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Case Number: **CCAT 26/2022**

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DEFENCE – Revision 1

SUPREME COURT OF SOUTH AUSTRALIA
 CIVIL JURISDICTION

KRISTEN TROY THROWER
 First Applicant

SA POWER NETWORKS
 First Respondent

MICHAEL GEORGIU
 Second Respondent

MARIANNE GEORGIU
 Third Respondent

Second and Third Respondents	Michael Georgiou and Marianne Georgiou		
Party Title	Full Name (including Also Known as, capacity (eg Administrator, Liquidator, Trustee) and Litigation Guardian Name (if applicable))		
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	Type - Number		

Defence

The defence of the abovenamed party is set out in the attached Defence Details.

Service

The party filing this document is required to serve it on all other parties in accordance with the Rules of Court.

DEFENCE DETAILS

In answer to the Statement of Claim ([Revision 1](#)) filed by the Applicant on ~~10 March 2021~~ [22 April 2022](#) (**Claim**), the Second Respondent and the Third Respondent (together **Georgious**) say as follows.

Terms defined in the Claim have the same meaning when used in this Defence.

Part 1: Response to background/uncontroversial matters

Preliminary

1. As to paragraph 1 of the Claim, the Georgious:
 - 1.1 admit that there was a bushfire on 20 December 2019 which burnt over the property;
 - 1.2 otherwise ~~do not~~ admit the allegations; and
 - 1.3 ~~says~~ further that they intend to plead further in respect of the causes and effects of the bushfire following provision of discovery, provision to them of the reports of all investigations into the bushfire including those conducted (or being conducted) by or on behalf of the South Australian Country Fire Service (**CFS**), SAPN and/or Active Tree Services Pty Ltd (**Active Tree Services**), the Coroner's Court and the South Australia Police, including the Major Crime division, and the service of expert reports.
2. As to paragraph 2 of the Claim, the Georgious:
 - 2.1 do not know and do not admit the allegations; and
 - 2.2 refer to and repeat the matters pleaded in paragraph 1.3 above.

The Applicant and group members

3. As to paragraph 3 of the Claim, the Georgious:
 - 3.1 do not know and do not admit the allegations; and
 - 3.2 refer to and repeat the matters pleaded in paragraph 1.3 above.
4. The Georgious do not plead to paragraph 4 of the Claim as it does not contain any allegations against them.
5. The Georgious do not plead to paragraph 5 of the Claim as it does not contain any allegations against them.
6. The Georgious do not plead to paragraph 6 of the Claim as it does not contain any allegations against them.

South Australian Power Networks

7. The Georgious do not plead to paragraph 7 of the Claim as it does not contain any allegations against them.

The Georgious

8. As to paragraph 8 of the Claim, the Georgious admit that at all material times since about February 2012 they 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, save as pleaded in paragraph 14.4 below; and
- 8.3 the occupiers of the property.

The Cudlee Creek feeder and the powerline

9. As to paragraph 9 of the Claim, the Georgious:
- 9.1 do not know and do not admit the allegations; and
- 9.2 refer to and repeat the matters pleaded in paragraph 1.3 above.
10. As to paragraph 10 of the Claim, the Georgious:
- 10.1 admit that at all material times, there has been an overhead powerline running north-south from Hollands Creek Road, through the property and onto neighbouring land to the south of the property (**Powerline**);
- 10.2 say that in the premises of the matters pleaded in the preceding subparagraph, the Powerline was a "public powerline" for the purposes of the *Electricity Act 1996* (SA);

Particulars

- 10.2.1 See Electricity Act, s 4.
- 10.3 otherwise do not know and do not admit the allegations; and
- 10.4 refer to and repeat the matters pleaded in paragraph 1.3 above.
11. As to paragraph 11 of the Claim, the Georgious:
- 11.1 admit that the Powerline, insofar as it ran from Hollands Creek Road through the property, was approximately 600 metres long;

11.2 otherwise do not know and do not admit the allegations; and

11.3 refer to and repeat the matters pleaded in paragraph 1.3 above.

11A. The Georgious admit the allegations in paragraph 11A of the Claim.

Part 2 : Response to other facts forming the basis of the claim

The plantation and the tree

12. As to paragraph 12 of the Claim, the Georgious:

12.1 admit that from a time before February 2012, there were pine trees growing in the area identified in the aerial photograph in Annexure B (pine tree area);

12.2 say further that:

12.2.1 the pine trees were growing on the property when they purchased it; and

12.2.2 they have never used or harvested, and have never sought to use or harvest, the pine trees as part of any tree farming operation or for any commercial benefit; and

12.3 otherwise do not admit the allegations.

