

PROCESSED

Class actions  
coordinator

IN THE SUPREME COURT OF VICTORIA  
AT LATROBE VALLEY  
COMMON LAW DIVISION

No S CI 2014 05162

IRWIN JAMES RAMSAY

Plaintiff

and

AUSNET ELECTRICITY SERVICES PTY LTD  
(ACN 064 651 118)

Defendant

**AMENDED STATEMENT OF CLAIM**

(Filed pursuant to r 36.04(a))

Date of Document:  
Filed on behalf of:  
Prepared by:  
Maddens Lawyers  
219 Koroit Street  
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24 ~~October~~ September 2014

The Plaintiff

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**A Preliminary**

*The Jack River Bushfire*

1. At about 10.20am on 9 February 2014, a fire started north west of the intersection of Egan's Road and Yarram-Morwell Road, between Jack River and Madalya, in the State of Victoria ("**the Jack River bushfire**") and burnt over the area highlighted on the map annexed to this Statement of Claim ("**the Jack River bushfire area**").

*The Plaintiff*

2. The plaintiff:
  - (a) is and was at all material times, the owner of a leasehold interest in Lot 1, Jack River Valley Road, Jack River, which is located within the Jack River Bushfire area and which was damaged in the Jack River bushfire;
  - (b) was the owner of personal property destroyed in the Jack River bushfire.
3. The plaintiff brings this proceeding on his own behalf and on behalf of the group members.

*Group Members*

4. 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 Jack River bushfire (including, without limitation, an injury suffered as a result of attempts to escape the Jack River bushfire or other emergency action taken by any person in response to the Jack River bushfire);  
  
where "psychiatric injury" in this group definition 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 30 June 2015 ; and
  - (b) all those persons who suffered loss of or damage to property as a result of the Jack River bushfire (including, without limitation, loss or damage resulting from emergency action taken by any person in response to the Jack River bushfire); and
  - (c) all those persons who at the time of the Jack River bushfire resided in, or had real or personal property in, the Jack River bushfire area and who suffered economic loss, which loss was not consequent upon injury to that person or loss of or damage to their property;
  - (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 Jack River bushfire.
5. As at the date of the commencement of this proceeding there are seven or more persons who have claims against the defendant.

**B AusNet Electricity Services Pty Ltd**

6. The defendant ("**AusNet**") at all material times:
- (a) was and is a corporation capable of being sued;
  - (b) carried on business as a supplier of electricity to residential and business consumers in Victoria ("**the 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 the *Electricity Safety Act 1998* (Victoria) ("**the ES Act**").

7. In the course of and for the purpose of the Business, AusNet at all material times:

- (a) owned and operated network infrastructure by which it transmitted electricity to end users of electricity (the "**supply network**");
- (b) the supply network included a single wire earth return electricity supply line (the "**SWER line**") running in a north westerly direction across various plantations north west of the intersection of Egan's Road and Yarram-Morwell Road;
- (c) transmitted electricity on the SWER line.

### **C The Statutory Duties**

8. At all material times from 1 January 2012:

- (a) section 98 of the ES Act required AusNet to design, construct, operate, and maintain its supply network to minimise as far as practicable:
  - (i) the hazards and risks to the safety of any person arising from the supply network; and
  - (ii) the hazards and risks of damage to the property of any person arising from the supply network; and
  - (iii) the bushfire danger arising from the supply network;
- (b) section 90 of the ES Act and clause 2(1) of the *Code of Practice for Electrical Line Clearance* ("**the Code**") prescribed by section 7 of the *Electricity Safety (Electric Line Clearance) Regulations 2010* ("**the Line Clearance Regulations**") required AusNet to create and maintain the required clearance space around a powerline in accordance with the Schedule to the Code

("the Statutory Duties").

9. The Statutory Duties imposed on AusNet 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 AusNet's supply 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.

#### **Particulars**

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

10. At all material times, the plaintiff and each of the group members were:
- (a) persons within the class described in the preceding paragraph; or
  - (b) the legal personal representatives of the estates of persons who were within that class at the time of the Jack River bushfire.

#### **Particulars**

The plaintiff resides at Lot 1, Jack River Valley Road, Jack River, in Victoria, being an area susceptible to bushfire ignited by a discharge of electricity from the AusNet network.

Particulars relating to individual group members may be provided following the trial of common questions.

