



FORM 5A

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

Case Number: S CI 2018 01113  
Filed On: 18/04/2019 11:54 PM

No. S CI 2018 01113

B E T W E E N

ANDREW JOHN FRANCIS

Plaintiff

-and-

POWERCOR AUSTRALIA LIMITED  
(ACN 064 651 109)

First Defendant

-and-

ELECTRIX PTY LIMITED  
(ACN 067 232 393)

Second Defendant

**AMENDED WRIT**

*(Pursuant to Order of Honourable Justice John Dixon dated 16 April 2019)*

Date of Document: ~~28 March 2018~~ 18 April 2019  
Filed on behalf of: The Plaintiff  
Prepared by:  
Maddens Lawyers  
219 Koroit Street  
Warrnambool  
Victoria 3280

Solicitors Code: 102650  
DX: 28001  
Telephone: (03) 5560 2000  
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**TO: THE SECOND DEFENDANT**

**TAKE NOTICE** that this proceeding has been brought against you by the plaintiff for the claim set out in this writ and the annexed Second Amended Statement of Claim.

**IF YOU INTEND TO DEFEND** the proceeding, or if you have a claim against the plaintiff or the First Defendant which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

**YOU OR YOUR SOLICITOR** may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and

(b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

**IF YOU FAIL** to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

**\*THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

**FILED** ~~28 March 2018~~ **18 April 2019**  
28 March 2018

Prothonotary

**THIS WRIT** is to be served within one year from the date it is filed or within such further period as the Court orders.

1. Place of trial: Warrnambool
2. Mode of trial: Judge Alone
3. This writ was filed for the plaintiff by Mr Brendan Pendergast of Maddens Lawyers, Warrnambool
4. The address of the plaintiff is: Ridge Road, Garvoc, Crown Portion 4B of allotment 13B Parish at Garvoc. Victoria 3265
5. The address for service of the plaintiff is:  
  
Maddens Lawyers  
219 Koroit Street  
Warrnambool, Victoria 3280  
Ref: 180455
6. The e-mail address for service of the plaintiff is: bfp@maddenslawyers.com.au
7. The address of the First Defendant is: Level 8, 40 Market Street, Melbourne Victoria, 3000
8. The address of the Second Defendant is: Unit 1, 8 Weddel Court, Laverton North, Victoria 3026.

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

No. S CI 2018 01113

B E T W E E N

ANDREW JOHN FRANCIS

Plaintiff

-and-

POWERCOR AUSTRALIA LIMITED  
(ACN 064 651 109)

First Defendant

-and-

ELECTRIX PTY LTD  
(ACN 067 232 393)

Second Defendant

**SECOND AMENDED STATEMENT OF CLAIM**

(Filed pursuant to the Orders of the Honourable Justice J Dixon  
made 16 April 2019)

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Date of Document: ~~18 April 2019~~ ~~16 April 2018~~ ~~28 March 2018~~

Filed on behalf of: The Plaintiff

Prepared by:

Maddens Lawyers

219 Koroit Street

Warrnambool

Victoria 3280

Solicitors Code: 102650

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Preliminary

1. At approximately 9.00pm on 17 March 2018 a fire started on a property at 974 Sisters-Garvoc Road, The Sisters in the State of Victoria (**the Garvoc Fire**).
2. The Garvoc Fire travelled in a south – easterly direction and burnt ~~in excess of 4,000 hectares~~ over the area highlighted on the map annexed at Annexure 1 to ~~this the~~ Statement of Claim (**the Affected Garvoc Fire Area**).

The Plaintiff

3. The plaintiff: -



- (a) is and was at all material times, owner of property at Ridge Road, Garvoc, Crown Portion 4B of allotment 13B Parish at Garvoc, located within the ~~Affected~~Garvoc Fire Area
- (b) was the owner of personal property destroyed in the Garvoc Fire.

4. The plaintiff brings this proceeding on his own behalf and on behalf of the group members.

Group Members

5. The group members to whom this proceeding relates are: -

- (a) all those persons who suffered personal injury (whether physical injury, or psychiatric injury as defined below) as a result of the Garvoc Fire (including without limitation, any injury suffered as a result of attempts to escape the Garvoc Fire or other emergency action taken by the person in response to the Garvoc Fire);  
where "psychiatric injury in this group means nervous shock or another psychiatric or psychological injury, disturbance, disorder or condition which has been diagnosed as such in a diagnosis given to the person by a medical practitioner prior to 1 March ~~2018~~ 2019;  
and
- (b) all those persons who suffered loss or damage to property as a result of the Garvoc Fire (including, without limitation, loss or damage resulting from emergency action taken by any person in response to the Garvoc Fire); and
- (c) all those persons who at the time of the Garvoc Fire resided in, or had real or personal property in the ~~Affected~~Garvoc Fire Area and who suffered economic loss, which loss was not consequent upon injury to that person or loss or damage to their property as a result of the Garvoc Fire; and
- (d) the legal personal representatives of the estates of any deceased persons who came within paragraphs (a), (b) and/or (c) at the time of the Garvoc Fire.

