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To be inserted by Court

Case Number:

Date Filed:

FDN:

**DEFENCE (REVISION 1)**

SUPREME COURT OF SOUTH AUSTRALIA  
CIVIL JURISDICTION

**KRISTEN TROY THROWER**  
Applicant

**SA POWER NETWORKS**  
First Respondent

**MICHAEL GEORGIU**  
First Respondent

**MARIANNE GEORGIU**  
Second Respondent

First Respondent	SA Power Networks			
Address for service	C/- Wotton +Kearney, Level 15/600 Bourke Street			
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	<b>City/town/suburb</b>	<b>State</b>	<b>Postcode</b>	<b>Country</b>
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**Amended Defence**  
The **amended** 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.

**AMENDED DEFENCE DETAILS**

In answer to the Statement of Claim filed by the Applicant on 10 March 2021 (**Claim**), the First Respondent says as follows.

The headings and defined terms used in the Claim are adopted for convenience only, except where otherwise indicated. The use of the headings and the defined terms employed in the Claim does not constitute any admission by the First Respondent.

**Part 1: Response to background/uncontroversial matters*****Preliminary***

1 It admits the allegations in paragraph 1.

2 It admits the allegations in paragraph 2.

***The Applicant and group members***

3 It does not know and therefore does not admit the allegations in paragraph 3.

4 It admits the allegations in paragraph 4.

5 It does not admit the allegations in paragraph 5 and says that it:

5.1 has no detail of who each of the group members are or what their alleged loss and damage is; and

5.2 relies on the provisions of Part 8 of the *Civil Liability Act 1936* (SA) (**Civil Liability Act**) in respect of each group member who is alleged to have suffered personal injury.

6 It does not admit the allegations in paragraph 6.

***SA Power Networks***

7 As to paragraph 7:

7.1 in relation to paragraph 7.1:

(a) it admits that SA Power Networks is a partnership of Spark Infrastructure (No.1) Pty Ltd (ABN 54 091 142 380), Spark Infrastructure (No.2) Pty Ltd (ABN 19 091 143 038), Spark

Infrastructure (No.3) Pty Ltd (ABN 50 091 142 362), CKI Utilities Development Ltd (ABN 65 090 718 880) and PAI Utilities Development Ltd (ABN 82 090 718 951); and

(b) it otherwise denies the allegations contained therein;

7.2 in relation to paragraph 7.2:

(a) it admits it carried on a business as a distributor of electricity to residential and business customers in South Australia under the *Electricity Act 1966* (SA) (**Electricity Act**) pursuant to a licence granted under the *Electricity Act* (**Distribution Business**);

7.3 in relation to paragraph 7.3:

(a) it admits that in carrying out the Distribution Business it was an “*electricity entity*” and the holder of a licence authorising its operation of a transmission or distribution network within the meaning of s 4 of the *Electricity Act*, and

(b) otherwise denies the allegations contained therein;

7.4 in relation to paragraphs 7.4 to 7.9:

(a) it says that in the course of and for the purposes of the Distribution Business, it leased and operated network infrastructure that carries electricity from a transmission network to the point at which supply is passed to end users of electricity in the licenced area (**Distribution Network**);

(b) it says further that as at 20 December 2019, the Distribution Network:

(i) covers more than 178,000 square kilometres and servicing around 900,000 customers ranging from isolated farms in rural areas to regional and metropolitan residential homes, businesses, industry precincts and city centres; and

(ii) contained around 87,000 kilometres of power lines;

(c) it says further that is the successor for some, but not all, rights and liabilities of the former ETSA;

(d) admits the allegations in paragraph 7.9; and

7.5 otherwise denies the allegations contained therein.

