

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION**

No. 4538 of 2012

BETWEEN:

KATHERINE ROWE

Plaintiff

and

**AUSNET ELECTRICITY SERVICES PTY LTD
(ACN 064 651 118)
& ORS (according to the schedule of parties)**

Defendants

(by original proceeding)

AND BETWEEN:

**AUSNET ELECTRICITY SERVICES PTY LTD
(ACN 064 651 118)**

Plaintiff by Counterclaim

And

**(ACN 060 674 580)
& ORS (according to the schedule of parties)**

Defendants by Counterclaim

(by counterclaim)

AFFIDAVIT OF ANDREW JOHN WATSON

Date of Document:

1 March 2018

Filed on behalf of:

The Plaintiff

Prepared by:

Maurice Blackburn Lawyers
Level 21, 380 La Trobe Street
Melbourne Vic 3000

Solicitor's Code: 564
Tel: (03) 9605 2700
DX: 466 Melbourne
Ref: AW/3052534
E: JPeck@mauriceblackburn.com.au

I, Andrew John Watson, Solicitor, of Level 21, 30 La Trobe Street, Melbourne in the State of Victoria, say as follows:

1. I am a Principal in the firm of Maurice Blackburn Pty Ltd (**Maurice Blackburn**), the solicitors for the Plaintiff in this proceeding, and pursuant to Orders of this Court dated 27 May 2015 I am the Scheme Administrator.



1. I make this affidavit from my own knowledge unless otherwise stated. Where statements are not made from my own knowledge, they are made to the best of my information and belief after due enquiry and I have set out the source of my information.
2. I make this affidavit for the purpose of providing the Court with an update on:
 - (a) the progress made in relation to the personal injury and dependency ("I-D") settlement distribution;
 - (b) the progress made in relation to the economic loss and property damage ("ELPD") settlement distribution;
 - (c) communications with claimants;
 - (d) residual distribution sum amounts;
 - (e) preparing for potential second distribution;
 - (f) the settlement administration costs; and
 - (g) the taxation issues affecting the Distribution Sum.
3. The team of lawyers and paralegals employed by Maurice Blackburn who are working on administration of the Scheme are referred to in this affidavit as the **SDS Team**.
4. All references to the affidavit of Andrew J Watson sworn on 28 February 2017 will be marked as the **February affidavit**.

PROGRESS IN RELATION TO I-D SETTLEMENT DISTRIBUTION

Remaining Distributions

5. I refer to paragraph 6 of the February affidavit and confirm that there is one I-D claimant who is yet to receive their compensation. The reason for the delay in payment is because this is an Estate claim and we are still awaiting probate to be granted. The SDS Team continue to monitor this claim.

Unpresented cheques

6. All I-D claimants that have received compensation have presented their cheques.



Finalising the I-D Distribution

7. The SDS Team is continuing to respond to inquiries by I-D Claimants regarding their compensation and the settlement distribution process generally.

PROGRESS IN RELATION TO ELPD SETTLEMENT DISTRIBUTION

Remaining Distributions

8. There are 872 above-insurance claimants entitled to receive compensation in the ELPD settlement distribution. Of those 872 claimants, as at 28 February 2018:
 - (a) Payment has been made to 867 claimants; and
 - (b) Payment remains outstanding for five claimants, including:
 - i) Two allocation disputes preventing distribution to four claimants; and
 - ii) One assessment which involves an unresolved Estate claim, preventing distribution to one claimant.
9. The total combined value of the claims not yet paid is \$313,010.02.
10. In each of the three above noted circumstances, as Scheme Administrator I have taken the following steps:
 - (a) considered the circumstances of the dispute and determined that distribution cannot presently be made;
 - (b) advised the claimants that distribution will continue to be withheld until such time as the issue preventing distribution is resolved, including, in most instances, discussing the issues with solicitors retained by those claimants; and
 - (c) advised those claimants that the Scheme Administrator does not intend to hold the money on trust in perpetuity and that their interests may be prejudiced by ongoing failure to resolve the issues preventing distribution.
11. The SDS Team continues to work with the affected claimants with a view to resolving and paying the remaining five claims as soon as practicable.
12. Distribution has been made in respect of all 1,182 subrogated claims assessed as being entitled to compensation.

