

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

No. 4788 of 2009

BETWEEN:

**CAROL ANN MATTHEWS**

Plaintiff

and

**AUSNET ELECTRICITY SERVICES PTY LTD  
(ACN 064 651 118)  
& ORS (according to the schedule of parties)**

Defendants

(by original proceeding)

AND BETWEEN:

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

Plaintiff by Counterclaim

and

**(ACN 060 674 580)  
& ORS (according to the schedule of parties)**

Defendants by Counterclaim

(by counterclaim)

**AFFIDAVIT OF ANDREW JOHN WATSON**

---

<b>Date of Document:</b>	1 March 2018
<b>Filed on behalf of:</b>	The Plaintiff
<b>Prepared by:</b> Maurice Blackburn Lawyers Level 21, 380 La Trobe Street Melbourne Vic 3000	Solicitor's Code: 564 Tel: (03) 9605 2700 DX: 466 Melbourne Ref: AW/3052491 E: JPeck@mauriceblackburn.com.au

---

I, Andrew John Watson, Solicitor, of Level 21, 380 La Trobe Street, Melbourne in the State of Victoria, make oath and say as follows:

1. I am a Principal in the firm of Maurice Blackburn Pty Ltd (**Maurice Blackburn**), the solicitors for the Plaintiff in this proceeding and pursuant to the Orders of this Court dated 23 December 2014 I am the Scheme Administrator.
2. I make this affidavit from my own knowledge unless otherwise stated. Where statements are not made from my own knowledge, they are made to the best of my information and belief after due enquiry and I have set out the source of my information.
3. I make this affidavit for the purpose of providing the Court with an update on:
  - (a) the progress made in relation to the personal injury and dependency ("**I-D**") settlement distribution;
  - (b) the progress made in relation to the economic loss and property damage ("**ELPD**") settlement distribution;
  - (c) communications with claimants;
  - (d) residual distribution sum amounts;
  - (e) preparing for potential second distribution;
  - (f) the settlement administration costs; and
  - (g) the taxation issues affecting the Distribution Sum.
4. The team of lawyers and paralegals employed by Maurice Blackburn who are working on administration of the Scheme are referred to in this affidavit as the **SDS Team**.
5. All references to the affidavit of Andrew J Watson sworn on 25 May 2017 will be marked as the **May affidavit**.

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

#### ***Remaining Distributions and Unpresented Cheques***

6. All I-D claimants have received their compensation and presented their cheques.

#### ***Potentially unpaid I-D Claimant – Claimant not assessed***

7. I refer to paragraph 5 of the May affidavit. Since the June Case Management Conference ("**June CMC**") in order to assess this ID-Claimant's claim pursuant to the Settlement Distribution Scheme ("**SDS**"), all necessary steps were undertaken and the



Claimant has received their compensation. Because the ID fund had been disbursed in December 2016 this claimant's compensation was paid directly from Maurice Blackburn's office account and not from settlement funds.

8. This payment together with another earlier payment to a claimant referred to in the affidavit of Andrew Watson sworn on 28 February 2017 brings to \$570,532.91 the total I-D compensation which has been paid directly by Maurice Blackburn.

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

9. The SDS Team is continuing to respond to inquiries by I-D Claimants regarding their compensation and the settlement distribution process generally.

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

#### ***Remaining Distributions***

10. There are 3,092 above-insurance claimants entitled to receive compensation in the ELPD settlement distribution. At the time of swearing the May affidavit, there were 37 ELPD payments which remained to be processed by the SDS Team.
11. Of the 3,092 above insurance claimants, as at 28 February 2018:
  - (a) Payment has been made to 3,078 claimants; and
  - (b) Payment remains outstanding for 14 claimants, including:
    - i) One allocation dispute preventing distribution to two claimants; and
    - ii) Three assessments which involve unresolved Estate claims, preventing distribution to 12 claimants.
12. The total combined value of the claims not yet paid is \$223,263.57.
13. In each of the four above noted circumstances, as Scheme Administrator I have taken the following steps:
  - (a) considered the circumstances of the dispute and determined that distribution cannot presently be made;
  - (b) advised the claimants that distribution will continue to be withheld until such time as the issue preventing distribution is resolved, including, in most instances, discussing the issues with solicitors retained by those claimants; and



(c) advised those claimants that the Scheme Administrator does not intend to hold the money on trust in perpetuity and that their interests may be prejudiced by ongoing failure to resolve the issues preventing distribution.

