

**SUPREME COURT OF VICTORIA**  
**TERANG BUSHFIRE CLASS ACTION**

**LENEHAN**  
**v**  
**POWERCOR AUSTRALIA LIMITED**  
(SCI 2018 01290)

## **IMPORTANT NOTICE**

On 10 April 2018, Mr Lenehan (**plaintiff**) commenced this group proceeding in the Supreme Court of Victoria against Powercor Australia Limited (**Powercor**). This group proceeding arises out of the fire that commenced near the corner of Peterborough Road and the Princes Highway in Terang on 17 March 2018 (**Terang Fire**) and is brought by the plaintiff on his own behalf and on behalf of persons who suffered personal injury or loss of or damage to property as a result of the Terang Fire.

The Supreme Court has ordered that this notice be published for the information of persons who might be group members on whose behalf this group proceeding is brought and who may be affected by it.

**You should read this notice carefully as it may affect your rights. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in this notice that you do not understand, you should seek legal advice.

**1. What is a group proceeding?**

A group proceeding, also known as a class action, is a proceeding brought by the plaintiff on his own behalf and on behalf of group members against the defendant, where the plaintiff and the group members have similar claims against the defendant.

Group members are bound by any judgment or settlement entered into in the group proceeding unless they choose not to participate by “opting out” of the proceeding. This means that:

- (a) if the group proceeding is successful or settles, group members may be eligible for a share of any settlement monies of Court-awarded damages;
- (b) if the group proceeding is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the group proceeding, group members will not be able to pursue their claims against the defendant in separate legal proceedings unless they have opted out.

## **2. What is the Terang Bushfire Class Action?**

The plaintiff alleges that Powercor owed him and the group members a duty to take reasonable precautions to prevent a fire starting as a result of the electrical infrastructure operated and maintained by Powercor. The plaintiff alleges Powercor breached that duty because of negligence by Powercor in the construction, maintenance and operation of the powerline causing the plaintiff and group members to suffer loss or damage.

The claims made by the plaintiff are set out in a “Statement of Claim” filed in the Court and dated 10 April 2018. Powercor has filed a defence and denies liability in respect of the allegations and is defending the class action.

## **3. Are you a group member?**

You are a group member in the class action if you:

- (a) suffered personal injury or loss of or damage to property as a result of the Terang Fire or are the legal personal representative of the estate of any deceased person who would otherwise have qualified as a group member;
- (b) are not any of the following:
  - (i) A related party of Powercor;
  - (ii) A related body corporate of Powercor;
  - (iii) An associated entity of Powercor; or
  - (iv) An officer or a close associate of Powercor.

## **4. What if your insurer has contacted you in relation to the class action?**

You may have been contacted by your insurer in relation to the obligations and rights you have under your policy of insurance and your ability to elect whether or not you remain a group member to the *Lenehan* proceeding. It is likely that each group member's obligations to their insurer/s will vary, depending upon the terms of any applicable policy of insurance. Any steps taken by you or your insurer on your behalf may impact on your legal rights. You may benefit from seeking independent legal advice in respect of this issue.

A number of statements made by Mr Brendan Pendergast of Maddens Lawyers published in the Warrnambool Standard on 25 September 2018 in relation to the St Patrick's Day fires in south-west Victoria were considered by the Supreme Court of Victoria to be misleading and to require clarification.

Lawyers appointed by insurance companies to pursue recovery of insured and uninsured losses arising from the St Patrick's Day fires have duties to act in the best interests of both the insurer and the insurer's customers (insured group members). It would be contrary to such duties for such lawyers to act in a way that favoured the interests of the insurer to the detriment of the group member.

There is nothing improper about insurers with the legal right to pursue recovery of insured and uninsured losses from Powercor choosing not to do so through class actions commenced by Maddens Lawyers. Further, the insurance companies that provide cover to group members do not insure Powercor, and neither do their solicitors provide legal advice to Powercor.

#### **5. What is opt out?**

The plaintiff in group proceedings does not need to seek the consent of group members to commence a group proceeding on their behalf. However, group members can cease to be group members by "opting out" of the group proceedings. If you have been included as a group member in the Terang Bushfire Class Action but you do not want to continue to be a group member, you can opt out now.

#### **6. What should group members do?**

If you fit the definition of a "group member" the following three options are available to you:

##### **Option 1: Register**

**If you wish to remain a group member** and make a claim for loss or damage you claim to have suffered a result of the Terang Fire, you should contact Maddens Lawyers to tell them what your loss and damage is, as follows:

Postal:           Brendan Pendergast  
                      Maddens Lawyers  
                      PO Box 320  
                      Warrnambool VIC 3280

Email:            jlw@maddenslawyers.com.au

Group members who register with Maddens will be bound by the outcome of the group proceeding. If the group proceeding is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the plaintiff and group members. You may have to satisfy certain conditions and establish elements of your claim that are relevant specifically to you before your entitlement arises.

