



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

Case: S ECI 2025 00287
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B E T W E E N

SCOTT BYRNES

Plaintiff

-and-

ORIGIN ENERGY LIMITED (ACN 000 051 696)

Defendant

STATEMENT OF CLAIM

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Filed on behalf of:	The plaintiff	DX:	N/A
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A PRELIMINARY

A.1 The plaintiff and the Group Members

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

- (a) during the period between 20 October 2021 and 31 May 2022 (inclusive) (**Relevant Period**) acquired:
 - (i) an interest in ordinary shares in the defendant (**ORG Shares** and **Origin**, respectively); and/or
 - (ii) long exposure to ORG Shares by entering into equity swap confirmations in respect of ORG Shares (**ORG Equity Swaps**);
- (b) have suffered loss or damage by or resulting from the conduct of Origin pleaded in this Statement of Claim; and
- (c) were not during any part of the Relevant Period, and are not as at the date of this Statement of Claim, any of the following:
 - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of Origin;
 - (ii) a related body corporate (as defined by s 50 of the *Corporations Act*) of Origin;
 - (iii) an associated entity (as defined by s 50AAA of the *Corporations Act*) of Origin;
 - (iv) an officer or a close associate (as defined by s 9 of the *Corporations Act*) of Origin;
 - (v) a Justice or the Chief Justice of the Supreme Court of Victoria or a Justice or the Chief Justice of the High Court of Australia; or
 - (vi) an officer or employee of, or other legal practitioner engaged by the solicitors for the plaintiff in relation to this proceeding—

(**Group Members**).

2. The plaintiff acquired an interest in ORG Shares during the Relevant Period.

Particulars

i. *Details of the particular acquisitions of ORG Shares by the plaintiff are set out below:*

Date	Transaction type	Number of ORG Shares	Price
1 December 2021	BUY	10,000	\$4.72

3. As at the commencement of this proceeding, there were more than seven Group Members.

A.2 The defendant

4. Origin, is and at all material times was:

- (a) incorporated pursuant to the Corporations Act and capable of being sued;
- (b) a person within the meaning of s 1041H of the Corporations Act;
- (c) a person within the meaning of s 12DA of the Australian Securities and Investments Commission Act 2001 (Cth) (**ASIC Act**);
- (d) a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* (**CCA**), as applicable pursuant to:
 - (i) s 131 of the CCA of the *Competition and Consumer Act 2010 (Cth)*;
 - (ii) s 12 of the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*;
 - (iii) s 28 of the *Fair Trading Act 1987 (NSW)*;
 - (iv) s 16 of the *Fair Trading Act 1989 (Qld)*;
 - (v) s 6 of the *Australian Consumer Law (Tasmania) Act 2010 (Tas)*;
 - (vi) s 19 of the *Fair Trading Act 2010 (WA)*;
 - (vii) s 14 of the *Fair Trading Act 1987 (SA)*;
 - (viii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992 (ACT)*; and/or
 - (ix) s 27 of the *Consumer Affairs and Fair Trading Act (NT)*—

(sub-paragraph 4(d)(i) to 4(d)(ix) individually, or collectively, **ACL**).

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

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

- (i) ED securities for the purposes of s 111AE of the Corporations Act;
- (ii) quoted ED securities for the purposes of s 111AM of the Corporations Act; and
- (iii) able to be acquired and disposed of by investors and potential investors on the financial market operated by the ASX under the ticker 'ORG' (**Affected Market**);

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

- (i) a listed disclosing entity within the meaning of s 111AL of the Corporations Act;
- (ii) subject to and bound by the Listing Rules of the ASX (**Listing Rules**);
- (iii) obliged, by s 111AP(1) and/or s 674A(2) of the Corporations Act and/or listing rule 3.1 (read with Listing Rule 19.12), once it is, or becomes, aware of any information concerning Origin that a reasonable person would expect to have a material effect on the price or value of ORG Shares, to tell the ASX that information immediately (unless the exceptions in Listing Rule 3.1A apply); and
- (iv) bound by s 674A(2) of the Corporations Act as in force from time to time—

(**Continuous Disclosure Obligations**).

6. At all material times prior to and during the Relevant Period, Origin was the ultimate holding company of a group of companies of which Origin Energy Electricity Limited (ACN 071 052 287) (**OEEL**) was a wholly owned subsidiary.

A.3 Directors and Officers of Origin

7. Scott Perkins was:

- (a) from 20 October 2020 to the end of the Relevant Period, Chairman of the Board of Origin;

- (b) from 1 September 2015 to the end of the Relevant Period, a non-executive member of the Board of Origin;
- (c) from 1 September 2015 to the end of the Relevant Period, a member of Origin's Audit Committee (**Audit Committee**);
- (d) from about FY2017 to the end of the Relevant Period, a member of Origin's Risk Committee (**Risk Committee**); and
- (e) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.

8. Ilana Atlas was:

- (a) from 19 February 2021 to the end of the Relevant Period, a non-executive member of the Board of Origin;
- (b) from no earlier than 1 July 2021 to the end of the Relevant Period, a member of the Risk Committee; and
- (c) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.

9. Maxine Brenner was:

- (a) from 15 November 2013 to the end of the Relevant Period, a non-executive member of the Board of Origin;
- (b) from 15 November 2013 to the end of the Relevant Period, a member of the Audit Committee;
- (c) from 15 November 2013 to the end of the Relevant Period, a member of the Risk Committee; and
- (d) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.

10. Greg Lalicker was:

- (a) from 1 March 2019 to the end of the Relevant Period, a non-executive member of the Board of Origin;

- (b) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
11. Mick McCormack was:
- (a) from 17 December 2020 to the end of the Relevant Period, a non-executive member of the Board of Origin;
 - (b) from FY2022 to the end of the Relevant Period, a member of the Audit Committee; and
 - (c) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
12. Steven Sargent was:
- (a) from 29 May 2015 to the end of the Relevant Period, a non-executive member of the Board of Origin;
 - (b) from 29 May 2015 to 30 June 2015 (being the end of FY2015), and from no later than 30 June 2020 to the end of the Relevant Period, a member of the Risk Committee; and
 - (c) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
13. Nora Scheinkestel was:
- (a) from 4 March 2022 to the end of the Relevant Period, a non-executive member of the Board of Origin;
 - (b) from 4 March 2022 to the end of the Relevant Period, a member of the Risk Committee;
 - (c) from 4 March 2022 to the end of the Relevant Period, a member of the Audit Committee; and
 - (d) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
14. Joan Withers was:
- (a) from 21 October 2020 to the end of the Relevant Period, a non-executive member of the Board of Origin;

- (b) from 21 October 2020 to the end of the Relevant Period, a member of the Risk Committee;
 - (c) from 21 October 2020 to the end of the Relevant Period, a member of the Audit Committee; and
 - (d) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
15. Bruce Morgan was:
- (a) from 16 November 2012 to the end of the Relevant Period, a non-executive member of the Board of Origin;
 - (b) from 16 November 2012 to the end of the Relevant Period, a member of the Risk Committee;
 - (c) from 16 November 2012 to the end of the Relevant Period, a member of the Audit Committee; and
 - (d) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
16. John Akehurst was:
- (a) from 29 April 2009 to 8 March 2022, a non-executive member of the Board of Origin;
 - (b) from no later than 30 June 2010 to 20 October 2021, a member of the Risk Committee; and
 - (c) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
17. Helen Hardy was:
- (a) from 2 June 2010 to the end of the Relevant Period, Company Secretary at Origin; and
 - (b) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
18. Frank Calabria (**Calabria**) was:

- (a) from 19 October 2016 to the end of the Relevant Period, Chief Executive Officer at Origin; and
 - (b) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
19. Lawrie Tremaine (**Tremaine**) was:
- (a) from 10 July 2017 to the end of the Relevant Period, Chief Financial Officer at Origin; and
 - (b) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
20. Greg Jarvis (**Jarvis**) was:
- (a) from 5 December 2016 to the end of the Relevant Period, Executive General Manager, Energy Supply and Operations at Origin; and
 - (b) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
21. Anthony Lucas (**Lucas**) was:
- (a) from February 2011 to the end of the Relevant Period, Executive General Manager, Future Energy and Technology at Origin; and
 - (b) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
22. Kate Jordan was:
- (a) from March 2020 to the end of the Relevant Period, General Counsel and Executive General Manager, Company Secretariat, Risk and Governance at Origin; and
 - (b) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.
23. Samantha Steens was:
- (a) from March 2018 to the end of the Relevant Period, Executive General Manager, Corporate Affairs at Origin; and

- (b) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.

24. Jon Briskin was:

- (a) from 5 December 2016 to the end of the Relevant Period, Executive General Manager, Retail at Origin; and
- (b) at all times in the Relevant Period, an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12.

B ORIGIN'S BUSINESS AND THE CONTEXT IN WHICH IT OPERATED

B.1 Overview of Origin's business

25. At all material times prior to and during the Relevant Period, Origin carried on a business as one of Australia's largest integrated energy companies, and its business comprised the following segments:

- (a) the **Energy Markets business**, comprising:
 - (i) the **Electricity Segment**, being:
 - (A) the generation and sale of electricity to the National Electricity Market as pleaded in paragraphs 26 to 70 below (**Electricity Generation Business**) in respect of which revenue known as **Pool Revenue** was earned; and
 - (B) the sale of electricity purchased from the National Electricity Market to retail customers, and to business and wholesale customers as pleaded in paragraphs 26 to 70 below (**Electricity Retail Business**);
 - (ii) the sale of natural gas to retail, business and wholesale customers (**Natural Gas Segment**);
 - (iii) procuring, supplying and distributing Liquefied Petroleum Gas to residential business locations across Australia and the Pacific (**LPG Segment**);
 - (iv) the sale, installation and maintenance of solar photovoltaic (PV) systems and batteries to residential and business customers (**Solar and Energy Services Segment**);

- (v) the deployment of digital products and services to customers; and
- (vi) a share in earnings from an investment in Octopus Energy Holdings Limited.

Particulars

- i. *Origin, FY2021 Annual Report, pp 27 to 33, 87.*
 - ii. *Origin FY2022 Annual Report, pp 28 to 35, 91.*
 - iii. *In FY2021 and FY2022, Origin reported generation and sales of electricity to the NEM (pool revenue) from the following power stations owned and/or operated by it: Eraring, Darling Downs, Osborne, Uranquinty, Mortlake, Mount Stuart, Quarantine, Ladbroke Grove, Roma and Shoalhaven: Origin FY2022 Annual Report, p 30.*
- (b) the Integrated Gas business, comprising:
- (i) a shareholding in Australia Pacific LNG Pty Ltd, being an incorporated joint venture between ConocoPhillips Australia Pacific LNG Pty Ltd, Origin and Sinopec Australia Pacific LNG Pty Ltd;
 - (ii) exploration rights in the Beetaloo (NT), Cooper-Eromanga (Qld) and Canning basins (WA); and
 - (iii) commodity hedging and trading.

Particulars

- i. *Origin FY2021 Annual Report, pp 34 to 39, 87.*
- ii. *Origin FY2022 Annual Report, pp 36 to 42, 91.*

B.2 The National Electricity Market and the regulatory scheme in which Origin operated

B.2.1 The National Electricity Market

26. At all material times, the system for the control and the conveyance of electricity in each of New South Wales (including the Australian Capital Territory), South Australia, Queensland, Victoria and Tasmania (**Participating Jurisdictions**) comprised:
- (a) electricity and power generating plants, systems and facilities in each of the Participating Jurisdictions which are connected to an interconnected national electricity network; and

- (b) an electricity spot market (**National Electricity Market**) whereby electricity is sold and purchased between electricity generators and retailers in a virtual pool through a central dispatch process operated and administered by the Australian Energy Market Operator Limited (**AEMO**) under the National Electricity Law, the National Electricity Rules and the National Electricity Regulations, as pleaded in paragraphs 29 to 54 below.
27. At all material times, the National Electricity Market operated to match electricity supply and demand instantaneously whereby:
- (a) electricity generators submit generation price and quantity offers (bids) to AEMO to have the output from electricity or power generating systems dispatched into the physical market;
 - (b) electricity retailers and other end users provide AEMO with details of their expected demand for electricity and then purchase electricity from the market which they sell as a retail product to their customers;
 - (c) AEMO dispatches the cheapest generator bid first, and progressively more expensive bids until sufficient electricity is dispatched to meet demand;
 - (d) the wholesale spot price is determined for each five-minute trading interval for specified regions from the average of the five-minute dispatch prices;
 - (e) the wholesale spot price determined in accordance with sub-paragraph 27(d) above is the price that all generators receive for supply during the five-minute trading interval, and the price that wholesale customers pay for the electricity purchased in that period; and
 - (f) AEMO invoices market customers for electricity drawn and pays electricity and power generators for electricity supplied.

Particulars

- i. National Electricity Rules, cl. 3.4.1(a)(1); cl. 3.8.1.*
- ii. Australian Energy Regulator, State of the Energy Market 2021, pp 67 – 68.*
- iii. Australian Energy Regulator, State of the Energy Market 2022, p 18.*
- iv. Further particulars may be provided following the filing of expert evidence.*

28. At all material times, AEMO held the following functions and responsibilities under the National Electricity Law and the National Electricity Rules:

- (a) to operate and administer the National Electricity Market and do all things necessary to operate and administer that market for the sale and purchase of electricity;
- (b) manage the centralised national dispatch process;
- (c) determine and publish a spot price for energy in accordance with r 3.9 of the National Electricity Rules;
- (d) to register persons as Registered Participants for the purposes of participation in the National Electricity Market;
- (e) to establish, maintain and publish a register of relevant market participants in the National Electricity Market;
- (f) to exempt certain persons from being registered as Registered Participants;
- (g) to maintain and improve power system security; and
- (h) to facilitate customer transfer, metering and retail competition.

Particulars

- i. National Electricity Law, s 49.*
- ii. National Electricity Rules, cl. 3.2.1; cl. 3.2.2(a), (b) and (c); cl. 3.4.1(b)(1); cl. 3.8.1; cl 3.9; definitions, Chapter 10.*
- iii. Further particulars may be provided following the filing of expert evidence.*

B.2.2 National Electricity Law and the National Electricity Rules as applicable to Generators and Market Customers

29. At all material times prior to and during the Relevant Period, the National Electricity Law contained in the Schedule to the *National Electricity (South Australia) Act 1996 (SA) (SA Electricity Law Act) (the National Electricity Law)* applied as a law (with necessary modification):

- (a) of South Australia, pursuant to s 6(a) of the SA Electricity Law Act;

- (b) of New South Wales, pursuant to s 6(a) of the *National Electricity (New South Wales) Act 1997* (NSW) (**NSW Electricity Act**);
 - (c) of Queensland, pursuant to s 6(a) of the *Electricity—National Scheme (Queensland) Act 1997* (Qld) (**Queensland Electricity Act**);
 - (d) in the Australian Capital Territory, pursuant to s 5(a) of the *Electricity (National Scheme) Act 1997* (ACT) (**ACT Electricity Act**);
 - (e) in Victoria, pursuant to s 6(a) of the *National Electricity (Victoria) Act 2005* (Vic) (**Victoria Electricity Act**); and
 - (f) in Tasmania, pursuant to s 6(a) of the *Electricity—National Scheme (Tasmania) Act 1999* (Tas) (**Tasmania Electricity Act**).
30. At all material times, the regulations in force from time to time made under Part 4 of the SA Electricity Act (**National Electricity Regulations**) applied (with necessary modification) as regulations in force:
- (a) in South Australia, pursuant to s 7(a) of the SA Electricity Act;
 - (b) in New South Wales, pursuant to s 7(a) of the NSW Electricity Act;
 - (c) in Queensland, pursuant to s 7(a) of the Queensland Electricity Act;
 - (d) in the Australian Capital Territory, pursuant to s 6(a) of the ACT Electricity Act;
 - (e) in Victoria, pursuant to s 7(a) of the Victoria Electricity Act; and
 - (f) in Tasmania, pursuant to s 7(a) of the Tasmania Electricity Act.
31. At all material times prior to and during the Relevant Period, the National Electricity Rules applied as force of law in each of the Participating Jurisdictions by operation of s 9 of the National Electricity Law (**National Electricity Rules**).
32. At all material times, the objectives of the National Electricity Law were to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity with respect to, *inter alia*:
- (a) price, quality, safety, reliability and security of supply of electricity; and
 - (b) the reliability, safety and security of the national electricity system.

Particulars

i. National Electricity Law, s 7(a) and (b).

33. At all material times, the National Electricity Law and the National Electricity Rules prohibited a person from owning, controlling or operating an electricity or power generating system or facility which was connected to the interconnected national electricity system in the Participating Jurisdictions unless:

- (a) that person is registered by AEMO as a **Generator**; or
- (b) that person is the subject of a derogation that exempts that person or is otherwise exempted by AEMO, from the requirement to be a Registered Participant in relation to that activity under the National Electricity Law and the National Electricity Rules.

Particulars

i. National Electricity Law, s 11(1).

ii. National Electricity Rules, cl. 2.2.1(a); cl. 2.4.1(b).

iii. Further particulars may be provided following the filing of expert evidence.

34. At all material times, the National Electricity Law and the National Electricity Rules prohibited a person in the Participating Jurisdictions from purchasing electricity directly through the National Electricity Market unless:

- (a) that person registered by AEMO as a **Market Customer**; or
- (b) that person is the subject of a derogation that exempts that person or is otherwise exempted by AEMO, from the requirement to be a Registered Participant in relation to that activity under the National Electricity Law and the National Electricity Rules.

Particulars

i. National Electricity Law, s 11(4).

ii. National Electricity Rules, cl. 2.3.1; cl. 2.3.4; cl. 2.4.1(b).

iii. Further particulars may be provided following the filing of expert evidence.

35. At all material times, the National Electricity Law and the National Electricity Rules required each of the “generating units” (that is the plant used in the production of electricity and all related

equipment essential to its functioning as a single entity) that forms part of the electricity generating system owned, operated or controlled by the person, or from which it otherwise sources electricity, to be registered with AEMO as:

- (a) either:
 - (i) a scheduled generating unit (with the Generator in respect of which any generating unit is classified by AEMO as a scheduled generating unit in accordance with Chapter 2 of the National Electricity Rules, referred to as a **Scheduled Generator**);
 - (ii) a semi-scheduled generating unit; or
 - (iii) a non-scheduled generating unit (with the Generator in respect of which any generating unit is classified as a non-scheduled generating unit in accordance with Chapter 2 of the National Electricity Rules, referred to as a **Non-Scheduled Generator**);
- (b) and:
 - (i) a market generating unit (with the Generator who has classified at least one generating unit as a market generating unit in accordance with Chapter 2 of the National Electricity Rules and who is also registered by AEMO as such, referred to as a **Market Generator**); or
 - (ii) a non-market generating unit.

Particulars

- i. National Electricity Rules, cl. 2.2.1(e)(1) and (f); cl. 2.2.4; definitions, Chapter 10.*
- ii. Further particulars may be provided following the filing of expert evidence.*

36. At all material times prior to and during the Relevant Period, OEEL was, relevantly, registered by AEMO in relation to the following activities under the National Electricity Laws, the National Electricity Rules and the National Electricity Regulations:

- (a) Generator Market – Scheduled;
- (b) Generator Market – Non-Scheduled; and

- (c) Market Customer.

Particulars

- i. NEM Registration and Exemption List, row 400.*
- ii. Further particulars may be provided following discovery and the filing of expert evidence.*

37. At all material times, the National Electricity Law and the National Electricity Rules required Origin, through OEEL as a Scheduled Generator or other controlled entities, to:

- (a) operate its scheduled generating units in accordance with the central dispatch process operated by AEMO under the provisions of Chapter 3 of the National Electricity Rules; and
- (b) notify AEMO of the availability of each scheduled generating unit in respect of each trading interval (namely a five-minute period ending on the hour (Australian Eastern Standard Time) and each continuous period of five minutes thereafter) (**Trading Interval**).

Particulars

- i. National Electricity Rules, cl. 2.2.2(f) and (g); definitions, Chapter 10.*
- ii. Further particulars may be provided following the filing of expert evidence.*

38. Further, at all material times, the National Electricity Law and the National Electricity Rules provided that a Non-Scheduled Generator did not participate in the central dispatch process operated by AEMO in accordance with cl. 3.8 of the National Electricity Rules unless AEMO considered it reasonably necessary for adequate system operation and the maintenance of power system security to do so to the extent and in the capacity specified by AEMO (contravention of such provision being a tier 2 civil penalty provision under the National Electricity Regulations).

Particulars

- i. National Electricity Rules, cl. 2.2.3(f); cl 3.8.2(e).*
- ii. National Electricity Regulations, reg 6; Schedule 1 Part 1.*
- iii. Further particulars may be provided following the filing of expert evidence.*

39. At all material times, the National Electricity Law and the National Electricity Rules required Origin, through OEEL as a Market Generator, or other controlled entities to:

- (a) sell the amount of electricity supplied to the transmission network or distribution network, through the National Electricity Market and to accept payments from AEMO for that electricity at the spot market price as determined by AEMO for each Trading Interval in accordance with Chapter 3 of the National Electricity Rules (contravention of such provision being a tier 1 civil penalty provision under the National Electricity Regulations); and
- (b) purchase all electricity supplied through the national grid (that is, the sum of all connected transmissions systems and distribution systems and regulated stand-alone power systems within the NEM jurisdictions) to that Market Generator at a connection point from the National Electricity Market and make payments to AEMO for such electricity supplied as determined by AEMO for each Trading Interval in accordance with Chapter 3 of the National Electricity Rules (contravention of such provision being a tier 1 civil penalty provision under the National Electricity Regulations).

Particulars

- i. National Electricity Rules, cl. 2.2.4(c) and (d); definitions, Chapter 10.*
- ii. National Electricity Regulations, reg 6; Schedule 1 Part 1.*
- iii. Further particulars may be provided following the filing of expert evidence.*

40. At all material times, the National Electricity Law and the National Electricity Rules required Origin, through OEEL as a Market Customer, or other controlled entities to purchase all electricity supplied at a connection point from the market and to make payments to AEMO for electricity supplied as determined for each Trading Interval in accordance with the provisions of Chapter 3 of the National Electricity Rules (contravention of such provision being a tier 1 civil penalty provision under the National Electricity Regulations).

Particulars

- i. National Electricity Rules, r 2.3.4(c).*
- ii. Further particulars may be provided following the filing of expert evidence.*

B.2.3 National Energy Retail Law and the National Energy Retail Rules

41. At all material times prior to and during the Relevant Period, the National Energy Retail Law as contained in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* (SA) (**National Energy Retail Law**) (**SA Retail Act**) applied as a law (with necessary modification):
- (a) of South Australia, pursuant to s 4(3) of the SA Retail Act;
 - (b) of New South Wales, pursuant to s 4(a) of the *National Energy Retail Law (Adoption) Act 2012* (NSW) (**NSW Retail Act**);
 - (c) of Queensland, pursuant to s 4(a) of the *National Energy Retail Law (Queensland) Act 2014* (Qld) (**Queensland Retail Act**);
 - (d) of the Australian Capital Territory, pursuant to s 6(1)(a) of the *National Energy Retail Law (ACT) Act 2012* (ACT) (**ACT Retail Act**); and
 - (e) of Tasmania, pursuant to s 4(a) of the *National Energy Retail Law (Tasmania) Act 2012* (Tas) (**Tasmania Retail Act**)—
- (together, the **Retail Jurisdictions**).
42. At all material times prior to and during the Relevant Period, the regulations made under the National Energy Retail Law (as amended from time to time) (**National Energy Retail Regulations**) applied (with necessary modification) as regulations in force:
- (a) in South Australia, pursuant to s 4(3) of the SA Retail Act;
 - (b) of New South Wales, pursuant to s 5(a) of the NSW Retail Act;
 - (c) of Queensland, pursuant to s 5(a) of the Queensland Retail Act;
 - (d) of the Australian Capital Territory, pursuant to s 7(a) of the ACT Retail Law; and
 - (e) of Tasmania, pursuant to s 6(a) of the Tasmania Retail Act.
43. At all material times prior to and during the Relevant Period, the National Energy Retail Rules applied as force of law in each of the Retail Jurisdictions by operation of s 15 of the National Energy Retail Law (**National Energy Retail Rules**).
44. At all material times, an objective of the National Energy Retail Rules was to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of

consumers of energy with respect to, *inter alia*, the price, quality, safety, reliability and security of supply of energy.

Particulars

i. National Energy Retail Law, s 13.

45. At all material times, the National Energy Retail Law prohibited a person (seller) in the Retail Jurisdictions from engaging in the activity of selling energy to a person for premises unless:
- (a) the seller is the holder of a current retailer authorisation granted or transferred under the National Energy Retail Law; or
 - (b) the person is an exempt seller under Division 6 of Part 2 of the National Energy Retail Law.

Particulars

i. National Energy Retail Law, s 88(1); Division 2 of Part 5; Division 3 of Part 5.

46. At all material times since 1 July 2012, OEEL has been the holder of a retailer authorisation in the Retail Jurisdictions issued under Part 5 of the National Energy Retail Law.

Particulars

i. National Energy Retail Regulations, s 13 and Schedule 2 specify that OEEL was a retailer under a transitional provision of the National Energy Retail Law.

ii. Australian Energy Regulator website: <https://www.aer.gov.au/industry/registers/authorisations/origin-energy-electricity-authorised-electricity-retailer> (accessed 10 April 2024).

