ASX release **31 October 2023**

Commencement of proceedings against PwC

Pioneer Credit Limited ('Pioneer' or the 'Company') advises that it has commenced legal proceedings in the Supreme Court of Western Australia against PricewaterhouseCoopers ('PwC') for negligence, breach of retainer, and misleading or deceptive conduct.

A copy of the Writ and Statement of Claim is attached.

The following is a short summary of the claim as made in the proceedings.

PwC were Pioneer's appointed auditors for the financial year ending 30 June 2014 until the financial year ending 30 June 2019.

The claim arises from PwC's opinion, first communicated to Pioneer in December 2017, that when Pioneer was required to adopt Accounting Standard AASB 9 ('AASB 9'), for the reporting period commencing 1 July 2018, it could continue to classify and report the value of its purchased debt portfolios (PDPs) at fair value through profit or loss.

It is alleged in the proceedings that PwC repeated and confirmed their opinion in this regard until February 2019, when they reviewed Pioneer's financial report for the half-year ending 31 December 2018, and reported that sufficient information was not available to determine whether Pioneer's existing method of classifying PDPs was appropriate. On or about April 2019, PwC advised Pioneer that, in PwC's opinion, Pioneer was required to classify and report the value of its PDPs under AASB 9 at amortised cost. This occurred less than three months before the end of the reporting period in which Pioneer was first required to classify and report the value of its PDPs under AASB 9, and less than five months before it was required to provide its financial results for the year ending 30 June 2019.

Pioneer claims that PwC's conduct caused Pioneer to breach its financial covenants and sustain significant loss and damage. If Pioneer had been aware from December 2017 that it was required to move to amortised cost, it could, with this knowledge, have conducted and managed its business and finances to avoid breaching its financial covenants. Pioneer claims that PwC's conduct caused Pioneer to suffer loss and damage currently assessed by Pioneer to be approximately $27 million (and almost $32 million with interest).

Chairman Stephen Targett commented, "Pioneer engaged PwC in 2013, prior to our Initial Public Offering, to ensure that Pioneer received independent audit services from a top tier firm. Pioneer's adoption of AASB 9 was a critical time for its business. Pioneer sought PwC's opinion well in advance of adopting AASB 9, to ensure that Pioneer's understanding and intended adoption was correct, and to provide it with sufficient time to prepare for any critical changes which might arise as a result of the new standard. The proceeding in essence alleges that PwC has failed the Company and its shareholders. Pioneer claims PwC's conduct has instead had a significant cost impact on the company, both to its bottom line and reputationally.

Naturally shareholders should expect that the Board would seek to recover the losses sustained. We have now commenced that process and will continue to keep shareholders updated as the matter progresses."

Authorised by:
Board of Directors, Pioneer Credit Limited

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About Pioneer

Pioneer Credit is an ASX-listed company (ASX: PNC) providing high quality, flexible, financial services support to help everyday Australians out of financial difficulty. Pioneer Credit has the trust of long-term vendor partners to do the right thing and respectfully support customers to achieve their financial independence.

Pioneer Credit has established a solid foundation to pursue further growth by leveraging its outstanding industry relationships, compliance record and customer-focused culture.

www.pioneercredit.com.au

IN THE SUPREME COURT
OF WESTERN AUSTRALIA
HELD AT PERTH

No. CIV 2222 of 2023

BETWEEN

PIONEER CREDIT LIMITED (ABN 44 103 003 505) — Plaintiff

AND

PRICEWATERHOUSECOOPERS (A FIRM) — Defendant

WRIT OF SUMMONS

Date of Document: 30/10/2023

Filed on behalf of: The Plaintiff

Date of Filing (and valid for service from): 30/10/2023

Filed by:
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Reference:	PVZ:NWK:20206968

TO: PRICEWATERHOUSECOOPERS (A FIRM)

OF: Tower One International Towers Sydney
Level 17
100 Barangaroo Avenue
BARANGAROO NSW 2000
Australia (Registered Office)

You are commanded that, within 21 days after the service of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in our Supreme Court in an action at the suit of the abovenamed plaintiff; and take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence.

Witness: THE CHIEF JUSTICE OF WESTERN AUSTRALIA on Monday, the 30th day of October 2023

NOTE: This writ may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

A defendant may appear to the writ by entering an appearance either personally or by solicitor at the Central Office of the Supreme Court at Perth.

If the defendant enters an appearance, then unless a summons for judgment is served on him in the meantime, he must also file a defence at the Central Office of the Supreme Court at Perth, and serve such defence on the solicitor for the plaintiff, within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

THE SEAL OF THE SUPREME COURT OF WESTERN AUSTRALIA

Statement of Claim

Introduction

1. The Plaintiff (**Pioneer**):

   (a) is and was at all material times a company incorporated pursuant to the *Corporations Act 2001* (Cth) (***Corporations Act***) and capable of suing in its own name;

   (b) is, and has been since in or about April 2014:

      (i) a public company listed on the Australian Stock Exchange (**ASX**);

      (ii) a disclosing entity, for the purposes of the *Corporations Act*;

      (iii) required by sections 292(1), 296(1), and 297 of the *Corporations Act* to prepare a financial report for each financial year which:

