

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

No. SCI 4538 of 2012

BETWEEN

KATHERINE ROWE RODERIC LIESFIELD

Plaintiff

and

AUSNET ELECTRICITY SERVICES PTY LTD (ACN 064 651 118) (formerly SPI ELECTRICITY
PTY LTD) (ACN 064 651 118) & ORS (according to the Schedule)

Defendants

STATEMENT OF DEFENCE OF THE SECOND DEFENDANT
TO THE FIRST DEFENDANT'S DEFENCE AND COUNTERCLAIM TO SEVENTH AMENDED
STATEMENT OF CLAIM

(Filed pursuant to the order of his Honour Justice Dixon on 30 October 2014)

Date of document: 9 December 2014
Filed on behalf of: The second defendant

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TO THE first defendant's defence and counterclaim to seventh amended statement of claim dated 21 November 2014, by way of response to the first defendant's amended defence and by way of defence to the counterclaim, the second defendant says:

1. It does not plead to paragraph 1 as it makes no allegation of material fact against it.
- 1A. It does not plead to paragraph 1A as it makes no allegation of material fact against it.
2. It does not plead to paragraph 2 as it makes no allegation of material fact against it.
3. It does not plead to paragraph 3 as it makes no allegation of material fact against it.
- 3A. It does not plead to paragraph 3A as it makes no allegation of material fact against it.
4. It does not plead to paragraph 4 as it makes no allegation of material fact against it.
5. It does not plead to paragraph 5 as it makes no allegation of material fact against it.
6. It does not plead to paragraph 6 as it makes no allegation of material fact against it.

7. It does not plead to paragraph 7 as it makes no allegation of material fact against it.
8. It does not plead to paragraph 8 as it makes no allegation of material fact against it.
9. It does not plead to paragraph 9 as it makes no allegation of material fact against it.
10. It does not plead to paragraph 10 as it makes no allegation of material fact against it.
11. It does not plead to paragraph 11 as it makes no allegation of material fact against it.
12. It does not plead to paragraph 12 as it makes no allegation of material fact against it.
13. It does not plead to paragraph 13 as it makes no allegation of material fact against it.
14. It does not plead to paragraph 14 as it makes no allegation of material fact against it.
15. It does not plead to paragraph 15 as it makes no allegation of material fact against it.
16. It does not plead to paragraph 16 as it makes no allegation of material fact against it.
17. It does not plead to paragraphs 17(a) to (h) ~~(j)~~ and 17~~(j)~~ ~~(k)~~ to (l) ~~(n)~~ as they makes no allegation of material fact against it. As to paragraph 17~~(j)~~ ~~(k)~~, insofar as any allegation is made against UAM, it says that:

- (a) At all material times UAM exercised reasonable care and skill in the provision of services pursuant to the First UAM Contract and Second UAM Contract (UAM Contracts); and
- (b) Any duty of care owed by ~~SP~~ AusNet to the claimants was a non-delegable duty of care to ensure that reasonable care was taken by any independent agents or contractors engaged by it.

- 17A. It does not plead to paragraph 17A as it makes no allegation of material fact against it.
- 17B. It does not plead to paragraph 17B as it makes no allegation of material fact against it.
- 17C. It does not plead to paragraph 17C as it makes no allegation of material fact against it.
- 17D. It does not plead to paragraph 17D as it makes no allegation of material fact against it.
- 17E. It does not plead to paragraph 17E as it makes no allegation of material fact against it.
- 17F. It does not plead to paragraph 17F as it makes no allegation of material fact against it.
- 17G. It does not plead to paragraph 17G as it makes no allegation of material fact against it.
- 17H. It does not plead to paragraph 17H as it makes no allegation of material fact against it.
- 17HA. It does not plead to paragraph 17HA as it makes no allegation of material fact against it.
- 17I. It does not plead to paragraph 17I as it makes no allegation of material fact against it.
- 17J. It does not plead to paragraph 17J as it makes no allegation of material fact against it.

- 17K. It does not plead to paragraph 17K as it makes no allegation of material fact against it.
- 17L. It does not plead to paragraph 17L as it makes no allegation of material fact against it.
- 17M. It does not plead to paragraph 17M as it makes no allegation of material fact against it.
- 17N. It does not plead to paragraph 17N as it makes no allegation of material fact against it.
- 17NA. It does not plead to paragraph 17NA as it makes no allegation of material fact against it.
- 17NB. It does not plead to paragraph 17NB as it makes no allegation of material fact against it.
18. It does not plead to paragraph 18 as it makes no allegation of material fact against it.
- 18AA. It does not plead to paragraph 18AA as it makes no allegation of material fact against it.
- 18A. It does not plead to paragraph 18A as it makes no allegation of material fact against it.
- 18B. It does not plead to paragraph 18B as it makes no allegation of material fact against it.
- 18C. It does not plead to paragraph 18C as it makes no allegation of material fact against it.
- 18D. It does not plead to paragraph 18D as it makes no allegation of material fact against it.
19. It does not plead to paragraph 19 as it makes no allegation of material fact against it.
- 19A As to paragraph 19A:
- (a) It does not plead to paragraph 19A(a) as it makes no allegation of material fact against it.
- (aa) It does not plead to paragraph 19A(aa) as it makes no allegation of material fact against it.
- (ab) It does not plead to paragraph 19A(ab) as it makes no allegation of material fact against it.
- (ac) It does not plead to paragraph 19A(ac) as it makes no allegation of material fact against it.
- (ad) It does not plead to paragraph 19A(ad) as it makes no allegation of material fact against it.
- (ae) As to paragraph 19A(ae), it says that:
- (i) it admits that a contract in writing between AusNet Services (**AusNet**) and Powerline Management Systems Pty Ltd (ACN 061 157 015) (**Powerline**) dated 31 December 1999 (**Powerline Contract**):
- (A) was entitled "For the provision of an asset inspection service for the distribution network within Eastern Energy's franchise area: Agreement";
- (B) stated at clause 2.1 that "The Term of this Agreement is for six years based on two-year approvals..."; and
- (C) was amended on or about 17 January 2000 by a document titled "Contract Amendment" dated 6 January 2000;

(ii) it otherwise does not plead to paragraph 19A(ae) as it makes no allegation of material fact against it.

(af) As to paragraph 19A(af), it says that:

(i) It admits that the Powerline Contract:

(A) was amended on or about 17 January 2000 by a document titled "Contract Amendment" dated 6 January 2000;

(B) contained the Powerline Agreement;

(C) contained schedules 1 to 10 to the Powerline Agreement;

(D) contained annexure A to the Powerline Agreement: General Terms and Conditions – Services;

(ii) it otherwise does not plead to paragraph 19A(af) as it makes no allegation of material fact against it.

(ag) As to paragraph 19A(ag):

(i) it admits that the Powerline Contract listed services to be provided by Powerline at the request of AusNet;

(ii) it otherwise does not plead to paragraph 19A(ag) as it makes no allegation of material fact against it.

(ah) As to paragraph 19A(ah):

(i) it admits than in or about late January 2000 Powerline assigned to UAM rights and obligations Powerline had under the Powerline Contract;

(ii) it says further that pursuant to the contract in place between AusNet and UAM from in or about late January 2000 until about April 2007 (**First UAM Contract**) UAM was engaged to perform services at the request and instruction of AusNet and as were required from time to time by AusNet;

(iii) it otherwise denies paragraph 19A(ah).

