

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

No S CI 5296 of 2014

STEVEN ELLIOT WILLIAMS

Plaintiff

and

AUSNET ELECTRICITY SERVICES PTY LTD
(ACN 064 651 118) and Others

Defendants

FOURTH ~~THIRD~~ AMENDED STATEMENT OF CLAIM

(Filed pursuant to the Orders of the Honourable Justice T Forrest
made 19 February 2016)

Date of Document:	<u>23 February 2016</u> 18 December 2015 15 January 2015 1 October 2014
Filed on behalf of:	The Plaintiff
Prepared by:	Solicitor's code: 102650
Maddens Lawyers	DX: 28001 Warrnambool
219 Koroit Street	Tel: 5560 2000
WARRNAMBOOL VIC 3280	Ref: Brendan Pendergast

A Preliminary

The Mickleham Bushfire

1. On 9 February 2014 a fire started near the eastern edge of Mickleham Road, Mickleham, in the State of Victoria ("**the Mickleham bushfire**") and burnt over the area highlighted on the map annexed to this Statement of Claim ("**the Mickleham bushfire area**").

The Plaintiff

2. The plaintiff:
 - (a) is and was at all material times, owner of 5 Vanessa Drive, Mickleham, located within the Mickleham Bushfire area;
 - (b) was the owner of personal property destroyed in the Mickleham bushfire.
3. The plaintiff brings this proceeding on his own behalf and on behalf of the group members.

Group Members

4. 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 Mickleham bushfire (including, without limitation, an injury suffered as a result of attempts to escape the Mickleham bushfire or other emergency action taken by any person in response to the Mickleham bushfire);

where “psychiatric injury” in this group definition 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 30 June 2015 ; and
 - (b) all those persons who suffered loss of or damage to property as a result of the Mickleham bushfire (including, without limitation, loss or damage resulting from emergency action taken by any person in response to the Mickleham bushfire); and
 - (c) all those persons who at the time of the Mickleham bushfire resided in, or had real or personal property in, the Mickleham bushfire area and who suffered economic loss, which loss was not consequent upon injury to that person or loss of or damage to their property;
 - (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 Mickleham bushfire.
5. As at the date of the commencement of this proceeding there are seven or more persons who have claims against the defendant.

B AusNet Electricity Services Pty Ltd

6. The defendant (“**AusNet**”) at all material times:
- (a) was and is a corporation 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) a major electricity company; and
 - (ii) an operator of a supply network;

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

7. In the course of and for the purpose of the Business, AusNet at all material times:
- (a) owned, further or alternatively had the use and management of, the poles, pole fittings, conductors, fuses, transformers, substations and like installations together and severally comprising the three-phase 66kV electricity sub-transmission line in AusNet’s SMG (South Morang) District known as the SMTS-KMS (South Morang terminal station to Kilmore South) line (“SMTS-KMS line”),
~~(i) ; and~~
~~(ii) the three-phase 22kV electricity distribution line built beneath the 66kV sub-transmission line referred to in (i) above~~
- which in part runs adjacent to the eastern side of Mickleham Road between Mount Ridley Rd and Bardwell Drive, Mickleham, in the State of Victoria (“**the powerline**”);
- (b) transmitted electricity along the powerline.

7A. Jemena Electricity Networks (Vic) Ltd owned, further or alternatively had the use and management of the three-phase 22kV electricity distribution line known as the C0011 feeder line built beneath the powerline (“feeder line”).

8. At all relevant times the powerline was part of a supply network within the meaning of section 3 of the ES Act.

C The Statutory Duties

9. At all material times:
- (a) since 13 December 2009, section 98 of the ES Act required AusNet to design, construct, operate, and maintain its supply network to minimise as far as practicable:
- (i) the hazards and risks to the safety of any person arising from the supply network; and
- (ii) the hazards and risks of damage to the property of any person arising from the supply network;
- (b) since 1 January 2012, section 98 of the ES Act required AusNet to design, construct, operate, and maintain its supply network to minimise as far as practicable:

- (i) the hazards and risks to the safety of any person arising from the supply network; and
- (ii) the hazards and risks of damage to the property of any person arising from the supply network; and
- (iii) the bushfire danger arising from the supply network.

(“the Statutory Duties”).

10. The Statutory Duties imposed on AusNet 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 AusNet’s supply 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.

Particulars

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

11. At all material times, the plaintiff and each of the group members were:
- (a) persons within the class described in the preceding paragraph; or
 - (b) the legal personal representatives of the estates of persons who were within the class described in the preceding paragraph at the time of the Mickleham bushfire.

Particulars

The plaintiff resides at 5 Vanessa Drive, Mickleham, in Victoria, being an area susceptible to bushfire ignited by a discharge of electricity from the AusNet 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 AusNet owed the Statutory Duties to:
- (a) the plaintiff;
 - (b) each of the group members referred to in paragraphs 4(a) to (c) hereof;
 - (c) each of the deceased persons referred to in paragraphs 4(d) hereof.

D General Duty of Care

13. At all material times AusNet:
- (a) had the right, to the exclusion of other private persons:
 - (i) to construct, repair, modify, inspect, maintain and operate the powerline; or
 - (ii) give directions as to its construction, repair, modification, inspection, maintenance or operation;
 - (b) exercised the said right; and
 - (c) in the premises, had practical control over the powerline.

Particulars

AusNet constructed, repaired, modified and inspected and operated the powerline, and further gave directions to its contractors regarding the construction, repair, modification, inspection or operation of the powerline. Insofar as the plaintiffs are able to say prior to the completion of discovery, AusNet only permitted other private persons to engage in conduct as aforesaid in relation to the powerline by agreement with AusNet.

14. At all material times:
- (a) AusNet used the powerline to transmit electricity at high voltage;
 - (b) the transmission of electricity along the powerline created a risk of unintended discharges of electricity from the powerline;
 - (c) unintended discharges of electricity from the powerline were highly dangerous in that they were capable of causing death or serious injury to persons, and damage to or loss of property, by:
 - (i) electrocution;
 - (ii) burning by electric current; further or alternatively
 - (iii) burning by fire ignited by the discharge of electricity;
 - (d) in the premises in (a) to (c) inclusive, the transmission of electricity along the powerline was a dangerous activity;
 - (e) AusNet knew or ought reasonably to have known of the risks referred to in (b) and (c) above.
15. At all material times it was reasonably foreseeable to AusNet that:
- (a) a discharge of electricity from the powerline could cause ignition of flammable material in the vicinity of the point of discharge;

Particulars

Flammable material is any material capable of ignition, including without limitation ignition by the application of electric current or by contact with molten or burning metal.

- (b) such ignition could produce a fire which might spread over a wide geographic area, depending on, among other things, wind direction and velocity;

Particulars

The fire spread also depended on the amount of combustible fuel, the terrain, the environmental conditions including humidity and precipitation and the effectiveness of human firefighting responses. Further particulars may be provided prior to trial.

- (c) such fire could cause death or injury to persons and loss of or damage to property within the area over which such fire spread ("**fire area**"), and consequential losses including economic losses;
- (d) such fire could cause 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");
- (e) 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;
- (f) the risks referred to in (c), further or alternatively (d), further or alternatively (e) above 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.

16. At all material times members 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 (“**the Mickleham Class**”):
- (a) had no ability, or no practical and effective ability, to prevent or minimise 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 AusNet ensuring that the powerline was safe and operated safely in the operating conditions applying to it from time to time.

Particulars

The Mickleham bushfire area is shown on the map being **Annexure A** to these particulars. Particulars of the actual affected area of the Mickleham bushfire will be provided prior to trial.

The operating conditions referred to included the level of electrical current being transmitted along the powerlines, and the physical environment around the powerlines including, without limitation, wind direction and speed, ambient temperature, the presence of objects capable of coming into contact with the powerlines (including trees) and the amount of combustible fuel around or below the powerlines.

17. In the premises, at all material times AusNet owed to the Mickleham Class a duty:
- (a) to take reasonable care, by its officers, servants and agents; and
 - (b) to ensure that reasonable care was taken, by its agents or contractors;
- to ensure that all parts of the powerline were safe and operated safely in the operating conditions that were foreseeable for the powerline (“**the General Duty**”).
18. 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 Mickleham bushfire were within, the Mickleham Class.
19. In the premises set out in the preceding paragraph, at all material times AusNet owed the General Duty to:
- (a) the plaintiff;
 - (b) each of the group members referred to in paragraphs 4(a) to (c) hereof;
 - (c) each of the deceased persons referred to in paragraphs 4(d) hereof.

E Standard of Statutory Duties and General Duty

AusNet's Vegetation Management Plans

20. At all material times, the Mickleham Road reserve in the vicinity of the powerline:

- (a) was in a hazardous bushfire risk area ("**HBRA**") within the meaning of:
 - (i) section 3 of the ES Act;
 - (ii) clause 1 of *The Code of Practice for Electric Line Clearance* ("**Code**") pursuant to regulation 7 of the *Electricity Safety (Electric Line Clearance) Regulations 2010* ("**the Line Clearance Regulations**");

Particulars

The area in the vicinity of the powerline was not in an urban area and had not been assigned a fire hazard rating of "low" under s 80 of the ES Act.

- (b) featured many mature gum trees which were of such height, and sufficiently close to the powerline, that if they fell or shed branches there was a material risk that the tree or branch would fall across the powerline causing electrical arcing to occur between the tree or branch and a conductor on the powerline, or between conductors or between a conductor and other installations on the powerline.

Particulars

In the reserve to the east of Mickleham Road and to the west of the powerline between Mount Ridley Road and Bardwell Drive, Mickleham there were a number of mature eucalypt trees of different species but predominantly sugar gums.

Insofar as the plaintiffs are able to estimate, the heights of the said trees were in the range of approximately 10m to approximately 30m. Many of the trees were taller than the horizontal distance between the trunk of the tree and the nearest conductor of the powerline.

Further particulars may be provided (if required) following the delivery of experts' reports.

21. At all material times since no later than 13 December 2009:

- (a) AusNet was responsible for keeping the whole or any part of a tree clear of the powerline;

Particulars

The responsibility was imposed by subsection 84(7) of the ES Act.

- (b) AusNet had the power to keep the whole or any part of a tree clear of the powerline;

Particulars

The power was conferred by sections 85 and 86 of the ES Act.

- (c) AusNet was required, by 31 March of each year, to prepare and submit to ESV for approval a management plan relating to compliance with the Code;

Particulars

Regulation 9(2)-(4) of the Line Clearance Regulations.

- (d) AusNet did prepare and submit to ESV and obtained ESV's approval for vegetation management plans ("**VM plans**") in compliance with the Line Clearance Regulations;

Particulars

The VM plans from 2010 comprised AusNet document number BFM 10-05 ("**BFM 10-05**"), being:

- (i) Vegetation Management Plan and Procedures 2010 – 2011 (issue 9): approved 28 February 2010 (AST.400.009.4660)
- (ii) Vegetation Management Plan and Procedures 2010 – 2011 (issue 10): approved 31 July 2010 (AST.400.009.0701)
- (iii) Vegetation Management Plan and Procedures 2010 – 2011 (issue 11): approved 25 November 2010 (AST.300.007.3472)
- (iv) Vegetation Management Plan and Procedures 2011 – 2012 (issue 12): approved 31 March 2011 (AST.400.009.0741); and
- (v) Vegetation Management Plan and Procedures 2012 – 2013 (issue 13): approved 30 March 2012 (AST.002.001.0001);
- (vi) Vegetation Management Plan (issue 14) approved 21 March 2013 (AST.002.001.0039).

~~Further particulars may be provided following the completion of discovery and prior to trial.~~

- (e) AusNet was required to comply with its VM plans;

Particulars

Regulation 9(8) of the Line Clearance Regulations.

- (f) AusNet was required by its VM plans, as approved by ESV from time to time, to, among other things:
- (i) conduct ~~an annual~~ pre summer tree inspection of HBRA spans, including the powerline, at least annually, by the start of the Fire Season ("**pre-summer tree inspection**");

Particulars

BFM 10-05:

- (i) issue 9, clause 4 (annually);
- (ii) issue 10, clause 4 (bi-annually);
- (iii) issue 11, clause 4 (bi-annually);
- (iv) issue 12, clause 5 (at least annually);
- (v) issue 13, clause 4.2.2 (annually as minimum);
- (vi) issue 14, clause 4.2.2 (annually as minimum).