      A. complies with the accounting standards;

      B. gives a true and fair view of the financial position and performance of Pioneer and its subsidiaries;

      (iv) required by section 301(1) of the *Corporations Act* to have its financial report for a financial year audited in accordance with Division 3 of Chapter 2M of the *Corporations Act*, and to obtain an auditor's report;

      (v) required by sections 302(a), 304, and 305 of the *Corporations Act* to prepare a financial report for each half-year which:

      A. complies with the accounting standards and any further requirements in the *Corporations Regulations 2001*;

      B. gives a true and fair view of the financial position and performance of Pioneer and its subsidiaries;

      (vi) required by section 302(b) of the *Corporations Act* to have the financial report for each half-year audited or reviewed in accordance with Division 3 of Chapter 2M of the *Corporations Act*, and to obtain an auditor's report;

(vii) required by ASX Listing Rule 4.3A to give the ASX, following the end of each financial year, a preliminary final report providing the information set out in Appendix 4E of the ASX Listing Rules (**Preliminary Final Report**);

(viii) required by ASX Listing Rule 4.3B to give the ASX the Preliminary Final Report immediately when it is ready to be given to the ASX, and no later than the time it lodges its financial report for the financial year with ASIC and, in any event, no later than two months after the end of the financial year.

2. The Defendant (**PwC**):

(a) is and was at all material times:

(i) a partnership formed in Australia and capable of being sued in the name of the firm;

(ii) generally, considered to be one of the big four accounting firms in Australia;

(iii) conducting business in Australia providing, amongst other things, audit, advisory and tax services under the names "PricewaterhouseCoopers" and "PwC"

(iv) engaged in trade or commerce for the purposes of the *Australian Consumer Law* (***ACL***); and

(b) at all material times held itself out as having expertise, experience, resources and quality of service at the highest level of accounting firms in the Australian market.

3. Mr Douglas Craig (**Mr Craig**):

(a) is and has been a partner of PwC since in or about 2005;

(b) is and has been a registered company auditor, as that term is defined in the *Corporations Act*, since in or about August 2005; and

(c) provides audit services on behalf of PwC, in his capacity as a partner of the firm, and has done so since in or about August 2005.

4. Ms Regina Fikkers (**Ms Fikkers**):

(a) is and has been a partner of PwC since in or about 2003; and

(b) provides accounting and consulting services on behalf of PwC, in her capacity as a partner of the firm, and has done so since in or about 2003.

Engagement of PwC

5. In or about November 2013, Pioneer appointed PwC as its auditor for the purposes of the *Corporations Act* (**Appointment**).

6. Pursuant to section 324AB of the *Corporations Act*, the Appointment was taken to be an appointment of all persons who, at the date of the appointment, were members of PwC, and registered company auditors (as that term is defined in the *Corporations Act*).

7. PwC was and remained Pioneer's appointed auditor for the purposes of the *Corporations Act* in respect of the financial reports Pioneer prepared for:

(a) the financial year ending 30 June 2013 through to the financial year ending 30 June 2019; and

(b) the half-year ending 31 December 2013 through to the half-year ending 31 December 2018.

8. The Appointment, and the terms of Pioneer's engagement of PwC, were recorded in PwC's letter to Pioneer dated 12 November 2013, counter-signed by Leslie Crockett on behalf of Pioneer (**Engagement**).

9. The express material terms of the Engagement were as follows:

(a) PwC would audit Pioneer's financial report for each financial year and audit or review Pioneer's financial report for each half-year;

(b) PwC would carry out the obligations imposed on it by the *Corporations Act* arising from PwC being appointed Pioneer's auditor for the purposes of the *Corporations Act*;

(c) The parties may agree to PwC providing Pioneer with other audit related services;

(d) PwC would carry out its obligations under the *Corporations Act*, and provide its services, with reasonable skill and care.

10. Alternatively, it was an implied term of the Engagement that PwC would carry out its obligations under the *Corporations Act*, and provide its services, with reasonable skill and care.

Particulars

The term is implied as a matter of law.

PwC's obligations under the *Corporations Act*

11. As Pioneer's appointed auditor, PwC had the following obligations under the *Corporations Act*:

(a) to form an opinion on whether the financial report which they audited was in accordance with the *Corporations Act* including whether it complied with the accounting standards and gave a true and fair view of the financial position and the performance of Pioneer and, if consolidated financial statements were required, the financial position and the performance of the consolidated entity (section 307(a));

(b) to conduct any audit or review in accordance with the auditing standards (section 307A(1));

(c) if they audited a financial report, to report to members:

(i) on whether they were of the opinion the financial report was in accordance with the *Corporations Act* including whether it complied with the accounting standards and gave a true and fair view of the financial position and the performance of Pioneer and, if consolidated financial statements were required, the performance of the consolidated entity (sections 308(1) and 309(1));

(ii) describing any defect or irregularity in the financial report (sections 308(3)(a) and 309(3)(a));

(d) if they reviewed a financial report for a half-year, to report to members on whether they had become aware of any matter in the course of the review that made them believe that the financial report did not comply with the requirements of half-year reports under Division 2 of Chapter 2M of the *Corporations Act* and to describe the matter and the non-compliance (sections 309(4) and (5)).

