

## February 2014 “MICKLEHAM BUSHFIRE”

### NOTICE OF A CLASS ACTION

Persons who suffered loss or damage as a result of the Mickleham bushfire which started on 9 February 2014 near the eastern edge of Mickleham Road, Mickleham (“the **Mickleham bushfire**”) should **TAKE NOTICE** that a class action has been commenced in the Supreme Court of Victoria (“the **Court**”).

The class action has been commenced on behalf of all persons who, as a result of the Mickleham bushfire, suffered any of the following:

- (a) personal injury (whether physical or psychiatric);
- (b) loss of or damage to property; or
- (c) economic loss not resulting from loss of or damage to property.

Persons who fit that description are called “**group members**” in the class action. The group members also include any “legal personal representatives” of the estates of any **deceased** person who would otherwise have qualified as a group member.

The Court has ordered that this notice be published to inform the group members about the action.

If you are, or think you might be a group member, you should **READ THIS NOTICE CAREFULLY** as it may affect your rights.

#### 1. What is the Mickleham bushfire class action?

The plaintiff in the Mickleham bushfire class action is Steven Elliot Williams. He is suing the defendants on his own behalf and on behalf of all persons who suffered personal injury, loss of or damage to property and economic loss (as outlined above) as a result of the Mickleham bushfire. Those other persons are called the “group members”. The effect of the class action on the group members is explained below.

The defendants to the class action are AusNet Electricity Services Pty Ltd (“**AusNet Services**”), Hume City Council (“**Hume CC**”) and Active Tree Services Pty Ltd (“**Active Tree Services**”).

Briefly, Mr Williams alleges that AusNet Services owned and operated a three-phase 66kV electricity sub-transmission line which in part runs adjacent to the eastern side of Mickleham Road between Mount Ridley Rd and Bardwell Drive, Mickleham (“**the powerline**”). Mr Williams alleges that Hume CC had duties to manage vegetation in the Mickleham Road Reserve and that Active Tree Services were contracted by AusNet Services to have responsibility for the assessment of vegetation clearances surrounding the powerline. Mr Williams alleges that on 9 February 2014 the Mickleham bushfire started because of breach of duties by AusNet Services in the maintenance and operation

of the powerline and by Hume CC and Active Tree Services in vegetation management in the vicinity of the powerline.

Mr Williams claims compensation and other remedies for himself and for each of the group members.

All defendants deny they are liable for the Mickleham bushfire, and are defending the class action. AusNet Services has also made counter-claims against Hume CC and Active Tree Services in response to Mr William's allegations.

The claims made by Mr Williams are set out in an "Amended Statement of Claim" filed in the Court. AusNet Services has filed a Defence and Counter Claims. Hume City Council and Active Tree Services have also filed defences. Copies of those documents can be viewed:

- on the Supreme Court website at [www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au).; or
- on the Maddens Lawyers' website at [www.maddenslawyers.com.au](http://www.maddenslawyers.com.au).

## **2. What does it mean to be a group member?**

The plaintiff in a class action does not need consent from the group members to start or run the class action. A person is a group member if they fit the definition of group members set out in the court papers filed by the plaintiff.

If the Court makes orders or gives a judgment, or the class action is settled, the results are "binding" on the group members. This means that if the class action is successful, group members may be eligible for a share of the compensation. If the action is unsuccessful, group members will not be able to sue on the same claims in any other litigation.

If you fit the definition of "group member" set out earlier then you are already a group member in the Mickleham class action. You do not need to remain a group member. If you do not wish to be a group member then you can "opt out" of the class action. This procedure is explained below.

## **3. Will group members be liable for legal costs?**

Group members will **not** become liable for any legal costs simply by remaining as group members.

However, if the class action is successful and there is a judgment or settlement that results in compensation becoming payable to group members, then:

- first, the Court may make an order that some of the compensation be used to help pay a share of the "common" costs incurred by Mr Williams in bringing the action for the benefit of the class. Mr Williams will ask for that order if the occasion arises;
- second, judgments and settlements in class actions often involve procedures requiring group members to submit claims for a share of the available compensation. You might want to engage solicitors to assist you with those procedures. Whether you use the same solicitors as Mr Williams (**Maddens**) or other solicitors, you are likely to need to enter a costs agreement with those solicitors and they will charge you for that work.

Maddens are acting in the class action on a “no win, no fee” basis. If the action is successful then the costs they will be entitled to charge will include a premium (“uplift”) permitted by the *Legal Profession Act*. The uplift will be calculated at 25% of the professional fees covered by the no-win, no-fee arrangement and will form part of the costs shared by successful group members.

#### 4. What if you had insurance?

Many group members had insurance but sometimes the insurance did not cover all the items lost (uninsurance), or did not cover the full value of a given item (underinsurance). If you received insurance payments, but think that the insurance did not fully compensate your losses, you will be a group member in respect of any uninsured or underinsured losses (together, **above-insurance losses**).