14. The SDS Team continues to work with the affected claimants with a view to resolving and paying the remaining 14 claimants as soon as practicable.

***Unpresented cheques***

15. As at 28 February 2018, there are 12 above insurance claimants who have not presented their cheques to the bank.
16. The total combined value of the monies which have not been presented is \$116,975.55.
17. Three of the unpresented cheques were issued or re-issued recently, and the remaining nine cheques were issued on 31 March 2017 and remain unpresented.
18. The SDS Team has been in contact with claimants who are yet to present their cheques on a number of occasions to advise them to bank their cheques and, on those occasions, all but two of the claimants confirmed their intention to do so.
19. On 14 February 2018, the SDS Team wrote to claimants who have not presented their cheques since distribution in March 2017 to advise that the Scheme Administrator would seek to cancel their cheques and absorb their entitlement to distribution back into the distribution sum if they failed to bank their cheques by 20 March 2018. Now produced and shown to me marked, "Exhibit AJW-1" is a template copy of the correspondence which was sent by email and registered post to claimants who had not presented their cheques as at 14 February 2018.
20. Clause J1 of the SDS provides as follows:

*J1.1 Where the Scheme Administrator considers that:*

*(a) the procedures to be followed in the implementation of this Scheme are wanting or in doubt; or*

*(b) an issue has arisen in connection with the administration of this Scheme which are appropriate for directions by the Court;*



*the Scheme Administrator may, by correspondence addressed to the Associate to the Judge or Associate Judge supervising the administration of this Scheme, apply to the Judge or Associate Judge for directions.*

*J1.2 Save where the Court upon an application pursuant to clause J1.1 requires otherwise, the Scheme Administrator need not give notice of the application to Claimants.*

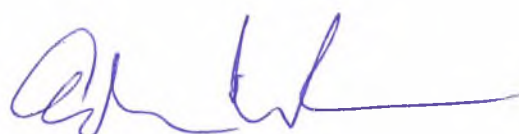
21. At this stage it is my intention to seek directions to cancel the entitlement of any claimants who have unrepresented cheques which have been outstanding since March 2017 as at 20 March 2018 and absorb those monies back into the distribution sum.

### ***Finalising the ELPD Distribution***

22. The SDS Team is continuing to attend to the following:
- (a) Actioning outstanding distributions;
  - (b) Responding to inquiries by ELPD Claimants regarding their compensation and the settlement distribution process generally;
  - (c) Reconciling ELPD Claimant data with presented cheques; and
  - (d) Identifying and following up any ELPD Claimants who fail to present their cheques. The SDS Team will continue to monitor the status of settlement cheques.

### **COMMUNICATIONS WITH CLAIMANTS**


23. Since the May affidavit, the SDS Team has updated claimants in regards to the ongoing taxation dispute on the following occasions:
- (a) Correspondence dated 8 August 2017. Now produced and shown to me marked, "**Exhibit AJW-2**" is a template copy of the correspondence that was sent to claimants on 8 August 2017.
  - (b) The affidavit of Andrew John Watson dated 1 September 2017 (the "**September affidavit**") filed and published on the website of the Supreme Court of Victoria. This affidavit was foreshadowed to claimants in the earlier August tax update correspondence.



- (c) Correspondence dated 19 December 2017. Now produced and shown to me marked, "**Exhibit AJW-3**" is a template copy of the correspondence that was sent to claimants on 19 December 2017.
24. As per the sections above regarding the progress of distribution, the SDS Team continue to follow up by correspondence and telephone with claimants' whose distribution is being withheld or who have not presented their cheques.
25. The SDS Team continue to take residual questions from time to time from claimants about aspects of the Settlement Distribution, including those claimants who seek more detailed advice about the terms and status of the taxation dispute.