47. At all material times, the National Energy Retail Law provided for the following types of customer retail contracts:
- (a) **market retail contracts** (being a customer retail contract referred to in s 33 of the National Energy Retail Law as pleaded further in paragraphs 50 to 51 below); and
 - (b) **standard retail contracts** (being a customer retail contract that takes effect under s 26 of the National Energy Retail Law as a contract between a small customer and a designated retailer as pleaded further in paragraphs 52 to 54 below).

Particulars

i. National Energy Retail Law, s 20(1).

48. At all material times, the National Energy Retail Law provided:

- (a) a **customer** means a person:
 - (i) to whom energy is sold for premises by a retailer; or
 - (ii) who proposes to purchase energy for premises from a retailer;
- (b) a **small customer** means a customer:
 - (i) who is a **residential customer** (being a customer who purchases energy principally for personal, household or domestic use at premises);
 - (ii) who is a **business customer** (being a customer who is not a residential customer) who consumes energy at business premises below the upper consumption threshold as provided for in the National Energy Retail Regulations or the National Energy Retail Rules;
- (c) a **customer retail service** means the sale of energy by a retailer to a customer at premises; and
- (d) the **standing offer prices** means all of the tariffs and charges that a retailer charges a small customer for or in connection with the sale and supply of energy to a small customer under a standard retail contract.

Particulars

i. National Energy Retail Law, ss 2 and 5.

49. At all material times, the National Energy Retail Law prohibited Origin, through OEEL as a retailer, or other controlled entity, from providing customer retail services in the Retail Jurisdictions to small customers under any kind of contract or arrangement other than a standard retail contract or market retail contract (contravention of such provision being a civil penalty provision under the National Energy Retail Law).

Particulars

i. National Energy Retail Law, s 20(2).

50. At all material times, the National Energy Retail Rules provided:

- (a) that the terms and conditions of a market retail contract are as agreed between the retailer and the small customer, except as provided by those National Energy Retail Rules; and
- (b) that other provisions of the National Energy Retail Rules applied to market retail contracts, to the extent provided by those provisions.

Particulars

i. National Energy Retail Rules, cl. 14 and 15.

51. At all material times prior to and during the Relevant Period, Origin (through OEEL or other controlled entity) had in place written terms and conditions in place that applied to its market retail contracts in force in the Australian Capital Territory, New South Wales, Northern Territory, Queensland and South Australia.

Particulars

i. The Electricity Agreement terms and conditions are in writing and dated March 2021 and November 2021 respectively.

52. Further, at all material times:

- (a) Schedule 1 of the National Energy Retail Rules set out model terms and conditions for standard retail contracts (**model terms and conditions**) and Origin's standard retail contract was required to be consistent with those model terms and conditions; and
- (b) the National Energy Retail Rules provided that other provisions of the National Energy Retail Rules applied to standard retail contracts, to the extent provided by those provisions.

Particulars

i. National Energy Retail Law, s 29.

ii. National Energy Retail Rules, cl. 12 and 13 and Schedule 1.

53. At all material times, the National Energy Retail Law operated to require Origin, through OEEL as a retailer, or other controlled entity, to make offers to provide customer retail services to small customers for whom it is the designated retailer:

- (a) at standing offer prices; and

(b) under the retailer’s form of standard retail contract—

(contravention of such provision being a civil penalty provision under the National Energy Retail Law).

Particulars

i. National Energy Retail Law, s 22(1).

54. Further, at all material times from 1 July 2019, the maximum standing offer prices that Origin, through OEEL as a retailer, or other controlled entity, could charge small customers in New South Wales, South Australia and South East Queensland on standard offer contracts was limited by operation of a price cap (known as the “Default Market Offer”) determined and set by the Australian Energy Regulator in accordance with the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* made under the CCA (contravention of such provision being a civil penalty provision of the Electricity Retail Code of Conduct for the purposes of Part IVB and s 76 of the CCA).

Particulars

*i. A table of the AER’s Final Determination of Default Market Offer Prices 2021-22 dated April 2021, the Default Market Offer between 1 July 2021 to 30 June 2022 is at **Annexure 3** to this statement of claim and at <https://www.aer.gov.au/documents/aer-default-market-offer-price-determination-2021-22-final-determination-27-april-2021> (accessed 10 May 2024).*

B.2.4 Supply to domestic and small business customers in the State of Victoria

55. At all material times prior to and during the Relevant Period, the *Electricity Industry Act 2000* (Vic) (**Victorian Retail Act**) applied as law in Victoria.

56. At all material times, the Essential Services **Commission** (being a body corporate established by s 7 of the *Essential Services Commission Act 2001* (Vic) (**Essential Services Commission Act**)) was empowered to regulate prescribed prices in respect of:

- (a) charges for connection to, and the use of, any distribution system; and
- (b) tariffs for the sale of electricity.

Particulars

i. Victorian Retail Act, s 12.

57. At all material times, s 13(1) of the Victorian Retail Act provided that the Governor in Council, on the recommendation of the Minister, may by Order published in the Government Gazette, regulate, in such manner and in relation to such period as the Governor in Council thinks fit, tariffs for the sale of electricity to prescribed customers or a class of prescribed customers, including *inter alia*:
- (a) fixing the tariff or the rate of increase or decrease in a tariff;
 - (b) fixing a maximum tariff or maximum rate of increase or minimum rate of decrease in the maximum tariff;
 - (c) fixing an average tariff or an average rate of increase or decrease in the average tariff;
and
 - (d) specifying policies or principles for fixing tariffs.

Particulars

i. Victorian Retail Act sub-s 13(1) and (2).

58. Further, at all material times, sub-s 16(1) of the Victorian Retail Act prohibited a person from engaging in the activity of generation of electricity for supply or sale or the transmission, distribution, supply or sale of electricity unless that person, relevantly:
- (a) is the holder of a licence authorising the relevant activity; or
 - (b) is exempted from the requirement to obtain a licence in respect of the relevant activity—
- (sub-s 16(1) being a civil penalty requirement for the purposes of the Essential Services Commission Act.
59. At all material times, OEEL has been the holder of:
- (a) since at least 22 November 1995, an **electricity retail licence**, being a licence to sell electricity otherwise than through the wholesale electricity market, issued under the Victorian Retail Act (and its predecessor Acts) and subject to the terms of that licence;
and
 - (b) since at least 17 November 2010, an **electricity wholesale licence** issued under the Victorian Retail Act (and its predecessor Act) and subject to the terms of that licence.

Particulars

- i. *As to (a), an electricity retail licence as varied on 28 July 2022 (with effect from 12 September 2022) refers to a licence first granted on 22 November 1995 and varied from time to time (cl 3.1).*
- ii. *As to (b), an electricity wholesale licence as varied on 12 May 2021 refers to a licence issued pursuant to s 19 of the Victorian Retail Act on 17 November 2010 (p 2).*

60. By reason of the matters pleaded in paragraphs 55, 58, and 59 above, at all material times prior to and during the Relevant Period Origin, through OEEL, or other controlled entity, was a **retailer** for the purposes of the Victorian Retail Act.

Particulars

- i. *Victorian Retail Act, s 3.*

61. By reason of the matters pleaded in paragraph 60 above, by operation of s 35 of the Victoria Retail Act, at all material times prior to and during the Relevant Period, Origin, through OEEL or other controlled entity, was subject to a condition requiring the relevant licensee to offer to supply and sell electricity to domestic or small business customers:

- (a) at tariffs fixed under an Order in force under s 13 of the Victorian Retail Act or determined under a price determination in force under such an Order or, if there are no such tariffs, at tariffs determined by the licensee and published by the licensee in the Government Gazette at least one month before they take effect; and
- (b) on terms and conditions determined by the licensee and approved by the Commission and published by the licensee in the Government Gazette at least one month before they take effect, with such terms and conditions determined by the licensee not to be inconsistent with the terms and conditions decided by the Commission under sub-s 36(1) of the Victorian Retail Act or a provision of a Code of Practice (as pleaded further in paragraph 64 below)—

(Victorian Standing Offer).

Particulars

- i. *Victorian Retail Act, s 35(1) and (2).*

62. Further, at all material times, sub-s 36(1) of the Victorian Retail Act provided that, subject to sub-s (1B), a term or condition in a contract for the supply or sale of electricity by a licensee to a relevant customer is void to the extent it is inconsistent with *inter alia*:

- (a) terms and conditions decided by the Commission that specify a period during which the licensee must not vary the tariffs applying under the contract unless exempted to do so by the Commission;
- (b) any other terms and conditions decided by the Commission and provided for in the licence of the licensee; and
- (c) a provision of Code of Practice (as pleaded further in paragraph 64 below).

63. Further, at all material times prior to and during the Relevant Period:

- (a) the electricity industry was an industry providing an **essential service** and was a **regulated industry**; and
- (b) Origin, through OEEL or other controlled entity was a **regulated entity**—

within the meaning of the Essential Services Commission Act.

Particulars

- i. Origin, through OEEL or other controlled entity is an entity operating in a regulated industry: Essential Services Commission Act, s 3.*

64. At all material times prior to and during the Relevant Period, the Commission was empowered to make, amend or revoke Codes of Practice for or with respect to a regulated industry in accordance with Part 6 of that Act, providing for any matters relating to *inter alia*:

- (a) requiring a specified regulated entity or a specified class of regulated entity to develop, issue and comply with customer-related standards, procedures, policies and practices in accordance with the Code of Practice;
- (b) specifying minimum customer-related standards, procedures, policies and practices for inclusion by a specified regulated entity or a specified class of regulated entity in a customer charter for specific services and
- (c) requiring a specified regulated entity or a specified class of regulated entity to comply with terms and conditions of contracts.

Particulars

- i. Essential Services Commission Act, sub-s 47(1) and (2).*

65. In the premises, by reason of the matters pleaded in paragraph 63 and 64 above, Origin, through OEEL or other controlled entity, was at all material times from the start of the Relevant Period to on or about 28 February 2022, bound by the Energy Retail Code (version 21) dated 1 July 2021 (**2021 Energy Retail Code**) and thereafter by the Energy Retail Code of Practice Version 1 (dated 1 March 2022) (**2022 Energy Retail Code**) (together, the **Energy Retail Code**).
66. At all material times, the Energy Retail Code (read together with the Victorian Retail Act) provided:
- (a) a **customer retail contract** means a contract between a small customer and a retailer for the provision of customer retail services for particular premises;
 - (b) a **market retail contract** means a contract between a small customer and a retailer which is not a deemed contract nor a standard retail contract;
 - (c) a **small customer** means *inter alios* a domestic or small business customer under s 3 of the Victorian Retail Act (as pleaded further in paragraph 67 below);
 - (d) a **standard retail contract** means a customer retail contract that arises from the acceptance of a standing offer (as defined in the 2021 Energy Retail Code) and the Victorian default offer for electricity (as defined in the 2022 Energy Retail Code);
 - (e) a **standing offer** means:
 - (i) a licensee standing offer, being:
 - (A) tariffs fixed under an Order of the Governor in Council under s 13 of the Victorian Retail Act, determined under a price determination in force under such an Order of the Governor in Council, or determined by a licensee and published in the Government Gazette; and
 - (B) terms and conditions determined by a licensee and approved by the Essential Services Commission; or
 - (ii) a regulated tariff standing offer, being a licensee standing offer—

(being the Victorian Standing Offer pleaded in paragraph 61 above);

Particulars

- i. Victorian Retail Act, ss 3 and 35.*

- ii. *2021 Energy Retail Code s 3.*
- iii. *2022 Energy Retail Code s 3.*

67. Further, at all material times, a person is a **domestic or small business customer** in relation to a licensed retailer where:

- (a) a person who purchases energy principally for personal, household or domestic use at the relevant supply point; or
- (b) in the case of electricity, a person whose aggregate consumption of electricity taken from the relevant supply point has not been, or in the case of a new supply point, is not likely to be, more than 40MWh per year.

Particulars

- i. *Victorian Retail Act, s 35.*
- ii. *Order in Council made under s 35 of the Victorian Retail Act on 25 November 2008.*

68. At all material times, the Energy Retail Code (read together with the Victorian Retail Act) *inter alia* provided that:

- (a) a retailer (including Origin through OEEL or other controlled entity) must offer a standard retail contract containing the model terms and conditions contained in a Schedule to the Energy Retail Code; and
- (b) the terms and conditions of a market retail contract are as agreed between the retailer (including Origin through OEEL or other controlled entity) and the small customer, except as provided by the applicable Code.

Particulars

- i. *Victorian Retail Act, ss 35 and 36.*
- ii. *2021 Energy Retail Code, ss 12 and 13 and Schedule 1.*
- iii. *2022 Energy Retail Code, ss 18 and 20 and Schedule 2.*

69. At all material times prior to and during the Relevant Period, Origin (through OEEL or other controlled entity) had in place written terms and conditions in place that applied to its market retail contracts in force in Victoria.

Particulars

- i. The particulars subjoined to paragraph 51 are repeated.*

B.2.5 Supply to business and wholesale customers

70. At all material times prior to and during the Relevant Period, Origin's customers comprised business customers (industrial and commercial) and wholesale customers, whereby Origin supplied electricity pursuant to terms and conditions specified in medium to long term contracts with fixed or index-linked energy rates that had been commercially negotiated.

Particulars

- i. Sub-paragraph 25(a) is repeated.*
- ii. Origin FY2021 Annual Report pp 25 and 91.*
- iii. Further particulars may be provided following discovery and the filing of expert evidence.*

B.3 Specific features of Origin's business

71. At all material times during and prior to the Relevant Period, Origin's primary revenue streams related to:

- (a) the sale of generated electricity into the National Electricity Market (that is, Pool Revenue);
- (b) the sale of electricity to retail (residential and small to medium enterprises) customers; and
- (c) the sale of electricity to business (industrial and commercial) and wholesale customers.

Particulars

- i. Sub-paragraph 25(a)(i) is repeated.*
- ii. Origin FY2021 Annual Report, pp 25 and 91.*
- iii. Further particulars may be provided following discovery and the filing of expert evidence.*

72. At all material times in the financial years ending 30 June 2019 to 30 June 2022, the Electricity Segment of Origin's business contributed the majority of the revenue to the Energy Markets business.

Particulars

- i. *Details of the contribution to the Energy Market's revenue stream are set out in the table below. The calculations are taken from the A2 Revenue Table at p 95 of the Origin FY2022 Annual Report, p 91 of the Origin FY2021 Annual Report, p 87 of the Origin FY2020 Annual Report and p 110 of the Origin 2019 Annual Report.*
- ii. *Further particulars may be provided following discovery and the filing of expert evidence.*

<i>FY2022 and FY2021</i>				
<i>Revenue stream</i>	<i>FY2022 \$M</i>	<i>% Total</i>	<i>FY2021 \$M</i>	<i>% Total</i>
<i>Electricity Segment</i>	<i>9,695</i>	<i>71.24%</i>	<i>8,472</i>	<i>71.42%</i>
<i>Natural Gas Segment</i>	<i>2,812</i>	<i>20.66%</i>	<i>2,455</i>	<i>20.70%</i>
<i>LPG Segment</i>	<i>705</i>	<i>5.18%</i>	<i>589</i>	<i>4.97%</i>
<i>Solar and Energy Services Segment</i>	<i>396</i>	<i>2.91%</i>	<i>346</i>	<i>2.92%</i>
<i>Total</i>	<i>13,608</i>	<i>100%</i>	<i>9,407</i>	<i>100%</i>
<i>FY2020 and FY2019</i>				
<i>Revenue stream</i>	<i>FY2020 \$M</i>	<i>% Total</i>	<i>FY2019 \$M</i>	<i>% Total</i>
<i>Electricity Segment</i>	<i>9,037</i>	<i>70.72%</i>	<i>10,381</i>	<i>73.12%</i>
<i>Natural Gas Segment</i>	<i>2,836</i>	<i>22.19%</i>	<i>2,926</i>	<i>20.61%</i>
<i>LPG Segment</i>	<i>608</i>	<i>4.76%</i>	<i>674</i>	<i>4.75%</i>
<i>Solar and Energy Services Segment</i>	<i>298</i>	<i>2.33%</i>	<i>216</i>	<i>1.52%</i>
<i>Total</i>	<i>12,779</i>	<i>100%</i>	<i>14,197</i>	<i>100%</i>

73. Further, in the financial years ending 30 June 2019 to 2021, the Energy Markets business contributed approximately 45% of Origin's business total earnings before interest, taxes, depreciation, and amortization (**EBITDA**).

Particulars

- i. *Details of the EBITDA contributions are set out in the table below. The calculations are taken from p 92 of the Origin FY2022 Annual Report (restating FY EBITDA),*

p 84 of the Origin 2020 Annual Report and p 105 of the FY2019 Annual Report.

- ii. *Further particulars may be provided following discovery and the filing of expert evidence.*

<i>FY2022 and FY2021</i>				
<i>Segment EBITDA</i>	<i>FY2022 \$M</i>	<i>% Total</i>	<i>FY2021 \$M</i>	<i>% Total</i>
<i>Energy Markets</i>	<i>365</i>	<i>16.58%</i>	<i>979</i>	<i>46.31%</i>
<i>Integrated Gas</i>	<i>1,837</i>	<i>83.42%</i>	<i>1,135</i>	<i>53.69%</i>
<i>Corporate</i>	<i>(88)</i>	<i>N/A</i>	<i>(78)</i>	<i>N/A</i>
<i>Total</i>	<i>2,114</i>	<i>N/A</i>	<i>2,048</i>	<i>N/A</i>
<i>Total (ex. Corporate)</i>	<i>2,204</i>	<i>100%</i>	<i>2,126</i>	<i>100%</i>
<i>FY2020 and FY2019</i>				
<i>Segment EBITDA</i>	<i>FY2020 \$M</i>	<i>% Total</i>	<i>FY2019 \$M</i>	<i>% Total</i>
<i>Energy Markets</i>	<i>1,459</i>	<i>45.59%</i>	<i>1,574</i>	<i>45.41%</i>
<i>Integrated Gas</i>	<i>1,741</i>	<i>54.41%</i>	<i>1,892</i>	<i>54.59%</i>
<i>Corporate</i>	<i>(59)</i>	<i>N/A</i>	<i>(234)</i>	<i>N/A</i>
<i>Total</i>	<i>3,141</i>	<i>N/A</i>	<i>3,323</i>	<i>N/A</i>
<i>Total (ex. Corporate)</i>	<i>3,200</i>	<i>100%</i>	<i>3,466</i>	<i>100%</i>

B.4 Eraring Power Station

74. At all material times prior to and during the Relevant Period, Origin owned and operated the Eraring Power Station, a black coal-fired power station located on Lake Macquarie in the State of New South Wales (**Eraring Power Station**).
75. At all material times prior to and during the Relevant Period, the Eraring Power Station:
- (a) is and was Australia's largest power station with a generating capacity of 2,922 megawatts;
 - (b) is and was Origin's only coal fired power station;

- (c) accounted for approximately 25% of the State of New South Wales' power requirements;
and
- (d) accounted for between 75% and 80% of Origin's total generated electricity output.

Particulars

- i. *As to sub-paragraph 75(a) to 75(c), Eraring Power Station Fact Sheet available at www.originenergy.com.au/about/who-we-are/what-we-do/generation/eraring-power-station/ (accessed 8 December 2023).*
- ii. *As to sub-paragraph 75(d), Origin FY2022 Annual Report, p 30. The figures are arrived at by dividing Eraring Power Station's total output in FY2021 and FY2022 by the total output generated in that period.*

B.5 Centennial, Mandalong mine, Myuna mine and Banpu

76. On a date presently unknown to the plaintiff, but in or around 2013, Origin entered into a coal supply agreement for the supply to Eraring Power Station with 24.5 million tonnes (Mt) of coal for the period FY2015 to FY2022, equating to approximately 3.06 Mt per annum, from mines operated by Centennial Coal Co. Pty Ltd (formerly known as Centennial Coal Company Limited) (**Centennial**) or subsidiaries of Centennial.

Particulars

- i. *Prior to discovery the plaintiff cannot provide particulars of the coal supply agreement/s, including the details of the counterparty(ies) save to say that by announcement published to the ASX on 1 July 2013, Origin stated: "Origin today announced it had entered into a coal supply agreement with Centennial Coal for the provision of 24.5 million tonnes of coal over an eight-year period from FY 2015 for use at Eraring Power Station ... Under the terms of the agreement announced today with Centennial Coal, Origin will receive 24.5 million tonnes of coal from FY2015 to FY2022 from Centennial's mines, several of which are located in close proximity to Eraring Power Station."*
- ii. *Further particulars may be provided following discovery.*

77. At all material times prior to and during the Relevant Period, the Mandalong mine:
- (a) is and was an underground longwall mine located on the western side of Lake Macquarie, near Morisset, in the State of New South Wales;

- (b) is and was owned and/or operated by Centennial Mandalong Pty Ltd (**Centennial Mandalong**), a subsidiary of Centennial;
- (c) operated under a State Significant Development Consent granted on 12 October 2015 (as modified from time to time) (**Mandalong SSD Consent**) by the Planning Assessment Commission of New South Wales, as delegate of the Minister of Planning, and made under the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**);
- (d) supplied run-of-mine coal extracted from the Mandalong mine to Eraring Power Station via a dedicated overland coal conveyer; and
- (e) supplied run-of-mine coal to Eraring Power Station in the following quantities:
 - (i) in the period 1 January 2020 to 31 December 2020, 2,774,188 tonnes per annum;
 - (ii) in the period 1 January 2021 to 31 December 2021, 1,948,190 tonnes per annum;
 and

Particulars

- i. *As to sub-paragraph 77(a) to 77(c), so far as the plaintiff can say prior to discovery, the plaintiff refers to:*
 - A. *Mandalong SSD Consent (consolidated to include modifications up to February 2022) is in writing and available at <https://www.centennialcoal.com.au/operations/mandalolong/> (accessed 22 February 2024).*
 - B. *Centennial, Mandalong Mine 2020 Annual Review dated 24 March 2021 (**Mandalong 2020 Annual Review**), p 5.*
 - C. *Modification Report dated May 2020 prepared by EMM and titled “Mandalong Mine – Modification report for the modification to development consent SSD-5144”.*
- ii. *As to sub-paragraph 77(d), so far as the plaintiff can say prior to discovery, the plaintiff refers to:*
 - A. *Modification Assessment Report for Mandalong dated in or around October 2009 in relation to the “Proposal to Process Mandalong Coal at Newstan Colliery”, p 2.*
 - B. *the Mandalong Longwall Extraction Plans 2023 Resident Information Pack dated in or around August 2023, pp 4-5.*
- iii. *As to sub-paragraph 77(e) so far as the plaintiff can say prior to discovery, the plaintiff refers to the Mandalong Mine 2021 Annual Review dated 28 March 2022 (**Mandalong 2021 Annual Review**), table 4-2, p 13.*

iv. *Further particulars may be provided following discovery and the filing of expert evidence.*

78. At all material times prior to and during the Relevant Period, the Myuna Colliery (**Myuna mine**):
- (a) is and was an underground coal mine located approximately 25 km southwest of Newcastle, in the State of New South Wales;
 - (b) is and was owned and/or operated by Centennial Myuna Pty Ltd, a subsidiary of Centennial;
 - (c) operated under a consolidated project approval made under the EPA Act and dated 18 January 2012 (**Myuna Consolidated Project Approval**);
 - (d) supplied all run-of-mine coal extracted from Myuna mine exclusively to Eraring Power Station via a dedicated overland coal conveyer; and
 - (e) supplied run-of-mine coal to Eraring Power station in the following quantities:
 - (i) in the period 1 January 2020 to 31 December 2020, 963,000 tonnes per annum; and
 - (ii) in the period 1 January 2021 to 31 December 2021, 866,838 tonnes per annum.

Particulars

- i. *As to sub-paragraph 78(a) to 78(c):*
 - A. *The Myuna Consolidated Project Approval is in writing and available at https://data.centennialcoal.com.au/domino/centennialcoal/cc205.nsf/0/9002B3CCF64D28B6CA25890700685A51/%24file/10_0080%20MOD%203%20-%2025%20November%202022.pdf (accessed 23 February 2024).*
 - B. *Myuna Colliery Annual Review dated 31 March 2023 for the period 1 January 2022 to 31 December 2022, p 9.*
- ii. *As to sub-paragraph 78(d):*
 - A. *So far as the plaintiff can say prior to discovery, the plaintiff refers to the Myuna Mine 2021 Annual Review dated 31 March 2022 (**Myuna 2021 Annual Review**) which states, in relation to the periods 1 January 2020 to 31 December 2020 and 1 January 2021 to 31 December 2021 that “[a]ll [run of min]e coal from Myuna Colliery is transported via a privately owned*

overland conveyor to the Eraring Power Station” (at p 15).

- B. The plaintiff also refers to statements on Centennial’s website that “Myuna mine extracts up to 1.5 million tonnes of coal per annum to supply the neighbouring Eraring Power Station”: www.centennialcoal.com.au/operations/myuna (accessed 26 February 2024).*
- iii. As to sub-paragraph 78(e), so far as the plaintiff can say prior to discovery, the plaintiff refers to the Myuna 2021 Annual Review, table 7, p 15.*
- iv. Further particulars may be provided following discovery and the filing of expert evidence.*

79. At all material times during and prior to the Relevant Period:

- (a) Centennial;
- (b) Centennial Mandalong Pty Ltd; and
- (c) Centennial Myuna Pty Ltd—

formed part of a group of companies of which Banpu Public Company Limited (**Banpu**) was the ultimate parent company.