11. In the premises set out in the preceding paragraph, at all material times AusNet owed the Statutory Duties to:
- (a) the plaintiff;
  - (b) each of the group members referred to in paragraphs 4(a) to (c) hereof;
  - (c) each of the deceased persons referred to in paragraphs 4(d) hereof.

#### **D General Duty of Care**

12. At all material times AusNet:
- (a) was the owner and/or operator of the SWER line;

- (b) had the right, to the exclusion of other private persons:
  - (i) to construct, repair, modify, inspect, maintain and operate the SWER line;  
or
  - (ii) give directions as to its construction, repair, modification, inspection, maintenance or operation;
- (c) exercised the said right; and
- (d) in the premises, had practical control over the SWER line.

13. At all material times:

- (a) AusNet used the SWER line to transmit electricity at high voltage;
- (b) the transmission of electricity along the SWER line created a risk of unintended discharges of electricity from the SWER line;
- (c) unintended discharges of electricity from the SWER line were highly dangerous in that they were capable of causing death or serious injury to persons, and damage to or loss of property, by:
  - (i) electrocution;
  - (ii) burning by electric current; further or alternatively
  - (iii) burning by fire ignited by the discharge of electricity;
- (d) in the premises in (a) to (c) inclusive, the transmission of electricity along the SWER line was a dangerous activity;
- (e) AusNet knew or ought reasonably to have known of the risks referred to in (b) and (c) above.

14. At all material times it was reasonably foreseeable to AusNet that:

- (a) a discharge of electricity from the SWER line 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 the application of electric current or by contact with molten or burning metal.

- (b) such ignition could produce a fire which might spread over a wide geographic area, depending on, among other things, wind direction and velocity;

### Particulars

The fire spread also depended on the amount of combustible fuel, the terrain, the environmental conditions including humidity and precipitation and the effectiveness of human firefighting responses. Further particulars may be provided prior to trial.

- (c) such fire could cause death or injury to persons and loss of or damage to property within the area over which such fire spread ("**fire area**"), and consequential losses including economic losses;
- (d) such fire could cause 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");

- (e) 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;

- (f) the risks referred to in (c) , further or alternatively (d), further or alternatively (e) above were greater during periods of high or extreme bushfire danger than otherwise.
15. At all material 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 SWER line:
- (a) had no ability, or no practical and effective ability, to prevent or minimise the risk of such discharge occurring; and
  - (b) were vulnerable to the impact of such fire; and consequently
  - (c) were to a material degree dependent, for the protection of their persons and property, upon AusNet ensuring that the SWER line was safe and operated safely in the operating conditions applying to it from time to time.
16. In the premises, at all material times AusNet owed to the class of persons described in paragraph 15 above a duty:
- (a) to take reasonable care, by its officers, servants and agents; and
  - (b) to ensure that reasonable care was taken, by its agents or contractors;
- to ensure that all parts of the SWER line were safe and operated safely in the operating conditions that were foreseeable for the line ("**the General Duty**").
17. At the time of the Jack River bushfire:
- (a) the plaintiff;
  - (b) each of the group members referred to in paragraphs 4(a) to (c) hereof;
  - (c) each of the deceased persons referred to in paragraphs 4(d) hereof
- were within the class described in paragraph 15 above.
18. In the premises set out in the preceding paragraph, at all material times AusNet owed the General Duty to:
- (a) the plaintiff;

- (b) each of the group members referred to in paragraphs 4(a) to (c) hereof;
- (c) each of the deceased persons referred to in paragraphs 4(d) hereof.

**E Standard of Care and Statutory Duties**

19. At all material times, the area in the vicinity of the SWER line was in a hazardous bushfire risk area within the meaning of:

- (a) section 3 of the ES Act;
- (b) clause 1 of ~~the Code~~ *The Code of Practice for Electric Line Clearance* ("**Code**") pursuant to regulation 7 of the *Line Clearance Regulations Electricity Safety (Electric Line Clearance) Regulations 2010* ("**the Line Clearance Regulations**");

**Particulars**

The area in the vicinity of SWER line was not in an urban area and had not been assigned a fire hazard rating of "low" under s 80 of the ES Act.