***The Georgious***

8 It does not know and therefore does not admit the allegations in paragraph 8.

***The Cudlee Creek feeder and the powerline***

9 It admits the allegations in paragraph 9.

10 It does not admit the allegations in paragraph 10.

11 In relation to paragraph 11:

11.1 it admits the allegations in paragraph 11.1;

11.2 it admits the allegations in paragraph 11.2, save that the insulators were porcelain;

11.2A it admits paragraph 11.2A;

11.3 it admits the allegations in paragraph 11.3;

11.4 in relation paragraph 11.4 it says;

(a) the Cudlee Creek feeder is protected by R1589, a Cooper-Eaton Form 6 electronic controller with NOVA recloser tank which was installed and configured in 2014;

(b) R1589 is an electronic controller recloser unit manufactured by Cooper Eaton, and was SCADA enabled;

(c) on 20 December 2019, recloser R1589:

(i) was in Normal Settings Profile (Protection Settings Group 1), being a configuration of 2 fast trips and 1 delayed trip, overcurrent settings, earth overcurrent settings and sensitive earth fault settings;

(ii) had reclosing functionality enabled; and

(iii) sensitive earth fault settings enabled;

11.5 it says that:

- (a) the line was part of a network which delivered power to rural South Australia as a social utility for the purposes of s 32(2)(d) of the *Civil Liability Act 1936 (SA)*;
- (b) the Distribution Network services sparsely populated and lightly loaded rural areas. The nature of the construction using 'stobie' poles and conductors above ground makes it efficient, economic and reliable in supplying communities in areas and is reasonable and appropriate system in the circumstances; and
- (c) inherent in the design of any system delivering electricity is an element of risk of harm against which the First Respondent has taken reasonable precautions as pleaded below.

11.6 otherwise denies the allegations contained therein.

11A It admits paragraph 11A.

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

### ***The plantation and tree***

12 It admits that there were trees on the property on 20 December 2019, but otherwise does not know and therefore does not admit the allegations in paragraph 12.

13 In relation the allegations in paragraph 13 it:

13.1 admits that there were trees on the western boundary of the property which were on a slope to the east of Span 2 and otherwise does not admit paragraph 13.1;

13.2 does not admit paragraph 13.2.

14 It does not admit the allegation in paragraph 14.

15 It does not admit the allegation in paragraph 15.

16 ~~It does not admit the allegation in paragraph 16. It denies paragraph 16.~~

16A As to paragraph 16A:

16A.1 it denies paragraph 16A.1:

16A.2 it admits that on 29 December 2016, the First Respondent to an incident recorded as a pine tree falling and resting on mains wires at or around the property:

16A.3 it denies paragraph 16A.3:

16A.4 it admits that in October 2018, Active Tree Services pursuant to section 55AA of the Electricity Act attended to a tree likely to fall onto electricity conductors on feeder GU43. The matter was resolved by ATS with the assistance of the First Respondent's line crews in the evening of 19 October 2018 by removing the failed section of the tree:

16A.5 it admits that on 19 July 2018 a low voltage aerial bundle cable (i.e. not Span 1,2 or 3) was brought down on the property. It was repaired by the First Respondent's crew without any assistance from ATS.

16A.6 otherwise it denies the allegations contained therein.

***Weather and forecast conditions***

17 It admits the allegations in paragraph 17.

18 In relation to paragraph 18 it admits that on 17, 18, 19 December 2019, temperatures had been recorded in South Australia, including the Mount Lofty Ranges, near or above 40°C, and otherwise does not admit the allegations.

19 It admits the allegations in paragraph 19.

20 In relation to paragraph 20 it:

20.1 says that the Bureau of Meteorology issued the following fire weather forecast at 3:50pm on 19 December 2019 for 20 December 2019:

- (a) catastrophic fire danger, strong northwesterly winds with extreme temperatures and scattered dry lightning ahead of a strong gusty southwest to southerly change. Very hot with very low relative humidity, northeast to northerly winds 20-35kmph, becoming north to northwesterly and strengthening to 35-50kmph with gusts to around 70kmph from mid-morning. A squally, cooler southwest to southerly wind change 30-55kmph will move over the west during the morning and early afternoon, central and southeast districts mid-late afternoon and eastern/northeastern districts during the evening;
- (b) Mount Lofty Ranges District Rating – Catastrophic;
- (c) Mount Lofty Ranges District Forest Fire Danger Index – 130;
- (d) Mount Lofty Ranges District Grass Fire Danger Index – 142;
- (e) Mount Crawford (Mount Lofty Ranges District) maximum temperature - 41°C;
- (f) Mount Crawford (Mount Lofty Ranges District) wind speed – 45kmph;

20.2 says further that the conditions so forecast by the Bureau of Meteorology were characterised the First Respondent at category of weather FDL2 by and in accordance with the protocol *“in policy/procedures for Disconnecting Supply Pursuant to the Electricity Act”*, and

20.3 otherwise denies the allegations contained therein.