(ai) As to paragraph 19A(ai):

(i) it admits than in or about late January 2000 UAM assumed rights and obligations Powerline had under the Powerline Contract;

(ii) it says further that pursuant to the First UAM Contract UAM was engaged to perform services at the request and instruction of AusNet and as were required from time to time by AusNet;

(iii) it otherwise denies paragraph 19A(ai).

(aj) As to paragraph 19A(aj):

(i) it refers to and repeats paragraph 19A(ah) above and admits that the First UAM Contract was extended:

(A) from on or about January 2002 to on or about 31 December 2003;

(B) from on or about 1 January 2004 to on or about 31 December 2005;

(C) from on or about 1 January 2006 to on or about 31 October 2006;

(D) from on or about 31 October 2006 to on or about 31 December 2006;

(E) from or about 31 December 2006 to on or about 28 February 2007;

(F) from or about 28 February 2007 to on or about April 2007;

(ii) it otherwise denies paragraph 19A(aj).

(ak) As to paragraph 19A(ak):

(i) it refers to and repeats paragraphs 19A(ae) to 19A(aj) above;

(ii) it otherwise denies paragraph 19A(ak).

(al) As to paragraph 19A(al):

(i) it refers to and repeats paragraphs 19A(ae) to 19A(aj) above and admits that:

(A) during the term of the First UAM Contract, AusNet set requirements for asset inspection;

(B) the asset inspection requirements applicable from the date of the First UAM Contract were those contained in the document entitled "Line Inspection Manual" dated August 1997 (SPN.005.001.0981) (as updated by AusNet from time to time) (1997 Asset Inspection Manual);

(ii) it says further that during the term of the First UAM Contract:

(A) it was engaged to perform services at the request and instruction of AusNet and as were required from time to time by AusNet;

(B) pursuant to the First UAM Contract, AusNet engaged UAM to undertake ground level activities including pole inspection and line hardware inspection (Asset Inspection Services):

(C) it complied with all obligations under the First UAM Contract in the provision of Asset Inspection Services and in the provision of services pursuant to the First UAM Contract;

(D) it exercised reasonable care and skill in carrying out Asset Inspection Services and in the provision of services pursuant to the First UAM Contract;

(iii) it otherwise denies paragraph 19A(al).

(am) It admits paragraph 19A(am) and refers to and repeats paragraph 19A(al) above.

(an) As to paragraph 19A(an):

(i) it refers to and repeats paragraphs 19A(ae) to 19A(aj) and 19A(al) above and admits that it was a requirement of the First UAM Contract that asset inspectors conduct all Asset Inspection Services in accordance with the 1997 Asset Inspection Manual;

(ii) it otherwise denies paragraph 19A(an).

(ao) As to paragraph 19A(ao):

(i) it refers to and repeats paragraphs 19A(ae) to 19A(aj) and 19A(al) above and save that it refers to the full terms and conditions of the First UAM Contract as to their meaning and effect it admits that:

(A) UAM was required to ensure that all personnel employed by UAM to perform functions pursuant to the First UAM Contract were fully trained and competent and possessed the necessary skills and ability to provide quality assurance of workmanship to ensure fulfilment of the obligations of UAM pursuant to the First UAM Contract;

(B) UAM was required to:

(I) carry out all work in a good, proper and professional manner and with due expedition and in accordance with good practice having regard to economy and safety;

(II) in providing services, at all times, exercise due care and skill in accordance with best international practices;

(C) UAM represented and warranted that it had the necessary skills, resources and experience to perform the First UAM Contract;

(ii) it otherwise denies paragraph 19A(ao).

(ap) As to paragraph 19A(ap):

(i) it refers to and repeats paragraphs 19A(ae) to 19A(aj) and 19A(al) above and admits that pursuant to the First UAM Contract AusNet engaged UAM to conduct an inspection of pole 6 (11526), and other Murrindindi assets including pole 5 (11525), on or about 16 March 2005 in accordance with the 1997 Asset Inspection Manual and the requirements of the First UAM Contract (**March 2005 Asset Inspection Services**);

(ii) it otherwise denies paragraph 19A(ap).

(aq) As to paragraph 19A(aq):

(i) insofar as any allegation is made against UAM, it is denied;

(ii) it says further that:

(A) as part of the March 2005 Asset Inspection Services, it reported stock items on pole 5;

(B) other than as referred to in (A) above, no reportable matters existed in respect of the Murrindindi assets on 16 March 2005;

(C) further and in the alternative, other than as referred to in (A) above, if there were any reportable matters, they were not capable of being observed as part of the March 2005 Asset Inspection Services;

(D) further and in the alternative, as at 16 March 2005, there was no defect, fault, deterioration in condition or incorrect assembly of the conductor or associated assets forming part of the Murrindindi assets such that they were at risk of failure and ought be replaced before the next scheduled asset inspection;

(E) further and in the alternative, if there was any defect, fault, deterioration in condition or incorrect assembly of the conductor or associated assets forming part of the Murrindindi assets such that they were at risk of failure and ought be replaced before the next scheduled asset inspection, they were not capable of being observed as part of the March 2005 Asset Inspection Services;

(F) it carried out the March 2005 Asset Inspection Services in accordance with the First UAM Contract;

(G) it complied with all obligations under the First UAM Contract in the provision of services and in respect of the March 2005 Asset Inspection Services;

(H) it exercised reasonable care and skill in carrying out the March 2005 Asset Inspection Services and in the provision of services pursuant to the First UAM Contract.

(ar) As to paragraph 19A(ar):

(i) insofar as any allegation is made against UAM, it is denied;

(ii) it refers to and repeats paragraph 19(aq) above.

(b) It admits paragraph 19A(b) but says further that pursuant to the ~~UAM Contract~~ agreement entered into on or about 1 April 2007 (Second UAM Contract), UAM carried out such Contract Works:

(i) as were required from time to time by ~~SP~~ AusNet; and

(ii) in accordance with the terms and conditions of the Second UAM Contract.

(c) As to paragraph 19A(c):

(i) It denies the allegations in paragraph 19A(c)(i), and says that:

(A) pursuant to the Second UAM Contract, ~~SP~~ AusNet, engaged UAM to undertake Asset Inspection Services ~~ground level activities including pole inspection and line hardware inspection (Asset Inspection Services);~~

(B) Asset Inspection Services were carried out by UAM in accordance with Works Orders;

- (C) each Works Order related to a pole in respect of which UAM was to provide Asset Inspection Services;
- (D) Works Orders were generated by the ~~SP~~ AusNet Q4 computer system, from information contained in a works spreadsheet issued by ~~SP~~ AusNet to UAM, specifying the poles in relation to which UAM was to provide Asset Inspection Services within the period covered by the spreadsheet (~~SP~~ **AusNet Works Spreadsheet**).

Particulars

- (i) ~~SP~~ AusNet Works Spreadsheets were generated by the ~~SP~~ AusNet Q4 System.
 - (ii) They were issued by ~~SP~~ AusNet to UAM annually and updated by ~~SP~~ AusNet on an ongoing basis.
 - (iii) Each ~~SP~~ AusNet Works Spreadsheet further specified the window of time within the period covered by the Works Spreadsheet during which the Asset Inspection Services were to be performed by UAM.
 - (iv) From the information contained in the ~~SP~~ AusNet Works Spreadsheet, UAM created a works package (**Works Package**) comprising a number of poles in relation to which Asset Inspection Services were to be carried out within the window of time specified by ~~SP~~ AusNet in the ~~SP~~ AusNet Works Spreadsheet.
- (E) pursuant to the Second UAM Contract, UAM, from time to time when engaged by ~~SP~~ AusNet, provided aerial activities including aerial inspection and pole-top inspection (**Aerial Inspection Services**) which were carried out:
- (I) at the instruction of ~~SP~~ AusNet;
 - (II) in relation to poles in respect of which there was a reported defective and / or deteriorated cross-arm; and / or
 - (III) to ascertain sound wood measurements and / or the presence of termite damage at heights inaccessible to normal asset inspection;
- and

- (IV) in North and East areas, only in relation to poles in areas that were easily accessible to an Elevating Work Platform (EWP).

