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PROCESSED

IN THE SUPREME COURT  
OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION

No. SCI 5296 of 2014

BETWEEN

STEVEN ELLIOT WILLIAMS

Plaintiff

and

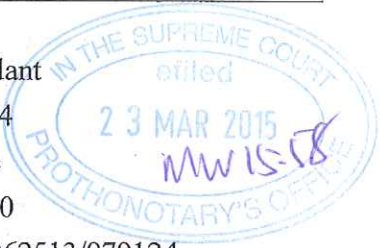
AUSNET ELECTRICITY SERVICES PTY LTD  
(ACN 064 651 118)

[and others]

Defendants

DEFENCE OF SECOND DEFENDANT

Date of Document:	23 March 2015
Filed on behalf of:	The Second Defendant
Prepared by:	Solicitors Code: 274
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To the Amended Statement of Claim endorsed on the Writ, the second defendant (**Hume**) says as follows:

**A. PRELIMINARY**

1. As to paragraph 1, save that it admits that a fire ignited on 9 February 2014 at Mickleham in Victoria, it otherwise does not admit paragraph 1.
2. As to paragraph 2, save that it admits that the plaintiff was at all material times a registered joint proprietor of the real property located at 5 Vanessa Drive, Mickleham in the State of Victoria, it otherwise does not admit paragraph 2.
3. It admits paragraph 3.

4. It does not admit paragraph 4, and says further that it relies on the provisions of Parts VA, VB and VBA of the *Wrongs Act 1958 (Vic)* (**Wrongs Act**) in respect of each group member who is alleged to have suffered personal injury.

5. It does not admit paragraph 5.

**B. AUSNET ELECTRICITY SERVICES PTY LTD**

6. As to paragraph 6, it:

(a) Admits that the first defendant (“**AusNet**”) at all material times:

(i) was and is a corporation capable of being sued;

(ii) carried on business as a distributor of electricity in the geographical area of northern and eastern Victoria pursuant to a distribution licence granted under the *Electricity Industry Act 2000 (Vic)*, as varied from time to time (“**the distribution business**”);

(iii) in carrying on the distribution business, was a major electricity company and an operator of a supply network, within the meaning of section 3 of the *Electricity Safety Act 1998 (Vic)* (“**the ES Act**”);

(b) otherwise does not plead to paragraph 6 as the same makes no allegations against it.

7. As to paragraph 7, it

(a) admits that in the course of and for the purposes of the distribution business, AusNet owned the pole, pole fittings, conductors, fuses, transformers, sub-stations and like installations together and severally

comprising the three-phase 66 kV electricity sub-transmission line which, in part, runs adjacent to the eastern side of Mickleham Road between Mount Ridley Road and Bardwell Drive, Mickleham in the State of Victoria (**66 kV line**);

- (b) admits that at all material times, a three-phase 22 kV electricity distribution line (**22 kV line**) built beneath the 66 kV line was owned, used and managed by Jemena Electricity Networks (Vic) Limited (ABN 82 064 651 083);
- (c) admits that AusNet operated the distribution network, including the 66 kV line;
- (d) otherwise does not plead to paragraph 7 as the same makes no allegations against it.

8. As to paragraph 8, it

- (a) admits that 66 kV line was part of a "supply network" as defined by section 3 of the *Electricity Safety Act (ES Act)*;
- (b) admits that the 22 kV line was part of a separate "supply network" as defined by section 3 of the ES Act;
- (c) otherwise does not plead to paragraph 8 as the same makes no allegations against it.

### C. THE STATUTORY DUTY ALLEGATIONS

9. As to paragraph 9, it:

- (a) admits that at all material times from:

- (b) 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, the hazards and risks:
  - (i) of the safety of any person arising from the supply network;  
and
  - (ii) damage to the property of any person arising from the supply network; and
- (c) 1 January 2012, in addition to (a), section 98 of the ES Act required AusNet to design, construct, operate and maintain its supply network to minimise, as far as practicable, the bush fire danger arising from the supply network;
- (d) otherwise does not plead to paragraph 9 as the same makes no allegation against it.

- 10. It does not plead to paragraph 10 as the same makes no allegation against it.
- 11. It does not plead to paragraph 11 as the same makes no allegation against it.
- 12. It does not plead to paragraph 12 as the same makes no allegation against it.