21 In relation to paragraph 21 it:

21.1 it says that the two closest weather stations to the location of the fire start are Mount Lofty and Mount Crawford;

21.2 it says that the weather conditions recorded by the Mount Lofty AWS at around 9:00am on 20 December 2019 were:

- (a) temperature – 33.9°C;
- (b) relative humidity – 19%; and
- (c) wind speed – 19kmph;

21.3 it says that the weather conditions recorded by the Mount Crawford AWS weather station at around 9:00am on 20 December 2019 were:

- (a) temperature - 36.2°C;
- (b) relative humidity – 16%; and
- (c) wind speed – 35kmph;

21.4 the weather conditions as recorded by Mt Lofty and Mt Crawford at the time of the outbreak of the fire were characterised as FDL0 in accordance with the First Respondent's protocol "*Policy/Procedures for Disconnecting Supply Pursuant to the Electricity Act*"; and

21.5 it otherwise denies the allegations contained therein.

22 It does not know and therefore does not admit the allegations in paragraph 22.

23 It does not know and therefore does not admit the allegations in paragraph 23.

24 It does not know and therefore does not admit the allegations in paragraph 24.

25 It does not know and therefore does not admit the allegations in paragraph 25.

26 It does not know and therefore does not admit the allegations in paragraph 26.

27 It does not know and therefore does not admit the allegations in paragraph 27.

### **SAPN'S Alleged Negligence**

#### ***Duty of Care***

28A. In relation to paragraphs 28 to 34:

28A.1 it says that to the extent that it owes any duty of care on the facts alleged by the Applicant in this case (which is not admitted) the only relevant duty was a statutory duty to keep vegetation clear from powerlines in the manner prescribed in section 55 of the *Electricity Act* (the EA Duties in relation to Vegetation Clearance);

28A.2 The EA Duties in relation to Vegetation Clearance were to the exclusion of any common law or other statutory duty;



Particulars

Section 55(6) and 55AA of the *Electricity Act*.

28A.2 the EA Duties in relation to Vegetation Clearance were complied with in area surrounding the Powerline;

28A.3 the alleged Tree was outside any zone which was required to be cleared by the First Respondent pursuant to the EA Duties;

Particulars of 28A.2 & 28A.3

The *Electricity (Principles of Vegetation Clearance) Regulations 2010 (SA)*, being the principles of vegetation clearance did not require First Respondent to remove or prune the Tree which is alleged to have come into contact with the Powerline.

28A.5 in the premises, it says that any alleged liability in consequence of the allegations of a fall of the Tree onto the Powerline is excluded.

28 In relation to:

28.1 paragraph 28.1 it:

- (a) denies that paragraph 28.1 is relevant to any alleged duty owed by the First Respondent to the Applicant;
- (b) says that section 60 of the *Electricity Act* requires the First Respondent to take reasonable steps to ensure that its electricity infrastructure:
  - i complies with, and is operated in accordance with, technical and safety requirements imposed under the regulations; and
  - ii is safe and safely operated.
- (c) further, and alternatively, says that at all material times prior to the fire on 20 December 2019 the electricity infrastructure comprising the Cudlee Creek feeder, including the

Powerline, complied with, and was operated in accordance with, technical and safety requirements imposed under the regulations and was safe and safely operated;

28.2 paragraph 28.2 it:

- (a) denies that paragraph 28.2 is relevant to any alleged duty owed by the First Respondent to the Applicant;
- (b) says that clause 5.2.1(a)(3) provides that the First Respondent, as a registered participant (a defined term) is required to operate all equipment that is part of its facilities (a defined term) in accordance with good electricity industry practice (a defined term) and relevant Australian Standards (a defined term);
- (c) further, and alternatively, says that to the extent that the Cudlee Creek feeder, including the Powerline, is part of its facilities (it is not admitted that it comes within the definition) then the First Respondent says that at all material times prior to the fire on 20 December 2019 they were operated in accordance with good electricity industry practice and relevant Australian Standards;

28.3 paragraph 28.3 it:

