

FORM 28A

FILING CONFIRMATION NOTICE

**IN THE SUPREME COURT
OF VICTORIA
AT Melbourne**

To Maddens Lawyers

An electronic copy of document now described –

Writ

is taken to be filed in the Supreme Court in this proceeding under Part 2 of Order 28 on 17-05-2018 at 13:52.

CASE DETAILS

Case Number:	S CI 2018 01833
Case Description:	William Robert Hawker v Powercor Australia Ltd
List Type:	Major Torts List
Your Reference:	BP:180549

Copies of this filing confirmation notice are permitted to be made for service and proof of service– refer to Rule 28.12

This filing confirmation notice must be retained as proof of filing of the document described above– refer to Rules 28.14 and 40.08



PROTHONOTARY

DATED:17-05-2018 13:52

FORM 5A

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

No. S CI

B E T W E E N

WILLIAM ROBERT HAWKER of 298 Naroghid Road Naroghid, Victoria 3266

Plaintiff

-and-

**POWERCOR AUSTRALIA LIMITED
(ACN 064 651 109)**

Defendant

WRIT

Date of Document: 17 May 2018
Filed on behalf of: The Plaintiff
Prepared by:
Maddens Lawyers
219 Koroit Street
Warrnambool
Victoria 3280

Solicitors Code: 102650
DX: 28001
Telephone: (03) 5560 2000
Ref: 180462
Email: bfp@maddenslawyers.com.au

TO: THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

***THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

FILED 17 May 2018

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

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

No. S CI

B E T W E E N

WILLIAM ROBERT HAWKER of 298 Naroghid Road Naroghid, Victoria 3266

Plaintiff

-and-

**POWERCOR AUSTRALIA LIMITED
(ACN 064 651 109)**

Defendant

STATEMENT OF CLAIM

Date of Document: 4 May 2018
Filed on behalf of: The Plaintiff
Prepared by:
Maddens Lawyers
219 Koroit Street
Warrnambool
Victoria 3280

Solicitors Code: 102650
DX: 28001
Telephone: (03) 5560 2000
Ref: 180462
Email: bfm@maddenslawyers.com.au

Preliminary

1. On 17 March 2018 at about 9.25 pm, a fire started in grass to the east of Cross Forest Road, Naroghid, Victoria, opposite 114 Cross Forest Road, Naroghid (**Gnotuk bushfire**).
2. The Gnotuk bushfire travelled in a south – easterly direction and burnt over the area shown in the aerial photograph annexed to this Statement of Claim (**Gnotuk bushfire area**).

The Plaintiff

3. The plaintiff:
 - (a) is and was at all relevant times, the owner of property at 298 Naroghid Road, Naroghid, Victoria 3266, located within the Gnotuk bushfire area; and
 - (b) was the owner of real and personal property damaged in the Gnotuk bushfire.
4. The plaintiff brings this proceeding on his own behalf and on behalf of the group members.

Group Members

5. 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 Gnotuk bushfire (including without limitation, any injury suffered as a result of burns, inhalation of smoke, attempts to escape the Gnotuk bushfire or other emergency action taken by the person in response to the Gnotuk bushfire);
 - where “psychiatric injury” in this group 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 1 March 2019; and
 - (b) all those persons who suffered loss or damage to property as a result of the Gnotuk bushfire (including, without limitation, loss or damage resulting from emergency action taken by any person in response to the Gnotuk bushfire); and
 - (c) all those persons who at the time of the Gnotuk bushfire resided in, or had real or personal property in the Gnotuk bushfire area alternatively in the immediate vicinity of the Gnotuk bushfire area and who suffered economic loss, which loss was not consequent upon injury to that person or loss or damage to their property as a result of the Gnotuk bushfire;
 - (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 Gnotuk bushfire
- (group members).**
6. As at the time of the commencement of this proceeding there are seven or more group members.

The Defendant

7. The defendant (**Powercor**) at all relevant times:
- (a) was and is a corporation capable of being sued;
 - (b) carried on business as a distributor of electricity to residential and business consumers in Victoria (**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) (**ES Act**).

8. In the course of and for the purpose of the Business, Powercor at all relevant times:
- (a) owned, further or alternatively had the use and management of, the electrical conductors, poles, pole caps, cross arms, insulators, fasteners, transformers and other pole top assets comprising:
 - (i) a 22kV single-phase line which runs in an approximate southerly direction from Naroghid to Cobden (**Kokoda Line**) and is supported by poles including pole 8, number 4198189 (**Pole**), being an intermediate pole with a mounted 25kVA substation transformer;
 - (ii) a low voltage conductor (**LV line**) running from the Pole in an approximate westerly direction across Cross Forest Road to a second pole on the western verge of Cross Forest Road outside 114 Cross Forest Road and supplying electricity to 114 Cross Forest Road;

Particulars

The electrical assets as configured on the Pole on 17 March 2018 included:

- (a) a metal cross arm supporting the 22kV single-phase line;
 - (b) a 25kVA substation transformer.
- (b) caused or allowed the transmission of electricity on the Kokoda Line and the LV line (the **powerlines**) for the purposes of, *inter alia*, supply to residential and/or business consumers.