20. At all material times:

- (a) the SWER line was:
  - (i) an electric line within the meaning of section 3 of the ES Act;
  - (ii) a powerline within the meaning of clause 1 of the Code;
- (b) AusNet was responsible for keeping the whole or any part of a tree clear of the SWER line;

**Particulars**

The responsibility was imposed by subsection 84(7) of the ES Act because none of subsections 84(2), (4), (5) or (6) applied to the SWER line.

- (c) AusNet had the power to keep the whole or any part of a tree clear of the SWER line;

**Particulars**

The power was conferred by sections 85 and 86 of the ES Act.



- (d) AusNet was obliged to create and maintain the required clearance space around the SWER line in accordance with the Code including the Schedule to the Code;

**Particulars**

The obligation was imposed by clause 2(1) of the Code and s 90 of the ES Act.

Under reg. 8 of the Line Clearance Regulations, clause 2(1) of the Code was a prescribed penalty provision for the purposes of section 90 of the ES Act.

- (e) AusNet was required, by 31 March of each year, to prepare and submit to ESV for approval a management plan relating to compliance with the Code;

**Particulars**

Regulation 9(2)-(4) of the Line Clearance Regulations.

- (f) AusNet did prepare and submit to ESV and obtained ESV's approval for vegetation management plans ("VM plans") in compliance with the Line Clearance Regulations;

**Particulars**

Further particulars may be provided following the completion of discovery and prior to trial.

- (g) AusNet was required to comply with its VM plans;

**Particulars**

Regulation 9(8) of the Line Clearance Regulations.

- (h) AusNet was required by its VM plans, as approved by ESV from time to time, to, among other things:
- (i) conduct an annual pre summer tree inspection of the SWER line, by the start of the Fire Season ("pre-summer tree inspection");
  - (ii) maintain the required clearance space between the SWER line and trees in accordance with the Code;

**Particulars**

Further particulars may be provided following the completion of discovery and prior to trial.

21. In the premises, at all material times, the Statutory Duties and the General Duty required AusNet to:
- (a) keep the whole or any part of a tree clear of the SWER line;
  - (b) create and maintain the required clearances around the SWER line in accordance with the Code;
  - (c) carry out pre-summer inspections of the space around the SWER line with due skill, care and diligence;
  - (d) further or alternatively to (c), ensure that pre-summer inspections of the space around the SWER line carried out by contractors were carried out with due skill, care and diligence.

**F Clearance Spaces and the Jack River Fire**

22. In accordance with the Code, at all material times, the required clearance space around the SWER line was:
- (a) the smallest space such that if a tree were cut or removed from that space, the tree would not grow into the minimum clearance space around the SWER line between cutting times;
  - (b) the space above the space described in (a).

**Particulars**

Clause 12(4) of the Code, which applied to the SWER line by reason that it was not constructed with aerial bundled cable or insulated cable, was located in a hazardous bushfire area, and was an electric line within the meaning of clause 1 of the Code.

If required, the plaintiff will provide further particulars of the required clearance space after receipt of expert reports.

23. In accordance with the Code, at all material times, the minimum clearance space around the SWER line away from the poles was 2 metres in all directions, plus an additional distance to allow for the sag and sway of the conductors, except vertically upwards, in which direction all space was within the minimum clearance space.

**Particulars**

Clause 12(2) and (3); Table 3 and Figure 5 of the Code.

The nominal voltage of the SWER line was over 1kV and less than 66kV and the span between poles on the SWER line was greater than 45 metres but not greater than 350 metres.

If required, the plaintiff will provide further particulars of the minimum clearance space after receipt of expert reports as to the sag and sway of the SWER line.

24. From a date unknown to the plaintiff but no later than about 1 October 2012 and continuing up to 9 February 2014, there were two pine trees growing from beneath the SWER line approximately 100 metres south east of pole 262160 (**the Trees**).

#### Particulars

So far as the plaintiffs are able to say prior to the delivery of experts' reports, the Trees were *Pinus Radiata*.

The base of the trunk of one of the Trees (**Tree 1**) was located at coordinates 0456989-5735318, approximately 1 metre horizontally to the north of the SWER line when the SWER line was not under sway.

The base of the trunk of the other of the Trees (**Tree 2**) was located at coordinates 0456991-5735318, approximately 1 metre horizontally to the south of the SWER line when the SWER line was not under sway.

25. From a date unknown to the plaintiff but no later than about 1 October 2013 and continuing up to 9 February 2014, each of the Trees was within the required clearance space around the SWER line under the Code.