Unpresented cheques

13. As at 28 February 2018, there is one above insurance claimant who has not presented their cheque to the bank. The value of that cheque is \$162,575.16.
14. That cheque was recently re-issued and I do not propose to take any other steps in respect of it for now, save for following up with the claimant to encourage them to present their cheque.

Finalising the ELPD Distribution

15. The SDS Team is continuing to attend to the following:
 - (a) Actioning outstanding distributions;
 - (b) Responding to inquiries by ELPD Claimants regarding their compensation and the settlement distribution process generally;
 - (c) Reconciling ELPD Claimant data with presented cheques; and
 - (d) Identifying and following up any ELPD Claimants who fail to present their cheques. The SDS Team will continue to monitor the status of settlement cheques.

COMMUNICATIONS WITH CLAIMANTS

16. Since the February affidavit, the SDS Team has updated claimants in regards to the ongoing taxation dispute on the following occasions:
 - (a) Correspondence dated 8 August 2017. Now produced and shown to me marked, "**Exhibit AJW-1**" is a template copy of the correspondence that was sent to claimants on 8 August 2017.
 - (b) The affidavit of Andrew John Watson dated 1 September 2017 (the "**September affidavit**") filed in the Kilmore Bushfire Class Action and published on the website of the Supreme Court of Victoria.
 - i) Note that, although the September affidavit was not published on the Murrindindi Bushfire Class Action page of the Supreme Court of Victoria website, the correspondence noted below (dated 19 December 2017) referred claimants to the September affidavit (on the Kilmore Bushfire



Class Action page) for further information about the terms and progress of the taxation dispute.

- (c) Correspondence dated 19 December 2017. Now produced and shown to me marked, "**Exhibit AJW-2**" is a template copy of the correspondence that was sent to claimants on 19 December 2017.

- 17. As per the sections above regarding the progress of distribution, the SDS Team continue to follow up by correspondence and telephone with claimants' whose distribution is being withheld or who have failed to cash their cheques.
- 18. The SDS Team continue to take residual questions from time to time from claimants about aspects of the Settlement Distribution, including those claimants who seek more detailed advice about the terms and status of the taxation dispute.

RESIDUAL DISTRIBUTION SUM AMOUNTS

- 19. There is presently \$775,696.72 (the composition of which is set out below) in addition to:
 - (a) Amounts distributed;
 - (b) Amounts described above pending distribution;
 - (c) Amounts set aside of the potential taxation liability; and
 - (d) Amounts set aside for administration costs.
- 20. There has been no call on the \$750,000 contingency amount set aside for the ELPD distribution.
- 21. An amount of \$23,172.41 comprising interest earned on the settlement funds in January was not distributed in the ELPD distribution.
- 22. An amount of \$2,200 for an I-D review cost that was not accounted for in the I-D or ELPD distribution sum calculations.
- 23. Following the ELPD distribution, on 11 July 2017 a member of the SDS Team spoke to the contact for a deceased estate claimant regarding their unrepresented cheque for \$324.31. The contact advised that they did not intend to bank the cheque. Following this conversation a letter was sent to the claimant confirming their instructions. Now



produced and shown to me and marked "**Confidential Exhibit AJW-3**" is a copy of the letter dated 18 July 2017.

24. On 10 October 2017 the residual sum of \$324.14 was transferred from the ELPD settlement distribution account into the settlement distribution fund or pool of funds available for a potential further distribution to claimants.