**(Group Members)**

6. As at the time of the commencement of this proceeding there are seven or more Group Members.

The **First** Defendant - **Powercor**

7. The first defendant (**Powercor**) at all material times:

- (a) was and is a corporation registered for the purposes of the *Corporations Act* 2001 (Cth) and capable of being sued;
- (b) carried on business as a ~~supplier~~distributor of electricity to residential and business consumers in Victoria (**the Business**);

- (c) in carrying on the Business was:
  - (i) an major electricity supplier company; and
  - (ii) an network-operator of a supply network;

within the meaning of section 3 of Electrical Electricity Safety Act 1998 (Victoria) (**the ES Act**).

8. In the course of and for the purpose of the Business, Powercor at all material times:

- (a) owned, further or alternatively had the use and management of, the poles, pole caps, insulators, fasteners, electrical conductors and other installations (together and severally **the Installations**) comprising a 22kV electricity supply line running in an east-westerly direction and located on a property at 974 Sisters-Garvoc Road, The Sisters, Victoria (**the Powerline**);

#### **Particulars**

The 22kV Powerline as configured on pole number 4 (**the Pole**), located on a property at 974 Sisters-Garvoc Road, The Sisters, Victoria comprised a single metal cross arm with three insulators. The Pole was a 10.67m high (35 feet) hardwood (Mountain Grey Gum) timber pole first installed in 1964, and reinforced on 1 July 1994 with the installation of two RFD 600 steel stakes: pole records [PCA.001.001.4790]; and construction drawing VX9/7020/108/1D [PCA.001.001.0001]. with The metal supports affixed to the base of the Pole and extending extended to approximately two metres in height from the ground.

- (b) caused or allowed the transmission of electricity on the Powerline for the purposes of, *inter alia*, supply to residential and business consumers.

#### Statutory Duty of Care

~~At all material times section 75 of the ES Act required Powercor as a network operator to take reasonable care to ensure that all parts of its network including the power poles:~~

- ~~(c) — were designed, constructed, operated and maintained in accordance with regulations made under the ES Act; and~~
- ~~(d) — were safe and were operated safely~~

9. At all material times since 1 January 2012, section 98 of the ES Act required Powercor to design, construct, operate and maintain its supply network to minimize as far as practicable:

- 
- (a) the hazards and risks to the safety of any person arising from the supply network;
- (b) the hazards and risks of damage to the property of any person arising from the supply network; and
- (c) the bushfire danger arising from the supply network.

**(the Statutory Duties).**

10. The Statutory Duties imposed on Powercor obligations for the protection of a particular class of persons, being persons who from time to time, by themselves or their property:
- (a) approached or came into contact with parts of Powercor's network, or
  - (b) might be injured or damaged by a discharge of electricity from any part of the said network or by the consequences of any such discharge, including but not limited to fire;

**(the Statutory Class).**

#### **Particulars**

The object of protecting the said class is to be inferred from the ES Act as a matter of the proper construction of the Act.

11. As at 17 March 2018 the plaintiff and each of the Group Members were:
- (a) persons within the Statutory Class; or
  - (b) the legal personal representatives of the estates of persons who were within the Statutory Class at the time of the Garvoc Fire.

#### **Particulars**

The plaintiff resides at Ridge Road, Garvoc being ~~and each of the Group Members had interests in real and personal property within~~ an area at risk of burning by fire ignited as a result of a Powercor's network.

Particulars relating to individual group members may be provided following the trial of common questions.

12. In the premises set out in the preceding paragraph, at all material times, Powercor owed the Statutory Duties to: -
- (a) the plaintiff;
  - (b) each of the Group Members referred to in paragraphs 5(a) to 5(c) hereof; and
  - (c) each of the deceased persons referred to in paragraph 5(d) hereof.

#### General Duty of Care

13. At all material times Powercor:-
- (a) had the right, to the exclusion of other private persons, to:
    - (i) to construct, modify, repair, inspect, maintain and operate; and/or
    - (ii) direct the installation, modification, repair, inspection and operation of,
- the Powerline and its Installations, including the power poles;

- (b) exercised the said right; and
- (c) in the premises, had control over the Installations.

14. At all material times:

- (aa) Powercor used the Powerline to transmit electricity at high voltage;
- (a) the transmission of high-voltage electricity along the Powerline created a risk of unintended discharges of electricity from the Powerline;
- (b) unintended discharges of electricity from the Powerline was highly dangerous in that it was capable of causing death or serious injury to persons, and damage to or loss of property, by:
  - (i) electric shock;
  - (ii) burning by electric current; further or alternatively
  - (iii) burning by fire ignited as a result of the discharge of electricity;
- (c) in the premises set out in paragraphs "a" and "b", the transmission by Powercor of electricity on the Powerline was a dangerous activity; and
- (d) Powercor knew, or as network operator ought reasonably to have known the matters set out in "a" to "c" above.

15. At all material times it was reasonably foreseeable to Powercor that:

- (a) (i) a wooden power pole affected by significant internal degradation might fail;

#### Particulars

Internal degradation is any compromise of the internal structure of a wooden power pole including but not limited to rot or termite infestation.