If you wish to be a group member to claim any above-insurance losses, you need to register using the procedure described below. Your insurance company will need to register separately to recover compensation for the insurance payout made to you. You and your insurer are also entitled to “opt out” your respective interests, if either of you wishes to do so. Your insurance company will be separately notified about its rights in this regard.

#### 5. What do group members need to do?

If you fit the definition of “group member” set out above then you are already a group member in the Mickleham bushfire class action.

The Court has now made orders to clarify what claims are covered by the class action. If you think you are a group member then you need to make a choice between the following three options:

##### ***Option A – register to participate in any settlement***

If you are not a client of Maddens Lawyers and you wish to participate in any settlement then you must complete the “**Notice of Registration**” which is Form A below. This is not a costs agreement with Maddens. It simply registers you as a group member so that you are “**bound**” by the class action. This means that if the action is successful then you may be entitled to compensation. If the action fails then you will not be able to sue the defendants for the same claims in any other litigation. If you wish to register you must do so by sending your Form A notice to Maddens Lawyers at the address shown on the form, **before 22 May 2015**. This date is called the “**Closure Date**” in the class action.

##### ***Option B – cease to be a group member by “opting out”***

If you do not wish to be a group member then you must complete the Form B “**Notice of Opting Out**” below. If you opt out then *you will cease to be a group member*. The class action will not affect your rights. If you wish to bring a separate claim against the defendants then you *may* be able to do so, but you should seek independent legal advice if you wish to take that course because *time limits will apply to your claim*. If you wish to opt out you must

do so by sending your Form B notice to the Supreme Court **before the Closure Date of 22 May 2015**.

***Option C – do nothing and lose your rights in settlement (but not judgment)***

If you do nothing – that is, neither register nor opt out – then you will remain a group member and be bound by the outcome of the class action. If there is a successful judgment you will be able to participate in the implementation of that judgment, but if there is a **settlement** you will not be entitled to participate in the settlement. That means you would lose your rights to sue, but also not be entitled to compensation.

**It is very important that you act promptly** in deciding what you want to do. If you are not sure whether you are a group member, or you want further information or advice, you can contact Maddens Lawyers on 03 5560 2000 or email [cam@maddenslawyers.com.au](mailto:cam@maddenslawyers.com.au).

**6. Where do I send my registration or opt-out form?**

Any Form A or Form B notice must reach the address shown on the relevant Form **before 4pm on 22 May 2015**.

**7. Further information**

Please consider the above information carefully. If you are not sure whether you are a group member, or want further information, you can contact Maddens Lawyers, or seek your own legal advice. **Please act promptly** since the deadline for registering or opting out is **22 May 2015**.

Maddens Lawyers can be contacted at 219 Koroit Street, Warrnambool or by telephone on (03) 5560 2000, or by email to [[cam@maddenslawyers.com.au](mailto:cam@maddenslawyers.com.au)].

Form A – Registration Notice

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION

No S CI 5296 of 2014

BETWEEN:

STEVEN ELLIOT WILLIAMS

Plaintiff

and

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

Defendants

Group Member Settlement Registration Form

To: Maddens Lawyers  
219 Koroit Street  
Warrnambool VIC 3280

Type of Group Member Circle one Individual/Deceased estate/Company/Business partnership/Trust

Name of Group Member: .....  
(Please complete a separate form for each person, business, partner, child etc who is making a claim)

ABN (if applicable) .....

Address of Group Member where they were injured or lost property .....  
.....

Does the person wish to claim compensation for personal injury? Circle one Yes/No

Does the person wish to claim compensation for property loss or damage, or economic loss which is not covered or not fully covered by insurance? Circle one Yes/No

The abovenamed Group Member **registers** as a group member wishing to claim compensation in any settlement of the proceeding.

Dated: ..... 2015

Signed: .....

Name of person signing .....  
(print)

If person signing is not the .....  
Group Member, in what  
capacity do you sign  
(?)for the Group Member  
(e.g. company director,  
legal guardian, parent)

Telephone .....

Email .....

Current postal address (if .....  
different from address  
above) .....

Form B – Notice of Opting Out

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION

No S CI 5296 of 2014

BETWEEN:

STEVEN ELLIOT WILLIAMS

Plaintiff

and

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

Defendants

NOTICE OF OPTING OUT BY GROUP MEMBER

To: The Prothonotary  
Supreme Court of Victoria – Registry  
Level 2, 436 Lonsdale Street  
Melbourne VIC 3000

Name of Group Member: .....

Address of Group Member: .....

.....

The abovenamed Group Member gives notice under section 33J(2) of the *Supreme Court Act 1986* that the Group Member is **opting out** of this proceeding.

Dated: ..... 2015

Signed: .....

Name of person signing .....  
(print)

If person signing is not the .....  
Group Member, in what  
capacity do you sign for the  
Group Member (e.g.  
company director, legal  
guardian, parent)

If person signing is signing .....  
on behalf of a company or a  
business, what is the ACN or  
ABN of the company or  
business?

Telephone .....

Email .....

Postal address .....

.....