13. As to paragraph 13 of the Claim, the Georgious:

13.1 admit that on and prior to 20 December 2019:

13.1.1 the trees on the western boundary of the pine tree area were on a slope above and to the east of the Powerline; and

13.1.2 some trees on the southern quarter of the western boundary of the pine tree area were of a sufficient height above the pPowerline such that, if they fell in the direction of the pPowerline, they would hit it;

13.2 refer to and repeats the matters pleaded in paragraphs 14.3 to 14.414.5 below; and

13.3 otherwise deny the allegations.

14. As to paragraph 14 of the Claim, the Georgious:

14.1 do not know and do not admit the allegations;

14.2 refer to and repeat the matters pleaded in paragraph 1.3 above;

14.3 further:

14.3.1 refer to and repeat the matters pleaded in paragraph 10.2 above;

- 14.3.2 say that at all material times SAPN was an “*electricity entity*” for the purposes of the Electricity Act;
- 14.3.3 say that the property was in a “*bushfire risk area*” for the purposes of the Electricity Act;
- 14.3.4 say that in the premises of the matters pleaded in the preceding subparagraphs, at all material times;

- (a) pursuant to s 55(1) of the Electricity Act, SAPN had a duty to take reasonable steps to keep vegetation clear of the Powerline in accordance with the principles of vegetation clearance;
- (b) pursuant to reg 4(2) of the *Electricity (Principles of Vegetation Clearance) Regulations 2010* (SA), SAPN’s obligations under s 55(1) included ensuring that no growth or regrowth was likely to intrude into the clearance zone around the Powerline within three years, taking into account the reasonable ascertainable characteristics of the Powerline and vegetation, and no part of the vegetation, growth or regrowth was likely to bend in the wind into the clearance zone at the time of clearance or within three years, taking into account the reasonably ascertainable characteristics of the pPowerline and vegetation and winds that might reasonably be expected in the area;
- (c) by reason of s 55(6) of the Electricity Act, any common law and/or other statutory duties on the Georgious with respect to the clearance of vegetation from the Powerline were excluded; and
- (d) pursuant to s 55AA(1) of the Electricity Act, SAPN had the power to clear vegetation if it was satisfied that the vegetation was likely to fall onto the Powerline so as, *inter alia*, to damage the pPowerline, or give rise to a risk of fire, even if SAPN had no duty to carry out such work;

14.4 say further that:

- 14.4.1 in the period since at least approximately February 2012 maintenance has been undertaken on the trees in the pine tree area by Active Tree Services as subcontractor or agent for SAPN;
- 14.4.2 in that period until 20 December 2019, Active Tree Services visited the property on at least three or four occasions a year;
- 14.4.3 during its visits, Active Tree Services would inspect, trim or otherwise maintain the trees in the pine tree area as it saw fit;

- 14.4.4 at all times, Active Tree Services' fees were paid for by SAPN and not by the Georgious;
- 14.4.5 in the initial period from February 2012 until a time relatively soon thereafter, Active Tree Services' representatives would arrive at the property at their time of choosing, with no prior warning to the Georgious, access the property and undertake the works in respect of the Powerline they saw fit, and, in the subsequent period, from a time relatively soon after February 2012, Active Tree Services' representative would inform the Georgious by telephone that they were coming prior to their arrival, but would otherwise arrive at the property at their time of choosing, access the property and undertake the works in respect of the Powerline they saw fit;
- 14.4.6 Active Tree Services' last visit to the property prior to 20 December 2019 was ~~in early on 12~~ December 2019, ~~only eight days approximately two weeks~~ before 20 December 2019. On that occasion, Active Tree Services' representatives accessed the property and undertook works in respect of the pine tree area and the Powerline they saw fit;
- 14.4.7 to their knowledge, neither SAPN nor Active Tree Services had ever exercised their powers under s 55A of the Electricity Act to undertake additional clearance works in respect of the pine tree area; and
- 14.4.8 on three prior occasions since 2012 when parts of a branch or trees had fallen on the Powerline or the adjacent private line, the most recent being on about 19 July 2019, SAPN and/or Active Tree Services came and cut the fallen branch or trees to free the relevant line. On none of these occasions did SAPN or Active Tree Services exercise their powers under s 55A of the Electricity Act to undertake additional clearance works in respect of the pine tree area; and