- (~~ii~~) maintain the clearance spaces between the powerline and trees in accordance with the Code;

Particulars

BFM 10-05:

- (i) issues 9 - 11, clause 5;
- (ii) issue 12, clause 6;
- (iii) issues 13-14, clauses 1.1, 4.2.

~~Further particulars may be provided following the completion of discovery and prior to trial.~~

~~(g) AusNet was required, as part of its pre-summer tree inspection, to:~~

- ~~(i) inspect the space outside the clearance space of the powerline (prescribed by the Line Clearance Regulations) in which trees or limbs due to their unsafe condition were a potential hazard to the safety of the powerline under a range of weather conditions that can be reasonably expected to prevail ("**hazard space**");~~
- ~~(ii) inspect the hazard space to identify and evaluate potential hazards ("**potential hazards**") within the space, including:~~
 - ~~(1) dead and dangerous limbs;~~
 - ~~(2) with poor structure or health;~~
 - ~~(3) other trees or limbs that may be unstable and could fall on the powerline under the range of weather conditions that could reasonably be expected to prevail in the locality of the powerline;~~
- ~~("vegetation assessments");~~

Particulars

~~Further particulars may be provided following the completion of discovery and prior to trial.~~

~~22. Further and in the alternative, at all material times AusNet was required to inspect the hazard space for hazard trees (“Hazard Trees”).~~

Particulars

~~A hazard tree is one which is likely to fall onto or otherwise come into contact with an electric line: clause 3 of the Code.~~

AusNet’s Hazard Tree Programs and Procedures

21A. At all material times, there was a risk that trees or limbs outside the clearance spaces could, by reason of their unsafe condition, fall onto or otherwise come into contact with an electric line (hazard trees).

22. At all material times, since no later than May 2007, AusNet has known that hazard trees were the major cause of vegetation related fires caused by its network assets.

Particulars

In May 2007, AusNet’s Vegetation & Easement group conducted a review on vegetation related fire starts over the previous 5 years, and found that no fires were caused by trees inside the clearance spaces but trees in the hazard space were the major cause of vegetation related fires.

22A. At all material times, AusNet was required by its VM plans:

(a) prior to 30 March 2012, to assess vegetation outside the clearance space to identify hazard trees as part of its pre-summer tree inspections:

Particulars

(i) BFM 10-05 (issues 9 – 11), clause 5;
 (ii) BFM 10-05 (issue 12), clause 6;
 (iii) AusNet was required to inspect the space outside the clearance space in which trees or limbs due to their unsafe condition are a potential hazard to the safety of a powerline under a range of weather conditions that can be reasonably expected to prevail (the hazard space) to identify and evaluate potential hazards (potential hazards) within the space, including:

- (1) dead and dangerous limbs;
- (2) with poor structure or health;
- (3) other trees or limbs that may be unstable and could fall on the powerline under the range of weather conditions that could reasonably be expected to prevail in the locality of the powerline;

(b) from 30 March 2012,

- (i) to assess vegetation outside the clearance space for obvious hazard trees as part of its pre-summer tree inspections;
- (ii) to implement a separate dedicated program in which arborists carried out a comprehensive Visual Tree Assessment inspection of trees in the hazard space to identify hazard trees.

Particulars

BFM 10-05 (issues 13 and 14), clause 4.2.5.

22B. AusNet developed, and from time to time amended, the following procedures relevant to the inspection, identification, assessment, and management of hazard trees:

- (a) AusNet document VEM 20-02 (**VEM 20-02**), which described the processes by which hazard trees were to be identified, inspected and managed by AusNet; and

Particulars

- (i) Vegetation and Easement Management *Hazardous Tree Assessment and Management* VEM 20-02, issue 1, approved 19 July 2007 (AST.004.001.0183);
 - (ii) Vegetation and Easement Management *Hazardous Tree Assessment and Management* VEM 20-02, issue 2, approved 13 November 2008 (AST.400.009.3152);
 - (iii) Vegetation and Easement Management *Hazardous Tree Assessment and Management* VEM 20-02, issue 3, approved 14 July 2010 (AST.400.009.3158);
 - (iv) Vegetation and Easement Management *Hazardous Tree Assessment and Management* VEM 20-02, issue 4, approved 9 August 2011 (AST.400.002.7212).
- (b) AusNet document VEM 20-03 (**VEM 20-03**), which described the requirements for vegetation assessment, including the inspection of the hazard space for hazard trees during the pre-summer tree inspections;

Particulars

- (i) Vegetation and Easement Management *Assessment and Cutting* VEM 20-03, issue 1, approved 19 July 2007 (AST.400.009.6342);
- (ii) Vegetation and Easement Management *Assessment and Cutting (Distribution)* VEM 20-03, issue 2, approved 8 April 2008 (AST.400.009.6274);
- (iii) Vegetation and Easement Management *Assessment Procedure (Distribution)* VEM 20-03, issue 3, approved 1 January 2009 (AST.400.009.6412);

- (iv) Vegetation and Easement Management Assessment Procedure (Distribution) VEM 20-03, issue 4, approved 20 April 2009 (AST.400.009.6430);
 - (v) Vegetation and Easement Management Assessment Procedure (Distribution) VEM 20-03, issue 5, approved 5 March 2010 (AST.400.009.3378);
 - (vi) Vegetation and Easement Management Assessment Procedure (Distribution) VEM 20-03, issue 6, approved 18 February 2011 (AST.400.009.3401);
 - (vii) Vegetation and Easement Management Assessment Procedure (Distribution) VEM 20-03, issue 7, approved 16 February 2012 (AST.400.009.3424);
 - (viii) Vegetation and Easement Management Assessment Procedure (Distribution) VEM 20-03, issue 8, approved 14 April 2012 (AST.400.009.3460);
 - (ix) Vegetation and Easement Management Assessment Procedure (Distribution) VEM 20-03, issue 9, approved 24 January 2013 (AST.400.004.3494);
 - (x) Vegetation and Easement Management Assessment Procedure (Distribution) VEM 20-03, issue 10, approved 15 January 2014 (AST.400.009.3192).
- (c) AusNet document VEM 20-01 (**VEM 20-01**), which described the process to be applied to determine the degree of risk presented by a tree in relation to AusNet's electrical assets.

Particulars

- (i) Vegetation and Easement Management Hazard Tree Assessment Guidelines VEM 20-01, issue 1, approved 19 July 2007 (AST.400.005.7832);
- (ii) Vegetation and Easement Management Hazard Tree Assessment Guidelines issue 2, approved 13 November 2008 (AST.400.009.3095);
- (iii) Vegetation and Easement Management Hazardous Tree and 56M Assessment Procedure, issue 3, approved 14 July 2010 (AST.400.009.3107);
- (iv) Vegetation and Easement Management Hazardous Tree and 56M Assessment Procedure, issue 4, final draft 16 December 2010 (AST.300.013.0111);
- (v) Vegetation and Easement Management Hazardous Tree and 56M Assessment Procedure, issue 5, final draft 29 August 2011 (AST.004.001.0147).

22C. At all material times, AusNet's procedures required assessors conducting assessments of vegetation outside the clearance space in the course of pre-summer tree inspections:

- (a) to have the following knowledge, training and experience:
- (i) a sound knowledge of horticulture and/or arboriculture;
 - (ii) completed an approved horticulture/arboriculture course; and
 - (iii) at least 3 years' experience in the field assessing trees.

Particulars

VEM 20-02; clauses 4.1 and 3, definition of "Field Officer/Field Assessor".

- (b) to identify and assess hazard trees in the normal course of conducting the pre-summer tree inspections, by:
- (i) prior to 15 March 2010, identifying any tree that was considered a threat to any AusNet electrical asset (VEM 20-03, issues 1 to 4);
 - (ii) from 15 March 2010 to 17 February 2011, identifying any tree that was considered a threat to any AusNet electrical asset, and which was assessed to be a Rating 3 or 4 Hazardous tree pursuant to VEM 20-01 (VEM 20-03, issue 5);
 - (iii) from 18 February 2011 to 15 February 2012, identifying any tree that was considered a threat to any AusNet electrical asset, and which was assessed to be a Rating 4 or 5 Hazardous tree pursuant to VEM 20-01 (VEM 20-03, issue 6);
 - (iv) from 16 February 2012, carrying out at every opportunity only a quick visual inspection of the adjacent vegetation from the location where they had positioned themselves to view the clearance space for the purpose of identifying any obvious hazard tree, being any tree that was considered a threat to any AusNet electrical asset, and which was assessed to be a Rating 4 or 5 Hazardous tree pursuant to VEM 20-01 (VEM 20-03, issues 7 to 9).
- (c) to complete and submit a *Tree Assessment – Hazard Span or 56M Span Form*, upon identifying and assessing a hazard tree in accordance with (b) above.

Particulars

- (i) VEM 20-02; cl. 4.1.1;
- (ii) VEM 20-03:
 - (A) issues 1 and 2; cl. 4.5, sub-heading, 'Hazard trees';
 - (B) issues 3 to 6; cl. 5, sub-heading, 'Hazard trees';

- (C) issues 7-8: cl. 6.24.1; and issue 9: cl. 6.25.1, sub-heading, 'Hazardous Tree Rating Criteria';
- (iii) the *Tree Assessment – Hazard Span or 56M Span* Form is AusNet document VEM 20-01A (AST.400.009.3081).

22D. In about April 2011, AusNet commenced a formal hazard tree program (the formal hazard tree program) under which:

- (a) it was to inspect for hazard trees located in HBRA spans in designated areas of its network, prioritised based on highest bushfire risk followed by network reliability;
- (b) within 3 years qualified arborists engaged by AusNet would inspect and assess all trees in the designated areas which may impact AusNet assets in the event of failure;
- (c) the arborists would conduct the inspections in accordance with VEM 20-01.

Particulars

AusNet Business Change Requirements – Electricity Safety (Electric Line Clearance) Regulations 2010 dated 25 February 2011 (AST.300.013.3552).

Vegetation Management Services Agreement with Active Tree Services

22E. On 1 July 2010, AusNet entered into a contract with the third defendant (Active Tree Services) for Active Tree Services to provide vegetation management services in the South Morang region, which included the powerline (Services Agreement).

Particulars

The Services Agreement is in writing. It comprises:

- (i) 'Services Agreement Vegetation Management Services – Distribution Assets dated 1 July 2010; and
- (ii) Contract Amendment and Restatement Services Agreement Vegetation Management Services – Distribution Assets dated 2 August 2012 (AST.004.001.0001).

22F. There were terms of the Services Agreement, among others, that:

- (a) Active Tree Services would:
 - (i) undertake electric line clearance work [Schedule 1, Section 1, clause 1.1];
 - (ii) assess vegetation [Schedule 1, Section 1, clause 1.3(d)];
 - (iii) during the normal span assessment process, report any hazardous trees that the assessor observes whilst performing their normal duties, in

accordance with VEM 20-01 and VEM 20-02, that pose a potential threat to the AusNet's Distribution Network [Schedule 1, Section 1, clause 1.9];

- (iv) comply with AusNet's policies and procedures [clause 3(c)];
 - (v) employ personnel with appropriate qualifications and experience to carry out the services [clause 7.3(a)];
 - (vi) ensure that all personnel engaged to carry out the services were adequately trained and were competent to carry out their duties [clause 7.3(b)];
- (b) AusNet may elect to engage Active Tree Services in a particular region to undertake the arboreal inspections and assessments required by the formal hazard tree program [Schedule 1, Section 1, clause 1.10].

Appropriate Training

22G. To be competent to inspect for, identify and assess hazard trees, an assessor conducting pre-summer tree inspections requires appropriate training in the inspection and identification of hazard trees (**Appropriate Training**).

Particulars

Appropriate Training is that necessary to enable a person without any previous arboricultural qualifications or experience to be able to identify signs that a tree was potentially a hazard tree that required assessment by a qualified arborist. Appropriate training would include:

- (i) a visual tree assessment training course, such as that offered by QTRA;
- (ii) an appropriately designed in-house training course conducted by a qualified arborist;

Additional training in tree risk assessment would enable an inspector to both identify and assess potentially hazard trees. Such training would include:

- (iii) a tree risk assessment training course, such as that offered by QTRA;
- (iv) an appropriately designed in-house tree risk assessment course conducted by a qualified arborist.

