

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:** 28 February 2017

**Filed on behalf of:** The Plaintiff

**Prepared by:**  
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I, Andrew John Watson, Solicitor, of Level 10, 456 Lonsdale Street, Melbourne in the State of Victoria, make oath and 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 the Orders of this Court dated 27 May 2015 I am the Scheme Administrator.

2. 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.
3. 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 group members;
  - (d) the settlement administration costs; and
  - (e) the taxation issues affecting the Distribution Sum.
4. 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**.
5. All references to the affidavit of Brooke Wendy Dellavedova sworn on 24 January 2017 will be marked as the **January affidavit**.

**PROGRESS IN RELATION TO I-D SETTLEMENT DISTRIBUTION**

***Remaining Distributions***

6. I refer to paragraph 19 of the January affidavit and confirm that there remain 6 I-D Claimants who are yet to receive their compensation. I confirm that reasons for delay in paying those Claimants are contained in paragraph 19 of the January affidavit. By way of update:

**Deceased Estates**

7. The SDS team continue to monitor and follow up the five I-D claims in respect of deceased claimants.



Payments to Third Parties

8. I refer to paragraphs 21 - 28 of the January affidavit and confirm that payment schedules have been prepared for those third parties who remain to be paid. These payment schedules have been sent to KPMG to review. These payments will be processed by the SDS Team once confirmation of their accuracy has been given by KPMG.

Department of Veterans' Affairs (DVA)

9. The one remaining I-D Claimant with DVA entitlements who is yet to receive their settlement money has met with Counsel to seek advice on the impact that their settlement money will have on their ongoing DVA entitlements. The SDS Team are awaiting counsel's advice and instructions from the Claimant. This I-D Claimant may ultimately elect not to receive compensation for their bushfire injuries through this settlement administration and the monies set aside for this I-D Claimant will consequently revert to the residual I-D distribution sum.

***Unpresented cheques***

10. On 10 February 2017, the SDS Team sent letters to the nine I-D Claimants who as at that date our records indicated were yet to present their cheques but whose cheques had not as at that date been returned to Maurice Blackburn. Six of these were sent via email and the remaining three were sent via priority post.
11. Since 21 February 2017, the SDS Team has been additionally calling these claimants to enquire as to whether they had received their cheques and if so to encourage them to bank the cheques as soon as possible
12. Of these nine I-D Claimants:
- (a) Three have responded confirming the cheques have been received but not yet banked for reasons such as being away on holidays and seeking financial advice. The SDS Team has encouraged these I-D Claimants to bank their settlement cheques as soon as they are able;
  - (b) Two have responded confirming they have recently presented their cheques to the bank;



- (c) Three have responded confirming they did not receive their cheque and consequently their cheques were cancelled and reissued as EFT payments; and
  - (d) One remains uncontactable.
13. The SDS Team will continue to monitor and contact those I-D Claimants who are yet to present their settlement cheques.
14. In the event that the SDS Team remain unable to contact the I-D Claimant referred to at paragraph 12(d) above by 14 June 2017, being the date on which the cheque will become invalid, I will make application to the Court to treat the claim as withdrawn and to treat the funds payable to the Claimant as reverting to the residual I-D distribution sum discussed below. At the time of making such application, I will detail all of the attempts made by the SDS Team to contact the Claimant.

***Residual I-D distribution sum***

15. As is evident from this affidavit, it is apparent that upon finalisation of the I-D settlement distribution and the taxation issues, there may be a residual I-D distribution sum available for distribution to I-D Claimants and/or otherwise in accordance with Court order due to one or more of the following occurring:
- (a) The remaining DVA Claimant electing not to receive compensation in this class action;
  - (b) Subject to the Court's approval, the treatment of the claim of the uncontactable claimant as at 14 June 2017 as a withdrawn claim; and/or
  - (c) A successful outcome in relation to the taxation dispute, resulting in funds withheld for the purposes of paying taxation becoming available for distribution to claimants.

***Finalising the I-D Distribution***

16. The SDS Team is continuing to attend to the following:
- (a) Finalising payments to third parties;
  - (b) Responding to inquiries by I-D Claimants regarding their compensation and the settlement distribution process generally;




- (c) Reconciling I-D Claimant data with presented cheques; and
- (d) Identifying and following up any I-D Claimants who fail to present their cheques.  
The SDS Team will continue to monitor the status of settlement cheques.

