



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

No. S CI 2018 01113

Case: S CI 2018 01113

Filed on: 14/05/2019 03:19 PM

BETWEEN

**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 DEFENDANT'S DEFENCE TO THE SECOND AMENDED STATEMENT OF CLAIM**

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

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In answer to the plaintiff's second amended statement of claim dated 18 April 2019, the second defendant (**Electrix**) says as follows:

**Note:** Capitalised terms in this defence have the same meaning as the defined terms in the second amended statement of claim, except where otherwise stated.

1. It admits the allegations in paragraph 1.
2. It admits the allegations in paragraph 2.
3. It does not admit the allegations in paragraph 3.
4. It admits the allegations in paragraph 4.
5. It does not admit the allegations in paragraph 5.
6. It does not admit the allegations in paragraph 6.
- 7-15. It does not plead to paragraphs 7 to 15 as they contain no allegation of material fact against it.

16. To paragraph 16:
- (a) Save to the extent that any persons may have had control over forces, circumstances, events or occurrences external to the Installations and the Powerline and the Pole which were capable of having an impact upon or damaging the Installations and the Powerline and the Pole so as to cause a discharge of electricity, it admits sub-paragraph (a);
  - (b) It denies the allegations in sub-paragraph (b) and says further that the allegations are embarrassing;
  - (c) It does not plead to sub-paragraph (c) as it contains no allegation of material fact against it.
  - (d) It says further that having regard to the allegations in paragraphs 15(d) to 15(f) of the second amended statement of claim, the class of persons described in paragraph 16 was an indeterminate class of persons.
17. It does not plead to paragraph 17 as it contains no allegation of material fact against it.
- 17A. Save that it says, having regard to paragraphs 15(d) and (e) and the definition of “affected areas” in paragraph 15(f) of the second amended statement of claim, the class of persons described in paragraph 16 of the second amended statement of claim was an indeterminate class of persons, it does not admit the allegations in paragraph 17A.
18. It does not plead to paragraph 18 as it contains no allegation of material fact against it.
- 18A. It does not plead to paragraph 18A as it contains no allegation of material fact against it.
- 18B. It does not admit the allegations in paragraph 18B.
- 18C. It does not plead to paragraph 18C as it contains no allegation of material fact against it.
- 18D. It does not plead to paragraph 18D as it contains no allegation of material fact against it.
- 18E. It does not plead to paragraph 18E as it contains no allegation of material fact against it.
- 18F. Save that it admits that the first defendant’s (**Powercor**) “*Network Asset Maintenance Policy for Inspection of Poles*” contained the statements set out in it, the full terms and effect of which will be referred to at trial, it otherwise denies the allegations in paragraph 18F.
- 18G. Save that it admits that Powercor’s “*Network Asset Maintenance Policy for Permanent Reinforcement Systems on Wood Poles*” and “*Asset Inspection Manual*” contained the statements set out in them, the full terms and effect of which will be referred to at trial, it otherwise denies the allegations in paragraph 18G.

- 18H. It does not admit the allegations in paragraph 18H.
- 18I. It does not plead to paragraph 18I as it contains no allegation of material fact against it.
- 18J. It does not plead to paragraph 18J as it contains no allegation of material fact against it.
- 18K. Save that it admits that on or about 9 October 2015, Powercor and Electrix entered into an agreement styled '*Supply of Network Asset Inspection Services*' and that the agreement contains terms and conditions set out therein, the full terms and effect of which will be referred to at trial, it otherwise denies the allegations in paragraph 18K.
- 18L. Save that it admits that on or about 28 November 2007, Powercor and Electrix entered into an agreement styled '*Provision of Asset Inspection and Maintenance Services*' and that the agreement contains terms and conditions set out therein, the full terms and effect of which will be referred to at trial, it otherwise denies the allegations in paragraph 18L.
- 18M. It does not plead to paragraph 18M as it contains no allegation of material fact against it.
19. It admits the allegations in paragraph 19.
20. It does not plead to paragraph 20 as it contains no allegation of material fact against it.
- 20A. Save that it admits that an inspection of the Pole was conducted on 30 November 2017, and that such inspection did not include drilling, it otherwise denies the allegations in paragraph 20A.
21. It does not admit the allegations in paragraph 21.
22. It does not plead to paragraph 22 as it contains no allegation of material fact against it.
23. It does not plead to paragraph 23 as it contains no allegation of material fact against it.
24. It denies the allegations in paragraph 24.
25. Save that it refers to and repeats paragraph 24 above, it otherwise does not plead to paragraph 25 as it contains no allegation of material fact against it.
- 25A. Save that it does not admit that loss and damage was suffered by any of the persons referred to in paragraph 25A, it otherwise does not plead to the allegations therein as they contain no allegation of material fact against it.
- 25B. It denies the allegations in paragraph 25B.
- 25C. Save that it admits that it is was registered on 15 January 2000, and that since that date it has been corporation incorporated pursuant to law, it otherwise does not admit the allegations in paragraph 25C.