If the Terang Bushfire Class Action is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceeding.

If you wish to remain a group member, even if you do not wish to retain Maddens Lawyers to act for you as a client, you may wish to contact Maddens to “**register**” as a group member to ensure that future notices about the group proceeding can be sent to you directly.

**Option 2:    Do Nothing**

**If you do nothing**, you will remain a group member and remain bound by any order, judgment or settlement in the Terang Bushfire Class Action. The plaintiff will continue to bring the proceeding on your behalf up to the point where the Court determines the questions that are common to the claims of the plaintiff and the group members.

However, unless you identify yourself as a “group member” no one may be aware that you are a group member and you may not be able to share in any benefit flowing from the proceeding. You may also have to satisfy certain conditions before your entitlement to a share in any benefit arises.

**Option 3:    Opt Out**

**If you do not wish to be a group member** you should opt out of the proceeding by completing the “Opt Out Notice” below. If you opt out then you will cease to be a group member and will not be affected by any orders made in the group proceeding.

If you wish to bring your own claim against the defendants, you should seek your own legal advice about your claim and the applicable time limit before opting out.

**You must decide what to do BEFORE 21 DECEMBER 2018.** If you want to opt out you must send your "Opt Out Notice" to the Supreme Court so that it arrives **before** that deadline.

#### **7. Will you be liable for legal costs?**

Group members will not become liable for any legal costs simply by remaining or registering as group members. Group members in a group proceeding **are not** legally liable for the legal costs associated with bringing the proceedings.

However, if there is a judgment or settlement that results in compensation becoming payable to group members, then:

- (a) If the preparation or finalisation of your personal claims requires work to be done in relation to issues specific to your claim, you can engage Maddens Lawyers or other solicitors to do that work for you. You may be liable for costs associated with the determination of issues concerned only with your claim;
- (b) If any compensation becomes payable to you as a result of any order, judgment or settlement in the group proceeding, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the plaintiff in running the group proceeding but which are not able to be recovered from the defendant. The plaintiff will ask the Court to make such an order if the occasion arises; and
- (c) Group proceedings are often settled out of Court. If this occurs in this proceeding, you may be able to claim from the settlement amount without retaining a lawyer.

#### **8. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the Statement of Claim and Defence, may be obtained by:

- (a) downloading them from [www.maddenslawyers.com.au](http://www.maddenslawyers.com.au);
- (b) telephone Maddens Lawyers on 1800 815 228 and requesting a copy to be posted or emailed;

- (c) inspecting them by visiting the Registry of the Supreme Court of Victoria in Melbourne at Level 2, 436 Lonsdale Street, Melbourne; or
- (d) on the Supreme Court website at [https://www.supremecourt.vic.gov.au /law-and-practice/class-actions/terang-bushfire-class-action](https://www.supremecourt.vic.gov.au/law-and-practice/class-actions/terang-bushfire-class-action)

Please consider the above matters carefully. If you are not sure whether you are a group member or want further information, you can contact the plaintiff's solicitors Maddens Lawyers on 1800 815 228, or seek your own legal advice. You should not delay in making your decision as the deadline for the opt out is **21 DECEMBER 2018**.

This notice is published pursuant to Orders made by the Supreme Court on **2 November 2018**.

NOTICE OF OPTING OUT BY GROUP MEMBER

IN THE SUPREME COURT OF VICTORIA

AT MELBOURNE

COMMON LAW DIVISION

MAJOR TORTS LIST

S CI 2018 01290

BETWEEN:

**Anthony James Lenehan**

Plaintiff

and

**Powercor Australia Limited  
(ACN 064 651 109)**

Defendant

To: The Prothonotary, Supreme Court of Victoria  
Registry, Level 2, 436 Lonsdale Street  
Melbourne VIC 3000

Maddens Lawyers  
PO BOX 320  
Warrnambool, VIC 3280

Wotton & Kearney Lawyers  
15/600 Bourke Street  
Melbourne VIC 3000

I, (print name) ....., a group member in the  
above group proceeding, give notice under section 33J(2) of the **Supreme Court Act 1986**  
that I am opting out of this proceeding.

Dated: .....

Signature of group members or the group member's  
solicitor:.....

Address of group member:

.....  
.....

