely upon the June 2018 I&M Subcontractor Agreement at trial for its full terms and effect;
- (b) clause 27 of the June 2018 I&M Subcontractor Agreement (which replaced clause 15(k)) added new requirements in relation to the Subcontracting Company meeting its employment obligations in relation to any overseas workers, including requiring compliance by the Subcontracting Company's subcontractors; and
- (c) it otherwise admits paragraph 187F.

August 2018 I&M Subcontractor Agreement

187G. As to paragraph 187G, it:

- (a) says that, from about 7 August 2018, it entered into Standard Agreements with Subcontracting Companies (**August 2018 I&M Subcontractor Agreement**):

Particulars

The Standard Form of the August 2018 I&M Subcontractor Agreement is in writing in a document styled "I&M Subcontractor Agreement" and is available for inspection at the offices of ISGM's solicitors.

- (b) refers to and repeats paragraphs 6A to 6P hereof (inclusive);
- (c) says that, the services provided to it pursuant to the August 2018 I&M Subcontractor Agreement were provided by Subcontracting Companies as independent contractors in the course of carrying on their own businesses;
- (d) says further that it did not enter into the August 2018 I&M Subcontractor Agreement with MBC;
- (e) says further that services provided pursuant to the August 2018 I&M Subcontractor Agreement were provided by Subcontracting Companies;
- (f) denies that the August 2018 I&M Subcontractor Agreement gave rise to rights or obligations as between ISGM and Subcontracting Companies' Representatives and/or group members (as defined at paragraph 1A of the 2FASOC); and
- (g) otherwise denies paragraph 187G.

187H. As to paragraph 187H, it says as follows:

- (a) it will rely upon the August 2018 I&M Subcontractor Agreement at trial for its full terms and effect;

- (b) clauses 13.2(b)(e) (which was added by the August 2018 I&M Subcontractor Agreement) included a warranty that the Subcontracting Companies register for GST and will notify ISGM if it ceases to be registered; and
- (c) it otherwise admits paragraph 187H.

2016 Field Operations Manual

188. As to paragraph 188, it:

- (a) denies that it issued the 2016 Field Operations Manual to Representatives of the Subcontracting Companies;
- (b) says that the 2016 Field Operations Manual was incorporated into, and formed part of the November 2016 I&M Subcontractor Agreement;

Particulars

The 2016 Field Operations Manual was Schedule 3 to the November 2016 I&M Subcontractor Agreement.

- (c) says further that the 2016 Field Operations Manual was:
 - (i) emailed to the registered email address of Subcontracting Companies; and

Particulars

The 2016 Field Operations Manual was emailed to existing and/or new Subcontracting Companies by Tandem on about 21 November 2016.

- (ii) available on CMS; and
- (d) otherwise denies paragraph 188.

188A. As to paragraph 188A, it:

- (a) says that Subcontracting Companies were required to comply with the 2016 Field Operations Manual;
- (b) says further that Subcontracting Companies were required to ensure that their Representatives were aware of and complied with the 2016 Field Operations Manual; and

Particulars

Clause 4 of the 2016 Field Operations Manual.

- (c) otherwise denies paragraph 188A.

188B. Further to paragraph 188A, it says that the 2016 Field Operations Manual contained operational procedures and practices that ensured the I&M Services were provided safely and in accordance with:

- (a) legislative and regulatory requirements; and
- (b) Telstra's requirements under the Telstra/ISGM Agreements.

Particulars

ISGM refers to and repeats paragraphs 5A, 5B and 5C.

189. As to paragraph 189, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 4 contained requirements and statements relating to Subcontracting Companies to the effect stated; and
- (b) otherwise denies paragraph 189.

190. As to paragraph 190, subject to production of the 2015 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 6.2 contained statements relating to Subcontracting Companies to the effect stated; and
- (b) otherwise denies paragraph 190.

191. As to paragraph 191, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 6.3 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
- (b) otherwise denies paragraph 191.

192. As to paragraph 192, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 6.4 contained requirements relating to Subcontracting Companies to the effect stated; and
- (b) otherwise denies paragraph 192.

193. As to paragraph 193, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 6.5 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and

- (b) otherwise denies paragraph 189.
194. As to paragraph 194, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 6.6.3 contained statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 194.
195. As to paragraph 195, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 6.6.4 contained requirements and statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 195.
196. As to paragraph 196, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 6.6.5 contained requirements and statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 196.
197. As to paragraph 197, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 6.6.6 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 197.
198. As to paragraph 198, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 6.6.7 contained requirements and statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 198.
199. As to paragraph 199, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 6.6.8 contained requirements and statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 199.

200. As to paragraph 200, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 6.6.9 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 200.
201. As to paragraph 201, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 6.6.13 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 201.
202. As to paragraph 202, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 6.9 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 202.
203. As to paragraph 203, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 9.1.6 contained requirements and statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 203.
204. As to paragraph 204, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 10.4 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 204.
205. As to paragraph 205, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 11.2 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 205.
206. As to paragraph 206, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:

- (a) admits that clause 11.3 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 206.
- 207. As to paragraph 207, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11.4 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 207.
- 208. As to paragraph 208, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11.4.1 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 208.
- 209. As to paragraph 209, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11.4.2 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 209.
- 210. As to paragraph 210, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 11.6 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 210.
- 211. As to paragraph 211, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 12.1 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 211.
- 212. As to paragraph 212, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
 - (a) admits that clause 12.2 contained statements relating to Subcontracting Companies, ISGM and Telstra to the effect stated; and

- (b) otherwise denies paragraph 212.
213. As to paragraph 213, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 13 contained requirements and statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 213.
214. As to paragraph 214, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 13.1 contained statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 214.
215. As to paragraph 215, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 13.2 contained statements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 215.
216. As to paragraph 216, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 13.4 contained requirements and statements relating to Subcontracting Companies and ISGM to the effect stated; and
 - (b) otherwise denies paragraph 216.
217. As to paragraph 217, subject to production of the 2016 Field Operations Manual at trial, and reference to its full terms and effect, it:
- (a) admits that clause 14.1 contained requirements relating to Subcontracting Companies to the effect stated; and
 - (b) otherwise denies paragraph 217.
218. Save that it says the documents referred to in subparagraph (a) are documents referred to in the 2016 Field Operations Manual, it otherwise admits paragraph 218.
- 218A. Further to paragraphs 188 to 218 (inclusive), it says that the 2016 Field Operations Manual was amended and reissued to Subcontracting Companies from time to time.

Particulars

- i. The 2016 Field Operations Manual was amended and issued to new Subcontracting Companies between 6 March 2017 and 3 August 2017.
- ii. The 2016 Field Operations Manual was amended and reissued to all Subcontracting Companies on or about:
 - A. 4 August 2017;
 - B. 22 March 2018;
 - C. 16 July 2018; and
 - D. 5 February 2019.

Alleged work practices

219. As to paragraph 219, it:

- (aa) refers to and repeats paragraphs 6A to 6S (inclusive) herein; and
- (a) denies subparagraph (a) and says further that:
 - (i) it refers to and repeats paragraphs 6I and 6K hereof;
 - (ii) the Subcontracting Companies and/or their Representatives indicated their own availability using CMS, which included identifying:
 - (A) the days (or part thereof) of the week that the Representatives were available to perform work;
 - (B) on any given day, the period during which the Representatives were available to perform work; and
 - (C) the number of Tickets of Work they wished to complete on a particular day;
 - (iii) the Subcontracting Companies and/or their Representatives were not required to login on a Toughbook at any specific time, rather their login time was determined by their availability as nominated by them; and
 - (iv) in respect of the Applicant:
 - (A) he generally indicated that he was available to accept Tickets of Work from 7:00am or 8:00am; and
 - (B) he would need to log into his Toughbook shortly before the time he had indicated that he was available to accept Tickets of Work;
- (b) as to subparagraph (b), it:
 - (i) refers to and repeats paragraphs 6J and 6K hereof;

- (ii) says that Telstra allocated Tickets of Work to the Subcontracting Companies' Representatives (including the Applicant) when the Representatives logged on and did so based on (inter alia):
 - (A) their availability as indicated on CMS;
 - (B) the nature of the work required;
 - (C) the skills and accreditations of the particular Subcontracting Companies and/or their Representatives; and
 - (D) the estimated completion time for each Ticket of Work; and

Particulars

Estimated completion time was based on the average time taken to complete work of a similar nature.