- 25D. It refers to an repeats paragraph 18K above and otherwise denies the allegations in paragraph 25D.
- 25E. It refers to an repeats paragraph 18K above and otherwise denies the allegations in paragraph 25E.
- 25F. It denies the allegations in paragraph 25F and says further that the paragraph is embarrassing and should be struck out.
- 25G. To paragraph 25G:
- (a) it admits that it provided services under the *Provision of Asset Inspection and Maintenance Services* agreement and the *Supply of Network Asset Inspection Services* agreement, which included services in respect of the Pole;
  - (b) it refers to and repeats paragraphs 18K and 18L above;
  - (c) it otherwise does not admit the allegations therein.
- 25H. To paragraph 25H:
- (a) it admits that it was required to provide services under the *Provision of Asset Inspection and Maintenance Services* agreement and the *Supply of Network Asset Inspection Services* agreement in accordance with their terms;
  - (b) it otherwise denies the allegations in paragraph 25H;
- 25I. It denies the allegations in paragraph 25I.
- 25J. It denies the allegations in paragraph 25J.
- 25K. It denies the allegations in paragraph 25K.
- 25L. To paragraph 25L:
- (a) it admits that it provided services under the *Provision of Asset Inspection and Maintenance Services* agreement during the term of that agreement involving inspection of the Pole;
  - (b) it otherwise does not admit the allegations therein.
- 25M. To paragraph 25M:
- (a) it admits that it provided services under the *Supply of Network Asset Inspection Services* agreement during the term of that agreement involving inspection of the Pole before the date of the Garvoc Fire;
  - (b) it otherwise does not admit the allegations therein.
- 25N. It denies the allegations in paragraph 25N.

- 25O. It denies the allegations in paragraph 25O and says further that, at trial, it will rely on the full terms and effect of the '*Provision of Asset Inspection and Maintenance Services*' agreement and the '*Supply of Network Asset Inspection Services*' agreement.
- 25P. It denies the allegations in paragraph 25P.
- 25Q. It denies the allegations in paragraph 25Q.
- 25R. It denies the allegations in paragraph 25R.
- 25S. It denies the allegations in paragraph 25S.
26. As to paragraph 26:
- (a) insofar as any allegation is made against it, it refers to and repeats paragraphs 1 to 25S above;
  - (b) it otherwise does not plead to paragraph 26 as it makes no allegation of material fact against it.
27. Further, it says that:
- (a) to the extent that the plaintiff on behalf of himself or any group member claims damages for past or future economic loss for any personal or bodily injury, any award of damages is subject to the limitations in sections 28F and 28I of the *Wrongs Act 1958 (Vic)*;
  - (b) the plaintiff and each group member must show that she or he suffered a 'significant injury' as that term is defined by section 28LF of the *Wrongs Act* before the plaintiff or any group member is entitled to any damages for non-economic loss for personal or bodily injury;
  - (c) alternatively to (b) above, any assessment of damages for non-economic loss for personal or bodily injury is subject to the limitations in sections 28G and 28H of the *Wrongs Act*;
  - (d) to the extent that the plaintiff or any group member has suffered any injury arising out of or in the course of or due to the nature of his or her employment, such claim may not be brought other than in accordance with section 134AB of the *Accident Compensation Act 1985 (Vic)*;
  - (e) to the extent that the plaintiff or any group member has suffered any damage in respect of an injury or death of a person as a result of a transport accident, such claim may not be brought other than in accordance with section 93 of the *Transport Accident Act 1986 (Vic)*; and
  - (f) it will rely on sections 72 to 75 of the *Wrongs Act* at trial.

28. For the purposes of the allegations in paragraphs 29 to 31 below, it adopts the plaintiff's allegations against Powercor as set out in paragraphs 6 to 25A of the second amended statement of claim.
29. In further answer to the whole of the claims made by the plaintiff (on behalf of himself and the group members) Electrix says that:
- (a) the claims include claims for economic loss and/or damage to property made in an action for damages arising from alleged failures by Electrix to take reasonable care (which failures are denied) (the **ELPD Claims**);
  - (b) the ELPD Claims are apportionable claims within the meaning of sections 24AE and 24AF(1)(a) of the *Wrongs Act*, to which Part IVAA of that Act applies;
  - (c) if any alleged act or omission of Electrix caused any of the alleged loss or damage that is the subject of the ELPD Claims (which is denied), then, on the grounds referred to in paragraph 28 above, Powercor is a concurrent wrongdoer in relation to the ELPD Claims within the meaning of section 24AH(1) of the *Wrongs Act 1958*.
30. In the premises, if, which is denied, it is liable to the plaintiff and/or any group members in respect of the ELPD Claims, then Powercor is a person who is one of two or more persons whose acts or omissions caused, independently of each other or jointly, the damage and/or loss as aforesaid.
31. In the premises, if, which is denied, it is liable to the plaintiff and/or any group member in respect of the ELPD Claims, then, pursuant to section 24AI of the *Wrongs Act*, such liability is limited to an amount reflecting that proportion of the loss and damage the subject of the ELPD Claims that the Court considers just having regard to the extent of its responsibility (if any) for that loss and damage, and judgment must not be given against it for more than that amount in relation to the ELPD Claims.

Date: 14 May 2019

M D Rush

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