#### Particulars

On 9 February 2014, each of the Trees rose above the vertical height of the SWER line and was no more than 1 metre horizontally from the SWER line when the SWER line was not under sway.

26. On 9 February 2014:
- (a) a strong, blustery, hot and dry nor' nor' westerly wind was blowing in the vicinity of, and against, the Trees and the SWER line;
  - (b) each of the Trees came into contact with the SWER line and/or became sufficiently close to the SWER line to cause arcing;
  - (c) the arcing between the SWER line and each of the Trees caused a discharge of sparks and heat;

- (d) the sparks and/or heat ignited the vegetation of each of the Trees at or near the points of contact between the SWER line and the Trees;
- (e) burning vegetable material from each of the Trees, alternatively from Tree 1 or Tree 2, fell to the ground and ignited dry vegetable material on the ground;
- (f) further, or alternatively to (d) and (e), sparks discharged from the arcing between the SWER line and one or both of the Trees ignited dry vegetable material on the ground; and
- (g) at about 10.20 am the sparks and/or heat thereby started a fire which subsequently spread over a wide geographic area, being the Jack River bushfire.

### Particulars

9 February 2014 was a day of Total Fire Ban for the whole of Victoria.

The nearest Bureau of Meteorology weather station at Yarram recorded that at 10.18 am on 9 February 2014, the air temperature was 38.7° C, the relative humidity was 11% and there was a nor' nor 'westerly wind blowing at 42 km/h which had gusted within the previous 10 minutes to a maximum of 76km/h.

The point of origin of the Jack River bushfire was within an area of approximately 12 metres (east/west) by 10 metres (north/south) immediately beneath the SWER line at the location of the Trees.

When inspected after the Jack River bushfire, the top portion of the stem of each of the Trees was charred and had dead and missing needles and the base of one of the Trees had charred needles within about 300 mm of the ground.

When inspected after the Jack River bushfire, there was matter on the SWER line in the vicinity of the Trees.

Further particulars may be provided following the delivery of experts' reports.

### **G Breaches of Duties**

27. In the premises alleged in paragraphs 22 to 26, AusNet failed to:
- (a) keep the Trees clear of the SWER line;
  - (b) create and maintain the required clearances around the SWER line in accordance with the Code;

- (c) carry out pre-summer inspections of the space around the SWER line with due skill, care and diligence;
- (d) further or alternatively to (c), ensure that pre-summer inspections of the space around the SWER line carried out by contractors were carried out with due skill, care and diligence.

28. In the premises, at all material times prior to 9 February 2014, AusNet was in breach of:

- (a) the Statutory Duties;
- (b) the General Duty.

#### **H Cause of Jack River bushfire**

29. Each of:

- (a) the dry summer condition of nearby vegetation;
- (b) the ambient temperature;
- (c) the wind speed and velocity;

on 9 February 2014, was within the range of conditions which, at all times while AusNet was the network operator, were within the range of foreseeable operating conditions for the SWER line.

#### **Particulars**

It was foreseeable to AusNet that the SWER line would be required to operate in temperatures higher and lower than the temperature which was present at Jack River on 9 February 2014. It was foreseeable to AusNet that during summer vegetation in the Jack River bushfire area would be relatively dry and susceptible to the ignition of fire. It was foreseeable to AusNet that the Trees and the SWER line would experience wind conditions involving velocities higher and lower than the wind velocities that were occurring around the Trees and the SWER line on 9 February 2014. It was foreseeable to AusNet that the SWER line would experience winds coming from each compass point and in particular coming from directions between due north and due west.

30. The Jack River bushfire was caused by AusNet's breaches of:

- (a) the Statutory Duties; further or alternatively

(b) the General Duty.

#### Particulars

But for Ausnet's breaches of duty, the Trees would have been removed or cut so that they could not contact the SWER line by no later than the start of the 2013-2014 fire danger period such that the Tees could not have come into contact with the SWER line to cause the Jack River bushfire.

31. The Jack River bushfire was a natural and foreseeable consequence of the breaches of duty alleged in the preceding paragraph.