PREPARATION FOR POTENTIAL SECOND DISTRIBUTION

25. In preparation for a potential second distribution, senior members of the SDS Team calculated the percentage proportion of the distribution sum received by each claimant in both the I-D and ELPD settlement distributions.
26. These calculations were sent to KPMG for review on 22 August 2017. Now produced and shown to me and marked "**Confidential Exhibit AJW-4**" are copies of the correspondence with KPMG and the associated spreadsheets.
27. KPMG confirmed the accuracy of these calculations on 7 September 2017.
28. These percentages will be used to calculate the entitlement of each claimant in any additional distribution made to I-D or ELPD claimants.
29. In circumstances where there is an amendment to the allocated split of an outstanding ELPD distribution the SDS Team will liaise with KPMG to amend these percentage calculations.

KPMG

30. The SDS Team continues to liaise with KPMG regarding outstanding ELPD distributions as required.
31. On 3 November 2017 the SDS Team electronically filed two affidavits of Mr Martin William Dougall exhibiting his final reports regarding the I-D and ELPD settlement administrations dated 20 October 2017.

SETTLEMENT ADMINISTRATION COSTS

32. On 22 June 2017, the Honourable Justice Dixon approved settlement administration costs in the amount of \$2,628,921.28, or the amount showing on Maurice Blackburn's finalised settlement administration invoices for the period from 1 January 2017 to 30 June 2017.

33. As per Mr Watson's affidavit of 6 June 2017, any payment of administration expenses would only take place upon review and approval by Mr John White, Special Referee and any subsequent orders deemed necessary by the Court following receipt of such report. As such, it is confirmed that no costs from 1 January 2017 have been paid.
34. Subject to the Court receiving a satisfactory report from Mr White, I now seek approval for Maurice Blackburn to be paid \$1,727,455.29, for the settlement administration fees and disbursements incurred for the period 1 January 2017 to 30 November 2017, composed of:
- (a) \$513,441.23 for General costs;
 - (b) \$93,640.68 for I-D costs;
 - (c) \$1,120,373.38 for ELPD costs.
35. This total falls within the previous approved total estimate of \$2,628,921.28 and contains sufficient allowance for the ongoing taxation dispute.
36. In previous affidavits, I have set out extensive detail regarding the nature of the work performed by the SDS Team and the disbursements incurred by the Scheme. This information has been provided to Mr White for the purposes of his review of our costs and I do not propose to repeat it here.
37. Now produced and shown to me and marked "**Confidential Exhibit AJW-5**" is a copy of the finalised itemised invoices for settlement administration costs and disbursements for work carried out between 1 January 2017 and 30 November 2017.

TAXATION ISSUES

38. On 1 September 2017, I filed an affidavit in respect of the Kilmore Bushfire Class Action Settlement Distribution which dealt with the taxation issue, including a background to the issue and an update as to the progress on that issue. The non-confidential component of that affidavit was published and is available on the website of the Supreme Court of Victoria. Now produced and shown to me marked, "**Confidential Exhibit AJW-6**" is the confidential annexure to that affidavit.
39. I refer to paragraphs 11 to 18 of the September Affidavit and to Confidential Exhibit AJW-1 to that affidavit. I and other members of the SDS Team continue to work closely with our legal advisors PricewaterhouseCoopers (**PwC**) and counsel on the taxation issues relating to the settlement administration.



40. Now produced and shown to me marked "**Confidential Exhibit AJW-7**" is a summary of progress made since the September Affidavit. I make application for this exhibit to be confidential so as to ensure the maintenance of privilege.
41. Without waiving privilege I can state:
- (a) The mechanism and procedure by which the dispute is to be resolved has been agreed with the Australian Taxation Office (**ATO**) and is currently ongoing;
 - (b) The ATO is currently considering a Notice of Objection filed on 20 December 2018 by PwC on behalf of the Scheme Administrator against an assessment of income tax issued to him by the ATO; and
 - (c) In the event that the ATO's decision in respect to the Notice of Objection is prejudicial to the interests of group members, I will instruct our legal advisors PwC to file proceedings in the Federal Court of Australia or the Administrative Appeals Tribunal to seek final resolution of this issue through litigation.
42. I will continue to provide updates on the status of the taxation dispute to group members and the Court, as appropriate.