Particulars

- i. Banpu 2022 Annual Report dated 31 March 2023, pp 117 and 122.*
- ii. Banpu 2021 Annual Report dated 21 March 2023, pp 127, 131 and 134.*
- iii. Further particulars may be provided following the service of subpoenas.*

80. At all material times during and prior to the Relevant Period, Mandalong mine and Myuna mine constituted Banpu’s designated “Northern Operations” region for Banpu’s reporting purposes.

81. At all material times during and prior to the Relevant Period, Banpu was a company based in the Kingdom of Thailand and listed on the Stock Exchange of Thailand (**SET**).

Particulars

- i. Banpu was listed on the Stock Exchange of Thailand on 4 May 1989 as “Ben Pu Coal Company Limited” and changed its name on 29 July 1993 to “Banpu Public Company Limited”: Banpu Annual Report 2022, p 23.*

82. At all material times during and prior to the Relevant Period, Banpu followed a fiscal year commencing on 1 January of any given year and ending on 31 December that year.

B.6 Eraring Power Station's coal requirements

83. For the financial year ending 30 June 2020, the electricity output at Eraring Power Station was 13,634 Gigawatt hours (GWh).

Particulars

- i. Origin FY2020 Annual Report, p 29.*
- ii. Further particulars may be provided following discovery.*

84. For the financial year ending 30 June 2021, the electricity output at Eraring Power Station was 13,276 GWh.

Particulars

- i. Origin FY2021 Annual Report, p 28.*
- ii. Further particulars may be provided following discovery.*

85. At all material times prior to and throughout the Relevant Period, in order to maintain an electricity output of between approximately 11,000 to 13,000 GWh, Eraring Power Station's annual coal consumption requirement was between 5 to 6 million tonnes of coal.

Particulars

- i. Paragraph 75 above is repeated.*
- ii. So far as the plaintiff can say prior to discovery, the plaintiff refers to Origin's June 2022 Quarterly Report which was published to the ASX on 29 July 2022 which states that a volume of 5 to 6 million tonnes of coal "would equate to plant output of ~11 to ~13 [terawatt] hours, consistent with output over recent years" (one terawatt hour equating to 1,000 GWh), p 10.*
- iii. Further particulars may be provided following discovery and the filing of expert evidence.*

86. In the financial year ending 30 June 2022, Eraring Power Station was contracted to receive approximately two thirds of Eraring Power Station's annual coal supply from Centennial and/or its subsidiaries.

Particulars

- i. *The particulars subjoined to paragraph 76 above are repeated.*
- ii. *So far as the plaintiff can say prior to discovery, the plaintiff refers to the statements of Calabria at the FY2021 Earnings Call (as defined in paragraph 94 below) held on 19 August 2021 where Calabria said, in relation to FY2022: “So we’ve got the 4 million tonnes that rolls all the way through the same as ‘21 through to ‘22”. The plaintiff also refers to statements made by Calabria at the FY2021 Earnings Call in response to a question regarding two thirds of Origin’s contracted coal supply to Eraring Power Station expiring at the end of FY2022 (at p 10). The plaintiff also refers to statements made by UBS on 3 June 2022 to the effect that Centennial had a 4 million tonne per annum contract to deliver coal to Eraring Power Station.*
- iii. *Further particulars may be provided following discovery and the filing of expert evidence.*

87. At all material times in the financial year ending 30 June 2022, Origin operated on the basis that Eraring Power Station’s annual coal requirements were to be supplied in the majority from the Mandalong mine and the Myuna mine by Centennial and/or its subsidiaries.

Particulars

- i. *The particulars subjoined to paragraphs 77, 78, 85 and 86 above are repeated.*
- ii. *Further particulars may be provided following discovery and the filing of expert evidence.*

C ORIGIN’S STATEMENTS TO THE MARKET PRIOR TO 1 JUNE 2022 AND THEIR CONTEXT

C.1 Origin’s statements in 2021

C.1.1 Origin’s 30 July 2021 statements

88. On 30 July 2021, Origin published and released to the ASX an announcement titled “Origin expects to recognise non-cash charges for FY2021 and issues guidance for FY2022” (**30 July Announcement**).

89. In the 30 July Announcement, Origin made the following statements:
- (a) as to FY2022 Energy Markets Guidance, “Origin expects FY2022 Underlying EBITDA for Energy Markets to be lower at \$450—\$600 million” (that EBITDA range being the **FY2022 Energy Markets Guidance**);
 - (b) as to FY2023 Energy Markets Guidance, “[i]n FY2023, Origin expects a recovery in Energy Markets Underlying EBITDA of an estimated \$150 to \$250 million to \$600—\$850 million” (that EBITDA increase range being **FY2023 Energy Markets Guidance**);
 - (c) quoted Calabria as saying:
 - (i) “As previously outlined, the Energy Markets business faces significant headwinds in FY2022, though fortunately this is expected to be largely offset by higher earnings from Integrated Gas, demonstrating the benefits of Origin’s diversified business”;
 - (ii) “FY2022 presents challenges for the Energy Markets business, and we are responding by targeting significant capital and operating cost savings, including from the introduction of the Kraken platform and new low cost and more efficient retail operating model, with customer migrations to the new platform continuing to progress very well”; and
 - (iii) “The outlook for the business improves from next year, with Origin expecting to see a material rebound in Energy Markets earnings, based on the commodity price outlook and supported by disciplined cost management”.

Particulars

- i. The statements are express and in writing in the document referred to in the paragraph.*

C.1.2 Origin’s 19 August 2021 statements

90. On or about 19 August 2021, Origin published and released to the ASX:
- (a) a document titled “Full Year Results – Financial Year Ended 30 June 2021” (**FY2021 Full Year Report**);
 - (b) a document titled “2021 Full Year Results—ASX/Media Release” (**FY2021 Full Year Results Media Release**); and

- (c) a document titled “Presentation to Analysts and Financial Markets” (**FY2021 Analyst Presentation**).

91. In the FY2021 Full Year Report, Origin made the following statements:

- (a) as to coal supply, “[a]pproximately 16 TWh per annum (or ~50 per cent) of our electricity supply costs are relatively fixed, subject to recontracting coal from FY2023, representing Eraring and the bundled renewable [Power Purchase Agreements]”;
- (b) as to Guidance generally:
- (i) “Guidance provided on the basis that market conditions and the regulatory environment do not materially change, adversely impact operations. Considerable uncertainty exists relating to potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability”;
- (c) as to FY2022 Energy Markets Guidance:
- (i) (table):

			<i>FY21</i>	<i>FY22 guidance</i>
Origin	Energy		2,048	1,850- 2,150
Underlying				
EBITDA				
Energy	Markets	A\$m	991	450-600
Underlying	EBITDA			
Integrated	Gas &	A\$m	1,057	1,400- 1,550
Corporate				
Underlying	EBIDA			

- (ii) “We estimate Energy Markets Underlying EBITDA to be lower than FY2021 at \$450—\$600 million...”; and
- (d) as to FY2023 Energy Markets Guidance, “[w]e expect a recovery in Energy Markets Underlying EBITDA in FY2023 of an estimated \$150—\$250 million, to \$600—\$850 million provided current forward commodity prices continue and flow into customer tariffs”.

Particulars

- i. The statements are express and in writing in the document referred to in the paragraph.*

92. In the FY2021 Full Year Results Media Release, Origin made the following statements:
- (a) “Underlying profit of \$318 million reflected lower commodity prices both in the Energy Markets and Integrated Gas divisions. This was partially offset by lower operating costs in Australia Pacific LNG, retail cost savings, lower interest expense and oil hedging gains”;
 - (b) “Underlying EBITDA for Energy Markets was \$991 million, down 32 per cent on the prior year”;
 - (c) as to FY2022 Energy Markets Guidance, “In FY2022, Energy Markets Underlying EBITDA is expected to be \$450—\$600 million, stepping up by an estimated \$150—\$250 million ... assuming current forward commodity prices continue and are reflected in tariffs...”;
 - (d) as to FY2023 Energy Markets Guidance, “Energy Markets Underlying EBITDA is expected to be ... in FY2023 to \$600—\$800 million [sic], assuming current forward commodity prices continue and are reflected in tariffs”; and
 - (e) quoted Calabria as saying, “Operating conditions were challenging this year due to low prices and the impacts of COVID-19 across our key commodities of electricity, natural gas and oil. Energy Markets headwinds are expected to persist into FY2022, though this should be largely offset by the strong performance of our Integrated Gas business”.

Particulars

- i. The statements are express and in writing in the document referred to in the paragraph.*

93. In the FY2021 Analyst Presentation, Origin made the following statements:
- (a) as to Eraring Power Station’s coal supply, “FY2022 coal supply: ~4mt legacy contract to end of FY2022; ~1mt procured under short term contracts. Contracting beyond FY2022 ongoing, requirements based on pool price outlook. Eraring typically procures closer to 5500 index coal and has diversity of supply via conveyor and rail”;
 - (b) as to Guidance generally:
 - (i) “Provided on the basis that market conditions and the regulatory environment do not materially change, adversely impact operations. Considerable uncertainty

exists relating to potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability”;

(c) as to FY2022 Energy Markets Guidance:

(i) (table):

			<i>FY21</i>	<i>FY22 guidance</i>
Origin	Energy		2,048	1,850- 2,150
Underlying EBITDA				
Energy	Markets	A\$m	991	450-600
Underlying	EBITDA			
Integrated	Gas &	A\$m	1,057	1,400- 1,550
Corporate	Underlying			
EBIDA				

(ii) “Lower FY2022 Underlying EBITDA – electricity reduction of \$400—\$480 million: lower wholesale energy prices, higher generation fuel costs and lower usage, partially offset by wholesale costs savings”;

(iii) “Gas reduction of up to \$50 million: higher procurement costs and lower C&I sales, partially offset by repricing retail tariffs”; and

(iv) “Cost to serve expected to be stable: Kraken savings weighted to FY2023-24”;

(d) as to FY2023 Energy Markets Guidance, “FY2023 Underlying EBITDA expected to rebound by an estimated \$150—\$250 million to \$600—\$850 million, assuming current forward commodity prices continue and flow through to tariffs, reflecting a \$4—10/MWh rebound in electricity forward prices flowing through to tariffs, reconnection of JKM netback and east coast domestic customer pricing, Kraken costs to serve savings”.

Particulars

i. The statements are express and in writing in the document referred to in the paragraph.

94. Further, on 19 August 2021 (18 August 2021 11.30PM GMT), a call with market analysts was held in conjunction with the 19 August Announcement (**FY2021 Earnings Call**), in a manner likely to bring things said during it to the attention of the Affected Market.

95. At the FY2021 Earnings Call, Origin made the following statements:
- (a) in response to a question as to Origin’s plans to adjust contracting and hedging to provide protection from commodity price volatility:
 - (i) Origin’s risk management was “robust”, and it had “tightened” its position around risk; and
 - (ii) in respect of future coal supply, Origin had “largely got that coal position for FY2022... well, that’s contracted now”;
 - (b) in response to a question as to the average coal price assumption in the FY2023 Energy Markets Guidance, given two thirds of the contracted coal supply to the Eraring Power Station expired at the end of FY2023:
 - (i) Origin was not expecting to see an escalation of coal prices beyond 2022; and
 - (ii) that coal purchased tended to be lower index quality and, as such, Origin was expecting the price to be “not significantly higher” than export quality coal;
 - (c) in response to a question about how much coal Origin was buying on spot and short-term contracts as compared to 2021:
 - (i) that Origin had 4 million tonnes contracted for FY2022 and had purchased a further 1 million to 2 million tonnes at a cost of about \$30 or \$40 a tonne higher; and
 - (ii) total blended cost in FY2022 was \$100 a tonne; and
 - (d) in response to a question about FY2023 Energy Markets EBITDA, coal price was not a “big driver” or a “massive driver”.

Particulars

- i. The statements in sub-paragraph 95(a) to 95(d) above are express and made by Calabria during the FY2021 Earnings Call.*

C.1.3 Origin’s 17 September 2021 statements

96. On 17 September 2021, Origin published and lodged with the ASX its Annual Report for the year ending 30 June 2021 (**2021 Annual Report**).

97. In the 2021 Annual Report, Origin made the following statements:

- (a) “As always, guidance is provided on the basis that market conditions and the regulatory environment do not materially change, and is subject to the potential ongoing impacts of COVID-19 on demand and customer affordability”;
- (b) “We anticipate that challenging conditions for our Energy Markets business will continue this year, ahead of a rebound in FY2023 if current forward prices continue and flow through to tariffs”;
- (c) “Our electricity margin is predominantly driven by outperforming the market cost of energy through our supply portfolio (power stations and supply contracts). Although Origin generates less electricity than it sells, a significant portion of its wholesale costs are relatively fixed, and so margins are leveraged to movements in wholesale market prices as they flow through into retail tariffs”;
- (d) “Guidance is provided on the basis that market conditions and the regulatory environment do not materially change, adversely impacting on operations. Considerable uncertainty exists relating to the potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability”:

			<i>FY21</i>	<i>FY22 guidance</i>
Origin	Energy		2,048	1,850- 2,150
Underlying				
EBITDA				
Energy	Markets	A\$m	991	450-600
Underlying	EBITDA			
Integrated	Gas &	A\$m	1,057	1,400- 1,550
Corporate	Underlying			
Underlying	EBIDA			

- (e) “We estimate Energy Markets Underlying EBITDA to be lower than FY2021 at \$450—\$600 million”;
- (f) “We expect a recovery in Energy Markets Underlying EBITDA in FY2023 of an estimated \$150—\$250 million, to \$600—\$850 million provided current forward commodity prices continue and flow into customer tariffs”; and
- (g) “Risk – Commodity – Consequences: Prices and volumes for electricity that Origin sources to on- sell to customers are volatile and are influenced by many factors that are difficult to predict. Long term fluctuations in coal and gas prices also impact the margins

of Origin's generation portfolio. Management: Commodity exposure limits are set by the Board to manage the overall financial exposure that Origin is prepared to take. Origin's commodity risk management process monitors and reports performance against defined limits. Commodity price risk is managed through a combination of physical positions and derivatives contracts. For each periodic price review, a negotiation strategy is developed, which takes into account external market advice and utilises both external and in-house expertise".

Particulars

- i. The statements are express and in writing in the document referred to in the paragraph.*

C.1.4 Origin's 20 October 2021 statements

98. On 20 October 2021, Origin held its Annual General meeting for the year ended 30 June 2021 (**2021 AGM**) and a transcript of the address and presentation (**2021 AGM Presentation**) by Origin's Chairman and Calabria at the 2021 AGM was published and lodged with the ASX on 20 October 2021.
99. During the 2021 AGM, Origin made the following statements:
 - (a) "As for outlook, Frank will provide a more detailed update, however, I note that since guidance was provided at full-year results in August, the outlook has improved as a result of higher commodity prices";
 - (b) "There is no change to Energy Markets Underlying EBITDA guidance. As we have previously said we expect an improvement in the performance of Energy Markets in FY2023. Earnings are expected to recover by \$150—250 million, on the basis that the recent recovery in wholesale energy prices continues and flows through to tariffs"; and
 - (c) "FY2022 outlook improved as a result of higher commodity prices: No change to Energy Markets Underlying EBITDA guidance of \$450—\$600 million".

Particulars

- i. The statements are express and in writing in the transcript referred to in the paragraph.*

100. Further, in the 2021 AGM Presentation, Origin made the following statements:
 - (a) "FY2022 outlook improved as a result of higher commodity prices";

- (b) “No change to Energy Markets Underlying EBITDA guidance of \$450—\$600 million”; and
- (c) (in smaller font) “Guidance is provided on the basis that market conditions and the regulatory environment do not materially change, adversely impacting operations. Considerable uncertainty exists relating to potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability”.

Particulars

- i. The statements are express and in writing at p 15 of the document referred to in the paragraph.*

C.1.5 Origin’s 29 October 2021 statements

101. Further, on 29 October 2021, Origin published and released to the ASX a document titled “September 2021 Quarterly Report” (**Q12021 Quarterly Report**).

102. In the Q12021 Quarterly Report, Origin made the following statements:

- (a) as to the electricity market, “Average NEM spot electricity price for Sep-21 quarter was \$66.1/MWh, down from \$94.7/MWh in Jun-21 quarter, but an increase from \$42.2/MWh in Sep-20 quarter:
 - Decrease from Jun-21 quarter due to fewer unplanned baseload outages and increased renewable availability;
 - Increase from Sep-20 quarter due to unplanned baseload outages and higher fuel costs for coal and gas generation”; and
- (b) “Considering cycling units at Eraring to improve operational efficiency in a subdued spot market environment. Standby units are expected to take three to five days to be returned to service, dependent on the period of outage.”

Particulars

- i. The statements are express and in writing in the document referred to in the paragraph.*

C.2 Origin’s reaffirmation of its FY2022 and FY2023 Energy Markets Guidance

103. On or about 17 February 2022, Origin published and lodged with the ASX:

- (a) Origin’s 1H2022 Appendix 4D Interim Financial Report (**1H2022 Interim Financial Report**)
- (b) a document titled “Origin Reports Half Year Results” (**1H2022 Results**); and
- (c) a document titled “Investor Presentation for Half Year Results” (**1H2022 Investor Presentation**).

104. In the 1H2022 Interim Financial Report, Origin made the following statements:

- (a) as to Energy Markets performance:
 - (i) “Consistent with our FY2022 guidance, earnings from Energy Markets declined reflecting lower retail tariffs, which were set in FY2021 based on recent record low wholesale electricity prices. During the period, the Energy Markets business was also impacted by higher energy procurement costs. In particular, operational constraints at our major coal supplier resulted in higher coal procurement costs, as we sourced additional purchases of relatively high-price coal on the market and high price electricity swap contracts to manage the increased risk associated with less generation output. Going forward, we expect the current higher electricity and gas prices to be reflected in customer tariffs resulting in improved cash flow from the Energy Markets business”;
 - (ii) “Energy Markets’ half-year earnings were lower primarily reflecting the previously guided impact of retail electricity tariffs set during FY2021 when wholesale prices were at low levels due to COVID-19. The business was also impacted by increased wholesale energy procurement costs driven by higher fuel costs to generation, higher JKM-linked gas procurement costs and higher green scheme costs. Operational constraints at Eraring’s primary coal supplier resulted in additional purchases of relatively high-price coal on the market and high price electricity swap contracts to manage the increased risk associated with less generation output. These negative impacts were partially offset by repricing of gas customer tariffs and the recovery of network costs”; and
 - (iii) “Looking forward, the Energy Markets business is well positioned to benefit from higher global energy prices and an expected tightening domestic gas market. Higher current period wholesale electricity and green scheme prices are expected to flow into FY2023 tariffs, partially offset by higher generation fuel costs, and higher domestic gas prices are also expected to support gas margins

going forward. Our gas portfolio is underpinned by fixed price supply contracts and there are no further price reviews on supply contracts until FY2024”;

(b) as to Guidance generally:

(i) “Guidance is provided on the basis that market conditions and the regulatory environment do not materially change, adversely impact operations. Considerable uncertainty exists relating to potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability”;

(c) as to FY2022 Energy Markets Guidance:

(i) (table):

		<i>FY21</i>	<i>FY22 guidance</i>	<i>Updated FY22 guidance</i>
Origin Energy Underlying EBITDA		2,048	1,850-2,150	1,950-2,250
Energy Markets Underlying EBITDA	A\$m	991	450-600	450-600
Integrated Gas & Corporate Underlying EBITDA	A\$m	1,057	1,400-1,550	1,500-1,650

(that EBITDA range being the **Reaffirmed FY2022 Energy Markets Guidance**);

“Energy Markets:

Overall guidance range remains unchanged. We estimate Energy Markets Underlying EBITDA to be lower than FY2021 at \$450—\$600 million , driven by:

- Electricity Gross Profit reduction of \$530—\$610 million driven by a ~\$20/MWh reduction in wholesale electricity prices flowing into customer tariffs, higher generation fuel costs and continued impacts of rooftop solar uptake and energy efficiencies. Electricity guidance is

lower than previous due to coal constraints leading to lower Eraring output and higher coal costs;

- Natural Gas Gross Profit increase of \$75—\$125 million, driven by increased volumes and prices on short term trading sales and the repricing of retail customer tariffs, partially offset by higher procurement costs and lower volumes and prices on C&I sales. Natural Gas guidance has improved due to increased volumes and prices on short term trading sales; and
 - Cost to serve expected to be relatively stable. Further savings associated with the adoption of Octopus’ Kraken platform and operating model are expected over FY2023-24”;
- (d) as to FY2023 Energy Markets Guidance, “We expect a recovery in Energy Markets Underlying EBITDA in FY2023 of an estimated \$150—\$250 million, to \$600—\$850 million assuming higher wholesale electricity and gas prices continue and flow into tariffs” (that EBITDA increase range being the **Reaffirmed FY2023 Energy Markets Guidance**);
- (e) as to electricity generation and energy procurement costs:
- (i) “Owned and contracted generation output of 9TWh decreased by 2 TWh, driven primarily by lower generation at Eraring (-1.2 TWh) due to lower contracted coal deliveries [sic] due to supplier operational issues”; and
 - (ii) “Energy procurement costs increased overall, driven by both higher volumes and higher unit costs. Unit costs increased due to higher generation fuel costs, higher green scheme costs reflecting higher costs for small-scale technology certificates and state green schemes, and higher net pool costs reflecting increased electricity spot prices and lower output from Eraring. These were partially offset by a decrease in the cost of market contracts due to the favourable timing of the purchase of swaps, lower generation operating costs and lower capacity hedge contract costs as more expensive contracts rolled off.”

Particulars

- i. The statements are express and in writing in the document referred to in the paragraph.*

105. In the 1H2022 Results, Origin made the following statements:

- (a) “Origin Energy Limited (Origin) today announced its results for the half-year ended 31 December 2021. Origin has also signalled its intention to accelerate its exit from coal-fired power generation, potentially retiring Eraring Power Station in mid-2025, delivering on a core aspect of the company’s strategy to be a leader in Australia’s energy transition to net zero emissions”;
- (b) as to Energy Markets EBITDA generally:
 - (i) “Underlying EBITDA for Energy Markets was \$268 million, lower than the prior half-year. This was largely driven by lower electricity customer tariffs, which were set during FY2021 when wholesale electricity prices were at lows due to subdued economic activity and increased renewables penetration. In addition, there was an increase in wholesale energy procurement costs primarily related to coal supply issues at Eraring”;
- (c) as to FY2022 Energy Markets Guidance:
 - (i) “Expected Energy Markets Underlying EBITDA for FY2022 is unchanged at \$450—\$600 million”;
- (d) as to FY2023 Energy Markets Guidance:
 - (i) “Origin expects a rebound of \$150—\$250 million in Energy Markets Underlying EBITDA in FY2023, to \$600—\$850 million, with the current higher commodity prices flowing through to customer tariffs. However, some risks to the outlook remain, with the price of uncontracted coal primary amongst them”;
- (e) quoted Calabria as saying:
 - (i) “In Energy Markets, operating conditions remain challenging as previously guided, due to the combination of record low wholesale electricity prices in FY2021 flowing through to customer tariffs in FY2022, and higher wholesale energy procurement costs incurred in the current period. Specifically, Eraring has been impacted by operational constraints at one of its primary suppliers, contributing to a material increase in both coal and wholesale electricity procurement costs”.

Particulars

i. The statements are express and in writing in the document referred to in the paragraph.

106. In the 1H2022 Investor Presentation, Origin made the following statements:

- (a) as to Energy Markets performance:
 - (i) “Positive outlook for Energy Markets:
 - Tailwinds from higher wholesale electricity prices, partially offset by higher energy procurement costs
 - Improving gas margins off the back of higher domestic gas prices in the second half 2022
 - Continuing to transform the Retail business to deliver low cost, market leading customer experience
 - Strategic investment in Octopus continues to create value”;
- (b) “Electricity gross profit down \$281 million or 56% to \$222 million:
 - Margin impacts (-\$276 million)
 - Lower electricity tariffs (-\$261 million)
 - Higher cost of energy (-\$58 million): generation fuel costs (-\$79 million), green schemes (-\$61 million), swap contracts and other (+\$82 million)
 - Improved value management and recovery of network costs offset by metering costs (+\$43 million)”;
- (c) as to coal supply constraints to Eraring Power Station:
 - (i) “Eraring generation volumes lower on lower contacted coal deliveries due to supplier operational issues”;
 - (ii) “Coal supplier constraints expected to continue for the remainder of FY2022”;
 - (iii) “Expect to recoup deficit in contractual deliveries”;

- (iv) “Higher market prices for coal purchases are increasing short run marginal costs at Eraring”;
 - (v) “Ongoing discussions with a number of coal suppliers to contract FY2023 requirements”;
 - (vi) “Lower Eraring output also partly replaced by higher cost swap contracts and pool purchases”; and
 - (vii) “higher pool costs in FY2022 expected to be recovered in FY2023 customer tariffs”;
- (d) as to Guidance generally:
- (i) “Provided on the basis that market conditions and the regulatory environment do not materially change, adversely impacting operations. Considerable uncertainty exists relating to potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability”;
- (e) as to FY2022 Energy Markets Guidance:

- (i) (table):

		<i>FY21</i>	<i>FY22 guidance</i>	<i>Updated FY22 guidance</i>
Origin Energy Underlying EBITDA		2,048	1,850-2,150	1,950-2,250
Energy Markets Underlying EBITDA	A\$m	991	450-600	450-600
Integrated Gas & Corporate Underlying EBITDA	A\$m	1,057	1,400-1,550	1,500-1,650

- (ii) “Overall guidance unchanged, FY2022 EBITDA of \$450—\$600m, driven by:
 - Electricity: lower than previous guidance due to coal constraints leading to lower Eraring output and higher coal costs.