**D. THE GENERAL DUTY OF CARE ALLEGATIONS**

- 13. At all material times, AusNet:
  - (a) had the right to construct, repair, modify, inspect, maintain and operate the 66 kV line and to give directions as to its construction, repair, modification, inspection, maintenance or operation;

- (b) to the extent that it conferred such rights on another party by contracting with another party, AusNet held those rights to the exclusion of other private persons;
  - (c) AusNet, as is admitted by it in its Defence filed in the proceeding, exercised the rights referred to in (a) and (b) above in relation to the 66 kV line;
  - (d) it does not otherwise plead to paragraph 13 as the same makes no allegations against it.
14. As to paragraph 14, it
- (a) admits that at all material times, AusNet used the 66 kV line to distribute electricity at a nominal voltage of 66 kV;
  - (b) does not otherwise plead to paragraph 14 as the same makes no allegations against it.
15. It does not plead to paragraph 15 as the same makes no allegation against it.
16. It does not plead to paragraph 16 as the same makes no allegation against it.
17. It does not plead to paragraph 17 as the same makes no allegation against it.
18. It does not plead to paragraph 18 as the same makes no allegation against it.
19. It does not plead to paragraph 19 as the same makes no allegation against it.

**E. THE STANDARD OF STATUTORY DUTIES AND GENERAL DUTY ALLEGED**

20. As to paragraph 20:
- (a) it admits that at all material times:

- (i) the Mickleham Road Reserve in the vicinity of the 66 kV power line was a hazardous bush fire risk area within the meaning of:
  - (i) section 3 of the ES Act;
  - (ii) clause 1 of the Code of Practice for Electricity Line Clearance (**Code**) pursuant to Regulation 7 of the Electricity Safety (Electric Line Clearance) Regulations 2010 (**Line Clearance Regulations**);
  - (iii) there were mature gum trees growing in a row on the Mickleham Road Reserve;
  - (iv) the gum trees growing in a row on the Mickleham Road Reserve including tree numbered 21367 referred to below were outside the minimum clearance space specified by the Code;
- (b) so far as the same makes any allegation against it, it denies paragraph 20.

21. As to paragraph 21, it:

- (a) admits that from 13 December 2009, AusNet was responsible pursuant to section 84(7) of the ES Act, for keeping the whole or any part of a tree clear of an electric line, including the 66 kV line
- (b) admits that AusNet, as the relevant distribution company, had powers in relation to the 66 kV line:

- (i) to enter onto land (including the Mickleham Road Reserve) at any reasonable time for the purposes of inspecting the line and to remain on the land for so long as necessary to inspect the line (section 85(a) ES Act);
  - (ii) with the agreement of Energy Safe Victoria to order that the line be substantially reconstructed and placed underground (section 85(b) ES Act);
  - (iii) at any reasonable time to enter onto and remain on land (including the Mickleham Road Reserve) for as long as is necessary to carry out any work required to be carried out by AusNet to fulfil its responsibilities under section 84(7) and 85(c) of the ES Act;
- (c) admits that from 13 December 2009, pursuant to AusNet's Vegetation Management Plan (Distribution):
- (i) a plan approved by Energy Safe Victoria;
  - (ii) with which AusNet was required to comply (Regulation 9(8) of the Line Clearance Regulations);

AusNet made provision for management of vegetation outside the clearance space;

- (d) admits that because the 66 kV line was in a hazardous bush fire risk area, as is admitted by it in its Defence, AusNet was required by clause 4.2.2 of its Vegetation Management Plan (Distribution):
- (i) to undertake a vegetation and easement assessment of the 66 kV line annually;

- (ii) such assessment to include:
- (1) the conduct of an annual pre-summer tree inspection of the power line by the start of the fire season;
  - (2) maintaining the clearance spaces between the 66 kV line and trees in accordance with the Code;
  - (3) an inspection of the space outside the clearance space of the 66 kV line so as to identify trees or limbs which, due to their unsafe conditions, were a potential hazard to the safety of the 66 kV line under a range of weather conditions that could be reasonably expected to prevail (**hazard space**);
  - (4) when inspecting the hazard space, to identify and evaluate potential hazards within the space including:
    - a. dead and dangerous limbs;
    - b. trees with poor structure or health;
    - c. other trees or limbs that may be unstable and could fall on the 66 kV line under the range of weather conditions that could reasonably be expected to prevail in the locality of the line;
- (e) admits that by clause 4.2.2 of the AusNet Vegetation Management Plan (Distribution), such assessment was to be undertaken by or on behalf of



AusNet in accordance with the procedure VEM 20-03 "Vegetation and Easement Management Assessment";