Particulars

"Aerial Inspections", Schedule 2, Second UAM Contract

- (F) at all material times, UAM was not required by SP AusNet to perform aerial inspections of the Sawmill Span;

Particulars

At all material times, SP AusNet did not instruct UAM to perform any aerial inspections of the Sawmill Span.

- (ii) save that it says that pursuant to the Second UAM Contract, UAM reported on maintenance items to SP AusNet and carried out minor maintenance tasks as required by SP AusNet, it denies the allegations in paragraph 19A(c)(ii).
- (iii) it admits that it employed and trained persons to conduct asset inspections. It otherwise denies paragraph 19A(c)(iii).
- (iv) it admits that at least bi-monthly internal auditing of asset inspectors and at least annual independent auditing of asset inspectors and internal auditors were required under the Second UAM Contract, it otherwise denies paragraph 19A(c)(iv).
- (v) it admits that monthly reporting to SP AusNet was required under the Second UAM Contract. It otherwise denies paragraph 19A(c)(v).
- (d) Save that it admits that at all material times SP AusNet set requirements for asset inspection, it otherwise denies paragraph 19A(d) and says further that:
- (i) the asset inspection requirements were contained in an SP AusNet asset inspection manual;
- (ii) new versions of the SP AusNet asset inspection manual were issued by SP AusNet to UAM from time to time;
- (iii) each version of the SP AusNet asset inspection manual was updated by SP AusNet from time to time;

(iv) the asset inspection requirements applicable from the date of the First UAM Contract and at the time of the March 2005 Asset Inspection Services were those contained in the 1997 Asset Inspection Manual;

~~(iv) the asset inspection requirements applicable from the date of the UAM Contract to in or about August 2007 were those contained in the SP AusNet asset inspection manual dated March 2006 and numbered ESV 4111 (as updated by SP AusNet from time to time) (2006 Asset Inspection Manual); and~~

(v) the asset inspection requirements applicable from in or about August 2007 and at the time of the May 2008 Asset Inspection Services were contained in the AusNet Asset Inspection Manual dated 1 July 2007 and numbered 4111 (as updated by SP AusNet from time to time) (2007 Asset Inspection Manual).

~~(e) Save that it admits that the asset inspection regime and practices prescribed in the Asset Inspection Manual accorded with good industry practice, it does not admit paragraph 19A(e).~~

It admits paragraph 19A(e).

(f) As to paragraph 19A(f):

(i) it refers to and repeats paragraph 19A(d) above;

(ii) it admits that it was a requirement of the Second UAM Contract that UAM conduct all Asset Inspection Services in accordance with asset inspection requirements set out in the 2007 Asset Inspection Manual;

(iii) it otherwise denies paragraph 19A(f).

~~Save that it says that it was a requirement of the UAM Contract that asset inspectors conduct all Asset Inspection Services as per the Line Inspection Manual 30 411, it otherwise denies paragraph 19A(f). It further says that:~~

~~(i) from the date of the UAM Contract to in or about August 2007, the applicable asset inspection manual was the 2006 Asset Inspection Manual;~~

~~(ii) from in or about August 2007, the applicable asset inspection manual was the Asset Inspection Manual.~~

(g) Save that it says that:

- (i) at all material times SP AusNet was responsible for setting and set the minimum requirements for asset inspection training; and
- (ii) requirements for asset inspection training were detailed in the 2007 Asset Inspection Manual and the Second UAM Contract,

it otherwise does not ~~admit~~ plead to paragraph 19A(g) as it makes no allegation of material fact against it.

- (h) It admits paragraph 19A(h).

~~Save that it admits that the asset inspection training specified in the Asset Inspection Manuals was in accordance with good industry practice, it otherwise does not admit paragraph 19A(h).~~

- (i) It admits that it was a requirement of the Second UAM Contract that the appropriate recognised training courses be conducted by a registered training organisation except where otherwise agreed by SP AusNet and that asset inspectors be sufficiently skilled and competent to perform asset inspections. It otherwise denies paragraph 19A(i) and says further that;

- (i) it was a requirement of the Second UAM Contract that asset inspectors complete Training as set out in the Second UAM Contract;

- (ii) between in or around late January 2000 ~~December 1999~~ and in or around April 2007 training of asset inspectors was to be in accordance with clause 23.5 of the First UAM Contract ~~a contract between Texas Utilities (Eastern Energy Limited) and Powerline Management Systems Pty Ltd dated 31 December 1999, as amended from time to time (First UAM Contract).~~

Particulars

~~A copy of the First UAM Contract may be inspected at the offices of the solicitors for UAM by appointment.~~

- (j) Save that UAM refers to the full terms and conditions of the Second UAM Contract as to their meaning and effect, it admits paragraph 19A(j).

- (k) Save that it says that UAM was engaged by SP AusNet pursuant to the Second UAM Contract to conduct Asset Inspection Services in respect of ~~the~~ poles 5 and 6 and other Murrindindi assets in on or about 28 May 2008 (May 2008 **Asset Inspection Services asset inspections**) in accordance with the 2007 Asset Inspection Manual and the requirements of the Second UAM Contract, it otherwise denies paragraph 19A(k).
- (l) As to paragraph 19A(l):
- (i) insofar as any allegation is made against UAM, it is denied;
- (ii) it says further that:
- (A) as part of the May 2008 Asset Inspection Services, it reported an HV insulator on Pole 5;
- (B) as part of the May 2008 Asset Inspection Services, it reported conductor fittings on Pole 6;
- (C) as part of the May 2008 Asset Inspection Services, it took photographs of Pole 6 and the pole top assets on Pole 6 and provided these photographs to AusNet;
- (D) other than as referred to in (A) – (C) above, no reportable matters existed in respect of the Murrindindi assets on 28 May 2005;
- (E) further and in the alternative, other than as referred to in (A) – (C) above, if there were any reportable matters, they were not capable of being observed as part of the May 2008 Asset Inspection Services;
- (F) further and in the alternative, as at 28 May 2008, there was no defect, fault, deterioration in condition or incorrect assembly of the conductor or associated assets forming part of the Murrindindi assets such that they were at risk of failure and ought be replaced before the next scheduled asset inspection;

(G) further and in the alternative, if there was any defect, fault, deterioration in condition or incorrect assembly of the conductor or associated assets forming part of the Murrindindi assets such that they were at risk of failure and ought be replaced before the next scheduled asset inspection, they were not capable of being observed as part of the May 2008 Asset Inspection Services;

(H) it carried out the May 2008 Asset Inspection Services in accordance with the Second UAM Contract;

(I) it complied with all obligations under the Second UAM Contract in the provision of services and in respect of the May 2008 Asset Inspection Services; and

(J) it exercised reasonable care and skill in carrying out the May 2008 Asset Inspection Services and in the provision of services pursuant to the Second UAM Contract.

~~Save that UAM conducted the 2008 May asset inspections in accordance with the Asset Inspection Manual and the requirements of the UAM Contract, it otherwise does not admit paragraph 19A(l).~~

(m) As to paragraph 19A(m):

(i) insofar as any allegation is made against UAM, it is denied;

(ii) it refers to and repeats paragraph 19A(l) above.