- Gas: higher than previous guidance due to increased volumes and prices on short term trading sales.
 - Costs to serve stable: Kraken savings weighted to FY2023-24”;
- (f) as to FY2023 Energy Markets Guidance:
- (i) “Underlying FY2023 EBITDA expected to rebound by an estimated \$150—\$250 million to \$600 million—\$850 million, assuming higher wholesale electricity and gas prices continue to flow through to tariffs, and reflecting:
- higher coal costs;
 - existing fixed price supply gas contracts;
 - Kraken costs to serve savings”;

Particulars

- i. The statements are express and in writing in the document referred to in the paragraph.*

107. Further, on 17 February 2022 (16 February 2022 10.00PM GMT), a call with market analysts was held in conjunction with the 17 February Announcement (**1H2022 Earnings Call**), in a manner likely to bring things said during it to the attention of the Affected Market.

108. At the 1H2022 Earnings Call, Origin made the following statements:

- (a) as to underlying profit and underlying EBITDA, “growth in the Integrated Gas earnings driven by rising oil and gas prices and a lower contribution from Energy Markets due to lower electricity and gas margins”;
- (b) as to Energy Markets, “EBITDA was down \$367 million or 58%, with the decrease coming predominantly from lower electricity earnings. Electricity gross profit decreased \$281 million, primarily driven by the \$17 per megawatt hour decrease in unit margins. \$260 million of which was related to lower wholesale electricity prices flowing into customer tariffs. Wholesale energy procurement costs were \$58 million higher due to higher coal and gas generation fuel costs and higher green scheme costs, partially offset by a decrease in swap contracts and other energy procurement costs. Improved management of customer value and the recovery of prior year network costs provided a \$43 million positive contribution to earnings”;

- (c) as to the cost of energy:
 - (i) the cost of energy had been impacted by constraints over the previous six months being “our major coal suppliers encountered operational issues really associated with the mining of their coal and also COVID. And as a result of that, their contracted coal deliveries to us have been lower than expected”;
 - (ii) with volumes from Eraring being lower, “[it has] also led the need to purchase coal at the higher market prices when we needed that over summer. And the lower output from Eraring has also been replaced by swap contracts and pool purchases. The combination of this has led to the higher cost of energy in the period and we do expect to recoup the deficit in those contractual deliveries, but that will occur through into the financial year ‘23”;
- (d) as to the risks of an uncontracted coal supply:
 - (i) “So we’re in negotiations, right now ... But just to be clear, there will be under delivery under that 4 million tonne contract this year, and that’s what we’ve baked, we’ve included in our guidance, not only for the half year, but for the full year. So we would expect to have volumes from that contract also going into the ‘23 year, so there will be some volume associated with that. And then we’re obviously in market with our key suppliers and continued negotiations on the balance of the contract”;
 - (ii) “It does depend on events through the year, but we’re not constrained by coal. There are other sources of coal. We’ve obviously had a supply dial over time that’s being characterized by – underpinned by a sort of 4 million tonne contract and then supplemented by short-term contracts as we also have the rail facility. We would expect that to be a combination going forward”;
 - (iii) “So we don’t think those constraints – again, there’s going to be a coal constraint. It will be just around the negotiations of the various contracts, which are underway now. I think what really drives it more than anything is how do we think the plant will need to run when you need to provide that capacity over the year and depending on events as you know, over the last couple of years, we’d have to run that harder as we did in the final quarter of ’21 when there were outages. So I think it’s more driven by that and the market events. And then it’s really about a combination of supply that comes from those sources”; and

- (iv) “We do expect to receive coal from that contract in the financial year ‘23 to make up for that shortfall on deliveries this year, okay? So that will be part of what we’ve expected. And then you’re right, there is also then an assessment around what we will pay as the market price for those coals under the various negotiations underway. And therefore, we’ve got, as you would expect, range of outcomes associated with that as well as we’ve seen a pretty dynamic movement in the wholesale electricity prices ... And therefore, it’s just really based on those range of outcomes, the whole combination of the delivery of that contract volume shortfall makeup plus what we enter into for contracts for the balance of the coal, recognizing we don’t really buy export coal, we buy coal at a lesser grade”;
- (e) as to FY2023 Energy Markets Guidance, “[l]ook, it’s really a judgement of the—you can observe where the wholesale electricity cost is and it’s really a judgement ... around where we’ll purchase coal in the FY23 year. And so without being specific, that’s got a range of outcomes. And therefore, that’s why we formed a view regarding that guidance. What we’ve seen is the gas that we had foreshadowed to occur next year is actually almost being brought forward into the second half, which has held the guidance for this year, but it really is just around a range of those outcomes, Mark. And that’s why we provide the range we do”.

Particulars

- ii. *The statements in sub-paragraph 108(a) and (c) to (e) above are express and made by Calabria during the 1H2022 Earnings Call.*
- iii. *The statements in subparagraph sub-paragraph 108(b) above are express and made by Tremaine during the 1H2022 Earnings Call.*

C.3 Origin’s Representations – to 16 February 2022

C.3.1 FY2022 Energy Markets Guidance Representation

109. In the premises, by reason of the matters pleaded at paragraphs 88 to 102 above, at all material times on and from each of 19 August 2021, 17 September 2021 and/or 20 October 2021, and during the Relevant Period until 16 February 2022, Origin represented to the Affected Market that on the basis there was no material change to market conditions and the regulatory environment, Origin expected to achieve FY2022 Energy Markets EBITDA of between \$450 million and \$600 million (**FY2022 Energy Markets Guidance Representation**).

Particulars

- i. *The FY2022 Energy Markets Guidance Representation is partly express and partly implied.*
- ii. *To the extent it is express, the plaintiff refers to sub-paragraphs 89(a), 91(b)(i), 91(c)(i), 91(c)(ii), 92(c), 93(b)(i), 93(c)(i), 97(a), 97(d), 97(e), 99(c), 100(b) and 100(c) above and the context in which it occurred being the matters alleged in sub-paragraphs 89(c)(i), 89(c)(ii), 92(e), 93(c)(ii) to 93(c)(iv), 95(a)(i), 95(a)(ii), 95(c), 97(b), 97(c), 97(g), 99(a) and 100(a) above.*
- iii. *To the extent it is implied, it is implied from the absence of Origin making any statement that qualified or contradicted those statements in particular (ii) above.*
- iv. *To the extent that the matters set out in particulars (ii) and (iii) above relate to different points in time, the plaintiff says that the FY2022 Energy Markets Guidance Representation was made at the beginning of the Relevant Period by reason of all such matters that preceded that date and was repeated and/or maintained by each such matter which occurred subsequently by reason of the matters identified in paragraphs 113 and 114 below.*

C.3.2 FY2022 Energy Markets Implied Representation

110. In the premises, by reason of the matters pleaded at paragraphs 88 to 102 and 109 above, at all material times on and from each of 19 August 2021, 17 September 2021 and/or 20 October 2021, and during the Relevant Period until 16 February 2022, Origin represented to the Affected Market that:

- (a) Origin had reasonable grounds for giving and maintaining the FY2022 Energy Markets Guidance of EBITDA of between \$450 million and \$600 million (**FY2022 Energy Markets Guidance Basis Representation**);
- (b) there had not been material changes to the market conditions in which Origin operated that affected, or were likely to affect, its ability to achieve the FY2022 Energy Markets Guidance of EBITDA of between \$450 million and \$600 million (**FY2022 Energy Markets Guidance Achievability Representation**); and/or
- (c) Origin was able, from the information available to it, to provide a reasonably reliable estimate of FY2022 Energy Markets EBITDA (**FY2022 Energy Markets Guidance Reliability Representation**)—

(each being a **FY2022 Energy Markets Implied Representation**).

Particulars

- i. *The particulars subjoined to paragraph 109 above are repeated.*
- ii. *The FY2022 Energy Markets Implied Representations are to be implied from the making by Origin of the FY2022 Energy Markets Guidance Representation.*

C.3.3 FY2023 Energy Markets Guidance Representation

111. In the premises, by reason of the matters pleaded at paragraphs 88 to 102 above, at all material times on and from each of 19 August 2021, 17 September 2021 and/or 20 October 2021, and during the Relevant Period until 16 February 2022, Origin represented to the Affected Market that, on the basis there was no material change to market conditions and the regulatory environment, Origin expected to achieve FY2023 Energy Markets EBITDA that increased by between \$150 million and \$250 million as compared to FY2022 (**FY2023 Energy Markets Guidance Representation**).

Particulars

- i. *The FY2023 Energy Markets Guidance Representation is partly express and partly implied.*
- ii. *To the extent it is express, the plaintiff refers to sub-paragraphs 89(b), 91(b)(i), 91(d), 92(d), 93(b)(i), 93(d), 97(a), 97(d), 97(f), 99(b) and 100(b) and the context in which it occurred being the matters alleged in sub-paragraphs 89(c)(iii), 95(a)(i), 95(b), 95(d), 97(b), 97(g) and 99(a) above.*
- iii. *To the extent it is implied, it is implied from the absence of Origin making any statement that qualified or contradicted those statements in particular (ii) above.*
- iv. *To the extent that the matters set out in particulars (ii) and (iii) above relate to different points in time, the plaintiff says that the FY2023 Energy Markets Guidance Representation was made at the beginning of the Relevant Period by reason of all such matters that preceded that date and was repeated and/or maintained by each such matter which occurred subsequently by reason of the matters identified in paragraphs 113 and 114 below.*

C.3.4 FY2023 Energy Markets Implied Representation

112. In the premises, by reason of the matters pleaded at paragraphs 88 to 102 and 111 above, at all material times on and from each of 19 August 2021, 17 September 2021 and/or 20 October 2021, and during the Relevant Period until 16 February 2022, Origin represented to the Affected Market that:

- (a) Origin had reasonable grounds for giving and maintaining the FY2023 Energy Markets Guidance of an increase to EBITDA of between \$150 million and \$250 million as compared to FY2022 (**FY2023 Energy Markets Guidance Basis Representation**);
- (b) there had not been material changes to the market conditions in which Origin operated that affected, or were likely to affect, its ability to achieve the FY2023 Energy Markets Guidance of an increase to EBITDA of between \$150 million and \$250 million as compared to FY2022 (**FY2023 Energy Markets Guidance Achievability Representation**); and/or
- (c) Origin was able, from the information available to it, to provide a reasonably reliable estimate of FY2023 Energy Markets EBITDA (**FY2023 Energy Markets Guidance Reliability Representation**); and

(each being a **FY2023 Energy Markets Implied Representation**).

Particulars

- i. The particulars subjoined to paragraph 111 above are repeated.*
- ii. The FY2023 Energy Markets Implied Representations are to be implied from the making by Origin of the FY2023 Energy Markets Guidance Representation.*

C.3.5 Origin's maintenance of the Representations

113. During the Relevant Period until 17 February 2022, Origin did not say anything to modify, qualify or contradict each or any of:

- (a) the FY2022 Energy Markets Guidance Representation;
- (b) the FY2022 Energy Markets Implied Representations (or any of them);
- (c) the FY2023 Energy Markets Guidance Representation; and/or
- (d) the FY2023 Energy Markets Implied Representations (or any of them).

Particulars

- i. The particulars subjoined to paragraphs 109 to 112 above are repeated.*

114. During the Relevant Period until 17 February 2022, each of the FY2022 Energy Markets Guidance Representation, the FY2022 Energy Markets Implied Representations, the FY2023 Energy Markets Guidance Representation and/or the FY2023 Energy Markets Implied Representations was a continuing representation.

C.4 Origin's representations on and from 17 February 2022

C.4.1 Reaffirmed FY2022 Energy Markets Guidance Representation

115. By reason of the matters pleaded in paragraphs 103 to 108 above, on and from 17 February 2022, Origin repeated its representation to the Affected Market that, on the basis there was no material change to market conditions and the regulatory environment, Origin expected to achieve FY2022 Energy Markets EBITDA Guidance of between \$450 million and \$600 million (**Reaffirmed FY2022 Energy Markets Guidance Representation**).

Particulars

- i. The Reaffirmed FY2022 Energy Markets Guidance Representation is partly express and partly implied.*
- ii. To the extent it is express, the plaintiff refers to sub-paragraphs 104(b)(i), 104(c), 105(c)(i), 106(d), 106(e)(i) and 106(e)(ii) above and the context in which it occurred being the matters alleged in sub-paragraphs 104(a)(i), 104(a)(ii), 104(e)(i), 104(e)(ii), 105(e)(i), 106(a) to 106(c) and 108(a) to 108(d).*
- iii. To the extent it is implied, it is implied from the absence of Origin making any statement that qualified or contradicted those statements in particular (ii) above.*
- iv. To the extent that the matters set out in particulars (ii) and (iii) above relate to different points in time, the plaintiff says that the Reaffirmed FY2022 Energy Markets Guidance Representation was made at the beginning of the Relevant Period by reason of all such matters that preceded that date and was repeated and/or maintained by each such matter which occurred subsequently by reason of the matters identified in paragraphs 121 and 122 below.*

C.4.2 *Reaffirmed FY2022 Energy Markets Implied Representation and the FY2022 Energy Markets Conditions Representation*

116. In the premises, by reason of the matters pleaded at paragraphs 103 to 108 and 115 above, on and from 17 February 2022, Origin reaffirmed its statements to the Affected Market that:

- (a) Origin had reasonable grounds reaffirming and maintaining the FY2022 Energy Markets EBITDA Guidance of between \$450 million and \$600 million (**Reaffirmed FY2022 Energy Markets Guidance Basis Representation**);
- (b) there had not been material changes to the market conditions in which Origin operated that affected, or were likely to affect, its ability to achieve the FY2022 Energy Markets Guidance of EBITDA of between \$450 million and \$600 million (**Reaffirmed FY2022 Energy Markets Guidance Achievability Representation**); and/or
- (c) Origin was able, from the information available to it, to provide a reasonably reliable estimate of FY2022 Energy Markets EBITDA (**Reaffirmed FY2022 Energy Markets Guidance Reliability Representation**)—

(each being a **Reaffirmed FY2022 Energy Markets Implied Representation**).

Particulars

- i. The particulars subjoined to paragraph 115 above are repeated.*
- ii. The Reaffirmed FY2022 Energy Markets Implied Representations are to be implied from the making by Origin of the Reaffirmed FY2022 Energy Markets Guidance Representation.*

117. Further, or alternatively, in the premises, by reason of the matters pleaded at paragraphs 103 to 108, 115 and 116 above, on and from 17 February 2022, Origin represented to the Affected Market that any changes in market conditions from the start of the Relevant Period to 16 February 2022 had not affected, or were not likely to affect, Origin's ability to achieve FY2022 Energy Markets EBITDA Guidance of between \$450 million and \$600 million (**FY2022 Energy Markets Conditions Representation**).

Particulars

- i. The particulars subjoined to paragraph 116 above are repeated.*

C.4.3 Reaffirmed FY2023 Energy Markets Guidance Representation

118. In the premises, by reason of the matters pleaded at paragraphs 103 to 108 above, on and from 17 February 2022, Origin repeated its representation to the Affected Market that on the basis there was no material change to market conditions and the regulatory environment, Origin expected to achieve FY2023 Energy Markets EBITDA that increased by between \$150 million and \$250 million as compared to FY2022 (**Reaffirmed FY2023 Energy Markets Guidance Representation**).

Particulars

- i. The Reaffirmed FY2023 Energy Markets Guidance Representation is partly express and partly implied.*
- ii. To the extent it is express, the plaintiff refers to sub-paragraphs 104(b)(i), 104(d), 105(d), 106(d)(i) and 106(f) and the context in which it occurred being the matters alleged in sub-paragraphs 104(a)(i), 104(a)(iii), 104(e)(i), 104(e)(ii), 105(e)(i), 106(a) to 106(c) and 108(a) to 108(e).*
- iii. To the extent it is implied, it is implied from the absence of Origin making any statement that qualified or contradicted those statements in particular (ii) above.*
- iv. To the extent that the matters set out in particulars (ii) and (iii) above relate to different points in time, the plaintiff says that the Reaffirmed FY2023 Energy Markets Guidance Representation was made at the beginning of the Relevant Period by reason of all such matters that preceded that date and was repeated and/or maintained by each such matter which occurred subsequently by reason of the matters identified in paragraphs 121 and 122 below.*

C.4.4 Reaffirmed FY2023 Energy Markets Implied Representations and the FY2023 Energy Markets Conditions Representation

119. In the premises, by reason of the matters pleaded at paragraphs 103 to 108 and 118 above, on and from 17 February 2022, Origin represented to the Affected Market that:

- (a) Origin had reasonable grounds for reaffirming and maintaining the FY2023 Energy Markets Guidance of an increase to EBITDA of between \$150 million and \$250 million as compared to FY2022 (**Reaffirmed FY2023 Energy Markets Guidance Basis Representation**);

- (b) there had not been material changes to the market conditions in which Origin operated that affected, or were likely to affect, its ability to achieve the FY2023 Energy Markets Guidance of an increase to EBITDA of between \$150 million and \$250 million as compared to FY2022 (**FY2023 Energy Markets Guidance Achievability Representation**); and/or
- (c) Origin was able to, from the information available to it, provide a reasonably reliable estimate of FY2023 Energy Markets EBITDA (**Reaffirmed FY2023 Energy Markets Guidance Reliability Representation**)—

(each being a **Reaffirmed FY2023 Energy Markets Implied Representation**).

Particulars

- i. The particulars subjoined to paragraph 118 above are repeated.*
- ii. The Reaffirmed FY2023 Energy Markets Implied Representations are to be implied from the making by Origin of the Reaffirmed FY2023 Energy Markets Guidance Representations.*

120. Further, or alternatively, in the premises, by reason of the matters pleaded at paragraphs 103 to 108, 118 and 119 above, on and from 17 February 2022, Origin represented to the Affected Market that changes in market conditions from the start of the Relevant Period to 16 February 2022 had not affected, and were not likely to affect, Origin's ability to achieve FY2023 Energy Markets EBITDA that increased by between \$150 million and \$250 million as compared to FY2022 (**FY2023 Energy Markets Conditions Representation**).

Particulars

- i. The particulars subjoined to paragraph 119 above are repeated.*

C.4.5 Origin's maintenance of the Representations

121. From 17 February 2022 until the end of the Relevant Period, Origin did not say anything to modify, qualify or contradict each or any of:

- (a) the FY2022 Energy Markets Guidance Representation;
- (b) the FY2022 Energy Markets Implied Representations (or any of them);
- (c) the FY2023 Energy Markets Guidance Representation;

- (d) the FY2023 Energy Markets Implied Representations (or any of them);
- (e) the Reaffirmed FY2022 Energy Markets Guidance Representation;
- (f) the Reaffirmed FY2022 Energy Markets Implied Representations (or any of them);
- (g) the FY2022 Energy Markets Conditions Representation;
- (h) the Reaffirmed FY2023 Energy Markets Guidance Representation;
- (i) the Reaffirmed FY2023 Energy Markets Implied Representations (or any of them);
and/or
- (j) the FY2023 Energy Markets Conditions Representation.

Particulars

- i. The particulars subjoined to paragraphs 109 to 119 above are repeated.*

122. Between 17 February 2022 until the end of the Relevant Period, each of:

- (a) the FY2022 Energy Markets Guidance Representations, the FY2022 Energy Markets Implied Representation, the FY2023 Energy Markets Guidance Representation and/or the FY2023 Energy Markets Implied Representations; and/or
- (b) the Reaffirmed FY2022 Energy Markets Guidance Representations, the Reaffirmed FY2022 Energy Markets Implied Representation, the FY2022 Energy Markets Conditions Representation, the Reaffirmed FY2023 Energy Markets Guidance Representation, the Reaffirmed FY2023 Energy Markets Implied Representations and/or the FY2022 Energy Markets Conditions Representation—

was a continuing representation.

D MATTERS AFFECTING ORIGIN IN 2020 TO 2022

D.1 Events at Mandalong mine in 2020 to mid-February 2022

123. At all material times prior to and during the Relevant Period, Mandalong mine used a longwall mining technique to extract underground coal which involved:

- (a) the extraction of large panels of coal by removing slices of coal from the longwall face by use of longwall shearing machinery travelling back and forth along the coal face;
- (b) delivery of coal from the underground workings to entry sites for processing;
- (c) the use of hydraulic roof supports to support the area in front of the coal face and the roof strata, and to provide a space for shearing and other machinery;
- (d) collapse of the overlying rock strata into the mined-out area behind the working mine face, forming an area referred to as the “goaf”;
- (e) by reason of the matters referred to in sub-paragraph 123(d) above, the sagging and bending of the near surface rocks and subsidence of the ground above;
- (f) the construction of roadways and other access routes around the longwall panel to form ventilation passages and to provide access to personnel, machinery, electrical supply, communication systems, water pump out lines, compressed air lines and gas drainage systems; and
- (g) following extraction, changeover or relocation of the longwall, a major planning and logistical exercise which involves the dismantling and relocation of the longwall equipment along transportation and access routes to the top of the next panel, and the advanced planning and construction of the transportation and access routes.

Particulars

- i. Paragraph 77 above is repeated.*
- ii. Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development, “Fact Sheet – subsidence from longwall coal mining”, June 2014.*
- iii. Centennial, “Information Pack – Longwall Extraction Plans”, 2023.*
- iv. Mine Subsidence Engineering Consultants, “Introduction to Longwall Mining and Subsidence”, August 2007.*
- v. Underground Coal, “Fundamentals – Longwall Mining Installation and Relocation” available at http://undergroundcoal.com.au/fundamentals/07_instal_lreloc.aspx (accessed 22 February 2024).*
- vi. Further particulars may be provided following discovery and the filing of expert evidence.*

124. By reason of the matters referred to in sub-paragraph 123(f) and 123(g) above, lower coal production results during periods of longwall changeover.

Particulars

- i. *So far as the plaintiff can say prior to discovery and the filing of expert evidence, the plaintiff refers to Banpu’s FY2021 and 4Q2021 Investor and Analyst Presentation dated 9 March 2022 which refers to the actual longwall changeovers at Mandalong during 2021 and the planned changeovers at Mandalong during 2022 and which states that “production generally responds to the timing of longwall changeovers (i.e. lower production results during a longwall changeover period).”*
 - ii. *Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*
125. On or around 14 May 2020, Centennial and/or Centennial Mandalong made an application to modify the Mandalong SSD Consent, such modification application to be assessed as an application made under s 4.55(2) of the EPA Act due to the predicted increased subsistence impacts (**the Modification 9 Application**).

Particulars

- i. *So far as the plaintiff can say prior to discovery, the Modification 9 Application was in writing and constituted: (a) a document titled “SSD Modifications – Modification 9 Longwall Reorientation” and given case identification number SSD-5144 Mod 9”, and (b) a Modification Report dated May 2020 prepared by EMM and titled “Mandalong Mine – Modification report for the modification to development consent SSD-5144”.*
 - ii. *Letter from the Department of Planning, Industry and Environment to Centennial Mandalong dated 15 April 2020.*
 - iii. *Further particulars may be provided following discovery and the service of subpoenas.*
126. To account for the presence of a geological fault zone and the extent of igneous sill in the Southern Extension Area of Mandalong mine, by the Modification 9 Application, Centennial and/or Centennial Mandalong sought approval to:
- (a) delete approved longwalls 30, 31 and 37;
 - (b) reorient approved longwalls 32 to 36;

- (c) rename approved longwalls 32 and 36 to longwalls 30 to 34; and
- (d) increase the chain pillar widths between the reorientated longwalls.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to Modification Report dated May 2020 prepared by EMM and titled “Mandalong Mine – Modification report for the modification to development consent SSD-5144”, pp 4, 5, 18.*
- ii. A copy of the approved mine plan map depicting the approved and proposed longwalls for the Southern Extension Area at Mandalong mine is at **Annexure 1** to this statement of claim.*
- iii. Further particulars may be provided following discovery and the service of subpoenas.*

127. Further, in around August 2020, Centennial and/or Centennial Mandalong removed proposed longwall 34 from the Modification 9 Application due to the intrusion of igneous sill, resulting in a net decrease in availability of 0.62 million tonnes in total run of mine coal.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to a document titled “Centennial Submissions Report – SD-5144 Mod 9” dated August 2020 prepared by Centennial which states “The additional analysis also indicated that the igneous sill intrudes into LW34. This longwall panel is no longer considered viable for extraction and has been removed from the modification application”, p 6.*
- ii. Letter from Centennial Mandalong to the Department of Planning, Industry and Environment dated 1 April 2021.*
- iii. Further particulars may be provided following discovery and the service of subpoenas.*

128. Between January and February 2021, Mandalong mine experienced a longwall changeover of approximately four weeks.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to a document published by Banpu titled “Q321 results – investor and analyst update” dated 15 November 2021, p 55.*

ii. Further particulars may be provided following discovery and the service of subpoenas.

129. On or around 1 April 2021, the delegate of the Minister for Planning and Public Spaces approved the modification of the Mandalong SSD Consent in accordance with the Modification 9 Application, subject to specified conditions.

Particulars

i. A copy of the notice of modification of the Mandalong SSD Consent dated 1 April 2021 and made under s 4.55(2) of the EPA Act is in writing and signed by the delegate.