- (f) admits that by clause 6.2.5 of issue 9 of the AusNet procedure VEM 20-03 Vegetation and Easement Management Assessment Procedure (Distribution) (and corresponding provisions in any other relevant issues of the procedure) in the terms there set out, assessors were to carry out at every opportunity only a quick visual inspection of the adjacent vegetation from the location where they positioned themselves to view the "clearance space" for the purpose of identifying any obvious hazardous tree ;
- (g) admits that if AusNet identified a tree as likely to fall onto or otherwise come into contact with the 66 kV line, AusNet had power to cut or remove the tree, provided that:
- (i) the tree has been assessed by a suitably qualified arborist;  
and
  - (ii) that assessment confirmed the likelihood of contact with an electric line having regard to foreseeable local conditions (Regulation 3 of the Line Clearance Regulations);
- (h) admits that AusNet, as a responsible person, was required, as far as practicable, to restrict cutting or removal of native trees to the minimum extent necessary to ensure compliance with the requirements of Part 2 of the Line Clearance Regulations and Part 3 of the Code and the Schedule to the Code or to make an unsafe situation safe (Regulation 2(3) of the Line and Clearance Regulations);

- (i) it does not otherwise plead to paragraph 21 as the same makes no allegation against it.
22. As to paragraph 22:
- (a) clause 3 of the Code relevantly provides that, if a person to whom the Code has application, including AusNet in relation to the 66 kV line, identifies a tree as likely to fall onto or otherwise come into contact with an electric line, AusNet, as the responsible person, in the case of the 66 kV line, may cut or remove the tree provided that:
    - (i) the tree has been assessed by a suitably qualified arborist;  
and
    - (ii) that assessment confirmed the likelihood of contact with an electric line having regard to foreseeable local conditions;
  - (b) it does not otherwise plead to paragraph 22 as the same makes no allegation against it.
23. It does not plead to paragraph 23 as the same makes no allegation against it.
24. It does not plead to paragraph 24 as the same makes no allegation against it.
25. It does not plead to paragraph 25 as the same makes no allegation against it.
26. As to paragraph 26, save that it admits that AusNet had the powers referred to in paragraphs 21(b) and (g) above, it does not otherwise plead to paragraph 26 as the same makes no allegations against it.
27. As to paragraph 27, save that it admits that AusNet was obliged to undertake the inspection referred to in paragraph 21(d) above, it does not otherwise plead to paragraph 27 as the same makes no allegations against it.

**F. THE TREE AND MICKLEHAM BUSH FIRE ALLEGATIONS**

28. As to paragraph 28,

(a) save that it admits that:

(i) at all material times prior to 9 February 2014, in the span between poles 931061 and 931062 of the 66 kV power line, there was an eucalyptus tree, a trunk of which was located approximately 15 metres west of the power line;

(ii) the tree was identified in records maintained by Hume as tree number 213167 (defined by the Plaintiff as “the tree”).

**PARTICULARS**

The Hume Tree Management System is an electronic database that contains an inventory of tree assets within the City of Hume. Copies of printed maps and spreadsheets forming part of the HTMS database may be inspected by appointment.

29. So far as the same makes any allegation against it, it does not admit paragraph 29.

30. So far as the same makes any allegation against it, it does not admit paragraph 30.

31. So far as the same makes any allegation against it, it denies paragraph 31.

32. So far as the same makes any allegation against it, it denies paragraph 32, and says further that:

(a) the term “hazard tree” is identified both in section 86B of the ES Act and in Regulation 3 of the Line Clearance Regulations to be a tree identified as likely to fall onto or come into contact with an electric line and;

(b) as per the Regulations, where such tree has been assessed by a suitably qualified arborist and where such assessment confirms the likelihood of

contact with an electric line having regard to foreseeable local conditions;

- (c) the circumstances referred to in (b) had no application, so far as Hume is or was aware, to tree numbered 213167 at any time prior to 9 February 2014.

- 33. As to paragraph 33, insofar as the same makes any allegation against it, it does not admit paragraph 33.

#### **G. BREACHES OF DUTY ALLEGATIONS**

- 34. So far as the same makes any allegation against it, it denies paragraph 34.

- 35. So far as the same makes any allegation against it, it denies paragraph 35.

- 36. As to paragraph 36:

- (a) save that it admits that at no time prior to 9 February 2014 has AusNet informed Hume that it had identified tree numbered 213167, as:

- (i) a potential hazard; or

- (ii) a hazard tree;

- (b) it does not otherwise plead to paragraph 36 as the same makes no allegations against it.