### **RESIDUAL DISTRIBUTION SUM AMOUNTS**

26. There is presently \$828,377.82 (the composition of which is set out below) in addition to:
- (a) Amounts distributed;
  - (b) Amounts described above pending distribution;
  - (c) Amounts set aside for the potential taxation liability; and
  - (d) Amounts set aside for administration costs
27. There has been no call on the \$750,000 contingency amount set aside for the ELPD distribution.
28. An amount of \$68,160 comprising interest earned on the settlement funds in January 2017 was not distributed in the ELPD distribution.
29. Prior to the ELPD distribution in March 2017 the Scheme Administrator was contacted by a member of the public regarding a potential fraudulent claim by a claimant. On receipt of that information the Scheme Administrator wrote to the claimant in question advising that their compensation would be withheld pending further investigation. Now produced and shown to me and marked "**Confidential Exhibit AJW-4**" is a copy of the letter dated 29 March 2017.
30. The claim was referred to Mr Michael Wilson QC for reassessment. Mr Wilson QC met with the claimant on 16 May 2017. Mr Wilson QC provided us with a Notice of ELPD

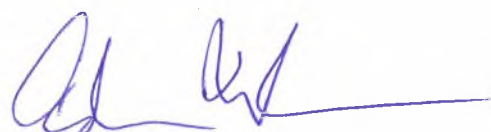


Review Assessment on 17 May 2017. Now produced and shown to me and marked "**Confidential Exhibit AJW-5**" is a copy of the review assessment dated 17 May 2017.

31. The claimants total assessed above insurance losses were ultimately reduced by \$35,868 resulting in a reduced distribution entitlement of \$10,210.70.
32. On 11 October 2017 the residual sum of \$10,210.70 was transferred from the ELPD settlement distribution account into the settlement distribution fund or pool of funds available for a potential further distribution to claimants.
33. On 11 July 2017 a member of the SDS Team spoke to a claimant regarding their unpresented cheque for \$7.12. The claimant advised that they did not intend to bank the cheque. Following this conversation a letter was sent to the claimants confirming their instructions. Now produced and shown to me and marked "**Confidential Exhibit AJW-6**" is a copy of the letter dated 18 July 2017.
34. On 11 October 2017 the residual sum of \$7.12 was transferred from the ELPD settlement distribution account into the settlement distribution fund or pool of funds available for a potential further distribution to claimants.
35. A decision will be made regarding the disposition of these funds and, if necessary orders sought from the Court, once the resolution of the taxation dispute is known.

#### **PREPARATION FOR POTENTIAL SECOND DISTRIBUTION**

36. In preparation for a potential second distribution senior members of the SDS Team calculated the percentage proportion of the distribution sum received by each claimant in both the I-D and ELPD settlement distributions.
37. These calculations were sent to KPMG for review on 22 August 2017. Now produced and shown to me and marked "**Confidential Exhibit AJW-7**" are copies of the correspondence with KPMG and the associated spreadsheets.
38. KPMG confirmed the accuracy of these calculations on 7 September 2017.
39. These percentages will be used to calculate the entitlement of each claimant in any additional distribution made to I-D or ELPD claimants.
40. In circumstances where there is an amendment to the allocated split of an outstanding ELPD distribution the SDS Team will liaise with KPMG to amend these percentage calculations.




**KPMG**

41. The SDS Team continues to liaise with KPMG regarding outstanding ELPD distributions as required.
42. On 3 November 2017 the SDS Team electronically filed two affidavits of Mr Martin William Dougall exhibiting his final reports regarding the I-D and ELPD settlement administrations dated 20 October 2017.