130. Further, between about April 2021 and June 2021, Centennial and/or Centennial Mandalong:

- (a) submitted an extraction plan as required under the terms of the Mandalong SSD Consent seeking approval at Mandalong mine for:
 - (i) the reorientation of longwalls 30 and 31, with mining of longwall 30 to commence in July 2021 and complete by October 2021 and mining of longwall 31 to commence in November 2021 and complete by February 2022, alternatively April 2022; and
 - (ii) the removal of longwall 33 due to the extent of igneous sill intrusion and a potential impact on a heritage site; and
- (b) sought a variation to existing approvals and consents to reduce the length of longwall 30 by 400 metres so as to avoid mining through a high strength igneous dyke and to reduce subsidence effects.

Particulars

i. As to sub-paragraph 130(a) and 130(b), so far as the plaintiff can say prior to discovery:

A. It was a condition of the Mandalong SSD Consent that Centennial Mandalong must prepare an Extraction Plan for all extraction of coal from longwall panels, mini-wall panels or pillar extraction (secondary extraction), to the satisfaction of the Planning Secretary under the EPA Act, Schedule 4, cl. 6.

B. The Extraction Plan Main Report (Longwall Panels 30 and 31) (Vol. 1, Rev. 2) dated June 2021 is in writing and signed by Mr Phil Enright (Mining Approvals Coordinator) and Mr Richard Gelson (Mine Manager),

refers alternatively to longwall 31 completion in February and April 2022, p 13.

C. The Minutes of Centennial Mandalong Community Consultative Committee held on 22 June 2021 and associated PowerPoint presentation refers to the proposed variation to shorten longwall 30 by 400 metres and the application for the reorientation of longwalls 30 and 31 which was submitted to the Department in April 2021.

D. A Modification Report dated October 2021 prepared by EMM and titled “Mandalong Mine – Modification report for the modification to development consent SSD-5144” states “Since the approval of MOD 9 in April 2021, Centennial Mandalong has continued to review the progression of underground mining within the Mandalong Southern Extension Area. As a result of these investigations, the decision has been made to shorten LW30 and remove LW33 from the mine plan. These changes have been made via the Extraction Plan process”, p 4.

ii. Further particulars may be provided following discovery and the service of subpoenas.

131. The extraction plan for longwall 30 and 31, which included the variation to shorten longwall 30, was approved on around 20 July 2021.

Particulars

i. So far as the plaintiff can say prior to discovery, the plaintiff refers to Modification Report dated October 2021 prepared by EMM and titled “Mandalong Mine – Modification report for the modification to development consent SSD-5144” which makes reference to an Extraction Plan for longwalls 30 and 31 to the effect alleged, p 15.

ii. Under the conditions of the Mandalong SSD Consent, Extraction Plans were required to be approved by the Planning Secretary under the EPA Act (or nominee), Schedule 4, cl. 6.

iii. Further particulars may be provided following discovery and the service of subpoenas.

132. The shortening of longwall 30 and the removal of longwall 33 as pleaded in paragraphs 130 and 131 above resulted in approximately 2 Mt in total run-of-mine coal being unavailable for extraction at Mandalong mine.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to:*
 - A. The Modification Report dated 7 October 2021 prepared by EMM and titled “Mandalong Mine – Modification report for the modification to development consent SSD-5144” which makes reference to longwalls 30 and 31 to the effect alleged, p 4.*
 - B. Email from Mr Phil Enright, Mining Approvals Coordinator at Centennial to Mr Mark Grace, Natural Resource Management Project Officer at the Department of Planning, Industry and Environment dated 12 November 2021 (11.24 AM).*
 - C. A document titled “Mandalong Southern Extension – Modification 10 (SSD-5144-Mod-10)” prepared by Regional NSW, Mining, Exploration and Geoscience published on around 19 November 2021 which assessed Modification 10 at around that time. The document states that Mining, Exploration and Geoscience had assessed the Modification 10 application and considered it appropriate so as to enable Mandalong mine to maintain continuity of production in the short term. The document states that the removal of longwall 33 and the reduction in longwalls 30 to 32 had resulted “in the sterilisation of around 2Mt of coal”, pp 2, 3.*
- ii. Further particulars may be provided following discovery and the service of subpoenas.*

133. Between June and July 2021, Mandalong mine experienced a longwall changeover of approximately seven to eight weeks.

Particulars

- i. The plaintiff repeats the particulars subjoined to paragraph 128 above and refers further to a document published by Banpu titled “2Q22 Results – investor and analyst update” dated 17 August 2022 which refers to the longwall changeover being eight weeks, p 52.*
- ii. Further particulars may be provided following discovery and the service of subpoenas.*

134. Contrary to the proposed commencement date as pleaded in sub-paragraph 130(a)(i) above, mining in longwall 30 did not commence until August 2021.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to the Minutes of Centennial Mandalong Community Consultative Committee held on 26 October 2021, p 7 and associated PowerPoint presentation.*
- ii. Further particulars may be provided following discovery and the service of subpoenas.*

135. On or around 7 October 2021, Centennial and/or Centennial Mandalong applied to further modify existing approvals and mining operations plans in the Southern Extension Area of Mandalong mine to include new longwall 34 within the approved boundary so as to reduce production losses due to the unfavourable geological conditions, such modification application to be assessed as an application made under s 4.55(2) of the EPA Act (**Modification 10 Application**).

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to:*
 - A. A letter dated 8 July 2021 from the Department of Planning and Environment to Centennial Mandalong refers to a letter dated 10 June 2021 from Centennial Mandalong seeking confirmation of the approval pathway and environmental assessment requirements for a proposed modification 10 to the Mandalong SSD Consent.*
 - B. A notice of Exhibition of State Significant Development Modification Application was published on or about 25 October 2021.*
 - C. A Modification Report dated 7 October 2021 prepared by EMM and titled “Mandalong Mine – Modification report for the modification to development consent SSD-5144”, pp 4, 5.*
 - D. A document titled “Mandalong Southern Extension – Modification 10 (SSD-5144-Mod-10)” prepared by Regional NSW, Mining, Exploration and Geoscience published on around 19 November 2021, pp 3, 5.*
- ii. Further particulars may be provided following discovery and the service of subpoenas.*

136. By the Modification 9 Application and Modification 10 Application, the total volume of coal available for extraction at Mandalong mine decreased by approximately 1.63 Mt.

Particulars

- i. *So far as the plaintiff can say prior to discovery, the plaintiff refers to the document titled “Mandalong Southern Extension – Modification 10 (SSD-5144-Mod-10)” prepared by Regional NSW, Mining, Exploration and Geoscience published on around 19 November 2021, p 8, Table 1.*
- ii. *Further particulars may be provided following discovery and the service of subpoenas.*

137. In the absence of the approval of the Modification 10 Application, there was a risk or likelihood that the further extraction of coal at Mandalong mine would be significantly reduced throughout 2021 and 2022.

Particulars

- i. *Paragraphs 132, 135 and 136 above are repeated.*
- ii. *So far as the plaintiff can say prior to discovery, the plaintiff refers to a document titled “Mandalong Southern Extension – Modification 10 (SSD-5144-Mod-10)” prepared by Regional NSW, Mining, Exploration and Geoscience published on around 19 November 2021, which states: “The Modification, if approved, would support the continued employment of the existing Mandalong mine workforce of about 660 FTE operational workers. Without MOD 10 it is anticipated Mandalong mine will not extract coal from its longwall mining area for a large portion of the 2022 calendar year. This could result in standing down about 80 FTE longwall crew”, pp 5, 8.*
- iii. *Further particulars may be provided following discovery and the service of subpoenas.*

138. By around 20 October 2021, Centennial Mandalong and/or Centennial:

- (a) had reduced the length of longwall 31 by 780 m and reduced the length of longwall 32 due to sill extending to the east further than was expected;
- (b) had revised the completion date for longwall 30 to December 2021 (as opposed to October 2021 as pleaded in sub-paragraph 130(a)(i) above);
- (c) had revised the commencement date for longwall 31 to January 2022 (as opposed to November 2021 as pleaded in sub-paragraph 130(a)(i) above); and

- (d) was in the process of drafting an Extraction Plan for longwall 32 and anticipated submitting it for approval in November 2021.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to the Minutes of Centennial Mandalong Community Consultative Committee held on 26 October 2021, p 7 and the associated PowerPoint presentation.*
- ii. Further particulars may be provided following discovery and the service of subpoenas.*

D.2 Mandalong mine and Myuna mine declines in coal output

139. By:

(a) 20 October 2021:

- (i) coal output at Mandalong mine in 2021 had decreased as compared to 2020; and
- (ii) coal output at Myuna mine in 2021 had decreased as compared to 2020;

(b) 31 December 2021:

- (i) coal output at Mandalong mine had decreased by approximately 26.92%, from 5.2 Mt in 2020 to 3.8 Mt in 2021; and
- (ii) coal output at Myuna mine had decreased by approximately 10%, from 1.0 Mt in 2020 to 0.9Mt in 2021.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to Banpu's Annual Report for the year ending 31 December 2021, published on Banpu's website on or about 21 March 2022, p 14. The output reductions are inferred to have commenced to manifest by the end of the July to September quarter, and reached the extent set out in sub-paragraph 139(b) by 31 December 2021.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

D.3 Banpu disclosures in 2021

140. On or about 23 February 2021, Banpu published a document to the SET titled “Management’s Discussion and Analysis For The Year Ended 2020”, by which Banpu disclosed:

- (a) for the period 1 October 2020 to 31 December 2020, Banpu’s Australian coal business reported sales of 3.1 Mt, a 5% lower quarter on quarter sales volume; and
- (b) for the period 1 January 2020 to 31 December 2020, Banpu’s Australian coal business reported sales of 12.5 Mt, a 2 Mt or 19% increase on sales in 2019.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, pp 3 and 8.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

141. On or about 25 February 2021, Banpu published a document to its website titled “FY20 & 4Q20 results – Investor and analysts update”, by which Banpu disclosed:

- (a) in the “Northern Operations” section of Banpu’s Australian business:
 - (i) production was down;
 - (ii) the Mandalong mine experienced a longwall changeover; and
 - (iii) the Myuna mine’s production was expected to improve;
- (b) for the period 1 June 2020 to 30 September 2020:
 - (i) actual coal output (Mt) at Mandalong mine was 1.5 Mt; and
 - (ii) actual coal output (Mt) at Myuna mine was 0.2 Mt;
- (c) for the period 1 October 2020 to 31 December 2020:
 - (i) actual coal output (Mt) at Mandalong mine was 1.1 Mt; and
 - (ii) actual coal output (Mt) at Myuna mine was 0.2 mt;
- (d) for the period 1 January 2021 to 31 March 2021:

- (i) estimated coal output (Mt) at Mandalong mine was 1.1 Mt; and
 - (ii) estimated coal output (Mt) at Myuna mine was 0.3 Mt;
- (e) in 2021, longwall changeovers at Mandalong mine were estimated to be:
- (i) in or around January and February 2021 for a period of four weeks;
 - (ii) in or around June 2021 for a period of three weeks; and
 - (iii) in or around October and November 2021 for a period of three weeks.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, pp 30, 50 and 63.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

142. On or about 10 May 2021, Banpu published a document to its website titled “1Q2021 Results Highlights”, being the period 1 January 2021 to 31 March 2021, by which Banpu disclosed:
- (a) Banpu’s Australian coal business reported a sales volume of 2.6 Mt, a 15% lower quarter on quarter sales volume; and
 - (b) the 15% lower sales volume was due to the longwall move for four weeks at Mandalong mine and geological challenges at, *inter alia*, Mandalong mine and Myuna mine.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, p 1.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

143. Further, on or about 10 May 2021, Banpu published a document to the SET titled “Management’s Discussion and Analysis For the 1st Quarter 2021”, being the period 1 January 2021 to 31 March 2021, by which Banpu:
- (a) repeated the statements pleaded in sub-paragraph 142(a) and 142(b) above; and

- (b) disclosed the Australian coal business sales of 2.63 Mt, a 0.46 Mt or 15% decrease quarter on quarter sales volume.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, pp 3 and 8.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

144. On or about 14 May 2021, Banpu published a document to its website titled “1Q21 results – Investor and analyst update”, by which Banpu disclosed:

- (a) in respect of Banpu’s Australian coal business:
 - (i) production was down compared to the prior quarter; and
 - (ii) production at the Myuna mine was impacted by complex geology;
- (b) for the period 1 January 2021 to 31 March 2021:
 - (i) actual coal output (Mt) at Mandalong mine was 1.1 Mt;
 - (ii) actual coal output (Mt) at Myuna mine was 0.2 Mt;
- (c) for the period 1 April 2021 to 30 June 2021:
 - (i) estimated coal output (Mt) at Mandalong mine was 1.0 Mt; and
 - (ii) estimated coal output (Mt) at Myuna mine was 0.4 Mt.
- (d) in 2021, longwall changeovers at Mandalong mine were estimated to be:
 - (i) in or around January and February 2021 for a period of four weeks;
 - (ii) in or around June 2021 for a period of four weeks; and
 - (iii) in or around November 2021 for a period of three weeks.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, p 29, 48 and 57.*

- ii. *Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

145. On or about 9 August 2021, Banpu published a document to its website titled “2Q/2021 Results Highlights”, being the period 1 April 2021 to 30 June 2021, by which Banpu disclosed:

- (a) Banpu’s Australian coal business had a coal sales volume of 2.5 million tonnes, a decrease of 5% quarter on quarter; and
- (b) the lower sales volume was due to the longwall move for four weeks at Mandalong mine.

Particulars

- i. *The statements were expressly made in writing in the document referred to in the paragraph, pp 1 and 3.*
- ii. *Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

146. Further, on or about 9 August 2021, Banpu published a document to the SET titled “Management’s Discussion and Analysis For the 2nd Quarter 2021”, being the period 1 April 2021 to 30 June 2021, by which Banpu:

- (a) repeated the statements pleaded in sub-paragraphs 145(a) and 145(b) above;
- (b) disclosed Banpu’s Australian coal business sales had decreased by 0.6 Mt, or 19% compared to 2Q2020; and
- (c) disclosed that the decrease in coal sales was caused by difficulties in geology mining conditions at, *inter alia*, Mandalong mine and Myuna mine.

Particulars

- i. *The statements were expressly made in writing in the document referred to in the paragraph, pp 3 and 8.*
- ii. *Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

147. On about 17 August 2021, Banpu published a document to its website titled “2Q21 Results – Investor and analyst update”, by which Banpu disclosed:

- (a) in respect of Banpu’s Australian coal business:

- (i) production was flat; and
 - (ii) the Mandalong mine experienced an extended longwall changeover;
- (b) for the period 1 April 2021 to 30 June 2021:
- (i) actual coal output (Mt) at Mandalong mine was 0.9 Mt;
 - (ii) actual coal output (Mt) at Myuna mine was 0.2 Mt;
- (c) for the period 1 July 2021 to 30 September 2021:
- (i) estimated coal output (Mt) at Mandalong mine was 1.4 Mt; and
 - (ii) estimated coal output (Mt) at Myuna mine was 0.3 Mt.
- (d) in 2021, longwall changeovers at Mandalong mine were estimated to be:
- (i) in or around January and February 2021 for a period of four weeks;
 - (ii) in or around June and July 2021 for a period of seven weeks; and
 - (iii) in or around November 2021 for a period of three weeks.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, pp 29, 48 and 57.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

148. On about 10 November 2021, Banpu published a document to the SET titled “Management’s Discussion and Analysis For the 3rd Quarter 2021”, being the period 1 July 2021 to 30 September 2021, by which Banpu disclosed:

- (a) Banpu’s Australian coal business sales were 2.49 Mt, a decrease of 0.74 Mt or 23% compared to Q32020; and
- (b) the decrease in coal sales was an impact from encountering difficulties in geology mining conditions at, *inter alia*, Mandalong mine and Myuna mine.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, p 8.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

149. On or about 10 November 2021, Banpu published a document to its website titled “3Q/2021 Results Highlight” which substantially repeated the disclosure pleaded in sub-paragraph 148(a) above.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, p 3.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

150. On about 15 November 2021, Banpu published a document to its website titled “3Q21 Results – Investor and analyst update”, by which Banpu disclosed:

- (a) for the period 1 July 2021 to 30 September 2021:
 - (i) actual coal output (Mt) at Mandalong mine was 1.2 Mt;
 - (ii) actual coal output (Mt) at Myuna mine was 0.3 Mt;
- (b) for the period 1 October 2021 to 31 December 2021:
 - (i) estimated coal output (Mt) at Mandalong mine was 1.4 Mt; and
 - (ii) estimated coal output (Mt) at Myuna mine was 0.3 Mt.
- (c) in 2021, longwall changeovers at Mandalong mine were estimated to be:
 - (i) in or around January and February 2021 for a period of four weeks;
 - (ii) in or around June and July 2021 for a period of seven weeks; and
 - (iii) in or around November 2021 for a period of two weeks.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, pp 45 and 54.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

D.4 Events at Mandalong mine from mid-February 2022

151. Contrary to the revised completion date for longwall 30 as pleaded in sub-paragraph 138(b) above, mining in longwall 30 was not completed until mid-February 2022.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to the Minutes of Centennial Mandalong Community Consultative Committee held on 22 February 2021, p 6 and associated PowerPoint presentation.*
- ii. Further particulars may be provided following discovery and the service of subpoenas.*

152. As at 22 February 2022, Centennial Mandalong and/or Centennial:

- (a) had further revised the commencement date for longwall 31 to early March 2022 (as opposed to November 2021 as pleaded in sub-paragraph 130(a)(i) and December 2021 as pleaded in sub-paragraph 138(c) above);
- (b) had reduced certain longwalls at Mandalong mine by approximately 800 metres due to sill; and
- (c) expected to commence mining in longwall 32 by June 2022.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to the Minutes of Centennial Mandalong Community Consultative Committee held on 22 February 2021, p 6 and associated PowerPoint presentation.*
- ii. Further particulars may be provided following discovery and the service of subpoenas.*

153. On 11 March 2022, the delegate of the Minister for Planning and Public Spaces approved the modification of the Mandalong SSD Consent in accordance with the Modification 10 Application, subject to specified conditions.

Particulars

- i. The notice of decision for Modification 10 made under s 4.55(2) of the EPA Act is in writing and dated 11 March 2022.*

154. Contrary to the revised completion date for longwall 31 as pleaded in sub-paragraph 130(a)(i) above, mining in longwall 31 was not completed until mid-June 2022.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to the Minutes of Centennial Mandalong Community Consultative Committee held on 28 June 2021, p 5 and associated PowerPoint presentation.*
- ii. Further particulars may be provided following discovery and the service of subpoenas.*

155. Mining of longwall 32 did not commence at any time before the end of the Relevant Period.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to the Minutes of Centennial Mandalong Community Consultative Committee held on 28 June 2021, p 5 and associated PowerPoint presentation.*
- ii. Further particulars may be provided following discovery and the service of subpoenas.*

D.5 Banpu disclosures in 2022

156. On or about 23 February 2022, Banpu published a document to the SET titled “Management’s Discussion and Analysis for the Year Ended 2021”, by which Banpu disclosed that Banpu’s Australian coal business’ annual sales volume was 9.82 Mt, a decrease of 2.69 Mt or 21% from 2020, as it experienced complex geology at, *inter alia*, Mandalong mine.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, pp 3 and 8.*

- ii. *Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

157. Further, on or about 23 February 2022, Banpu published a document to its website titled “2021 Results Highlight”, by which Banpu repeated the statement that Banpu’s Australian coal business’ annual sales volume was 9.82 Mt, a decrease of 21% from the previous year as it experienced complex geology at, *inter alia*, Mandalong mine.

Particulars

- i. *The statements were expressly made in writing in the document referred to in the paragraph, p 1.*
- ii. *Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

158. On or about 9 March 2022, Banpu published a document to its website titled “FY21 & 4Q21 Results – Investor and analyst update”, by which Banpu disclosed:

- (a) in the “Northern Operations” section of Banpu’s Australian business, production was down due to a geological issue that resulted in a 600 kilotonne shortfall against Banpu’s budget;
- (b) for the period 1 October 2021 to 31 December 2021:
 - (i) actual coal output (Mt) at Mandalong mine was 0.6 Mt;
 - (ii) actual coal output (Mt) at Myuna mine was 0.2 Mt;
- (c) for the period 1 January 2022 to 31 March 2022:
 - (i) estimated coal output (Mt) at Mandalong mine was 0.8Mt; and
 - (ii) estimated coal output (Mt) at Myuna mine was 0.3 Mt.
- (d) in 2021, longwall changeovers at Mandalong mine were:
 - (i) in or around January and February 2021 for a period of four weeks;
 - (ii) in or around June and July 2021 for a period of seven weeks; and
 - (iii) in or around November 2021 for a period of two weeks;

- (e) in 2022, longwall changeovers at Mandalong mine were estimated to be:
 - (i) in or around February 2022 for a period of three weeks;
 - (ii) in or around June 2022 for a period of three weeks; and
 - (iii) in or around October and November 2022 for a period of three weeks.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, pp 27, 45 and 58.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

159. On or about 21 March 2022, Banpu published its 2021 Annual Report to the SET, by which Banpu disclosed:

- (a) output at Centennial Coals’ mines was down by 24% at 9.5 Mt compared to 12.4 Mt in 2020;
- (b) the decrease referred to in sub-paragraph 159(a) above was “mainly due to complex geology” at, *inter alia*, Myuna mine and extended longwall changeover at Mandalong mine;
- (c) production at Mandalong mine had decreased from 5.2 Mt in 2020 to 3.8 Mt; and
- (d) production at Myuna mine had decreased from 1.0 Mt in 2020 to 0.9 Mt.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

160. On about 10 May 2022, Banpu published a document to its website titled “1Q/2022 Results Highlights”, by which Banpu disclosed that Banpu’s Australian coal business reported total

production of 1.72 Mt, down by 17% quarter on quarter due to longwall changeover at, *inter alia*, Mandalong mine.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, p 2.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

161. On or about 10 May 2022, Banpu published a document to the SET titled “Management’s Discussion and Analysis For the 1st Quarter 2022”, by which Banpu disclosed that the Australian coal business’ annual sales volume was 1.72 Mt, a decrease of 17% from 1Q2021, due to longwall changeover and complex geology at, *inter alia*, Mandalong mine.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, pp 3 and 8.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

162. On or about 18 May 2022, Banpu published a document to its website titled “1Q22 Results – Investor and analyst update”, by which Banpu disclosed:

- (a) production in Banpu’s Australian coal business in 1Q22 was impacted by delayed longwall relocations;
- (b) for the period 1 January 2022 to 31 March 2022:
 - (i) actual coal output (Mt) at Mandalong mine was 0.7 Mt;
 - (ii) actual coal output (Mt) at Myuna mine was 0.2 Mt;
- (c) for the period 1 April 2022 to 30 June 2022:
 - (i) estimated coal output (Mt) at Mandalong mine was 1.1Mt; and
 - (ii) estimated coal output (Mt) at Myuna mine was 0.3 Mt.
- (d) in 2021, longwall changeovers at Mandalong mine were:

- (i) in or around January and February 2021 for a period of four weeks;
 - (ii) in or around June and July 2021 for a period of seven weeks; and
 - (iii) in or around November 2021 for a period of two weeks;
- (e) in 2022, longwall changeovers at Mandalong mine were estimated to be:
- (i) in or around February 2022 for a period of three weeks;
 - (ii) in or around June 2022 for a period of three weeks; and
 - (iii) in or around October and November 2022 for a period of three weeks.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, pp 25, 43 and 53.*
- ii. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

D.6 Escalation of coal prices and forecasts in 2021 and 2022

163. The Newcastle index thermal coal price is a benchmark index used for pricing thermal coal and represents the average weekly spot price of thermal coal delivered to the port of Newcastle, in US dollars per metric tonne with a specification of 6,000 kilocalories per kilogram (**6,000 kcal index**).
164. Between October 2021 and June 2022, the global benchmark price for 6,000 kcal coal from the port of Newcastle was:
- (a) in October 2021, US\$221.83/tonne;
 - (b) in November 2021, US\$159.49/tonne;
 - (c) in December 2021, US\$172.44/tonne;
 - (d) in January 2022, US\$230.98/tonne;
 - (e) in February 2022, US\$254.20/tonne;
 - (f) in March 2022, US\$328.26/tonne;

- (g) in April 2022, US\$311.61/tonne;
- (h) in May 2022, US\$396.67/tonne; and
- (i) in June 2022, US\$396.33/tonne.

Particulars

- i. Office of the Chief Economist, Resources and Energy Quarterly Report, December 2023 – historical data Tab 22, row 394 to 402.*
- ii. Further particulars may be provided following the filing of expert evidence.*

165. At all material times, Origin purchased spot coal on a discount to the 6,000 kcal index.

Particulars

- i. So far as the plaintiff can say prior to discovery, the plaintiff refers to Origin's June 2022 Quarterly Report dated 29 July 2022, p 10.*
- ii. 1H21 Half Year Results Report dated 17 February 2022 states that Origin typically buys 5,500 kcal coal, p 8.*
- iii. 1H21 Investor Presentation dated 17 February 2022 states that Origin typically buys 5,500 kcal coal, p 23.*
- iv. FY21 Presentation to Analysts and Financial Markets dated 19 August 2021 states that Eraring Power Station procures closer to 5,500 index coal, page 22.*
- v. Further particulars may be provided following discovery, the service of subpoenas and the filing of expert evidence.*

166. After a period of relative price stability wherein between 2016 and 2020 the price of Newcastle 5,500 kcal coal remained under US\$100/tonne, from around 2021 the price of Newcastle 5,500 kcal commenced trending upwards, rising to over US\$250/tonne by the beginning of 2022.