~~Save that UAM conducted the May 2008 asset inspections in accordance with the Asset Inspection Manual and the requirements of the UAM Contract, it otherwise does not admit paragraph 19A(m).~~

20. Save that it refers to paragraph 19A above, it does not plead to paragraph 20 as it makes no allegation of material fact against it.
21. It does not plead to paragraph 21 as it makes no allegation of material fact against it.
22. It does not plead to paragraph 22 as it makes no allegation of material fact against it.
23. It does not plead to paragraph 23 as it makes no allegation of material fact against it.
24. It does not plead to paragraph 24 as it makes no allegation of material fact against it.

25. It does not plead to paragraph 25 as it makes no allegation of material fact against it.
26. It does not plead to paragraph 26 as it makes no allegation of material fact against it.
27. It does not plead to paragraph 27 as it makes no allegation of material fact against it.
28. It does not plead to paragraph 28 as it makes no allegation of material fact against it.
29. It does not plead to paragraph 29 as it makes no allegation of material fact against it.
30. It does not plead to paragraph 30 as it makes no allegation of material fact against it.
31. It does not plead to paragraph 31 as it makes no allegation of material fact against it.
32. It does not plead to paragraph 32 as it makes no allegation of material fact against it.
33. It does not plead to paragraph 33 as it makes no allegation of material fact against it.
34. It does not plead to paragraph 34 as it makes no allegation of material fact against it.
35. It does not plead to paragraph 35 as it makes no allegation of material fact against it.
36. It does not plead to paragraph 36 as it makes no allegation of material fact against it.
37. It does not plead to paragraph 37 as it makes no allegation of material fact against it.
38. It does not plead to paragraph 38 as it makes no allegation of material fact against it.
39. It does not plead to paragraph 39 as it makes no allegation of material fact against it.
40. It does not plead to paragraph 40 as it makes no allegation of material fact against it.
41. It does not plead to paragraph 41 as it makes no allegation of material fact against it.

[There are no paragraphs 42 to 66.]

67. As to paragraphs 67:

- (a) Save that UAM refers to the full terms and conditions of the UAM Contracts_u as to their meaning and effect and refers to and repeats paragraph 19A above, it does not plead to paragraph 67(a) as it makes no allegation of material fact against it.
- (b) Save that UAM refers to the full terms and conditions of the UAM Contracts_u as to their meaning and effect and refers to and repeats paragraph 19A above, it does not plead to paragraph 67(b) as it makes no allegation of material fact against it.
- (c) Save that UAM refers to the full terms and conditions of the UAM Contracts_u as to their meaning and effect and refers to and repeats paragraph 19A above, it does not plead to paragraph 67(c) as it makes no allegation of material fact against it.

- (d) Save that UAM refers to the full terms and conditions of the UAM Contracts as to their meaning and effect and refers to and repeats paragraph 19A above, it does not plead to paragraph 67(d) as it makes no allegation of material fact against it.
 - (e) It does not plead to paragraph 67(e) as it makes no allegation of material fact against it.
 - (f) It does not plead to paragraph 67(f) as it makes no allegation of material fact against it.
68. Save that it refers to and repeats paragraphs 17 and 19A above, it does not plead to paragraph 68 as it makes no allegation of material fact against it.
69. Save that it refers to and repeats paragraph 17 above, it does not plead to paragraph 69 as it makes no allegation of material fact against it.
70. It does not plead to paragraph 70 as it makes no allegation of material fact against it.
71. It does not plead to paragraph 71 as it makes no allegation of material fact against it.
72. As to paragraph 72:
- (a) It does not admit paragraph 72(a).
 - (b) It does not admit paragraph 72(b).
 - (c) It denies paragraph 72(c)(i) and says further that UAM is not legally liable to the claimants.
 - (d) It does not plead to paragraphs 72(c)(ii) as they make no allegation of material fact against it.
73. It admits paragraph 73.
74. Save that it refers to and repeats paragraphs 19A(b) and (c) above, it denies paragraph 74.
75. It denies paragraph 75 and says that the asset inspection services UAM agreed to provide to SP AusNet were limited to the Asset Inspection Services set out in paragraph 19A(c)(i) above.
- 75A. As to paragraph 75A:
- (a) It refers to and repeats paragraph 19A above.
 - (b) It otherwise denies paragraph 75A.
- 75B. As to paragraph 75B, it refers to and repeats paragraph 19A above and says further that:
- (a) As to paragraph 75B(a):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[f]urther to clause 7 of the Conditions the Contractor warrants that all Work undertaken under the terms of this Agreement shall be performed in a good and proper manner and warrants and guarantees all of its work against faulty or inadequate workmanship for a period of twelve (12) months from the date of completion thereof and shall upon demand rectify and make good at its own cost any customer complaints arising from faulty or inadequate workmanship within the said period of twelve (12) months" (clause 8 of the Powerline Agreement);

(ii) it otherwise denies paragraph 75B(a);

(b) As to paragraph 75B(b):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he Contractor shall except where specifically otherwise provided for in this Agreement, provide and maintain in a reasonable condition at its own risk and expense, all labour, supervision, plant, vehicles, tools, equipment and every other service and item which is necessary for, or incidental to the carrying out and completion of the works required under this Agreement" (clause 11(a) of the Powerline Agreement);

(ii) it otherwise denies paragraph 75B(b);

(c) As to paragraph 75B(c):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that:

(A) "[t]he Contractor shall carry out all work in a good, proper and professional manner and with due expedition and in accordance with good practice having regard to economy and safety and shall provide sufficient safeguards against accidents to the public and all persons and property at sites of work" (clause 11(c) of the Powerline Agreement);

(B) "[t]he Contractor, in providing the Service, shall at all times ... exercise due care and skill in accordance with best international practices" (clause 23.4 of the Powerline Agreement);

(ii) it otherwise denies paragraph 75B(c);

(d) As to paragraph 75B(d):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[AusNet] reserves the right to visit work sites both during and after inspections or repair work by the Contractor to audit the practices and procedures undertaken by the Contractor to ensure that they are being maintained to [AusNet]'s standards" (clause 16(a) of the Powerline Agreement);

(ii) it otherwise denies paragraph 75B(d);

(e) As to paragraph 75B(e):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he Contractor shall be responsible to audit its employees and Sub-contractors for quality, performance and health & safety[.] ... Results of these audits are to be available to [AusNet] on request" (clause 16(e) of the Powerline Agreement);

(ii) it otherwise denies paragraph 75B(e);

(f) As to paragraph 75B(f):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he Contractor shall provide [AusNet] with an inspection of assets that form part of the Electrical Distribution System in the Service Area, which includes, the reporting and transfer of data relating to the inspection of assets and where required by the Standards, the carrying out of preventative maintenance" (clause 23.1 of the Powerline Agreement);

(ii) it otherwise denies paragraph 75B(f);

(g) As to paragraph 75B(g):

- (i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he Contractor, in providing the Service, shall at all times ... wherever it is applicable, comply with [among other things] Electricity Supply and Construction Regulations 1988 (Vic); ... Linesworker's Handbook; Line Inspection Manual" (clause 23.4 of the Powerline Agreement);
- (ii) it otherwise denies paragraph 75B(g).