- (ii) if a wooden power pole supporting high voltage powerlines failed, those power lines could come into contact with the ground or vegetation below;
- (iii) contact between the Powerline and the ground or vegetation below might cause a discharge of electricity, including arcing between the conductors and the ground and/or vegetation;
- (iv) a discharge of electricity from the Powerline could cause the emission of electricity, heat or molten metal particles ("sparks") from the point of discharge;
- (b) electricity, heat or sparks emitted from a point of discharge could cause electric shock or burns to persons or property in the vicinity of the point of discharge;
- (c) electricity, heat or sparks emitted from a point of discharge could cause the ignition of fire in combustible material exposed to the electricity, heat or sparks; and

### Particulars

Combustible material is any material capable of ignition, including without limitation ignition by contact with molten or burning metal.

- (d) such fire once ignited might spread over a wide geographic area; **and**
- (e) the fire could cause death or injury to persons and loss of or damage to property within the area over which the fire spread, and consequential losses including economic losses; **and**
- (f) such fire could cause personal injury, damage to property and consequential losses including economic losses within areas:
  - (i) affected by the physical consequences of fire, such as smoke or debris; or
  - (ii) the subject of emergency activity to prevent the spread of fire, including without limitation the clearing of fire breaks**(affected areas); and**
- (g) such fire or its consequences could:
  - (i) disrupt or impair the income-earning activities of persons residing or carrying on business in the fire area or affected areas;
  - (ii) impede the use or amenity of property located in the fire area or affected areas; or
  - (iii) reduce the value of property or businesses located in the fire area or affected areas;and thereby cause economic loss to those persons, or the owners of those properties or businesses;
- (h) the risks referred to in "**a**" to "**eg**" '**c**' to '**f**' inclusive **(Consequences)** were likely to be higher when the environment around the Powerline was dry and hot and windy than when the environment was damp or cool or windless  
**(the risks in 'a' to 'h' above being collectively, the Risks).**

16. At all material times, ~~Group members within the Affected Area~~ of the public who might be, or who owned or had an interest in real or personal property that might be, within the fire area or the affected area of a fire caused by the discharge of electricity from the powerline (Garvoc Class): -
- (a) had no ability, or no practical and effective ability, to prevent or minimize the risk of such discharge occurring; and
  - (b) were vulnerable to the impact of such fire; and consequently

- (c) were to a material degree dependent, for the protection of their persons and property, upon Powercor ensuring that the Powerline and its Installations were safe and operated safely in the operating conditions applying from time to time.

### Particulars

The Garvoc Fire Area is shown on the map annexed to the statement of claim. Particulars of the actual affected area of the Terang bushfire will be provided prior to trial.

The operating conditions referred to included the level of electrical current being transmitted along the Powerline, the construction of the Installations (including timber poles) and the physical environment around the Powerline including, without limitation, wind direction and speed, ambient temperature and the amount of combustible fuel around or below the Powerline.

17. In the premises ~~set out in paragraphs 8 to 17 inclusive, alternatively paragraphs 4 and 14 to 17 inclusive~~, at all material times Powercor owed to the plaintiff and Group Members Garvoc Class a duty: -
- (a) to take reasonable care, by its officers and servants; and
  - (b) to ensure that reasonable care was taken, by its agents or contractors;
- to ensure that all parts of the Powerline and its Installations were safe and operated safely in the operating conditions that were foreseeable for the line (**the General Duty**).

187A At all material times, the plaintiff and group members were persons within, or the personal representatives of deceased persons who, at the time of the Garvoc Fire were within, the Garvoc Class.

18. In the premises set out in the preceding paragraph, at all material times Powercor owed the General Duty to the plaintiff and the Group Members.

### Standard of care

18A. At all material times, Powercor:

- (a) was, as operator of a supply network, required to comply with an Electrical Safety Management Scheme (ESMS) approved by Energy Safe Victoria;
- (b) was required by the ES Act, the Electricity Safety (Bushfire Mitigation) Regulations 2013 and its ESMS (Part 3, cl.3) to undertake programs of cyclic inspection of above ground electric lines at intervals of no longer than 37 months in hazardous bushfire risk areas to identify required maintenance works (scheduled inspections);
- (c) knew that the escape of electricity could result in the Consequences.



- 18B. At all material times, the property at 974 Sisters-Garvoc Road, The Sisters, Victoria in the vicinity of the Powerline was in a hazardous bushfire risk area within the meaning of section 3 of the ES Act.
- 18C. At all material times, Powercor knew that if it failed to properly inspect and maintain wooden power poles, a fire may occur.
- 18D. At all material times, Powercor's system for scheduled inspections of wooden poles within its distribution network was recorded in its:
- (a) Asset Management Plan for Poles (M0010), from time to time, including Issue No. 2.0 dated 23/02/2015 [PCA.001.001.1649];
  - (b) Network Asset Maintenance Policy for Inspection of Poles (D-390), from time to time, including Issue no: 4.4 dated 25/08/2017 [PCA.001.001.2646];
  - (c) Network Asset Maintenance Policy for Permanent Reinforcement Systems on Wood Poles (D-398), from time to time, including Issue No: 2.1 dated 16/11/2017 [PCA.001.001.2691]; and
  - (d) Asset Inspection Manual (05-M540), from time to time, including Issue No: 2.6 dated 15/11/2017 [SUP.ELX.001.7184],
- (collectively, **Powercor's policies and procedures**).
- 18E. Powercor's Asset Management Plan for Poles required Powercor to:
- (a) conduct cyclic inspections of its distribution assets at intervals of 2.5 years for 'above ground' inspection and 5 years for 'above ground' and 'ground-line' inspection (cl. 3.5.1; Table 3.5);
  - (b) apply the inspection interval for 'normal' serviceable wooden poles to reinforced (including RFD staked) poles (cl. 5.5.1);
  - (c) conduct inspections of its poles in accordance with the procedure and timeframes for pole inspection work outlined in the Network Asset Maintenance Policy for Inspection of Poles and the Asset Inspection Manual (cl. 6.2).
- 18F. Powercor's Network Asset Maintenance Policy for Inspection of Poles required inspectors conducting inspection and assessment of poles in Powercor's distribution network:

