

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION

Not Restricted

S CI 2012 04538

KATHERINE ROWE

Plaintiff

v

AUSNET ELECTRICITY SERVICES PTY LTD  
(ACN 064 651 118) (FORMERLY SPI ELECTRICITY PTY LTD)  
& ORS

Defendants

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JUDGE: JOHN DIXON J  
WHERE HELD: MELBOURNE  
DATE OF HEARING: 19 SEPTEMBER 2016  
DATE OF RULING: 29 SEPTEMBER 2016  
CASE MAY BE CITED AS: ROWE v AUSNET ELECTRICITY SERVICES PTY LTD & ORS  
(RULING No 8)  
MEDIUM NEUTRAL CITATION: [2016] VSC 586

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PRACTICE AND PROCEDURE - Group proceedings - Amendment of the Settlement Distribution Scheme - Appointment of an independent expert by the Scheme Administrator to audit the administration in particular respects - *Supreme Court Act 1986 s 33V, Civil Procedure Act 2010 s 65M.*

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APPEARANCES:

	<u>Counsel</u>	<u>Solicitors</u>
For the Scheme Administrator	Mr A Watson, the Scheme Administrator, appeared in person	Maurice Blackburn

HIS HONOUR:

- 1 On 27 May 2015, Emerton J authorised the plaintiff for and on behalf of the group members and each of them to enter into and give effect to a Deed of Settlement ('Deed') that effected a compromise of this proceeding. By that order, I was nominated as the supervising judge with respect to the Deed and the Settlement Distribution Scheme ('SDS') that it created.<sup>1</sup>
- 2 On 19 September 2016, a joint case management conference was convened for the Scheme Administrator, Mr Andrew Watson, to report to the Court on the progress of the administration of the Murrindindi and Kilmore-East Kinglake group proceedings. As stated in previous rulings, I am only concerned to supervise the administration of the Murrindindi SDS. The Kilmore-East Kinglake group proceeding is being supervised by J Forrest J.
- 3 The Scheme Administrator filed an affidavit sworn 12 September 2016 that detailed the progress of the administration of the SDS. I have carefully considered this affidavit and heard from Mr Watson at the case management conference.
- 4 The purpose of the case management conference in respect of the Murrindindi SDS was to consider the progress of the SDS, the terms of which are identical to that in the Kilmore-East Kinglake group proceeding and which is administered jointly with that SDS. Further there were two particular issues that arose, being:
  - (a) consideration of some minor amendments to the SDS; and
  - (b) the appointment of an independent expert by the Scheme Administrator.
- 5 As at 8 September 2016, 382 of the 425 registered personal injury and dependency group members are proceeding with the assessment of their claim. Of the 382 members, all have completed personal injury questionnaires and attended a conference with assessing counsel. Two Notices of Assessments and Statement of Reasons ('Notices') are currently outstanding from assessing counsel. Eight Notices

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<sup>1</sup> A copy of the Deed and SDS is available on the Court's website at:  
<http://www.supremecourt.vic.gov.au/home/law+and+practice/class+actions/murrindindi+black+saturday+bushfire+class+action>

are currently the subject of review by the SDS team. Of the 372 Notices that have been reviewed and sent to group members, six requests for review have been received, with two having been determined in favour of the group member.<sup>2</sup>

6 Mr Watson deposes in his affidavit that the SDS team ‘remains confident that the distribution of settlement monies will take place in the final quarter of 2016, or in the first quarter of 2017.’<sup>3</sup>

7 As at 9 September 2016, all the ‘insurance only’ and ‘above insurance’ claims have been allocated for assessment to economic loss and property damage assessors. The position, as explained by Mr Watson, is that 71 per cent of these claims have now been assessed and 61 per cent have been issued with Provisional Notices of Assessment (as at 29 August 2016).<sup>4</sup>