Particulars

- i. So far as the plaintiff can say prior to the filing of expert evidence, the plaintiff refers to Origin's FY2022 Full Year Results dated 18 August 2022 at p 6.*
- ii. Office of the Chief Economist, Resources and Energy Quarterly Report, December 2021 at p 66, figure 6.6; Office of the Chief Economist, Resources and Energy Quarterly Report, March 2022 at p 73, figure 6.6; Office*

of the Chief Economist, Resources and Energy Quarterly Report, December 2023 at p 61, figure 6.8.

iii. Further particulars may be provided following the filing of expert evidence.

167. At all material times prior to and during the Relevant Period, the Office of the Chief Economist within the Commonwealth Department of Industry, Science and Resources (**OCE**) published a Resources and Energy Quarterly which, *inter alia*, provides forecasts for global commodity prices, demand and supply and forecasts for the volume, value and price of Australia’s resources and energy community exports.
168. On about 28 June 2021, the OCE published the Resources and Energy Quarterly for the three month period to June 2021, which contained the following statements:
- (a) “The Newcastle benchmark price is forecast to average US\$90 a tonne in 2021, easing slowly to US\$68 a tonne by 2023”;
 - (b) “[Thermal coal demand] over 2021 is not expected to reach its level of 2019, but demand growth is likely to persist over subsequent years, peaking towards the end of the outlook period, then flattening from 2023”;
 - (c) “Thermal coal prices have picked up over recent quarters (Figure 6.7), as global supply conditions tightened up: utilities restocked after the cold winter, and production cuts among price-sensitive miners further reduced supply”;
 - (d) “Most of this price growth has occurred for the higher-grade calorific coals, with lower calorific coal becoming somewhat oversupplied in some markets following the informal import restrictions imposed on Australian coal by China”;
 - (e) “Prices for the benchmark Australian thermal coal spot price — Newcastle 6,000 kcal/kg — have lifted from around US\$80 a tonne at the end of 2020 to more than US\$100 a tonne at the time of writing. However, this rally is expected to partly unwind over the remainder of 2021, as inventories normalise and temporary drivers of price gains ease. Prices are forecast to ease to around US\$80 a tonne by the end of 2021, and then to US\$67 a tonne by the final quarter of the outlook period”; and
 - (f) “Australian 6,000kcal coal has recently fared much better than the lower calorie grades. Supply problems in the NSW Hunter Valley and in South Africa have helped push prices of premium coal up”.

Particulars

i. The statements were expressly made in writing in the document referred to in the paragraph, pp 52, 58, 59.

169. On about 30 September 2021, the OCE published the Resources and Energy Quarterly for the three month period to September 2021, which contained the following statements:
- (a) “Thermal coal prices have lifted sharply so far in 2021”;
 - (b) “The Newcastle benchmark price is forecast to average US\$101 a tonne in 2021”;
 - (c) “Thermal coal prices for Newcastle 6,000 kcal product are expected to fall to US\$85 a tonne in 2022 and US\$71 in 2023”; and
 - (d) “The market continues to be marked by high price differentials between 5,500 kcal coal and 6,000 kcal coal, which reached record levels in July, as a result of disruptions to South African and Australian high grade coal supply”.

Particulars

i. The statements were expressly made in writing in the document referred to in the paragraph, pp 58, 63.

170. On or about 20 December 2021, the OCE published the Resources and Energy Quarterly report for the three month period to December 2021, which contained the following statements:
- (a) “Thermal coal spot prices spiked in October as strong Chinese demand hit up against global supply disruptions and capacity constraints”;
 - (b) “The Newcastle benchmark price is forecast to average US\$134 a tonne in 2021, easing slowly to around US\$90 a tonne by 2023”;
 - (c) “Thermal coal demand appears to be recovering more rapidly than supply. Exports remain below pre-COVID-19 peaks, but a rapid global economic recovery and cold Northern Hemisphere Winter has increased demand for power generation among significant thermal coal importers. This has led to rising pressure on inventory levels and surging prices over the second half of 2021”;
 - (d) “Prices surged during 2021, and are expected to stay volatile and high. Prices rose sharply in the September quarter as a result of a growing supply deficit”;

- (e) “With policy pressure dampening investment in new supply, it is expected that prices will remain high and volatile through the outlook period”; and
- (f) “On balance, the thermal coal price for Newcastle 6,000kcal product is expected to fall to a still-high US\$120 a tonne in 2022, and to US\$91 in 2023, but there is potential for significant moves in either direction”.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, pp 60, 65.*
- i. Further particulars may be provided following the filing of expert evidence.*

171. On or about 1 April 2022, the OCE published the Resources and Energy Quarterly report for the three month period to March 2022, which contained the following statements:

- (a) “Global thermal coal spot prices have spiked, as increasing Chinese demand coincides with weather disruptions, supply impacts from COVID-19 outages, and the fallout from the Russian invasion of Ukraine. As more normal conditions return, the Newcastle benchmark price is forecast to ease from a peak of US\$184 a tonne in 2022 to around US\$60 a tonne by 2027 (in real terms)”;
- (b) “Thermal coal markets are undergoing a complex transition. Prices have surged in recent months as demand outpaced supply, which remains disrupted among a range of major exporters”;
- (c) “Thermal coal prices surged in January 2022, lifting by almost a third from (already high) December levels. Prices have been consistently elevated in recent months as rising demand ran up against successive disruptions to seaborne supply ... These disruptions included labour shortages and slow loading at ports as a result of the COVID-19 pandemic. Difficult weather conditions (including intense wet weather in north-eastern Australia) have affected Australian supply in particular. Chinese informal import restrictions against Australia have added to the length and complexity of coal freight, adding especially to Chinese domestic prices”;
- (d) “As conditions gradually return to normal, prices are forecast at US\$128 a tonne in the March quarter 2023, ultimately easing to US\$60 by the end of the outlook period (in real terms). However, prices are likely to experience significant fluctuations along the way”;
- (e) “Price risks remain in both directions, but with a weighting to the upside”; and

- (f) “Volatility in prices and uncertainties around global coal markets are expected to persist through the outlook and beyond, but Australia’s natural advantages should provide a measure of stability to coal producers”.

Particulars

- i. The statements were expressly made in writing in the document referred to in the paragraph, pp 66, 72, 73 ,74.*

D.7 Surge in electricity prices and electricity procurement costs

172. The quarterly volume weighted average NEM spot electricity price for New South Wales was:

- (a) for the quarter ending September 2021, AUD\$88 per megawatt hour;
- (b) for the quarter ending December 2021, AUD\$65 per megawatt hour;
- (c) for the quarter ending March 2022, AUD\$89 per megawatt hour; and
- (d) for the quarter ending June 2022, AUD\$321 per megawatt hour.

Particulars

- i. Australian Energy Regulator – quarterly volume weighted average spot prices for each region of the NEM are available at <https://www.aer.gov.au/industry/registers/charts/quarterly-volume-weighted-average-spot-prices-regions> (accessed 4 June 2024).*
- ii. A copy of a graph produced by the Australian Energy Regulator depicting the quarterly volume weighted average spot electricity price in each region of the NEM is at **Annexure 2** to this statement of claim.*
- iii. Further particulars may be provided following the filing of expert evidence and the service of subpoenas.*

173. The quarterly volume weighted average NEM spot electricity price for Victoria was:

- (a) for the quarter ending September 2021, AUD\$64 per megawatt hour;
- (b) for the quarter ending December 2021, AUD\$33 per megawatt hour;
- (c) for the quarter ending March 2022, AUD\$64 per megawatt hour; and
- (d) for the quarter ending June 2022, AUD\$241 per megawatt hour.

Particulars

- i. *Australian Energy Regulator – quarterly volume weighted average spot prices for each region of the NEM are available at <https://www.aer.gov.au/industry/registers/charts/quarterly-volume-weighted-average-spot-prices-regions> (accessed 4 June 2024).*
- ii. *A copy of a graph produced by the Australian Energy Regulator depicting the quarterly volume weighted average spot electricity price in each region of the NEM is at **Annexure 2** to this statement of claim.*
- iii. *Further particulars may be provided following the filing of expert evidence and the service of subpoenas.*

174. The quarterly volume weighted average NEM spot electricity price for Queensland was:

- (a) for the quarter ending September 2021, AUD\$90 per megawatt hour;
- (b) for the quarter ending December 2021, AUD\$111 per megawatt hour;
- (c) for the quarter ending March 2022, AUD\$171 per megawatt hour; and
- (d) for the quarter ending June 2022, AUD\$344 per megawatt hour.

Particulars

- i. *Australian Energy Regulator – quarterly volume weighted average spot prices for each region of the NEM are available at <https://www.aer.gov.au/industry/registers/charts/quarterly-volume-weighted-average-spot-prices-regions> (accessed 4 June 2024).*
- ii. *A copy of a graph produced by the Australian Energy Regulator depicting the quarterly volume weighted average spot electricity price in each region of the NEM is at **Annexure 2** to this statement of claim.*
- iii. *Further particulars may be provided following the filing of expert evidence and the service of subpoenas.*

175. The quarterly volume weighted average NEM spot electricity price for South Australia was:

- (a) for the quarter ending September 2021, AUD\$63 per megawatt hour;
- (b) for the quarter ending December 2021, AUD\$60 per megawatt hour;
- (c) for the quarter ending March 2022, AUD\$86 per megawatt hour; and

- (d) for the quarter ending June 2022, AUD\$280 per megawatt hour.

Particulars

- i. *Australian Energy Regulator – quarterly volume weighted average spot prices for each region of the NEM are available at <https://www.aer.gov.au/industry/registers/charts/quarterly-volume-weighted-average-spot-prices-regions> (accessed 4 June 2024).*
- ii. *A copy of a graph produced by the Australian Energy Regulator depicting the quarterly volume weighted average spot electricity price in each region of the NEM is at **Annexure 2** to this statement of claim.*
- iii. *Further particulars may be provided following the filing of expert evidence and the service of subpoenas.*

176. In FY2022, Origin’s net pool costs per megawatt hour of electricity increased by 118% on the prior corresponding period.

Particulars

- i. *So far as the plaintiff can say prior to discovery, the plaintiff refers to Origin’s First Half FY2022 Financial Report dated 17 February 2022 which stated that the cost of “net pool costs” (being gross pool purchase costs net of pool revenue from generation, net and settled power purchase agreements and other contracts) was \$52.9/MWh, p 18. Origin’s FY2022 Annual Report dated 18 August 2022 which stated that Electricity Gross Profit had decreased partly because of “higher electricity procurement costs, largely reflecting higher unit net pool costs which increased from \$45.5/MWh [in FY2021] to \$99.2/MWh [in FY2022]” as Origin had been forced to purchase electricity from the spot market as a consequence of lower output from Eraring caused by coal supply disruptions, pp 29-30.*
- ii. *Further particulars may be provided following discovery and the filing of expert evidence.*

177. In FY2022, the volume of electricity Origin purchased pursuant to “market contracts” (being, swap and energy hedge contracts) (either directly or via a controlled entity) had increased by 55% on the prior corresponding period.

Particulars

- i. *So far as the plaintiff can say prior to discovery, the plaintiff refers to Origin’s First Half FY2022 Financial*

Report dated 17 February 2022 which stated that it had purchased 4.9 TWh of electricity from “market contracts” in 1H2022 compared with 3.2 TWh in 1H2021, p 18. Origin’s FY2022 Financial Report dated 18 August 2022 which stated that Electricity Gross Profit had decreased partly because of “higher electricity procurement costs, largely reflecting... higher volumes of market contracts” as Origin had been forced to purchase electricity (11.9 TWh in FY2022 from market contracts compared with 7.7 TWh in FY2021) as a consequence of lower output from Eraring caused by coal supply disruptions, pp 29-30.

- ii. *Further particulars may be provided following discovery and the filing of expert evidence.*

D.8 Change in market conditions

178. From the start of the Relevant Period:

- (a) the matters pleaded in paragraphs 123 to 138 above (being the **2021 Longwall Changeover and Modification Delays**);
- (b) the matters pleaded in paragraph 139 above in the context of:
 - (i) the coal supply from Mandalong mine and Myuna mine to Eraring Power Station as pleaded in sub-paragraphs 77(d), 77(e), 78(d), 78(e), and paragraphs 85 to 87 above; and
 - (ii) the Banpu disclosures as pleaded in paragraphs 140 to 150 above—

(being the **Coal Output Decrease**);
- (c) the matters pleaded in sub-paragraphs 164(a) to 164(c) and paragraph 166 above (having regard to the matters pleaded in paragraphs 163 and 165 above) (being the **2021 Coal Procurement Cost Hike**);
- (d) the matters pleaded in sub-paragraphs 172(a) and 172(b), 173(a), 173(b), 174(a), 174(b), 175(a) and 175(b) above (being the **2021 Electricity Spot Price Surge**);
- (e) the matter pleaded in paragraph 176 above (being the **Net Pool Costs Price Hike**);
and/or
- (f) the matter pleaded in paragraph 177 above (being the **Market Contract Increase**)—

was a change in market condition that was relevant to the Electricity Segment of Origin's Energy Markets business and was likely to affect the achievability and/or reliability of:

- (i) the FY2022 Energy Markets Guidance as pleaded in sub-paragraph 89(a) above; and/or
- (ii) the FY2023 Energy Markets Guidance as pleaded in sub-paragraph 89(b) above.

179. Further, from 17 February 2022:

- (a) the 2021 Longwall Changeover and Modification Delays as pleaded in sub-paragraph 178(a) above;
- (b) the Coal Output Decrease as pleaded in sub-paragraph 178(b) above in the context of the further Banpu disclosures as pleaded in paragraphs 156 to 162 above;
- (c) the 2021 Coal Procurement Cost Hike as pleaded in sub-paragraph 0 above;
- (d) the 2021 Electricity Spot Price Surge as pleaded in sub-paragraph 178(d) above;
- (e) the Net Pool Costs Price Hike as pleaded in sub-paragraph 178(e) above;
- (f) the Market Contract Increase as pleaded in sub-paragraph 178(f) above;
- (g) the matters pleaded in paragraphs 151 to 155 above (being the **2022 Longwall Changeover and Modification Delays**);
- (h) the matters pleaded in paragraphs 164(d) to 164(i) and paragraph 166 above (in the context of the matters pleaded in paragraphs 163 and 165 above) (being the **2022 Coal Procurement Cost Hike**); and/or
- (i) the matters pleaded in sub-paragraphs 172(c) and 172(d), 173(c), 173(d), 174(c), 174(d), 175(c) and 175(d) (being the **2022 Electricity Spot Price Surge**)—

was a change in market condition that was relevant to the Electricity Segment of Origin's Energy Markets business and was likely to affect the achievability and/or reliability of:

- (i) the Reaffirmed FY2022 Energy Markets Guidance as pleaded in sub-paragraph 104(b)(i) above; and/or

- (ii) the Reaffirmed FY2023 Energy Markets Guidance as pleaded in sub-paragraph 104(d) above.

180. From 31 December 2021, Origin did not withdraw, or say anything to qualify or contradict:

- (a) the FY2022 Energy Markets Guidance as pleaded in sub-paragraph 89(a) above; and/or
- (b) the FY2023 Energy Markets Guidance as pleaded in sub-paragraph 89(b) above.

181. Further, from 17 February 2022, Origin did not withdraw, or say anything to qualify or contradict:

- (a) the Reaffirmed FY2023 Energy Markets Guidance as pleaded in sub-paragraph 104(c)(i) above; and/or
- (b) the Reaffirmed FY2023 Energy Markets Guidance as pleaded in sub-paragraph 104(d) above.

D.9 Information as to coal supply constraints and impacts, and the achievability of Guidance

D.9.1 Coal Supply Constraint and Impact Information

182. During the Relevant Period, from and after 20 October 2021 (or alternatively from and after each day in the Relevant Period after that date):

- (a) there was a risk or likelihood that the contractual, supply and delivery constraints creating a shortfall in the volume of coal delivered to Eraring Power Station prior to and during FY2022 were of such persistence and magnitude that any FY2022 shortfall could not be made up in FY2023;
- (b) there was a risk or likelihood that contractual, supply and delivery constraints would continue into FY2023 creating a shortfall in the volume of coal that was available to Eraring Power Station in that year; and/or
- (c) there was uncertainty regarding Eraring Power Station's output in FY2023.

(each of (a) and/or (b) and/or (c) being the **Coal Supply Constraint and Impact Information**).

Particulars

- i. *From 20 October 2021, the plaintiff refers to the following matters:*
 - A. *Eraring Power Station accounted for between 75% and 80% of Origin's total generated electricity output and the particulars to paragraph 75 above are repeated;*
 - B. *in the financial year ending 30 June 2022, Origin operated on the basis that Eraring Power Station's annual coal requirements were to be supplied in the majority from the Mandalong mine and the Myuna mine by Centennial and/or its subsidiaries and paragraph 87 above is repeated;*
 - C. *the coal supply agreement with Centennial, which expired at the end of FY2022, represented approximately two thirds of Origin's coal supply to Eraring Power Station for FY2022 and paragraphs 76 and 86 above are repeated;*
 - D. *as at 19 August 2021, Origin remained in the process of negotiating contracts for its coal supply requirements beyond 30 June 2022 and the plaintiff refers to statements to that effect made by Calabria at the FY2021 Earnings Call (at p 10);*
 - E. *from around May 2020 and continuing to the start of the Relevant Period, there had been significant delays and constraints experienced at the Mandalong mine and Myuna mine which had disrupted coal supply by Centennial and/or its subsidiaries to Eraring Power Station, and sub-paragraphs 178(a) and 178(b) above are repeated; and*
 - F. *by 20 October 2021, coal output at both Mandalong mine and Myuna mine in 2021 had continuously decreased as compared to 2020 and sub-paragraph 139(a) and paragraphs 140 to 150 above are repeated;*
- ii. *From 17 February 2022, in addition to the matters referred to in particular (i) above, the plaintiff refers to the following matters:*
 - A. *longwall mining continued to be significantly delayed at Mandalong mine, and sub-paragraph 179(g) above is repeated;*
 - B. *the approval of the Modification 10 Application was not given until 11 March 2022 and paragraph 153 above is repeated; and*
 - C. *coal output at both Mandalong mine and Myuna mine continued on a downward trajectory and paragraphs 156 to 162 above are repeated.*

D.9.2 The Energy Markets Earnings Information

183. During the Relevant Period, from and after 20 October 2021 (or alternatively from and after each day in the Relevant Period after that date):

- (a) there had been changes to the market conditions that were likely to affect Origin's ability to achieve FY2022 Energy Markets EBITDA of \$450—\$600 million;
- (b) it was unlikely that Origin would achieve FY2022 Energy Markets EBITDA of \$450 million—\$600 million; and/or
- (c) there was uncertainty around the range of earnings outcomes for the 2023 financial year, such that Origin could no longer maintain its guidance increase of between \$150 million—\$250 million as compared to FY2022—

(each of (a) and/or (b) and/or (c) being **Energy Markets Earnings Information**).

Particulars

- i. Paragraph 178 above is repeated.*

D.9.3 The Reaffirmed Energy Markets Earnings Information

184. Further, or alternatively to paragraph 183 above, during the Relevant Period from and after 17 February 2022 (or alternatively from and after each day in the Relevant Period after that date):

- (a) there had been changes to the market conditions that were likely to affect Origin's ability to achieve FY2022 Energy Markets EBITDA of \$450—\$600 million;
- (b) it was unlikely that that Origin would achieve FY2022 Energy Markets EBITDA of \$450 million—\$600 million; and/or
- (c) there was uncertainty around the range of earnings outcomes for the 2023 financial year, such that Origin could no longer maintain its guidance increase of between \$150 million—\$250 million as compared to FY2022—

(each of (a) and/or (b) and/or (c) being **Reaffirmed Energy Markets Earnings Information**).

Particulars

- i. Paragraph 179 above is repeated.*

E CONTINUOUS DISCLOSURE CONTRAVENTIONS

E.1 Coal Supply Constraint and Impact Information

185. By at least the beginning of the Relevant Period, an officer of Origin ought reasonably to have come into possession, in the course of the performance of his or her duties as an officer of Origin, of the Coal Supply Constraint and Impact Information.

Particulars

- i. As to the officers of Origin as at the beginning of the Relevant Period, the plaintiff refers to paragraphs 7 to 24 above.*
- ii. Origin was bound by the Continuous Disclosure Obligations as pleaded in paragraph 5 above. It also had in place a Continuous Disclosure policy that set out the internal processes for inter alia assisting Origin and its officers to comply with the Corporations Act and Listing Rules and disclosure requirements thereunder.*
- iii. Origin's Chief Executive Officer, Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations ought to have known or ought reasonably to have become aware of this information in the course of the performance of their duties by reason the criticality and importance of timely deliveries of coal to Eraring Power Station and the matters referred to in particular (i) subjoined to paragraph 182 above are repeated.*
- iv. Given the matters in particular (iii), Origin's Chief Executive Officer, Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations ought to have become aware of the information as pleaded in sub-paragraph 182(a) and/or (b) and/or (c) above.*
- v. Origin's Chief Executive Officer, Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations ought to have reported the information to Origin's Board of Directors, Risk Committee and Senior Executives consistent with their obligations (including per the Continuous Disclosure policy).*
- vi. Alternatively, members of Origin's Board of Directors ought to have made reasonable enquiries of the Chief Executive Officer and/or the Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations and/or Senior Executives and management and/or Origin's Risk Committee(s) consistently with*

their duties of care and diligence so as to enable them to become aware of this information.

vii. Further particulars may be provided following discovery and the filing of expert evidence.

186. By reason of the matters pleaded in paragraph 185 above, as at the beginning of the Relevant Period, Origin was aware of the Coal Supply Constraint and Impact Information within the meaning of rule 3.1 (read with 19.12) of the Listing Rules.
187. At all times in the Relevant Period, the Coal Supply Constraint and Impact Information was information concerning Origin that a reasonable person would expect to have a material effect on the price or value of ORG Shares within the meaning of rule 3.1 of the Listing Rules.
188. At all times in the Relevant Period, by reason of the matters pleaded in paragraphs 186 and 187 above, Origin had information that rule 3.1 of the Listing Rules required Origin to notify the ASX (namely the Coal Supply Constraint and Impact Information) within the meaning of s 674A(2)(b) of the Corporations Act.
189. At all times in the Relevant Period, the Coal Supply Constraint and Impact Information was not generally available within the meaning of s 674A(2)(c) of the Corporations Act.

Particulars

i. The plaintiff refers to s 676 of the Corporations Act as in force during the Relevant Period which concerns when information is generally available.

190. At all times in the Relevant Period, Origin:
- (a) ought to have known that the Coal Supply Constraint and Impact Information would, if generally available, have a material effect on the price or value of ORG Shares; and
 - (b) in the premises, was negligent with respect to whether the Coal Supply Constraint and Impact Information would, if it were generally available, have a material effect on the price or value of ORG Shares, within the meaning of s 674A(2)(d) of the Corporations Act.

Particulars

i. The particulars subjoined to paragraph 185 above are repeated.

- ii. *Prior to the start of the Relevant Period, Origin made the statements pleaded in paragraphs 88 to 97 above. Further, at the start of the Relevant Period to 17 February 2022, Origin made the statements pleaded in paragraphs 98 to 102 and 103 to 108 above.*
- iii. *Each of the statements referred to in particular (ii) above was published in a manner likely to bring what was said to the attention of the Affected Market.*
- iv. *By reason of particular (iii) above, the contents of the statements in particular (ii) were objectively likely to influence investors who were considering whether to purchase or sell ORG Shares.*
- v. *At the start of the Relevant Period, there had been continuing supply and delivery constraints affecting the volume of coal available to Eraring Power Station and particular (i) subjoined to paragraph 182 above is repeated;*
- vi. *At the start of the Relevant Period, the true position was as pleaded in paragraph 182 above, but that was not known to the Affected Market;*
- vii. *Had the true position referred to in particular (vi) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements referred to in particular (ii) above, and Origin (and its directors and officers) acting reasonably would have considered that such qualification or contradiction was objectively likely to influence investors who were considering purchasing or selling ORG Shares.*
- viii. *Origin's directors and officers knew it had made the statements referred to in particular (ii) above, that they had been made to the Affected market as set out in particular (iii) above, and having regard to their inherent nature ought reasonably to have known that the contents of the statements were objectively likely to influence investors who were considering buying or selling ORG Shares, as set out in particular (iv) above.*
- ix. *Origin's directors and officers who did not have actual knowledge of the true position as pleaded in paragraph 182 failed to obtain that information which they ought to have acquired in the course of their duties, and*
 - A. *consider whether their actual knowledge qualified or contradicted any of the statements as set out in particular (ii) above so as to be likely to influence investors who were considering purchasing or selling ORG Shares, so concluding and then causing a corrective disclosure to be issued; and*

- B. *communicate their actual knowledge to Origin's directors and officers (and those persons with responsibility for monitoring compliance with the Continuous Disclosure Obligations and the Listing Rules) so that Origin could properly consider whether the actual knowledge qualified or contradicted any or all of Origin's statements set out in particular (ii) above so as to be likely to influence investors who were considering purchasing or selling ORG Shares, so concluding then causing a corrective disclosure to be issued;*
- C. *alternatively, Origin failed to ensure that its systems had processes to ensure that those directors and officers who did not have actual knowledge of the true position as pleaded in paragraph 182 above obtained that information which they ought to have obtained during the course of their duties and then taken the steps set out in particulars (ix)(A) and (B) above.*

191. By reason of the matters pleaded in paragraphs 185 to 190 above, on and from 20 October 2021 to the end of the Relevant Period, Origin was obliged by) s 674A(2) of the Corporation Act to notify the ASX of the Coal Supply Constraint and Impact Information.