**SETTLEMENT ADMINISTRATION COSTS**

43. On 30 November 2016 and 13 June 2017, the Honourable Justice Forrest made orders approving that particular amounts be set aside for future settlement administration costs as follows:
  - (a) On 30 November 2016, the Honourable Justice Forrest approved settlement administration costs for the period 1 November 2016 and 31 December 2016, in the amount of \$684,146.00 being in respect of estimated anticipated I-D settlement administration costs. Of which, \$137,579.84 remains set aside due to an over-estimate for those relevant months.
  - (b) In the same order, settlement administration costs for the period 1 January 2017 and 31 January 2017 in the amount of \$57,302.00, being in respect of estimated anticipated I-D settlement administration costs were approved.
  - (c) On 13 June 2017, the Honourable Justice Forrest approved settlement administration costs in the amount of \$3,810,117.94, or the amount showing on Maurice Blackburn's finalised settlement administration invoices for the period from 1 January 2017 to 30 June 2017.
44. The total of these previously approved settlement administration funds that have been set aside for future settlement administration costs are \$4,004,999.78.
45. As per Mr Watson's affidavit of 25 May 2017, any payment of administration expenses would only take place upon review and approval by Mr John White, Special Referee, Costs, appointed by the Court, and any subsequent orders deemed necessary by the Court following receipt of such report. As such, it is confirmed that no costs from 1 January 2017 have been paid.
46. Subject to the Court receiving a satisfactory report from Mr White, I now seek approval for Maurice Blackburn to be paid \$2,990,295.63 for settlement administration fees and





disbursements incurred for the period 1 January 2017 to 30 November 2017, composed of:

- (a) \$707,657.11 for General costs;
- (b) \$327,302.04 for I-D costs;
- (c) \$1,995,336.48 for ELPD costs.

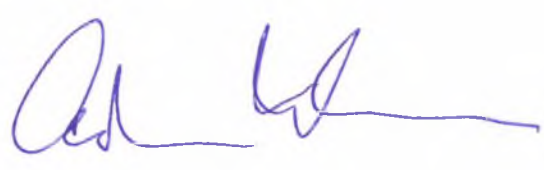
47. In previous affidavits, I have set out extensive detail regarding the nature of the work performed by the SDS Team and the disbursements incurred by the Scheme. This information has been provided to Mr White for the purposes of his review of our costs and I do not propose to repeat it here.

### TAXATION ISSUES

48. I refer to paragraphs 11 to 18 of the September affidavit and to Confidential Exhibit AJW-1 to that affidavit. I and other members of the SDS Team continue to work closely with our legal advisors PricewaterhouseCoopers ("**PwC**") and counsel on the taxation issues relating to the settlement administration.
49. Now produced and shown to me marked "**Confidential Exhibit AJW-8**" is a summary of progress made since the September affidavit. I make application for this exhibit to be confidential so as to ensure the maintenance of privilege.
50. Without waiving privilege I can state:
- (a) The mechanism and procedure by which the dispute is to be resolved has been agreed with the Australian Taxation Office (ATO) and is currently ongoing;
  - (b) The ATO is currently considering a Notice of Objection filed on 20 December 2017 by PwC on behalf of the Scheme Administrator; and
  - (c) In the event that the ATO's decision in respect to the Notice of Objection is prejudicial to the interests of claimants, I will instruct our legal advisors PwC to file proceedings in the Federal Court of Australia or the Administrative Appeals Tribunal to seek final resolution of this issue through litigation.
51. I will continue to provide updates on the status of the taxation dispute to claimants and the Court, as appropriate.



SWORN by the deponent at )  
Melbourne in the State of Victoria )  
this 1st day of March 2018 )  
)



Before me:

  
.....

FILED on behalf of the Plaintiff

**JONATHAN DANIEL PECK**  
~~of 456 Lonsdale Street, Melbourne~~  
an Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)

.....  
**of 380 La Trobe Street, Melbourne**  
an Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION

No. 4788 of 2009

BETWEEN:

CAROL ANN MATTHEWS

Plaintiff

and

AUSNET ELECTRICITY SERVICES PTY LTD  
(ACN 064 651 118)  
& ORS (according to the schedule of parties)

Defendants

(by original proceeding)

AND BETWEEN:

AUSNET ELECTRICITY SERVICES PTY LTD  
(ACN 064 651 118)

Plaintiff by Counterclaim

And

ACN 060 674 580 PTY LTD  
& ORS (according to the schedule of parties)