8 Mr Watson deposes in his affidavit that the SDS team anticipate that a distribution to claimants may be possible in late 2016, or will otherwise occur in early 2017.<sup>5</sup>

9 Further details can be obtained from Mr Watson’s affidavit which is available on the Court’s website.

10 Turning to the issue of amendment of the SDS, I have had the considerable advantage of reading, in draft form, the reasons of J Forrest J in respect of the like application in the Kilmore-East Kinglake group proceeding.<sup>6</sup> The terms of the two schemes are relevantly identical and reading the reference to the order of Osborn JA approving the settlement of the Kilmore-East Kinglake group proceeding as a reference to the order of Emerton J approving the settlement of the Murrindindi group proceeding, I agree, with respect, with his Honour’s analysis and his conclusion that the issues raised for a possible amendment of the Deed should be

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<sup>2</sup> Affidavit of Mr Andrew Watson sworn 12 September 2016, [9]. At the hearing on 19 September 2016, Mr Watson informed the Court that no Notices of Assessments and Statements of Reasons were outstanding, seven Notices are currently the subject of review by the SDS team, and three requests for review are to be determined.

<sup>3</sup> Affidavit of Mr Watson sworn 12 September 2016, [43].

<sup>4</sup> Ibid, [47]-[48].

<sup>5</sup> Ibid, [85].

<sup>6</sup> *Matthews v Ausnet Pty Ltd & Ors (Ruling No.43)* [2016] VSC 583.

resolved by directions from the Court rather than amendment of the Deed. I will give appropriate directions, for the reasons his Honour gives,<sup>7</sup> and I invite the Scheme Administrator to submit a minute of appropriate directions to give effect to these reasons.

11 The Administrator proposes to appoint an independent expert, Mr George Kompos, director of KPMG Forensic Services, to provide a report examining and auditing the assessment data recorded in Maurice Blackburn's Matter Centre database to ensure that:

- (a) the assessment data correlates with and accurately reflects the assessment amount recorded in the Notices of Assessment or Review Notices of Assessment;
- (b) any interim payments have been accurately recorded;
- (c) any reviews have been accurately recorded;
- (d) any deductions for I-D claims, dependency claims and pro rata calculations have been accurately recorded;
- (e) calculations regarding the interest earned on the investment sum as at a particular date are correct;
- (f) the deductions of any tax liabilities are correct; and
- (g) the deduction of administration costs and disbursements are correct.

12 After considering the factors identified in s 65M(3) of the *Civil Procedure Act 2010*, I am satisfied with the proposal to appoint an independent expert to provide a report for the purposes of examining and auditing the assessment data recorded in Maurice Blackburn's Matter Centre database and I will so order. Mr Kompos will discharge the same audit function in the Kilmore-East Kinglake SDS.<sup>8</sup> The appointment of Mr

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<sup>7</sup> *Matthews v Ausnet Pty Ltd & Ors (Ruling No.43)* [2016] VSC 583, [34]-[40].

<sup>8</sup> *Ibid*, [41]-[42].

Kompos will not be disproportionate to—

- (a) the complexity or importance of the issues in dispute; and
- (b) the amount in dispute in the proceeding;

and I am persuaded that his report will significantly assist the Court in determining whether the SDS has been properly, and fairly administered for the benefit of all group members. An audit process is particularly appropriate in the context of the joint administrations that are highly complex settlement distributions involving thousands of claimants and hundreds of millions of dollars in settlement funds.

- 13 A further joint case management conference in conjunction with the Kilmore-East Kinglake group proceeding is scheduled for 14 November 2016 at 9:30am. I will order that the Scheme Administrator file an affidavit informing the Court of the progress of the administration of the SDS in the Murrindindi group proceeding 7 days prior to the conference.

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### CERTIFICATE

I certify that this and the 3 preceding pages are a true copy of the reasons for ruling of John Dixon J of the Supreme Court of Victoria delivered on 29 September 2016.

DATED this twenty ninth day of September 2016.

  
Associate  