### **PROGRESS IN RELATION TO ELPD SETTLEMENT DISTRIBUTION**

#### ***Final Notice of Assessment Reviews***

17. I refer to Section C of the January affidavit confirming that all ELPD Claimants had been issued with a Final Notice of Assessment (FNOA), and that completion of the ELPD Settlement Distribution process was pending the finalisation of FNOA Review assessments.
18. I refer to paragraphs 59 to 67 of the January affidavit. All review periods have now also expired and all pending FNOA Reviews have now also been finalised.
19. In total, the SDS Team received 13 FNOA reviews applications. Of these, 11 were referred to an ELPD Review Assessor as they required a formal review process. All of the 11 reviews were requested by above insurance claimants.
20. Senior members of the SDS Team worked very closely with ELPD Review Assessors so as to minimise any delays to the estimated distribution date.
21. Ms Dellavedova, in her capacity as Scheme Administrator during my absence, and senior members of SDS Team took a number of steps to expedite these reviews, including:
  - (a) Monitoring all deadlines very closely and contacting ELPD claimants in advance of pending deadlines;
  - (b) Granting bond waivers in circumstances where not doing so would likely delay the review process;
  - (c) Contacting ELPD Claimants who intended to seek a FNOA review, and encouraging them to make a FNOA review in advance of their review period expiring;
  - (d) Requesting ELPD Claimants waive their rights pursuant to E5.3 which provided them 21 days to return material where no further material was intended to be submitted; and




- (e) Arranging face-to-face conferences with ELPD Claimants and ELPD Review Assessors where appropriate to expedite the review process.

***Finalising distribution***

*Estimated Timeline*

22. I refer to paragraphs 88 to 96 of the January Affidavit as to the estimated timeline for distribution. I remain confident that the ELPD distribution will occur by 7 April 2017.
23. Based on the small number of FNOA Reviews received, and the speed with which the ELPD Review Assessors were able to finalise these reviews, I now estimate that final distribution to ELPD Claimants may occur as early as late March. Such an outcome remains dependent on the completion of external audit processes and the finalisation of cheques by an external mailing house.

*Internal Audit*

24. The SDS Team has now sent all ELPD Claimants confirmation of the ELPD data recorded in Maurice Blackburn's Matter Centre database which will be the data relied upon for distribution of ELPD compensation. ELPD Claimants and insurers were requested to review their assessment data and to contact the SDS Team in response to the following issues:
- (a) If any errors were identified;
  - (b) If the allocation of compensation was recorded incorrectly; and
  - (c) If the claimant needed to provide the SDS Team with updated contact details.
25. The SDS Team continues to conduct internal audits on an as-needs basis when new data such as updated assessment data following a successful review is added to the Matter Centre database.
26. The SDS Team has received a number of requests from ELPD Claimants to amend their name either because their legal name has changed or the legal name of the entity receiving compensation has changed. Senior members of the SDS Team are monitoring these changes to ensure that any compensation is distributed to the correct claimant.






External Audit

27. I refer to paragraphs 109 to 110 of the January affidavit regarding the external review of ELPD assessment data by KPMG.
28. Since the last Case Management Conference:
- (a) KPMG have been sent a written letter of instruction regarding KPMG's independent review of ELPD claims. Now produced and shown to me and marked "Exhibit AJW-1" is a copy of the letter of instruction to KPMG.
  - (b) Senior members of the SDS Team have been assisting KPMG with their independent review, and providing further information as requested.
  - (c) Mr Kompos has indicated that his review should be finalised by 2 March 2017.

Estate Claims

29. I refer to paragraphs 138 – 156 of the January affidavit. I confirm that there are 10 estate claims where it has been determined that a grant of representation is required but has not yet been provided to the SDS Team.
30. As referred to at paragraph 129 in the January affidavit, where an estate is an ELPD Claimant but the executor is not known, and there are other ELPD Claimants who share losses with the estate claim, the allocation of compensation was marked as disputed as the estate is unable to provide instructions. In all such circumstances, ELPD compensation will be withheld from estate claimants and claimants that have joint losses with such estates until the grant of representation is provided.