Particulars

- (a) The first occasions was in approximately 2014 or 2015. On that occasion, a minor branch fell on the Powerline approximately mid-way along the length of the span that runs through the property, adjacent to the third dam on the property. The branch lay over the Powerline, which caused the Powerline to bend lower than usual, but the Powerline remained well above ground level. SAPN and/or Active Tree Services attended and cut the branch, which allowed the Powerline to return to what appeared to be its normal position.
- (b) The second occasion was in approximately 2017 or 2018. On that occasion, 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. The tree lay over the Powerline, which caused the Powerline to bend lower than usual, but the Powerline remained well above ground level. SAPN and/or Active

Tree Services attended and cut the tree, which allowed the Powerline to return to what appeared to be its normal position.

(c) The third occasion was on about 19 July 2019. On that occasion, a tree fell on a private line that powers the Georgious' bore, which line is located towards the northern end of the span that runs through the property. The tree brought down the private line. SAPN and/or Active Tree Services attended and put the private line back up in place.

14.5 say that in the premises of the matters pleaded in the preceding subparagraphs, SAPN and/or Active Tree Services, and not the Georgious, was (or were) responsible for any vegetation clearance required in respect of the pine tree area.

15. As to paragraph 15 of the Claim, the Georgious:

15.1 do not know and do not admit the allegations;

15.2 refer to and repeat the matters pleaded in paragraph 1.3 above; and

15.3 further, refer to and repeat the matters pleaded in paragraphs 14.3 to 14.5 above.

16. As to paragraph 16 of the Claim, the Georgious:

16.1 do not know and do not admit the allegations;

16.2 refer to and repeat the matters pleaded in paragraph 1.3 above;

16.3 refer to and repeat the matters pleaded in paragraphs 14.3 to 14.5 above; and

16.4 say that in the premises of the above, SAPN and/or Active Tree Services was (or were) responsible for any vegetation clearance required in respect of the pine tree area, including, if it was located there, the alleged Tree.

16A. As to paragraph 16A of the Claim, the Georgious:

16A.1 admit the allegations in paragraphs 16A.1, 16A.3 and 16A.5;

16A.2 do not know and do not admit the allegations in paragraphs 16A.2 and 16A.4; and

16A.3 refer to and repeat the matters pleaded in paragraph 1.3 above.

Weather and forecast fire conditions

17. As to paragraph 17 of the Claim, the Georgious:

17.1 admit the allegations in subparagraph 17.1 insofar as they concern the property and the Powerline;

17.2 otherwise do not know and do not admit the allegations; and

17.3 refer to and repeat the matters pleaded in paragraph 1.3 above.

18. As to paragraph 18 of the Claim, the Georgious:

18.1 admit that on 17, 18 and 19 December 2019 temperatures had been recorded in South Australia, including the Mount Lofty Ranges, near or above 40°C; and

18.2 otherwise do not know what is meant by the phrase "*extreme heat wave conditions*" and do not admit the allegations.

19. As to paragraph 19 of the Claim, the Georgious admit the allegations.:

~~19.1 do not know and do not admit the allegations; but~~

~~19.2 will request a copy of the Catastrophic TFB Declaration from the Applicant.~~

20. As to paragraph 20 of the Claim, the Georgious:

~~20.1 do not know and do not admit the allegations BOM forecast, amongst other things, the matters pleaded;~~

~~20.2 say that by the same forecast, the BOM also forecast that the atmospheric instability according to the Continuous Haines (C-Haines) index would be 13; andbut~~

~~20.3 say further that 13 is the highest figure on the C-Haines index and indicates the highest level of atmospheric instabilitywill request a copy of the BOM Fire Weather Warning from the Applicant.~~

The Cudlee Creek bushfire

21. As to paragraph 21 of the Claim, the Georgious:

21.1 admit the allegations insofar as they concern the Powerline; and

21.2 otherwise do not know and do not admit the allegations.

22. As to paragraph 22 of the Claim, the Georgious:

22.1 do not know and do not admit the allegations; and

22.2 refer to and repeat the matters pleaded in paragraph 1.3 above.

23. As to paragraph 23 of the Claim, the Georgious:

23.1 do not know and do not admit the allegations; and

23.2 refer to and repeat the matters pleaded in paragraph 1.3 above.