The knowledge, training and experience required of Field Assessors under VEM 20-02 also amounted to Appropriate Training.

Scope of Duty

23. At all material times, it was reasonably foreseeable to AusNet that a failure:

- ~~(a) to conduct vegetation assessments;~~

~~(b) to identify potential hazards and/or Hazard Trees within the hazard space;~~

~~(c) to clear or remove a potential hazard and/or a hazard tree from the hazard space~~

to inspect for, identify, assess and/or manage hazard trees could result in a tree falling or shedding limbs across conductors on AusNet's supply network.

24. At all material times:

- (a) the conductors on the powerline and the feeder line were bare or uninsulated aerial conductors;
- (b) the conductors were in close proximity to each other;
- (c) there was a material risk that in the event of conductors being displaced in any way by a tree, tree stem or branch they could arc between themselves or with the tree, tree stem or branch;
- (d) there was a material risk that an arc occurring might cause the discharge of molten particles of super-heated metal ("**sparks**") from the section of conductor where arcing occurred;
- (e) there was a material risk that an arc occurring between a conductor and a tree, tree stem or branch might cause vegetation in the tree, tree stem or branch to ignite;
- (f) the 3 phase 66kV sub-transmission line and the 22kV distribution line comprising the powerline and the feeder line were fitted with fault current detection and protection devices ("**protection systems**");

Particulars

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

- (g) the protection systems regulating the powerline and the feeder line were such that there was a material risk that, in the event of a tree, tree stem or branch falling across the powerline, the protection systems would or could allow current to continue to be transmitted through the powerline to cause ignition of a fire, especially in dry and windy conditions.

Particulars

So far as the plaintiff is able to say prior to discovery, interrogation, and receipt of expert evidence, the protection systems on the powerline were such that after a tree, tree stem or branch fell on the powerline, electricity would or could continue to be transmitted, or would resume transmission,

during which time arcing could occur resulting in the discharge of heat and/or sparks and the ignition of vegetation.

- (h) there was material risk that molten metal sparks or electrical discharge or heat from arcing could ignite vegetation in the vicinity of the sparks, heat or discharge;
 - (i) the risk referred to in (h) was higher the longer that the protection systems permitted current to be transmitted through the powerline and/or the feeder line after a tree or branch came into contact with a conductor or conductors of the powerline;
 - (j) the risk referred to in (h) was higher when conditions around the powerlines were dry and hot and windy than when conditions were moist, cool and calm;
 - (k) the dry, hot and windy conditions which increased the risk referred to in (h) above were also likely to increase the risks of a tree falling, or shedding branches, across the powerline.
25. At all material times AusNet knew or, as operator of a ~~supply~~ distribution network, ought reasonably to have known the matters set out in the preceding paragraph.
26. In the premises, the Statutory Duties and the General Duty required AusNet to design and implement a system that was capable of reasonably mitigating the risk of hazard trees falling onto or otherwise coming into contact with an electric line.

~~In the premises, at all material times, the Statutory Duties required AusNet to remove potential hazards and/or Hazard Trees:~~

- ~~(a) as quickly as possible;~~
- ~~(b) in any event, before the commencement of the next fire danger period declared pursuant to s.4 of the Country Fire Authority Act 1958 (Vic) (“fire danger period”).~~

~~27. In the premises, at all material times, the General Duty required AusNet to:~~

- ~~(a) carry out vegetation assessments with due skill, care and diligence;~~
- ~~(b) further or alternatively to (a), ensure that vegetation assessments carried out by contractors were carried out with due skill, care and diligence;~~
- ~~(c) ensure that potential hazards and/or Hazard Trees were removed:~~
 - ~~(i) as quickly as possible;~~
 - ~~(ii) in any event, before the commencement of the next fire danger period.~~

27. If (which is denied) the General Duty was delegable and could be discharged by the appointment of competent contractors, it included a duty to exercise reasonable care in the appointment and supervision of the contractors.

27A. The scope of the duty to exercise reasonable care in the appointment and supervision of the contractors included a duty to exercise reasonable care to ensure that the persons whom the contractors engaged to perform vegetation management services on behalf of AusNet were competent to perform those services.

F The Tree and the Mickleham Bushfire

28. At all material times prior to 9 February 2014, in the span between poles 931061 and 931062 of the powerline, there was a eucalyptus tree (“**the Tree**”), the trunk of which was located approximately 15 metres west of the powerline.

Particulars

~~So far as the plaintiff is able to say prior to the delivery of experts’ reports, t~~The Tree was a *Eucalyptus Cladocalyx* also known as Sugar Gum. The Tree was identified in records maintained by AusNet as tree number 468669 and by the second defendant (**Hume**) as tree number 213167.

29. On a date unknown to the plaintiff but many years prior to 9 February 2014, the Tree was lopped at a height of about 2.5 metres above the ground and the stem of the Tree was left in the ground (“**the remaining stem**”).

30. Subsequently, over a period of time unknown to the plaintiff, but many years prior to 9 February 2014:

- (a) epicormic stems grew from near the base of the remaining stem; and
- (b) the remaining stem of the Tree died.

31. At all material times prior to 9 February 2014:

- (a) the remaining stem formed a large dead spar at the centre of the base of the Tree;
- (b) there were four large epicormic stems growing from the outer sides of the base of the remaining stem (“**the living stems**”);
- (c) each of the living stems had poor physical attachment to the Tree;
- (d) the living stem on the eastern side of the Tree (“**the eastern stem**”) grew in the direction of the powerline;

- (e) the Tree was taller than the horizontal distance to the powerline such that if the Tree, a living stem or a branch from the Tree fell in the direction of the powerline, there was a significant risk that it would come into contact with the powerline.

Particulars

~~So far as the are able to say prior to the delivery of experts' reports,~~
 ‡The living stems were, and therefore the Tree was, approximately 23 metres tall.

The centre of the remaining stem of the Tree was located 14.2 metres west of the line of the power poles supporting the powerline and the feeder line.

- (f) the structure of the Tree was poor, with major faults and significant potential for stem failure;

Particulars

At all material times, the Tree had the following major structural faults:

- (i) each of the living stems was an epicormic stem with poor attachment to the remaining stem;
- (ii) there was included bark between each of the living stems and the remaining stem;
- (iii) each of the living stems featured poorly tapered branches and long internodes;

At all material times from no later than about February 2009, the Tree had the following further major structural faults:

- (iv) a wound on the western face of the eastern stem adjacent to and above its point of attachment with the remaining stem;
- (v) dead wood associated with the wound on the eastern stem;
- (vi) internal decay in the vicinity of the point of attachment between the eastern stem and the remaining stem.

32. By reason of the matters alleged in paragraph 31, at all material times prior to 9 February 2014, the Tree:
- (a) had ~~very~~ poor structure;
 - (b) was located within the hazard space;
 - (c) was a potential hazard;
 - (d) was a hazard tree.
33. At approximately midday on 9 February 2014:
- (a) a strong, blustery, hot and dry north-westerly wind was blowing in the vicinity of, and against, the Tree;

- (b) the eastern stem broke away from the Tree and fell onto the 66kV conductors of the powerline, pushing them down onto the 22kV conductors of the feeder line;
- (c) two or more of the conductors of the powerline and/or the feeder line touched and/or became sufficiently close to cause arcing between them;
- (d) the conductors which the eastern stem came into contact with arced with the vegetable matter of the eastern stem;
- (e) for a period of time unknown to the plaintiff after the eastern stem fell onto the conductors, current continued to flow and/or resumed flow through the conductors by reason of the operation of the protection systems;
- (f) the arcing caused a discharge of sparks or heat;
- (g) the sparks or heat ignited dry vegetable material on the ground near the base of the powerline, alternatively, the eastern stem of the Tree; and
- (h) the sparks or heat thereby started a fire which subsequently spread over a wide geographic area, being the Mickleham bushfire.

Particulars

At about midday the air temperature exceeded 38° C and wind gusts were in the vicinity of 80km/h. The load imposed by the eastern stem became too great for the structure of the Tree. The attachment of the eastern stem to the Tree failed and the eastern stem fell to the east and onto the powerline. A second branch subsequently dislodged from an adjacent living stem of the Tree and fell to the east ~~over the powerline~~ a short time later. Further particulars may be provided following the delivery of experts' reports.

G Breaches of Duties

33A. In the circumstances:

- (a) the probability that the harm referred to in paragraph 15 would occur if AusNet failed to take care was not insignificant;

Particulars

- (i) The plaintiff refers to and repeats the matters set out in paragraphs 15, 20, 21A and 24 above;
- (ii) The risk that bushfires could be ignited by clashing between high voltage conductors was identified in the 2009 Victorian Bushfires Royal Commission [VBRC Report, Volume 2, Ch 4];
- (iii) The VBRC found that contact between vegetation and power lines poses a considerable risk for causing fires and that trees outside regulated clearance spaces pose a risk of causing fires by contacting

power lines when they break or fall [VBRC Report, Volume 2, Ch 4, [4.6.2]]:

- (iv) AusNet was aware of the findings of the VBRC and of the significant bushfire risk posed by hazard trees: BFM Plan [Appendix 3, Issues 15-18].
- (b) in the event that the risks in paragraph 24 materialised, the harm was potentially catastrophic;
- (c) any burden on AusNet in taking precautions to avoid the risks in paragraph 24 was slight and not unreasonable having regard to its available resources, the seriousness of the harm and the risk of the occurrence of the harm;
- (d) there was no social utility in permitting the Tree to remain as it was.

Particulars

- (i) The Tree was a hazard;
- (ii) Prior to the fire, a number of similar mature sugar gum trees had been removed from the Mickleham Road Reserve.

33B. A reasonable person in the position of AusNet would have taken the following precautions to avoid the materialisation of the risks in paragraph 24:

- (a) designed and implemented a system that was reasonably capable of mitigating the risks posed by hazard trees in the vicinity of the powerline;
- (b) inspected the trees in the vicinity of the powerline, including the Tree, as part of its formal hazard tree inspection program prior to the Mickleham bushfire;
- (c) ensured that the contractor it engaged to conduct pre-summer tree inspections on its behalf was competent to inspect for and identify hazard trees;
- (d) ensured that the contractor it engaged to conduct the pre-summer tree inspections on its behalf discharged the obligation to inspect for and identify hazard trees;
- (e) identified the Tree as a hazard tree by virtue of the defects and hazards associated with the Tree identified in paragraph 31;
- (f) upon identifying the Tree as a hazard tree, removed or pruned the Tree to ensure that it could not contact the powerline.

34. By not later than 13 December 2009, and continuing at all times up to and including 9 February 2014, each of the matters alleged in paragraph 31 was visible and capable of being observed in the course of a vegetation assessment.

