Form 8

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Case Number: CIV-21-002144

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STATEMENT OF CLAIM (REVISION 1)

SUPREME COURT OF SOUTH AUSTRALIA
CIVIL JURISDICTION

KRISTEN TROY THROWER
First Applicant

SA POWER NETWORKS
First Respondent

MICHAEL GEORGIOU
Second Respondent

MARIANNE GEORGIOU
Third Respondent

Lodging Party	Kristen Troy Thrower **Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))**	
Name of law firm / solicitor **If any**	Maddens Lawyers **Law Firm**	Kathryn Emeny **Solicitor**

Part 1: Introduction by Applicant

The applicant brings this claim in a representative capacity on behalf of all those persons who have suffered personal injury and/or loss of or damage to property and/or economic loss as a result of a fire which commenced on 20 December 2019 at Cudlee Creek.

The causes of action relied on are:
(as against the first respondent) Negligence;
(as against the second and third respondents) Nuisance and Negligence.

Part 2: Background and uncontroversial matters

Preliminary

1. On 20 December 2019, a bushfire (**Cudlee Creek bushfire**) started at 230 Hollands Creek Road, Cudlee Creek, South Australia (**property**).

2. The Cudlee Creek bushfire burnt over the area highlighted on the map in Annexure A to this Statement of Claim (**Cudlee Creek bushfire area**).

The Applicant and group members

3. The Applicant is and was at all relevant times:

   3.1. an occupier of property at 105 Ridge Road, Woodside, South Australia, located within the Cudlee Creek bushfire area; and

   3.2. the owner of personal property damaged and/or destroyed in the Cudlee Creek bushfire.

Particulars

The applicant resided within the Cudlee Creek bushfire area at 105 Ridge Road, Woodside, South Australia, which was his primary place of residence. The applicant had stored at the residence various household contents items, equipment and personal effects which were destroyed in the Cudlee Creek bushfire.

Further particulars will be provided prior to trial.

4. The applicant brings this proceeding on his own behalf and on behalf of the group members.

5. The group members to whom this proceeding relates are:

   5.1. all those persons who suffered loss of or damage to property as a result of the Cudlee Creek bushfire (including, without limitation, consequential losses including economic losses; and loss or damage resulting from emergency action taken by any person in response to the Cudlee Creek bushfire); and

   5.2. all those persons who suffered personal injury (whether physical injury, or psychiatric injury as defined below) as a result of the Cudlee Creek bushfire (including without limitation, any injury suffered as a result of burns, inhalation of smoke, attempts to escape the Cudlee Creek bushfire or other emergency action taken by the person in response to the Cudlee Creek bushfire);

   where “psychiatric injury” in this group means nervous shock or another psychiatric or psychological injury, disturbance, disorder or condition which has been diagnosed as such in a diagnosis given to the person by a medical practitioner prior to 31 October 2021; and

   5.3. all those persons who suffered loss of or damage to property, or economic loss, in connection with the Cudlee Creek bushfire’s interference in their use or enjoyment of interests in land;

5.4. the legal personal representatives of the estates of any deceased persons who came within subparagraphs 5.1, 5.2 and/or 5.3 above at the time of the Cudlee Creek bushfire.

(**group members**).

6. As at the time of the commencement of this proceeding there are two or more group members.

South Australian Power Networks

7. The first respondent (**SAPN**), at all material times:

7.1. was and is a partnership between Spark Infrastructure (No.1) Pty Ltd (ACN 091 142 380), Spark Infrastructure (No.2) Pty Ltd (ACN 091 143 038), Spark Infrastructure (No.3) Pty Ltd (ACN 091 142 362), CKI Utilities Development Ltd (ACN 090 718 880) and PAI Utilities Development Ltd (ACN 090 718 951);

7.2. carried on business as a distributor of electricity to residential and business customers in South Australia (**Business**) pursuant to a licence granted to it under the *Electricity Act 1996* (SA) (**Act**);

7.3. was:

(a) an 'electricity entity';

(b) a supplier of 'network services'; and

(c) engaged in the 'supply' of electricity –

within the meaning of the Act;

7.4. distributed electricity using a network of poles, conductors, sub-stations, circuit breakers, fittings and other physical apparatus located within the geographic area covered by its licence (**Network**);

7.5. was responsible for planning, building, operating and maintaining the Network;

7.6. was and is the lessee of, further or alternatively, has had the use and management of, the Network;

7.7. caused or allowed the transmission of electricity via the Network for the purpose of, inter alia, supplying electricity to residential and business customers;

7.8. was and is the successor to all rights and liabilities of the former Electricity Trust of South Australia (**ETSA**) in respect of or arising out of the operation of the Network; and

7.9. conducted the Business (including by means of the Network) for commercial profit.

The Georgious

8. The second and third respondents (**Georgious**) are and, at all material times since about February 2012, have been:

8.1. joint registered proprietors of the property, being the land more particularly described in Certificate of Title Volume 5753 Folio 522;

8.2. in possession and effective control of the property;

8.3. the occupiers of the property.

The Cudlee Creek feeder and the powerline

9. At all material times, the Network has included an 11kV distribution line supplying customers in and around Cudlee Creek from the Lobethal zone substation (**Cudlee Creek feeder**).

Particulars

The Cudlee Creek feeder is known to SAPN by the feeder identifier 'GU43'.

10. At all material times, the Cudlee Creek feeder has included a segment of 11kV overhead powerline, running north-south from Hollands Creek Road, through the property, and terminating at a pole mounted distribution substation on the neighbouring land to the south of the property (**powerline**).

Particulars

The powerline is identified in the aerial photograph in Annexure B to this Statement of Claim.

11. At all material times, the powerline:

11.1. was approximately 600 metres long;

11.2. comprised two, bare, uninsulated, three-strand, steel conductors attached to ~~ceramic~~ porcelain insulators mounted on the steel cross arm of 4 stobie poles;

11.2A included a span, designated span 1 (ID:SPAN 0000756486) by SAPN (**Span 1**), which ran approximately 135 metres between two stobie poles, designated by SAPN as:

(a) pole 1 (POLE ID:SUPS 0000473194) (**Pole 1**) ; and

(b) pole 2 (POLE ID:SUPS 0000473137) (**Pole 2**);

11.3. included a span, designated span 2 (ID:SPAN 0000756485) by SAPN (**Span 2**), which ran approximately 217 metres between two stobie poles, designated by SAPN as:

(a) pole 4 (POLE ID:SUPS 0000473137); and

(b) ~~p~~Pole 1 ~~(POLE ID:SUPS 0000473194) (**Pole 1**)~~;

11.4. was protected by a SCADA enabled, automatic circuit recloser (**ACR**), designated R1589 by SAPN (**R1589**).

11A At all material times, the conductors in Span 1 were suspended above a post and wire agricultural fence located approximately 40 metres south of Pole 1 (**wire fence**).

Part 3: Other facts forming the basis of the claim

The plantation and the Tree

12. At all material times from at least 1987, there was a *pinus radiata* plantation on the property (**plantation**).

Particulars

The plantation is identified in the aerial photograph in Annexure B.

13. At all material times, on and prior to 20 December 2019:

13.1. the trees on the western boundary of the plantation were on a steep slope above and to the east of Span 2;

13.2. many of the trees on the southern quarter of the western boundary of the plantation were of sufficient height above the powerline that, if they fell in the direction of the powerline, they would hit it.

Particulars

The slope and relative height of the trees on the western boundary of the plantation and the powerline can be seen in the photograph in Annexure C to this Statement of Claim.

Further particulars of the height of the trees in the plantation (if required) shall be provided following the delivery of experts' reports.

14. By 20 December 2019, the plantation:

14.1. had not been thinned, nurtured or managed;

14.2. was over-mature;

14.3. included fallen trees and branches, which lay where they had fallen;

14.4. included standing dead trees;

14.5. included a floor layer of dry, highly inflammable, pine needle debris and other pine tree litter.

15. Prior to the Cudlee Creek bushfire, there was a dead pine tree standing on the western edge of the plantation in close proximity to the powerline and Pole 1 (**Tree**).

Particulars

The remaining stump of the Tree is marked with a painted yellow 6 in the photograph annexed hereto as Annexure D to this Statement of Claim.