- (iii) otherwise denies subparagraph (b);
- (c) as to subparagraph (c), it:
 - (i) refers to and repeats subparagraph 6K(c) and 219(g) hereof;
 - (ii) says that Subcontracting Companies' Representatives were able to accept or reject allocated Tickets of Work;
 - (iii) says further that the Applicant rejected Tickets of Work from time to time; and

Particulars

From July 2015 to November 2016, the Applicant rejected approximately 8 percent of the Tickets of Work allocated to him. Further particulars may be provided prior to trial.

- (iv) otherwise denies subparagraph (c);
- (d) as to subparagraph (d), it:
 - (i) says that the number of Tickets of Work allocated to the Subcontracting Companies' Representatives (including the Applicant) was variable, and was influenced by factors including:
 - (A) the availability of the Subcontracting Companies' Representatives as indicated in CMS;
 - (B) the demand for I&M Services by Telstra's customers, and/or by reason of faults on the CAN;
 - (C) the nature of the work required to be performed; and

- (D) whether particular Subcontracting Companies' Representatives had the skills and accreditations to perform the required work; and
- (ii) otherwise denies subparagraph (d);
- (e) as to subparagraph (e), it:
 - (i) says that the minimum number of Tickets of Work allocated to the Subcontracting Companies' Representatives (including the Applicant) by Telstra was based on a range of factors, including those enumerated in subparagraph 219(d)(i);
 - (ii) says further that the Subcontracting Companies (including MBC) acknowledged and agreed that ISGM did not promise or represent that it would procure any particular volume of services from the Subcontracting Companies and/or their Representatives; and

Particulars

Clause 2.3(c) of each of the 2013 Tickets of Work Standing Offer Agreement, October 2015 Tickets of Work Standing Offer Agreement and November 2016 I&M Subcontractor Agreement.

- (iii) otherwise denies subparagraph (e);
- (f) as to subparagraph (f), it:
 - (i) says that, to the extent it is alleged that the Subcontracting Companies and/or their Representatives were unable to predict or control the precise location of Tickets of Work, that allegation is admitted;
 - (ii) says further that precise locations only became known when:
 - (A) a Telstra customer requested I&M Services at their address; or
 - (B) a fault on the CAN occurred at a particular location; and
 - (iii) otherwise denies subparagraph (f) and says further that:
 - (A) it refers to and repeats subparagraph 6G(d) hereof;
 - (B) the Subcontracting Companies' Representatives had an agreed start location which was used by Telstra to inform the allocation of Tickets of Work;
 - (C) Telstra used fixed district and sub-district boundaries which informed where the Subcontracting Companies and/or their Representatives were allocated Tickets of Work;

Particulars

Maps of the districts and sub-districts used by Telstra are available for inspection at the offices of ISGM's solicitors by prior appointment.

- (D) the Applicant's agreed start location was the Ferntree Gully sub-district, which was located in the district of South-East Victoria;
 - (E) most of the Tickets of Work allocated to the Applicant fell within the Ferntree Gully sub-district and the sub-districts immediately surrounding the Ferntree Gully sub-district;
 - (F) from time to time, and based on the level of demand for I&M Services, Telstra allocated Tickets of Work to Subcontracting Companies' Representatives (including the Applicant) outside of their usual sub-district, or the sub-districts immediately surrounding it;
 - (G) the Subcontracting Companies and/or their Representatives were able to, and did, reject Tickets of Work if they did not want to attend a particular location;
 - (H) the Subcontracting Companies and/or their Representatives could seek increased rates if they elected to accept a Ticket of Work that fell outside of their usual area of work (**ZZ Rates**); and
 - (I) the Applicant negotiated ZZ Rates on 16 occasions;
- (g) denies each and every allegation in subparagraph (g) and says further that:
- (i) the Subcontracting Companies' Representatives (including the Applicant):
 - (A) were able to reject any Ticket of Work after it was allocated, but before work commenced; and
 - (B) were not required to obtain a sequence code from ISGM in order to reject a Ticket of Work;

Particulars

Representatives could reject Tickets of Work by recording the rejection in their Toughbook, without approval from ISGM.

- (ii) in the event that a Representative rejected a Ticket of Work, they:
 - (A) recorded a reason for the rejection in their Toughbook, which was conveyed to Telstra, via Connect;
 - (B) were asked to notify ISGM of the rejection and the reason for the rejection; and

Particulars

Reasons were required so that:

- i. the Representative could be allocated a more suitable Ticket of Work;
- ii. if necessary, the Representative's availability could be adjusted in Connect;
- iii. if necessary, Telstra was able to contact its customers and reschedule a customer appointment, which might occur if, for example, the reason for the rejection related to adverse weather conditions;
- iv. if the reason for the rejection was skill based, the Ticket of Work could be re-allocated to a Representative who had the requisite skills to perform the work; and/or
- v. if the reason for the rejection was due to the location of the Ticket of Work, ISGM and the Representative might negotiate ZZ Rates in respect of the work.

(iii) between July 2015 and November 2016, the Applicant rejected 82 Tickets of Work for reasons including (but not limited to):

- (A) insufficient time; and
- (B) incorrect skills;

(h) as to subparagraph (h) it:

- (i) refers to and repeats paragraphs 6J(c), 6K(b) and 219(b) hereof;
- (ii) denies that it created or allocated Tickets of Work;
- (iii) admits that Tickets of Work created by Telstra included:
 - (A) a timer that recorded when Representatives commenced and completed each job; and
 - (B) an estimated completion time for each job; and

Particulars

- i. Estimated completion time was based on the average time taken to complete work of a similar nature and was recorded on each Ticket of Work to assist with Telstra's scheduling of customer appointment windows.
- ii. The timer attached to each Ticket of Work ensured that Telstra was able to collect data that enabled it to assess the average time taken to complete particular

services for the purpose of accurate scheduling of customer appointment windows, and generally managing the allocation of Tickets of Work.

- (iv) says further, that:
 - (A) save that Subcontracting Companies' Representatives were expected to attend their next Ticket of Work within pre-arranged customer appointment windows (unless that Ticket of Work was rejected by the Representative), Representatives were not required to complete Tickets of Work within any set period of time;
 - (B) it refers to and repeats subparagraph 219(k) hereof;
 - (C) the Applicant generally took significantly longer than the estimated completion time to complete individual Tickets of Work; and

Particulars

From July 2015 to November 2016, the Applicant spent an average of 133 minutes completing a Ticket of Work, whereas the average completion time for all Subcontracting Companies' Representatives was 69 minutes per Ticket of Work. Further particulars may be provided prior to trial.