35. An ~~vegetation~~ inspection and assessment conducted with due care, skill and diligence by an assessor with Appropriate Training in the course of a pre-summer tree inspection would have identified that the Tree:
- (a) was a potential hazard;
 - (b) was a hazard tree.
- 35A. An inspection and assessment conducted with due care, skill and diligence by an arborist, whether upon referral from a pre-summer tree inspection assessor or in the course of the formal hazard tree inspection program, would have identified that the Tree was a hazard tree.
36. AusNet did not at any time prior to 7 February 2014, identify the Tree as:
- (a) a potential hazard; or
 - (b) a hazard tree.
37. In the premises, by not later than the 13 December 2009, and continuing at all times up to and including 9 February 2014, AusNet failed to:
- (a) exercise, by its officers, servants or agents, reasonable skill, care and diligence in conducting vegetation assessments;
 - (b) ensure that contractors exercised reasonable skill, care and diligence in conducting vegetation assessments;
 - (c) ~~remove the Tree or the eastern stem of the Tree, take any of the precautions alleged in paragraph 33B as alleged in (d) to (i) below;~~
 - (d) design and implement a system that was reasonably capable of mitigating the risks posed by hazard trees in the vicinity of the powerline;

Particulars

- (i) the design and implementation of AusNet's pre-summer tree inspections program was not reasonably capable of identifying hazard trees because:
 - (A) the Active Tree Services personnel who conducted the pre-summer tree inspections on AusNet's behalf did not have the knowledge, training or experience required of Field Assessors required by VEM 20-02 or otherwise have Appropriate Training;
 - (B) AusNet's procedures did not require trees which had been identified as potential hazards in the pre-summer tree inspection program to be assessed by a qualified arborist;

- (ii) the design and implementation of AusNet's pre-summer tree inspections program was not reasonably capable of identifying obvious hazard trees because:
- (A) the Active Tree Services personnel who conducted the pre-summer tree inspections on AusNet's behalf did not have the knowledge, training or experience required of Field Assessors required by VEM 20-02 or otherwise have Appropriate Training;
 - (B) for an assessor to identify a tree as an obvious hazard tree or as a potential hazard tree, the assessor must conduct a visual inspection of the tree;
 - (C) from 16 February 2012, AusNet's pre-summer tree inspection procedure VEM 20-03:
 - 1. did not require persons assessing the clearance spaces to position themselves close to vegetation for the purpose of looking for potentially hazardous trees; and
 - 2. only required the assessors to make a quick visual inspection of the adjacent vegetation from the location where they had positioned themselves to view the clearance space for the purpose of identifying any obvious hazard tree.
- (iii) AusNet's formal hazard tree program was not reasonably capable of mitigating the risk posed by hazard trees in the vicinity of the powerline because the program did not include an inspection of trees in the vicinity of the powerline on the Mickleham Road Reserve:
- (A) because the powerline on the Mickleham Road Reserve was in a HBRA, AusNet should have included it within its formal hazard tree inspection program prior to the Mickleham bushfire;
 - (B) for the purposes of its formal hazard tree program, AusNet only identified 1 span on the SMTS-KMS line for assessment for the purpose of identifying hazard trees, with a budget number of hazard trees to be identified as "0".
 - (C) AusNet did not inspect any spans on the SMTS-KMS line as part of formal hazard tree program prior to the Mickleham bushfire;

Further particulars may be provided following discovery at or prior to trial.

- (e) inspect the trees in the vicinity of the powerline , including the Tree, as part of its formal hazard tree inspection program prior to the Mickleham bushfire;
- (f) ensure that the contractor it engaged to conduct pre-summer tree inspections on its behalf was competent to inspect for and identify hazard trees;

Particulars

- (i) the persons engaged by Active Tree Services to conduct pre-summer tree inspections did not have the knowledge, training and experience required under VEM 20-02 or otherwise have Appropriate Training;

- (ii) the persons performing line clearance assessments as part of AusNet's pre-summer tree inspection are only required to have completed *Tree and Plant Knowledge 1 for Powerline Clearance*, and *SP AusNet Vegetation Field Assessor Accreditation: s.11.2, BFM 10-05*;
 - (iii) AusNet did not require persons conducting pre-summer tree inspections to have Appropriate Training;
- (g) ensure that the contractor it engaged to conduct the pre-summer tree inspections on its behalf discharged the obligation to inspect for and identify hazard trees;

Particulars

- (i) the plaintiff refers to an repeats the particulars to sub-paragraphs (d) and (f) above;
 - (ii) AusNet did not direct or instruct Active Tree Services to comply with its contractual obligation to inspect for and identify hazard trees, particularly hazard trees in the hazard space;
- (h) identify the Tree as a hazard tree by virtue of the defects and hazards associated with the Tree identified in paragraph 31;
- (i) remove or prune the Tree to ensure that it could not contact the powerline.
38. In the premises, at all material times prior to 9 February 2014, from not later than the 2009 pre-summer inspection, AusNet was in breach of:
- (a) the Statutory Duties;
 - (b) the General Duty.

H Cause of Mickleham Bushfire

39. Each of:
- (a) the dry summer condition of nearby vegetation;
 - (b) the ambient temperature;
 - (c) the wind speed and velocity;

on 9 February 2014, was within the range of conditions which, at all times while AusNet was the network operator, were within the range of foreseeable operating conditions for the powerline.

Particulars

It was foreseeable to AusNet that the powerline would be required to operate in temperatures higher and lower than the temperature which was present at Mickleham on 9 February 2014. It was foreseeable to AusNet that during summer vegetation in the area of Mickleham would be relatively dry and susceptible to the ignition of fire. It was foreseeable to AusNet that

the Tree and the powerline would experience wind conditions involving velocities higher and lower than the wind velocities that were occurring around the Tree on 9 February 2014. It was foreseeable to AusNet that the powerline would experience winds coming from each compass point and in particular coming from directions between due north and due west.

40. The Mickleham bushfire was caused by AusNet's breaches of:
- (a) the Statutory Duties; further or alternatively
 - (b) the General Duty.

Particulars

But for the breaches of duty alleged in paragraph ~~37~~ ~~38~~ above, the Tree ~~or, alternatively, the eastern stem~~ would have been removed, or alternatively pruned, by no later than the start of the 2013-2014 fire danger period such that the eastern stem could not have fallen onto the powerline to cause the Mickleham bushfire.

41. The Mickleham bushfire was a natural and foreseeable consequence of the breaches of duty alleged in the preceding paragraph.

Particulars

A natural and foreseeable consequence of a tree having the features described in paragraph 31 above is that the attachment of one or more of the living stems would fail causing it to break away from the tree and fall. A natural and foreseeable consequence of such a living stem being weighted in the direction of the powerline and being under the force of a wind blowing in the direction of the powerline was that the stem would fall in that direction. A natural and foreseeable consequence of such a stem being taller than the horizontal distance of the stem to the powerline was that in falling it would contact the powerline. A natural consequence of a large tree or tree stem falling across the powerline was that it would or could cause the conductors on the powerline to clash or come close enough to permit arcing, alternatively for arcing to occur between conductors and vegetation across the powerline, and the ignition of sparks and heat. The natural consequence of exposing the Tree or dry grass in late summer conditions at Mickleham to contact with molten or burning metal, or to the levels of heat produced by the formation of an electrical arc, was that the Tree and / or grass would ignite. A natural and foreseeable consequence of such ignition, in such conditions, was fire. A natural and foreseeable consequence of fire in dry grass adjacent to and upwind of available fuel in such a location in such a season, was the spread of fire, being bushfire.

I Subgroup Claims - private nuisance

42. Further to paragraph 3 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 Mickleham bushfire's interference with their use and enjoyment of interests in land.

Particulars

The plaintiff was registered proprietor of land over which the bushfire burned, being the land situated at 5 Vanessa Drive, Mickleham.

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

43. At all material times each of:
- (a) the risks referred to in paragraphs 14 and 15 above; and
 - (b) the risk that a bushfire ignited by a discharge of electricity from the powerline would unreasonably interfere with the use or enjoyment of interests in land:
 - (i) over which the fire passed; further or alternatively
 - (ii) that was affected by physical consequences of the fire or by emergency responses to the fire;
 - (iii) by the persons entitled to the said use or enjoyment;
 were reasonably foreseeable to AusNet.
44. By transmitting electric current along the powerline, alternatively doing so on 9 February 2014 when the powerline was not safe or operated safely, AusNet created or increased the risks referred to in the preceding paragraph.
45. AusNet by the conduct alleged in the preceding paragraph in fact caused the Mickleham bushfire, which fire spread to land in which the subgroup members had interests (“**subgroup lands**”).
46. The Mickleham bushfire unreasonably interfered with the subgroup members’ use and enjoyment of their interests in the subgroup lands.
47. In the premises, the subgroup members suffered nuisance created by AusNet.

J Causation and Loss and Damage

48. By reason of:
- (a) the breaches of the Statutory Duties;
 - (b) the breaches of the General Duty; further or alternatively
 - (c) the nuisance;
- by AusNet alleged herein
- (i) the plaintiffs,
 - (ii) each of the group members described in paragraphs 4(a) to (c) hereof;

- (iii) the deceased persons referred to in paragraphs 4(d) hereof;
- (iv) each of the subgroup members

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

Particulars of loss and damage

The plaintiff suffered property loss and damage, including:

- (i) damage to house roof and interior;
- (ii) damage to septic system;
- (iii) destruction of red gum and perimeter fencing;
- (iv) damage to water infrastructure;
- (v) damage and destruction of trees and garden;
- (vi) destruction of electrical infrastructure and home electrical equipment;
- (vii) destruction of two trailers.

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.

K Hume City Council

49. Further or alternatively to the claims against AusNet 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 AusNet's claims against ~~the second defendant (Hume)~~ as follows.

Duty of Care

50. Hume is and was at all relevant times:
- (a) a municipal council; and
 - (b) a body corporate pursuant to s 5 of the *Local Government Act* 1989 (Vic).
51. At all relevant times:
- (a) the Tree was situated on the Mickleham Road Reserve; and
 - (b) the powerline ~~66 kV line~~ and the ~~22 kV~~ feeder line, referred to in paragraph 7 above, were situated on the Mickleham Road Reserve.
52. At all relevant times, the Mickleham Road Reserve was:
- (a) within the municipal district of the City of Hume;

- (b) outside the metropolitan fire district established under s 4 of the *Metropolitan Fire Brigades Act 1958* (Vic); and
 - (c) within the country area of Victoria for the purposes of the *Country Fire Authority Act 1958* (Vic).
53. At all relevant times the Mickleham Road Reserve was under:
- (a) the control;
 - (b) alternatively, the management;
 - (c) alternatively, the care and management –
of Hume.
54. Accordingly, pursuant to s 43 of the *Country Fire Authority Act*, at all relevant times:
- (a) it was the duty of Hume to take all practicable steps to prevent the occurrence of fire on, and to minimise the danger of the spread of fires on and from the Mickleham Road Reserve; and
 - (b) Hume was empowered to:
 - (i) acquire any equipment;
 - (ii) do any thing; and
 - (iii) expend from its funds any amount -
that was necessary or expedient for the purposes of fulfilling its duty.
55. At all relevant times, Hume was required by s 55A of the *Country Fire Authority Act* to prepare and maintain a municipal fire prevention plan for its municipal district.
56. At all relevant times on and after 21 October 2010, Hume was required by s 86B of the *ES Act* to specify, in its municipal fire prevention plan:
- (a) procedures and criteria for the identification of hazard trees; and
 - (b) procedures for the notification of responsible persons of trees that are hazard trees in relation to electric lines for which they are responsible.
57. From time to time, including after 21 October 2010, Hume prepared municipal fire prevention plans.
58. Hume, by its employees or agents, inspected the Tree on the following occasions:
- (a) on or about 15 October 2007;
 - (b) on or about 15 February 2012;

- (c) on or about 27 March 2012;
 - (d) on or about 18 January 2013;
 - (e) on or about 9 September 2013.
59. Hume, by its employees or agents, determined:
- (a) as a result of the inspection on or about 15 October 2007, that the Tree required structural pruning and weight reduction; and
 - (b) by the subsequent inspections (alleged in sub-paragraphs 587(b)-(e) above) that the Tree did not require any works.
60. At all relevant times, the following risks (collectively, **the Risks**) were or ought to have been reasonably foreseeable to Hume:
- (a) the trees situated on the Mickleham Road Reserve could fall or shed limbs and thereby come into contact with the power lines along Mickleham Road;
 - (b) contact between the failed trees or their limbs and the power lines might cause arcing between ~~power lines or~~ the conductors of the powerline and/or the feeder line and/or arcing between the conductors and vegetation which could cause a discharge of sparks and heat;
 - (c) sparks and heat might ignite nearby fuel and result in a fire;
 - (d) such a fire could:
 - (i) spread over a wide geographic area;
 - (ii) cause injury to persons and loss or damage to property within the area affected by the fire;
 - (iii) cause economic loss to people affected by the fire:
 - (1) by disrupting or impairing their income earning activities;
 - (2) by impeding the use or amenity of their properties if they were located in areas affected by the fire; and
 - (3) by reducing the value of real property or businesses located in the area affected by the fire.
61. At all relevant times the plaintiff and group members were:
- (a) vulnerable to the Risks materialising; and

- (b) for the purposes of protecting themselves and their property and their economic interests against the Risks, dependent upon Hume exercising reasonable care in:
- (i) managing the trees on the Mickleham Road Reserve;
 - (ii) inspecting the trees on the Mickleham Road Reserve to determine whether by reason of their health or structure they were at risk of failure or shedding limbs and at risk of coming into contact with power lines; and
 - (iii) planning and carrying out inspections of the trees.
62. By reason of the matters alleged in paragraphs 50 to 61 ~~60~~ above, at all relevant times Hume:
- (a) was under a duty to control and reduce the Risks;
 - (b) was reasonably able to exercise powers to control and reduce the Risks; and
 - (c) entered upon the exercise of powers under s 43 and s 55A of the *Country Fire Authority Act* and s 86B of the *Electricity Safety Act* to control or reduce the Risks.
63. In the premises, Hume was under a common law duty to the plaintiff and group members:
- (a) to take reasonable care; and
 - (b) to ensure that reasonable care was taken, by its agents or contractors to eliminate or reduce the Risks.
- 63A If (which is denied) Hume was able to discharge its common law duty by engaging competent contractors, Hume's duty included a duty to exercise reasonable care in the appointment, supervision and management of its contractors.