75C. As to paragraph 75C, it refers to and repeats paragraph 19A above and says further that:

(a) As to paragraph 75C(a):

- (i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he management fee is a yearly rate, which is to be paid on a monthly basis and covers ... [t]he provision of performance, progress and asset condition reports to [AusNet]. The data and timing of reports to be provided is to be specified by [AusNet]" (Schedule 1, (a) of the Powerline Agreement);
- (ii) it otherwise denies paragraph 75C(a);

(b) As to paragraph 75C(b):

- (i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he management fee is a yearly rate, which is to be paid on a monthly basis and covers ... [t]he service of packaging works identified through asset inspections into works construction files. These work files are to include, but not be limited to, maps, work instructions, project estimates and project numbers. The work to be packaged is to be based on [AusNet]'s maintenance policies" (Schedule 1, (c) of the Powerline Agreement);
- (ii) it otherwise denies paragraph 75C(b);

(c) As to paragraph 75C(c):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[i]nspection activities will include ... ":

(A) "[i]nspecting for evidence of defects in crossarms, insulators, conductors and their attachment ties, plus all other ancillary gear mounted on poles";

(B) "[r]ecording all observations via a Portable Data Entry Device";

(C) "[p]rovision of detailed assessment of pole top structures/hardware including advice on any replacement specification";

(D) "[p]rovision of the service of a visual inspection of pole top assembly and recording the asset condition, including the inspection of line clearances. (drive by check of pole top assembly)" (Schedule 1, "Inspection Units" of the Powerline Agreement);

(ii) it otherwise denies paragraph 75C(c).

75D. As to paragraph 75D, it refers to and repeats paragraph 19A above and says further that:

(a) As to paragraph 75D(a):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he description of the Services to be performed will, subject to these Conditions, be as specified in ... the Order; and ... any Specification; ... supplied by [AusNet] to the Contractor in regard to the Order; or ... agreed in writing by the parties" (clause 3.1 of the General Terms and Conditions of the Powerline Agreement);

(ii) it otherwise denies paragraph 75D(a);

(b) As to paragraph 75D(b):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that:

(A) "[a]t any time during the provision of Services, [AusNet]'s Responsible Employee may inspect or test or inspect and test the Services and the Contractor must provide [AusNet] with all reasonably required facilities for inspection and testing" (clause 3.2 of the General Terms and Conditions of the Powerline Agreement);

(B) "[AusNet] may require the Contractor to re-perform any Services ... if, in the reasonable opinion of [AusNet]'s Responsible Employee, the Services will not or do not comply with the Agreement" (clause 3.3(a) of the General Terms and Conditions of the Powerline Agreement);

(ii) it otherwise denies paragraph 75D(b);

(c) As to paragraph 75D(c):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he Contractor must comply with all applicable legislation, regulations, ordinances and all other legal requirements in the provision of the Services, including, but not limited to, all relevant health and safety legislation, regulations and ordinances" (clause 4.1 of the General Terms and Conditions of the Powerline Agreement);

(ii) it otherwise denies paragraph 75D(c);

(d) As to paragraph 75D(d):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he Services must be performed at the Relevant Site on the date or within the period stated in the Order, and in either case, during Eastern Energy's Usual Business Hours unless agreed otherwise" (clause 6.1 of the General Terms and Conditions of the Powerline Agreement);

(ii) it otherwise denies paragraph 75D(d);

(e) As to paragraph 75D(e):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he Contractor warrants that the Services provided ... comply in all respects with the quality and description of the Services; and comply with all relevant statutory requirements and all relevant Australian Standards" (clause 7 of the General Terms and Conditions of the Powerline Agreement);

(ii) it otherwise denies paragraph 75D(e);

(f) As to paragraph 75D(f):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he Contractor is liable for all damages, actions, claims, proceedings, injury, loss and expenses of whatsoever nature (including, but not limited to economic loss, loss of profit and consequential loss and damage) incurred by [AusNet] arising out of the failure of the Contractor to comply with its obligations under the Agreement, including, but not limited to the failure of the Services to meet the requirements of the Agreement" (clause 8 of the General Terms and Conditions of the Powerline Agreement);

(ii) it otherwise denies paragraph 75D(f);

(g) As to paragraph 75D(g):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he Contractor releases to the fullest extent permitted by law and indemnifies and agrees to keep indemnified [AusNet], its agents and employees from and against all liability of [AusNet] for any claims for nuisance, damage, loss, injury to, or in respect of":

(A) "[AusNet]'s property";

(B) "property of [AusNet]'s employees";

(C) "the Contractor's property";

(D) "property of the Contractor's employees";

(E) "property of any other person or corporation"; or

(F) "persons including employees of [AusNet], the Contractor and the Contractor's employees and any other person whatsoever and including claims in respect of the death of persons,

which nuisance, damage, loss or injury arises out of, or is in respect of the Contractor's act or neglect or the act or neglect of an agent or servant of the Contractor in the course of the performance of the Agreement" (clause 9 of the General Terms and Conditions of the Powerline Agreement);

(ii) it otherwise denies paragraph 75D(g);

(h) As to paragraph 75D(h):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[i]n order to ensure the safety of Contractors, [AusNet] and the public, and to adhere to the principals [sic] as set out in the Occupational Health and Safety Act 1985 (Victoria) all personnel working under the Agreement (including the Contractor's employees and approved sub-contractors) must meet minimum requirements with regard to training as reasonably required by [AusNet]'s Responsible Employee and notified to the Contractor from time to time" (clause 16.1 of the General Terms and Conditions of the Powerline Agreement);

(ii) it otherwise denies paragraph 75D(h);

(i) As to paragraph 75D(i):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that:

(A) "[u]pon request, the Contractor must provide [AusNet]'s Responsible Employee with copies of all current certificates and authorisations relating to the training required pursuant to clause 16.1 [of the General Terms and Conditions of the Powerline Agreement]" (clause 16.2 of the General Terms and Conditions of the Powerline Agreement);

(B) "[AusNet] may, at its own cost, audit the training undertaken by personnel working under the Agreement. This shall include the right to test the knowledge and skills of any such persons to ensure that those persons are competent in the reasonable opinion of [AusNet]'s Responsible Employee to carry out the provision of the Services. Where ..., in the reasonable opinion of [AusNet]'s Responsible Employee, skills and knowledge of personnel are not adequate, [AusNet]'s Responsible Employee may, direct the Contractor to not allow that person to be involved in the provision of the Services until such time as he or she has obtained the required training" (clause 16.3 of the General Terms and Conditions of the Powerline Agreement);

(ii) it otherwise denies paragraph 75D(i);

(j) As to paragraph 75D(j):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that: "[t]he Contractor must ensure that all personnel employed by the Contractor to perform functions pursuant to the Agreement are fully trained and competent and possess the necessary skills and ability to provide quality assurance of workmanship to ensure fulfilment of the obligations of the Contractor pursuant to the Agreement" (clause 17.1 of the General Terms and Conditions of the Powerline Agreement);

(ii) it otherwise denies paragraph 75D(j);

(k) As to paragraph 75D(k):

(i) save that UAM refers to the full terms and conditions of the First UAM Contract as to their meaning and effect, it admits that the Powerline Contract and the First UAM Contract stated that:

(A) "[t]he Contractor's quality system or system elements must be in accordance with the relevant Australian Standard" (clause 24.2 of the General Terms and Conditions of the Powerline Agreement);

(B) "[AusNet] may, upon the giving of reasonable prior notice, audit the Contractor's quality system or system elements to establish or review conformance. The Contractor agrees to use its reasonable endeavours to cooperate with such an audit. This includes the provision of access by the Contractor to its premises and documents to [AusNet]" (clause 24.3 of the General Terms and Conditions of the Powerline Agreement);

(ii) it otherwise denies paragraph 75D(k).

75E. As to paragraph 75E, it refers to and repeats paragraph 19A above and says further that:

(a) It admits that it was an implied term of the First UAM Contract that UAM would exercise reasonable care and skill in the provision of services pursuant to the First UAM Contract;

(b) It otherwise denies paragraph 75E.