- (v) otherwise denies subparagraph (h);
- (i) it denies subparagraph (i) and repeats subparagraph (h) hereof;
- (j) it denies subparagraph (j), and says further that:
 - (i) Telstra recorded details about whether Subcontracting Companies' Representatives (including the Applicant) attended at customers' premises within pre-arranged customer appointment windows and provided that information to ISGM; and
 - (ii) it refers to and repeats paragraph 5C and subparagraph 219(h) hereof;
- (k) as to subparagraph (k), it:
 - (i) repeats subparagraph (h) hereof;
 - (ii) denies that Subcontracting Companies and/or their Representatives (including the Applicant) were reprimanded for failing to complete Tickets of Work within:
 - (A) the estimated completion time attached to each Ticket of Work; or
 - (B) any other specified time-frame;
 - (iii) says that:

- (A) from time to time Telstra and/or ISGM would ask a Subcontracting Companies' Representatives to suspend a Ticket of Work so that they could attend another Ticket of Work within a pre-arranged customer appointment window; and
- (B) from time to time Subcontracting Companies and/or their Representatives would elect to suspend a Ticket of Work so that they could attend another Ticket of Work within a pre-arranged customer appointment window;
- (iv) from time to time the Applicant suspended Tickets of Work in order to attend other appointments; and
- (v) otherwise denies subparagraph (k);
- (l) it objects to subparagraph (l) on the basis that it is vague, ambiguous, embarrassing and liable to be struck out, and under cover of that objection it says that:
 - (i) the skill and competence of the Subcontracting Companies' Representatives (including the Applicant) directly influenced the time it took to complete a Ticket of Work;
 - (ii) it refers to and repeats subparagraph 219(h)(iv)(C);
 - (iii) at all times the Subcontracting Companies could direct their Representatives, and/or their Representatives could elect, to engage in additional training to improve their skills and competencies;
 - (iv) if Subcontracting Companies' Representatives experienced difficulty in completing a Ticket of Work, they were able to request that ISGM arrange for assistance to be provided by another Subcontracting Company and/or Representative;
 - (v) the Applicant requested assistance with Tickets of Work on 22 occasions between 1 July 2015 and 20 November 2016;
 - (vi) where jobs took substantially longer than anticipated for reasons which were outside the Subcontracting Companies' Representatives control, Subcontracting Companies and/or their Representatives were able to negotiate ZZ Rates for individual Tickets of Work;
 - (vii) the Applicant received ZZ Rates as set out at paragraph 219(f)(iii)(l) above; and
 - (viii) it otherwise denies subparagraph (l);
- (m) as to subparagraph (m), it says that:

- (i) each Standard Agreement permitted Subcontracting Companies to delegate I&M Services, including work to be performed pursuant to a Ticket of Work, to their employees without the prior written consent of ISGM;

Particulars

Clause 4.4(b) of the 2013 and October 2015 Tickets of Work Standing Offer Agreement. Clause 4(a) of the November 2016 I&M Subcontractor Agreement.

- (ii) in practice, Tickets of Work were allocated directly to individual Representatives by Telstra through Connect, as to which it refers to and repeats subparagraphs 6J(c) and 219(b) above;
- (iii) in practice, Subcontracting Companies could, and some did, engage multiple Representatives to carry out Tickets of Work, as to which it refers to and repeats paragraph 6E above; and
- (iv) it otherwise denies subparagraph (m);
- (n) as to subparagraph (n), it:
 - (i) says that it made statistics available to Subcontracting Companies in respect of their Representatives, via CMS, (and provided those statistics to Representatives on about a monthly basis), that related to:
 - (A) the number of times customers required follow-up I&M Services within 14 and/or 21 and/or 30 days of the completion of an initial Ticket of Work (**revisits**);

Particulars

Revisits were often attributable to defective workmanship in completion of the original Ticket of Work.

- (B) the number of pre-arranged customer appointment windows that were met;
- (C) accuracy in the recording of incorrect call outs;

Particulars

- (i) Incorrect call outs occurred where the fault identified by Telstra's customer was not a fault with Telstra's network;
- (ii) Telstra's customers were charged a fee in respect of incorrect call outs provided that the attending Representative accurately recorded the job as an incorrect call out.

- (D) customer complaints and satisfaction;
- (E) compliance with reporting health and safety incidents;
- (F) the number of Tickets of Work that, once commenced, were not completed;
- (G) the quality of completed work;

Particulars

The quality of completed work was assessed by way of audits and by reference to assessment criteria specified by Telstra.

- (ii) says that the monthly statistics in respect of Subcontracting Companies' Representatives were required in order to ensure that ISGM complied with obligations imposed on it by the Telstra/ISGM Agreement; and
- (iii) otherwise denies subparagraph (n);
- (o) as to subparagraph (o), it says that:
 - (i) upon completion of a Ticket of Work, Representatives could provide customers with a 14 day calling card containing the Representatives' contact details for use in the event that a revisit was required;
 - (ii) if a customer contacted the Representative and requested a revisit, the Representative was required to create a Ticket of Work on their Toughbook at a time agreed with the customer;
 - (iii) the Representative's Subcontracting Company was paid for the original Ticket of Work, and the subsequent Ticket of Work;
 - (iv) it does not know whether Representatives failed to create Tickets of Work in respect of revisits from time to time;
 - (v) it did not require Representatives to complete revisits without payment to their Subcontracting Company; and
 - (vi) it otherwise denies subparagraph (o);
- (p) as to subparagraph (p), it:
 - (i) refers to and repeats paragraphs 6J(c), 6K(b) and 219(b) hereof;
 - (ii) denies that it assigned or allocated Tickets of Work, as to which it refers to and repeats paragraphs 6J(c) and 219(b) above;

- (iii) says that it was entitled to and, from time to time did, request that Telstra limit the allocation of work to Subcontracting Companies' Representatives in circumstances where the Representative/s:
 - (A) consistently failed to perform I&M Services to the required standard; and/or
 - (B) committed a serious breach or breaches of health and safety obligations; and
- (iv) otherwise denies subparagraph (p);
- (q) it denies each and every allegation in sub-paragraph (q), and says further that:
 - (i) it refers to and repeats subparagraph 219(a) hereof;
 - (ii) Subcontracting Companies and/or their Representatives indicated their availability using CMS, including the days and hours that Representatives were available to perform services;
 - (iiA) Subcontracting Companies and/or their Representatives:
 - i. did not, or did not necessarily, work a regular pattern of hours;
 - ii. nominated their own availability and hours;
 - (iiB) there was substantial variation between individual Representatives in relation to the average number of days they would work per week, and in relation to the start and finish times they would work on any particular day;
 - (iii) a limited number of Subcontracting Companies and/or their Representatives chose to make themselves available 6-7 days per week and/or on public holidays, but there was no requirement that they do so; and

Particulars

- Across the 2011/2012 financial year to the 2017/2018 financial year~~Between October 2013 and November 2018,~~ about ~~77-91~~ percent of Subcontracting Companies' Representatives worked an average of 5 days or less per week, and about ~~45-32~~ percent of Subcontracting Companies' Representatives worked an average of 4 days or less per week.
- (iv) during the period in which the Applicant provided I&M Services on behalf of MBC, his nominated availability varied from week to week;

Particulars

Generally, the Applicant nominated his availability to supply I&M Services on behalf of MBC for five or six days per week.

Between July 2014 and November 2016, the Applicant nominated his availability, and worked, between one and five days for 49 percent of his working weeks, with an average of 5.3 days per week.

During the same period, Subcontracting Companies' Representatives nominated their availability, and worked, an average of 4.8 days per week.

- (r) it denies subparagraph (r), and says further that:
 - (i) it refers to and repeats paragraphs 6G(c) and 219(a) above;
 - (ii) the availability of Subcontracting Companies' Representatives could be, and frequently was, changed by the Subcontracting Companies and/or their Representatives from any previously indicated availability at their own initiative and without authorisation from ISGM:
 - (iii) a notice period of 5 days was notionally required to be observed when changing the previously indicated availability of Representatives; and

Particulars

Changes to availability within the 5 day notice period were agreed as between ISGM and the relevant Subcontracting Company.

- (iv) the Applicant, as MBC's Representative, changed his previously indicated availability on 71 occasions between July 2014 and November 2016;
- (s) as to subparagraph (s), it:
 - (i) denies each and every allegation in subparagraph (s); and
 - (ii) repeats subparagraphs (q) and (r) hereof;
- (t) as to subparagraph (t), it:
 - (i) says that Subcontracting Companies were required to have their Representatives wear, and ISGM expected and required that Representatives would wear, uniforms with Telstra and ISGM logos and carry identification with ISGM and Telstra branding; and

Particulars

The work performed by the Subcontracting Companies and their Representatives required access to Telstra's customers' homes and businesses. In the interests of public and customer confidence and safety it was necessary that the Representatives of Subcontracting Companies be readily identifiable as authorised by Telstra and ISGM.