PwC's duty of care

12. At all times during PwC's appointment as Pioneer's auditor, PwC owed Pioneer a duty at law, to exercise reasonable skill and care not to expose Pioneer to economic loss when:

(a) auditing and reviewing Pioneer's financial reports;

(b) carrying out its obligations under the *Corporations Act* with respect to auditing and reviewing Pioneer's financial reports;

(c) providing audit related services, including advice as to whether Pioneer's proposed accounting treatment of its PDP's would comply with AASB 9, and advice to Pioneer with respect to the preparation of its financial reports.

Particulars

The duty arises by reason of one or more of the following matters:

A. The Appointment and the statutory obligations pleaded in paragraph 11 above;

B. The Engagement;

C. The matters pleaded in paragraphs 2(a)(ii), 2(a)(iii) and 2(b) above;

D. PwC knew, or ought to have known, that Pioneer would rely on PwC to exercise reasonable skill and care when auditing and reviewing Pioneer's financial reports, carrying out its obligations under the *Corporations Act* and providing audit related services including advice to Pioneer with respect to the preparation of its financial reports; and

E. PwC knew, or ought to have known, that Pioneer could suffer loss and damage if PwC failed to exercise reasonable care and skill.

Relevant standard of care

13. The standard of care to be exercised by PwC, pursuant to the Engagement, further or alternatively the duty of care, was informed by the matters pleaded at paragraphs 2(a)(ii) and 2(b) above and higher than the standard of care which would otherwise be expected of an auditor.

AASB 9 and Pioneer's business

14. At all material times since no later than 2013, to the knowledge of PwC, Pioneer carried on the business of acquiring debt portfolios from financial institutions (**PDP's**) to earn profits.

15. On 17 December 2014, Australia Accounting Standards Board Standard number 9 (**AASB 9**) was published.

16. The application of AASB 9 was to become, and did become, mandatory, and superseded Australia Accounting Standards Board Standard number 139 (**AASB 139**), from 1 July 2018, for the purpose of a company with a reporting period starting after 1 January 2018.

17. At all material times prior to the reporting period commencing 1 July 2018, Pioneer classified and reported the value of its PDP's under AASB 139 at fair value through profit or loss (**Fair Value**).

PwC's Fair Value Opinion

18. On 26 October 2017, Pioneer requested PwC to advise whether it agreed that when Pioneer was required to classify and report the value of its PDP's under AASB 9, Pioneer's PDP's were to continue to be classified and measured at Fair Value.

Particulars

The request was made:

A. During a meeting at Pioneer's Perth offices on 26 October 2017, between PwC's Mr Douglas Craig and Mr Chris Young, and Pioneer's Chief Financial Officer at the time, Mr Leslie Crockett.

B. By email dated 26 October 2017 from Pioneer's Mr Crockett to PwC's Mr Craig and Mr Young.

19. On 11 December 2017, PwC advised Pioneer that when Pioneer was required to classify and report the value of its PDP's under AASB 9, Pioneer's PDP's were to continue to be classified and measured at Fair Value,

(**the Fair Value Opinion**).

Particulars

The Fair Value Opinion was formed by Ms Fikkers acting for and on behalf of PwC, and communicated by email dated 11 December 2017 from PwC's Mr Chris Young to Pioneer's Chief Financial Officer at the time, Mr Leslie Crockett (**Dec 17 Email**).

20. In or about late February 2018, PwC repeated, and confirmed, to Pioneer, the Fair Value Opinion.

Particulars

A. Report of PwC, signed by Mr Craig, to Pioneer's Audit and Risk Management Committee, with respect to PwC's review of Pioneer's financial report for the half-year ended 31 December 2017 (**HY18 ARMC Report**), in which PwC stated that they concurred with Pioneer's proposal to classify its PDP's at Fair Value under AASB 9.

B. PwC's independent auditor's review report to members of Pioneer, signed by Mr Craig and dated 26 February 2018, accompanying Pioneer's financial report for the half-year ended 31 December 2017 (**HY18 Report**), in which PwC stated that they were not aware of any matter that made them believe that the HY18 Report was not in accordance with the *Corporations Act*, in circumstances where:

(i) Immediately prior to PwC issuing the review report, they had repeated, and confirmed, the Fair Value Opinion in the HY18 ARMC Report;

(ii) Sections 304 and 305 of the *Corporations Act* required the HY18 Report to comply with the accounting standards and give a true and fair view of the financial position and performance of Pioneer and its subsidiaries;

(iii) The notes to Pioneer's financial statements for the HY18 Report included (at Note 12: Basis of preparation) a statement to the effect that Pioneer had assessed its future obligations under AASB 9 and concluded that its PDP's will continue to be classified at Fair Value;

(iv) Paragraph 15 of accounting standard AASB 101 (**AASB 101**) required Pioneer's HY18 Report to present fairly the financial position, financial performance and cash flows of Pioneer, by faithfully representing the effects of transactions and other events and conditions, and providing additional disclosure when necessary to achieve a fair presentation;

(v) Paragraph 17(b) of AASB 101 required Pioneer's HY18 Report to present accounting policies in a manner that provided reliable information.