192. Origin did not notify the ASX of the Coal Supply Constraint and Impact Information during the Relevant Period.

193. By reason of the matters pleaded in paragraphs 191 and 192 above, on and from 20 October 2021 to the end of the Relevant Period, Origin contravened s 674A(2) of the Corporations Act.

E.2 Energy Market Earnings Information

194. By at least the beginning of the Relevant Period, an officer of Origin ought reasonably to have come into possession, in the course of the performance of his or her duties as an officer of Origin, of the Energy Markets Earnings Information.

Particulars

- i. *As to the officers of Origin as at the beginning of the Relevant Period, the plaintiff refers to paragraphs 7 to 24 above.*
- ii. *Origin was bound by the Continuous Disclosure Obligations as pleaded in paragraph 5 above. It also had in place a Continuous Disclosure policy that set out the internal processes for inter alia assisting Origin and its officers to comply with the Corporations Act and Listing Rules and disclosure requirements thereunder.*

- iii. *Origin's Chief Executive Officer, Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations ought to have known or ought reasonably to have become aware of this information in the course of the performance of their duties by reason of the actual changes in market conditions as pleaded in paragraph 178, the criticality and importance of timely deliveries of coal to Eraring Power Station and Origin's sensitivity to higher wholesale energy procurement costs. Further:*
 - A. *throughout the Relevant Period, Origin knew that its ~4mt legacy coal supply contract would conclude by 30 June 2022 and that contracting requirements beyond FY2022 would be affected by pool price outlook: FY2021 Analyst Presentation (19 August 2021);*
 - B. *by at least 30 July 2021, Origin knew that elevated coal prices had led to higher than expected generation fuel costs in the electricity business: ORG, "FY21 Non-Cash Charges and FY22 Guidance" (30 July 2021); and*
 - C. *by at least 29 October 2021, Origin new pool prices were higher and that average NEM spot electricity prices for the September 2021 quarter had increased as compared to the September 2020 quarter: ORG, September 2021 Quarterly Report (29 October 2021).*
- iv. *Given those matters in particular (iii), Origin's Chief Executive Officer, Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations ought reasonably have formed the opinion(s) as pleaded in sub-paragraph 183 (a) and/or (b) and/or (c) above.*
- v. *Origin's Chief Executive Officer, Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations ought to have reported the information to Origin's Board of Directors, Risk Committee and Senior Executives consistent with their obligations (including per the Continuous Disclosure policy).*
- vi. *Alternatively, members of Origin's Board of Directors ought to have made reasonable enquiries of the Chief Executive Officer and/or the Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations and/or Senior Executives and management and/or Origin's Risk Committee(s) consistently with their duties of care and diligence so as to enable them to become aware of this information.*
- vii. *Further particulars may be provided following discovery and the filing of expert evidence.*

195. By reason of the matters pleaded in paragraph 194 above, as at the beginning of the Relevant Period, Origin was aware of the Energy Markets Earnings Information within the meaning of rule 3.1 (read with 19.12) of the Listing Rules.
196. At all times in the Relevant Period, the Energy Markets Earnings Information was information concerning Origin that a reasonable person would expect to have a material effect on the price or value of ORG Shares within the meaning of rule 3.1 of the Listing Rules.
197. At all times in the Relevant Period, by reason of the matters pleaded in paragraphs 195 and 196 above, Origin had information that rule 3.1 of the Listing Rules required Origin to notify the ASX (namely the Energy Markets Earnings Information) within the meaning of s 674A(2)(b) of the Corporations Act.
198. At all times in the Relevant Period, the Energy Markets Earnings Information was not generally available within the meaning of s 674A(2)(c) the Corporations Act.

Particulars

- i. The plaintiff refers to s 676 of the Corporations Act as in force during the Relevant Period which concerns when information is generally available.*
199. At all times in the Relevant Period, Origin:
- (a) ought to have known that the Energy Markets Earnings Information would, if generally available, have a material effect on the price or value of ORG Shares; and
- (b) in the premises, was negligent with respect to whether the Energy Markets Earnings Information would, if it were generally available, have a material effect on the price or value of ORG Shares, within the meaning of s 674A(2)(d) of the Corporations Act.

Particulars

- i. The particulars subjoined to paragraph 194 above are repeated.*
- ii. Prior to the start of the Relevant Period, Origin made the statements pleaded in paragraphs 88 to 97 above. Further, at the start of the Relevant Period to 29 October 2021, Origin made the statements pleaded in paragraphs 98 to 102 above.*
- iii. Each of the statements referred to in particular (ii) above was published in a manner likely to bring what was said to the attention of the Affected Market.*

- iv. *By reason of particular (iii) above, the contents of the statements in particular (ii) were objectively likely to influence investors who were considering whether to purchase or sell ORG Shares.*
- v. *At the start of the Relevant Period, the true position was as pleaded in paragraph 178 above, but that was not known to the Affected Market.*
- vi. *Had the true position referred to in particular (v) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements referred to in particular (ii) above, and Origin (and its directors and officers) acting reasonably would have considered that such qualification or contradiction was objectively likely to influence investors who were considering purchasing or selling ORG Shares.*
- vii. *Origin's directors and officers knew it had made the statements referred to in particular (ii) above, that they had been made to the Affected market as set out in particular (iii) above, and having regard to their inherent nature ought reasonably to have known that the contents of the statements were objectively likely to influence investors who were considering buying or selling ORG Shares, as set out in particular (iv) above.*
- viii. *Origin's directors and officers who did not have actual knowledge of the true position as pleaded in paragraph 178 failed to obtain that information which they ought to have acquired in the course of their duties and:*
 - A. *consider whether their actual knowledge qualified or contradicted any of the statements as set out in particular (ii) above so as to be likely to influence investors who were considering purchasing or selling ORG Shares, so concluding and then causing a corrective disclosure to be issued; and*
 - B. *communicate their actual knowledge to Origin's directors and officers (and those persons with responsibility for monitoring compliance with the Continuous Disclosure Obligations and the Listing Rules) so that Origin could properly consider whether the actual knowledge qualified or contradicted any or all of Origin's statements set out in particular (ii) above so as to be likely to influence investors who were considering purchasing or selling ORG Shares, so concluding then causing a corrective disclosure to be issued;*
- ix. *alternatively, Origin failed to ensure that its systems had processes to ensure that those directors and officers who did not have actual knowledge of the true position as pleaded in paragraph 178 above obtained that information which they ought to have obtained during*

the course of their duties and then taken the steps set out in particulars (viii)(A) and (B) above.

200. By reason of the matters pleaded in paragraphs 194 to 199 above, on and from 20 October 2021 to the end of the Relevant Period, Origin was obliged by s 674A(2) of the Corporations Act to notify the ASX of the Energy Markets Earnings Information.
201. Origin did not notify the ASX of the Energy Markets Earnings Information during the Relevant Period.
202. By reason of the matters pleaded in paragraphs 200 and 201 above, on and from 20 October 2021 to the end of the Relevant Period, Origin contravened s 674A(2) of the Corporations Act.

E.3 Reaffirmed Energy Market Earnings Information

203. By at least 17 February 2022, an officer of Origin ought reasonably to have come into possession, in the course of the performance of his or her duties as an officer of Origin, of the Reaffirmed Energy Markets Earnings Information.

Particulars

- i. As to the officers of Origin as at the beginning of the Relevant Period, the plaintiff refers to paragraphs 7 to 24 above.*
- ii. Origin was bound by the Continuous Disclosure Obligations as pleaded in paragraph 5 above. It also had in place a Continuous Disclosure policy that set out the internal processes for inter alia assisting Origin and its officers to comply with the Corporations Act and Listing Rules and disclosure requirements thereunder.*
- iii. Origin's Chief Executive Officer, Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations ought to have known or ought reasonably to have become aware of this information in the course of the performance of their duties by reason of the actual changes in market conditions as pleaded in paragraph 179, the criticality and importance of timely deliveries of coal to Eraring Power Station and Origin's sensitivity to higher wholesale energy procurement costs. Particulars (iii)(A) to (C) to paragraph 194 above are repeated. Further:*
 - A. by at least 31 January 2022, Origin knew that NEM spot electricity prices for the December 2021 quarter had increased to \$57.5/MWh as compared to \$43.8/MWh for the December 2020 quarter: ORG, Quarterly Report (December 2021);*

- B. *by at least 17 February 2022, Origin knew that in the past six months, its major coal supplier had encountered “operational issues” associated with, inter alia, coal mining and as a result the deliveries of coal had been lower than expected. By this date, Origin knew this constraint expected to continue into the second half of 2022. By this date, Origin knew that the coal delivery constraint had led to Eraring Power Station production volumes being lower and the concomitant need to purchase coal at higher market prices. By this date, Origin knew there would be an under delivery of coal to Eraring in the 2022 year. These matters were known by Calabria and stated by him during the 1H2022 Earnings Call and were repeated in the 1H22 Investor Presentation;*
 - C. *by at least 17 February 2022, Origin knew that the Energy Markets’ operating conditions were challenging due to, inter alia, higher wholesale energy procurement costs incurred. By this date, Origin knew Eraring Power Station had been impacted by operational constraints at one of its primary suppliers, contributing to a material increase in both coal and wholesale electricity procurement costs: ORG, Half-Year Results 2022;*
 - D. *by at least 17 February 2022, Origin knew that its Energy Markets business had been impacted by higher energy procurement costs due in part to the operational issues referred to in particular (B) above, Origin had sourced additional purchases of relatively high-price coal on market and high price electricity swap contracts: 1H2022 Interim Financial Report (17 February 2022); and*
 - E. *by at least 29 April 2022, Origin knew output from Eraring Power Station was significantly down for the financial year as compared to the prior corresponding period driven primarily by coal delivery constraints at its major supplier: ORG, Quarterly Report (March 2022). By this date, wholesale prices across the NEM had risen significantly compared with the prior period driven by higher coal prices: ORG, Quarterly Report (March 2022). By this date, Origin knew that NEM spot prices for the March 2022 quarter had increased from the December 2021 and March 2021 quarters driven by inter alia, higher coal and gas generation fuel costs: ORG, Quarterly Report (March 2022).*
- iv. *Given those matters in particular (iii), Origin’s Chief Executive Officer, Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations ought reasonably to have formed the opinion(s) as pleaded in sub-paragraph 184(a) and/or (b) and/or (c) above.*

- v. *Origin's Chief Executive Officer, Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations ought to have reported the information to Origin's Board of Directors, Risk Committee and Senior Executives consistent with their obligations (including per the Continuous Disclosure policy).*
- vi. *Alternatively, members of Origin's Board of Directors ought to have made reasonable enquiries of the Chief Executive Officer and/or the Chief Financial Officer and/or Executive General Manager, Energy Supply and Operations and/or Senior Executives and management and/or Origin's Risk Committee(s) consistently with their duties of care and diligence so as to enable them to become aware of this information.*
- vii. *Further particulars may be provided following discovery and the filing of expert evidence.*

204. By reason of the matters pleaded in paragraph 203 above, by at least 17 February 2022, Origin was aware of the Reaffirmed Energy Markets Earnings Information within the meaning of rule 3.1 (read with 19.12) of the Listing Rules.

205. On and from 17 February 2022 to the end of the Relevant Period, the Reaffirmed Energy Markets Earnings Information was information concerning Origin that a reasonable person would expect to have a material effect on the price or value of ORG Shares within the meaning of rule 3.1 of the Listing Rules.

206. On and from 17 February 2022 to the end of the Relevant Period, by reason of the matters pleaded in paragraphs 204 and 205 above, Origin had information that rule 3.1 of the Listing Rules required Origin to notify the ASX (namely the Reaffirmed Energy Markets Earnings Information) within the meaning of s 674A(2)(b) of the Corporations Act.

207. At all times from 17 February 2022 to the end of the Relevant Period, the Reaffirmed Energy Markets Earnings Information was not generally available within the meaning of s 674A(2)(c) the Corporations Act.

Particulars

- i. *The plaintiff refers to s 676 of the Corporations Act as in force during the Relevant Period which concerns when information is generally available.*

208. At all times on and from 17 February 2022, Origin:

- (a) ought to have known that the Reaffirmed Energy Markets Earnings Information would, if generally available, have a material effect on the price or value of ORG Shares; and
- (b) in the premises, was negligent with respect to whether the Reaffirmed Energy Markets Earnings Information would, if it were generally available, have a material effect on the price or value of ORG Shares, within the meaning of s 674A(2)(d) of the Corporations Act.

Particulars

- i. *The particulars subjoined to paragraph 203 above are repeated.*
- ii. *Prior to the start of the Relevant Period, Origin made the statements pleaded in paragraphs 88 to 97 above. Further, at the start of the Relevant Period to 29 October 2021, Origin made the statements pleaded in paragraphs 98 to 102 above.*
- iii. *Each of the statements referred to in particular (ii) above was published in a manner likely to bring what was said to the attention of the Affected Market.*
- iv. *By reason of particular (iii) above, the contents of the statements in particular (ii) were objectively likely to influence investors who were considering whether to purchase or sell ORG Shares.*
- v. *By 17 February 2022, the true position was as pleaded in paragraph 179 above, but that was not known to the Affected Market.*
- vi. *Had the true position referred to in particular (v) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements referred to in particular (ii) above, and Origin (and its directors and officers) acting reasonably would have considered that such qualification or contradiction was objectively likely to influence investors who were considering purchasing or selling ORG Shares.*
- vii. *Origin's directors and officers knew it had made the statements referred to in particular (ii) above, that they had been made to the Affected Market as set out in particular (iii) above, and having regard to their inherent nature ought reasonably to have known that the contents of the statements were objectively likely to influence investors who were considering buying or selling ORG Shares, as set out in particular (iv) above.*
- viii. *Origin's directors and officers who did not have actual knowledge of the true position as pleaded in paragraph*

179 above failed to obtain that information which they ought to have acquired in the course of their duties and:

- A. consider whether their actual knowledge qualified or contradicted any of the statements referred to in particular (ii) above so as to be likely to influence investors who were considering purchasing or selling ORG Shares, so concluding and then causing a corrective disclosure to be issued; and*
 - B. communicate their actual knowledge to Origin's directors and officers (and those persons with responsibility for monitoring compliance with the Continuous Disclosure Obligations and the Listing Rules) so that Origin could properly consider whether the actual knowledge qualified or contradicted any or all of Origin's statements referred to in particular ii above so as to be likely to influence investors who were considering purchasing or selling ORG Shares, so concluding then causing a corrective disclosure to be issued.*
- ix. Alternatively, Origin failed to ensure that its systems had processes to ensure that those directors and officers who did not have actual knowledge of the true position as pleaded in paragraph 179 above obtained that information which they ought to have obtained during the course of their duties and then taken the steps set out in particulars (viii) (A) and (B) above.*

209. By reason of the matters pleaded in paragraphs 203 to 208 above, on and from 17 February 2022 to the end of the Relevant Period, Origin was obliged by s 674A(2) of the Corporations Act to notify the ASX of the Reaffirmed Energy Markets Earnings Information.

210. Origin did not notify the ASX of the Reaffirmed Energy Markets Earnings Information during the Relevant Period.

211. By reason of the matters pleaded in paragraphs 209 and 210 above, on and from 17 February 2022 to the end of the Relevant Period, Origin contravened s 674A(2) of the Corporations Act.

F MISLEADING OR DECEPTIVE CONDUCT CONTRAVENTIONS

212. In making, maintaining, or failing to correct or qualify of each or any of:

- (a) the FY2022 Energy Markets Guidance Representation, the FY2022 Energy Markets Implied Representation, the FY2023 Energy Markets Guidance Representation and the FY2023 Energy Markets Implied Representations; and

- (b) the Reaffirmed FY2022 Energy Markets Guidance Representation, the Reaffirmed FY2022 Energy Markets Implied Representation, the FY2022 Energy Markets Conditions Representation, the Reaffirmed FY2023 Energy Markets Guidance Representation, the Reaffirmed FY2023 Energy Markets Implied Representations and the FY2023 Energy Markets Conditions Representation—

Origin engaged in conduct:

- (i) in relation to financial products (being ORG Shares) within the meaning of s 1041H(1) of the Corporations Act;
- (ii) in trade or commerce in relation to financial services within the meaning of s 12DA of the ASIC Act; and/or
- (iii) in trade or commerce, within the meaning of s 18 of the ACL.

213. On and from the start of the Relevant Period, Origin did not have reasonable grounds for maintaining, and failed to correct or qualify, each or any of the FY2022 Energy Markets Guidance Representation, the FY2022 Energy Markets Implied Representations, the FY2023 Energy Markets Guidance Representation and the FY2023 Energy Markets Implied Representations by reason of the changes in market conditions as pleaded in paragraph 178 above.

Particulars

- i. Each of the FY2022 Energy Markets Guidance Representation, the FY2022 Energy Markets Implied Representations, the FY2023 Energy Markets Guidance Representation and the FY2023 Energy Markets Implied Representations were a representation as to future matters, and s 769C of the Corporations Act, s 12BB of the ASIC Act and/or s 4 of the ACL are relied on by the plaintiff.*

214. Further, on and from 17 February 2022, Origin did not have reasonable grounds for maintaining, and failed to correct or qualify the Reaffirmed FY2022 Energy Markets Guidance Representation, the Reaffirmed FY2022 Energy Markets Implied Representations, the FY2022 Energy Markets Conditions Representation, the Reaffirmed FY2023 Energy Markets Guidance Representation, the Reaffirmed FY2023 Energy Markets Implied Representations and the FY2023 Energy Markets Conditions Representation by reason of the changes in market conditions as pleaded in paragraph 179 above.

Particulars

- i. *Each of the Reaffirmed FY2022 Energy Markets Guidance Representation, the Reaffirmed FY2022 Energy Markets Implied Representations, the FY2022 Energy Markets Conditions Representation, the Reaffirmed FY2023 Energy Markets Guidance Representation, the Reaffirmed FY2023 Energy Markets Implied Representations and the FY2022 Energy Markets Conditions Representation were a representation as to future matters, and s 769C of the Corporations Act, s 12BB of the ASIC Act and/or s 4 of the ACL are relied on by the plaintiff.*

F.1 The FY2022 Energy Markets Guidance Representation and the FY2022 Energy Markets Implied Representations

215. By reason of the matters pleaded in paragraphs 212 and 213 above, on and from the start of the Relevant Period, in maintaining, or failing to correct or qualify, each or any of the FY2022 Energy Markets Guidance Representation and/or the FY2022 Energy Markets Implied Representations, Origin engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.
216. By reason of the matters pleaded in paragraphs 212, 213 and 215 above, on and from the start of the Relevant Period, Origin contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (**FY2022 Energy Markets Guidance Misleading Conduct Contraventions**).

F.2 The FY2023 Energy Markets Guidance Representation and the FY2023 Energy Markets Implied Representations

217. By reason of the matters pleaded in paragraphs 212 and 213 above, on and from the start of the Relevant Period, in making, maintaining, or failing to correct or qualify, each or any of the FY2023 Energy Markets Guidance Representation and/or the FY2023 Energy Markets Implied Representations, Origin engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.
218. By reason of the matters pleaded in paragraphs 212, 213 and 217 above, on and from the start of the Relevant Period, Origin contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (**FY2023 Energy Markets Guidance Misleading Conduct Contraventions**).

F.3 The Reaffirmed FY2022 Energy Markets Guidance Representation and the Reaffirmed FY2022 Energy Markets Implied Representations

219. By reason of the matters pleaded in paragraphs 212 to 214 above, on and from 17 February 2022, in making, maintaining or failing to correct or qualify, each or any of the Reaffirmed FY2022 Energy Markets Guidance Representation and/or the Reaffirmed FY2022 Energy Markets Implied Representations, Origin engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.
220. By reason of the matters pleaded in paragraphs 212 to 214 and 219 above, on and from 17 February 2022, Origin contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (**Reaffirmed FY2022 Energy Markets Guidance Misleading Conduct Contraventions**).

F.4 The Reaffirmed FY2023 Energy Markets Guidance Representation and the Reaffirmed FY2023 Energy Markets Implied Representations

221. By reason of the matters pleaded in paragraphs 212 to 214 above, on and from 17 February 2022, in making, maintaining or failing to correct or qualify, each or any of the Reaffirmed FY2023 Energy Markets Guidance Representation and/or the Reaffirmed FY2023 Energy Markets Implied Representations, Origin engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.
222. By reason of the matters pleaded in paragraphs 212 to 214 and 221 above, on and from 17 February 2022, Origin contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (**Reaffirmed FY2023 Energy Markets Guidance Misleading Conduct Contraventions**).

F.5 The FY2022 Energy Markets Conditions Representation and the FY2023 Energy Markets Conditions Representation

223. By reason of the matters pleaded in paragraphs 212 and 214 above, on and from 17 February 2022, in making, maintaining or failing to correct or qualify, each or any of the FY2022 Energy Markets Conditions Representation and/or the FY2023 Energy Markets Conditions Representation, Origin engaged in conduct which was misleading or deceptive, or likely to mislead or deceive.
224. By reason of the matters pleaded in paragraphs 212, 214 and 223 above, on and from 17 February 2022, Origin contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18

of the ACL (**FY2022 and FY2023 Energy Markets Conditions Misleading Conduct Contraventions**).

G ORIGIN'S REVISED FY2022 GUIDANCE AND WITHDRAWAL OF FY2023 GUIDANCE

G.1 1 June 2022 Corrective Disclosure

225. On 1 June 2022, Origin:

- (a) published and lodged with the ASX a document titled "Update on operating conditions and guidance" (**Update on FY2022 and FY2023 Guidance**); and
- (b) convened an earnings call (**1 June Earnings Call**), in a manner likely to bring things said during it to the attention of the Affected Market.

226. In the Update on FY2022 and FY2023 Guidance, Origin made the following statements:

- (a) Origin expected FY2022 Energy Markets Underlying EBITDA to be lower than the original guidance range of \$450 million—\$600 million (**Revised FY2022 Energy Markets Guidance**); and
- (b) there was a high degree of uncertainty around the range of earnings outcomes for FY2023 and as a result, Origin withdrew all guidance for FY2023 (**Withdrawn FY2023 Energy Markets Guidance**).

Particulars

- i. The statements in sub-paragraph 226(a) and 226(b) were express and in writing in the Update on FY2022 and FY2023 Guidance.*

227. The Update on FY2022 and FY2023 Guidance contained the following statements:

- (a) as to FY2022 Energy Markets Guidance:
 - (i) "In Energy Markets, ongoing challenges with coal supply have been impacting Eraring Power Station throughout FY2022. However, the situation has deteriorated significantly in recent weeks, with material under-delivery of contracted coal compared to expectations, and with Centennial Coal notifying Origin of further production constraints at its Mandalong mine. Deliveries from the Mandalong mine are expected to be interrupted during the remainder of

FY2022 and into the first half of FY2023. Equipment supply chain delays are also expected to impact coal deliveries in FY2023”; and

(ii) “The recent material under-delivery of coal to Eraring results in lower output from the plant, additional replacement coal purchases at significantly higher prices, and is being exacerbated by coal delivery constraints via rail. Despite positioning the year with a relatively low short position across all states, the lower output from Eraring results in a greater exposure to the purchase of electricity at current higher spot prices in order to meet customer demand”;

(b) as to FY2023 Energy Markets Guidance:

(i) “The challenges with coal delivery to Eraring Power Station are expected to persist into FY2023. This is expected to result in a material increase in coal purchasing costs given high coal prices and continued exposure to high spot electricity prices. While Origin has worked closely with coal suppliers to secure additional coal supply by rail, there are limitations to the amount of coal that can be delivered to the plant by this method. Therefore, there is uncertainty regarding the plant’s output in FY2023. Origin is part-way through finalising coal contracting arrangements for FY2023”; and

(ii) “Due to the factors outlined above there is a very high degree of uncertainty around the range of earnings outcomes for the 2023 financial year”.

Particulars

i. The statements in sub-paragraph 227(a) and 227(b) were express and in writing in the Update on FY2022 and FY2023 Guidance.