- (a) denies that paragraph 28.3 is relevant to any alleged duty owed by the First Respondent to the Applicant;
- (b) says that regulation 47(1) of the *Electricity (General) Regulations* (SA) provides that no circuit in electricity infrastructure may be allowed to remain in service unless every part of the circuit functions in a safe manner;
- (c) further, and alternatively to 28.3(a) says that, at all material times prior to the fire, all parts of the Cudlee Creek feeder, including the Powerline, functioned in a safe manner;

28.4 paragraph 28.4 it:

- (a) says that section 53(1) of the *Electricity Act* does not impose a duty but rather confers a power, coupled with an immunity from liability, to cut off the supply of electricity to any region area, land

or place if, in the First Respondent's opinion, it is necessary to do so to avert danger to person or property;

- (b) further, the power under section 53 of the *Electricity Act* is discretionary such that any act or omission to cut electricity made pursuant to that section could only give rise to a liability if the decision upon which the act or omission was based lacked an evident and intelligible justification and/or were not so unreasonable that no authority acting with due appreciation of its discretionary responsibilities would have so exercised those responsibilities.

29 It admits paragraph 29, save that it did not construct the Network.

30 In relation to paragraph 30:

30.1 it admits the allegations in paragraph 30.1;

30.2 it admits the allegations in paragraph 30.2 and refers to paragraph 30.3 of the Defence below;

30.3 as to the allegations in paragraph 30.3 it:

- (a) says that unintended discharges of electricity from the powerlines might be capable of causing death or serious injury to person and damage to property by the means alleged;
- (b) says further that the prospect of the risk of injury to persons or damage to property from burning by fire ignited by the discharge of electricity materialising, and the magnitude of the risk if it did materialise, were dependent upon circumstances outside the First Respondent's control;
- (c) says that the circumstances outside the control of the First Respondent referred to above, included without limitation, the nature of the power outage, weather conditions at the time of the discharge of electricity, latent features of surrounding vegetation, the nature and quality of flammable material available in the vicinity of any point of discharge, the direction and speed at which the fire (if ignited) travelled, the extent and expedition of actions taken by fire agencies and other persons to suppress the fire and steps taken by persons to remove or protect themselves or their property from the impact of the fire; and

- (d) specifically denies that the risk of injury to persons or damage to property from burning fire ignited by the discharge of electricity from the powerlines was material;

30.4 it denies the allegations in paragraph 30.4; and

30.5 it denies the allegations in paragraph 30.5.

31 In relation to paragraph 31 it:

31.1 it denies the allegations in paragraph 31.1 and says that the discharge of electricity is a phenomenon which is inherent to electricity and its transmission and so cannot be absolutely guarded against;

31.2 it does not admit the allegations in paragraph 31.2.

31.3 as to the allegations in paragraph 31.3 it:

- (a) admits that in certain circumstances, electricity could cause the ignition of flammable material in the vicinity of the point of discharge – such circumstances that include, without limitation, weather conditions at the time of the discharge of electricity, latent features of surrounding vegetation, the nature and quality of the flammable material available in the vicinity of the point of discharge; and

- (b) otherwise does not admit the allegations;

31.4 does not admit the allegations in paragraph 31.4 and says that the discharge of electricity is a phenomenon which is inherent to electricity and cannot be absolutely guarded against;

31.5 it does not admit the allegations in paragraph 31.5

31.6 it does not admit the allegations in paragraph 31.6

31.6A it does not admit the allegations in paragraph 31.6A

31.7 as to the allegations contained in paragraph 31.7 it:

(a) admits that fire once ignited might spread over a wide geographic area depending, among other things, on wind direction and velocity; and

(b) otherwise does not admit the allegations;

31.8 it admits the allegations in paragraph 31.8;

31.9 admits the allegations in paragraph 31.9, save that no admission is made in relation to the extent or nature of any economic loss consequent upon property damage in the affected areas; and

31.10 denies the allegations in paragraph 31.10.

32 In relation to paragraph 32, it:

32.1 denies the allegations therein;

32.2 says that the Applicant and some or all of the group members were capable of protecting themselves including by effecting insurance cover in respect of the losses alleged; and

32.3 says further that the class of persons alleged in paragraph 32 is indeterminate and was not at any relevant time capable of being reasonably determined.