The trunk of the Tree was located approximately:

(i) 6.31 metres horizontally from the nearest conductor of the powerline (**eastern conductor**); and

(ii) 13 metres north of Pole 1 along the line of the powerline.

16. For many years prior to 20 December 2019, the Tree was dead, and before that dying, and at risk of failing and falling onto the powerline.

Particulars

~~So far as the applicant is able to say prior to the delivery of experts' reports,~~ tThe Tree was approximately 40 years old. It had been dead for about 3 years prior to 20 December 2019 and was visibly dying for years before that.

There were signs that the Tree was at risk of failing and falling onto the powerline that would have been detectable by visual inspection, including that:

(i) it was dead and devoid of foliage;

(ii) it had no twigs or branchlets;

(iii) its bark was a darker colour than that of adjacent live trees;

(iv) its bark was extensively cracked and split and was peeling off the wood on the branches;

(v) there was evidence of bark and wood feeding and/or boring insects present, including entry and exit holes in the bark and exposed underlying wood and frass.

The Tree was approximately 20 metres tall and positioned:

(i) on a slope above the powerline and so that, if it fell, it was likely to fall down the slope towards the powerline; and

(ii) on the edge of the plantation so that, if it fell, no other tree or trees could block its path of fall onto the powerline.

16A Prior to the Cudlee Creek bushfire, pine trees from the plantation had failed and fallen onto or over the powerline on at least the following occasions:

16A.1 in about 2014 or 2015, a branch fell on the powerline approximately mid-way along the length of the span that runs through the property, adjacent to the third dam of the property and the branch lay over the line, causing it to bend lower than usual until SAPN and/or Active Tree Services (**ATS**) attended and cut the tree, which allowed the line to return to what appeared to be its normal position;

16A.2 on about 29 December 2016, a pine tree from the plantation fell onto the powerline and rested on the conductors in Span 2;

Particulars

The plaintiff relies on SAPN's records of this event in SAPN.00582

16A.3 in about 2017 or 2018, a tree fell approximately mid-way along the length of the span that runs through the property, adjacent to the third dam on the property and lay over the line, which caused the line to bend lower than usual, but the line remained well above ground level until SAPN and/or ATS attended and cut the branch, which allowed the line to return to what appeared to be its normal position;

16A.4 on 19 October 2018, a pine tree from the plantation failed and bent towards and over the powerline, threatening to fall onto it, before being removed by Active Tree Services (**ATS**) at the request of, and as contractor for, SAPN;

Particulars

The pine tree bent over and threatened to fall on the powerline in Span 2 approximately 10-15 metres north of Pole 1, in the immediate vicinity of the Tree.

The location and bend of the pine tree is recorded in photographs attached to an email with the subject "*Urgent – Dangerous pine over 11kv*" from Gene Milburn of ATS to Boris Bunt and Norrie Balacco of SAPN dated 19 October 2018 [SAPN.00583]

16A.5 on 19 July 2019, a pine tree fell onto and brought down a private line that powers the Georgious' bore, which is located towards the northern end of Span 2, requiring SAPN and/or ATS to attend and put the private line back up in place.

Weather and forecast fire conditions

17. At all material times, the Cudlee Creek feeder, the property and the powerline were located in:

17.1. the Mount Lofty Ranges Fire Ban District as declared under the *Fire and Emergency Services Act 2005* (SA);

17.2. a High Bushfire Risk Area as designated by SAPN for the purposes of its bushfire risk mitigation on the Network.

18. In the days preceding 20 December 2019, there were extreme heat wave conditions in South Australia, including the Mount Lofty Ranges.

Particulars

On 17, 18 and 19 December 2019, the maximum temperatures recorded by the Bureau of Meteorology Automatic Weather Station (**AWS**):

(i) at Mount Crawford (approximately 20 km northwest of the property) were 37.8ºC, 40.5ºC and 40ºC respectively; and

(ii) at Parafield Airport AWS (approximately 20 km east-northeast of the property) were 41.9ºC, 44.8ºC and 45.4ºC respectively.

Further particulars may be provided prior to trial.

19. The South Australian Country Fire Service (**CFS**) declared that 20 December 2019 was a day of Total Fire Ban for the Mount Lofty Ranges Fire Ban District with a forecast Catastrophic Fire Danger Rating (**Catastrophic TFB Declaration**).

Particulars

The Catastrophic TFB Declaration was issued in writing at about 5.30 pm on 19 December 2019. A copy of it is in the possession of the applicant's solicitors and available for inspection.

A Catastrophic fire danger rating is issued for the worst conditions for a bush or grass fire. According to the CFS, in Catastrophic fire danger rating conditions:

(i) if a fire starts and takes hold, it will be extremely difficult to control and will take significant firefighting resources and cooler conditions to bring it under control;

(ii) spot fires will start well ahead of the main fire and cause rapid spread of the fire and embers will come from many directions;

(iii) homes are not designed or constructed to withstand fires in these conditions; and

(iv) the safest place to be is away from bushfire prone areas.

20. For 20 December 2019 in the Mount Lofty Ranges Fire Ban District, the Bureau of Meteorology (**BOM**) forecast:

20.1. a day of Catastrophic Fire Danger;

20.2. a district Forest Fire Danger Index of 130;

20.3. a district Grass Fire Danger Index of 142;

20.4. maximum temperatures exceeding 41^{o}C;

20.5. mean wind speeds of 45 km/h, gusting to 75 km/h.

Particulars

The forecasts were issued in writing by BOM in a Fire Weather Forecast for South Australia at 3.50 pm 19 December 2019 (**BOM Fire Weather Warning**). A copy of the BOM Fire Weather Warning is in the possession of the applicant's solicitors and available for inspection.

The Cudlee Creek bushfire

21. In the morning of 20 December 2019, in the vicinity of the powerline:

21.1. there were very high ambient air temperatures;

21.2. there were strong, hot, gusty, winds blowing;

21.3. there was low humidity; and

21.4. there was dry vegetation.

Particulars

(i) Prior to 9.11 am, the Mount Crawford AWS recorded:

(A) air temperature over 36^{o}C;

(B) mean speeds up to 48 km/h gusting to 70 km/h, mainly from the north to northeast;

(C) relative humidity below 13%.

(ii) Prior to 9.11 am, the Parafield Airport AWS recorded:

(A) air temperature over 40^{o}C;

(B) mean speeds up to 39 km/h gusting to 55 km/h, mainly from the north to northeast;

(C) relative humidity below 10%.

22. At approximately 9:11 am on 20 December 2019, the Tree fell and struck the powerline near Pole 1.

Particulars

The Tree failed about 1 metre above ground level and fell in an approximately south-south-west direction towards Pole 1.

23. As a result:~~,~~

23.1. the insulator on the eastern arm of the cross arm on Pole 1 broke and the eastern conductor came away from its connection with the insulator ~~and fell to the ground~~;

23.2. the insulator on the eastern arm of the cross arm on Pole 2 (**Pole 2 eastern insulator**) detached from its support post and was suspended to the east of Pole 2, while still attached to the eastern conductor;

23.3. the eastern conductor lost its support at both Pole 1 and Pole 2.

24. As a result, the eastern conductor fell and made electrical contact with:

    24.1. ~~a~~ the wire fence ~~beneath the powerline, approximately 40 metres south of Pole 1 (**wire fence**)~~; and

    24.2. the ground in the vicinity of Pole 1.

25. As a result, there was arcing:

    25.1. between the eastern conductor and the wire fence; and/or

    25.2. between the eastern conductor and earth in the vicinity of Pole 1.

26. As a result of the arcing:

    26.1. between the eastern conductor and the wire fence, molten metal particles (**sparks**) were discharged from the contact points, one or more of which ignited dry vegetable matter ~~on the ground~~ in the vicinity of the wire fence; and/or

    26.2. between the eastern conductor and earth in the vicinity of Pole 1, heat was discharged which ignited dry vegetable matter on the ground.

Particulars

The areas of origin are identified in the expert report of Richard Woods dated 3 February 2022, pages 53 - 76, Figures 28-30, and 45.