Change in allocation of compensation

31. I refer to paragraphs 125 to 130 of the January Affidavit regarding amendments by ELPD Claimants to the allocation of compensation. In response to recent correspondence, the SDS Team have received amended instructions regarding the allocation of compensation from multiple ELPD Claimants. In preparation for distribution, the SDS Team have sent correspondence to affected ELPD Claimants to confirm any split amendments.



Recent update letter returned to sender

32. The SDS Team recently sent correspondence by post to all group members. Where this correspondence was subsequently 'returned to sender', the SDS Team have contacted ELPD Claimants to obtain updated contact details to facilitate compensation being distributed on time to these ELPD claimants, as final distribution payments will be sent via cheque.

Senior Master's Office

33. The SDS Team recently identified an additional two ELPD Order 15 Claimants. The identification of these claimants has necessitated work to confirm their legal incapacity, identification of their personal representative and to confirm the assessment and review process with the personal representative.
34. In accordance with section H of the Scheme, the Scheme Administrator during my absence, Brooke Dellavedova, provided the Senior Master's Office with an affidavit confirming compliance with the Scheme. The Senior Master's Office was provided with a register identifying each ELPD Order 15 Claimant, the contact details for their personal representative and final ELPD Assessments.
35. Compensation owed to Order 15 Claimants will be paid to Funds in Court upon receipt of Orders from Associate Justice Derham.

ELPD Distribution list

36. The SDS Team have established administrative procedures to identify the following:
- (a) ELPD Claimants who will receive their compensation by way of cheque from the external mailing house, Dynamic Direct;
  - (b) ELPD Claimants who are homeless or have no fixed address, and will require an electronic funds transfer to be organised;
  - (c) ELPD Claimants who are overseas and require an electronic funds transfer to be organised;
  - (d) ELPD estate claimants who have not provided a grant of representation, and consequently compensation will need to be withheld;






- (e) ELPD Claimants with disputes regarding the allocation of compensation in relation to joint losses. These claimants will have their compensation withheld until a statutory declaration or Court Order is returned to the SDS Team to confirm the allocation of compensation;
- (f) Order 15 Claimants and ELPD Claimants at the same loss address can only be processed upon receipt of Orders from Associate Justice Derham;
- (g) Dissolved corporate entities can only be processed once issues related to the corporate structure have been resolved; and
- (h) ELPD Claimants that require compensation to be paid to a third party, such as a solicitors trust account pending resolution of legal proceedings.

#### **INTERIM PAYMENTS**

37. The SDS Team contacted ELPD claimants to advise that no further interim payment applications would be accepted after 14 February 2017. As at 17 February 2017, the Scheme Administrator has received 64 applications for interim payment.

#### **UNCONTACTABLE ELPD CLAIMANTS**

38. I refer to paragraphs 119 - 123 of the January affidavit in relation to uncontactable group members.
39. In relation to the three uncontactable group members who are eligible for compensation, their assessed losses on a 55% - 70% recovery rate, is approximately \$171,921.56 – \$218,809.26.
40. I proposed to hold the final settlement distributions for such group members on trust until the taxation issues are resolved. If the funds remain unclaimed at that time, subject to the Court's approval, I propose to treat these claims as being withdrawn and to treat the monies as forming part of the residual ELPD distribution sum. I propose to use this remaining distribution sum to form part of a potential second ELPD distribution or to disburse it in accordance with Court orders.

#### **CALCULATION OF ESTIMATED ELPD DISTRIBUTION SUM**

41. The ELPD pro rata recovery rate will be calculated by dividing the ELPD Distribution Sum by the total ELPD assessed losses. Whilst all ELPD claims have now been finalised and the assessment data uploaded to Matter Centre, the process of review




and verification of the assessment data in Matter Centre has not yet been completed. As such, at the time of swearing this affidavit, the ELPD pro rata rate has not yet been calculated.