- 24. As to paragraph 24 of the Claim, the Georgious:
 - 24.1 do not know and do not admit the allegations; and
 - 24.2 refer to and repeat the matters pleaded in paragraph 1.3 above.
- 25. As to paragraph 25 of the Claim, the Georgious:
 - 25.1 do not know and do not admit the allegations; and
 - 25.2 refer to and repeat the matters pleaded in paragraph 1.3 above.
- 26. As to paragraph 26 of the Claim, the Georgious:
 - 26.1 do not know and do not admit the allegations; and
 - 26.2 refer to and repeat the matters pleaded in paragraph 1.3 above.
- 27. As to paragraph 27 of the Claim, the Georgious:
 - 27.1 do not know and do not admit the allegations; and
 - 27.2 refer to and repeat the matters pleaded in paragraph 1.3 above.

SAPN'S ALLEGED NEGLIGENCE

Alleged duty of care

- 28. The Georgious do not plead to paragraph 28 of the Claim as it does not contain any allegations against them.
- 29. The Georgious do not plead to paragraph 29 of the Claim as it does not contain any allegations against them.
- 30. The Georgious do not plead to paragraph 30 of the Claim as it does not contain any allegations against them.
- 31. The Georgious do not plead to paragraph 31 of the Claim as it does not contain any allegations against them.
- 32. The Georgious do not plead to paragraph 32 of the Claim as it does not contain any allegations against them.
- 33. The Georgious do not plead to paragraph 33 of the Claim as it does not contain any allegations against them.
- 34. The Georgious do not plead to paragraph 34 of the Claim as it does not contain any allegations against them.

Alleged breach – inspections

34A. The Georgious do not plead to paragraph 34A of the Claim as it does not contain any allegations against them.

34B. The Georgious do not plead to paragraph 34B of the Claim as it does not contain any allegations against them.

34C. The Georgious do not plead to paragraph 34C of the Claim as it does not contain any allegations against them.

34D. The Georgious do not plead to paragraph 34D of the Claim as it does not contain any allegations against them.

34E. The Georgious do not plead to paragraph 34E of the Claim as it does not contain any allegations against them.

34F. The Georgious do not plead to paragraph 34F of the Claim as it does not contain any allegations against them.

34G. The Georgious do not plead to paragraph 34G of the Claim as it does not contain any allegations against them.

Alleged breach – ACR settings or disconnection

34H. The Georgious do not plead to paragraph 34H of the Claim as it does not contain any allegations against them.

34I. The Georgious do not plead to paragraph 34I of the Claim as it does not contain any allegations against them.

34J. The Georgious do not plead to paragraph 34J of the Claim as it does not contain any allegations against them.

34K. The Georgious do not plead to paragraph 34K of the Claim as it does not contain any allegations against them.

34L. The Georgious do not plead to paragraph 34L of the Claim as it does not contain any allegations against them.

34M. The Georgious do not plead to paragraph 34M of the Claim as it does not contain any allegations against them.

35. The Georgious do not plead to paragraph 35 of the Claim as it does not contain any allegations against them.

- 36. The Georgious do not plead to paragraph 36 of the Claim as it does not contain any allegations against them.
- 37. The Georgious do not plead to paragraph 37 of the Claim as it does not contain any allegations against them.
- 37A. The Georgious do not plead to paragraph 37A of the Claim as it does not contain any allegations against them.
- 38. The Georgious do not plead to paragraph 38 of the Claim as it does not contain any allegations against them.
- 39. The Georgious do not plead to paragraph 39 of the Claim as it does not contain any allegations against them.
- 40. The Georgious do not plead to paragraph 40 of the Claim as it does not contain any allegations against them.
- 41. The Georgious do not plead to paragraph 41 of the Claim as it does not contain any allegations against them.

Alleged causation and loss

- 41A. The Georgious do not plead to paragraph 41A of the Claim as it does not contain any allegations against them.
- 42. The Georgious do not plead to paragraph 42 of the Claim as it does not contain any allegations against them.
- 43. The Georgious do not plead to paragraph 43 of the Claim as it does not contain any allegations against them.
- 43A. The Georgious do not plead to paragraph 43A of the Claim as it does not contain any allegations against them.
- 44. The Georgious do not plead to paragraph 44 of the Claim as it does not contain any allegations against them.
- 45. The Georgious do not plead to paragraph 45 of the Claim as it does not contain any allegations against them.