The Homewood Contract

- 63B By contract made on or about 29 September 2005, Hume engaged **the fourth defendant**, Homewood Consulting Pty Ltd (**Homewood**) and R Greenwood Consulting Pty Ltd (**Greenwood**) to provide tree data collection services across the municipality of the City of Hume (the **Homewood Contract**).

Particulars

The Homewood Contract is in writing and is Contract 20051380 *Provision of Tree Data Collection for City of Hume* (HCC.001.006.002690) and included by reference the document, *Data Collection Attributes & Definitions* dated 26 July

20152005 (HCC.001.006.002982) and thereafter as updated from time to time as follows:

- (i) Data Collection Attributes and Definitions dated 15 March 2007 (HCC.010.001.004494);
- (ii) Data Collection Attributes and Definitions dated 7 September 2009 (HCC.010.001.006530);
- (iii) Data Collection Attributes and Definitions dated 22 February 2010 (HCC.010.001.003955);
- (iv) Data Collection Attributes and Definitions dated 27 March 2012 (HCC.002.001.002401).

63C Pursuant to the Homewood Contract, Homewood and Greenwood were required to perform services, including:

- (a) data collection for individual trees within Hume's reserves and facilities (**Reserve Trees**) and individual trees planted in road reserves (**Street Trees**) in the municipality of Hume;
- (b) the provision of digital photographs for "high risk trees", as determined by the risk assessment methodology set out in the Homewood Contract.

63D There were terms of the Homewood Contract that:

- (a) each tree surveyed would be assigned a Risk Score value (Part 3, Clause 6);
- (b) the Risk Score value of each tree was to be automatically calculated in accordance with the formula, Risk Score = (Failure Potential (FP) + Failure Size (FS)) x (Target Occupancy (TO) + Target Value (TV)) x Damage Probability (Table 5.1);
- (c) for the purpose of calculating the Risk Score value:
 - (i) of each Reserve Tree, data was to be collected as to its Failure Potential, Failure Size, Target Occupancy, Target Value and Damage Probability (Table 5.1);
 - (ii) of each Street Tree:
 - (1) data was to be collected as to its Failure Potential, Failure Size and Target Occupancy (Table 5.2); and
 - (2) the Target Value and Damage Probability was to be assumed to be 'high' (Table 5.2 and *Data Collection Attributes & Definitions*, p. 22);
- (d) Hume's contract superintendent was to determine the Risk Score value for "high risk trees" (cl. 6).

63D1 Hume's contract superintendent determined that the Risk Score value for "high risk trees" was 20.

Particulars

The Plaintiff refers to paragraph 17 of the letter from DLA Piper to Maddens Lawyers dated 9 October 2015,

63E Homewood continued to provide tree inspection services to Hume under the terms of the Homewood Contract, including in relation to the row of gum trees in the Mickleham Road Reserve, of which the Tree formed part, following the formal expiry of Homewood Contract.

Hume's Breach of Duty

63F At all relevant times, the probability of the Risks materialising was not insignificant by reason that:

- (a) the Mickleham Road Reserve was in a hazardous bushfire risk area;
- (b) the Mickleham Road Reserve between Mt Ridley Road and Bardwell Drive featured a large number of mature sugar gum trees, including the Tree, which:
 - (i) had been lopped many years previously at a height of approximately 2 – 3 metres above the ground, with the stem left in the ground;
 - (ii) grew large epicormic stems from their lopped stem; and
 - (iii) as a result of (i) and (ii) had poor structure (**epicormic structure**);
- (c) in about 2002, Hume removed approximately 31 mature sugar gum trees with epicormic structure from the Mickleham Road Reserve south of Mt Ridley Road;

Particulars

The trees were removed as part of the restoration of the Mickleham Avenue of Honour of which they formed part.

Hume reported in the *Hume People* newsletter dated 2 May 2002 at page 4 that the trees were removed because they were in 'bad condition'. The plaintiff is unable to provide further particulars of the condition of the trees until proper discovery is made by Hume.

- (d) prior to 9 February 2014 and to Hume's knowledge, a number of the mature sugar gum trees with epicormic structure on the Mickleham Road Reserve between Mt Ridley Road and Bardwell Drive had shed epicormic stems or branches onto Mickleham Road and/or the Mickleham Road reserve;

Particulars

- (i) on 27 January 2006, a mature sugar gum tree shed a very large tree branch onto Mickleham Road in the vicinity of 1990 Mickleham Road (HCC.002.001.000320);
- (ii) on about 29 September 2008, a mature sugar gum tree failed near the intersection of Mickleham Road and Bardwell Drive (HCC.004.001.000432);
- (iii) on 15 November 2011, a large branch fell from a mature sugar gum tree on Mickleham Road just north of Mt Ridley Road (HCC.002.001.000474);
- (iv) at a time unknown to the plaintiff but before 18 March 2012, a mature sugar gum tree identified by Hume as HTMS ID 213096 and located at 1960 Mickleham Road had a large branch failure (HCC.005.001.000196 0050);
- (v) at a time unknown to the plaintiff but before 18 March 2012, a mature sugar gum tree identified by Hume as HTMS ID 213103 and located at 1960 Mickleham Road had a very large branch failure (HCC.005.001.000196 0050);
- (vi) on 4 February 2014, a mature sugar gum tree split in half and blocked both lanes of Mickleham Road between Mt Ridley Road and Bardwell Drive (HCC.002.001.00418);
- (vii) Hume's knowledge is to be inferred from the fact that the incidents were reported to Hume in the documents cited above.

63G In the circumstances:

- (a) The probability that the harm referred to in paragraph 15 would occur if Hume failed to take reasonable care to avoid the materialisation of the Risks was not insignificant;

Particulars

- (i) The plaintiff refers to and repeats paragraph 63F;
- (ii) The Victorian Bushfires Royal Commission found that contact between vegetation and power lines poses a considerable risk for causing fires and that trees outside regulated clearance spaces pose a risk of causing fires by contacting power lines when they break or fall [VBRC Report, Ch 4, [4.6.2]];
- (iii) The risk that bushfires could be ignited by clashing between uninsulated conductors was identified in the *Report of the Board of Inquiry Into the Occurrence of Bush and Grass Fires in Victoria 1977* and confirmed by the *2009 Victorian Bushfires Royal Commission* [VBRC Report, Ch 4, [4.6.4]];
- (iv) Hume was aware of the findings of the VBRC and of the significant bushfire risk posed by hazard trees, for example:
- (A) Municipal Association of Victoria, Members Brief re Royal Commission Final Report dated 1 August 2010 [HCC.005.001.001396];

(B) Hume Fire Management Plan 2012-2015, Appendix C [HCC.005.001.001779_0028].

- (b) in the event that the Risks materialised, the harm was potentially catastrophic;
- (c) any burden to Hume in taking precautions to avoid the Risks was slight and not unreasonable having regard to the cost of taking precautions, Hume's available resources, the probability of the Risks materialising and the seriousness of the harm;

Particulars

- (i) In 2012, Hume Contracting charged Hume \$769.25 per tree for the removal of large trees, including sugar gums, and \$294.50 per tree for large trims [HCC.005.001.000220];
- (ii) The plaintiff will provide particulars of Hume's available resources following discovery of Hume's financial statements.
- (d) there was no social utility in permitting the Tree to remain as it was.

Particulars

- (i) The Tree was a hazard.
- (ii) Prior to the fire Hume had removed or pruned a number of similar mature sugar gum trees from the Mickleham Road Reserve and from other sites in its municipality.

64. By reason of the matters alleged in paragraphs 31, 32, ~~and~~ 35 and 63F and 63G above, in exercising reasonable care Hume, its employees or agents, ought reasonably to have taken the following precautions:

- (a) identified the Tree as a "high risk tree" under the Homewood Contract and/or as hazard tree;
- (b) identified the Tree as a potential hazard;
- (c) determined that the Tree was at risk of failure or shedding limbs;
- (d) determined that the Tree was at risk of coming into contact with power lines;
- (e) determined that the Tree had ~~very~~ poor structure;
- (f) pruned or removed the Tree to mitigate the risks of it failing, shedding limbs or coming into contact with power lines; and
- (g) further and alternatively, notified AusNet, alternatively, VicRoads, of the matters set out in sub-paragraphs ~~(a)~~ to ~~(f)~~ above.

65. By reason of the matters alleged in paragraphs 65A to 65L below, negligently, and in breach of its duty of care, Hume:

- (a) failed to exercise, by its officers, servants or agents, reasonable skill, care and diligence in conducting vegetation assessments of the Tree;
- (b) failed to ensure that any of its contractors exercised reasonable skill, care and diligence in conducting vegetation assessments of the Tree; and
- (c) failed to take any of the ~~measures~~ precautions alleged in sub-paragraphs 64(a) to (g) above.

65A In the course of the inspection of the Tree on 15 October 2007, Homewood, as agent for Hume:

- (a) identified the Tree as having 'poor' structure; and
- (b) recommended structural pruning and weight reduction works on the Tree within 18 months;
- (c) collected the following data relevant to the calculation of the Risk Score value of the Tree:
 - (i) a 'moderate' Failure Potential;
 - (ii) a '15-45cm' Failure Size; and
 - (iii) an 'intermittent' Target Occupancy.

65B Based on the data collected in relation to the Tree on 15 October 2007 and calculated in accordance with the formula in the Homewood Contract, the Tree's Risk Score value was 16.

Particulars

Pursuant to the Risk Score methodology in the Homewood Contract:

- (i) a 'moderate' Failure Potential is to be assigned a score of 2;
- (ii) a '15-45cm' Failure Size is to be assigned a score of 2;
- (iii) an 'intermittent' Target Occupancy is to be assigned a score of 2;
- (iv) a 'high' Target Value is to be assigned a score of 3; and
- (v) a 'high' Damage Probability is to be assigned a score of .8.

Pursuant to the Risk Score formula, the above values result in a Risk Score value of 16 because $(2 + 2) \times (2 + 3) \times .8 = 16$.

65B1 At the time of the inspection of the Tree by Homewood on 15 October 2007 and at all material times, the structure of the tree indicated significant faults and defects with a

significant potential for the failure of any one of the living stems, including the eastern stem.

Particulars

The plaintiff refers to and repeats paragraph 31 above.

65B2 Pursuant to the Homewood Contract, where the structure of a tree indicates significant faults and defects and there is a significant potential for branch or trunk failure, the tree is to be assigned a Failure Potential rating of 3 (Part 2, p.25).

65B3 At the time of the inspection of the Tree by Homewood on 15 October 2007 and at all material times:

- (a) the part of the Tree most likely to fail was one or more of the living stems, including the eastern stem, at the point of its attachment to the remaining stem;
- (b) the diameter of each of the living stems at about the point of its attachment to the remaining stem was between 45cm and 75cm.

65B4 Pursuant to the Homewood Contract, where the branch or trunk most likely to fail is between 45cm and 75cm in diameter, the tree is to be assigned a Failure Size rating of 3 (Part 2, p.25).

65C At all material times, if a stem of the Tree failed and fell it had the potential to hit:

- (c) the powerline;
- (d) vehicles travelling on Mickleham Road.

65D Pursuant to the Homewood Contract, where the target most likely to be hit in the event of failure is in the 'danger zone' for greater than 8 hours a day, the Target Occupancy is to be rated as 'constant' and is to be attributed a Target Occupancy rating of '4' (Part 2, p.26).

65E At all material times, each of:

- (a) the powerline; and
- (b) vehicles travelling on Mickleham Road

was is in the 'danger zone' of the Tree for greater than 8 hours a day.