- (ii) otherwise denies subparagraph (t);
- (u) as to subparagraph (u), it says that:
 - (i) it says that the Subcontracting Companies and/or their Representatives were required to adhere to policies, manuals and methods of work;
 - (ii) adherence to policies, manuals and methods of work was necessary by virtue of:
 - (A) the nature of I&M Services and specialised I&M Services;
 - (B) regulatory requirements and standards;
 - (C) Telstra's mandatory operational procedures, which applied to each and every person performing work on its network; and
 - (D) legislative health and safety requirements;
 - (iii) it repeats paragraphs 5 to 5D (inclusive) and subparagraph 219(x)(ii) hereof; and
 - (iv) it otherwise denies subparagraph (u);
- (v) as to subparagraph (v), it:
 - (i) says that in cases of serious or ongoing breaches of operational procedures and/or standards set out in policies, manuals and Standard Agreements, it was entitled to, and from time to time did:
 - (A) issue a breach notice; and/or
 - (B) instruct Telstra to cease issuing Tickets of Work to Subcontracting Companies and/or their Representatives (including the Applicant) on a temporary basis;
 - (ii) says that MBC:
 - (A) was audited in relation to the quality of the work performed on its behalf by the Applicant as part of a national quality improvement plan implemented by ISGM, on the basis that it consistently demonstrated comparatively high revisit statistics;

- (B) failed audits for work performed by the Applicant on its behalf on 15 and 17 February 2016 and 1 March 2016;
- (C) was issued a breach notice on 21 March 2016 for failing to meet the requirements of clauses 4.3(b), (c), (d) and (g) of the October 2015 Tickets of Work Standing Offer Agreement; and
- (D) as a result of the breach notice, did not receive any Tickets of Work for a period of about three months.

Particulars

- i. During early 2016, ISGM identified that there was a high level of revisits taking place in respect of completed Tickets of Work. In order to determine whether the overall revisit numbers were being driven by the quality of work undertaken by particular Representatives, it implemented a plan whereby Subcontracting Companies' Representatives with a high number of revisits would be audited in relation to the quality of their work.
 - ii. About 1539 Subcontracting Companies' Representatives were audited throughout Victoria and Tasmania, in the circumstances described above. As a result, about 22 Subcontracting Companies were issued breach notices, including MBC.
 - iii. MBC was invited to resume providing I&M Services in about June 2016, however it failed to take the necessary steps to reinstate insurances and other certifications that were necessary to supply I&M Services. As a result, the Applicant, on behalf of MBC, did not resume accepting Tickets of Work until about October 2016.
- (iii) repeats subparagraph (u) hereof; and
 - (iv) otherwise denies each and every allegation in subparagraph (v);
- (w) it objects to subparagraph (w) on the basis that it is vague, ambiguous, embarrassing and liable to be struck out, and under cover of that objection, it:
 - (i) denies that Representatives were "suspended" and refers to and repeats subparagraph 219(v) hereof; and
 - (ii) otherwise denies subparagraph (w);
 - (x) as to subparagraph (x), it:
 - (i) denies subparagraph (x)(i) and says further that it did not require the Subcontracting Companies and/or their Representatives to attend Toolbox

meetings, but where the purpose of a meeting was to convey information relating to safety issues, they were encouraged to attend;

- (ii) admits that, in conjunction with Telstra, it required the Subcontracting Companies to have their Representatives undertake occupational health and safety training from time to time (**Mandatory OHS Training**), and says further that:
 - (A) ISGM was required by law to ensure that Subcontracting Companies' Representatives undertook Mandatory OHS Training;

Particulars

The provision of I&M services involves high risk work. Accordingly, legislation regulating occupational health and safety in all states imposed a duty on ISGM to ensure its independent contractors had sufficient information, instruction, training and supervision to protect them from risks to health and safety arising from their work.

- (B) most of the Mandatory OHS Training was provided by Telstra and/or a RTO;
- (C) it refers to and repeats subparagraph 5A(b) hereof; and
- (D) it otherwise denies subparagraph (x)(ii); and
- (iii) as to subparagraph (x)(iii), it:
 - (A) refers to and repeats paragraphs 5A to 5D (inclusive);
 - (B) says that from time to time it offered the Subcontracting Companies the opportunity for their Representatives to attend courses and/or receive training to assist them to improve their skills and competencies (**Non-Mandatory Courses**);
 - (C) says that the Subcontracting Companies' Representatives were not required to attend Non-Mandatory Courses; and
 - (D) says further that the Applicant did not attend any Non-Mandatory Courses; and
 - (E) otherwise denies subparagraph (x)(iii).
- (y) as to subparagraph (y), it:
 - (i) says that the rates payable for tasks completed pursuant to a Ticket of Work were:
 - (A) fixed by Telstra in consultation with ISGM;

- (B) contained in a Schedule of Rates (**SOR**) attached to each version of the Field Operations Manual; and
 - (C) re-issued to Subcontracting Companies when the SOR was updated from time to time;
- (ii) says further that the Subcontracting Companies and/or their Representatives (including the Applicant) were able to, and did:
- (A) negotiate the application of ZZ Rates in certain circumstances; and
 - (B) engage in upselling to customers while completing Tickets of Work which enabled them to increase the amount payable pursuant to the SOR (**Fee for Service**); and

Particulars

Fee for Service involved services provided outside of a Ticket of Work, and arose through:

- i. Representatives identifying further issues while rectifying a fault;
 - ii. Representatives asking customers if they had any further issues;
 - iii. customers directly requesting assistance with issues unrelated to the Ticket of Work.
- (iii) otherwise denies subparagraph (y);
- (z) as to subparagraph (z), it repeats subparagraph (t) hereof and otherwise denies subparagraph (z);
- (aa) as to subparagraph (aa), it:
- (i) refers to and repeats subparagraph 219(m) hereof; and
 - (ii) otherwise denies subparagraph (aa).
- (bb) as to subparagraph (bb), it:
- (i) says that Subcontracting Companies were required to ensure that their Representatives obtained tools specified by ISGM;
 - (ii) says further that the tools the Subcontracting Companies and/or their Representatives were required to obtain were the tools that were necessary to enable the safe and effective performance of the I&M Services; and
 - (iii) otherwise denies subparagraph (bb); and

(cc) as to subparagraphs (cc)-(hh), it:

- (i) does not know and cannot say what payments were made by the Subcontracting Companies to their Representatives or whether payments were made by them in respect of dividends, wages, leave, other entitlements and/or superannuation as referred to in subparagraphs (cc)-(hh);

Particulars

Particulars to be provided after discovery by the Applicant and group members.

- (ii) says that Subcontracting Companies were required to ensure that such payments were made to their Representatives to the extent that those Representatives were employees of the Subcontracting Companies;
- (iii) admits that it did not pay the Subcontracting Companies, the Representatives of the Subcontracting Companies and/or the “workers” (as defined in paragraph 1A of the 2FASOC) any of the amounts referred in subparagraphs (cc)-(hh);
- (iv) denies that it was required to pay Subcontracting Companies, the Representatives of the Subcontracting Companies and/or the “workers” (as defined in paragraph 1A of the 2FASOC) any of the amounts referred in subparagraphs (cc)-(hh); and
- (v) otherwise denies subparagraphs (cc)-(hh).