42. However, in order to ensure that the review of the ELPD pro rata rate could be undertaken as soon as possible after its calculation, on 27 February 2017, the SDS Team provided Mr Kompos of KPMG with a draft ELPD Distribution Sum calculation for review. This calculation assumed that all extant and anticipated costs applications, including those made by way of this affidavit, would be successful. Now produced and shown to me and marked "Exhibit AJW-2" is the draft ELPD Distribution Sum calculation provided to Mr Kompos on 27 February 2017.
43. If some, or all, of the costs applications which have been assumed to be successful in the draft ELPD Distribution Sum are unsuccessful, then the draft calculation can be amended to reflect the costs as allowed and sent to Mr Kompos for re-review.
44. The draft ELPD Distribution Sum calculation takes into account each of the following additions and deductions to and from the Settlement Fund to enable the calculation of the sum available for distribution to ELPD Claimants:
  - (a) The addition of interest;
  - (b) The deduction of taxation liabilities and associated costs;
  - (c) The addition of interim payments made which would otherwise have remained in the Settlement Fund;
  - (d) The addition of recoverable review and bond costs payable to the Settlement Fund;
  - (e) The deduction of the Murrindindi to Kilmore transfer payment;
  - (f) The deduction of a contingency; and
  - (g) The deduction of settlement administration costs.



Addition of interest

45. The draft ELPD Distribution Sum calculation takes into account estimated interest earned on the Settlement Fund up until 28 February 2017 based on bank advice regarding same. This calculation date was chosen as I anticipate that the funds required to make the final ELPD settlement distribution will be required to be made available shortly after this date to enable claimants to receive funds by early April 2017.

Deduction of taxation and associated costs

46. The draft ELPD pro rata calculation deducts taxation payable consistent with:
- (a) the ATO's oral advice that all interest earned on the Distribution Sum is assessable and that settlement administration costs are not deductible; and
  - (b) PwC's advice that the applicable rate of taxation is 49%.
47. In addition, deduction is made for the estimated maximum costs associated with the current dispute with the ATO regarding taxation.

Interim payments, review costs and bond repayments

48. The draft calculation takes into account:
- (a) interim payments made to date, treating such payments as deductions which have been made from the Settlement Fund which need to be added back into the fund prior to the calculation of ELPD pro rata recovery rate; and
  - (b) recoverable bond and review costs payable to the Settlement Fund on account of unsuccessful reviews under the Settlement Distribution Scheme, as such costs properly form part of the Settlement Fund and as such need to be added back in prior to the calculation of the ELPD pro rata recovery rate.

The Murrindindi to Kilmore transfer payment

49. The draft ELPD pro rata calculation takes into account the transfer payment authorised by the Honourable Justice Dixon on 30 November 2016 from the Murrindindi Distribution Sum to the Kilmore Distribution Sum.




Deduction of contingency

50. In light of the matters referred to paragraphs 28 and 34 of my affidavit of 28 February 2017 filed in the Kilmore Bushfire Class Action settlement administration, the considerable complexities associated with the administration of the ELPD settlement administration and the fact a second ELPD distribution would be necessary in the event of success in relation to the taxation dispute, I consider it prudent to reserve a small percentage contingency of 0.32% of the ELPD Distribution Sum to deal with any errors in the pro rata calculation.

Deduction of settlement administration costs

51. The draft ELPD pro rata calculation takes into account all settlement administration costs approved to date and, as foreshadowed above, assumes that all extant costs applications are successful. As such, the calculation takes into account:
- (a) ELPD settlement administration costs up to 30 June 2017;
  - (b) General settlement administration costs up to the end of settlement distribution; and
  - (c) I-D settlement administration costs up to 31 January 2017.

KPMG review of draft ELPD Distribution Sum calculation of 27 February 2017

52. Once the ELPD assessment data has been finalised and its accuracy verified both internally and by KPMG, the SDS Team will calculate the ELPD pro rata recovery rate (being the ELPD Distribution Sum divided by the total ELPD assessed losses) for his review and verification. This will occur prior to the 6 March 2017 Case Management Conference. I will provide the Court with an update as to the ELPD pro rata calculation at such time.