228. At the 1 June Earnings Call, Origin made the following statements:

(a) “There’s been very recent events that have actually really resulted us landing in this position today. And that’s really as a result, in our circumstances, of having recent under-delivery of contracted coal by Centennial, coinciding with us, therefore, needing to secure further coals limited by rail and some sort of client chain that is associated with sort of rail movements and cancellation rates of rail. And to the extent we’ve not been able to cover the energy position through those two matters, then clearly, we have a small amount but nevertheless exposed to spot prices, but those spot prices, I think, you could all observe in the market, has accelerated dramatically over the last week or two”;

- (b) “But the very recent sort of under delivery relative to our last guidance by Centennial, which was associated with specific matters regarding Mandalong and even their Eraring coal mine has meant that we’re, therefore, not being able to produce our energy at the cost we are anticipating on a blended basis”;
- (c) “If as a result of that coal supply delivery, which by the way continues into ‘23, specifically regarding Mandalong that has led to us to withdraw guidance, we gave that guidance in ‘23 based on certain commodity and market outlook. And clearly, that’s changed. And the reason we’ve withdrawn it is just that there’s a large range of outcomes based on the supply of energy, the wholesale markets and how they play out over the coming 12 months”;
- (d) “... [H]istorically, over the last, I don’t know, how many years ... there’s been a base load supply of coal that’s come from those adjacent mines operated by Centennial. And they have, until this year, largely delivered on those contractual commitments. This year, what we have found for the first time is that they’ve underdelivered on their existing mine commitments by over 1 million tonnes. So that’s the first thing ...”;
- (e) “Secondly, on top of that, we would then contract from a variety of other sources, but generally to a much smaller volume, if you could think about our volumes over time. So through the course of this year, they’ve had operational matters across a variety of their mines ... Their focus and our focus initially had been to get the operational performance. We have, therefore, extended the existing contract into this financial year, which was the first priority. They had a fair bit of operational stuff and, therefore, requested that the negotiations for the future contracts therefore take place immediately after some of those operational matters”;
- (f) “And so we’ve been in discussions with them about those future contracts for some months now and had been certainly in negotiation with them before even -- well before Christmas last year. Well before -- nevertheless we find ourselves in a situation where they’ve been interplaying between both their operational reliability and their ability to, therefore, enter into those term contracts beyond”;
- (g) “So that’s how we have landed here. And clearly, the Mandalong mine matter has only emerged very recently to do with some specific aspects geologically with that mine. But nevertheless, that’s how we’ve landed. It’s the physical edge. It’s not running a short position in any other way. It’s actually even been a supply of that. And we’ve risked that down, source of the coal. And that is -- the constraint on the other coal is largely due to

rail access. So we've been getting coal, but over recent times, we've also seen cancellations on train delivered coal”;

- (h) “We've contracted certainly some coal in the next year, but we have – we're only partway through that. So there's more coal to contract into that as well as obviously making sure that the existing coal contracted is delivered. And we would have already – we've also been in the market in terms of purchasing both swap cover in that market as well. So we're partway through that. We're not completely done in that respect. And therefore, we still have a range of outcomes on electricity associated with them;
- (i) “...[O]utside Centennial, we've made significant progress. And what we're assuming at the moment is we're still averaging two trains a day into the power station. Now the other point which I'd like to make here is that we are working on how we can improve deliveries of coal on our rail lines. So we are still working very hard on that as well with government and the rail providers. Clearly, with Centennial just with all the operational issues they're having, I can go into detail here. But essentially, that they're a part of the coal mine in Mandalong, which is problematic. And so they are really having geological risk. They're waiting on new equipment, which has been delayed because of supply issues, what have you. And so given all that, we are working very closely with Centennial, and that's a key priority as well”.
- (j) “[I]t's the Mandalong mine specifically where there's probably more geological issues at the moment”;
- (k) “[T]here's two coal mines next to Eraring. Myuna goes straight into Eraring. So we're negotiating on that. So that goes nowhere else. Mandalong can supply -- it does supply other domestic coal fire gas stations. Vales being the closest one. But they also are clearly big exporters as well. So there's competing markets here”;
- (l) “Well, ... '23 difficult to forecast, and I'll start, I'm not really going to give you the numbers that you want specifically. But yes, with these elevated prices and just the level of volatility, then even quite small changes in position have quite large P&L impact. So we're seeing a much, much, much wider range of outcomes in 2023. And even you can

see in the balance of 2022, the volatility causing us to have a quite wide range given you've only got 4 or 5 weeks of this to go".

Particulars

- i. The statements in sub-paragraph 228(a) to 228(h) above were express and made by Calabria during the 1 June Earnings Call.*
- ii. The statements in sub-paragraph 228(i) and 228(j) above were express and made by Jarvis during the 1 June Earnings Call.*
- iii. The statements in sub-paragraph 228(l) above were express and made by Lucas during the 1 June Earnings Call.*

G.2 Price response following the 1 June Corrective Disclosure

229. Following the release of the Revised FY2022 Energy Markets Guidance and the Withdrawn FY2023 Energy Markets Guidance:

- (a) the price of ORG Shares fell materially; and
- (b) the value of ORG Equity Swaps was materially adversely affected.

Particulars

- i. On 1 June 2022, the price of ORG Shares fell on the ASX by \$0.94 (~13.72%).*
- ii. Further particulars may be provided following the filing of expert evidence.*

H CONTRAVENING CONDUCT CAUSED LOSS

H.1 Market based causation

H.1.1 ORG Shares

230. The plaintiff and some Group Members acquired an interest in ORG Shares in a market of investors or potential investors in ORG Shares in circumstances where:

- (a) Origin was bound by the Continuous Disclosure Obligations as pleaded in paragraph 5 above;

- (b) the price of ORG Shares was affected by information notified to the ASX in accordance with those obligations;
 - (c) the price of ORG Shares was affected by representations made by Origin to the Affected Market;
 - (d) Origin was obliged by s 1041H of the Corporations Act and/or s 12DA of the ASC Act and/or s 18 of the ACL not to make representations to the market that were misleading or deceptive or likely to mislead or deceive.
231. By reason of the contraventions pleaded in paragraphs 193, 202 and 211 above (**Continuous Disclosure Contraventions**) and/or the contraventions pleaded in paragraphs 216, 218, 220, 222 and 224 above (**Misleading Conduct Contraventions**), the information available to the market for investors and potential investors in ORG Shares was different from the information that would have been available to the market had those contraventions not occurred.
232. During the Relevant Period, the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions caused the price of ORG Shares in the Affected Market to be, or material contributed to the price of ORG Shares in the market being, substantially greater than:
- (a) the true value of ORG Shares; and/or
 - (b) the price of ORG Shares that would have prevailed but for the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions.

Particulars

- i. Particulars of the extent to which the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions caused the price of ORG Shares to be, or materially contributed to the price of ORG Shares being, greater than their true value and/or greater than the price that would otherwise have prevailed during the Relevant Period will be provided by way of expert evidence.*
233. The material fall in the price of ORG Shares as pleaded in paragraph 229 above was caused or materially contributed to by:
- (a) the Revised FY2022 Energy Markets Guidance and the Withdrawn FY2023 Energy Markets Guidance; and

- (b) by reason of the matters pleaded in paragraphs 230 to 232 above, the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions.

H.1.2 ORG Equity Swaps

234. At all times in the Relevant Period, the market for ORG Equity Swaps was a market that traded on the basis that the market for ORG Shares had the features pleaded in paragraph 230 above.

235. By reason of the matters pleaded in paragraphs 230 to 234 above, when during the Relevant Period Group Members who entered into ORG Equity Swaps entered into those swaps, they did so at a time when:

- (a) the market for ORG Shares was substantially greater than:
 - (i) the true value of ORG Shares; and/or
 - (ii) the price of ORG shares that would have prevailed but for the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions;
- (b) the ORG Equity Swaps had been defined by reference to the market price of ORG Shares in circumstances where that market price had the features as pleaded in sub-paragraph 235(a) above; and
- (c) by reason of the matters pleaded in sub-paragraph 235(a)(i) and (ii) and 235(b) above, the value of the future cashflows to be received by the equity amount receiver pursuant to the ORG Equity Swaps (by reference to the performance of ORG Shares) was diminished and/or the value of the cashflows to be paid by the equity amount receiver in return was inflated.

H.2 Reliance

236. Further, or in the alternative to paragraphs 230 to 233 above, in deciding to acquire an interest in ORG Shares:

- (a) some Group Members would not have entered into the transactions pursuant to which they acquired ORG Shares if they had known the information pleaded in paragraphs 182, 183 and/or 184 above; and/or
- (b) some Group Members relied directly on some or all of:
 - (i) the representations the subject of the Misleading Conduct Contraventions; and/or

- (ii) the absence of any correction of or qualifications to those representations.

Particulars

- i. *The identities of those Group Members who would not have entered into the transactions pursuant to which they acquired ORG Shares had they known the information pleaded in paragraphs 182, 183 and/or 184 above and/or relied on the representations the subject of the Misleading Conduct Contraventions, are not presently known to the plaintiff and cannot be ascertained unless and until those advising the plaintiff take detailed instructions from all Group Members on individual issues related to the determination of those Group Members' claims.*
- ii. *Instructions will be obtained (and the particulars of identity provided) following opt out, the determination of the plaintiff's claims and identified common issues at an initial trial and if and when it is necessary for determination to be made of individual Group Members' claims.*

237. Further, or in the alternative to paragraphs 234 and 235 above, in deciding to acquire ORG Equity Swaps, some Group Members:

- (a) would not have acquired ORG Equity Swaps by reference to the price for, and volume of, ORG Shares that they did, if they had known of the information pleaded in paragraphs 182, 183 and/or 184 above; and/or
- (b) acquired ORG Equity Swaps by reference to the price of ORG Shares in reliance upon some or all of:
 - (i) the representations the subject of the Misleading Conduct Contraventions; and/or
 - (ii) the absence of any correction of or qualification to the representations the subject of those contraventions.

238. Further, or in the alternative to paragraphs 230 to 233 and 236 above, the plaintiff and some Group Members acquired an interest in ORG Shares during the Relevant Period on the assumption generally held by members of the Affected Market, including them, that the price at which they acquired that interest represented the market price in a market that had been informed of all material information relating to Origin.

Particulars

- i. Investors in shares on the ASX are generally aware that there is a complex and comprehensive regulatory regime including, inter alia, the ASX Listing Rules and sections 674(2) and 1041H of the Corporations Act, which has as one of its purposes to ensure that the market is promptly informed of all information which is relevant to the price at which shares are traded.*
- ii. Further particulars may be provided following the filing of expert evidence.*

239. Further, or in the alternative to paragraphs 234 and 235 and 237 above, some Group Members acquired ORG Equity Swaps during the Relevant Period on the assumption generally held by members of the Affected Market, including them, that the price at which they acquired that interest represented a price referable to the market price in a market that had been informed of all material information relating to Origin.

Particulars

- i. Investors in the equity swap market are generally aware that there is a complex and comprehensive regulatory regime including, inter alia, the ASX Listing Rules and sections 674(2) and 1041H of the Corporations Act, which:*
 - A. has as one of its purposes to ensure that the market is promptly informed of all information which is relevant to the price at which ORG Shares are traded; and*
 - B. influences the price of ORG Equity Swaps traded in the equity swap market.*
- ii. Further particulars may be provided following the filing of expert evidence.*

H.3 Loss and damage suffered by the plaintiff and Group Members

240. By reason of the matters pleaded in paragraphs 230 to 239 above, the plaintiff and Group Members have suffered loss or damage by, because of, and/or resulting from the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions.

Particulars

- i. As to the plaintiff, the loss is the difference between the price at which it acquired an interest in ORG Shares during the Relevant Period and the price at which that*

interest would have been acquired at that time had the Contravening Conduct not occurred (Price Inflation).

- ii. *The loss suffered by Group Members is either:*
 - A. *Price Inflation;*
 - B. *alternatively, the difference between the price at which they acquired an interest in ORG Shares during the Relevant Period and whatever is “left in hand” or was realised upon a sale of those shares following the Corrective Disclosure, modified to take into account so much, if any, of the movement in the traded price of ORG Shares which did not result from the Contravening Conduct;*
 - C. *alternatively, for days during the Relevant Period and thereafter where the traded price of ORG Shares fell as a result of the disclosure of information which had not previously been disclosed because of the Contravening Conduct, the quantum of that fall;*
 - D. *alternatively, for those Group Members who would have, but for the Contravening Conduct, not acquired an interest in ORG Shares and further or alternatively retained or acquired an alternative investment, the difference, at the date of hearing, between their actual position as a result of having acquired an interest in ORG Shares during the Relevant Period and the position in which they would have been had they not acquired that interest and further or alternatively made that alternative investment instead.*
- iii. *Further particulars will be provided following expert and lay evidence.*

I COMMON QUESTIONS OF LAW OR FACT

The questions of law or fact common to the claims of the plaintiff and Group Members are:

- 1. Whether Origin made during the Relevant Period:
 - (a) the FY2022 Energy Markets Guidance Representation;
 - (b) the FY2022 Energy Markets Implied Representations;
 - (c) the FY2023 Energy Markets Guidance Representation;
 - (d) the FY2023 Energy Markets Implied Representations;
 - (e) the Reaffirmed FY2022 Energy Markets Guidance Representation;

- (f) the Reaffirmed FY2022 Energy Markets Implied Representations;
 - (g) the FY2022 Energy Markets Conditions Representation;
 - (h) the Reaffirmed FY2023 Energy Markets Guidance Representation;
 - (i) the Reaffirmed FY2023 Energy Markets Implied Representations; and/or
 - (j) the FY2023 Energy Markets Conditions Representation
2. Whether the matters alleged in paragraphs 178 and 179 occurred and/or were true during the Relevant Period.
3. Whether Origin contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the ACL by making, maintaining and/or failing to qualify:
- (a) the FY2022 Energy Markets Guidance Representation;
 - (b) the FY2022 Energy Markets Implied Representations;
 - (c) the FY2023 Energy Markets Guidance Representation;
 - (d) the FY2023 Energy Markets Implied Representations;
 - (e) the Reaffirmed FY2022 Energy Markets Guidance Representation;
 - (f) the Reaffirmed FY2022 Energy Markets Implied Representations;
 - (g) the FY2022 Energy Markets Conditions Representation;
 - (h) the Reaffirmed FY2023 Energy Markets Guidance Representation;
 - (i) the Reaffirmed FY2023 Energy Markets Implied Representations; and/or
 - (j) the FY2023 Energy Markets Conditions Representation.
4. Whether there was any correction of or qualification to those representations during the Relevant Period.
5. Whether Origin knew or ought reasonably to have known during the Relevant Period of the Coal Supply Constraint and Impact Information (or any of it), the Energy Markets Earnings Information (or any of it) and/or the Reaffirmed Energy Markets Earnings Information (or any of it).

6. Whether, during the Relevant Period, the Coal Supply Constraint and Impact Information (or any of it), the Energy Markets Earnings Information (or any of it), and/or the Reaffirmed Energy Markets Earnings Information (or any of it) was information a reasonable person would expect to have a material effect on the value of ORG Shares.
7. Whether, during the Relevant Period, the Coal Supply Constraint and Impact Information (or any of it), the Energy Markets Earnings Information (or any of it) and/or the Reaffirmed Energy Markets Earnings Information (or any of it) was information that Origin was negligent with respect to whether it would have a material effect on the price or value of ORG Shares.
8. Whether, during the Relevant Period, the Coal Supply Constraint and Impact Information (or any of it), the Energy Markets Earnings Information (or any of it) and/or the Reaffirmed Energy Markets Earnings Information (or any of it), was not generally available.
9. Whether, during the Relevant Period, Origin was obliged to disclose to the ASX the Coal Supply Constraint and Impact Information (or any of it), the Energy Markets Earnings Information (or any of it) and/or the Reaffirmed Energy Markets Earnings Information (or any of it) and contravened s 674A(2) of the Corporations Act by failing to do so.
10. What is the proper measure of establishing whether the plaintiff and Group Members have suffered loss or damage by, because of or resulting from the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions and are entitled to compensation for that loss or damage.

AND THE PLAINTIFF CLAIMS on its own behalf and on behalf of Group Members:

- A.** A declaration that the defendant contravened ASX Listing Rule 3.1 and s 674A(2) of the Corporations Act by not informing the ASX immediately of some or all of:
1. the Coal Supply Constraint and Impact Information;
 2. the Energy Markets Earnings Information;
 3. the Reaffirmed Energy Markets Earnings Information.
- B.** An order pursuant to s 1317HA(1) of the Corporations Act that the defendant pay compensation to the plaintiff and Group Members for damage caused by its contraventions of s 674A(2) of the Corporations Act.
- C.** A declaration that the defendant engaged in conduct in contravention of:
1. s 1041H(1) of the Corporations Act;
 2. s 12DA(1) of the ASIC Act; and
 3. s 18 of the ACL.
- D.** An order pursuant to:
1. s 1041I of the Corporations Act that the defendant pay compensation to the plaintiff and Group Members for damage caused by the conduct of the defendant in contravention of s 1041H of the Corporations Act;
 2. s 12GF of the ASIC Act that the defendant pay compensation to the plaintiff and Group Members for damage caused by the conduct of the defendant in contravention of s 12DA(1) of the ASIC Act; and/or
 3. s 236 of the ACL that the defendant pay compensation to the plaintiff and Group Members for damage caused by the conduct of the defendant in contravention of s 18 of the ACL.
- E.** Interest pursuant to statute.
- F.** Costs.

G. Such further or other order as the Court determines is appropriate.

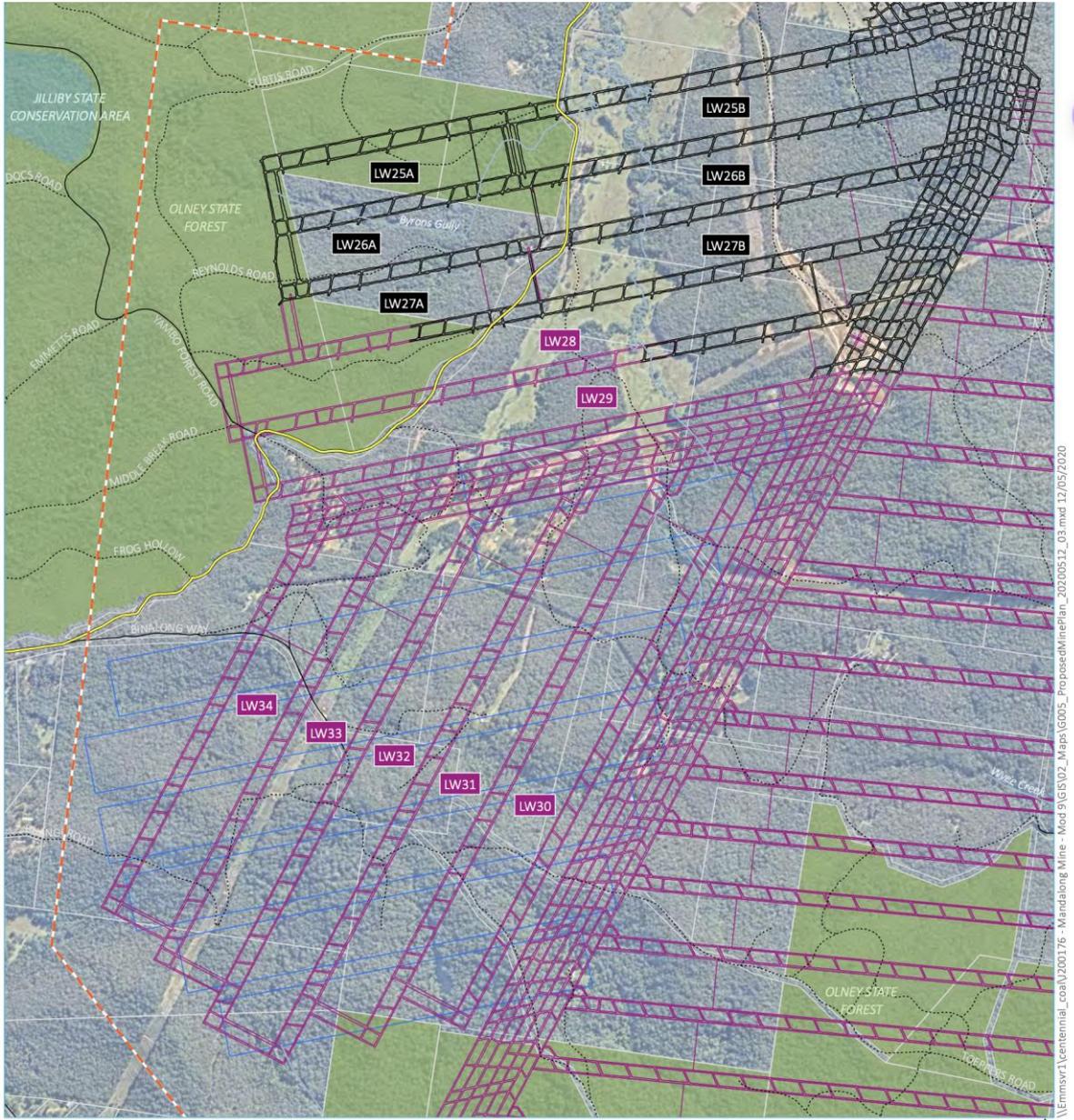
Dated: 21 January 2025

W.A.D. Edwards KC

R.V. Howe

Counsel for the plaintiff

Annexure 1 – approved and proposed longwall mines at Mandalong (as at May 2020)



Source: EMM (2020); Centennial (2020); NearMap (2020); DFSI (2017)

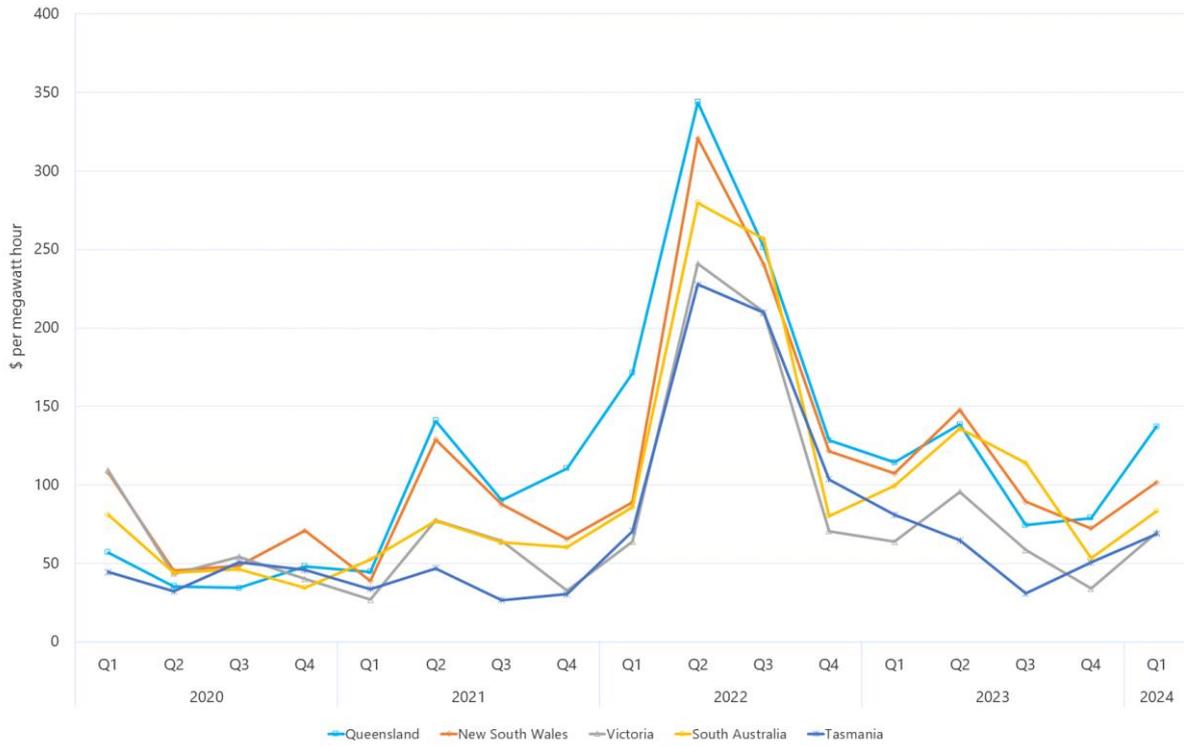
- | | |
|---|---|
| KEY | |
| Development consent boundary | Underground mine layout |
| Main road | Completed mine workings |
| Minor road | Proposed workings (including reoriented LW30-34) |
| Vehicular track | Previously approved workings (LW30-37) |
| Named watercourse | |
| Cadastral boundary | |
| NPWS reserve | |
| State forest | |

Proposed reorientation of longwall panels
at Mandalong Mine

Mandalong Mine Modification 9
 Modification report
 Figure 4.1

Annexure 2 – Australian Energy Regulator graph of the quarterly volume weighted average spot electricity prices in each region of the NEM 2020—2023

Available at <https://www.aer.gov.au/industry/registers/charts/quarterly-volume-weighted-average-spot-prices-regions> (accessed 10 May 2024).



Annexure 3 – AER’s Final Determination of Default Market Offer Prices 2021-22

Available at <https://www.aer.gov.au/documents/aer-default-market-offer-price-determination-2021-22-final-determination-27-april-2021> (accessed 10 May 2024, page 21 of embedded document).

Table 2: DMO prices – 1 July 2021 (including GST, nominal)

Distribution region		Residential without CL	Residential with CL	Small Business without CL
Ausgrid	DMO 3 Price	\$1,393	\$1,912	\$6,900
	for annual usage of	3,900 kWh	General usage 4,800 kWh + CL 2,000 kWh	20,000 kWh
	Difference to DMO 2	-\$69 (-4.7%)	-\$112 (-5.5%)	-\$340 (-4.7%)
Endeavour	DMO 3 Price	\$1,609	\$2,014	\$5,736
	for annual usage of	4,900 kWh	General usage 5,200 kWh + CL 2,200 kWh	20,000 kWh
	Difference to DMO 2	-\$102 (-6%)	-\$151 (-7%)	-\$441 (-7.1%)
Essential	DMO 3 Price	\$1,907	\$2,271	\$7,791
	for annual usage of	4,600 kWh	General usage 4,600 kWh + CL 2,000 kWh	20,000 kWh
	Difference to DMO 2	-\$53 (-2.7%)	-\$85 (-3.6%)	-\$250 (-3.1%)
Energex	DMO 3 Price	\$1,455	\$1,741	\$5,517
	for annual usage of	4,600 kWh	General usage 4,400 kWh + CL 1,900 kWh	20,000 kWh
	Difference to DMO 2	-\$53 (-3.5%)	-\$71 (-3.9%)	-\$243 (-4.2%)
SAPN	DMO 3 Price	\$1,716	\$2,077	\$8,033
	for annual usage of	4,000 kWh	General usage 4,200 kWh + CL 1,800 kWh	20,000 kWh
	Difference to DMO 2	-\$116 (-6.3%)	-\$167 (-7.4%)	-\$272 (-3.3%)