SAPN'S ALLEGED ETSA LIABILITY

- 45A. The Georgious do not plead to paragraph 45A of the Claim as it does not contain any allegations against them.

45B. The Georgious do not plead to paragraph 45B of the Claim as it does not contain any allegations against them.

45C. The Georgious do not plead to paragraph 45C of the Claim as it does not contain any allegations against them.

45D. The Georgious do not plead to paragraph 45D of the Claim as it does not contain any allegations against them.

45E. The Georgious do not plead to paragraph 45E of the Claim as it does not contain any allegations against them.

45F. The Georgious do not plead to paragraph 45F of the Claim as it does not contain any allegations against them.

45G. The Georgious do not plead to paragraph 45G of the Claim as it does not contain any allegations against them.

45H. The Georgious do not plead to paragraph 45H of the Claim as it does not contain any allegations against them.

45I. The Georgious do not plead to paragraph 45I of the Claim as it does not contain any allegations against them.

45J. The Georgious do not plead to paragraph 45J of the Claim as it does not contain any allegations against them.

GEORGIUS' ALLEGED NUISANCE

46. As to paragraph 46 of the Claim, the Georgious:

46.1 admit that at all material times they knew:

46.1.1 that the Powerline ran through the property;

46.1.2 the matters pleaded in subparagraph 46.2 and paragraph 12 of the Claim; ~~and~~

46.1.3 the matters pleaded in paragraph 13.1 above; and

46.1.4 the matters pleaded in paragraphs 16A.1, 16A.3 and 16A.5 above;

46.2 do not know and do not admit the allegations in subparagraph 46.3;

46.3 refer to and repeat the matters pleaded in paragraph 1.3 above;

46.4 refer to and repeat the matters pleaded in paragraphs 13 to 16A above; and

46.5 otherwise deny the allegations.

47. As to paragraph 47 of the Claim, the Georgious:

47.1 refer to and repeat the matters pleaded in paragraphs 14.3 to 14.5 above;

47.2 in the premises of the above matters, including s 55(6) of the Electricity Act, say that they were under no obligation to inspect, assess, maintain, nurture and/or manage the trees within the pine tree area;

47.3 further, refer to and repeat the matters pleaded in paragraph 59A below;

47.4 in the premises of the matters pleaded in the preceding subparagraph, say that they did appropriately manage, control and reduce the vegetation loads on the property during periods of high bushfire risk; and

47.5 otherwise deny the allegations.

48. As to paragraph 48 of the Claim, the Georgious:

48.1 refer to and repeat the matters pleaded in paragraphs 14.3 to 14.5 and 47.2 above, and 59A and 60A below; and

48.2 otherwise deny the allegations.

49. As to paragraph 49 of the Claim, the Georgious:

49.1 deny the allegations;

49.2 refer to and repeat the matters pleaded in paragraphs 14.3 to 14.5 and 47.2 above, and 59A and 60A below; and

49.3 say that the Landholder subgroup as pleaded is not sufficiently defined for the purposes of a claim in nuisance.

50. As to paragraph 50 of the Claim, the Georgious:

50.1 refer to and repeat the matters pleaded in paragraphs 14.3 to 14.5, 47 and 48 above, and 59A and 60A below; and

50.2 otherwise deny the allegations.

51. As to paragraph 51 of the Claim, the Georgious:

51.1 refer to and repeat the matters pleaded in paragraphs 14.3 to 14.5, 47, 48 and 50 above, and 59A and 60A below; and

51.2 otherwise deny the allegations.