65F In the premises, pursuant to the Homewood Contract:

- (aa) the correct Failure Size for the Tree was between 45cm and 75cm;
- (ab) the correct Failure Size rating for the Tree was '3';

- (a) the correct Target Occupancy of the Tree was 'constant';
- (b) the correct Target Occupancy rating of the Tree was '4';
- (c) by reason of the matters in alleged in paragraph 31:
 - (i) the correct Failure Potential of the Tree was 'high';
 - (ii) the correct Failure Potential rating of the Tree was '3';
- (d) the correct Risk Score value of the Tree was ~~28-34~~;

Particulars

$$\text{Risk Score} = (3 + \del{2-3}) \times (4 + 3) \times .8 = \del{28-33.6}.$$

- (e) the Tree was a "high risk tree".

65G In breach of its duty of care, following the inspection on 15 October 2007, Hume:

- (a) failed to perform the recommended structural pruning and weight reduction works on the Tree;
- (b) wrongly assigned a Risk Score value of 6 to the Tree;
- (c) failed to identify the Tree as a "high risk tree";
- (d) failed to remove the Tree.

65H Between 15 October 2007 and 27 March 2012:

- (a) no works were performed on the Tree;
- (b) the height of the Tree had grown from 15 metres to 22 metres;
- (c) the height, size and weight of the stems had increased as a result of their growth;
- (d) the structure of the Tree did not improve;
- (e) the risk of the Tree failing had increased.

65I Despite the matters alleged in paragraph 65H above, in the inspection of the Tree on 27 March 2012, Homewood, as agent for Hume:

- (a) identified the Tree as having 'fair' structure;
- (b) recommended no works on the Tree;
- (c) collected the following data relevant to the calculation of the Risk Score value of the Tree:
 - (i) a 'moderate' Failure Potential;

- (ii) a '0-15 cm' Failure Size; and
- (iii) an 'intermittent' Target Occupancy.

65J The inspection of the Tree conducted by Homewood on 27 March 2012 was negligent because the inspector:

- (a) failed to identify that the Tree had 'poor' structure;

Particulars

- (i) The structure of the Tree was poor by reason of the matters alleged in paragraph 31 above;
 - (ii) Homewood had assessed the structure of the Tree to be 'poor' on 15 October 2007 and the structure could not have improved since that time.
- (b) failed to accurately record data relevant to the calculation of the Risk Score value of the Tree;

Particulars

- (i) the correct Failure Potential of the Tree was 'high' by reason of the matters alleged in paragraph 31 ~~and 65~~;
 - (ii) the correct Target Occupancy of the Tree was 'constant' by reason of the matters alleged in paragraphs 65C to 65E above;
 - (iii) the correct Failure Size of the Tree was '~~15-45~~ 45-75 cm' by reason of the matters alleged in paragraphs 65B3 and 65B4 as identified in the Homewood inspection conducted on 15 October 2007.
- (c) failed to identify that the Tree was a "high risk tree";
 - (d) failed to recommend that the Tree be removed as a matter of 'High' priority;
 - (e) alternatively to (d), failed to recommend that Tree be pruned to eliminate the risk that it would fail and contact the powerline as a matter of 'High' priority.

Particulars

Pursuant to the Data Collection Attributes and Definitions where a tree has significant defects that may cause failure resulting in damage or injury works are to be assigned a priority of 'High' meaning recommended works should be carried out within 9 months (HCC.001.006.002982_0014).

65K In the premises, Hume:

- (a) is vicariously liable for the negligent inspections of its agent, Homewood; and/or
- (b) breached its duty of care by failing to ensure that reasonable care was taken by Homewood in the inspection of the Tree.

65L Further or alternatively to 65K, in breach of its duty to exercise reasonable care in the supervision and management of Homewood under the Homewood Contract, Hume:

- (a) failed to provide adequate information, direction or instruction to Homewood in relation to the HTMS inspection conducted on 27 March 2012 and, in particular:
 - (i) failed to inform Homewood that a number of the mature sugar gum trees with epicormic structure on the Mickleham Road Reserve between Mt Ridley Road and Bardwell Drive had shed epicormic stems or branches onto Mickleham Road and/or the Mickleham Road reserve since Homewood's inspection of those trees on 15 October 2007;
 - (ii) failed to instruct Homewood that the powerlines were a 'constant' target of the sugar gum trees on the eastern side of Mickleham Road Reserve and to rate the Target Occupancy accordingly;
 - (iii) failed to instruct Homewood to take into account its previous tree assessment and to depart from them only with good reason;
 - (iv) further or alternatively to (iii), failed to ensure that the Homewood employee who conducted the March 2012 inspection was made aware of the results of the October 2007 inspection, including that structural pruning and weight reduction were recommended;
 - (b) failed to properly analyse the tree assessment data provided by Homewood in relation to the Tree and, in particular:
 - (i) failed to have in place any means by which it could identify inconsistencies between the 2007 and 2012 inspections;
 - (ii) failed to identify that Homewood had not accurately assessed the powerlines as being a constant target for the sugar gum trees on the eastern side of Mickleham Road Reserve;
 - (c) failed to require Homewood to justify and provide reasons for the inconsistent assessments of the Tree between the October 2007 and March 2012 inspections.
66. Had Hume exercised reasonable care as alleged:
- (a) the risk of the Tree failing, shedding limbs or coming into contact with power lines would have been identified; and
 - (b) prior to 9 February 2014 Hume, alternatively VicRoads, alternatively AusNet Services, would have pruned or removed the Tree to mitigate so as to eliminate

the risks of it failing, or shedding limbs or and thereby coming into contact with power lines.

67. By reason of the matters alleged in paragraphs 51 to 66 above, the Mickleham bushfire was caused by the negligence of Hume, its agents or employees.

68. By reason of the negligence of Hume, its agents or employees:

(a) the plaintiffs;

(b) each of the group members referred to in sub-paragraphs 4(a) to (c) hereof; and

(c) each of the deceased persons referred to in sub-paragraph 4(d) hereof

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

69. The Mickleham bushfire was a natural and foreseeable consequence of the negligence of Hume, its agents or employees.

L Active Tree Services

70. Further or alternatively to the claims against AusNet and Hume 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 AusNet's claims against the third defendant (**Active Tree Services**) as follows.

71. At all relevant times, Active Tree Services was incorporated pursuant to the Corporations Act 2001 (Cth).

72. ~~The plaintiff refers to and repeats paragraph 22E, By a written agreement dated 2 August 2012 ("the Services Agreement"), and an Approval Order issued under clause 2.2 of the Services Agreement, AusNet appointed Active Tree Services to provide to it vegetation management services.~~

73. The Services Agreement provided, relevantly, that:

(a) Active Tree Services was to undertake electric line clearance work including the management of allocated feeders throughout the period of the contract to ensure that assessment and cutting programs as agreed and managed by AusNet were met, and assessing vegetation (**Services**);

(b) assessments were to be undertaken in accordance with procedure VEM 20-03 (namely, the Vegetation and Easement Management Assessment Procedure (Distribution));

- (c) all spans in high bushfire risk areas (HBRA) were to be assessed prior to 15 August each year with re-inspections commencing on 1 September and being completed prior to 30 October each year;
 - (d) a programmed review of HBRA spans prior to and throughout the declared bushfire period must be instigated by Active Tree Services and agreed with AusNet to ensure compliance to the Code clearance for all vegetation;
 - (e) AusNet would conduct random sampling of the contractor's work in order to verify compliance with relevant standards and with the contract;
 - (f) all contractor personnel must meet AusNet's minimum training requirements.
74. There were written terms of the Services Agreement that Active Tree Services should~~should~~would:
- (a) perform the services to that standard of care and skill to be expected of a service provider who regularly acted in the capacity in which Active Tree Services was engaged and who possessed the knowledge, skill and experience of a service provider qualified to act in that capacity [clause 2.4];
 - (b) comply with AusNet Services' policies and procedures [clause 3(c)];
 - (c) comply with all applicable legislative requirements [clause 3(e)];
 - (d) remain fully responsible for the services carried out notwithstanding any review of acceptance of those services by AusNet Services [clause 3(d)];
 - (e) employ personnel with appropriate qualifications and experience to carry out the services [clause 7.3(a)];
 - (f) ensure that all personnel engaged to carry out the services were adequately trained and were competent to carry out their duties [clause 7.3(b)];
 - (g) conduct sample audits of all its work, procedures and practices in order to verify compliance with relevant standards, code and requirements of the contract [Schedule 1, Section 4, clause 1.2];
 - (h) during the normal span assessment process, report any hazardous tree that the assessor observes whilst performing their normal duties, as per AusNet Services' procedure VEM 20-01 'Hazard Tree and 56M Assessment Procedure', and in accordance with procedure VEM 20-02 'Hazardous Tree and 56M Management Procedure' that pose a potential threat to the AusNet Services Distribution Network. Failure to identify visible Rating 5 trees is treated as a non-conformance in the Quality KPI mechanism [Schedule 1, Section 1, clause 1.9].

Particulars

The plaintiff will rely at trial on the Services Agreement for its full terms and effect.

A copy of the Services Agreement and the Approval Order is in the possession of the plaintiff's solicitors and is available for inspection by appointment.

The plaintiff refers to and repeats paragraphs 22B and 22C above as to the identification of the versions of VEM 20-01, VEM 20-02 and VEM 20-03 and the procedures set out therein, in accordance with which Active Tree Services were required to conduct the pre-summer tree inspections.

75. From the commencement of the Services Agreement and from time to time thereafter AusNet provided to Active Tree Services copies of its policies as amended from time to time, including its VM Plans, and in particular procedure VEM 20-03 'Vegetation and Easement Management Assessment Procedure (Distribution)'.
76. During the term of the Services Agreement Active Tree Services provided services to AusNet, including in respect of the 66 kV line referred to in sub-paragraph 7(a)(i) above.
77. By reason of the matters alleged at paragraphs 69 to 74 and 76 above, Active Tree Services had a responsibility for and a degree of control over:
- (a) the assessment of vegetation clearances surrounding parts of AusNet's distribution network, including the 66 kV line;
 - (b) the implementation and observance by its employees of the requirements of the Services Agreement and of AusNet Services' policies and procedures, including Clearance Procedure VEM 20-03, during and for the purposes of assessing vegetation clearances;
 - (c) the knowledge, training and experience of the employees it engaged to perform services under the Services Agreement, including the assessment of vegetation outside the clearance space.
78. During the term of the Services Agreement, it was reasonably foreseeable that any failure by Active Tree Services, its servants or agents, to observe and implement the requirements of the Services Agreement and of AusNet's policies in respect of the assessment of vegetation clearances could result in the materialisation of the Risks alleged in paragraph 60 above.

79. Throughout the term of the Services Agreement, the plaintiff and group members were:
- (a) vulnerable to the Risks materialising; and
 - (b) for the purposes of protecting themselves and their property and their economic interests against the Risks, reliant on Active Tree Services by its servants and agents exercising reasonable care in undertaking the Services.
80. In the premises, throughout the term of the Services Agreement, Active Tree Services 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 assessments of vegetation outside the clearance space that could fall within the clearance space and come into contact with power lines;
 - (b) to ensure that the assessment of vegetation outside the clearance space was undertaken in accordance with the requirements of the Services Agreement and of AusNet's policies and procedures including Clearance Procedure VEM 20-03;
 - (c) to ensure that persons engaged to conduct the assessments of vegetation outside the clearance space were competent to inspect for and identify hazard trees.
- 80A. The persons engaged by Active Tree Services to conduct pre-summer tree inspections under the Services Agreement did not have Appropriate Training.
81. During the term of the Services Agreement, and prior to the Mickleham bushfire, Active Tree Services, by an employee, conducted one or more inspections of the 66 kV line in the vicinity of the Tree.
82. By reason of the matters alleged in paragraphs 31, 32 and 35 above, in exercising reasonable care, Active Tree Services, its employees or agents, ought reasonably to have:
- (aa) ensured that the persons engaged by it to conduct pre-summer tree inspections under the Services Agreement had Appropriate Training;
 - (a) identified the Tree as a hazard tree;
 - (b) identified the Tree as a potential hazard;
 - (c) determined that the Tree was at risk of failure or shedding limbs;
 - (d) determined that the Tree was at risk of coming into contact with power lines;

- (e) determined that the Tree had very poor structure; and
 - (f) notified AusNet of the matters set out at sub-paragraphs (a) to (e) above.
83. In the premises, Active Tree Services itself, or by its employees or agents, breached the duty of care alleged in paragraph 80 above.
84. Had Active Tree Services notified AusNet Services of the matters alleged in sub-paragraphs 82(a) to (b) above, then:
- (a) subject to arranging for an assessment by a qualified arborist; and
 - (b) subject to the arborist confirming the likelihood of contact with an electric line having regard to foreseeable local conditions –
AusNet services would have cut or removed the Tree.
85. By reason of the matters alleged in paragraphs 71 to 84 above, the Mickleham bushfire was caused by the negligence of Active Tree Services, its agents or employees.
86. By reason of the negligence of Active Tree Services, its agents or employees:
- (a) the plaintiffs;
 - (b) each of the group members referred to in sub-paragraphs 4(a) to (c) hereof; and
 - (c) each of the deceased persons referred to in sub-paragraph 4(d) hereof
as the case may be, suffered loss and damage of the kinds referred to in sub-paragraphs 15(c) to (e) above.
87. The Mickleham bushfire was a natural and foreseeable consequence of the negligence of the negligence of Active Tree Services, its agents or employees.