Characterisation of relationship

220. As to paragraph 220, it refers to and repeats paragraphs 6A to 6S (inclusive) herein, and denies that it had any contract with, or that any contractual term referred to therein applied to, the Representatives of the Subcontracting Companies further or alternatively the “workers” (as that term is defined at paragraph 1A of the 2FASOC) and, under cover of that denial, it says further as follows:

- (a) in respect of subparagraph (a), it:
 - (i) admits that it was required to exert some control and direction over the operational procedures followed by Subcontracting Companies and/or their Representatives, by virtue of:
 - (A) the nature of I&M Services and Specialised I&M Services;
 - (B) regulatory requirements and standards;

- (C) Telstra's mandatory operational procedures, which applied to each and every person performing work on its network;
 - (D) ISGM's obligations under the Telstra/ISGM Agreement; and
 - (E) legislative health and safety requirements;
- (ii) refers to and repeats paragraphs 5 to 5D (inclusive) and subparagraph 219(x)(ii) hereof;
 - (iii) says further that the Subcontracting Companies' Representatives (including the Applicant) had control over, and exercised their own skill and judgment in relation to, the manner in which they completed individual Tickets of Work; and
 - (iv) otherwise denies subparagraph (a);
- (b) it denies subparagraph (b) and says that Telstra controlled and issued Tickets of Work;
 - (c) it denies subparagraph (c) and repeats subparagraph 219(g) hereof;
 - (d) it denies subparagraph (d) and repeats subparagraphs 219(a), 219(b), 219(q) and 219(r) hereof;
 - (e) as to subparagraph (e) it says that:
 - (i) it refers to and repeats:
 - (A) paragraphs 5A(a) and 5B hereof and says further that in order to perform I&M Services and/or Specialised I&M Services for any provider, specific training and accreditations were required by legislation;
 - (B) paragraph 219(x)(ii) hereof and says further that in order to comply with legislative requirements relating to occupational health and safety, Mandatory OHS training was required; and
 - (C) paragraph 5A(b) and says further that in order to perform work on Telstra's network, certain training was required to be undertaken;
 - (ii) in order to use ISGM's CMS system, certain training was required to be undertaken;
 - (iii) it admits that it controlled and directed the requirement for the training described at subparagraphs 220(e)(i)(B) and 220(e)(ii) hereof; and
 - (iv) it otherwise denies subparagraph (e);
 - (f) as to subparagraph (f), it:

- (i) refers to and repeats subparagraph 219(x)(i); and
 - (ii) otherwise denies subparagraph (f);
- (g) as to subparagraph (g), it:
 - (i) refers to and repeats subparagraph 219(m) hereof; and
 - (ii) otherwise denies subparagraph (g).
- (h) as to subparagraph (h), it:
 - (i) says that it controlled the issue of directions to Subcontracting Companies about:
 - (A) compliance with telecommunications legislation, regulations, and other legislative instruments in operation from time to time;
 - (B) compliance with Occupational Health and Safety legislation; and
 - (C) compliance with Telstra's operational procedures as they applied to all persons performing work on its network;
 - (ii) repeats paragraphs 5A, 5C and 219(x)(ii) hereof; and
 - (iii) otherwise denies subparagraph (h);
- (i) as to subparagraph (i), it:
 - (i) says that it had the ability to, and did require, the provision of information that was reasonably required in order to allow ISGM to assess Subcontracting Companies' compliance with:
 - (A) Standard Agreements to which Subcontracting Companies were a party;
 - (B) operational procedures; and
 - (C) legislative and/or regulatory requirements;
 - (ii) says that it had the ability to, and did require, the provision of information by Subcontracting Companies necessary for ISGM to carry out audits of the Subcontracting Companies' and/or their Representatives' work practices and quality; and
 - (iii) otherwise denies subparagraph (i).
- (j) as to subparagraph (j), it:
 - (i) says that, pursuant to the Standard Agreements, it had the right to amend some contractual terms between ISGM and the Subcontracting Companies;

- (ii) says that generally, the right to amend contractual documents between ISGM and the Subcontracting Companies was limited to:
 - (A) rate adjustments, which resulted from amendments to rates prescribed by the Telstra/ISGM Management Agreement (including increases to rates set out in the SOR);
 - (B) the use of confidential information relating to government authorities or to Telstra; and
 - (C) amendments to operating procedures from time to time; and
- (iii) otherwise denies subparagraph (j);
- (k) as to subparagraph (k), it
 - (i) says that it had the right to terminate contracts with Subcontracting Companies without cause by giving:
 - (A) not less than 7 days' notice under the 2013 and October 2015 Tickets of Work Standing Offer Agreements; and
 - (B) not less than 20 business days' notice under the November 2016 I&M Subcontractor Agreement;
 - (ii) says that Subcontracting Companies had the right to terminate contracts with ISGM without cause by giving:
 - (A) after 24 months of engagement, not less than 30 days' notice under the 2013 Ticket of Work Standing Offer Agreement;
 - (B) after 12 months of engagement, not less than 30 days' notice under the 2015 Ticket of Work Standing Offer Agreement; and
 - (C) not less than 20 business days' notice under the November 2016 I&M Subcontractor Agreement;
 - (iii) says further that, if the Subcontracting Companies wished to cease providing I&M Services at any time, they were able to indicate, via CMS, that they, and/or their Representatives had no availability to provide I&M Services; and
 - (iv) otherwise denies subparagraph (k);
- (l) it admits subparagraph (l);
- (m) it denies subparagraph (m) and says further that:
 - (i) the contractual relationship between ISGM and the Subcontracting Companies was non-exclusive;

Particulars

Clause 2.3 of the 2013 Tickets of Work Standing Offer Agreement, October 2015 Tickets of Work Standing Offer Agreement and November 2016 I&M Subcontractor Agreement.

- (ii) if a Subcontracting Company wished to provide similar services to a person, they were only required to notify ISGM if the provision of those services was likely to affect the nominated availability of the Subcontracting Company and/or its Representatives to perform services for ISGM; and

Particulars

The purpose of the notification requirement was to allow ISGM to monitor its work-flow requirements and gauge whether it needed to engage additional Subcontracting Companies, but the requirement was rarely enforced in practice.

- (iii) in all other respects, the Subcontracting Companies controlled and directed the circumstances in which their Representatives could or could not perform services for other entities;
- (n) as to subparagraph (n), it:
 - (i) says that ISGM was subject to statistical measures (**KPIs**) in respect of its provision of I&M Services pursuant to the Telstra/ISGM Agreement;
 - (ii) says further that Telstra was subject to KPIs pursuant to the CSG;
 - (iii) repeats subparagraph 219(p) hereof; and
 - (iv) otherwise denies subparagraph (n);
- (o) as to subparagraph (o):
 - (i) it says that Subcontracting Companies were required to ensure that their Representatives obtained tools specified by ISGM;
 - (ii) repeats subparagraph 219(bb) hereof; and
 - (iii) otherwise denies subparagraph (o);
- (p) as to subparagraph (p), it says that:
 - (i) the Subcontracting Companies were subject to the pleaded requirement;
 - (ii) the Subcontracting Companies were required to ensure that their Representatives adhered to the pleaded requirement; and
 - (iii) it otherwise denies subparagraph (p);

- (q) it denies subparagraph (q);
- (r) as to subparagraph (r), it:
 - (i) refers to and repeats subparagraphs 219(t) and 219(z) hereof; and
 - (ii) otherwise denies subparagraph (r); and
- (s) it otherwise denies each and every allegation in paragraph 220.