GEORGIOUS' ALLEGED NEGLIGENCE

52. As to paragraph 52 of the Claim, the Georgious refer to and repeat the matters pleaded in paragraphs 8, 12 to 16A, 46 and 47 above.
53. As to paragraph 53 of the Claim, the Georgious:
- 53.1 refer to and repeat the matters pleaded in paragraphs 14.3 to 14.5 and 47.2 above;
- 53.2 say that in the premises, SAPN and/or Active Tree Services had the right, responsibility and duty to inspect, assess, maintain, nurture and/or manage the pine tree area insofar as any such inspection, assessment, maintenance, nurturing and/or management affected the Powerline; and
- 53.3 otherwise deny the allegations.
54. As to paragraph 54 of the Claim, the Georgious:
- 54.1 admit the allegations in subparagraphs 54.1 and 54.1A;
- 54.2 do not admit the allegations in subparagraph 54.2;
- 54.3 refer to and repeat the matters pleaded in paragraphs 14.3 to 14.5, 47.2 and 53.2 above, and 59A and 60A below;
- 54.4 otherwise deny the allegations in subparagraph 54.3; and
- 54.5 say that to the extent that the Cudlee Creek class members were dependent on the matters alleged in paragraphs 54.3(a) and (b), they were dependent on SAPN and/or Active Tree Services.
55. As to paragraph 55 of the Claim, the Georgious:
- 55.1 refer to and repeat the matters pleaded in paragraphs 52 to 54 above;
- 55.2 in the premises, deny that they owed any duty in respect of vegetation clearance in respect of the Powerline; and
- 55.3 say that to the extent any duty in respect of vegetation clearance in respect of the Powerline was owed to the Cudlee Creek class members, it was owed by SAPN and/or Active Tree Services;
- 55.4 refer to and repeat the matters pleaded in paragraph 58A below;
- 55.5 in the premises, deny that they owed a broader duty to the Cudlee Creek class members; and

55.6 say further or in the alternative that to the extent they owed a broader duty, at most, that duty extended to grazing their property as a bushfire mitigation strategy.

56. As to paragraph 56 of the Claim, the Georgious:

56.1 deny the allegations;

56.2 further refer to and repeat the matters pleaded in paragraphs 14.3 to 14.5, 47.2 and 53.2 above; and

56.3 say that in the premises of the matters pleaded in the preceding subparagraph;

56.3.1 any obligation to remove, alternatively to prune, any dead trees on the western edge of the pine tree area fell upon SAPN and/or Active Tree Services and not on the Georgious;

56.3.2 they had no obligation to request that SAPN remove or prune dead trees from the plantation; and

56.3.3 that even had they made such a request, it was entirely SAPN's decision whether or not to undertake any tree removal or pruning works as a result, such that the making of a request could not, in and of itself, have reduced or eliminated the risk of fire

56.4 refer to and repeat the matters pleaded in paragraphs 58A and 59A below; and

56.5 say that in the premises of the matters pleaded in the preceding subparagraph, they developed and implemented a reasonable fire management plan and undertook reasonable precautions that land owners in their position would be expected to take to reduce or eliminate the risk of a fire starting in the circumstances pleaded.

57. As to paragraph 57 of the Claim, the Georgious:

57.1 ~~on the assumption that the reference to paragraph 38 in the Claim is meant to be a reference to paragraph 56 of the Claim,~~ do not admit the matters alleged;

57.2 refer to and repeat the matters pleaded in paragraph 1.3 above;

57.3 further, refer to and repeat the matters pleaded in paragraphs 14.3 to 14.5, 47.2, 53.2 and 56.3 above; and

57.4 say that in the premises of the matters pleaded in the preceding subparagraph, any burden of removing, alternatively pruning, any dead trees on the western edge of the pine tree area fell upon SAPN and/or Active Tree Services and not on the Georgious;

57.5 further, refer to and repeat the matters pleaded in paragraph 59A below;

57.6 say that in the premises of the matters pleaded in the preceding subparagraph, they developed and implemented a reasonable fire management plan and undertook reasonable precautions that land owners in their position would be expected to take to reduce or eliminate the risk of a fire starting in the circumstances pleaded;

57.7 further, refer to and repeat the matters pleaded in paragraphs 19 to 21 above and 60A below; and

57.8 say that in the premises of the matters pleaded in the preceding subparagraph, in light of the weather conditions on 20 December 2019, no proportionate or reasonable precautions that the Georgious could have taken could have eliminated or reduced the risk and potential gravity of the harm that might have been caused by a fire igniting on the property that day.

58. As to paragraph 58 of the Claim, the Georgious:

58.1 refer to and repeat the matters pleaded in paragraph 55 to 57 above; and

58.2 in the premises, deny the allegations.

58A. As to paragraph 58A of the Claim, the Georgious:

58A.1 deny the allegations; and

58A.2 say that, at most, it was reasonable to have expected that property owners in their position would have grazed their property as a bushfire mitigation strategy.

59. As to paragraph 59 of the Claim, the Georgious:

59.1 refer to and repeat the matters pleaded in paragraph 55 to 58 above; and

59.2 in the premises, deny the allegations.

59A. As to paragraph 59A of the Claim, the Georgious:

59A.1 deny the allegations in subparagraph 59A.1 and say that prior to the bushfire on 20 December 2019 they had in place a fire management plan;

Particulars

(a) The Georgious' fire management plan was not recorded in writing but was known to both of the Georgious.