M Homewood

- 87A. Homewood was at all relevant times:
- (a) incorporated pursuant to the *Corporations Act 2001 (Cth)*; and
 - (b) carrying on business as consulting arborists specialising in the provision of tree management services for local governments.
- 87B. Pursuant to the Homewood Contract, Hume engaged Homewood to provide arboricultural services to it across the municipality of Hume as alleged at paragraphs 63B to 63D above.

87B1 Further, in about November 2011, pursuant to the Homewood Contract, Hume engaged Homewood to:

- (a) conduct an annual rapid audit of each tree in the inspection zone near major roads, education institutions, power lines and high use areas within the City of Hume so as to identify and update trees with 'High' or 'Urgent' priority works (the **Regulated Areas program**);
- (b) identify and assess hazardous trees on rural roads in the City of Hume ("rural roads").

Particulars

The "regulated areas" and "rural roads" services are described in the document entitled Consultancy Services provided to City of Hume dated 27 March 2012 [HCC.002.001.002401].

87C. Homewood provided services to Hume pursuant to the Homewood Contract, inspecting and assessing trees in the municipality of Hume, and in the course of doing so:

- (a) individually inspected and logged each gum tree growing in a row on the Mickleham Road Reserve, including the Tree;
- (b) on 15 October 2007 performed an individual arborist's inspection of the Tree;
- (c) on 15 February 2012 inspected the Tree in the course of a "regulated areas" inspection carried out by an arborist;
- (d) on 27 March 2012 performed an individual arborist's inspection of the Tree;
- (e) on 18 January 2013 inspected the Tree in the course of a "regulated areas" inspection carried out by an arborist;
- (f) on 9 September 2013 inspected the Tree in the course of a "rural roads" inspection carried out by an arborist
(the **Homewood Services**).

87D. It was a term of the Homewood Contract that Homewood would exercise due care and skill in providing the Homewood Services.

Particulars

The term is implied at law, alternatively by reason of:

- (i) section 32J of the *Fair Trading Act 1999*(Vic);
- (ii) section 74(1) of the *Trade Practices Act 1974*(Cth);

- (iii) further or alternatively, section 60 of the *Australian Consumer Law (Cth)* and the *Australian Consumer Law (Victoria)*.

- 87E. As a result of the inspection on 15 October 2007, Homewood recommended structural pruning and weight reduction to the Tree.
- 87F. As a result of the inspection on or about 27 March 2012 Homewood reported that there were no recommended works to the Tree.
- 87G. Following inspections on 15 February 2012, 18 January 2013 and 9 September 2013 Homewood reported on those trees for which either urgent or high priority works were recommended, and did not report that any urgent or high priority works were recommended in respect of the Tree.
- 87H. Further, plaintiff refers to and repeats each of the allegations in paragraphs 65A to 65F, 65G(a) and (d), 65H, 65I and 65J.
- 87I. At all relevant times the following risks were or ought to have been reasonably foreseeable to Homewood:
- (a) the trees situated on the Mickleham Road Reserve could fall or shed limbs and thereby come into contact with the power lines along Mickleham Road;
 - (b) contact between failed trees or their limbs and the power lines might cause arcing between the conductors of the powerline and/or the feeder line and/or arcing between the conductors and vegetation which could cause a discharge of sparks and heat;
 - (c) sparks and heat might ignite nearby fuel and result in a fire;
 - (d) such a fire could –
 - (i) spread over a wide geographic area;
 - (ii) cause injury to persons and loss or damage to property within the area affected by the fire;
 - (iii) cause economic loss to people affected by the fire –
 - (1) by disrupting or impairing their income earning activities;
 - (2) by impeding the use or amenity of their properties if they were located in areas affected by the fire; and
 - (3) by reducing the value of real property or businesses located in the area affected by the fire.

87I.1 The arboricultural services were provided by Homewood in order to establish tree location, species, size and condition of trees throughout the City of Hume on road reserves, Council reserves and within Council owned properties and also to set a priority for works that may be required to maintain a safe and healthy tree population.

87I.2 The purpose of the Homewood Contract thereby included the mitigation of risks associated with unsafe and unhealthy trees, including the risks identified in paragraph 87I above.

87J. During the term of the Homewood Contract, it was reasonably foreseeable that any failure by Homewood, its servants or agents, to observe and implement the requirements of the Homewood Contract could result in the materialisation of the risks alleged in paragraph 87I above.

Particulars

Any failure by Homewood to exercise reasonable care in the conduct of its vegetation inspections and assessments could result in it failing to identify and notify Hume of the existence of a tree or trees that were at risk of failing, shedding limbs and coming into contact with power lines and that such a failure was likely to result in Hume failing to take action to eliminate or mitigate the risks posed by the tree or trees as a result of which the risks may materialise.

87K. At all relevant times the plaintiff and group members were:

- (a) vulnerable to the risks alleged in paragraph 87I materialising; and
- (b) for the purposes of protecting themselves and their property and their economic interests against the risks alleged in paragraph 87I, dependent upon Homewood exercising reasonable care in carrying out the Homewood Services under the Homewood Contract.

87L. By performing the Homewood Services pursuant to the Homewood Contract Homewood had responsibility for and control over the inspection and assessments of trees in the municipality of Hume, including the Tree.

87M. In the premises, throughout the period during which it performed the Homewood Services Homewood owed to the plaintiff and group members a duty to take reasonable care in inspecting and assessing trees, including the Tree, to eliminate or reduce the risks alleged in paragraph 87I.

Homewood's breach of duty

87N. At all relevant times, the probability of the risks alleged in paragraph 87I above materialising was not insignificant by reason that:

- (a) the Mickleham Road Reserve was in a hazardous bushfire risk area;
- (b) high voltage powerlines were located within the Mickleham Road Reserve;
- (c) the Mickleham Road Reserve between Mt Ridley Road and Bardwell Drive featured a large number of mature sugar gum trees, including the Tree, which:
 - (i) had been lopped many years previously at a height of approximately 2 – 3 metres above the ground, with the stem left in the ground;
 - (ii) grew large epicormic stems from their lopped stem; and
 - (iii) as a result of (i) and (ii) had poor structure (**epicormic structure**);
- (d) in about January 2006, Homewood:
 - (i) inspected 24 mature sugar gum trees in the Mickleham Road Reserve south of Mt Ridley Road;
 - (ii) identified that 22 of these mature sugar gum trees required major remedial pruning, or removal and replacement.

Particulars

The trees were inspected for the Avenue of Honour National Database (SUP.HOM.001.0494 and SUP.HOM.001.0313).

- (e) prior to 9 February 2014 and to Homewood's knowledge, a number of the mature sugar gum trees with epicormic structure on the Mickleham Road Reserve between Mt Ridley Road and Bardwell Drive had shed epicormic stems or branches onto Mickleham Road and/or the Mickleham Road reserve;

Particulars

- (i) at a time unknown to the plaintiff but before 18 March 2012, a mature sugar gum tree identified by Hume as HTMS ID 213096 and located at 1960 Mickleham Road had a large branch failure (HCC.005.001.000196_0050);
- (ii) at a time unknown to the plaintiff but before 18 March 2012, a mature sugar gum tree identified by Hume as HTMS ID 213103 and located at 1960 Mickleham Road had a very large branch failure (HCC.005.001.000196_0050);
- (iii) Homewood's knowledge is to be inferred from the fact that the incidents were reported to Hume as part of the data collection process performed by Homewood under the Homewood contract.

87N1 In the circumstances:

- (a) The probability that the harm referred to in paragraph 15 would occur if Homewood failed to take reasonable care to avoid the materialisation of the risks alleged in paragraph 87I above was not insignificant;

Particulars

- (i) The plaintiff refers to and repeats paragraph 87N;
 - (ii) The Victorian Bushfires Royal Commission found that contact between vegetation and power lines poses a considerable risk for causing fires and that trees outside regulated clearance spaces pose a risk of causing fires by contacting power lines when they break or fall [VBRC Report, Ch 4, [4.6.2]];
 - (iii) The risk that bushfires could be ignited by clashing between uninsulated conductors was identified in the *Report of the Board of Inquiry Into the Occurrence of Bush and Grass Fires in Victoria 1977* and confirmed by the *2009 Victorian Bushfires Royal Commission* [VBRC Report, Ch 4, [4.6.4]];
 - (iv) Homewood was or ought to have been aware of the findings of the VBRC and of the significant bushfire risk posed by hazard trees.
- (b) in the event that the Risks materialised, the harm was potentially catastrophic;
- (c) any burden to Homewood in taking precautions to avoid the risks was slight and not unreasonable having regard to the cost of taking precautions, the probability of the risks materialising and the seriousness of the harm;

Particulars

So far as Homewood's inspections of mature sugar gum trees in the Mickleham Road Reserve under the Homewood contract are concerned, no additional burden would have arisen in undertaking them with due skill and care.

- (d) there was no social utility in permitting the Tree to remain as it was.

Particulars

- (i) The Tree was a hazard.
- (ii) Prior to the fire Hume had removed or pruned a number of similar mature sugar gum trees from the Mickleham Road Reserve upon the recommendation of Homewood. The plaintiff relies upon the report entitled "HTMS Update Inspection Program Updated Tree Assessments 2012 Bulla/Kalkallo" [HCC.005.001.000196].

87N2 By reason of the matters alleged in paragraphs 31, 32, 35, 87N and 87N1 above, in exercising reasonable care Homewood, its employees or agents, ought reasonably to have taken the following precautions:

- (a) properly assessed the Failure Potential, Failure Size and Target Occupancy relevant to the Tree;

- (b) determined that the Tree had poor structure;
- (c) identified the Tree as a “high risk tree” under the Homewood Contract;
- (d) determined that structural pruning and weight reduction works should be performed as a matter of ‘High’ priority;
- (e) alternatively to (d), determined that the Tree be removed as a matter of ‘High’ priority;
- (f) determined the extent of the risk that the Tree including one of its epicormic stems would fail and contact the powerline;
- (g) updated the HTMS data collected for Hume in relation to the Tree so as to correctly record the risk posed by the Tree; and
- (h) otherwise notified Hume of the matters set out in sub-paragraphs (a) to (g) above.

870. Homewood failed to exercise reasonable care and was negligent:

- (a) in its inspection and assessment of the Tree on 15 October 2007, by:
 - (i) failing to properly assess the Failure Potential, Failure Size and Target Occupancy relevant to the Tree as alleged in paragraphs 65B1 to 65F above;
 - (ii) failing to identify the Tree as a ‘high risk tree’ under the classification specified in the Homewood Contract;
 - (iii) failing to advise Hume that the recommended structural pruning and weight reduction works should be performed as a matter of ‘High’ priority;
 - (iv) alternatively to (iii), failing to recommend to Hume that the Tree be removed as a matter of ‘High’ priority;
- (b) in its inspection and assessment of trees in the Mickleham Road Reserve, including the Tree, as part of the “Regulated Areas” inspection program on 15 February 2012 and 18 January 2013 by:
 - (i) failing to identify the Tree as having poor structure and high Failure Potential;
 - (ii) failing to update the HTMS data collected for Hume in relation to the Tree so as to correctly record the risk posed by the Tree;
 - (iii) failing to identify the Tree as a ‘high risk tree’;

- (iv) failing to recommend to Hume that the Tree be removed as a matter of 'Urgent' or 'High' priority;
 - (v) alternatively to (iv) failing to recommend to Hume that the Tree be pruned to eliminate the risk that it would fail and contact the powerline as a matter of 'Urgent' or 'High' priority;
- (c) in its inspection and assessment of the Tree pursuant to the Homewood Contract on 27 March 2012 by:
- (i) failing to identify the Tree as having poor structure;
 - (ii) failing to properly assess the Failure Potential, Failure Size and Target Occupancy relevant to the Tree;
 - (iii) failing to identify the Tree as a 'high risk tree' under the classification specified in the Homewood Contract;
 - (iv) failing to recommend to Hume that the Tree be removed as a matter of 'High' priority;
 - (v) alternatively to (iv) failing to recommend to Hume that the Tree be pruned to eliminate the risk that it would fail and contact the powerline as a matter of 'High' priority

as alleged in paragraph 65J above.

