



NOTICE OF DEFENCE

Case: S CI 2018 01833

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

BETWEEN

WILLIAM ROBERT HAWKER

Plaintiff

and

**POWERCOR AUSTRALIA LIMITED
(ACN 064 651 109)**

Defendant

Date of Document:	26 July 2018
Filed on Behalf of:	The defendant
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In answer to the plaintiff's Statement of Claim dated 17 May 2018, the Defendant says as follows:

- 1 It admits paragraph 1.
- 2 It admits paragraph 2.
- 3 It makes no admissions to paragraph 3.
- 4 It makes no admissions to paragraph 4.
- 5 It makes no admissions to paragraph 5, but it admits the definition of 'Group Members'.
- 6 It makes no admissions to paragraph 6 as it has no relevant knowledge.
- 7 As to paragraph 7 it says:

7.1 that the **Electricity Safety Act 1998 (Vic) (ES Act)** together with the **Electricity Industry Act 2000 (ES Act)** expressly or impliedly confers a duty/or power on the Defendant to transmit electricity through the network owned by the Defendant;

7.2 otherwise it admits paragraph 7.

8 It admits paragraph 8 and further says that:

8.1 The line was part of a network constructed by the State Electricity Commission in the 1960s which delivered power to rural Victoria as a social utility for the purposes of section 48(2)(d) of the **Wrongs Act 1958**.

8.2 The network so constructed services in sparsely populated and lightly loaded rural areas. The nature of the construction using wooden poles and conductors above ground makes it efficient, economic and reliable in supplying communities in the areas and is reasonable and appropriate as a system in the circumstances.

8.3 Inherent in the design of any system delivering electricity is an element of risk of harm against which the Defendant says it has taken the precautions as mandated by statute as pleaded below but there are risks which cannot be guarded against.

9 It admits paragraph 9.

10 It denies paragraph 10.

11 It makes no admissions to paragraph 11.

12 It denies paragraph 12.

13 It admits paragraph 13.

14 As to paragraph 14:

14.1 it admits sub-paragraph (a);

- 14.2 as to sub-paragraph (b) it admits that the transmission of electricity could create a risk of unintended discharges of electricity but the prospects of the risk if it did materialise were dependent upon circumstances outside the control of the Defendant. Such circumstances included, discrete weather conditions at the time of the discharge of electricity, features of surrounding vegetation including the health of the tree, the nature and quantity of flammable material available in the vicinity of any point of discharge, the acts and omissions of parties who had control over assets not available to the Defendant and steps taken by persons to remove or protect themselves or their property from the fire;
- 14.3 as to sub-paragraph (c) the Defendant repeats its particulars under paragraph (b) above;
- 14.4 it denies sub-paragraph (d) and further says that the transmission of electricity along a powerline gives rise to inherent risks which cannot be guarded against; and
- 14.5 it denies sub-paragraph (e).
- 15 It admits paragraphs 15 (a) – (d) but denies paragraphs (e) – (g).
- 16 It denies paragraph 16 and further says that the Plaintiffs and some or all of the Group Members were able to protect themselves by effecting insurance cover in respect of the losses alleged.
- 17 It denies paragraph 17
- 18 It denies paragraph 18.
- 19 It denies paragraph 19.
- 20 It makes no admissions to paragraph 20.
- 21 As to paragraph 21:
- (a) it admits that a caller had the following conversation with an operator in the Call Room in Bendigo operated by the defendant as follows:

"Caller Hi my address is 114 Cross Forest Road, Naroghid 3266. A tree has just come down across our powerlines. My husband is out on the road at the moment removing the tree.

Operator Okay.

Caller But the powerline is down.

Operator Oh, okay, yeah, definitely just let him know to keep his distance well away from the line, in case it is still alive.

Caller Yeah.

Operator Ideally you want to remain 7 metres or more from any contact point. One of the dangers with even a tree branch, is that if it is quite wet, it can still carry a decent current.

Caller Yep. There is absolutely no chance it is wet.

Operator Yeah. So, so I will get a job share (?) and we will get someone out. So that the service wired to your property there?

Caller Yep. Yep. We have no power. The power just went out so my husband just went to check.

Operator Yep.

Caller Because we can see a neighbour up the road. They have still got power.

Operator Yep.

Caller Yeah he went out and saw that a tree has come down across the road.

Operator Yeah, okay, yep, yep. So sorry, is the main wire pole to pole? Or is it wired to your property?