21. On or about 21 August 2018, PwC repeated, and confirmed, to Pioneer, the Fair Value Opinion.

Particulars

Report of PwC, signed by Mr Craig, to Pioneer's Audit and Risk Management Committee, with respect to PwC's audit of Pioneer's financial report for the financial year ended 31 July 2018 (**FY18 ARMC Report**). The PwC Aug 18 Report stated (on page 18) that PwC had reviewed Pioneer management's financial statement disclosures (in relation to new accounting standards AASB 9, 15, and 16) and considered them to be appropriate.

22. On or about 24 August 2018, PwC repeated, and confirmed, to Pioneer, the Fair Value Opinion.

Particulars

A. PwC's independent auditor's report to members of Pioneer, signed by Mr Craig and dated 24 August 2018, accompanying Pioneer's financial report for the financial year ended 31 July 2018 (**FY18 Report**), in which PwC stated that they were not aware of any matter that made them believe that the FY18 Report was not in accordance with the *Corporations Act*, in circumstances where:

(i) Immediately prior to PwC issuing the audit report, they had stated in the FY18 ARMC Report that they had reviewed Pioneer management's financial statement disclosures (in relation to new accounting standards AASB 9, 15, and 16) and considered them to be appropriate;

(ii) Sections 304 and 305 of the *Corporations Act* required the FY18 Report to comply with the accounting standards and give a true and fair view of the financial position and performance of Pioneer and its subsidiaries;

(iii) The notes to Pioneer's financial statements for the financial year ended 30 June 2018 (which formed part of the FY18 Report) included (at Note 24a: Basis of preparation) a statement to the effect that Pioneer had assessed its future obligations under AASB 9 and concluded that its PDP's will continue to be classified at Fair Value;

(iv) Paragraph 15 of AASB 101 required Pioneer's FY18 Report to present fairly the financial position, financial performance and cash flows of Pioneer, by faithfully representing the effects of transactions and other events and conditions, and providing additional disclosure when necessary to achieve a fair presentation;

(v) Paragraph 17(b) of AASB 101 required Pioneer's FY18 Report to present accounting policies in a manner that provided reliable information.

23. The basis on which PwC formed, and maintained, the Fair Value Opinion was the view PwC had formed about Pioneer's business model (**Business Model Opinion**) that:

(a) Pioneer's business model did not fall into one of the two categories of businesses which would satisfy the "business model test" under AASB 9, being 'holding financial assets to collect contractual cash flows' or 'holding financial assets to collect the contractual cash flows and selling';

(b) Pioneer's business model did not fall into one of these two categories because PwC considered:

(i) Pioneer's business model, results monitoring and management of KPI's were heavily focused on increasing the value of the portfolio rather than cash collection;

(ii) the PDP's were managed at an overall portfolio level and not on an individual tranche or asset level;

(iii) sales of PDP's were infrequent and are not part of Pioneer's core business objective for generating value from PDP's.

Particulars

The fact that the Business Model Opinion formed the basis for the Fair Value Opinion was communicated by PwC to Pioneer in the Dec 17 Email and the HY18 ARMC Report. Further particulars may be provided after discovery.

24. Between in or about October 2018 and in or about January 2019, PwC repeated, and confirmed, to Pioneer, the Fair Value Opinion.

Particulars

A. Email from Mr Craig to Mr Crockett dated 30 October 2018, attaching Mr Craig and Ms Fikkers' suggested amendments to a draft letter from Pioneer to the

Australian Securities and Investment Commission (**ASIC**), responding to ASIC's request for Pioneer's analysis supporting the statement in its FY18 Report that it had assessed its future obligations under AASB 9 and concluded that its PDP's will continue to be classified at Fair Value. Mr Craig and Ms Fikkers' suggested amendments included amendments to parts of the draft letter explaining why Pioneer's analysis supported its assessment of its future obligations under AASB 9, in terms that were consistent with and sought to improve and add to Pioneer's explanations and arguments in support of its assessment.

B. Email from Ms Fikkers to Pioneer's General Manager of Finance at the time, Mr Jonty Gibbs, dated 5 November 2018, stating that Ms Fikkers did not have any further comments on the draft letter to ASIC, and that she considered the accounting section of the letter to be much crisper, and the model section easier to understand.

C. Oral statements by Ms Fikkers during a teleconference with members of Pioneer's management and Audit and Risk Committee on 17 December 2018, to the effect that the view that Pioneer should be classifying its PDP's at amortised cost was shallow, uninformed, and incorrect;

D. Email from Ms Fikkers to Mr Crockett dated 21 December 2018, suggesting that Mr Crockett send an email to ASIC's Mr Doug Niven, asserting that Pioneer's classification of its PDP's at Fair Value does not result in it making a 'day 1 gain', being an argument in support of the Fair Value Opinion.

E. Email from Ms Fikkers to Mr Crockett dated 30 December 2018, providing comments and suggested amendments to a draft letter from Pioneer responding to ASIC's request for clarifications as to how Pioneer responds to specific paragraphs of AASB 9. Ms Fikkers' comments and suggested amendments were in terms that were consistent with and sought to improve and add to Pioneer's explanations and arguments in support of its assessment that under AASB 9 its PDP's will continue to be classified at Fair Value;

F. Email from Mr Craig to Mr Crockett dated 16 January 2019, providing Ms Fikkers' comments and suggested amendments to a draft letter from Pioneer responding to ASIC's request for clarifications. Ms Fikkers' comments and suggested amendments were in terms that were consistent with and sought to improve and add to Pioneer's explanations and arguments in support of its assessment that under AASB 9 its PDP's will continue to be classified at Fair Value.