87N. Negligently and in breach of its duty of care, Homewood:

- ~~(a) ought to have identified the Tree as a "high risk" tree under the classifications specified by the Homewood Contract but failed to do so;~~
- ~~(b) ought to have classified the Tree as a hazard tree but failed to do so;~~
- ~~(c) ought to have determined that the Tree was at risk of failure or shedding limbs but failed to do so;~~
- ~~(d) ought to have determined that the Tree was at risk of coming into contact with powerlines but failed to do so;~~
- ~~(e) ought to have determined that the tree had poor structure in its inspections of the Tree on 27 March 2012, 15 February 2012, 18 January 2013 and 9 September 2013 but failed to do so;~~
- ~~(f) ought to have recommended that the Tree—~~
 - ~~(i) be removed;~~

~~(ii) alternatively to (f)(i), be pruned to eliminate the risk that it would fail and contact the powerline;~~

~~but failed to do so;~~

~~(g) ought to have notified Hume, AusNet Services or VicRoads of the matters in (a) to (f) above but failed to do so.~~

~~87O. Further or alternatively, Homewood breached its duty of care by reason of the matters alleged by Hume in paragraph 93 of its defence and counterclaim dated 27 November 2015.~~

87P. Hume:

(a) ~~relied upon Homewood's failure to identify and notify Hume of the extent of risk of the Tree failing, shedding limbs or coming into contact with the powerline; and~~

(b) ~~as a consequence Hume failed to prune or remove the Tree.~~

~~87P1 Had Homewood not breached its duty of care as alleged:~~

~~(a) the risk of the Tree failing, shedding limbs or coming into contact with power lines would have been identified as a 'high risk tree' pursuant to the Homewood Contract; and~~

~~(aa) it would have identified the Tree as requiring either removal or structural pruning and weight reduction as a matter of 'High' priority;~~

~~(ab) it would have notified Hume as to (a) and (aa) above;~~

~~(b) prior to 9 February 2014 Hume, alternatively VicRoads, alternatively AusNet Services, would have pruned or removed the Tree so as to eliminate the risks of it failing, or shedding limbs or and thereby coming into contact with power lines.~~

Particulars

(i) ~~Had Homewood not been negligent in its inspection and assessment of the Tree on 15 October 2007:~~

~~(A) it would have identified the Tree to Hume as a "high risk tree" and would have advised Hume that the Tree required either removal or structural pruning and weight reduction as a matter of "High" priority;~~

~~(B) Hume would have included the Tree in its program of works for 2008;~~

- (C) Hume would have either removed the Tree or conducted structural pruning and weight reduction works on the Tree in 2008 or, in any event, prior to 9 February 2014 such that as at that date the eastern stem of the Tree could not have fallen onto the conductors.
- (ii) Had Homewood not been negligent in its regulated areas inspection of the Mickleham Road Reserve on 15 February 2012:
 - (A) it would have identified the Tree to Hume as a “high risk tree” and would have advised Hume that the Tree required either removal or structural pruning and weight reduction as a matter of “Urgent” or “High” priority;
 - (B) Hume would have included the Tree in its report entitled “Hume City Council Regulated Areas Annual Inspection Program Greenvale/Kalkallo Tree Assessments Feb/March 2012” [HCC.004.001.000543] as a tree requiring either removal or structural pruning and weight reduction as a matter of “Urgent” or “High” priority;
 - (C) Hume would have included the removal or structural pruning and weight reduction works on the Tree within the scope of works which it performed or engaged a contractor to perform in Mickleham Road, Mickleham in about April and May 2012;
 - (D) Alternatively to C, Hume would have otherwise removed or performed structural pruning and weight reduction works on the Tree prior to 9 February 2014 such that as at that date the eastern stem of the Tree could not have fallen onto the conductors.
- (iii) Had Homewood not been negligent in its inspection and assessment of the Tree on 25 March 2012:
 - (A) it would have identified the Tree to Hume as a “high risk tree” and would have advised Hume that the Tree required either removal or structural pruning and weight reduction as a matter of “High” priority;
 - (B) Hume would have included the Tree in its report entitled “HTMS Update Inspection Program Updated Tree Assessments 2012

Bulla/Kalkallo' [HCC.005.001.00196] as a tree requiring either removal or structural pruning and weight reduction as a matter of "High" priority;

(C) Hume would have included the removal or structural pruning and weight reduction works on the Tree within the scope of works which it engaged Hume Contracting to perform as part of Field Instruction #4887 and which Hume Contracting performed in about December 2012;

(D) Alternatively to C, Hume would have otherwise removed or performed structural pruning and weight reduction works on the Tree prior to 9 February 2014 such that as at that date the eastern stem of the Tree could not have fallen onto the conductors.

(iv) Had Homewood not been negligent in its regulated areas inspection of the Mickleham Road Reserve on 18 January 2013:

(A) it would have identified the Tree to Hume as a "high risk tree" and would have advised Hume that the Tree required either removal or structural pruning and weight reduction as a matter of "Urgent" or "High" priority;

(B) Hume would have removed or performed structural pruning and weight reduction works on the Tree prior to 9 February 2014 such that as at that date the eastern stem of the Tree could not have fallen onto the conductors.

87Q. By reason of the matters alleged in paragraphs 87A to 87P above, the Mickleham bushfire was caused by the negligence of Homewood, its agents or employees.

87R. Homewood's breach of duty caused the plaintiff and group members to suffer loss and damage of the kinds referred to in sub-paragraphs 15(c) to (e) above.

87S. The Mickleham bushfire was a natural and foreseeable consequence of the negligence of Homewood, its agents or employees.

N Common Questions of Law or Fact

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

(relevant to each defendant)

(a) how the Mickleham bushfire started;

(relevant to AusNet)

(b) whether AusNet owed the Statutory Duties to the plaintiff and group members, and if so the content of those duties;

(c) whether AusNet owed the General Duty to the plaintiff and group members, and if so the content of the duty;

(d) whether the Mickleham bushfire was caused by a breach by AusNet of any of the Statutory Duties or General Duty;

(e) whether the plaintiff and subgroup members suffered actionable nuisance created by AusNet;

(e1) to the extent that economic loss and property damage claims are made against AusNet:

(i) whether the claims are apportionable claims under Part IVAA of the *Wrongs Act*;

(ii) if they are apportionable claims, whether Hume and/or Active Tree Services and/or Homewood is a concurrent wrongdoer;

(iii) if either Hume and/or Active Tree Services and/or Homewood is a concurrent wrongdoer, the proportionate responsibility of the defendants under Part IVAA of the *Wrongs Act*.

(relevant to Hume)

(e2) whether Hume owed the plaintiff and group members a duty of care, and if so, the content of the duty;

(e3) whether the Mickleham bushfire was caused by Hume's breach of its duty of care;

(e4) to the extent that economic loss and property damage claims are made against Hume:

(i) whether the claims are apportionable claims under Part IVAA of the *Wrongs Act*;

(ii) if they are apportionable claims, whether AusNet and/or Active Tree Services and/or Homewood is a concurrent wrongdoer;

- (iii) if AusNet and/or Active Tree Services and/or Homewood is a concurrent wrongdoer, the proportionate responsibility of the defendants under Part IVAA of the *Wrongs Act*.

(relevant to Active Tree Services)

- (e5) whether Active Tree Services owed the plaintiff and group members a duty of care, and if so, the content of the duty;
- (e6) whether the Mickleham bushfire was caused by Active Tree Services' breach of its duty of care;
- (e47) to the extent that economic loss and property damage claims are made against Active Tree Services:
 - (i) whether the claims are apportionable claims under Part IVAA of the *Wrongs Act*;
 - (ii) if they are apportionable claims, whether AusNet and/or Hume and/or Homewood is a concurrent wrongdoer;
 - (iii) if AusNet and/or Hume and/or Homewood is a concurrent wrongdoer, the proportionate responsibility of the defendants under Part IVAA of the *Wrongs Act*.

(relevant to Homewood)

- (e8) whether Homewood owed the plaintiff and group members a duty of care, and if so, the content of the duty;
- (e9) whether the Mickleham bushfire was caused by Homewood's breach of its duty of care;
- (e10) to the extent that economic loss and property damage claims are made against Homewood:
 - (i) whether the claims are apportionable claims under Part IVAA of the *Wrongs Act*;
 - (ii) if they are apportionable claims, whether AusNet and/or Hume and/or Active Tree Services is a concurrent wrongdoer;

- (iii) if AusNet and/or Hume and/or Active Tree Services is a concurrent wrongdoer, the proportionate responsibility of the defendants under Part IVAA of the Wrongs Act.

(relevant to each defendant)

- (f) what are the principles for identifying and measuring compensable losses suffered by the claimants resulting from the breaches of duty or nuisance alleged herein.

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

(Against AusNet)

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

(Against Hume)

- D. Damages.
- E. Interest.
- F. Costs.

(Against Active Tree Services)

- G. Damages.
- H. Interest.
- I. Costs.

(Against Homewood)

- J. Damages.
- K. Interest.
- L. Costs.

TP Tobin

G Dalton

A Fraatz

Dated: 23 February 2016

MADDENS LAWYERS.....

Maddens Lawyers
Solicitors for the plaintiff

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION**

No S CI 5296 of 2014

SCHEDULE OF PARTIES

BETWEEN

STEVEN ELLIOT WILLIAMS

Plaintiff

and

AUSNET ELECTRICITY SERVICES PTY LTD (ACN 064 651 118)

First Defendant

and

HUME CITY COUNCIL

Second Defendant

and

ACTIVE TREE SERVICES PTY LTD (ACN 002 919 299)

Third Defendant

and

HOMEWOOD CONSULTING PTY LTD (ACN 113 595 430)

Fourth Defendant

AND BETWEEN

AUSNET ELECTRICITY SERVICES PTY LTD (ACN 064 651 118)

Plaintiff by
Counterclaim

and

STEVEN ELLIOT WILLIAMS

First Defendant
to Counterclaim

and

HUME CITY COUNCIL

Second Defendant
to Counterclaim

and

ACTIVE TREE SERVICES PTY LTD (ACN 002 919 299)

Third Defendant
to Counterclaim

and

HOMEWOOD CONSULTING PTY LTD (ACN 113 595 430)

Fourth Defendant
to Counterclaim

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION**

No S CI 5296 of 2014

STEVEN ELLIOT WILLIAMS

Plaintiff

and

**AUSNET ELECTRICITY SERVICES PTY LTD
(ACN 064 651 118) and Others**

Defendants

CERTIFICATE IDENTIFYING ANNEXURE

Date of document: 23 February 2016
Filed on behalf of: The Plaintiff
Prepared by:
Maddens Lawyers
219 Koroit Street
WARRNAMBOOL VIC 3280

Solicitor's Code:102650
DX: 28001
Tel:(03) 5560 2000
Fax: (03) 5560 2099
Ref: Brendan Pendergast: 140278

This is the Annexure referred to in Fourth Amended Statement of Claim dated 23 February 2016

**Map of the Mickleham – Kilmore
Bushfire Area dated 14 February 2014
(SUP.CFA.007.0001)**

Mickleham-Kilmore Fire - 9th February 2014 - Fire Spread



Disclaimer: This map is a snapshot generated from Victorian Government data as well as data from various other sources. This does not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for error, loss or damage which may arise from reliance upon it. All persons accessing this information should make appropriate enquiries to assess the currency of the data.