Defendants by Counterclaim

(by counterclaim)

**CERTIFICATE IDENTIFYING EXHIBIT**

**Date of Document:** 1 March 2018

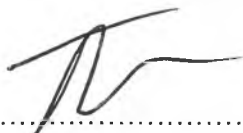
**Filed on behalf of:** The Plaintiff

**Prepared by:**

Maurice Blackburn Lawyers  
Level 10, 456 Lonsdale Street  
Melbourne Vic 3000

Solicitor's Code: 564  
Tel: (03) 9605 2700  
DX: 466 Melbourne  
Ref: AW/3052491  
E: JPeck@mauriceblackburn.com.

This is the exhibit marked 'Exhibit AJW-1' produced and shown to Andrew John Watson at the time of swearing his affidavit on 1 March 2018 before me:



*Jonathan Daniel Peck*

of 380 La Trobe Street, Melbourne  
an Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)

**Exhibit 'AJW-1'**

Template claimant correspondence dated 14 February 2018

Our Ref: AJW/3052493  
 T: (03) 9605 2783  
 F: (03) 9258 9610  
 E: [bushfireca@mauriceblackburn.com.au](mailto:bushfireca@mauriceblackburn.com.au)



Maurice Blackburn Pty Limited  
 ABN 21 105 657 949

Level 10  
 456 Lonsdale Street  
 Melbourne VIC 3000

PO Box 523  
 Melbourne VIC 3001

DX 466 Melbourne

T (03) 9605 2700

F (03) 9258 9600

14 February 2018

[Contact first name + Contact surname]  
 [Contact street address 1]  
 [Contact street address 2]

**By registered post and email** – [Email address]

Dear [Contact first name],

**Kilmore-East Kinglake Bushfire Class Action Settlement  
 Economic Loss & Property Damage Claim of [Claimant]**

We refer to previous correspondence regarding your compensation for Economic Loss and Property Damage (ELPD) in the Kilmore Bushfire Class Action.

We note that you were sent a cheque in March 2017 for the amount of **\$(Distribution amount)** and that, to date, the cheque has not been banked. We also note that we have previously contacted you on multiple occasions encouraging you to take steps to bank your cheque as soon as possible.

Banks generally cease to accept cheques from 12 – 15 months after issuance and so that cheque will likely cease to be accepted by your bank shortly.

Further, there is a Case Management Conference that is scheduled for 20 March 2018 and the Scheme Administrator intends to seek the Court's directions to the effect that those cheques still not banked be cancelled and that any monies be returned to the pool of funds available for distribution in accordance with the Court's orders.

If you have not banked the cheque yet and you intend to do so, please do so immediately.

**If you do not bank the cheque before 20 March 2018, the cheque may be cancelled and you may lose the right to receive compensation from the Bushfire Class Action.**

If there is any reason that you are not able to bank the cheque or you have any questions about the distribution of compensation in the class action, please contact the Settlement Distribution Team immediately on (03) 9605 2783.

Yours Faithfully,

**Scheme Administrator  
 MAURICE BLACKBURN**

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

No. 4788 of 2009

B E T W E E N:

**CAROL ANN MATTHEWS**

Plaintiff

and

**AUSNET ELECTRICITY SERVICES PTY LTD  
(ACN 064 651 118)  
& ORS (according to the schedule of parties)**

Defendants

(by original proceeding)

A N D B E T W E E N :

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

Plaintiff by Counterclaim

And

**ACN 060 674 580 PTY LTD  
& ORS (according to the schedule of parties)**

Defendants by Counterclaim

(by counterclaim)

**CERTIFICATE IDENTIFYING EXHIBIT**

**Date of Document:** 1 March 2018

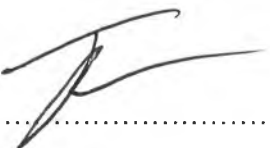
**Filed on behalf of:** The Plaintiff

**Prepared by:**

Maurice Blackburn Lawyers  
Level 10, 456 Lonsdale Street  
Melbourne Vic 3000

Solicitor's Code: 564  
Tel: (03) 9605 2700  
DX: 466 Melbourne  
Ref: AW/3052491  
E: JPeck@mauriceblackburn.com.