G. Oral statements by Ms Fikkers during a teleconference with Pioneer's Mr Crockett, Mr Gibbs, and Ms Sue Symmons on 18 January 2019, to the effect that:

(i) ASIC's perception that Pioneer should be classifying its PDP's at amortised cost was wrong;

(ii) Pioneer's determination at Fair Value is good, although there is a different view;

(iii) Pioneer should keep answering ASIC's questions and keep the debate alive.

25. In about mid-February 2019, PwC advised Pioneer, for the first time, to the effect that they no longer held the Fair Value Opinion, alternatively had reservations about whether the Fair Value Opinion was correct.

26. On 9 April 2019, PwC provided Pioneer with a draft position paper (**April 2019 Position Paper**) which stated that, in PwC's opinion, AASB 9 required Pioneer to classify and report the value of its PDP's at amortised cost (**the Amortised Cost Opinion**).

27. In the April 2019 Position Paper, PwC stated that it held the Amortised Cost Opinion following its consideration of:

(a) how the performance of Pioneer's business model and the PDP's were evaluated and reported to key management personnel by examining monthly financial report and budget/forecast information, which consideration revealed that:

(i) one of the most prominent key performance indicators monitored by PNC was liquidations;

(ii) other financial performance metrics monitored included EBITDA and NPAT;

(iii) changes in fair value calculated by Pioneer's models were not a dominant factor in the way PDP's were managed on a day-to-day basis, but rather are calculated monthly to determine the profit or loss for the period; and

(iv) cash collected under contracts (i.e. liquidations) features most prominently in measures used to report and assess the performance of the company and the PDP portfolio;

(b) Pioneer's process for negotiating settlements and whether the purchased value and/or fair value of the PDP was considered when a settlement was approved by management, which consideration revealed that:

(i) fair value did not feature to a significant extent in the approval process; and

(ii) the lump sum settlements received by Pioneer were ultimately still in the nature of contractual cash flows, albeit that they often represented only a part payment of contractual amounts outstanding;

(c) the risks affecting Pioneer's business model and its PDP's, and the manner in which those risks were managed, which consideration revealed that:

(i) The risks that affect the performance of Pioneer's business model are predominantly credit, liquidity and market risks;

(ii) In relation to PDP's, credit risk was the most significant risk;

(iii) Credit risk is managed by policies and processes designed to actively maximise the cash collected from PDP contracts, mainly by either seeking to enter into payment arrangements and/or negotiating a settlement of the amounts owing under the contract;

(iv) Liquidity risk and market risk are largely managed in the same manner as credit risk, by maximising cash collections from customers; and

(v) Pioneer's business model is to collect and settle, not sell, PDP's;

(d) how the managers of Pioneer's business are compensated, which consideration revealed that:

(i) the Chief Operating Officer's team is most particularly focused on the effective liquidation of customer portfolios on a daily basis, and receives an incentive for achieving annual outcomes;

(ii) Pioneer provided incentive schemes for Operations Team employees which are based on the level of liquidations achieved in a given month by the employee; and

(iii) Short term incentives offered to management and staff are linked predominantly to the achievement of liquidations. Although long term incentives are linked to service period, the arrangements provide an incentive for share price growth to align management and shareholder interests.

(e) the example in paragraph B4.1.4 of AASB 9 of a business model which, under AASB 9, requires PDP's to be reported at amortised cost;

(f) the "SPPI test", which consideration revealed that Pioneer's PDP's satisfied the SPPI test.

Breach of Retainer and duty of care

28. Between December 2017 and April 2019, there was no change, alternatively, no material change, in:

(a) the manner in which Pioneer evaluated and reported the performance of the business model and the PDP's (being the matters considered by PwC which caused them to reach the conclusions in the April 2019 Position Paper pleaded in paragraphs 27(a)(i) to (iv) above);

(b) the manner in which Pioneer considered the purchased value and/or fair value of a PDP when a settlement was negotiated and approved by management (being the matters considered by PwC which caused them to reach the conclusions in the April 2019 Position Paper pleaded in paragraphs 27(b)(i) to (ii) above);

(c) the types of risks which affected Pioneer's business model, and the manner in which those risks were managed (being the matters considered by PwC which caused them to reach the conclusions in the April 2019 Position Paper pleaded in paragraphs 27(c)(i) to (v) above);

(d) how the managers of Pioneer's business model were compensated (being the matters considered by PwC which caused them to reach the conclusions in the April 2019 Position Paper pleaded in paragraphs 27(d)(i) to (iii) above);

(e) paragraph B4.1.4 of AASB 9, and the "SPPI test" (being the matters considered by PwC which caused them to reach the conclusions in the April 2019 Position Paper pleaded in paragraphs 27(e) and (f) above);

(f) the substance of the information provided or made available to PwC by Pioneer and relevant to the question of the classification of its PDP's under AASB 9.