75F As to paragraph 75F, it refers to and repeats paragraph 19A above and says further that:

(a) It admits that at all relevant times, UAM held itself out to AusNet to be fully experienced, competent and qualified with respect to carrying out the works required under the First UAM Contract;

(b) It otherwise denies paragraph 75F.

76. Save that UAM refers to the full terms and conditions of the Second UAM Contract as to their meaning and effect, it admits paragraph 76.

77. Save that UAM refers to the full terms and conditions of the Second UAM Contract as to their meaning and effect, it admits paragraph 77.

78. Save that UAM refers to the full terms and conditions of the Second UAM Contract as to their meaning and effect, it admits paragraphs 78(a), (b), (d), and (e). It otherwise denies paragraph 78 and says further that:

(a) It was a requirement of the Second UAM Contract that asset inspectors complete Training as set out in the Second UAM Contract;

(b) Between in or around late January 2000 ~~December 1999~~ and in or around April 2007 training of asset inspectors was to be in accordance with clause 23.5 of the First UAM Contract.

Particulars

UAM refers to and repeats paragraph 19A(d) above.

79. Save that Schedule 2 to the Second UAM Contract ~~contained the matters~~ referred to the matters listed in paragraphs 79(a), 79(b), 79(c)(i) and (ii), 79(d), 79(e), 79(h), 79(i), 79(j), 79(k), 79(l), and 79(m), it otherwise denies paragraph 79 and refers to and repeats paragraphs 19A(b) and (c) above.

80. Save that it admits that pursuant to the Second UAM Contract, UAM agreed to indemnify and keep indemnified AusNet and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a result of any act, neglect or default of UAM, its officers, employees or agents related to its execution of the Contract Works, it otherwise denies paragraph 80.

~~It admits paragraph 80.~~

81. Save that it admits that it was an implied term of the Second UAM Contract that UAM would exercise reasonable care and skill in the provision of services pursuant to the Second UAM Contract, it otherwise denies paragraph 81.

82. Save that it admits that UAM held itself out to ~~SP~~ AusNet to be fully experienced, competent and qualified with respect to carrying out the Contract Works, it otherwise denies paragraph 82.

83. Save that throughout the term of the UAM Contracts, UAM provided to ~~SP~~ AusNet Asset Inspection Services under the UAM Contracts throughout the distribution network including in respect of the Murrindindi assets, it otherwise denies paragraph 83.

Particulars

UAM refers to and repeats paragraph 19A(~~e~~) above.

84. It denies paragraph 84 and says that at all material times ~~SP~~ AusNet had responsibility for and control over:

- (a) The distribution network, including the Murrindindi assets, including asset inspection throughout the distribution network;

Particulars

UAM refers to and repeats paragraph 12 of the plaintiff's statement of claim.

- (b) Determining the scope and timing of the Contract Works to be provided by UAM under the UAM Contracts and the manner in which the services were to be provided;

Particulars

UAM refers to and repeats paragraph 19A(b), (c), (d), (f) and (g) above.

- (c) Setting requirements for asset inspection to be provided by UAM under the UAM Contracts;
and

Particulars

UAM refers to and repeats paragraph 19A(d) above.

- (d) Setting minimum requirements for asset inspection training under the UAM Contracts;

Particulars

UAM refers to and repeats paragraph 19A(e) above.

- (e) It otherwise refers to and repeats paragraph 17 herein.

85. To the extent that it admits the terms of the UAM Contracts above, paragraph 85 is admitted. It otherwise denies paragraph 85.

86. It objects to paragraph 86 on the basis that it is vague, oppressive and cannot be pleaded to. Under cover of that objection, it denies paragraph 86.

87. It objects to paragraph 87 on the basis that it is vague, oppressive and cannot be pleaded to. Under cover of that objection, it denies paragraph 87.

88. As to paragraph 88:

- (a) It admits paragraph 88(a) insofar as it relates to the UAM Contracts and otherwise denies paragraph 88(a).

- (b) It denies paragraph 88(b).

- (c) It denies paragraph 88(c) to ~~(g)~~ (f) and says further that:

(i) the risk of a fire ignition as the result of a conductor break on the Sawmill Span was unforeseeable. It refers to and repeats paragraphs 13(b), (c), and (f) of SP AusNet's defence to the plaintiff's claim;

(ii) the risks materialising was unforeseeable to UAM;

(iii) at all material times, SP AusNet had responsibility for and control over the Murrindindi assets. It refers to and repeats paragraph 84 above.

89. As to paragraph 89:

- (a) Save to the extent that any persons may have had control over forces, circumstances, events or occurrences external to the assets and component parts of the Murrindindi assets and which were capable of having an impact upon or damaging the Murrindindi assets so as to cause a discharge of electricity, it admits paragraph 89(a) insofar as it relates to the UAM Contracts and otherwise denies paragraph 89(a).
- (b) It denies paragraph 89(b).
- (c) It denies paragraph 89(c) and says that if any dependency existed (which is denied), the dependency was upon ~~SP~~ AusNet meeting the duties owed by it as set out in paragraphs 8 and 17 of the plaintiff's statement of claim and/or upon the DEPI Secretary (as defined in paragraph 72 of ~~SP~~ AusNet's defence and counterclaim), the CFA and/or Victoria Police meeting the duties owed by them as alleged in ~~SP~~ AusNet's defence and counterclaim. It refers to and repeats paragraph 84 above.
- (d) It otherwise refers to and repeats paragraph 15(d) of ~~the~~ ~~SP~~ AusNet's defence to the plaintiff's claim.

90. As to paragraph 90:

- (a) It denies that it owed the UAM Duty or any duty of care to the claimants and says further that:
 - (i) having regard to paragraph 14(e) of the plaintiff's statement of claim, the definition of "fire area" in paragraph 14(f) of the statement of claim and the definition of "affected areas" in paragraph 14(g) of the statement of claim, the class of persons to whom it is alleged UAM owed a duty of care was indeterminate;
 - (ii) further and in the alternative, it denies that it owed the UAM Duty or any other duty of care:
 - (A) to a class of persons of such magnitude; and / or
 - (B) to avoid acts and omissions which could cause loss and damage so remote, that the potential class of persons or potential loss and damage would be out of all proportion to the seriousness of the act or omission or the extent of the want of care, if any, which resulted in the act or omission;

- (iii) further and in the alternative, it denies that it owed the UAM Duty or any other duty of care to any persons who were not vulnerable to the risk of property damage or economic loss including those persons who by reason of measures which ought to have been taken by ~~SP~~ AusNet, the DEPI Secretary , the CFA and/or Victoria Police as alleged in the plaintiff's statement of claim and ~~SP~~ AusNet's defence and counterclaim, in accordance with the duties owed by ~~SP~~ AusNet, the DEPI Secretary, the CFA and/or Victoria Police as set out in the plaintiff's statement of claim or in ~~SP~~ AusNet's defence and counterclaim would not otherwise have suffered personal injury loss or damage, property damage or economic loss;
 - (iv) it denies that it owed the UAM Duty or any other duty of care to persons who were too physically remote from the Murrindindi assets for it to be reasonably foreseeable that they may be subjected to the risks; and
 - (v) the claimants and the real and personal property in which they had an interest were located too remotely from the Murrindindi assets such that they fall within the class of persons referred to in the sub-paragraph (iv), to whom UAM did not owe a duty of care.
- (b) Further and alternatively, if it did owe a duty of care to the claimants (which is denied), it says that:
- (i) the duty of care was to exercise reasonable care and skill in the provision of services pursuant to the UAM Contracts;
 - (ii) any duty of care which it owed to the claimants (which is denied) did not extend to taking precautions against a risk of harm unless:
 - (A) the risk was foreseeable;
 - (B) the risk was not insignificant; and
 - (C) in the circumstances a reasonable person in UAM's position would have taken those precautions.