- 37. It does not plead to paragraph 37 as the same makes no allegation against it.

- 38. It does not plead to paragraph 38 as the same makes no allegation against it.

#### **H. ALLEGED CAUSE OF MICKLEHAM BUSH FIRE**

- 39. It does not plead to paragraph 39 as the same makes no allegation against it.

- 40. It does not plead to paragraph 40 as the same makes no allegation against it.

41. It does not plead to paragraph 41 as the same makes no allegation against it.

**I. SUB-GROUP CLAIMS – ALLEGED PRIVATE NUISANCE**

42. So far as the same makes any allegation against it, it does not admit paragraph 42.

43. It does not plead to paragraph 43 as the same makes no allegation against it.

44. It does not plead to paragraph 44 as the same makes no allegation against it.

45. It does not plead to paragraph 45 as the same makes no allegation against it.

46. So far as the same makes any allegation against it, it denies the allegation in paragraph 46.

47. It does not plead to paragraph 47 as the same makes no allegation against it.

**J. ALLEGED CAUSATION AND LOSS AND DAMAGE**

48. It does not plead to paragraph 48 as the same makes no allegation against it.

**K. HUME CITY COUNCIL**

49. It does not plead to paragraph 49 as the same makes no allegation against it.

50. It admits paragraph 50.

51. As to paragraph 51, it

(a) admits that, at all relevant times, tree number 213167 was situated on the Mickleham Road Reserve;

(b) admits that, at all relevant times, the 66 kV line and the 22 kV line, referred to in paragraph 7 above were situated on the Mickleham Road Reserve;

(c) does not otherwise plead to paragraph 51 as the same makes no allegation against it.

52. It admits paragraph 52.
53. As to paragraph 53, it
- (a) admits that VicRoads was the responsible road authority for the Mickleham Road roadway and for the roadside on which tree numbered 213167 was situated, and VicRoads had the relevant operational functions and statutory powers as set out in the *Road Management Act 2004 (Vic) (RMA Act)*;

#### PARTICULARS

The relevant section of Mickleham Road was an arterial road that was not in an urban area, such that VicRoads was the responsible road authority in accordance with s 37(1)(b)(vii) of the RMA Act.

The terms responsible road authority, roadside, and roadway are defined in s 3(1) of the RMA Act.

- (b) admits that by an agreement in writing titled "Minor Maintenance Roads Agreement Between VicRoads and the City of Hume" dated 1 July 2013, the City of Hume agreed to undertake certain minor maintenance works on various roads within the City of Hume listed in Schedule 1, attached to the agreement including Mickleham Road between Melrose Drive and Donnybrook Road;
- (c) admits that the works to be undertaken by Hume were "in accordance with the Specification attached as Schedule 2. (Refer to Appendix 1 for VicRoads Section 750 – Routine Maintenance)" (**specifications**) including tree and shrub management;

#### PARTICULARS

A copy of the agreement in writing including the specifications may be inspected by appointment.

(d) otherwise denies paragraph 53.

54. As to paragraph 54, it

(a) admits that section 43(1) of the *Country Fire Authority Act 1958* (Vic) (**CFA Act**) relevantly provides that, in the country area of Victoria, it is the duty of every municipal council and public authority to take all practicable steps (including burning) to prevent the occurrence of fires on and minimise the danger of the spread of fires on and from:

- (i) any land vested in it or under its control or management; and
- (ii) any road under its care and management;

it otherwise denies sub-paragraph (a);

(b) admits that for the purposes of fulfilling the duty in section 43(1), a municipal council or public authority is empowered by section 43(2) of the CFA Act to:

- (i) acquire any equipment;
- (ii) do anything;
- (iii) expend from its funds any amount;

it otherwise denies sub-paragraph (b);

(c) it otherwise denies paragraph 54.

55. It admits paragraph 55.

56. As to paragraph 56, it:

(a) admits that at all relevant times, on and after 21 October 2010, Hume was required by section 86B of the ES Act to specify in its municipal fire prevention plan prepared and maintained under section 55A of the CFA Act:

(i) procedures and criteria for the identification of trees that are likely to fall onto or come into contact with an electric line (**hazard trees**); and

(ii) procedures for the notification of responsible persons of trees that are hazard trees in relation to electric lines for which they are responsible – in the case of the 66 kV line, AusNet being the responsible person;

(b) it does not otherwise plead to paragraph 56.