This is the exhibit marked '**Exhibit AJW-2**' produced and shown to Andrew John Watson at the time of swearing his affidavit on 1 March 2018 before me:



.....

**Exhibit 'AJW-2'**

Template claimant correspondence dated 8 August 2017

*Jonathan Daniel Peck*

of 380 La Trobe Street, Melbourne  
an Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)



Our Ref: AJW/3052491  
 T: 1800 99 55 70  
 F: (03) 9258 9610  
 E: [bushfireca@mauriceblackburn.com.au](mailto:bushfireca@mauriceblackburn.com.au)

Maurice Blackburn Pty Limited  
 ABN 21 105 657 949  
 Level 10  
 456 Lonsdale Street  
 Melbourne VIC 3000  
 PO Box 523  
 Melbourne VIC 3001  
 DX 466 Melbourne  
 T (03) 9605 2700  
 F (03) 9258 9600

8 August 2017

«Contact\_First\_Name» «Contact\_Last\_Name»  
 «Contact\_Street\_Address\_1»  
 «Contact\_Street\_Address\_2»  
 «Contact\_Suburb» «Contact\_State» «Contact\_Post\_Code»

[By email – «Contact\_Email»]

Dear «Contact\_First\_Name»,

### **Kilmore-East Kinglake Bushfire Class Action Settlement Administration Update on taxation dispute**

With the distribution of compensation substantially completed, the primary outstanding issue to be resolved is the taxation dispute we have with the Australian Tax Office ('ATO'). This dispute remains ongoing and we are working closely with our taxation advisors and the ATO to resolve this issue.

If a positive result is achieved, we will be able to distribute the withheld money to group members on a pro-rata basis. However, if we are unsuccessful and the taxation liability is upheld, we will have to pay the withheld money to the ATO.

We confirm that the dispute between the Scheme Administrator and the ATO relates to the taxation liability on the interest earned on the settlement sum and **not** the personal taxation liabilities of individual group members.

#### **Timeframe and further information:**

We cannot estimate the length of time that resolution of these issues may require because they depend on certain outcomes outside of our control. We will continue to keep group members who may be entitled to further compensation informed as this issue progresses to resolution.

We will be filing an affidavit to update the court on this matter by 1 September 2017 which will include an update on the situation. This affidavit will be available on the website of the Supreme Court of Victoria at the following link:

<http://www.supremecourt.vic.gov.au/home/law+and+practice/class+actions/kilmore+east+kinglake+bushfire+class+action+settlement/>

**Contact details:**

You should advise us of any changes to your contact details so that we can continue to update you about the resolution of the taxation dispute and ensure that we have accurate contact details in the event that there is a second settlement distribution.

Please contact the Bushfire Class Action Info-line on 1800 99 55 70 if you have any further questions about this issue.

Yours faithfully,



**Andrew Watson**  
**Scheme Administrator**  
**MAURICE BLACKBURN LAWYERS**

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

No. 4788 of 2009

BETWEEN:

**CAROL ANN MATTHEWS**

Plaintiff

and

**AUSNET ELECTRICITY SERVICES PTY LTD  
(ACN 064 651 118)  
& ORS (according to the schedule of parties)**

Defendants

(by original proceeding)

AND BETWEEN:

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

Plaintiff by Counterclaim

And

**ACN 060 674 580 PTY LTD  
& ORS (according to the schedule of parties)**

Defendants by Counterclaim

(by counterclaim)

**CERTIFICATE IDENTIFYING EXHIBIT**

**Date of Document:** 1 March 2018


**Filed on behalf of:** The Plaintiff

**Prepared by:**

Maurice Blackburn Lawyers  
Level 10, 456 Lonsdale Street  
Melbourne Vic 3000

Solicitor's Code: 564  
Tel: (03) 9605 2700  
DX: 466 Melbourne  
Ref: AW/3052491  
E: JPeck@mauriceblackburn.com.