29. PwC, in reaching and communicating the Business Model Opinion and therefore the Fair Value Opinion, and continuing to hold and communicate those opinions to Pioneer, and audit and review Pioneer's financial statements on the basis of those opinions, until in or about February 2019, failed to exercise reasonable skill and care, because the Business Model Opinion and the Fair Value Opinion were incorrect and no reasonable and competent auditor in the position of PwC, exercising reasonable skill and care, would have formed the Business Model Opinion and the Fair Value Opinion in December 2017 or at any time thereafter.

Particulars

A. Pioneer repeats and relies upon paragraphs 27 and 28 above.

B. AASB 9 was issued no later than in or about December 2014, such that by December 2017 PwC had had sufficient time to develop an understanding of the standard and its guidance on classification tests.

C. There was sufficient clear guidance within AASB 9 to enable a reasonable and competent auditor exercising reasonable skill and care to conclude sales of Pioneer's PDP's were infrequent and not part of Pioneer's core business objective, and that Pioneer had a model of holding PDP's to collect contractual cash flows that were solely payments of principal and interest which would result in Pioneer being required by AASB 9 to classify its PDP's at Amortised Cost.

D. A reasonable and competent auditor in the position of PwC, exercising reasonable skill and care, would have formed the opinion that Pioneer's PDP's contained none of the characteristics which AASB 9 identified as being unrelated to a basic lending arrangement, and would have concluded that the PDP's met the 'solely payments of principal and interest test'.

E. Further particulars will be provided after expert evidence.

30. In the premises, PwC breached the Engagement and its duty of care to Pioneer pleaded in paragraph 12 above and the breach was a continuing breach from 11 December 2017 to at least in or about February 2019.

Misleading or deceptive conduct

31. At all times from 11 December 2017 to at least February 2019, PwC represented to Pioneer that they were exercising, and had exercised, reasonable skill and care when forming and expressing the Business Model Opinion and the Fair Value Opinions, and when proceeding to review and audit Pioneer's financial statements on the basis of those opinions (the **PwC Representation**).

Particulars

Pioneer repeats and relies upon paragraphs 2(a)(ii), 2(a)(iii), 2(b), 5, 9(b), 9(d), and 11 above.

32. The PwC Representation was a continuing representation by PwC to Pioneer at all times from 11 December 2017 to at least February 2019.

33. The PwC Representation was made by PwC in trade or commerce.

34. In the premises pleaded at paragraphs 29 to 33 above:

(a) the PwC Representation was false and misleading at all times from 11 December 2017 to at least February 2019; and

(b) PwC engaged in misleading or deceptive conduct in contravention of the prohibition on engaging in such conduct pursuant to section 18 of the *ACL*.

Causation and damages

35. On or about 2 December 2016, Pioneer entered into a A$ Syndicated Facilities Agreement (**Senior Debt Facility**) with Westpac Banking Corporation (**Westpac**) and Commonwealth Bank of Australia trading as Bankwest (**Bankwest**), pursuant to which it loaned the sum of $100 million from Westpac and Bankwest for a term of 3 years.

36. The Senior Debt Facility was varied from time to time, including by a Third Variation Deed dated 21 December 2018 which extended the term of the Senior Debt Facility to 31 March 2020.

37. By an email dated 21 August 2019, Bankwest provided Pioneer with conditional approval to extend the term of the Senior Debt Facility from 31 March 2020 to 30 September 2020.

38. By an email dated 22 August 2019, Westpac provided Pioneer with conditional approval to extend the term of the Senior Debt Facility from 31 March 2020 to 30 September 2020.

39. It was an express material term of the Senior Debt Facility, including as varied, that (adopting, unless otherwise stated, the capitalised definitions in the Senior Debt Facility):

(a) Pioneer must ensure that at all times:

(i) the ratio of EBIT to Interest Expenses, of Pioneer and its subsidiaries for the preceding 12 month period, is at least 3.00:1.00 (**Interest Cover Ratio**);

(ii) the Loan Book Value Ratio does not exceed 55%;

(iii) the Debt to Adjusted EBITDA Ratio does not exceed 2.40:1.00 between 31 December 2017 and 29 June 2018, and 2.10:1.00 on any date thereafter.

(**Financial Covenants**) (cl. 16.1)

(b) A Default occurs if any of Pioneer's Marketable Securities listed on a securities exchange are suspended from trading for 5 consecutive trading days (**Suspension Default**) (cl. 18.1(x)).

40. At all material times between in or about December 2017 and in or about February 2019, Pioneer relied on the Business Model Opinion, the Fair Value Opinion, and the PwC Representation, in that it:

(a) Prepared and finalised its financial reports for each financial year and each half-year in belief that when it was required to classify and value its PDP's under AASB 9, it would continue to classify and value its PDP's at Fair Value;

(b) Continued to conduct and manage its business, finances, and compliance with the Financial Covenants, in belief that when it was required to classify and value its PDP's under AASB 9, it would continue to classify and value its PDP's at Fair Value;

(c) Did not commence performing the work required to determine the impact that the future change in classification and valuation of its PDP's, to amortised cost, would have on its financial position until in or about April 2019;

(d) Did not conduct and manage its business, finances, and compliance with the Financial Covenants on the basis that when it was required to classify and value its PDP's under AASB 9, it would be required to classify and value its PDP's at amortised cost.