- (a) at the 2.5-yearly inspection of serviceable hardwood poles, to conduct a visual assessment of a pole's condition above ground-line; and
- (b) at the 5-yearly above ground and below ground-line inspection of serviceable hardwood poles to conduct:
  - (i) an assessment of a pole's condition from ground-line to two metres above;
  - (ii) an assessment of a wood pole's condition from ground-line to a minimum of 300mm below ground;
  - (iii) a visual assessment of a pole's condition from two metres above ground-line to the top of the pole;
  - (iv) an inspection to identify wood destroying insects;
  - (v) a preservative treatment of hardwood poles.

### **Particulars**

Item 8 of the "Task List for Inspection of Poles" (Asset Maintenance Policy for inspection of poles [PCA.001.001.2646 at .2653]) specifies the tasks for the inspection of wood poles reinforced with staking systems:

- (a) Visually inspect the external surfaces of the pole from 2 metres above ground to the pole top for deteriorations, fungal attack, lightning strikes, significant cracking and or bowing and termite infestation.
- (b) Inspect the external surfaces of the pole from ground-line to 2 metres above ground for:
  - (i) deterioration;
  - (ii) termite infestation;
  - (iii) security of reinforcement system.
- (c) Inspect externally surfaces of the pole below ground to a maximum depth of 300mm for:
  - (i) termite infestation;
  - (ii) corrosion of the reinforcement system.
- (d) Inspect internally, reinforced staked hardwood poles with a 12mm auger bit to ascertain depth of sound timber, at 400mm below the top of the reinforcement system [PCA.001.001.2646 at .2658].

The assessment of the condition of reinforced wood poles is to take into account the matters in Item 9, including:

- (e) Strength grouping of the timber species.
- (f) Safety factor of 1.875 for the strength grouping of the timber species.
- (g) Durability class of the timber species (defaulting to a Class 3 classification if cannot be determined) and a reduction of 1 metre from the pole's measured height where a reinforcement system fitted.
- (h) The effective diameter of the pole at the top of the reinforcement system. This diameter is to take into account any pockets of decay and cracks greater than 20mm in depth and 5mm in width.
- (i) The thickness of any internal measurements taken shall be measured in millimetres. Poles that are measured with less than 80mm shall have a second hole drilled and if a pole is not drilled the default measurement shall be 150mm.



- (j) The number of inspection holes in the poles taking into account the direction of loading on the pole top.
- (k) The original strength rating of the pole [PCA.001.001.2646 at .2658]

'Ground-line' for a reinforced (staked) pole refers to the top securing bolts of the reinforcing stakes: Powercor's Asset Investigation Report [PCA.001.001.4760].

18G. Powercor's Network Asset Maintenance Policy for Permanent Reinforcement Systems on Wood Poles [PCA.001.001.2691] and Asset Inspection Manual [PCA.001.001.2704] required inspectors conducting inspection and assessment of poles in Powercor's distribution network with RFD reinforcement systems, such as the Pole, to conduct the following tests at each scheduled inspection:

- (a) Sound and Visual Test Above Ground;
- (b) Excavate;
- (c) Visual Below Ground; and
- (d) Drill.

#### Particulars

Each of these tests are defined terms in the Asset Inspection Manual.

An Above Ground Sound Test on a reinforced pole requires:

- (a) Sound testing to ascertain possible internal defects; and
- (b) the bottom bolts to 2m above ground must be tested [PCA.001.001.2704 at .3050].

An Above Ground Visual Test on a reinforced pole requires:

- (c) Probing cracks/splits, removing debris from the base of pole to identify termite or fungal attacks;
- (d) Checking of all bolts for tightness;
- (e) Measuring of:
  - (i) the diameter or girth of the pole at top of stake, after the removal of surface decay;
  - (ii) the width of any cracks/splits or pockets of deterioration at top of the stake. A crack or split is classified as being a minimum of 5mm in width and 20mm in depth
- (f) Counting the number of inspection holes for each sector based on the pole structure [PCA.001.001.2704 at .3051].

An Excavation requires an inspector to excavate to a minimum depth of 300mm. If termites are present, consideration must be given to further excavation [PCA.001.001.2704 at .3053].