#### Particulars

A natural and foreseeable consequence of a tree being within the required clearance space around the SWER line was that the tree would come into contact with the SWER line. A natural and foreseeable consequence of a tree coming into contact with the SWER line, or coming sufficiently close to the SWER line to cause arcing, was that there would be arcing between the SWER line and the tree and/or the transmission of electricity into the tree. A natural and foreseeable consequence of arcing between a tree and the SWER line was that heat and sparks would be discharged from the SWER line. A natural and foreseeable consequence of electricity being transmitted into a tree was that the vegetable matter in the tree would ignite. A natural and foreseeable consequence of exposing a tree or dry grass in late summer condition to contact with molten or burning metal, or to the levels of heat produced by the formation of an electrical arc, or the transmission of electricity into the tree was that the tree and/or grass would ignite. A natural consequence of such ignition, in such conditions, was fire. A natural consequence of fire in dry grass adjacent to and upwind of available fuel in such a location at such a season was the spread of fire, being bushfire.

#### I Subgroup Claims - private nuisance

32. Further to paragraph 3 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 Jack River bushfire's interference with their use and enjoyment of interests in land.

#### Particulars

The plaintiff had a leasehold interest in Lot 1 Jack River Valley Road, Jack River damaged by the Jack River bushfire.

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

33. At all material times each of:
- (a) the risks referred to in paragraphs 13 and 14 above; and
  - (b) the risk that a bushfire ignited by a discharge of electricity from the SWER line would unreasonably interfere with the use or enjoyment of interests in land:
    - (i) over which the fire passed; further or alternatively
    - (ii) that was affected by physical consequences of the fire or by emergency responses to the fire;
    - (iii) by the persons entitled to the said use or enjoyment;
- were reasonably foreseeable to AusNet.
34. By transmitting electric current along the SWER line, alternatively doing so on 9 February 2014 when the SWER line was not safe or operated safely, AusNet created or increased the risks referred to in the preceding paragraph.
35. AusNet by the conduct alleged in the preceding paragraph in fact caused the Jack River bushfire, which fire spread to land in which the subgroup members had interests ("**subgroup lands**").
36. The Jack River bushfire unreasonably interfered with the subgroup members' use and enjoyment of their interests in the subgroup lands.
37. In the premises, the subgroup members suffered nuisance created by AusNet.

#### **J Causation and Loss and Damage**

38. By reason of:
- (a) the breaches of the Statutory Duties;
  - (b) the breaches of the General Duty; further or alternatively
  - (c) the nuisance;
- by AusNet alleged herein
- (i) the plaintiffs;

- (ii) each of the group members referred to in subparagraphs 4(a) to (c) hereof;  
and
- (iii) each of the deceased persons referred to in subparagraph 4(d) hereof

as the case may be, suffered loss and damage of the kinds referred to in paragraph 14(c) to (e) above.

#### **Particulars of loss and damage**

The plaintiffs suffered loss as a result of damage to his leasehold interest in the land and damage to personal property, including destruction of:

- (i) standing pasture;
- (ii) electric fence unit;
- (iii) fencing materials;
- (iv) a spray tank unit; and
- (v) wood splitter.

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.

#### **K Common Questions of Law or Fact**

39. The questions of law or fact common to the claims of the plaintiff and each of the group members or subgroup members are:
- (a) how the Jack River bushfire started;
  - (b) whether AusNet owed the Statutory Duties to the plaintiff and group members, and if so the content of those duties;
  - (c) whether AusNet owed the General Duties to the plaintiff and group members, and if so the content of the duty;
  - (d) whether the Jack River bushfire was caused by a breach by AusNet of any of the Statutory Duties or General Duties;
  - (e) whether the plaintiff and subgroup members suffered actionable nuisance created by AusNet;



- (f) what are the principles for identifying and measuring compensable losses suffered by the claimants resulting from the breaches of duty or nuisance alleged herein.

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

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

TP Tobin

GD Dalton

Dated: September 24 October 2014

IN THE SUPREME COURT OF VICTORIA  
AT LATROBE VALLEY  
COMMON LAW DIVISION

No S CI 2014 05162

IRWIN JAMES RAMSAY

Plaintiff

and

AUSNET ELECTRICITY SERVICES PTY LTD  
(ACN 064 651 118)

Defendant

**CERTIFICATE IDENTIFYING ANNEXURE**

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Date of document: 24 September  
October 2014  
Filed on behalf of: The Plaintiff  
Prepared by:  
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This is the Annexure marked "A" referred to in Statement of Claim dated 24 September 2014.

**Annexure "A"**  
**Copy map The Jack River**  
**Bushfire Area- undated**