221. As to paragraph 221, it refers to and repeats paragraphs 6A to 6S (inclusive) herein, and denies that it had any contract with, or that any contractual term referred to therein applied to, the Representatives of the Subcontracting Companies further or alternatively the “workers” (as that term is defined at paragraph 1A of the 2FASOC) and, under cover of that denial, it says further as follows:

- (a) it denies subparagraph (a) and says that the rates payable to Subcontracting Companies were determined by Telstra, in consultation with ISGM;
- (ab) further to paragraph 221(a) herein:
 - (i) amounts paid by ISGM under the Standard Agreements were paid to Subcontracting Companies, not their Representatives;
 - (ii) save for as pleaded in paragraph 239(da) herein, the Respondent does not know, and cannot admit, the amount or amounts paid by each Subcontracting Company to each of its Representatives;
 - (iii) the amounts paid by ISGM to each Subcontracting Company varied as a result of (among other things):
 - (A) business structure;
 - (B) patterns of service provision;
 - (C) skills and experience of Representatives;
 - (D) efficiency of Representatives;
 - (iv) the total amounts paid to each Subcontracting Company for:
 - (A) ZZ rates (as referred to in 219(f)(iii)(I) herein);
 - (B) Fee for Service work (as referred to in 219(y)(iii)(B) herein); and
 - (C) work performed remedying further faults identified by a Subcontracting Company’s Representative when completing a Ticket of Work (Extra-Over work),

varied from one Subcontracting Company to another as a result of factors including whether (and how often) the Subcontracting Company took up opportunities to perform those kinds of work.
- (b) as to subparagraph (b), it:

- (i) says that it prepared and provided RCTIs to Subcontracting Companies;
 - (ii) refers to and repeats paragraphs 6M to 6P (inclusive) hereof; and
 - (iii) otherwise denies subparagraph (b);
- (c) as to subparagraph (c), it:
- (i) says that it established a process to be adopted if the Subcontracting Companies disputed an RCTI; and
 - (ii) otherwise denies subparagraph (c); and
- (d) it denies subparagraph (d) and says that rate adjustments were determined by Telstra in consultation with ISGM.
222. As to paragraph 222, it refers to and repeats paragraphs 6A to 6S (inclusive) herein, and denies that it had any contract with, or that any contractual term referred to therein applied to, the Representatives of the Subcontracting Companies further or alternatively the “workers” (as that term is defined at paragraph 1A of the 2FASOC) and, under cover of that denial, it says further as follows:
- (a) it denies subparagraph (a) and repeats subparagraph 219(t);
 - (b) it denies subparagraph (b) and says that:
 - (i) Subcontracting Companies were provided with removable magnets and stickers bearing ISGM’s and Telstra’s insignia for use by their Representatives;
 - (ii) Subcontracting Companies and/or their Representatives were not required to use the removable magnets and stickers but could elect to do so;
 - (iii) Subcontracting Companies were able to have their own branding on their vehicles;
 - (iv) it otherwise denies subparagraph (b); and
 - (c) as to subparagraph (c), it refers to and repeats subparagraph 219(z) hereof and otherwise denies subparagraph (c).
223. As to paragraph 223, it refers to and repeats paragraphs 6A to 6S (inclusive) herein, and denies that it had any contract with, or that any contractual term referred to therein applied to, the Representatives of the Subcontracting Companies further or alternatively the “workers” (as that term is defined at paragraph 1A of the 2FASOC) and, under cover of that denial, it says further as follows:
- (a) as to subparagraph (a), it:

- (i) subject to subparagraphs 219(p) and 219(v), denies that it controlled the allocation of work to Subcontracting Companies and/or their Representatives;
 - (ii) says that Telstra controlled the allocation of work to Subcontracting Companies and their Representatives;
 - (iii) refers to and repeats paragraphs 6J, 6K and subparagraph 219(b); and
 - (iv) otherwise denies subparagraph (a);
- (b) denies subparagraph (b) and refers to and repeats subparagraph 219(g);
- (c) as to subparagraph (c), it:
- (i) says that its business involves the administration and management of specialist contractor services to industry; and
 - (ii) otherwise denies subparagraph (c); and
- (d) it denies subparagraph (d).
224. It refers to and repeats paragraphs 6A to 6S (inclusive) herein and 227A to 227B (inclusive) herein, and otherwise does not know and cannot admit paragraph 224.
225. It refers to and repeats paragraphs 6A to 6S (inclusive) herein and 227A to 227B (inclusive) herein, and otherwise does not know and cannot admit paragraph 225.
226. As to paragraph 226, it:
- (aa) refers to and repeats paragraphs 6A to 6S (inclusive) herein; and
 - (a) says that the amounts paid for work were fixed by Telstra in consultation with ISGM;
 - (b) says that, in certain circumstances, Subcontracting Companies and/or their Representatives (including the Applicant) were able to, and did, negotiate the application of ZZ Rates with ISGM;
 - (c) refers to and repeats subparagraph 219(y) hereof; and
 - (d) otherwise denies paragraph 226.
227. As to paragraph 227, it:
- (aa) refers to and repeats paragraphs 6A to 6S (inclusive) herein; and
 - (a) does not know and cannot admit whether the Subcontracting Companies were economically dependent on it, or provided services exclusively, or almost exclusively to it;

- (b) says that if the Subcontracting Companies were economically dependent on it, that was by reason of the fact that they elected not to provide services to other persons or entities;
- (c) refers to and repeats subparagraphs 219(e)(ii) and 220(m) hereof; and
- (d) otherwise denies paragraph 227.

227A. Further to paragraph 227 herein, the Respondent says as follows:

- (a) numerous Subcontracting Companies provided I&M Services to entities other than ISGM; and
- (b) numerous Subcontracting Companies provided services other than I&M Services to companies other than ISGM.

227B Further to paragraphs 227 and 227A herein, many Subcontracting Companies advertise their services to entities other than ISGM and/or individuals.

228. It refers to and repeats paragraphs 6A to 6S (inclusive) herein and 219 to 227B (inclusive) herein, and otherwise denies paragraph 228.

National Employment Standards

229. It admits paragraph 229.

230. As to paragraph 230, it:

- (a) admits that it was a National Systems Employer in respect of its employees;
- (b) denies that the Subcontracting Companies, their Representatives, group members or workers (as that term is defined at paragraph 1A of the 2FASOC) were its employees.

231. As to paragraph 231:

- (a) it does not know and cannot say whether the Applicant, or any other Representative, was a 'national system employee' of any Subcontracting Company; and

Particulars

Particulars to be provided after discovery by the Applicant and group members.

- (b) it otherwise denies paragraph 231.

232. As to paragraph 232, it:

- (a) denies subparagraph (a) and repeats subparagraph 219(r) hereof;
- (b) denies subparagraph (b) and repeats subparagraphs 219(a), 219(q) and 219(r) hereof.

233. As to paragraph 233:

- (ai) it refers to and repeats paragraph 219(q)(iiA) herein;
- (aia) Subcontracting Companies and/or their Representatives:
 - i. could elect not to accept work;
 - ii. did not provide a firm advance obligation to provide ongoing services;
 - iii. had capacity for rest and recreation based on their ability to nominate their own availability; and
 - iv. did not have any certainty as to the period over which Tickets of Work would be offered.
- (a) it does not know and cannot say whether the Applicant, or any other Representative, was a casual employee within the meaning of section 86 of the FW Act ~~Fair Work Act~~ in respect of any Subcontracting Company;

Particulars

Particulars to be provided after discovery by the Applicant and group members.

- (b) it says that Subcontracting Companies, the Applicant and/or Representatives were not casual employees of ISGM within the meaning of section 86 of the FW Act ~~Fair Work Act~~;
- (c) alternatively, it says that, if the Subcontracting Companies and/or their Representatives are found to have been employees of ISGM (which is denied), then:
 - (i) they were casual employees within the meaning of section 86 of the FW Act ~~Fair Work Act~~; alternatively
 - (ii) some were casual employees within the meaning of section 86 of the FW Act ~~Fair Work Act~~;

Particulars

~~Subcontracting Companies and/or their Representatives:~~

- i. ~~did not, or did not necessarily, work a regular pattern of hours;~~
- ii. ~~nominated their own availability and hours;~~
- iii. ~~could elect not to accept work;~~
- iv. ~~did not provide a firm advance obligation to provide ongoing services;~~

- v. ~~had capacity for rest and recreation based on their ability to nominate their own availability; and~~
- vi. ~~did not have any certainty as to the period over which Tickets of Work would be offered.~~

234. As to paragraph 234:

- (a) it does not know and cannot say whether the Applicant was entitled to any paid annual leave from MBC; and

Particulars

Particulars to be provided after discovery by the Applicant.

- (b) it otherwise denies paragraph 234.

235. It admits paragraph 235 but says further that, save for the matters pleaded at paragraph 234(a), it has no application to:

- (a) the Subcontracting Companies and/or their Representatives; or
- (b) the Applicant.