A Below Ground Visual Test on a RFD reinforced pole requires:

- (g) When excavated, remove soil and decayed material from pole surface to identify the extent of termite and fungal attack. Assess the condition of the stake/sleeve if corrosion is present;
- (h) Measuring of:
  - (i) Diameter or girth of the pole, after the removal of surface decay;

- (ii) Width of any cracks/splits or pockets of deterioration. A crack or split is classified as being a minimum of 5mm in width and 20mm in depth
- (i) Counting the number of inspection holes for each sector based on the pole structure;
- (j) additional requirements in relation to pressure treated poles, and the identification of termites and corrosion in stakes [PCA.001.001.2704 at .3053].

The Internal Inspection of Wood Poles (Drill) test is:

"an attempt to identify the extent of internal decay. The position of the inspection holes needs to be considered with care, as internal decay does not uniformly occur vertically or horizontally. The internal inspection needs to target the areas of the pole that has [sic] already been identified as 'suspect areas' by the external inspection. If no suspect site can be identified the pole shall be drilled 50 to 150 mm below ground-line in the neutral zone." [PCA.001.001.2704 at .3054]

The inspection hole shall be drilled to the centre of the pole and measured in millimetres.

Assessment of Pole Condition testing:

"involves the assessment of pole condition from ground line to two metres above and below ground line using a combination of excavation, visual examination, sounding, probing and drilling, and entering the information into the pole calculator."

- 18H. Prior to the introduction of Powercor's Asset Inspection Manual (05-M540) in or about November 2005, Powercor inspected, maintained and tested RFD reinforced poles including the Pole in accordance with the *Line Inspection Manual – December 1995*.

#### Particulars

See Section 3 – Pole Inspection; Section 4 – Reinforced Pole Inspection including RFD staked poles: drawings VX9/7020/108/6 and VX9/7020/108/7A; and Section 8 – Preservative Treatment of Poles, including the requirement that staked poles must be very thoroughly treated to prevent decay creeping up the centre: drawing VX9/7020/189/2.

- 18I. At all material times, Powercor's policies and procedures required it to downgrade poles assessed during scheduled inspections to 'Limited Life', 'Unserviceable' or 'Urgent':

- (a) based upon the 'pole calculator' assessment;

#### Particulars

The assessed condition given by Powercor's pole calculator will either be Serviceable, Limited Life, Unserviceable or Urgent. [PCA.001.001.2704 at .3057]. Poles are replaced in accordance with Powercor's Priority Maintenance policy. Further particulars shall be provided after discovery, and receipt of expert evidence.



- (b) if the amount of sound wood was less than the historical minimum figures from VESI Manual drawing VX9/7020/177.

### Particulars

Asset Inspection Manual Training Reference Manual for Pole Inspection, Section G.12-TM at page 13.

18J. In the premises, at all material times:

- (a) the Statutory Duties; further or alternatively  
(b) the General Duty;

required Powercor to take reasonable care to ensure that:

- (i) hardwood poles at risk of failure alternatively not fit for service were detected and replaced prior to failure;
- (ii) the procedures undertaken in the course of scheduled inspections of RFD staked hardwood poles, were suitable to detect poles at risk of failure, including the assessment of the extent of sound wood;
- (iii) inspections of RFD staked hardwood poles were conducted using suitable inspection techniques, which included inspection by trained pole inspectors using sounding tests and, where appropriate, drilling or other tests where sounding indicated internal defect(s) (including decay or termite activity)(**degradation**);
- (iv) reasonable steps were taken to ensure that the instruction provided to inspectors was at all times clear in its requirements for the scheduled inspection of RFD staked poles;
- (v) reasonable steps were taken to ensure that inspectors received adequate training in the identification and assessment of RFD staked poles at risk of failure due to internal degradation;
- (vi) reasonable steps were taken to ensure that inspectors, following training, were competent in the identification and assessment of RFD staked poles at risk of failure due to internal degradation;
- (vii) the procedures undertaken in inspections of RFD staked hardwood poles were suitable to enable poles at risk of failure due to internal degradation to be detected;
- (viii) RFD staked hardwood poles were drill tested at each scheduled inspection;
- (ix) further and in the alternative, RFD staked hardwood poles with previous inspection records of significant internal degradation were drill tested at each scheduled inspection;
- (x) further and in the alternative, Powercor's 'above ground' testing procedure for RFD staked hardwood poles required drill testing where sounding indicated possible

internal degradation;

- (xi) RFD staked hardwood poles with significant internal degradation at or near the top of stakes were replaced prior to failure;

#### **Particulars**

Further particulars may be provided following the completion of discovery, interrogation and receipt of expert evidence.

- 18K. On or about 9 October 2015, Powercor entered into a contract with the second defendant (Electrix) for Electrix to provide maintenance services in the western district in respect of Powercor's distribution network assets, including the Powerline (Electrix Agreement).

#### **Particulars**

The Electrix Agreement is in writing. It includes Conditions of Contract order number 7017406 executed 9 October 2015.

Further particulars may be provided following discovery.

- 18L. Prior to October 2015, Powercor entered into one or more contracts with Electrix in similar terms to the Electrix Agreement for Electrix to provide maintenance services in the western district in respect of Powercor's distribution network assets, including the Powerline (previous Electrix Agreement).

#### **Particulars**

Further particulars may be provided following discovery.