**COMMUNICATIONS WITH GROUP MEMBERS**

53. An update was sent to ELPD Claimants on 3 February 2017 confirming:
- (a) The likely timeframe for the ELPD settlement distribution;
  - (b) An update on taxation issues;
  - (c) A request for updated contact details;




- (d) Information regarding allocation of compensation;
  - (e) Information regarding dissolved legal entities; and
  - (f) Information regarding seeking financial advice.
54. Now produced and shown to me and marked "Exhibit AJW-3" is a copy of the update letter dated 3 February 2017.
55. Further correspondence was sent to claimants on 9 February 2017 with disputed allocations of compensation. This letter confirmed that the resolution of these disputes would be a matter for claimants. Further, the letter confirmed that any amendment to a disputed allocation would require court orders or statutory declarations from all claimants at a loss address and that in the absence of such agreement, the Scheme Administrator will continue to hold the compensation in trust.
56. Now produced and shown to me and marked "Exhibit AJW-4" is a copy of the update letter dated 9 February 2017.

#### **SETTLEMENT ADMINISTRATION COSTS**

##### **Costs**

57. Subject to the Court receiving a satisfactory report from Mr John White, Special Referee, Costs, appointed by the Court, I now seek approval for Maurice Blackburn to be paid \$1,932,879.14 for settlement administration costs and disbursements comprised of:
- (a) \$59,526.62, being the estimated General settlement administration fees and disbursements between 1 January 2017 and 31 January 2017;
  - (b) \$473,063.32, being the estimated General settlement administration fees and disbursements between 1 February 2017 and finalisation of the settlement administration;
  - (c) \$452,845.86, being the ELPD settlement administration fees and disbursements incurred between 1 December 2016 to 31 December 2016;
  - (d) \$310,093.59, being the estimated ELPD settlement administration fees and disbursements between 1 January 2017 and 31 January 2017; and






- (e) \$637,349.75, being the estimated ELPD settlement administration fees and disbursements between 1 February 2017 and 30 June 2017.
58. If the above estimates prove to be higher than the actual costs incurred for the relevant periods, I will account to the Court regarding any residual funds remaining and Maurice Blackburn will only be paid the amounts actually incurred for the relevant periods.
59. 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.
60. Now produced and shown to me and marked "**Confidential Exhibit AJW-5**" is a copy of the finalised itemised invoice for the ELPD fees and disbursements currently recorded for the period 1 December 2016 to 31 December 2016. I request that this and the other itemised invoice exhibited to this affidavit be kept confidential, as they contain details pertaining to individual claimants' claims.

***Amended costs application***

61. I refer to paragraph 180 of the January Affidavit, in which Ms Dellavedova sought approval for I-D Costs for the period 1 November 2016 to 31 December 2016 of \$290,969.41. This amount included an amount in relation to an invoice from KPMG dated 19 January 2017 which as at the date of Ms Dellavedova swearing the Affidavit not yet been processed.
62. Since that time, it has come to my attention that the amount sought in relation to the KPMG invoice failed to take into account GST and Technology and Administrative charges claimed by KPMG. As such, I seek approval from the Court for payment of the amount of \$291,724.63 for I-D Costs for the period 1 November 2016 to 31 December 2016, which accounts for these fees.
63. Now produced and shown to me and marked "**Confidential Exhibit AJW-6**", is a copy of the finalised itemised invoice for the I-D fees and disbursements currently recorded for the period 1 December 2016 to 31 December 2016.



**TAXATION ISSUES**

- 64. I refer to paragraphs 198 – 202 as well as the Confidential Exhibit BWD12 of the January affidavit.
- 65. As referred to in paragraph 201 of the January affidavit, I and other members of the SDS Team continue to work closely with our taxation advisors PwC and counsel on this issue.
- 66. Now produced and shown to me marked "**Confidential Exhibit AJW-7**" is a summary of progress made since the January Case Management Conference. I make application for this exhibit to be confidential so as to ensure the maintenance of privilege.

SWORN by the deponent at )  
 Brisbane in the State of )  
 Queensland this 28<sup>th</sup> day of )  
 February 2017 )



Before me:



FILED on behalf of the Plaintiff

**JARRAH NINA EKSTEIN**  
 of Level 32, 201 Elizabeth Street, Sydney  
 an Australian Legal Practitioner  
 within the meaning of the Legal  
 Profession Uniform Law (NSW)