SWORN by the deponent at)
Melbourne in the State of Victoria)
this 1st day of March 2018)
)



Before me:



FILED on behalf of the Plaintiff

MEGAN FLORENCE GREAVES
of 380 La Trobe Street, Melbourne
an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

No. 4538 of 2012

BETWEEN:

KATHERINE ROWE

Plaintiff

and

AUSNET ELECTRICITY SERVICES PTY LTD
(ACN 064 651 118)
& ORS (according to the schedule of parties)

Defendants

(by original proceeding)

AND BETWEEN:

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Plaintiff by Counterclaim

And

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& ORS (according to the schedule of parties)

Defendants by Counterclaim

(by counterclaim)

CERTIFICATE IDENTIFYING EXHIBIT

Date of Document:

1 March 2018

Filed on behalf of:

The Plaintiff

Prepared by:

Maurice Blackburn Lawyers
Level 10, 456 Lonsdale Street
Melbourne Vic 3000

Solicitor's Code: 564
Tel: (03) 9605 2700
DX: 466 Melbourne
Ref: AW/3052491
E: JPeck@mauriceblackburn.com.

This is the exhibit marked 'Exhibit AJW-1' produced and shown to Andrew John Watson at the time of swearing his affidavit on 1 March 2018 before me:



MEGAN FLORENCE GREAVES
of 380 La Trobe Street, Melbourne
an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit 'AJW-1'

Template claimant correspondence dated 8 August 2017

Our Ref: AJW/3052534
T: 1800 18 26 45
F: (03) 9258 9610
E: Murrindindica@mauriceblackburn.com.au



Maurice Blackburn Pty Limited
ABN 21 105 657 949

Level 10
456 Lonsdale Street
Melbourne VIC 3000

PO Box 523
Melbourne VIC 3001

DX 466 Melbourne

T (03) 9605 2700

F (03) 9258 9600

8 August 2017

«Contact_First_Name» «Contact_Last_Name»
«Contact_Street_Address_1»
«Contact_Street_Address_2»
«Contact_Suburb» «Contact_State» «Contact_Post_Code»

[By email – «Contact_Email»]

Dear «Contact_First_Name»,

**Murrindindi - Marysville Bushfire Class Action Settlement Administration
Update on taxation dispute**

With the distribution of compensation substantially completed, the primary outstanding issue to be resolved is the taxation dispute we have with the Australian Tax Office ('ATO'). This dispute remains ongoing and we are working closely with our taxation advisors and the ATO to resolve this issue.

If a positive result is achieved, we will be able to distribute the withheld money to group members on a pro-rata basis. However, if we are unsuccessful and the taxation liability is upheld, we will have to pay the withheld money to the ATO.

We confirm that the dispute between the Scheme Administrator and the ATO relates to the taxation liability on the interest earned on the settlement sum and **not** the personal taxation liabilities of individual group members.

Timeframe and further information:

We cannot estimate the length of time that resolution of these issues may require because they depend on certain outcomes outside of our control. We will continue to keep group members who may be entitled to further compensation informed as this issue progresses to resolution.

Contact details:

You should advise us of any changes to your contact details so that we can continue to update you about the resolution of the taxation dispute and ensure that we have accurate contact details in the event that there is a second settlement distribution.

Please contact the Bushfire Class Action Info-line on 1800 18 26 45 if you have any further questions about this issue.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Andrew Watson', with a long horizontal flourish extending to the right.

Andrew Watson
Scheme Administrator
MAURICE BLACKBURN LAWYERS

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

No. 4538 of 2012

B E T W E E N:

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Plaintiff by Counterclaim

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CERTIFICATE IDENTIFYING EXHIBIT

Date of Document:

1 March 2018

Filed on behalf of:

The Plaintiff

Prepared by:

Maurice Blackburn Lawyers
Level 10, 456 Lonsdale Street
Melbourne Vic 3000

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Tel: (03) 9605 2700
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E: JPeck@mauriceblackburn.com.