27. The fire or fires so ignited developed and spread to become the Cudlee Creek bushfire.

SAPN'S NEGLIGENCE

Duty of care

28. At all material times, SAPN:

    28.1. was required, by s 60(1) of the Act, to take reasonable steps to ensure that the electricity infrastructure that it owned or operated, including all parts of the Network:

        (a) complied with, and was operated in accordance with, technical and safety requirements imposed under the regulations made under the Act; and

        (b) was safe and safely operated;

    28.2. was required, by clause 5.2.1(a) of the National Electricity Rules to maintain and operate the Network in accordance with good electricity industry practice;

    28.3. was required, by regulation 47(1) of the Electricity (General) Regulations 2012, to ensure that no circuit in electricity infrastructure was allowed to remain in service unless every part of the circuit functioned in a safe manner;

    28.4. had the power, pursuant to s 53(1) of the Act, without incurring any liability, to cut off the supply of electricity to any region, area, land or place if, in its opinion, it was necessary to do so to avert danger to person or property.

29. At all material times, SAPN:

29.1. had the ultimate responsibility for all activities associated with the planning, design, construction, inspection, modification and maintenance of the Network;

29.2. had the right, to the exclusion of other private persons to:

(a) construct, repair, modify, inspect and operate the Network; or

(b) give directions for the construction, repair, modification, inspection or operation of the Network;

29.3. had the right, to the exclusion of other private persons to determine, set, adjust and modify the operating settings of electrical protection equipment on the Network, including circuit breakers and ACRs;

29.3A had the statutory right and power under Part 4 of the Act, *inter alia*, to enter and remain on land on which Network infrastructure was located for the purposes of inspecting, maintaining or repairing the Network;

29.4. exercised the rights referred to in 29.2 ~~and~~ to 29.3A above; and

29.5. in the premises, had practical control over the Network, including the Cudlee Creek feeder and the powerline.

Particulars

So far as the applicant can say prior to discovery, SAPN constructed, repaired, modified, inspected and operated the Network and gave directions to its contractors regarding the construction, repair, modification, inspection or operation of the Network. The operation of the Network included determining the operating settings for various items of electrical protection equipment, including ACRs. Further particulars may be provided prior to trial.

30. At all material times:

30.1. SAPN used the Network, including the Cudlee Creek feeder and the powerline, to transmit electricity at high voltage;

30.2. the transmission of electricity along the Network created a risk of unintended discharges of electricity from the Network;

30.3. unintended discharges of electricity from the Network were highly dangerous in that they were capable of causing death or serious injury to persons, and destruction or loss of property by:

(a) electrocution;

(b) burning by electric current; further or alternatively;

(c) burning by fire ignited by the discharge of electricity;

30.4. in the premises set out in 30.2 and 30.3 above, the transmission of electricity along the Network was a dangerous activity;

30.5. SAPN knew or ought reasonably to have known of the matters set out in 30.2 to 30.4 above.

31. At all material times, it was reasonably foreseeable to SAPN that:

31.1. interference with the Network, including the Cudlee Creek feeder and the powerline, by trees might lead to the discharge of electricity from the Network;

31.2. without limiting 31.1, trees or branches falling or being blown onto conductors or pole top installations could cause the unintended discharge of electricity from the Network by a range of means, including by conductors clashing together, conductors breaking and/or coming into contact with other parts of the Network, with the ground or with objects on or travelling over the ground (including people, animals or vehicles);

31.3. the discharge of electricity from the Network 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.

31.4. further and in the alternative to 31.3, a discharge of electricity from the Network could cause the emission of electricity, heat or sparks from the point of discharge;

31.5. electricity, heat or sparks emitted from a point of discharge could cause electric shock or burns to persons or property in the vicinity of the point of discharge;

31.6. electricity, heat or sparks emitted from a point of discharge could cause the ignition of fire in flammable material exposed to / in the vicinity of the point of discharge of the electricity, heat or sparks;

31.6A the risk that a fire would ignite as a consequence of the discharge of electricity from the Network was likely to increase as electricity continued to be supplied to and from the point of discharge;

31.7. such ignition could produce a fire which might spread over a wide geographic area, depending on environmental and weather conditions, including temperature and wind direction and velocity;

Particulars

The fire spread also depends on the amount of combustible fuel, the terrain, the humidity and precipitation, and the effectiveness of any human firefighting responses.

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

31.9. such fire could cause damage to property and consequential losses including economic losses within areas:

(a) affected by the physical consequence of fire, such as smoke or debris; or

(b) the subject of emergency activity to prevent the spread of fire, including without limitation the clearing of firebreaks;

(**affected areas**)

31.10. such fire or its consequences could:

(a) disrupt or impair the income-earning activities of persons residing or carrying on business in the fire area or affected areas;

(b) impede the use or amenity of property located in the fire area or affected areas; or

(c) 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.

32. At all material times members of the public who:

32.1. owned or had an interest in real or personal property; or

32.2. carried on business; or

32.3. were from time to time;

in the fire area or affected areas (**Cudlee Creek class**):

(a) had no ability, or no practical and effective ability, to prevent or minimize the risk of unintended discharges of electricity from the Network occurring; and

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

(c) were dependent on SAPN ensuring that the power line was safe and operated safely in the operating conditions applying to it from time to time.

Particulars

Particulars of the area affected by the Cudlee Creek bushfire will be provided prior to trial.

The operating conditions referred to included the level of electrical current being transmitted along the Network, the physical environment around the Network, including without limitation wind direction and speed, ambient temperature, the presence of objects capable of coming into contact with the Network (including without limitation trees) and the amount of combustible fuel around or below the power lines.

33. At all material times, the applicant and group members were:

33.1. persons within the Cudlee Creek class; or

33.2. dependents of persons within the Cudlee Creek class; or

33.3. persons likely to suffer mental injury, psychiatric injury or nervous shock as a result of the death of or injury to persons within the Cudlee Creek class.

34. In the premises, at all material times, SAPN owed to persons within the Cudlee Creek class a duty to exercise reasonable care to avoid or minimise the risk of injury to them, and loss or damage to their property, from the ignition and spread of fire ignited by unintended discharges of electricity from the Network ~~starting a bushfire~~ (**SAPN Duty**).

Breach - inspections

34A At all material times, SAPN knew or ought reasonably to have known that:

34A.1 parts of the Network, including insulators, that are not properly or securely attached to their support are at an increased risk of failing and becoming disconnected from the Network;

34A.2 parts of the Network, including insulators, that fail or become disconnected may cause a discharge of electricity from the Network;

34A.3 without limiting 34A.2, an insulator that fails or becomes disconnected from its attachment may cause a discharge of electricity from the Network by a range of means, including by conductors clashing together, conductors breaking and/or coming into contact with other parts of the Network, with the ground or with objects on or travelling over the ground (including people, animals or vehicles);

34A.4 any such discharge of electricity may in turn cause any of the consequences or events referred to in paragraphs 31.3 to 31.10 above.

34B At all material times, SAPN knew or ought reasonably to have known that the risk that part of the Network, such as an insulator, which is not properly attached to its support, might fail or become detached can be eliminated or reduced by:

34B.1 having and implementing systems, policies and procedures for the periodic inspection of the Network to identify defects which could affect the safe operation of the Network;

34B.2 conducting such periodic inspections of the Network, including the powerline, with reasonable care.

34C In exercise of its statutory rights and powers referred to in paragraph 29.3A above, SAPN, by its servants or officers, entered the property and inspected the powerline:

34C.1 in 2015 and January 2019, as part of SAPN's Component Inspection cycle under its Line Inspection Manual;

34C.2 in September 2019, as part of SAPN's Pre-Bushfire Patrol under its Line Inspection Manual;

34C.3 on dates presently unknown to the applicant but approximately on a 5-yearly basis, as part of SAPN's Component Inspection cycle under its Line Inspection Manual;

34C.4 on dates presently unknown to the applicant but approximately on an annual basis, as part of SAPN's Pre-Bushfire Patrol under its Line Inspection Manual

(**Inspections**).

Particulars

The inspection dates are taken from paragraphs 2.5.1 to 2.5.4 of the SAPN Investigation Report dated 4 March 2020 [SAPN.00119].

The fact of the previous inspections is inferred from the terms of SAPN's Line Inspection Manual, Manual No 11 issued April 2019.