- 18M. If (which is denied) Powercor was able to discharge its common law duty by engaging competent contractors, Powercor's duty included a duty to exercise reasonable care in the appointment, supervision and management of its contractors.

#### **The Garvoc Fire**

19. At approximately 9.00pm on 17 March 2018: -
- (a) the Pole a timber power pole marked with identification number 4, located on a property at 974 Sisters-Garvoc Road, The Sisters in the State of Victoria (the Pole) failed and broke away from the metal supports affixed to the base of the Pole;
  - (b) the Pole, two 22kV electrical conductors and other Installations came into contact with the ground;
  - (c) electricity, heat or sparks emitted from the Installations landed in and ignited a fire in grass on a property at 974 Sisters-Garvoc Road, The Sisters;
  - (d) the fire, being the Garvoc Fire, spread across the Affected Garvoc Fire Area.



### Breaches of duties of care

20. The Garvoc Fire was caused by breaches by Powercor of:

- (a) the Statutory Duties; further or alternatively
- (b) the General Duty.

#### **Particulars of Breach**

- (i) Failing to adequately maintain the Installations, in particular timber power poles, to ensure the safe operation of the electricity supply network;
- (ii) failing to have adequate systems for identifying power poles at risk of failure;  
~~and~~
- (iii) failing to have adequate systems for the replacement of power poles at risk of failure;
- (iv) failing to detect that the Pole was at risk of failure alternatively not fit for service;
- (v) failing to exercise, by its officers, servants or agents, reasonable skill, care and diligence in conducting scheduled inspection and assessment of wooden poles;
- (vi) failing to ensure that Electrix exercised reasonable skill, care and diligence in conducting scheduled inspection and assessment of wooden poles;
- (vii) failing to ensure that the procedures undertaken in scheduled inspections of RFD staked hardwood poles, were suitable to detect poles at risk of failure, including the assessment of the extent of sound wood;
- (viii) failing to ensure that inspections of RFD staked hardwood poles were conducted using suitable inspection techniques, which included inspection by trained pole inspectors using sounding tests and, where appropriate, drilling or other tests where sounding indicated internal degradation;
- (ix) failing to ensure that reasonable steps were taken to ensure that the instruction provided to inspectors was at all times clear in its requirements for the scheduled inspection of RFD staked poles;
- (x) failing to ensure that reasonable steps were taken to ensure that inspectors received adequate training in the identification and assessment of RFD staked poles at risk of failure due to internal degradation;
- (xi) failing to ensure that reasonable steps were taken to ensure that inspectors, following training, were competent in the identification and assessment of RFD staked poles at risk of failure due to internal degradation;
- (xii) failing to ensure that the procedures undertaken in inspections of RFD staked hardwood poles were suitable to enable poles at risk of failure due to internal degradation to be detected;
- (xiii) failing to ensure that RFD staked hardwood poles were drill tested at each scheduled inspection;
- (xiv) further and in the alternative, failing to ensure that RFD staked hardwood poles

with previous inspection records of significant internal degradation including decreasing assessments of minimum sound wood at or near the top of stakes were drill tested at each scheduled inspection;

- (xv) further and in the alternative, failing to ensure that Powercor's 'above ground' testing procedure for RFD staked hardwood poles required drill testing where sounding indicated internal degradation;
- (xvi) failing to ensure that RFD staked hardwood poles with records of decreasing assessments of minimum sound wood at or near the top of stakes were drill tested at each scheduled inspection;
- (xvii) failing to ensure that RFD staked hardwood poles with internal degradation at or near the top of stakes were replaced prior to failure;
- (xviii) failing to replace the Pole prior to 17 March 2018.

Further particulars of breach will be provided subsequent to discovery, interrogation and receipt of expert evidence.

20A. In circumstances where:

- (a) Powercor knew that the Pole had internal degradation for many years prior to its failure on 17 March 2018;
- (b) from at least 14 May 2015, Powercor knew that the level of internal degradation in the Pole was:
  - (i) significant; and
  - (ii) advancing.

**Particulars of knowledge in (a) and (b)**

Powercor's records of inspection of the Pole included a measurement of:

- (a) 100mm of sound wood on 10 May 2010; and
  - (b) 50mm of sound wood on 14 May 2015.
- (c) the Pole was last inspected prior to the Garvoc Fire on 30 November 2017;
  - (d) the amount in millimetres of sound wood in the Pole was not assessed in the course of its inspection on 30 November 2017;
  - (e) at all material times, Powercor knew that wooden poles with internal degradation could fail;
  - (f) prior to its failure, the Pole was supporting high voltage conductors across an area where there was a significant risk of the Consequences if the Pole failed;

**Particulars**

The Pole was located in an open paddock with combustible material directly under the Powerline, and adjacent to open paddocks, grassland, trees and other vegetation, livestock, property and persons.

- (g) foreseeable weather conditions in the area of the Pole included dry and hot and windy conditions;
- (h) at all material times, Powercor had control over the Installations, including the Pole;
- (i) Powercor failed to replace the Pole prior to its failure on 17 March 2018.

the plaintiff relies on the doctrine of *res ipsa loquitur* to establish causation and breach of duty.