Particulars

A. In or about March 2018, Pioneer raised $40 million debt by way of a subordinated medium term note offering;

B. In or about March 2018, Pioneer established a new lending arm of its business, called Pioneer Connect;

C. Between in or about December 2017 and in or about February 2019, Pioneer monitored its compliance with the Financial Covenants on the basis that when it was required to classify and value its PDP's under AASB 9, it would continue to classify and value its PDP's at Fair Value.

41. By reason of the matters pleaded in paragraph 40 above, between in or about February 2019 and in or about September 2019, Pioneer:

(a) did not know and was unable to determine the impact that the future change in classification and valuation of its PDP's to amortised cost would have on how it reported its financial position;

(b) was, therefore, unable to:

(i) manage its business, finances, and compliance with the Financial Covenants on the basis that when it was required to classify and value its PDP's under AASB 9, it would be required to classify and value its PDP's at amortised cost;

(ii) monitor compliance with the Financial Covenants under the Senior Debt Facility on the basis that when it was required to classify and value its PDP's under AASB 9, it would be required to classify and value its PDP's at amortised cost.

42. In or about June 2019, Pioneer breached one of the Financial Covenants, being the Interest Cover Ratio (**the FY19 Covenant Breach**).

43. By reason of the matters pleaded in paragraphs 40 and 41 above:

(a) Pioneer did not become aware, until in or about late August 2019, of the possibility:

(i) that there could be a material difference between what Pioneer had previously disclosed to the market as its expected Net Profit After Taxation (**NPAT**) at 30 June 2019, and the NPAT to be reported at amortised cost;

(ii) of the FY19 Covenant Breach;

(b) Pioneer was not able to release its financial results for the year ended 30 June 2019 (including a Preliminary Final Report) on 27 August 2019, as it had announced to the ASX on 1 August 2019 that it would do;

(c) on 28 August 2019, at its request, Pioneer's securities were suspended from trading on the ASX as Pioneer had not yet determined an appropriate carrying value for its PDP's and PwC was not yet able to complete their audit of Pioneer's financial results for the year ended 30 June 2019;

(d) On 2 September 2019, Pioneer wrote to the ASX:

(i) advising, amongst other things, as were the facts, that:

(A) it continued to not be in a position to release its financial results for the year ended 30 June 2019;

(B) it had been advised by one of its financiers that they would not be extending the Senior Debt Facility beyond the expiry date of March 2020 and that it would not waive any breaches that may arise;

(ii) requesting the suspension to remain in place until the earlier of 30 September 2019 or the resolution of the discussions with its financiers and the release of its financial results for the year ended 30 June 2019.

44. By reason of the matters pleaded in paragraphs 40, 41 and 43 above, between 28 August 2019 and 4 September 2019, alternatively between 28 August 2019 and on or about 23 December 2019, Pioneer's securities were suspended from trading on the ASX for more than 5 consecutive trading days, such that a Suspension Default occurred.

45. But for PwC's conduct as pleaded in paragraphs 29 to 34 above:

(a) Pioneer would not have been advised, in or about December 2017, that PwC agreed with Pioneer's proposed classification of PDP's under AASB 9;

(b) Pioneer would not have been advised, in or about late February 2018, in the HY18 ARMC Report, that PwC concurred with Pioneer that PDP's should continue to be classified under AASB9 at Fair Value;

(c) Pioneer would not have been advised, in or about August 2018, in the FY18 ARMC Report, that PwC had reviewed management's financial statement disclosures (in relation to new accounting standards including AASB 9) and considered them to be appropriate;

(d) Pioneer would not have been advised, between in or about October 2018 and in or about January 2019, by PwC, in effect, that Pioneer's determination that under AASB 9 it could classify and value its PDP's at Fair Value was still good;

(e) Pioneer would have been advised by its appointed auditor in December 2017 that AASB 9 required Pioneer to classify and report the value of its PDP's at amortised cost;

(f) Pioneer would have commenced, in December 2017, performing the work required to determine the impact that the future change in classification and valuation of its PDP's, to amortised cost, would have on its reported financial position;

(g) From December 2017 until such time as it determined the impact that the future change in classification and valuation of its PDP's, to amortised cost, would have on its reported financial position, Pioneer would have conducted its business, finances, and compliance with the Financial Covenants conservatively, and on the basis that it did not know what impact the future change in classification and valuation of its PDP's would have on its reported financial position.

Particulars

A. Pioneer would not have raised $40 million debt by way of a subordinated medium term note offering in March 2018, or at all;

B. Pioneer would not have established a new lending arm of its business, or any new arm of its business, in March 2018, or at all;

C. Pioneer would have managed its compliance with the Financial Covenants by controlling debt levels and selling additional tranches of PDP's to generate income;

D. Pioneer would have raised cash required to meet its PDP purchasing commitments and targets by a combination of selling additional tranches of PDP's to generate income, and raising equity from new and existing shareholders.