Under SAPN's Line Inspection Manual:

(i) a Component Inspection required a visual inspection of all assets including overhead components, such as insulators;
(ii) a Pre-Bushfire Patrol required a patrol to identify and record obvious faults or hazards that may pose a risk of injury to members of the public, supply interruption or potential bushfire start, including, for example, leaning insulators.

34D At all material times, the Pole 2 eastern insulator was not properly or securely attached to its post support.

Particulars

The Pole 2 eastern insulator was only partly screwed onto the threaded polymer sleeve on the post support.

Expert reports of Professor Blackburn dated 21 February 2022, pages 39-51, and Dr Clegg dated 3 February 2022, pages 39-40.

34E At the time of each of the Inspections, the fact that the Pole 2 eastern insulator was not properly or securely attached to its post support:

34E.1 was visible and capable of detection by an appropriately trained and qualified inspector;

34E.2 ought reasonably to have been detected by SAPN's inspectors as a defect that presented a safety risk to the Network.

34F At the time of each of the Inspections, SAPN, by its servants or officers, failed to identify and report that the Pole 2 eastern insulator was not properly or securely attached to its post support.

Particulars

The failure is to be inferred from:

(i) The matters alleged in paragraph 34E;
(ii) The fact that SAPN's Line Inspection Manual required its inspectors to inspect pole top insulators.

34G In the circumstances, SAPN, by its servants or officers, failed to exercise reasonable skill and care in the inspection of the powerline and thereby breached the SAPN Duty.

Breach- ACR settings or disconnection

34H At all material times since at least 2014, SAPN knew or ought reasonably to have known that:

34H.1 the probability of an unintended discharge of electricity from the Network causing a fire increases the longer the fault persists;

34H.2 disabling the auto-reclose function and setting ACRs to clear faults as quickly as possible significantly reduces the probability of a fire igniting in dry vegetation from arcing between a conductor and the ground under high bushfire risk environmental conditions;

Particulars

SAPN Bushfire Mitigation Program – Business Case dated October 2014, page 9.

34I From no later than about the commencement of the 2014-2015 fire danger season, good Australian electricity distribution practice, alternatively reasonable and appropriate practice, required that electricity distributors, such as SAPN, mitigate the risk of a bushfire being started by the unintended discharge of electricity from their distribution network, by applying bushfire mitigation settings to ACRs in high bushfire risk areas on days of high bushfire risk by:

34I.1 suppressing the auto-reclose function; and/or

34I.2 applying more sensitive protection settings.

Particulars

SAPN Bushfire Mitigation Programs Business Case dated October 2014

Expert report of Dr Wong dated 11 February 2022, paragraphs 2.3.1 to 2.3.13.

34J For the 2019-2020 bushfire season, SAPN had in place the bushfire mitigation policies and procedures set out in its Bushfire Risk Mitigation Manual – Manual No.8, dated November 2019, which provided, inter alia, that:

34J.1 SAPN was only required to disable the auto-reclose function and apply more sensitive protection settings on ACRs protecting overhead powerlines in High Bushfire Risk Areas on days of Catastrophic Fire Danger, if:

(a) the mean wind speed was forecast to be 63kph or greater; or

(b) the mean wind speed was forecast to be between 45kph and 63kph and the powerline included a Risk Line Section (**RLS**);

Particulars

The more sensitive protection settings in the Bushfire Risk Management Plan [SAPN.00409] are the Hot Line Tag (**HLT**) Protection Settings referred to in the Manual, the particulars of which are otherwise presently unknown to the applicant.

34J.2 relevantly, an RLS was a section of line which contained section(s) satisfying one of the following criteria:

(a) the line had not been cleared in accordance with *Electricity (Principles of Vegetation Clearance) Regulations*; or

(b) the Pre Bushfire Patrol had not been completed; or

(c) the line had Priority Z defects.

34J.3 relevantly, a Priority Z defect was a defect identified and assessed in accordance with SAPN's Line Inspection Manual as having the potential to start a fire.

34K At all material times:

34K.1 trees likely to fall onto Network assets from outside the clearance zones prescribed by the *Electricity (Principles of Vegetation Clearance) Regulations* (**hazard trees**) presented a major risk of fire ignition by the Network;

34K.2 SAPN did not, and the *Electricity (Principles of Vegetation Clearance) Regulations* did not require it to, identify or remove hazard trees from its Network;

34K.3 hazard trees did not fall within any of the criteria for an RLS under SAPN's Bushfire Risk Mitigation Manual.

34L In the circumstances, compliance with the SAPN Duty required SAPN, prior to the Cudlee Creek bushfire, to have:

34L.1 devised and implemented bushfire mitigation policies and procedures, which included a requirement to:

(a) disable the auto-reclose function; and

(b) apply more sensitive protection settings

on all ACRs protecting powerlines in High Bushfire Risk Areas on days of forecast Catastrophic Bushfire Danger;

34L.2 alternatively to 34L.1, included known or obvious hazard trees within the criteria for an RLS in its Bushfire Risk Mitigation Manual;

34M The burden of taking any of the precautions in paragraph 34L was not disproportionate having regard to their efficacy in eliminating or reducing the risk and the potential gravity of the harm that might be caused by a fire ignited by the Network in a High Bushfire Risk Area during a period of Catastrophic Bushfire Danger.

35. On 19 December 2019, SAPN received:

35.1. the BOM Fire Weather Warning at about 4.00 pm;

35.2. the Catastrophic TFB Declaration at about 5.30 pm.

36. As a result, at all times from no later than about 5.30 pm on 19 December 2019 until the ignition of the Cudlee Creek bushfire, SAPN knew or ought reasonably to have known that, in the Mount Lofty Ranges Fire Ban District, 20 December 2019 would be a day:

36.1. of Total Fire Ban;

36.2. of Catastrophic Fire Danger;

36.3. with a district Forest Fire Danger Index of 130;

36.4. with a district Grass Fire Danger Index of 142;

36.5. of maximum temperatures exceeding 41^{o}C; and

36.6. with mean wind speeds of 45 km/h, gusting up to 75 km/h.

37. At all material times, SAPN knew or ought reasonably to have known that:

37.1. the risk that a fire started by the Network would not be able to be suppressed and would spread over a wide geographic area was highest on days of Catastrophic Fire Danger;

Particulars

SAPN Bushfire Mitigation Program Strategy and Justification, 2020-2025 Regulatory Proposal, January 2019, p. 26-27 and Table 4.

37.2. feeders in the Mount Lofty Ranges Fire Ban District:

(a) presented the highest risk of starting a fire on the Network; and

(b) accounted for the majority of SAPN's overall bushfire risk.

Particulars

SAPN Bushfire Mitigation Program Strategy and Justification, 2020-2025 Regulatory Proposal, January 2019, p. 27-28 and Table 5.

37.3. pine trees from the plantation had failed and fallen onto or over the powerline on at least the occasions set out in paragraph 16A above;

37.4. from no later than about 2017, the Tree was dead and likely to fail and fall onto the powerline;

37.5. from no later than about 2017, there were other dead trees in the plantation likely to fail and fall onto the powerline.

Particulars

That SAPN knew or ought to have known of the matters alleged in subparagraph 37.3 is to be inferred from:

(i) SAPN's records of the tree failure that occurred on 16 December 2016 [SAPN.00582 and SAPN.00439];
(ii) SAPN's records of the tree failure that occurred on 19 October 2018 [SAPN.00430 and SAPN.00583];
(iii) The fact that SAPN attended the property or engaged ATS to attend the property to:
  (A) cut the tree that had fallen on the powerline in 2014 or 2015;
  (B) cut the tree that had fallen on the powerline in 2017 or 2018; and
  (C) remove the tree and replace the private line that had fallen on 19 July 2019;

That SAPN knew or ought to have known of the matters alleged in subparagraph 37.4 and 37.5 is to be inferred from:

(iv) the matters alleged in paragraphs 12 to 16 above;
(v) the matters alleged above in these particulars to paragraph 37.5;
(vi) the fact that SAPN officers, employees and/or contractors had attended the property to inspect the powerline, which is directly proximate to the plantation, on numerous occasions in the period from about 2014 and 20 December 2019.