57. As to paragraph 57, it

(a) admits that at all relevant times, pursuant to section 20 of the *Emergency Management Act 1986*, Hume prepared and maintained a Municipal Emergency Management Plan (**MEMP**);

(b) admits that:

(i) in November 2011, the Hume Municipal Fire Management Plan (**MFMP**) was endorsed by the Municipal Fire Management Planning Committee which included representatives of the Country Fire Authority, Metropolitan Fire Brigade and others;

(ii) in March 2012, the MFMP was endorsed by Hume's Municipal Emergency Planning Committee;



- (iii) in March 2013, the MFMP was adopted by the Council of the City of Hume as a sub-plan of the MEMP;
- (iv) the MFMP included procedures and criteria for the identification of hazard trees and the notification of responsible persons of hazard trees (Appendix C);

#### **PARTICULARS**

A copy of the Municipal Fire Management Plan 2013-2016 may be inspected by appointment.

- (c) it does not otherwise plead to paragraph 57.

58. As to paragraph 58, it:

- (a) admits that Pursuant to contract 20051380 made on about 29 September 2005, following a tender process, Hume engaged Homewood Consulting Pty Ltd (**Homewood**) and R Greenwood Consulting Pty Ltd, which were qualified and experienced providers of arboriculture services to provide tree data collection services across the municipality of the City of Hume, which encompasses approximately 150,000 trees;

#### **PARTICULARS**

A copy of contract 20051380 which is in writing may be inspected by appointment.

- (b) admits that the services required to be and in fact provided pursuant to contract 20051380 included:
  - (i) data collection on individual trees planted in road reserves within Hume;

- (ii) the provision of digital photographs for “high risk trees”, as determined by the risk assessment method described in the final tender submissions forming part of contract 20051380;
- (c) admits that pursuant to contract 20051380, each gum tree growing in a row on the Mickleham Road Reserve including tree 213167 were individually identified and logged;
- (d) admits that there was no report provided to the City of Hume pursuant to contract 20051380 in or to the effect that the tree 213167 was a “high risk tree”;
- (e) admits that notwithstanding its formal expiry, pursuant to contract 20051380, Homewood continued to provide tree inspection services to Hume including in relation to the row of gum trees in Mickleham Road, of which tree 213167 formed part;
- (f) admits that on or about:
  - (i) 15 October 2007, tree 213167 was individually inspected by an arborist on behalf of Homewood;
  - (ii) 15 February 2012, tree 213167 was part of a “regulated areas” inspection carried out by an arborist on behalf of Homewood;
  - (iii) 7 March 2012, tree 213167 was individually inspected by an arborist on behalf of Homewood;
  - (iv) 18 January 2013, tree 213167 was the subject of a “regulated areas” inspection carried out by an arborist on behalf of Homewood;

- (v) 9 September 2013, tree 213167 was the subject of a “rural roads” inspection carried out by an arborist on behalf of Homewood;

#### **PARTICULARS**

The inspections on 15 October 2007 and 7 March 2012 were performed as part of the Hume Tree Management System, by which all trees within the City of Hume were to be inspected by Homewood at least once every 4 years.

The Regulated Areas and Rural Roads Inspections Programs are as described in the Homewood Consultancy Services Document in writing and dated 13 November 2012.

- (g) it otherwise does not admit paragraph 58.
59. As to paragraph 59, it
- (a) admits that as a result of the inspection on or about 15 October 2007, Homewood recommended structural pruning and weight reduction to tree 213167; and
  - (b) admits that as a result of the inspection on or about 7 March 2012, Homewood reported that there were no recommended works to tree 213167;
  - (c) admits that 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 tree 213167;
  - (d) otherwise denies paragraph 59.
60. It denies paragraph 60.

61. It denies paragraph 61.
62. It denies paragraph 62, and says further that:
  - (a) if Hume entered upon the exercise of powers under sections 43 and 55A of the CFA Act or section 86B of the ES Act, each of which allegations are denied;
  - (b) then, in respect of the MFMP prepared and maintained pursuant to section 55A of the CFA Act Hume refers to and relies upon sections 83 and 85 of the Wrongs Act.
63. It denies paragraph 63.
64. It denies paragraph 64, and says further that it:
  - (a) delegated the performance of any duty to take the steps alleged in subparagraphs 64(a)-(e) to a competent independent contractor, namely, Homewood;
  - (b) refers to and relies upon sections 83 and 85 of the Wrongs Act .
65. It denies paragraph 65.
66. It denies paragraph 66.
67. It denies paragraph 67.
68. It denies paragraph 68.
69. It denies paragraph 69

**L. THE ACTIVE TREE SERVICES ALLEGATIONS**

70. Save to admit the claims by the Plaintiff on his own behalf and on behalf of group members, except for any claims in relation to personal injury, are apportionable

claims pursuant to Part IVAA of the Wrongs Act, it does not further plead to paragraph 70.