(h) From such time as Pioneer determined the impact that the future change in classification and valuation of its PDP's, to amortised cost, would have on its reported financial position, Pioneer would have conducted its business, finances, and compliance with the Financial Covenants on the basis that when it was required to classify and value its PDP's under AASB 9, it would be required to classify and value its PDP's at amortised cost;

(i) Pioneer would have released its financial results for the year ended 30 June 2019 by 27 August 2019;

(j) Pioneer's securities would not have been suspended for more than five consecutive days in the period between 28 August 2019 and 4 September 2019, between 28 August 2019 and on or about 23 December 2019, or at all;

(k) In the premises, the FY19 Covenant Breach and the Suspension Default would not have occurred;

(l) Pioneer would have continued to have access to and use of the Senior Debt Facility, alternatively a debt facility on identical or similar terms, until at least in or about September 2020.

46. In the premises pleaded in paragraphs 40 to 45 above, PwC's breaches of the Engagement and its duty of care as pleaded in paragraph 30 above, further or alternatively its contravention of section 18 of the *ACL* as pleaded in the paragraph 34 above, caused Pioneer to suffer loss and damage, being the costs, losses, and expenses incurred by reason of the FY19 Covenant Breach and the Suspension Default.

Particulars

Particulars of the costs, losses, and expenses incurred by reason of the FY19 Covenant Breach and the Suspension Default are set out in Schedule 1.

Loss of opportunity

47. Alternatively to paragraphs 45 to 46 above, by reason of the matters pleaded in paragraphs 40 to 45 above, Pioneer suffered loss and damage, in that it lost the opportunity to avoid the FY19 Covenant Breach and the Suspension Default.

Particulars

Particulars of the value of the opportunity lost are set out in Schedule 1.

AND THE PLAINTIFF CLAIMS

A. Damages.

B. Further or alternatively, damages pursuant to section 236 of the *ACL*.

C. Interest on damages at the rate of 6% per annum pursuant to section 32 of the *Supreme Court Act 1935* (WA) from the date each item of loss was sustained.

D. Costs.

E. Such other order or relief as this Honourable Court sees fit.

J C Giles SC

P W van der Zanden

N W Kalmund

Schedule 1 – Particulars to Paragraphs 46 and 47

A. The costs, losses, and expenses incurred by reason of the FY19 Covenant Breach and the Suspension Default are:

No.	Category	Amount
1.	Default costs	$1,078,842
2.	Default interest and standstill fees	$810,947
3.	Refinancing costs	$4,743,606
4.	Additional interest on new facility	$20,490,097
Total		**$27,123,492**

B. Each of the above categories of costs, losses, and expenses are comprised of the following:

1. <u>Default Costs</u>

No.	Description	Amount
1.	Consulting fees	$1,078,842
Total		**$1,078,842**

2. <u>Default interest and standstill fees</u>

No.	Description	Amount
1.	Bankwest – Default interest and standstill fees	$441,218
2.	Westpac – Default interest and standstill fees	$369,729
Total		**$810,947**

3. <u>Refinancing costs</u>

No.	Description	Amount
1.	Consulting fees	$4,893,606
2.	Estimated refinancing fee payable to Bankwest &	($150,000)

	Westpac	
Total		**$4,743,606**

4. Additional interest on new facility

No.	Description	Amount
1.	Carlyle – Interest paid under new facility (20% p.a on $144,095,494)	$21,634,063
2.	Interest that would have been paid to Westpac under Senior Debt Facility (1.35% p.a on $49,157,933)	($498,179)
3.	Interest that would have been paid to Bankwest under Senior Debt Facility (1.75% p.a on $49,157,933)	($645,787)
Total		**$20,490,097**

Place of Trial: Perth

This writ was issued by or on behalf of the plaintiff.

The plaintiff's geographical address is: PIONEER CREDIT LIMITED
Level 6
108 St Georges Terrace
PERTH WA 6000
Australia

The plaintiff's service details are: c/-Hotchkin Hanly
Level 18, Forrest Centre
221 St Georges Terrace
PERTH WA 6000
Australia

Indorsement as to service

This writ was served by me at ___________________________________

on ____
(The Defendant or one of the Defendants)
on ________ day the ______________ day of _______________ 20__.

Indorsed the ______________ day of _______________ 20__.

(Signed) ………………………………………………………………………..

(Address) ………………………………………………………………………..

Service and Execution of Process Act 1992
(Section 16 Regulation 4)

Form 1

NOTICE TO DEFENDANT

Please read this notice and the attached document very carefully.

If you have any trouble understanding them you should get legal advice as soon as possible.

Attached to this notice is a Writ of Summons ("the attached process") issued out of the Supreme Court of Western Australia held at Perth.

Service of the attached process outside the State of Western Australia is authorised by the *Service and Execution of Process Act 1992*.

SUPREME COURT OF WESTERN AUSTRALIA

Your rights

If a court of a State or Territory other than Western Australia is the appropriate court to determine the claim against you set out in the attached process, you may be able to:

- have the proceeding stayed by applying to the Supreme Court of Western Australia held at Perth
- apply to the Supreme Court in the relevant State or Territory to have the proceeding transferred to another Supreme Court or a Federal Court.

If you think the proceeding should be stayed or transferred, you should get legal advice as soon as possible.

Contesting this claim

If you want to contest this claim, you must take any action set out in the attached process as being necessary to contest the claim.

If you want to contest this claim, you must also file a memorandum of appearance in the Supreme Court held at Perth. You have only 21 days after receiving the attached process to do so.

The memorandum of appearance must contain a geographical address (not a post Office Box) in Australia where documents can be left for you or sent to you.