37A. Despite the Catastrophic Bushfire Danger conditions forecast for the Cudlee Creek feeder for 20 December 2019 and despite the risk which the Tree and other trees in the plantation might fall onto the powerline under those conditions:

37A.1 the criteria for disabling the auto-reclose function and/or applying more sensitive protection settings to R1589 were not satisfied; and

37A.2 R1589 remained programmed to 'normal' settings.

Particulars

Under SAPN's Bushfire Risk Mitigation Manual – Manual No.8, dated November 2019:

(i) the forecast Fire Danger Level was FDL2;
(ii) in High Bushfire Risk Areas when conditions were forecast FDL2, only ACRs with RLS would have their auto reclose function disabled or HLT applied.

SAPN's 'normal' settings involved two fast and one slow trip to lockout (two reclose attempts) in accordance with the table set out in paragraph 2.1.21 of the expert report of Dr Wong dated 11 February 2022.

38. At all material times, SAPN knew or ought reasonably to have known that the risk that an unintended discharge of electricity from the Network might ignite a fire in a High Bushfire Risk Area under Catastrophic Fire Danger conditions:

38.1. could be eliminated by disconnecting the supply of electricity to feeders located in High Bushfire Risk Areas during periods of Catastrophic Fire Danger; and

38.2. could be materially reduced by adjusting the operational settings of ACRs in High Bushfire Risk Areas during periods of Catastrophic Fire Danger so as to:

(a) minimise the duration of fault current before clearance; and/or

(b) disable the auto reclose function.

39. The burden of taking either of the precautions in paragraph 38 was not disproportionate having regard to their efficacy in eliminating or reducing the risk and the potential gravity of the harm that might be caused by a fire ignited by the Network in a High Bushfire Risk Area during a period of Catastrophic Bushfire Danger.

40. In the circumstances, upon receipt of the BOM Fire Weather Warning and the Catastrophic TFB Declaration, compliance with the SAPN Duty required SAPN to:

40.1. disconnect the supply of electricity to the Cudlee Creek feeder, including the powerline, during the period of Catastrophic Fire Danger on 20 December 2019; alternatively

40.2. adjust the operating settings on reclosers on the Cudlee Creek feeder, including the ACR, to reduce the fault clearance time and to disable the reclose function.

41. In breach of the SAPN Duty, SAPN failed to:

41.1. disconnect the supply of electricity to the Cudlee Creek feeder prior to the Cudlee Creek bushfire; and

41.2. adjust the operating settings on the reclosers on the Cudlee Creek feeder, including the ACR, to reduce the fault clearance time or to disable the reclose function

41.3. operate R1589 in accordance with good Australian electricity distribution practice, alternatively reasonable and appropriate practice, on 19 and 20 December 2019;

41.4. devise and implement a bushfire mitigation policy, prior to the Cudlee Creek bushfire, under which it was required to:

(a) disable the auto-reclose function; and

(b) apply more sensitive protection settings

on all ACRs protecting powerlines in High Bushfire Risk Areas on days of forecast Catastrophic Bushfire Danger;

41.5. alternatively to 41.4, include known or obvious hazard trees within the criteria for a RLS in its Bushfire Risk Mitigation Manual;

Causation and loss

41A. Had SAPN not breached the SAPN Duty as alleged in paragraph 34G above:

41A.1 the fact that the Pole 2 eastern insulator was not properly attached to its pole support would have been detected during the Inspections;

41A.2 the Pole 2 eastern insulator would have been screwed fully into the threaded polymer sleeve of the pole support prior to the Cudlee Creek bushfire;

41A.3 at the time that the Tree fell onto the powerline, the Pole 2 eastern insulator would not have come away from its pole support;

41A.4 the eastern conductor would have remained supported by Pole 2 and would not have contacted the wire fence;

41A.5 there would have been no arcing between the eastern conductor and the wire fence;

41A.6 the Cudlee Creek bushfire would not have occurred.

Particulars.

Expert report of Professor Blackburn dated 21 February 2022, pages 24-25, 39-51 and 54-55.

42. Had SAPN not breached the SAPN Duty as alleged in paragraph 41.1 above:

42.1. at the time that the Tree fell onto the powerline, the powerline would not have been live;

42.2. at the time that the eastern conductor fell and contacted the wire fence and/or the ground near pole 1, it would not have been live;

42.3. the Cudlee Creek bushfire would not have occurred.

43. Had SAPN not breached the SAPN duty as alleged in paragraph 41.2 to 41.4 above, the Cudlee Creek bushfire would not have occurred because:

43.1. the settings on ~~the AC~~R1589 would have been adjusted so that, upon detecting the initial phase to earth fault ~~the eastern conductor contacting the wire fence~~, ~~the AC~~R1589 would have opened the circuit more rapidly than it did and would not have subsequently reclosed it;

Particulars

On 20 December 2019, R1589 operated as follows:

(i) at 9:11:55.799 am, it tripped in response to a phase to earth fault with a fault current of 113 amps, with a fault duration of 190 ms;
(ii) at 9:12:00.959 am, after 5 seconds of dead time, it reclosed onto a phase-to-phase fault with fault currents ranging from 136 to 183 amps and phase to earth fault of 7 amps, with the phase-to-phase fault spontaneously clearing 160 ms after the reclose;
(iii) at 9:12.02.354, it tripped and locked out in response to a phase to earth fault with fault current of 99 amps and a fault duration of 670ms.

Had SAPN disabled its reclose function, R1589 would not have reclosed after its first trip such that the total fault duration would have been only 190 ms. The total thermal energy released during the fault event would have been reduced to only 18.6% of the total thermal energy actually released: see expert report of Dr Wong dated 11 February 2022 paragraph 2.8.23.

Had SAPN also applied ultra-fast protection settings:

(iv) R1589 would have been configured to operate in accordance with the settings set out in Table 6 at paragraph 2.8.21 of the expert report of Dr Wong dated 11 February 2022;
(v) the total fault duration would have been reduced to 80 - 90 ms;
(vi) the total thermal energy released during the fault event would have been reduced to only 8.7% of the total thermal energy actually released: see expert report of Dr Wong dated 11 February 2022 paragraph 2.8.23.

The above particulars replace the plaintiff's further and better particulars dated 17 June 2021.

43.2. there would have been a significantly shorter period of arcing between the eastern conductor and the wire fence before ~~the AC~~R1589 opened the circuit and extinguished the arc;

Particulars

In the event that SAPN had disabled the auto reclose function, the period of arcing would have been 190 ms rather than 2.255 seconds: see expert report of Professor Blackburn, pages 28-33 and 52.

In the event that SAPN had also applied ultra-fast protection settings, the period of arcing would have been only 80-90 ms: see expert report of Dr Wong paragraph 2.8.21.

The above particulars replace the applicant's further and better particulars dated 17 June 2021.

43.3. there would have been significantly fewer sparks produced by arcing between the eastern conductor and the wire fence;

Particulars

The Applicant is unable to identify the precise number of sparks but says that the number of sparks would have been reduced approximately in proportion to the

difference between 80-90 ms (being the duration of any phase to earth fault had the settings on R1589 been adjusted to disable the reclose function and apply ultra-fast protection settings) and 2.255 seconds (being the actual duration of arcing time on the day of the fire).

The above particulars replace the applicant's further and better particulars dated 17 June 2021.

43.4. ~~the ACR~~1589 would have opened the circuit before any arcing occurred between the eastern conductor and the ground in the vicinity of Pole 1;

43.5. alternatively to 43.4, there would not have been enough time for any arcing that did occur between the eastern conductor and the ground in the vicinity of Pole 1 to have transferred sufficient heat to cause ignition of nearby fuel before ~~the ACR~~1589 opened the circuit and extinguished the arc;

Particulars

Many seconds are required for arcing between the ground and earth to have transferred sufficient heat to cause ignition of nearby fuel: see expert report of Professor Blackburn, page 34-35 and 53.

The above particulars replace the applicant's further and better particulars dated 17 June 2021.

43.6. the auto reclose function of ~~the ACR~~1589 would not have operated to resume the supply of electricity to the powerline;

43.7. the Cudlee Creek bushfire would not have occurred.