This is the exhibit marked 'Exhibit AJW-1' produced and shown to Andrew John Watson at the time of swearing his affidavit on 1 March 2018 before me:



MEGAN FLORENCE GREAVES
of 380 La Trobe Street, Melbourne
an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Exhibit 'AJW-2'

Template claimant correspondence dated 19 December 2017

Our Ref: AJW/3052534
T: 1800 18 26 45
F: (03) 9258 9610
E: murrindindica@mauriceblackburn.com.au

Maurice Blackburn Pty Limited
ABN 21 105 657 949
Level 10
456 Lonsdale Street
Melbourne VIC 3000
PO Box 523
Melbourne VIC 3001
DX 466 Melbourne
T (03) 9605 2700
F (03) 9258 9600

19 December 2017

«Contact_First_Name» «Contact_Last_Name»
«Contact_Street_Address_1»
«Contact_Street_Address_2»
«Contact_Suburb» «Contact_State» «Contact_Post_Code»

[By email – «Contact_Email»]

Dear «Contact_First_Name»,

**Murrindindi Bushfire Class Action Settlement Administration
Update on taxation dispute**

We refer to previous correspondence in regards to the Settlement Administration and write to provide you with an update on the ongoing taxation dispute with the Australian Taxation Office (ATO).

As previously advised, the amount withheld from distribution represents a sum that the Scheme Administrator reasonably considers to be sufficient in order to discharge all potential taxation liabilities and associated costs that may be payable. *

If the outcome of the dispute is that the taxation and associated costs payable are less than the amount withheld, the Settlement Distribution Team will seek to distribute any remaining sum to group members as per their pro-rata entitlement to compensation.

However, if we are unsuccessful and the taxation liability is upheld, the withheld money will be used to meet the taxation liability and pay the costs associated with the dispute.

We confirm that the dispute between the Scheme Administrator and the ATO relates to the taxation liability on the interest earned on the settlement sum and **not** the personal taxation liabilities of individual group members.

Timeframe and progress:

We filed an affidavit on 1 September 2017 which provided a background to the dispute and an update as to progress. That document has been published on the website of the Supreme Court of Victoria and can be accessed at the following link:

<https://www.supremecourt.vic.gov.au/law-and-practice/class-actions/kilmore-east-kinglake-black-saturday-bushfire-class-action-39>

As stated previously, the advice that we have received is subject to privilege and necessarily confidential.

However, without waiving privilege, we can state that we have reached agreement with the ATO regarding the process by which the taxation dispute will be resolved. This involves utilising the Murrindindi Class Action Settlement Distribution and the 2016 financial year as a test case to resolve all issues and, in relation to that Settlement Distribution and that financial year:

1. Lodging a tax return;
2. Receiving a Notice of Assessment from the ATO;
3. Lodging a Notice of Objection to the Notice of Assessment;
4. If the ATO does not accept the Notice of Objection, instituting proceedings in either the Administrative Appeals Tribunal or the Federal Court of Australia.

Steps 1 and 2 listed above have occurred. A draft Notice of Objection has been lodged with the ATO, with a final version intended to be lodged shortly. If AAT or Federal Court proceedings are necessary (and we anticipate that they will be), they will be commenced as soon as practicable.

We cannot estimate the length of time that resolution of these issues may require because they depend on certain outcomes outside of our control. We will continue to keep group members who may be entitled to further compensation informed as this issue progresses to resolution.

Contact details:

You should advise us of any changes to your contact details so that we can continue to update you about the resolution of the taxation dispute and ensure that we have accurate contact details in the event that there is a second settlement distribution.

Further update:

Please contact the Bushfire Class Action Info-line on 1800 18 26 45 if you have any further questions about this issue.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Andrew Watson', with a long horizontal flourish extending to the right.

Andrew Watson
Scheme Administrator
MAURICE BLACKBURN LAWYERS