Particulars

UAM relies upon section 48(1) of the *Wrongs Act 1958 (Vic)* (**Wrongs Act**).

- (iii) it denies that:

- (A) the risk of harm alleged to have been suffered by the claimants was foreseeable;

Particulars

It refers to and repeats paragraph 88

- (B) the risk of harm, alleged to have been suffered by the claimants was not insignificant;

Particulars

It refers to and repeats paragraph 88.

- (C) in the circumstances a reasonable person in UAM's position would have taken those precautions, and says further that in the circumstances, the precautions a reasonable person in UAM's position would have taken were to exercise reasonable care and skill in providing services under the UAM Contracts.

91. It denies paragraph 91 and refers to and repeats paragraph 90 above.

92. It denies paragraph 92 and refers to and repeats paragraphs 19A(aq), 19A(l) and 90 above. ~~and says further that:~~

~~(a) — As part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it reported an HV insulator on Pole 5;~~

~~(b) — As part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it reported conductor fittings on Pole 6;~~

~~(c) — As part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it took photographs of Pole 6 and the pole top assets on Pole 6 and provided these photographs to SP AusNet;~~

~~(d) — it carried out Asset Inspection Services in respect of the Murrindindi assets in accordance with the UAM Contract;~~

~~(e) — it complied with all obligations under the UAM Contract in the provision of services and in respect of Asset Inspection Services in respect of the Murrindindi assets; and~~

~~(f) — it exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets and in the provision of services pursuant to the UAM Contract generally.~~

93. It denies paragraph 93 and refers to and repeats paragraph 92 above.

94. It denies paragraph 94 and refers to and repeats paragraph 92 above. Further and in the alternative, it says that if the Murrindindi fire was associated with a break in the conductor on the Sawmill Span (which is denied), then it was not caused by a breach of the UAM Duty or any duty which UAM may have owed to the claimants (which duties are denied). Further and in the alternative, it says that:

- (a) The weather conditions on 7 February 2009;
- (b) The conductor breaking on a high fire danger day;
- (c) A fire being ignited as the result of the conductor breaking (which is denied);
- (d) The speed and/or extent of the spread of the resulting fire;
- (e) The destruction caused by the resulting fire,

were acts of God or alternatively were inevitable events and/or accidents.

Further and in the alternative, it refers to and repeats paragraph 18AA of the first defendant's defence and counterclaim to the seventh amended statement of claim.

95. It denies paragraph 95 and refers to and repeats paragraphs 92 and 94 above.

96. It denies paragraph 96 and refers to and repeats paragraphs 92 and 94 above.

97. It denies paragraph 97. Further and/or in the alternative, if UAM is a concurrent wrongdoer (which is denied), then UAM's liability 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 UAM's responsibility (any such responsibility is denied) for the loss or damage.

98. It does not plead to paragraphs 98 to 147 as they make no allegation of material fact against it.

[The next paragraph is numbered 148 to correspond with the numbering in the first defendant / plaintiff by counterclaim's amended defence.]

SP AusNet claim for relief in respect of alleged concurrent wrongdoing

148. As to paragraph 148, it refers to and repeats paragraph 19A above. It otherwise does not plead to paragraph 148 as it makes no allegation of material fact against it.

149. It does not plead to paragraph 149 as it makes no allegation of material fact against it.
150. As to paragraph 150, UAM denies that ~~SP~~ AusNet is entitled to the relief sought, or to any relief at all.
151. It denies paragraph 151 and refers to and repeats paragraphs 73 to 97 above. It says further that UAM has no responsibility for the personal injury loss and damage.
152. It denies paragraph 152 and refers to and repeats paragraphs 73 to 97 above. It says further that UAM has no responsibility for the personal injury loss and damage.
153. It does not plead to paragraph 153 as it makes no allegation of material fact against it.
154. It does not plead to paragraph 154 as it makes no allegation of material fact against it.
155. It does not plead to paragraph 155 as it makes no allegation of material fact against it.

~~SP~~ AusNet negligence claim against UAM

156. It admits paragraph 156.
157. It denies paragraph 157 and refers to and repeats paragraphs 88 and 90 above. It says further that UAM is not liable to ~~SP~~ AusNet as alleged or at all. Further and alternatively, UAM says as to paragraph 157(b), if UAM is liable to ~~SP~~ AusNet (which is denied), to the extent it is alleged by ~~SP~~ AusNet that UAM is liable to ~~SP~~ AusNet for either the bushfire proceedings liabilities or bushfire proceedings costs (which liability is denied), UAM's liability is limited to:
 - (a) The amount reflecting that proportion of liability which the court considers just having regard to the extent of the UAM's responsibility (if any) for such liability; and
 - (b) The bushfire proceedings liabilities and/or bushfire proceedings costs incurred by ~~SP~~ AusNet solely in respect to the Murrindindi fire.
158. It denies paragraph 158 and refers to and repeats paragraph 88 above.
159. Save that it says that it owed a duty to ~~SP~~ AusNet to exercise reasonable care and skill in the provision of services pursuant to the UAM Contracts, it denies paragraph 159.
160. Save that it says that it owed a duty to ~~SP~~ AusNet to exercise reasonable care and skill in the provision of services pursuant to the UAM Contracts, it denies paragraph 160.
161. It denies paragraph 161 and repeats paragraphs 19A(aq), 19A(l) and 159 above ~~and says further that:~~

- ~~(a) As part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it reported an HV insulator on Pole 5;~~
- ~~(b) As part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it reported conductor fittings on Pole 6;~~
- ~~(c) As part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it took photographs of Pole 6 and the pole top assets on Pole 6 and provided these photographs to SP AusNet;~~
- ~~(d) it carried out Asset Inspection Services in respect of the Murrindindi assets in accordance with the UAM Contract;~~
- ~~(e) it complied with all obligations under the UAM Contract in the provision of services and in respect of Asset Inspection Services in respect of the Murrindindi assets; and~~
- ~~(f) it exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets and in the provision of services pursuant to the UAM Contract generally.~~

162. It denies paragraph 162 and refers to and repeats paragraph 161 above.

162A. It denies paragraph 162A and refers to and repeats paragraph 161 above.

162B. It denies paragraph 162B and refers to and repeats paragraph 161 above.

163. It denies paragraph 163 and refers to and repeats paragraph 161 above. Further and alternatively, it says that if the Murrindindi fire was associated with a break in the conductor on the Sawmill Span (which is denied), then it was not caused by a breach of UAM's alleged duty to SP AusNet (which duty is denied) or any duty which UAM may have owed to SP AusNet. Further and in the alternative, it says that:

- (a) The weather conditions on 7 February 2009;
- (b) The conductor breaking on a high fire danger day;
- (c) A fire being ignited as the result of the conductor breaking (which is denied);
- (d) The speed and/or extent of the spread of the resulting fire;
- (e) The destruction caused by the resulting fire,

were acts of God or alternatively were inevitable events and/or accidents.

Further and in the alternative, it refers to and repeats paragraph 18AA of the first defendant's defence and counterclaim to the seventh amended statement of claim.