43A Had SAPN not breached the SAPN duty as alleged in paragraph 41.5, the Cudlee Creek bushfire would not have occurred because:

43A.1 the Tree and other obvious hazard trees in the plantation would have been identified as Priority Z defects;

43A.2 the powerline would have been identified as a RLS;

43A.3 pursuant to the procedures in its Bushfire Risk Mitigation Manual, SAPN would have disabled the auto-reclose function and/or applied HLT settings to R1589;

43A.4 upon detecting the initial phase to earth fault, R1589 would have opened the circuit more rapidly than it did and would not have subsequently reclosed it;

Particulars

HLT settings are more sensitive than SAPN's normal settings such that ACRs to which it is applied will open more quickly for the same fault. The Applicant does not know the precise HLT settings but estimates that that the HLT settings would have opened the circuit in about 80-90 ms.

43A.5 there would have been a significantly shorter period of arcing between the eastern conductor and the wire fence before R1589 opened the circuit and extinguished the arc;

43A.6 there would have been significantly fewer sparks produced by arcing between the eastern conductor and the wire fence;

43A.7 R1589 would have opened the circuit before any arcing occurred between the eastern conductor and the ground in the vicinity of Pole 1;

43A.8 alternatively to 43.4, there would not have been enough time for any arcing that did occur between the eastern conductor and the ground in the vicinity of Pole 1 to have transferred sufficient heat to cause ignition of nearby fuel before R1589 opened the circuit and extinguished the arc.

Particulars

For subparagraphs 43A.5 to 43A.8, the applicant refers to and repeats the particulars to sub-paragraph 43.2 to 43.5.

43A.9 the auto reclose function of R1589 would not have operated to resume the supply of electricity to the powerline;

43A.10 the Cudlee Creek bushfire would not have occurred.

44. In the premises, the Cudlee Creek bushfire was caused by SAPN's negligence.

45. By reason of SAPN's negligence, the applicant and each of the group members suffered loss and damage.

Particulars of loss and damage

The applicant suffered property loss and damage to his personal property located at 105 Ridge Road, Woodside, South Australia, 5244 at the time of the fire including but not limited to household chattels, clothing, tools and equipment, and a John Deere Gator Utility Vehicle. The applicant further has suffered inconvenience.

Particulars of injury of the applicant

Psychiatric injury.

The applicant is aged 56, having been born on 21 June 1964.

Further particulars of the applicant's injury, 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.

SAPN'S ETSA LIABILITY

45A ETSA was established as a body corporate by s 5 of the *Electricity Trust of South Australia Act 1946* (**ETSA Act**).

45B At all material times until 1994, ETSA was empowered by the *ETSA Act* to, inter alia:

45B.1 generate, transmit and supply electricity within the state of South Australia;

45B.2 do any act or thing incidental or ancillary to the purpose for the purpose of generating, transmitting and supplying electricity;

45B.3 exercise any power under the Adelaide Electric Supply Company's Acts, 1897 – 1931, including the power to erect electric lines, aerial conductors and any other works suitable to be used or incidental to the distribution or supply of electricity on or across any land, including private land

45C In the exercise of its statutory powers:

45C.1 ETSA constructed the powerline on the property, in about 1966;

45C.2 ETSA replaced Pole 1 and Pole 2, including their cross arms and insulators, in about 1977.

Particulars

Geytenbeek's Nurseries – Cudlee Creek – Proposed 11kV Extension [SAPN.00137] dated 1977.

The SAPN Investigation Report dated 4 March 2020 records that:

(iii) Span 1 between Pole 1 and Pole 2 was originally constructed in 1966 (page 9);

(iv) Pole 2 as in place at the time of the fire was manufactured in 1968;

(v) Pole 1 as in place at the time of the fire was manufactured in 1977 (page 7);

The Pole 2 eastern insulator was manufactured in 1974: Expert report of Dr Clegg dated 3 February 2022, page 21-22.

45D At the time of the exercise of its statutory powers, it was reasonably foreseeable to ETSA that:

45D.1 any insulator on the powerline that was not properly or securely attached to its post support could become detached from its support post;

45D.2 without limiting paragraph 45D.1, an improperly or insecurely attached insulator may become detached by a range of means, including by conductor motion initiated by wind, vibration, and/or impact or interference by animals or objects, including trees or branches;

45D.3 the detachment of an insulator from its support post could cause a discharge of electricity from the powerline by a range of means, including by a conductor losing its support at the pole and coming into contact with other parts of the powerline, with the ground or with objects on or travelling over the ground (including people, animals or vehicles);

45D.4 the discharge of electricity from the powerline could cause any of the events and consequences set out in paragraphs 31.3 to 31.10 above.

45E In the premises, when exercising its statutory powers to construct, extend, repair, or maintain the powerline, ETSA owed a duty to members of the Cudlee Creek Class, including the applicant, to exercise reasonable care to avoid the risk of injury to them, and loss or damage to their property, from the ignition and spread of fire ignited by unintended discharges of electricity from the powerline (**ETSA Duty**).

45F In breach of the ETSA Duty, when installing the Pole 2 eastern insulator on the powerline, ETSA, by its servants, officers or agents, failed to properly or securely attach it to its post support.

Particulars

Expert reports of Professor Blackburn dated 21 February 2022, pages 39-51, and Dr Clegg dated 3 February 2022, pages 39-40.

45G Had ETSA not breached the ETSA Duty:

45G.1 the Pole 2 eastern insulator would have been screwed fully into the threaded polymer sleeve of the pole support prior to the Cudlee Creek bushfire;

45G.2 at the time that the Tree fell onto the powerline, the Pole 2 eastern insulator would not have come away from its pole support;

45G.3 the eastern conductor would have remained supported by Pole 2 and would not have contacted the wire fence;

45G.4 there would have been no arcing between the eastern conductor and the wire fence;

45G.5 the Cudlee Creek bushfire would not have occurred.

Particulars.

Expert report of Professor Blackburn dated 21 February 2022, pages 24-25, 39-51 and 54-55.

45H In the premises, the Cudlee Creek bushfire was caused by SAPN's negligence.

45I By reason of ETSA's negligence, the applicant and each of the group members suffered loss and damage.

Particulars.

The applicant refers to and repeats the particulars to paragraph 45 above.

45J ETSA's liability to the applicant and group members was transferred to SAPN pursuant to a transfer order made under s 8 of the *Electricity Corporations (Restructuring and Disposal) Act 1999*.

GEORGIOUS' NUISANCE

46. At all material times, the Georgious knew, or as the owners and occupiers of the property ought reasonably to have known:

46.1. that the powerline ran through the property;

46.2. that SAPN transmitted electricity at high voltage along the powerline;

46.3. that the conductors of the powerline were bare, uninsulated, aerial conductors;

46.4. each of the matters in paragraphs 12 to 16A above.

47. At all material times, it was reasonably foreseeable to the Georgious that:

47.1. if they failed to inspect, assess, maintain, nurture and/or manage the trees within the plantation that were located sufficiently close to the powerline that, if they fell, they could contact it, one or more of the trees would, in time, fall and contact the powerline;

47.2. a dead tree on the western edge of the plantation, such as the Tree, was at significant risk of falling onto the powerline, particularly under the influence of wind;

47.3. a tree falling from the plantation and contacting the powerline, could cause the unintended discharge of electricity from the powerline;

47.4. an unintended discharge of electricity from the powerline could cause a bushfire by the manners alleged in subparagraphs 31.3 to 31.7 above;

47.5. a bushfire ignited as a result of a tree in the plantation falling on the powerline, could cause devastating damage to the land over which the fire passed, including by damaging or destroying buildings, fences, trees, pasture and fixtures;

47.6. a bushfire ignited as a result of a tree in the plantation falling on the powerline, could unreasonably interfere with the use or enjoyment of interests in land –

(a) over which the fire passed;

(b) within affected areas;

by the persons entitled to such use or enjoyment;

47.7. <u>if they failed to manage, control and/or reduce the vegetation fuel loads on the property, during periods of high bushfire risk, the risk that:</u>

(a) <u>a bushfire would ignite on the property from an unintended discharge of electricity from the powerline;</u>

(b) <u>a fire which ignited on the property would develop and spread from the property and cause the damage and interference alleged in 47.5 and 47.6</u>

<u>would increase.</u>

48. In the circumstances, the Georgious:

48.1. created, adopted and continued an unreasonable state of affairs in which the Tree was at risk of failing and falling onto the powerline and starting a bushfire;

48.2. caused the Tree to fall onto the powerline; and

48.3. thereby created, on the property, the fire or fires which developed and spread to become the Cudlee Creek bushfire.