236. As to paragraph 236:

- (a) it does not know and cannot say whether the Applicant was entitled to any personal/carer's leave from MBC;

Particulars

Particulars to be provided after discovery by the Applicant.

- (b) it otherwise denies paragraph 236.

237. As to paragraph 237, it:

- (a) says that the Applicant was a Representative of MBC and not an employee of ISGM;
- (b) denies that ISGM was required to pay any amount to the Applicant for annual leave and/or personal leave; and
- (c) otherwise denies paragraph 237.

Telecommunications Services Award 2010

238. It denies paragraph 238.

238A. In the alternative to paragraph 238, it says that if the Subcontracting Companies and/or their Representatives are found to have been employees of ISGM (which is denied), then it denies that they were covered by the *Telecommunications Services Award 2010* (**Award**).

Particulars

In the event that the Subcontracting Companies and/or their Representatives were employees of ISGM, then clause 4.5(g) of the Award would operate to exclude ISGM and any employees performing I&M Services for ISGM from coverage by the Award.

239. As to paragraph 239, it:

- (a) does not know and cannot say whether the Applicant was engaged by MBC on a full-time basis within the meaning of clause 11 of the Award;
- (b) refers to and repeats subparagraph 219(q) hereof;
- (c) says that MBC provided I&M Services for ISGM from about 29 July 2014 to 20 November 2016 (**period of service**);
- (d) says further that the Applicant was MBC's Representative during the period of service;
- (da) in the period prior to 13 August 2017, MBC from time to time paid:
 - (i) wages to the Applicant; and
 - (ii) superannuation for the benefit of the Applicant;
- (db) MBC employed the Applicant during the period of service, under a contract of service; and

Particulars

The existence of an employment relationship and a contract of service between MBC and the Applicant may be inferred from the payment by MBC to the Applicant of wages and superannuation. Further particulars may be provided after the completion of discovery and upon the filing of evidence by the Applicant in the proceeding.

- (e) otherwise denies paragraph 239.
240. It denies paragraph 240.
241. It denies paragraph 241.
242. It denies paragraph 242.
243. It denies paragraph 243.
244. It denies paragraph 244.
245. It denies paragraph 245.
246. It denies paragraph 246.
247. It denies paragraph 247.

248. It admits paragraph 248 but denies that the Award applied to or covered the Applicant or other Representatives of Subcontracting Companies.
249. It denies paragraph 249.
250. It denies paragraph 250.
251. It denies paragraph 251.
252. As to paragraph 252, it:
- (a) says, as to subparagraph (a), that:
 - (i) it refers to and repeats paragraph 6N;
 - (ii) all weekly payments were made by ISGM to MBC and not to the Applicant;
 - (iii) MBC:
 - (A) entered into the 2013 Tickets of Work Standing Offer Agreement in around July 2014;
 - (B) commenced providing I&M Services on 29 July 2014; and
 - (C) was not paid any amount by ISGM between January 2014 and June 2014 by virtue of the fact that it did not provide any services during that period;

Particulars

During the period January to June 2014 the Applicant was undertaking the Apprenticeship Training Program and was employed by AiGTS.

- (iv) it otherwise denies subparagraph (a);
- (b) says that it did not pay the Applicant the amounts referred to in subparagraphs (b) to (j) (inclusive) hereof;
- (c) denies that it had any obligation to pay the Applicant amounts referred to in subparagraphs (b) to (j) (inclusive) hereof;
- (d) denies that the Award applied to or covered ISGM or the Applicant;
- (e) says further or alternatively that the weekly amounts paid to MBC by ISGM were to cover the operating expenses of the business of MBC, which may have included those matters referred to in subparagraph 123(a) and 181(a) hereof, and/or those entitlements which MBC was required to pay to the Applicant if the Award applied; and

(f) otherwise denies subparagraphs (b) to (j) (inclusive) hereof.

252A. Further to paragraph 252, it says that:

- (a) the payments made to Subcontracting Companies by ISGM were based on the nature and number of Tickets of Work completed by their Representatives (including the Applicant); and
- (b) Subcontracting Companies had the capacity to be paid amounts that considerably exceeded any minimum statutory or award entitlements which Representatives providing I&M Services on their behalf would have been entitled to receive had those individuals been employees of ISGM.

253. As to paragraph 253, it:

- (a) repeats paragraph 238A hereof; and
- (b) otherwise denies paragraph 253 and each subparagraph therein.

254. It admits paragraph 254.

255. It denies paragraph 255 and refers to and repeats subparagraphs 219(a), 219(d), 219(e), 219(g), 219(h), 219(k), 219(l), 219(n), 219(q), 219(r) and 219(v) hereof.

255A. Further to paragraphs 229 to 255 herein, to the extent that:

- (a) the 2FASOC makes claims of contravention of sections 44 or 45 of the FW Act;
- (b) those claims are made:
 - (i) in respect of group members as defined at paragraph 1A of the 2FASOC who were not group members as defined at paragraph 1A of the Further Amended Statement of Claim dated 1 March 2019 (**Group Members added on 18 June 2020**);
 - (ii) in respect of contraventions alleged to have occurred on or before 18 June 2014,

the application is barred by section 544 of the FW Act and, in any event, the Court must not make orders under section 545 in respect of such underpayment alleged contraventions.

Particulars

Paragraph 1A(a1) of the Further Amended Statement of Claim dated 1 March 2019 defined group members as persons who, amongst other conditions, "received Tickets of Work under one or more of the 2013 Tickets of Work Agreement, 2015 Tickets of Work Agreement, and 2016 Tickets of Work Agreement..." (as defined in the Further Amended Statement of Claim dated 1 March 2019). People who received Tickets of Work under agreements other than those three Standard Agreements were not included in the group as defined by Paragraph 1A(a1) of the Further Amended Statement of Claim dated 1 March 2019.

The Respondent further refers to sections 544 and 545(5) of the FW Act, and to the Order of the Federal Court of Australia dated 18 June 2020 in this proceeding.

255B. Further and in the alternative to paragraph 255A herein, to the extent that:

- (a) the 2FASOC makes claims of contravention of sections 44 or 45 of the FW Act;
- (b) those claims are made in respect of contraventions alleged to have occurred on or before 21 November 2012 (being six years prior to the filing of the Originating Application in this proceeding),

the application is barred by sections 544 of the FW Act and, in any event, the Court must not make orders under section 545 in respect of such underpayment alleged contraventions.

Particulars

The Respondent refers to sections 544 and 545(5) of the FW Act.

Section 357 of the FW Act-Fair Work Act

256. As to paragraph 256, it:

- (a) admits that the contracts pursuant to which Subcontracting Companies were engaged stated that they were contracts for services, under which the Subcontracting Companies would perform work as independent contractors:
- (b) otherwise denies paragraph 256.

257. It denies paragraph 257.

258. It admits paragraph 258.

258A. Further to paragraphs 256 to 258 herein, to the extent that:

- (a) the 2FASOC makes claims of contravention of section 357 of the FW Act;
- (b) those claims are made:
 - (i) in respect of Group Members added on 18 June 2020 (as defined by paragraph 255A herein); and
 - (ii) in respect of contraventions alleged to have occurred on or before 18 June 2014,

the application is barred by section 544 of the FW Act.

Particulars

The Respondent refers to and repeats the particulars to paragraph 255A herein.

258B. Further and in the alternative to paragraph 258A herein, to the extent that:

- (a) the 2FASOC makes claims of contravention of section 357 of the FW Act;

- (b) those claims are made in respect of contraventions alleged to have occurred on or before 21 November 2012 (being six years prior to the filing of the Originating Application in this proceeding),

the application is barred by section 544 of the FW Act and, in any event, the Court must not make orders under section 545 in respect of such underpayment alleged contraventions.

Particulars

The Respondent refers to and repeats the particulars to paragraph 255B herein.