71. It admits that, at all relevant times, Active Tree Services was incorporated pursuant to the *Corporations Act 2001* (Cth).

72. As to paragraph 72, it

(a) admits that by written agreement dated 2 August 2012 (**services agreement**) and an Approval Order issued under clause 2.2 of the services agreement, AusNet appointed Active Tree Services to provide vegetation management services to it;

(b) does not otherwise plead to paragraph 72 as the same makes no allegation against it.

73. As to paragraph 73 ,it

(a) admits that there were terms of the services agreement as alleged in paragraph 73;

(b) does not otherwise plead to paragraph 73 as the same makes no allegation against it.

74. As to paragraph 74, it:

(a) admits that there were written terms of the services agreement as alleged in paragraph 74;

(b) does not otherwise plead to paragraph 74 as the same makes no allegation against it.

75. It does not plead to paragraph 75 as the same makes no allegation against it.

76. It does not plead to paragraph 76 as the same makes no allegation against it.

77. It does not plead to paragraph 77 as the same makes no allegation against it.
78. It does not plead to paragraph 78 as the same makes no allegation against it.
79. It does not plead to paragraph 79 as the same makes no allegation against it.
80. It does not plead to paragraph 80 as the same makes no allegation against it.
81. It does not plead to paragraph 81 as the same makes no allegation against it.
82. It does not plead to paragraph 82 as the same makes no allegation against it.
83. It does not plead to paragraph 83 as the same makes no allegation against it.
84. It does not plead to paragraph 84 as the same makes no allegation against it.
85. It does not plead to paragraph 85 as the same makes no allegation against it.
86. It does not plead to paragraph 86 as the same makes no allegation against it.
87. It does not plead to paragraph 87 as the same makes no allegation against it.
88. As to paragraph 88:
  - (a) it admits the question in sub-paragraph (a) is a common question;
  - (b) so far as the questions in sub-paragraphs (b) to (d) concern it, it does not admit such questions are common questions;
  - (c) so far as the questions in sub-paragraphs (e) and (f) concern it, it denies such questions are common questions;
  - (d) so far as the questions in sub-paragraphs (e1) to (e7) concern it, it does not admit that such questions are common questions.

**Proportionate Liability - Part IVAA Wrongs Act**

89. If, which is denied, Hume is liable to the plaintiff or any group member for any economic loss or damage to property as alleged, Hume says that:

- (a) by reason of the matters alleged in paragraphs 6 to 48 of the plaintiff's Amended Statement of Claim, the acts or omissions of AusNet by itself or by its employees and agents also caused or contributed to the loss or damage the subject of the claim;
- (b) by reason of the matters alleged in paragraphs 70 to 87 inclusive of the plaintiff's Amended Statement of Claim, the acts or omissions of Active Tree Services by itself or by its employees or agents also contributed to the loss or damage the subject of the claim;
- (c) accordingly, pursuant to section 24AI of the Wrongs Act, the liability of Hume is limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of Hume's responsibility for the loss or damage;
- (d) judgement must not be given against Hume for more than that amount.

**Contribution – Part IV Wrongs Act**

90. If, which is denied, Hume is liable to the plaintiff or any group member for any claims that are not apportionable claims, then:

- (a) by reason of the matters alleged in paragraphs 6 to 48 of the plaintiff's Amended Statement of Claim, AusNet is liable in respect of the same damage;
- (b) accordingly, Hume is entitled to recover contribution from AusNet in such amount as is found to be just and equitable having regard to the extent of AusNet's responsibility for the damage;

- (c) by reason of the matters alleged in paragraphs 70 to 87 inclusive of the plaintiff's Amended Statement of Claim, Active Tree Services is liable in respect of the same damage;
- (d) accordingly, Hume is entitled to recover contribution from Active Tree Services in such amount as is found to be just and equitable having regard to the extent of Active Tree Services' responsibility for the damage.

DATED 23 March 2015

**J DELANY**

**M HOOPER**

*DLA Piper Australia*

**DLA Piper Australia**  
Solicitors for the Second Defendant