49. The Cudlee Creek bushfire unreasonably interfered with the use or enjoyment of the interests in land held by the applicant and by those group members who owned or occupied land within the fire area or the affected areas (**Landholder subgroup**).

Particulars

The Cudlee Creek bushfire burned over and destroyed all property which the applicant occupied or otherwise had an interest in and which was situated at 105 Ridge Road, Woodside, in South Australia.

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

50. In the premises, the applicant and each of the Landholder subgroup members suffered nuisance created by the Georgious.

51. By reason of the Georgious' nuisance, the applicant and each of the Landholder subgroup members suffered loss and damage.

Particulars

The applicant refers to the particulars sub-joined to paragraph 45 above.

GEORGIOUS' NEGLIGENCE

52. The applicant refers to and repeats the allegations in paragraphs 8, 12 to 16A (inclusive), 46 and 47 above.

53. At all material times since in or about February 2012, the Georgious:

53.1. had the right, to the exclusion of other private persons to inspect, assess, maintain, nurture and/or manage the plantation; or

53.2. exercised the said right; and

53.3. in the premises, had control over the plantation.

54. At all material times the Cudlee Creek class:

54.1. had no ability, or no practical and effective ability, to prevent or minimize the risk of a tree falling from the plantation and contacting the powerline; and

54.1A had no ability, or no practical and effective ability, to prevent or minimize the risk of a fire igniting on the property as a result of an unintended discharge of electricity from the powerline caused by a tree falling from the plantation and contacting the powerline;

54.2. were vulnerable to the impact of fire caused by such a tree falling; and consequently

54.3. were dependent on the Georgious ensuring that:

(a) trees on the western edge of the plantation were safe and maintained safely in the conditions applying from time to time; and

(b) dead trees on the western edge of the plantation were removed alternatively pruned so that they were no longer at risk of failing and falling onto the powerline; or alternatively

(c) they had a fire management plan in place to minimise the risk of a fire igniting, propagating or spreading from the property in the event that a tree from the plantation did fail and fall onto the powerline.

55. In the premises, at all material times, the Georgious owed to persons within the Cudlee Creek class a duty to exercise reasonable care:

55.1. to see that those persons did not suffer injury, loss or damage by reason of things done or omitted to be done in relation to the state or condition of the property;

55.2. to prevent trees in the plantation falling onto the powerline (**Occupiers Duty**).

56. At all material times, the Georgious knew or ought reasonably to have known that the risk that an unintended discharge of electricity caused by a tree falling onto the powerline might ignite a fire could be reduced or eliminated by:

56.1. removing dead trees on the western edge of the plantation; or alternatively

56.2. pruning dead trees on the western edge of the plantation so that they were no longer at risk of failing and falling onto the powerline;

56.3. requesting that SAPN remove or prune dead trees from the plantation, which, if they fell, could contact the powerline, including the Tree;

56.4. developing and implementing a fire management plan, incorporating at least the precautions set out in 58A.2 to 58A.5 below;

56.5. taking the precautions set out in 58A.2 to 58A.5 below.

57. The burden of taking ~~either~~ any of the precautions in paragraph ~~9~~ 56 was not disproportionate having regard to their efficacy in eliminating or reducing the risk and the potential gravity of the harm that might be caused by a fire ignited by a tree failing and falling onto the powerline in a High Bushfire Risk Area during a period of Catastrophic Bushfire Danger.

58. In the circumstances, compliance with the Occupiers Duty required the Georgious to:

58.1. identify dead trees within the plantation at risk of falling and failing onto the powerline; and

58.2. remove dead trees on the western edge of the plantation; or alternatively

58.3. prune dead trees on the western edge of the plantation so that they were no longer at risk of failing and falling onto the powerline; or alternatively

58.4. request that SAPN remove dead trees from the western edge of the plantation, or prune dead trees on the western edge of the plantation so that they were no longer at risk of failing and falling onto the powerline.

58A Further, and in the alternative, in the circumstances, compliance with the Occupiers Duty required the Georgious to:

58A.1 develop and implement a fire management plan incorporating at least the precautions set out in 58A.2 to 58A.5 below;

58A.2 cut, mow, slash and/or graze the grass on the property, including any grass beneath or in the vicinity of the powerline, prior to the start of the bushfire season;

58A.3 establish and maintain fire breaks around the property fence lines, including the wire fence, prior to the start of the bushfire season, by spraying all grass and other vegetation beneath

and within at least 2 metres of either side of the fence line and by slashing, cutting or mowing any grass between 2 and 5 metres of the fence line to a height of no more than 10 cm;

58A.4 establish and maintain a fire break of 7 metres around the perimeter of the plantation;

58A.5 maintain existing vehicle access tracks on the property free of grass or other vegetation.

59. In breach of the Occupiers Duty, prior to 20 December 2019 the Georgious failed to:

59.1. identify that the Tree was at risk of falling and failing onto the powerline; and

59.2. remove the Tree; alternatively

59.3. prune the Tree so that it was no longer at risk of failing and falling onto the powerline;

59.4. request that SAPN remove dead trees from the western edge of the plantation, or prune dead trees on the western edge of the plantation so that they were no longer at risk of failing and falling onto the powerline.

59A Further, and in the alternative, in breach of the Occupiers Duty, prior to 20 December 2019, the Georgious:

59A.1 failed to develop and implement a fire management plan incorporating at least the precautions set out in 58A.2 to 58A.5 above;

59A.2 failed to cut, mow, slash and/or graze the grass on the property adequately or at all, prior to the start of the bushfire season, but rather so managed their property that, on 20 December 2019, there was long, fully cured, standing, grass beneath of the powerline;

59A.3 failed to establish and maintain fire breaks around the internal property fence lines, prior to the start of the bushfire season, but rather so managed their property that, on 20 December 2019, there was long, fully cured, standing, grass growing beneath, through and around the wire fence;

59A.4 failed to establish and maintain a fire break of 7 metres around the perimeter of the plantation;

59A.5 failed to maintain existing vehicle access tracks on the property free of grass or other vegetation.

60. Had the Georgious not breached the Occupiers Duty as alleged in paragraph 59 above, the Tree would not have fallen onto the powerline and the Cudlee Creek bushfire would not have occurred.

60A Further, and in the alternative, had the Georgious not breached the Occupiers Duty as alleged in paragraph 59A above, the Cudlee Creek bushfire would not have ignited, propagated and/or spread from the property.

Particulars

Expert Report of Mark Gilmore dated 14 February 2022 pages 94-102.

61. In the premises, the Cudlee Creek bushfire was caused by the Georgious' negligence.

62. By reason of the Georgious' negligence, the applicant and each of the group members suffered loss and damage.

Particulars

The applicant refers to the particulars sub-joined to paragraph 45 above.

COMMON QUESTIONS OF LAW OR FACT

63. The questions of law or fact common to the claims of the applicant and each of the group members are:

63.1. how the Cudlee Creek bushfire started;

63.2. whether the SAPN Duty was owed by SAPN to the applicant and group members, and if so the content of the duty;

63.3. whether the Cudlee Creek bushfire was caused by a breach by SAPN of the SAPN Duty;

63.4. whether the applicant and subgroup members suffered actionable nuisance created by the Georgious;

63.5. whether the Occupiers Duty was owed by the Georgious to the applicant and group members, and if so the content of the duty;

63.6. whether the Cudlee Creek bushfire was caused by a breach by the Georgious of the Occupiers Duty;

63.7. what are the principles for identifying and measuring compensable losses suffered by the claimants resulting from the breaches of duty or nuisance alleged.

Part 4: Orders sought

1. Damages
2. Interest
3. Costs

Certification
Mark appropriate section below with an 'x'

[**X**] As the filing lawyer, I certify that this pleading is filed in accordance with the instructions of the party/parties for whom I act. There is a proper basis for each allegation of fact in the pleading and it complies with the Rules of Court.