Penalty under the FW Act ~~Fair Work Act~~

259. It denies paragraph 259.

Independent Contractors Act 2006 (Cth)

260. Save that it admits the Subcontracting Companies were independent contractors, it does not otherwise plead to paragraph 260 as it contains no allegation of fact against it.

261. It admits paragraph 261.

261A. Further to paragraph 261 herein, the Respondent says as follows:

- (a) the 2014 Agreement between ISGM and MBC was a services contract which ended on or about 1 March 2016;
- (b) the 2016 Agreement between ISGM and MBC was a services contract which ended in or about November 2016;
- (c) each of:
 - (i) the 2014 Agreement between ISGM and MBC;
 - (ii) the 2016 Agreement between ISGM and MBC; and
 - (iii) any 2013 Tickets of Work Standing Offer Agreement with a Subcontracting Company, in so far as that agreement ended on or before 22 November 2017;
 - (iv) any October 2015 Tickets of Work Standing Offer Agreement with a Subcontracting Company, in so far as that agreement ended on or before 22 November 2017;
 - (v) any November 2016 I&M Subcontractor Agreement with a Subcontracting Company, in so far as that agreement ended on or before 22 November 2017;

is a services contract which ended more than 12 months before the filing of the Applicant's Originating Application on 23 November 2018;

- (d) the Court has not allowed the making of an application to review each (or any) of the agreements referred to in paragraph 261A(c) herein, after being satisfied that there are exceptional circumstances justifying the making of the application;

- (e) in respect of the agreements referred to in paragraph 261A(c) herein:
- (i) the Applicant did not file an application for review within 12 months starting on the day on which the services contract ended; and
 - (ii) the Applicant's claim for review under section 12 of the *Independent Contractors Act 2006 (Cth) (IC Act)* is not maintainable as it has been brought after the expiry of the relevant limitation period in section 13 of the IC Act, regulation 5 of the *Independent Contractors Regulations 2007 (Cth)* and regulation 7 of the *Independent Contractors Regulation 2016 (Cth)*;
- (f) for the reasons set out above, the proceeding in so far as it relies on the IC Act should be dismissed.

261B. Further to paragraph 261 herein, and further and in the alternative to paragraph 261A herein, the Respondent says as follows:

- (a) the Respondent refers to and repeats paragraphs 13, 94 and 163 herein;
- (b) neither the Applicant nor any of the group members (as defined at paragraph 1A of the 2FASOC) were party to any of the agreements referred to in paragraph 261A(c) herein;
- (c) neither the Applicant nor any group members (as defined at paragraph 1A of the 2FASOC) has, or at any material time did have, standing under subsection 12(2) of the IC Act to make an application under section 12 of the IC Act; and
- (d) for the reasons set out above, the proceeding in so far as it relies on the IC Act should be dismissed.

262. It refers to and repeats paragraphs 261A and 261B herein, and otherwise denies paragraph 262.

263. It refers to and repeats paragraphs 261A and 261B herein, and otherwise denies paragraph 263.

263A. Further to paragraph 263 herein, the Respondent says as follows:

- (a) the only two agreements under which the Applicant performed I&M Services were the 2014 Agreement between ISGM and MBC and the 2016 Agreement between ISGM and MBC;
- (b) the Applicant never provided I&M Services, in any capacity, under an agreement based on the November 2016 I&M Subcontractor Agreement;
- (c) in the circumstances, an application of the kind pleaded in paragraph 263(c) of the 2FASOC is not maintainable, and should be dismissed.

Estoppel

264. Further to the matters pleaded herein, it says that the Applicant:

- (a) executed the ~~2013 and 2015 Tickets of Work Standing Offer Agreements~~ 2014 Agreement between ISGM and MBC and the 2016 Agreement between ISGM and MBC on behalf of MBC, and not in his own capacity as a natural person;
- (b) agreed on behalf of MBC, that MBC would provide I&M services to ISGM as an independent contractor; and
- (c) throughout the period of service, as the sole director and controller of MBC, had MBC accept payments made by ISGM to MBC and, further or alternatively, did so without demur or at any time communicating to ISGM that the I&M Services were not being provided by MBC,

(Applicant's conduct).

Particulars

ISGM refers to and repeats the matters in paragraphs 5 and 9 to 11 (inclusive) of its Cross-Claim against the Applicant, together with paragraphs 13A and 94B of its Defence.

265. The Applicant's conduct encouraged or induced ISGM to adopt an assumption, further or alternatively gave rise to a common assumption as between the Applicant and ISGM, further or alternatively constituted a representation by the Applicant to ISGM, that:

- (a) MBC was providing, and would continue to provide, I&M Services to ISGM as an independent contractor; and
- (b) I&M Services provided to ISGM were being, and would continue to be, provided by MBC in the capacity of an independent contractor, and not by the Applicant:
 - (i) in the capacity of an employee; or
 - (ii) personally, as an independent contractor,
 (the **assumption** and/or the **representation**).

266. ISGM acted in reliance on the assumption, further or alternatively on the representation, throughout the period of service, and the Applicant knew that it was doing so.

Particulars

- i. ISGM entered into the ~~2013 and 2015 Tickets of Work Standing Offer Agreements~~ 2014 Agreement between ISGM and MBC and the 2016 Agreement between ISGM and MBC with MBC;
- ii. ISGM engaged MBC's purported services during the period of service pursuant to the ~~2013 and 2015 Tickets of Work Standing Offer Agreements~~ 2014 Agreement between ISGM and MBC and the 2016 Agreement between ISGM and MBC; and

- iii. at the Applicant's direction, ISGM made payments to MBC for the I&M Services it purportedly provided, on the basis that it was an independent contractor.

267. If:

- (a) the I&M Services provided to ISGM during the period of service were provided by the Applicant in the capacity of an employee, or as an independent contractor directly engaged by ISGM, rather than by MBC as an independent contractor (which is denied); and
- (b) ISGM is ordered to pay any compensation to the Applicant,

then, ISGM's actions in reliance on the assumption, further or alternatively the representation, were to its detriment.

Particulars

ISGM's detriment comprises loss of the whole amount that it paid MBC, or, if any compensation awarded to the Applicant is limited to the difference between the amounts he would have received as an employee (or as an independent contractor engaged directly by ISGM), and the amounts paid to MBC, ISGM's detriment will be limited to that difference, and (on either basis) its legal costs of the proceeding.

268. By reason of the matters in paragraphs 264 to 267 hereof, it would be unconscionable for the Applicant to assert that the I&M Services provided to ISGM during the period of service were provided by the Applicant in the capacity of an employee, or an independent contractor engaged directly by ISGM, rather than by MBC as an independent contractor, and the Applicant should be estopped from so doing.
269. In the premises, the Applicant should be prevented from claiming any entitlements for the I&M Services provided to ISGM during the period of service on the basis that they were provided by him in the capacity of an employee, or an independent contractor engaged directly by ISGM.

Set-off

270. Further and in the alternative to the matters pleaded herein, if I&M Services were provided by the Applicant in the capacity of an employee, rather than by MBC as an independent contractor (which is denied), then:
- (a) ISGM refers to and repeats the contents of its Cross-Claim against the Applicant; and
 - (b) ISGM claims an entitlement to set off the following against any loss or damage suffered by the Applicant, or any compensation awarded to the Applicant:
 - (i) any amounts paid to MBC for I&M Services;

- (ii) any amounts paid to MBC for GST in respect of the provision of I&M Services.

Dated: ~~23 April 2019~~ 17 July 2020



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Signed by Daniel Proietto
Lawyer for the Respondent

This pleading was prepared by Jessica Swanwick of counsel, amended by Daniel Snyder and Brendan Avallone of counsel, and settled by Catherine Button SC and Frank Parry QC of counsel.

CERTIFICATE OF LAWYER

I Daniel Proietto certify to the Court that, in relation to the amended defence filed on behalf of ISGM, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Dated: ~~23 April 2019~~ 17 July 2020



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Signed by Daniel Proietto
Lawyer for the Respondent