59A.2 say further that, consistent with their fire management plan, prior to the bushfire on 20 December 2019 they:

59A.2.1 installed a 100,000 litre water tank on a hill which can operate on gravity pressure alone, and which has multiple water access points around the property;

- 59A.2.2 installed a further 50,000 litre water tank near the shed behind the house on the property;
- 59A.2.3 maintained roll out fire hoses at points around the infrastructure on the property;
- 59A.2.4 maintained firebreaks around the property's boundary fence, to the extent possible given the property's landscape, by slashing and/or spraying grass and vegetation on their side of the fence line on at least an annual basis, with further slashing and/or spraying undertaken as required, together with mowing and grazing. More specifically:
- (a) the southern boundary of the property was sprayed to a width of approximately 2m to 3m;
 - (b) the eastern boundary of the property was grazed;
 - (c) part of the northern boundary of the property was mowed on a weekly basis all year round, and part was slashed annually (where the landscape permitted); and
 - (d) the western boundary of the property was both grazed and sprayed;
- 59A.2.5 mowed parts of the property on a weekly basis all year round;
- 59A.2.6 undertook slashing of service tracks and around infrastructure, including the house and the sheds, by way of multiple passes (depending on the landscape) with a slasher that is approximately 1.8m wide, on at least an annual basis, with further slashing undertaken as required;
- 59A.2.7 undertook regular spraying around the property for weeds and excess growth on at least an annual basis, with further spraying undertaken as required;
- 59A.2.8 continuously stocked the property with between 20 and 40 sheep or lambs to manage the height and quantity of grass on the property. As at 20 December 2019, there were 38 sheep or lambs on the property, which was more than adequate for the management of the height and quantity of grass on the property;
- 59A.2.9 to the extent permitted by the weather, undertook regular burning across the property, usually in the winter months;
- 59A.2.10 maintained a track under the length of the Powerline through the property which was suitable for use by their vehicles, SAPN/ATS's vehicles and CFS appliances, including on 20 December 2019;
- 59A.2.11 maintained a landline telephone which could be used in emergencies given the very limited mobile telephone reception on the property; and

59A.2.12 collaborated with their neighbour on the southern boundary of the property, Andrew Geytenbeek, who is an officer with the South Australian Metropolitan Fire Service and a former Captain of the Cuddlee Creek branch of the CFS, in respect of fire management matters, including the maintenance of fire breaks;

59A.3 say further that at all material times there were seven dams on the property containing water that could be used for fighting fires; and

59A.4 say that in the premises of the matters pleaded in the preceding two subparagraphs, the Georgious had taken steps well beyond what could reasonably be required of landowners in their position to manage the risk of ignition, propagation and/or spread of fire on and from the property.

60. As to paragraph 60 of the Claim, the Georgious:

60.1 refer to and repeat the matters pleaded in paragraph 59 above; and

60.2 in the premises, deny the allegations.

60A. As to paragraph 60A of the Claim, the Georgious:

60A.1 refer to and repeat the matters pleaded in paragraph 59A above;

60A.2 in the premises of the matters pleaded in the preceding subparagraph, deny the allegations;

60A.3 further, refer to and repeat the matters pleaded in paragraphs 19 to 21 above; and

60A.4 say that in the premises of the matters pleaded in the preceding subparagraph, no reasonable steps that the Georgious could have taken would have prevented the ignition, propagation and/or spread of the fire from the property on 20 December 2019.

61. As to paragraph 61 of the Claim, the Georgious:

61.1 refer to and repeat the matters pleaded in paragraphs 52 to 60A above; and

61.2 in the premises, deny the allegations.

62. As to paragraph 62 of the Claim, the Georgious:

62.1 refer to and repeat the matters pleaded in paragraphs 52 to 61 above; and

62.2 in the premises, deny the allegations.

COMMON QUESTIONS OF LAW OR FACT

63. The Georgious do not plea to paragraph 63 as it does not contain any allegations against them.

Part 3: Orders sought

The Georgious deny that the Applicant or any group member is entitled to the relief sought from them, or any relief from them at all.

Certification

Mark appropriate section below with an '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.
- As a Litigant in Person (self-represented), I am responsible for filing this pleading. Each allegation of fact in the pleading is true to the best of my knowledge, information and belief.



.....
Signature

R. M. SMITH.....

Name printed

20 MAY 2022.....

Date