#### *Subgroup Claims – Private Nuisance*

21. Further to paragraph 4 above, the plaintiff brings this proceeding on behalf of those group members (**subgroup members**) who suffered loss of or damage to property, further or alternatively economic loss, in connection with the Garvoc Fire's interference in their use or enjoyment of interests in land.

#### **Particulars**

The plaintiff was the registered proprietor of land over which the Garvoc Fire burned, being land at Ridge Road, Garvoc, Crown Portion 4B of allotment 13B Parish at Garvoc.

Particulars relating to individual subgroup members will be provided following the trial of common questions or otherwise as the Court may direct.

22. At all material times each of:
- (a) the Risks referred to in paragraph ~~46~~15 above; and
  - (b) the risk that a fire ignited as a result of the failure of a power pole which brought the Powerline and its Installations in contact with flammable materials, would unreasonably interfere with the use or enjoyment of interests in land over which the fire passed, by the persons entitled to the said use or enjoyment;
- were reasonably foreseeable to Powercor.
23. By reason of the matters set out in paragraphs 20 and 21 Powercor:
- (a) caused electricity, heat or sparks from the Powerline to come into contact with combustible material on a property at 974 Sisters-Garvoc Road, The Sisters; and thereby
  - (b) caused the ignition of the Garvoc Fire, which spread to the ~~Affected~~Garvoc Fire Area being land upon which the plaintiff or subgroup members had interests.
24. The Garvoc Fire unreasonably interfered with the use or enjoyment by the plaintiff and subgroup members of their interests in the lands over which the fire passed.



25. In the premises, the plaintiff and each of the subgroup members suffered nuisance created by Powercor.

Causation and Loss and Damage

25A. By reason of:

- (a) the breaches of the Statutory Duties;
- (b) the breaches of the General Duty; further or alternatively
- (c) the nuisance;

by Powercor alleged above

- (i) the plaintiff.
- (ii) each of the group members described in paragraphs 5(a) to (c) hereof;
- (iii) the deceased persons referred to in paragraphs 5(d) hereof;
- (iv) each of the subgroup members

as the case may be, suffered loss and damage of the kinds referred to in paragraphs 1546(e) to (g) above.

**Particulars of loss and damage**

The plaintiff suffered property loss and damage, including the destruction of:

- (i) a shipping container;
- (ii) personal chattels;
- (iii) chickens; and
- (iv) an extensive permaculture garden

Further particulars of the plaintiff's loss and damage, including particulars as to quantum, will be provided prior to trial.

Particulars relating to individual group members will be provided following the trial of common questions.

The Second Defendant - Electrix

25B. Further or alternatively to the claims against Powercor set out above, by reason of Part IVAA of the Wrongs Act 1958, the Plaintiff on his own behalf and on behalf of the group members adopts Powercor's claims against the second defendant (Electrix) as follows.

25C. At all relevant times, Electrix was incorporated pursuant to the Corporations Act 2001 (Cth).

25D. The plaintiff repeats paragraphs 18K.

- 25E. There were terms of the Electrix Agreement, among others, that:
- (a) Electrix was required to provide maintenance services using all due skill, care and diligence (condition 4(c));
  - (b) Electrix was required to provide maintenance services in accordance with sound professional and business practices (clause 4.1(c));
  - (c) the maintenance services to be provided by Electrix included undertaking scheduled asset inspections of wood poles including the performance of structural integrity testing of wooden poles in accordance with Asset Inspection Manual 05-M540 (schedule 1, clause 1.1.3) (Services).
- 25F. At all relevant times, it was reasonably foreseeable to Electrix that a failure to inspect for, identify, assess and/or manage poles at risk of failure could result in a pole failing within Powercor's distribution network.
- 25G. During the term of the Electrix Agreement and the previous Electrix Agreement, Electrix provided services to Powercor including in respect of the Powerline and the Pole.
- 25H. By reasons of the matters alleged at paragraph 25D to 25G above, Electrix had a responsibility for and a degree of control over:
- (a) the inspection and assessment of poles within Powercor's distribution network, including the Pole;
  - (b) the implementation and observance by its employees of the requirements of the Electrix Agreement and of Powercor's policies and procedures, including the Asset Inspection Manual, during and for the purposes of inspection and assessment of wooden power poles;
  - (c) the knowledge, training and experience of the employees it engaged to perform services under the Electrix Agreement, including the inspection and assessment of wooden poles.
- 25I. During the term of the Electrix Agreement, it was reasonably foreseeable that any failure by Electrix, its servants or agents, to observe and implement the requirements of the Electrix Agreement and of Powercor's policies in respect of the inspection and assessment of wooden poles could result in the materialisation of the Risks alleged in paragraph 15 above.
- 25J. Throughout the term of the Electrix Agreement, the plaintiff and group members were:
- (a) vulnerable to the Risks materializing;

(b) for the purposes of protecting themselves and their property and their economic interest against the Risks, reliant on Electrix by its servants and agents exercising reasonable care in undertaking the Services.