Statutory Duties

9. Since 1 January 2012, section 98 of the ES Act required Powercor to design, construct, operate and maintain its supply network to minimize as far as practicable:
- (a) the hazards and risks to the safety of any person arising from the supply network;
 - (b) the hazards and risks of damage to the property of any person arising from the supply network; and
 - (c) the bushfire danger arising from the supply network.
- (the **Statutory Duties**).
10. The Statutory Duties imposed on Powercor 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 Powercor's 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
- (**Statutory Class**).

Particulars

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

11. At all relevant times, the plaintiff and each of the group members were:
- (a) persons within the Statutory Class; or
 - (b) the legal personal representatives of the estates of persons who were within the Statutory Class at the time of the Gnotuk bushfire.

Particulars

The plaintiff resides at 298 Naroghid Road Naroghid, Victoria 3266 being an area susceptible to bushfire ignited by a discharge of electricity from Powercor's supply 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 relevant times, Powercor owed the Statutory Duties to:
- (a) the plaintiff
 - (b) each of the group members referred to in paragraphs 5(a) to 5(c) hereof; and
 - (c) each of the deceased persons referred to in paragraph 5(d) hereof.

General Duty of Care

13. At all relevant times Powercor:
- (a) had the right, to the exclusion of other private persons:
 - (i) to construct, repair, modify, inspect, maintain and operate the powerlines; or
 - (ii) give directions as to their installation, modification, repair, inspection and operation;
 - (b) exercised the said right; and
 - (c) in the premises, had control over the powerlines.
14. At all relevant times:
- (a) Powercor used the powerlines to transmit electricity at high voltage;
 - (b) the transmission of high-voltage electricity along the powerlines created a risk of unintended discharges of electricity from the powerlines;
 - (c) an unintended discharge of electricity from the powerlines was highly dangerous in that it was capable of causing death or serious injury to persons, and damage to or loss of property, by:

- (i) electric shock;
- (ii) burning by electric current; further or alternatively
- (iii) burning by fire ignited as a result of the discharge of electricity;
- (d) in the premises (a) to (c) inclusive, the transmission by Powercor of electricity along the powerlines was a dangerous activity; and
- (e) Powercor knew, or as network operator ought reasonably to have known the matters set out in (a) to (d) inclusive above.

15. At all relevant times it was reasonably foreseeable to Powercor that:

- (a) a discharge of electricity from the powerlines could cause the emission of electricity, heat or molten metal particles (**sparks**) from the point of discharge;
- (b) 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 contact with molten or burning metal.

- (c) such fire once ignited might spread over a wide geographic area;
- (d) the fire could cause death or injury to persons and loss of or damage to property within the area over which the fire spread, and consequential losses including economic losses;
- (e) such fire could cause personal injury, 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**);
- (f) 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;

(g) each of the risks referred to in (b) to (f) inclusive were likely to be higher when the environment around the powerlines was dry and hot and windy than when the environment was damp or cool or windless.

16. At all relevant 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 (**Gnotuk Class**):

(a) had no ability, or no practical and effective ability, to prevent or minimize the risk of such discharge occurring; and

(b) were vulnerable to the impact of such fire; and consequently

(c) were to a relevant degree dependent, for the protection of their persons and property, upon Powercor ensuring that the powerlines were safe and operated safely in the operating conditions applying from time to time.

Particulars

The Gnotuk bushfire area is shown on the map annexed to the statement of claim. Particulars of the actual affected area of the Gnotuk bushfire will be provided prior to trial.

The operating conditions referred to include the level of electrical current being transmitted along the powerlines, the configuration of the pole-top assets on the Pole (including fuses and transformers) 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 relevant times Powercor owed to the Gnotuk Class a duty:

(a) to take reasonable care, by its officers and servants; and

(b) to ensure that reasonable care was taken, by its agents or contractors;

to ensure that all parts of the powerlines were safe and operated safely in the operating conditions that were foreseeable for the powerlines (**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 Gnotuk bushfire were within, the Gnotuk Class.

19. In the premises set out in the preceding paragraph, at all relevant times Powercor owed the General Duty to the plaintiff and the group members.

The Gnotuk bushfire

20. 17 March 2018 was a day of severe bushfire risk in the South West fire district of Victoria in which the the Kokoda Line, the Pole and the LV line were located.

Particulars

The Country Fire Authority (**CFA**) declared Saturday, 17 March 2018 to be a day of Total Fire Ban for 6 fire districts in Victoria, including the South West fire district.