Caller Ah, that I do not know, he just said I am just going to remove the tree before someone crashes into it.

Operator Yeah, okay.

Caller Because it is quite a busy road.

Operator Yep, yep, understand. Um. TYPING ... Alright, well, yeah we will get someone out there as soon as possible. So your best phone number is the one you are calling from now?

Caller Yeah, because now the power is out we do not have a phone.

Operator Yep, yep, alright. No worries. Yeah, yeah, yep we will get someone there as soon as we can.

Caller That would be great.

Operator Okay, thanks for your call.

Caller Thank you.

Operator/ Bye. "

- (b) it admits that the call was logged in the Defendant's call centre starting at 9.05pm;
- (c) it makes no admissions to the time which the fire started save that it was after 9:05pm;
- (d) it admits subparagraph (a);
- (e) it admits that the Tree broke the LV line;
- (f) it denies that the fire was caused by heat, electricity or sparks ejected from the broken LV line;
- (g) it says the fire was caused by an arc event occurring between the transformer LV wiring and the earthed transformer tank resulting from forces imparted when the Tree fell onto the LV line. As a result of the arc molten material dropped to the ground starting the fire in the dry grass;

- (h) it is unusual for a fire to start as a result of a transformer being damaged when a line falls;
- (i) otherwise it denies paragraph 21.

22 It denies paragraph 22. Without prejudice to its denial, it says as follows:

- (a) it responded appropriately and reasonably to the fault based on the information provided in the telephone call logged at 9.05pm on 17 March 2018;
- (b) the record of the call was logged by the operator into the Defendant's Outage Management System at 9:09pm;
- (c) it is highly unusual for a fire not to occur instantaneously if it is to occur upon an insulated "*wire down*" occurring.
- (d) it is an unreasonable response to a report of a line down to an individual house where no fire had been reported to remotely isolate the entire CDN006 feeder. This feeder supplied a total of 982 customers including 6 life support customers and once isolated, the feeder would have been down an extended period;
- (e) it responded in accordance with its normal protocols by treating the fault as a high priority "*wire down fault*" and by proposing to despatch a fault crew;
- (f) the logistics of despatch made it impossible to allocate a fault crew to reach 114 Cross Forest Road prior to the fire occurring. The closest fault crew had earlier been despatched to attend the Terang fire (at 9:00pm, followed by a call to confirm at 9.04pm), following a call from the Country Fire Authority received at 8.58pm reporting an outbreak of fire at one of the Defendant's

substations had caused a grass fire, which was threatening houses in Terang. A fire in or affecting the zone substation would have put over 6,000 customers including life support customers at risk of loss of supply for an extended period. It was not appropriate to pull that fault crew off that job.

23 It denies paragraph 23.

24 It denies paragraph 24.

25 It denies paragraph 25.

26 It denies paragraph 26.

27 It denies paragraph 27.

28 It denies paragraph 42 and further it says that if by transmitting electricity on the powerlines the Defendant created a nuisance, which is expressly denied,

28.1 the transmission of electricity by the Defendant was authorised by the ES Act and the EI Act;

28.2 the ES Act and/or the EI Act imposed a duty and/or power on the Defendant to transmit electricity the performance or exercise of which created the nuisance as an inevitable consequence;

28.3 the transmission of electricity on the powerlines by the Defendant was expressly within the scope of the statutory authority given by the ES Act and the EI Act to the Defendant;

28.4 the Defendant acted with reasonable care in the exercise of the statutory power or duty imposed by the ES Act and the EI Act; and

28.5 by reason of the matters pleaded in this paragraph, if, which is denied, the Plaintiff and the Group Members suffered a nuisance created by the Defendant, the Defendant has a complete defence in respect of the nuisance.

29 It denies paragraph 29.

30 It denies paragraph 30.

31 It admits paragraph 31 and further says that the questions of fact or law in this proceeding requires the appointment of a sub-group member to consider whether the Statutory Duty and/or General Duty as alleged was owed by the Defendant to any person who resided in or had real or personal property in the bushfire who suffered economic loss which was loss not consequent upon injury to that person or loss or damage to their property as a result of the bushfire.

32 Save as admitted or not admitted in this Defence, the Defendant denies that the Plaintiff is entitled to the sums claimed as alleged or at all.

Dated: 26 July 2018



WOTTON + KEARNEY
Solicitors for the Defendant