This is the exhibit marked '**Exhibit AJW-3**' produced and shown to Andrew John Watson at the time of swearing his affidavit on 1 March 2018 before me:



**Jonathan Daniel Peck**

of 380 La Trobe Street, Melbourne  
an Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)

**Exhibit 'AJW-3'**

Template claimant correspondence dated 19 December 2017



**Maurice  
Blackburn**  
Lawyers

Since 1919

Our Ref: AJW/3052491  
T: 1800 99 55 70  
F: (03) 9258 9610  
E: [bushfireca@mauriceblackburn.com.au](mailto:bushfireca@mauriceblackburn.com.au)

Maurice Blackburn Pty Limited  
ABN 21 105 657 949

Level 10  
456 Lonsdale Street  
Melbourne VIC 3000

PO Box 523  
Melbourne VIC 3001

DX 466 Melbourne

T (03) 9605 2700

F (03) 9258 9600

19 December 2017

«Contact\_First\_Name» «Contact\_Last\_Name»  
«Contact\_Street\_Address\_1»  
«Contact\_Street\_Address\_2»  
«Contact\_Suburb» «Contact\_State» «Contact\_Post\_Code»

[By email – «Contact\_Email»]

Dear «Contact\_First\_Name»,

### **Kilmore-East Kinglake Bushfire Class Action Settlement Administration Update on taxation dispute**

We refer to previous correspondence in regards to the Settlement Administration and write to provide you with an update on the ongoing taxation dispute with the Australian Taxation Office (ATO).

As previously advised, the amount withheld from distribution represents a sum that the Scheme Administrator reasonably considers to be sufficient in order to discharge all potential taxation liabilities and associated costs that may be payable.

If the outcome of the dispute is that the taxation and associated costs payable are less than the amount withheld, the Settlement Distribution Team will seek to distribute any remaining sum to group members as per their pro-rata entitlement to compensation.

However, if we are unsuccessful and the taxation liability is upheld, the withheld money will be used to meet the taxation liability and pay the costs associated with the dispute.

We confirm that the dispute between the Scheme Administrator and the ATO relates to the taxation liability on the interest earned on the settlement sum and **not** the personal taxation liabilities of individual group members.

#### **Timeframe and progress:**

We filed an affidavit on 1 September 2017 which provided a background to the dispute and an update as to progress. That document has been published on the website of the Supreme Court of Victoria and can be accessed at the following link:

<https://www.supremecourt.vic.gov.au/law-and-practice/class-actions/kilmore-east-kinglake-black-saturday-bushfire-class-action-39>

As stated previously, the advice that we have received is subject to privilege and necessarily confidential.

However, without waiving privilege, we can state that we have reached agreement with the ATO regarding the process by which the taxation dispute will be resolved. This involves utilising the Murrindindi Class Action Settlement Distribution and the 2016 financial year as a test case to resolve all issues and, in relation to that Settlement Distribution and that financial year:

1. Lodging a tax return;
2. Receiving a Notice of Assessment from the ATO;
3. Lodging a Notice of Objection to the Notice of Assessment;
4. If the ATO does not accept the Notice of Objection, instituting proceedings in either the Administrative Appeals Tribunal or the Federal Court of Australia.

Steps 1 and 2 listed above have occurred. A draft Notice of Objection has been lodged with the ATO, with a final version intended to be lodged shortly. If AAT or Federal Court proceedings are necessary (and we anticipate they will be), they will be commenced as soon as practicable.

We cannot estimate the length of time that resolution of these issues may require because they depend on certain outcomes outside of our control. We will continue to keep group members who may be entitled to further compensation informed as this issue progresses to resolution.

**Contact details:**

You should advise us of any changes to your contact details so that we can continue to update you about the resolution of the taxation dispute and ensure that we have accurate contact details in the event that there is a second settlement distribution.

**Further update:**

Please contact the Bushfire Class Action Info-line on 1800 99 55 70 if you have any further questions about this issue.

Yours faithfully,



**Andrew Watson**  
**Scheme Administrator**  
**MAURICE BLACKBURN LAWYERS**