The CFA rated the fire risk in the South West fire district on 17 March 2018 as Severe.

On 17 March 2018, the maximum temperature was approximately 32°C and there were strong and blustery northerly to north westerly winds.

21. On 17 March 2018:
- (a) shortly after 9.00 pm, a branch or branches of a eucalyptus tree (**the Tree**) located inside the boundary of 114 Cross Forest Road fell onto the LV line;
 - (b) the LV line broke or was pulled from its connection with the Pole and fell onto Cross Forest Road with the branch or branches of the Tree;
 - (c) at about 9.05 pm, Powercor was advised that the LV line was down on Cross Forest Rd;

Particulars

Vicki Wright, of 114 Cross Forest Road, Naroghid, telephoned the Powercor emergency line and advised that the LV line was down over the road in front of her house.

- (d) at about 9.25 pm, electricity, heat and sparks ejected from the LV line or the transformer or other electrical assets on the Pole;
 - (e) the sparks landed in and ignited a fire (being the Gnotuk bushfire) in long, dry grass and/or other flammable materials on the ground near the base of the Pole; and
 - (f) the Gnotuk bushfire spread across the Gnotuk bushfire area.
22. The Gnotuk bushfire was caused by breaches by Powercor of:
- (a) the Statutory Duties; further or alternatively
 - (b) the General Duty.

Particulars of Breach

- (i) failing to adequately respond to the report that the LV line was down on Cross Forest Rd;
- (ii) failing to prevent the continuing supply of electricity to the LV line within a reasonable time after being made aware that it was damaged;
- (iii) failing to prevent the continuing supply of electricity to the electrical assets at the Pole within a reasonable time of being made aware that the LV line was damaged at or near the Pole;

- (iv) permitting the continuing supply of electricity to electrical assets that it knew were damaged and had an increased risk of causing an unintended discharge of electricity at high voltage and heat and sparks;
- (v) failing to respond adequately or at all to the risk that the damage to the LV line and/or other electrical assets at the Pole may cause a discharge of electricity, heat or sparks to start a bushfire;
- (vi) failing to have an adequate system for:
 - a. responding to faults on or failures of conductors on LV lines;
 - b. isolating LV lines;
 - c. stopping the transmission of electricity to LV lines, within a reasonable time after the occurrence of a fault on or failure of an LV line;
- (vii) alternatively, failing to implement, or effectively implement, the system for:
 - a. responding to faults on or failures of conductors on LV lines;
 - b. isolating LV lines;
 - c. stopping the transmission of electricity to LV lines, within a reasonable time after the occurrence of a fault on or failure of an LV line.

Further particulars of breach will be provided subsequent to discovery.

Subgroup Claims – Private Nuisance

23. Further to paragraph 5 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 Gnotuk bushfire's interference in their use or enjoyment of interests in land.

Particulars

The Gnotuk bushfire burned over and destroyed property which the plaintiff owned or otherwise had an interest in and which was situated at 298 Naroghid Road Naroghid, Victoria 3266.

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

24. At all relevant times each of:
- (a) the risks referred to in paragraphs 14 and 15 above; and
 - (b) the risk that a fire ignited as a result of the discharge of electricity or sparks from the powerlines, would unreasonably interfere with the use or enjoyment of interests in land –
 - (i) over which the fire passed; alternatively
 - (ii) within the affected areas,
 by the persons entitled to such use or enjoyment;

were reasonably foreseeable to Powercor.

25. By reason of the matters set out in paragraphs 20 and 21 Powercor:
- (a) caused electricity, heat or sparks to be ejected from the powerlines onto flammable material near or surrounding the Pole; and thereby
 - (b) caused the ignition of the Gnotuk bushfire, which spread to the Gnotuk bushfire area being land upon which the plaintiff or subgroup members had interests.
26. Further, the spread of the fire across the Gnotuk bushfire area caused smoke, fumes and airborne debris to spread to and impact land within the affected areas, being land upon which the plaintiff or subgroup members had interests.

Particulars

Further particulars of the lands affected shall be provided prior to trial.

27. The Gnotuk bushfire unreasonably interfered with the use or enjoyment by the plaintiff and subgroup members of their interests in the lands:
- (a) over which the fire passed;
 - (b) within the affected areas.
28. Further, the matters referred to in paragraph 25 constitute a continuing nuisance caused by Powercor.
29. In the premises, the plaintiff and each of the subgroup members suffered nuisance created by Powercor.

Causation and Loss and Damage

30. By reason of:
- (a) the breaches of the Statutory Duties;
 - (b) the breaches of the General Duty; further or alternatively
 - (c) the nuisance;
- by Powercor alleged above
- (i) the plaintiff,
 - (ii) each of the group members described in paragraphs 5(a) to (c) hereof;
 - (iii) the deceased persons referred to in paragraphs 5(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(d) to (f) above.