25K. In the premises during the term of the Electrix Agreement, Electrix and its relevant employees owed to the Plaintiff and group members a duty to take reasonable care and to ensure that reasonable care was taken by them:

(a) in providing the Services, in particular, in conducting inspection and assessment of wooden poles;

(b) to ensure that the assessment of wooden poles was undertaken in accordance with the requirements of the Electrix Agreement and of Powercor's policies and procedures;

(c) to ensure that persons engaged to conduct the assessments of wooden poles were competent to inspect for and identify poles at risk of failure.

**(Electrix Duty).**

25L. During the term of the previous Electrix Agreement, Electrix by an employee or agent conducted one or more inspections of the Powerline including the Pole.

**Particulars**

Electrix conducted inspections of the Pole on 10 May 2010, 5 December 2012 and 14 May 2015. Further particulars may be provided following discovery.

25M. During the term of the Electrix Agreement, Electrix by an employee or agent conducted one or more inspections of the Powerline including the Pole.

**Particulars**

Electrix conducted an inspection of the Pole on 30 November 2017. Further particulars may be provided following discovery.

25N. By reason of the matters alleged above at paragraphs 25D to 25M, in exercising reasonable care during inspection of the Pole, Electrix, its employees or agents ought reasonably to have:

(a) referred to results of previous inspections of the Pole indicating the level of internal degradation of the Pole;

(b) conducted sound testing to identify the presence of internal degradation;

(c) conducted further testing including drill testing to ascertain the depth of sound timber in the Pole following sounding;



- (d) identified the Pole as a pole at risk of failure alternatively not fit for service; and
- (e) notified Powercor that the Pole was at risk of failure alternatively not fit for service.

25O. Electrix itself, or by its employees or agents, breached the Electrix Duty.

#### **Particulars**

Electrix in its inspection of the Pole conducted on 14 May 2015:

- (a) failed to seek or have regard to results of previous inspections of the Pole indicating the level of internal degradation of the Pole;
- (b) failed to conduct any or any adequate further testing to ascertain the depth of sound timber in the Pole following sounding and drill testing;
- (c) failed to identify the Pole as being at risk of failure alternatively not fit for service;
- (d) failed to notify Powercor that the Pole was at risk of failure alternatively not fit for service.

Electrix in its inspection of the Pole conducted on 30 November 2017:

- (e) failed to seek or have regard to results of previous inspections of the Pole indicating the level of internal degradation of the Pole;
- (f) failed to conduct any or any adequate sounding to identify the presence of internal degradation of the Pole;
- (g) failed to conduct any or any adequate further testing including drill testing to ascertain the depth of sound timber in the Pole following sounding;
- (h) failed to identify the Pole as being at risk of failure alternatively not fit for service;
- (i) failed to notify Powercor that the Pole was at risk of failure alternatively not fit for service.

25P. If Electrix had notified Powercor that the Pole was at risk of failure alternatively not fit for service following its inspection of the Pole on:

- (a) 14 May 2015;
- (b) 30 November 2017.

Powercor would have replaced the Pole prior to the Garvoc Fire.

#### **Particulars**

The plaintiff relies upon Powercor's Network Asset Maintenance Priority Policy (05-C001.A-025) and Network Asset Maintenance Policy for Management of Unserviceable Poles Policy (05-C001.D-392).

25Q. By reason of the matters alleged in paragraphs 25O to 25P above, the Garvoc Fire was caused by the negligence of Electrix, its agents or employees.

25R. By reason of the negligence of Electrix, its agents or employees:

- (a) the Plaintiff;
- (b) each of the group members referred to in sub paragraphs 5(a) to (c) above; and
- (c) each of the deceased persons referred to in sub paragraph 5(d) above

as the case may be, suffered loss and damage of the kinds referred to in sub paragraphs 15(e) to (g) above.

25S. The Garvoc Fire was a natural and foreseeable consequence of the negligence of Electrix, its agents or employees.

*Common Questions of Law or Fact*

26. The questions of law or fact common to the claims of the plaintiff and each of the group members are:

- (a) whether the Statutory Duties were owed by Powercor to the plaintiff and Group Members, and if so the content of those duties;
- (b) whether the General Duty was owed by Powercor to the plaintiff and Group Members, and if so the content of the duty;
- (ba) whether the Electrix Duty was owed by Electrix to the plaintiff and Group Members, and if so the content of the duty;
- (c) how the Garvoc Fire started;
- (d) whether the Garvoc Fire was caused by a breach by Powercor of any of the Statutory Duties or the General Duty;
- (da) whether the Garvoc Fire was caused by a breach by Electrix of the Electrix Duty;
- (e) ~~as between the plaintiff and subgroup members~~ – whether the plaintiff and subgroup members suffered private nuisance created by Powercor;
- (f) what kinds of loss caused by the Garvoc Fire and suffered by the plaintiff and Group Members are recoverable from Powercor and/or Electrix for the breaches of duty or the nuisance alleged herein, and the principles for assessing those losses.

**AND THE PLAINTIFF CLAIMS on his own behalf and on behalf of the group members:**

- A. Damages.
- B. Interest.
- C. Costs.

Andrew Fraatz

Tim Tobin SC

A handwritten signature in black ink, appearing to read 'Maddens', is written over a horizontal dotted line. The signature is stylized and extends to the right.

Maddens Lawyers  
Solicitors for the Plaintiff