164. It denies paragraph 164 and refers to and repeats paragraphs 88 to 94 above.

165. It denies that the Murrindindi fire was caused by the alleged breaches by UAM (which breaches are denied) of the alleged UAM duty to ~~SP~~ AusNet (which duty is denied) or of any other duty. It otherwise does not admit paragraph 165.

165A. It denies paragraph 165A and refers to and repeats paragraph 161 above.

SP AusNet breach of contract indemnity claim against UAM

166. It denies paragraph 166 and refers to and repeats paragraphs 161 above.

167. It denies paragraph 167. Further and alternatively, it says that if the Murrindindi fire was associated with a failure of the conductor on the Sawmill Span (which is denied), then it was not caused by the UAM Contract breaches (which breaches are denied). Further and in the alternative, it says that:

- (a) The weather conditions on 7 February 2009;
- (b) The conductor breaking on a high fire danger day;
- (c) A fire being ignited as the result of the conductor breaking (which is denied);
- (d) The speed and/or extent of the spread of the resulting fire;
- (e) The destruction caused by the resulting fire,

were acts of God or alternatively were inevitable events and/or accidents.

Further and in the alternative, it refers to and repeats paragraph 18AA of the first defendant's defence and counterclaim to the seventh amended statement of claim.

It otherwise refers to and repeats paragraph 161 above.

168. It denies that the Murrindindi fire was caused by the alleged UAM contract breaches (which breaches are denied). It otherwise does not admit paragraph 168.

168A. It denies paragraph 168A and refers to and repeats paragraphs 161 and 167 above.

168B. It denies paragraph 168B and refers to and repeats paragraphs 161 and 167 above.

168C. It denies paragraph 168C and refers to and repeats paragraphs 161 and 167 above.

169. It denies paragraph 169 and refers to and repeats paragraphs 161 and 167 above.

170. It denies paragraph 170 and refers to and repeats paragraphs 161 and 167 above.

171. It does not plead to paragraphs 171 to ~~295~~ 299 as they make no allegation of material fact against it.

172. UAM denies that SP AusNet is entitled to the relief claimed in paragraphs A to I M of the prayer for relief or to any relief at all.

Contributory negligence of SP AusNet

From in or around 1994

173. Further and in the alternative, if SP AusNet suffered the SP AusNet liabilities and losses (which is not admitted), they were caused or contributed to by SP AusNet's failure to take reasonable care.

Particulars

UAM refers to and repeats paragraph 17L of the plaintiff's seventh amended statement of claim dated 29 October 2014.

Engineering failures

- (i) ~~attaching the northern stay wire to Pole 6 at a point above the bottom cross arm;~~
- (ii) ~~failing to relocate the attachment point of the northern stay wire, to a location below the bottom cross arm;~~
- (iii) ~~placing the insulator on the northern stay wire so that the end of the insulator closest to the pole was above the lowest conductor on Pole 6;~~
- (iv) ~~failing to modify the northern stay wire so that the end of the insulator closest to the pole was below the lowest conductor on Pole 6;~~
- (v) ~~failing to coat the northern stay wire with insulative wrap in the vicinity of the northern conductor or at all;~~
- (vi) ~~failing to coat the northern conductor with insulative wrap in the vicinity of the northern stay wire or at all;~~
- (vii) ~~failing to maintain adequate clearance between the northern conductor and the earthed section of the northern stay wire;~~
- (viii) ~~further or alternatively, failing to otherwise configure the pole top assets so that there would have been adequate clearance between the northern conductor and the northern stay wire.~~

Asset inspection and maintenance system failures

- (ix) ~~failing to have procedures undertaken in scheduled inspections of pole top assets suitable to enable the clearances between conductors and earthed or unearthed structures including stay wires to be assessed.~~

- ~~(x) — failing to have adequate system for recording observations made by inspectors or maintenance crews regarding the configuration and condition of installations, and/or making such records available to inspectors for comparison with observations at later inspections and to maintenance crews prior to undertaking maintenance work.~~
- ~~(xi) — failing to conduct adequate inspections of the Sawmill Span, and in particular failing to inspect the northern conductor and northern stay wire on Pole 6 using suitable inspection techniques, which included inspection by trained line inspectors using stabilized binoculars and, where appropriate, line height inspections by suitably trained and qualified personnel;~~
- ~~(xii) — failing to take reasonable steps to ensure that the inspection manual provided to inspectors was at all times reasonably suitable as a reference guide;~~
- ~~(xiii) — failing to take reasonable steps to ensure that inspectors and maintenance crews received adequate training in the identification of incorrect pole top assemblies, and in particular the identification of inadequate clearances between conductors and other pole top assets including earthed structures;~~
- ~~(xiv) — failing to take reasonable steps to ensure that inspectors and maintenance crews, following training, were competent in the identification of incorrect pole top assemblies, and in particular the identification of inadequate clearances between conductors and other pole top assets including earthed structures;~~

Asset inspection failures

- ~~(xv) — failing during scheduled inspections to Pole 6 by asset inspectors to detect or report:

 - ~~(a) — signs of arc damage on the northern conductor and/or the northern stay wire;~~
 - ~~(b) — inadequate clearance between the northern conductor and the northern stay wire;~~
 - ~~(c) — the incorrect placing of the insulator above the lowest conductor on Pole 6;~~
 - ~~(d) — the lack of insulation between the northern stay wire and the northern conductor;~~~~
- ~~(xvi) — failing during attendances by maintenance crews at the Murrindindi assets to detect, report or take any or any adequate steps to remediate:

 - ~~(a) — signs of arc damage on the northern conductor and/or the northern stay wire;~~
 - ~~(b) — inadequate clearance between the northern conductor and the northern stay wire;~~
 - ~~(c) — the incorrect placing of the insulator above the lowest conductor on Pole 6;~~~~

~~(d) — the lack of insulation between the northern stay wire and the northern conductor;~~

~~(xvii) — failing to specifically check the pole top assets on the Feeder line including on Pole 6, being located at or near spans which had suffered unusual damage or high rate of asset failure or interruption of supply, for adequate clearances;~~

Patrol and reconnection failures

~~(xviii) — restoring power to the Feeder line at around 2:45pm on 7 February 2009, following the morning fault;~~

~~(xix) — restoring power as described in (xviii) in the weather conditions prevailing on 7 February 2009, without having affirmatively identified the cause of the morning fault;~~

~~(xx) — restoring power as described in (xviii) in the weather conditions prevailing on 7 February 2009, without having conducted an adequate patrol of the Feeder line, and in particular an adequate examination of the pole top assembly on Pole 6;~~

~~(xxi) — restoring power to the Feeder line as described in (xviii) in the weather conditions prevailing on 7 February 2009 without specific approval or authorisation from SP AusNet's Network Operations Control centre.~~

Further particulars may be provided after discovery and expert evidence.

174. The damages (if any) recoverable by SP AusNet against UAM must be reduced to such extent as the court thinks just and equitable having regard to SP AusNet's share in the responsibility for the SP AusNet liabilities and losses.

W. R. RAY

E. BRIMER

Holman Fenwick Willan

HOLMAN FENWICK WILLAN

Solicitors for the second defendant / first defendant by counterclaim

DELIVERED this 9th day of December 2014

Schedule of parties

KATHERINE ROWERODERIC LIESFIELD

Plaintiff

- and -

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

First Defendant

**ACN 060 674 580 PTY LTD
(ACN 060 674 580)**

Second Defendant

**SECRETARY TO THE DEPARTMENT
ENVIRONMENT AND PRIMARY INDUSTRIES**

Third Defendant

COUNTRY FIRE AUTHORITY

Fourth Defendant

STATE OF VICTORIA

Fifth Defendant