Particulars of loss and damage

The plaintiff suffered property loss and damage of the plaintiff's property located at 298 Naroghid Road Naroghid, Victoria 3266 at the time of the fire including but not limited to fencing, livestock, pasture, trees, and water infrastructure. The plaintiff further has suffered physical inconvenience.

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.

Common Questions of Law or Fact

31. The questions of law or fact common to the claims of the plaintiff and each of the group members are:
- (a) whether the Statutory Duties were owed by Powercor to the plaintiff and group members, and if so the content of those duties;
 - (b) whether the General Duty was owed by Powercor to the plaintiff and group members, and if so the content of the duty;
 - (c) how the Gnotuk bushfire started;
 - (d) whether the Gnotuk bushfire was caused by a breach by Powercor of any of the Statutory Duties or the General Duty;
 - (e) whether the plaintiff and subgroup members suffered actionable nuisance created by Powercor;
 - (f) what are the principles for identifying and measuring compensable losses suffered by the claimants resulting from the breaches of duty or nuisance alleged.

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

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

G. Dalton
C. Nicholson



Maddens Lawyers
Solicitors for the Plaintiff

1. Place of trial: Melbourne

2. Mode of trial: Judge Alone

3. This writ was filed for the plaintiff by Mr Brendan Pendergast of Maddens Lawyers, Warrnambool
4. The address of the plaintiff is 298 Naroghid Road Naroghid, Victoria 3266.
5. The address for service of the plaintiff is:
Maddens Lawyers
219 Koroit Street
Warrnambool, Victoria, 3280
Ref: 180455

6. The email address for service of the plaintiff is bfp@maddenslawyers.com.au

7. The address of the defendant is Level 8, 40 Market Street, Melbourne, Victoria, 3000

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

No. S CI

B E T W E E N

WILLIAM ROBERT HAWKER of 298 Naroghid Road Naroghid, Victoria 3266

Plaintiff

-and-

**POWERCOR AUSTRALIA LIMITED
(ACN 064 651 109)**

Defendant

WRIT

Date of Document: 17 May 2018
Filed on behalf of: The Plaintiff
Prepared by:
Maddens Lawyers
219 Koroit Street
Warrnambool
Victoria 3280

Solicitors Code: 102650
DX: 28001
Telephone: (03) 5560 2000
Ref: 180462
Email: bfp@maddenslawyers.com.au

This is the Annexure referred to in the Statement of Claim dated 17 May 2018



Aerial photograph of the Gnotuk Bushfire Area (source - <http://maps.au.nearmap.com/> 22 March 2018)

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

S CI 2018

B E T W E E N

WILLIAM ROBERT HAWKER

Plaintiff

-and-

**POWERCOR AUSTRALIA LIMITED
(ACN 064 651 109)**

Defendant

PROPER BASIS CERTIFICATION

Date of Document: 17 May 2018
Filed on behalf of: The Plaintiff
Prepared by:
Maddens Lawyers
219 Koroit Street
Warrnambool VIC 3280

Solicitors Code: 102650
DX: 28001
Telephone: (03) 5560 2000
Ref: 180455
Email:
bfp@maddenslawyers.com.au

In accordance with section 42 of the **Civil Procedure Act 2010**, I Kathryn Emeny certify to the Court that, in relation to the Statement of Claim filed on behalf of the plaintiff, Mr William Robert Hawker, on the factual and legal material available to me at present each allegation of fact in the document has a proper basis.

Date: 17.05.18



Signed

KATHRYN AMY EMENY
of Maddens Lawyers 219 Koroit Street
Warrnambool An Australian legal practitioner
within the meaning of the Legal Profession
Uniform Law (Victoria)

FORM 4A

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST

S CI 2018

B E T W E E N

WILLIAM ROBERT HAWKER

Plaintiff

-and-

POWERCOR AUSTRALIA LIMITED
(ACN 064 651 109)

Defendant

OVERARCHING OBLIGATIONS CERTIFICATION

Date of Document: 17 May 2018
Filed on behalf of: The Plaintiff
Prepared by:
Maddens Lawyers
219 Koroit Street
Warrnambool VIC 3280

Solicitors Code: 102650
DX: 28001
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bfp@maddenslawyers.com.au

In accordance with section 41 of the **Civil Procedure Act 2010**, I Kathryn Emeny certify to the Court that I have read and understood the overarching obligations set out in sections 16 to 26 of that Act and the paramount duty set out in section 16 of the Act.

Date: 17.05.18


Signed

KATHRYN AMY EMENY
of Maddens Lawyers 219 Koroit Street
Warrnambool An Australian legal practitioner
within the meaning of the Legal Profession
Uniform Law (Victoria)