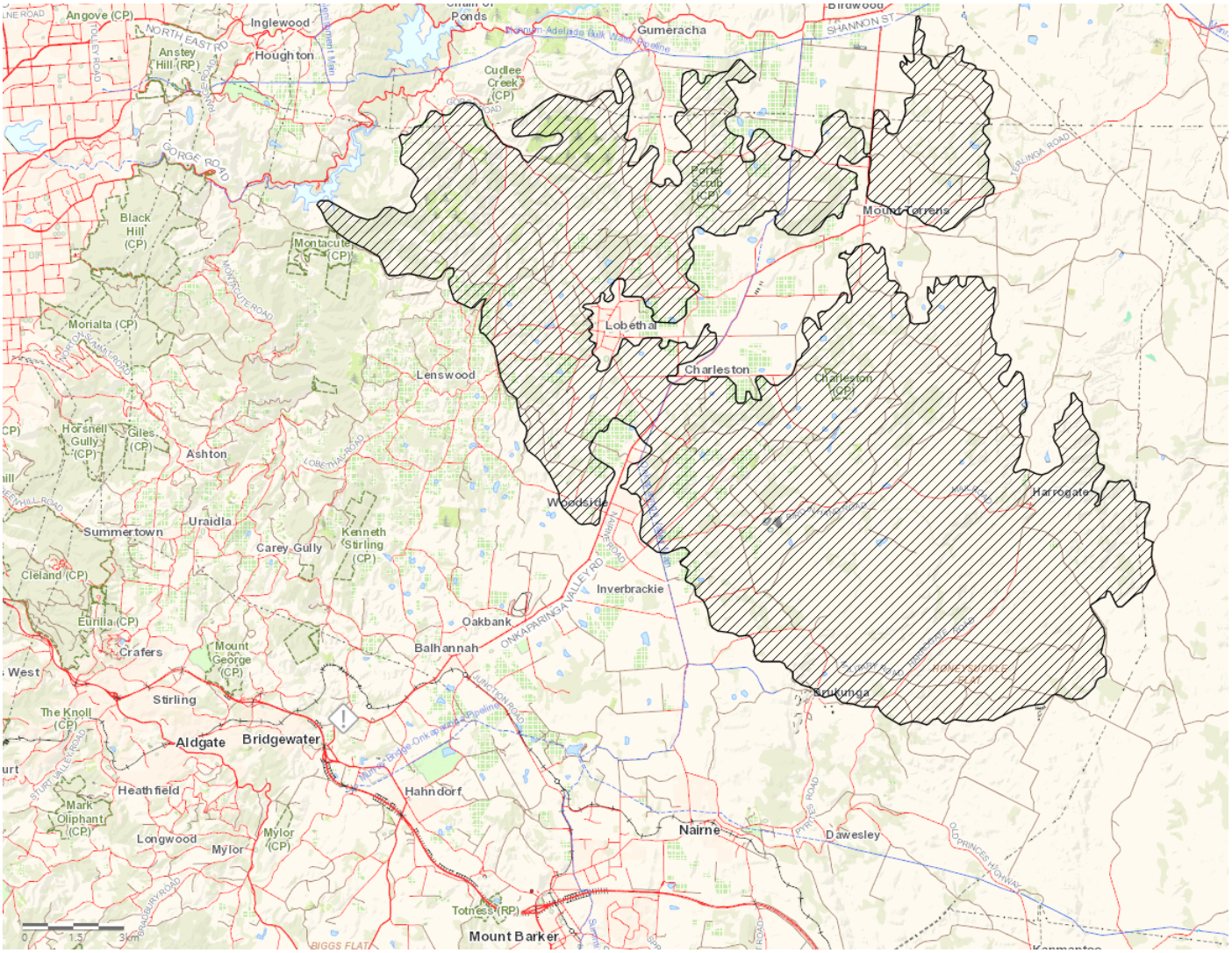
…….
Signature

Kathryn Amy Emeny

…….
Name printed

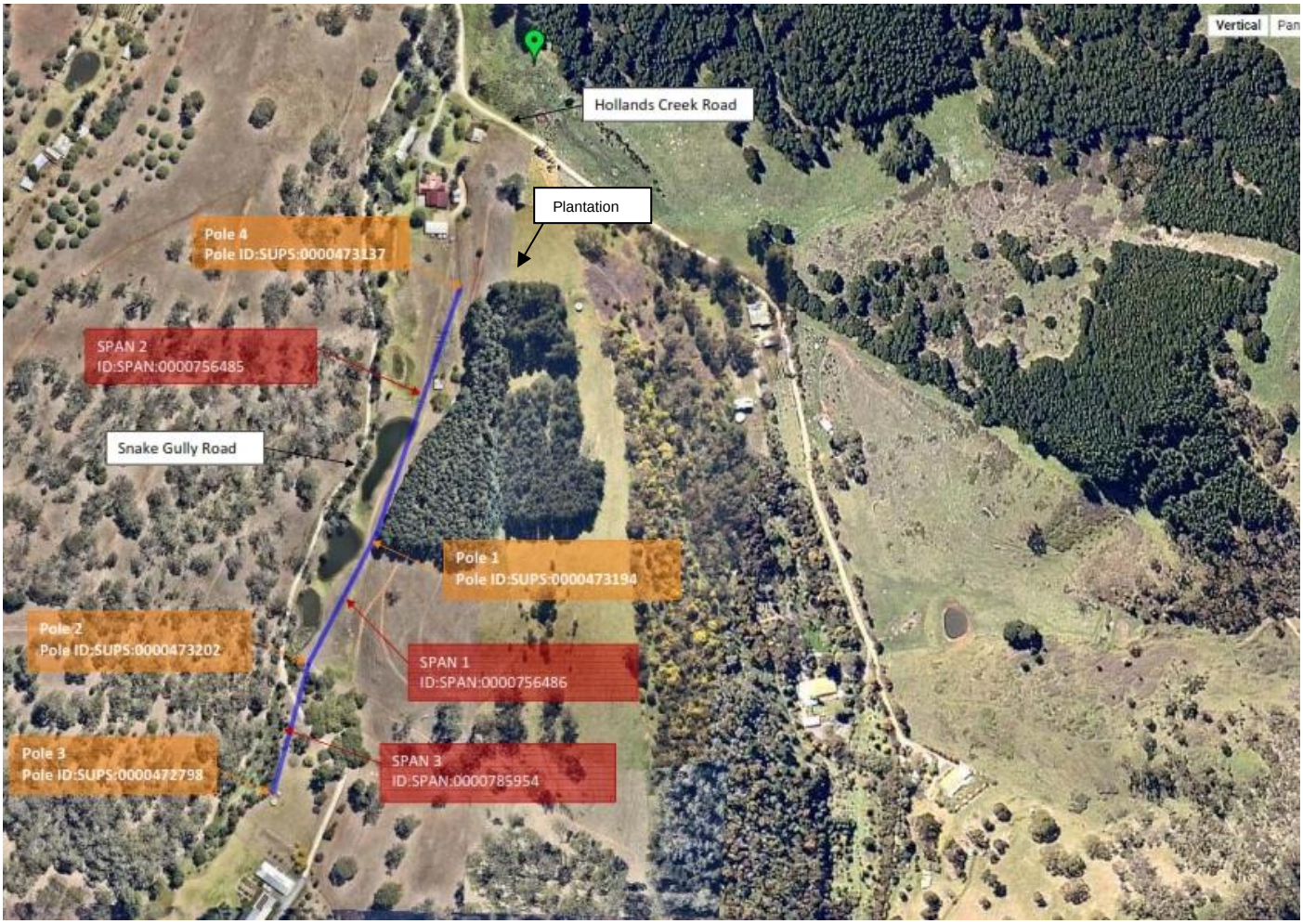
22 April 2022
…….
Date

Annexure A
Cudlee Creek Bushfire Area



Annexure B

Aerial photograph identifying powerline



Annexure C

Photograph identifying slope, relative height of trees and powerline

Annexure D

Photograph identifying remaining stump of tree