33 It does not admit the allegations in paragraph 33.

34 In relation to paragraph 34:

34.1 it denies the allegations therein;

34.2 it says that if (which is denied) it owed a duty of care to a class of persons including the Applicant and group members or any of them, the scope of that duty and the reasonableness of the steps taken in discharge of that duty are to be assessed by reference, amongst other things, to the facts and consideration set out in the subparagraphs below;

34.3 it says further that at all relevant times the Respondent was governed by a technical regulatory framework (the **Technical Regulatory Framework**) which as at 20 December 2019 relevantly comprised of:

- (a) the terms of the Distribution Licence;
- (b) the *Electricity Act*;
- (c) *Electricity (Principles of Vegetation Clearance) Regulations 2010* (SA)
- (d) *Electricity (General) Regulations 2012*;

34.4 it says that pursuant to the Technical Regulatory Framework:

- (a) the Respondent was required to prepare, maintain and periodically revise a safety, reliability, maintenance and technical management plan dealing with matters prescribed by regulation (**the Plan**) (the *Electricity Act* s 23(1)(c)(i));
- (b) to obtain the approval of the Plan by the Technical Regulator prior to the commencement of the operation of the transmission or distribution system to which the plan relates (the *Electricity Act* s 23(1)(c)(ii));
- (c) an accepted plan, that dealt the matters including the following, was taken to form part of the Plan:
  - i the preparation and maintenance of an Electricity Network Safety Management System in accordance with the requirements of AS 5577 “Electricity Network Safety Management Systems”;
  - ii monitoring and inspecting aerial lines owned or operated by the person in a bushfire risk area for the purpose of identifying risks posed by the aerial lines relating to bushfires;

34.5 it says further that at all relevant times the First Respondent had in place:

- (a) a Plan that was approved by the Technical Regulator, which:
  - (i) addressed, amongst other matters, Bushfire Risk Management; and
  - (ii) complied with AS 5577 ‘Electricity Network Safety Management Systems’;

- (b) Bushfire Risk Management Manual setting out the Respondent's bushfire risk management policies and procedures.

34.6 it further expressly denies that there is any duty owed to those persons who at the time of the Cudlee Creek bushfire resided in or had real or personal property in the Cudlee Creek bushfire area or in the immediate vicinity of the Cudlee Creek bushfire and who suffered economic loss, which loss was not consequent upon injury to that person or loss or damage to property as a result of the Cudlee Creek bushfire.

As to paragraphs 34A to 34M, it says as follows:

34A It denies paragraph 34A;

34B It denies paragraph 34B;

34C It admits paragraph 34C.1 and paragraph 34C.2;

34D It denies paragraph 34D. Without prejudice to its denial it says that the eastern insulator was fully screwed onto the threaded polymer sleeve on the post support to the extent of its manufactured depth of 40mm;

34E it denies paragraph 34E;

34F it denies paragraph 34F;

34G it denies paragraph 34G;

34H it denies paragraph 34H;

34I it denies paragraph 34I;

34J it admits paragraph 34J insofar as First Respondent had in place the Bushfire Mitigation Policies and Procedures set out in Bushfire Risk Mitigation Manual – Manual No. 8 dated November 2019 but it denies that the pleaded extract in paragraph 34J accurately reflects such policies and procedures;

34K it denies paragraph 34K.1 and 34K.3 but admits paragraph 34K.2;

34L it denies paragraph 34L:

34M it denies paragraph 34M and repeats its plea hereinafter under paragraph 39.

**Breach**

35 In relation to paragraph 35 it:

35.1 refers to and repeats the matters pleaded in paragraph 20.1 above; and

35.2 otherwise does not admit the allegations contained therein.

36 In relation to paragraph 36 it:

36.1 refers to and repeats the matters pleaded in paragraph 20.1 above; and

36.2 otherwise does not admit the allegations contained therein.

37 It denies the allegations in paragraph 37.

37A It denies paragraph 37A.

38 It denies the allegations in paragraph 38.

39 It denies the allegations in paragraph 39 and says further (without limiting the scope of this denial) that cutting the power imposes costs, burdens and risks on the community giving rise, in particular, to a range of public safety consequences arising from a loss of power including:

39.1 failure of telephone, radio and television communications, vital not only in the early detection of fires, but also as a means of providing people with essential information during emergencies and evacuations;

39.2 the failure of traffic signals, increasing the risk of road accidents and diverting police from more important duties;

39.3 disruption to essential services, including water distribution services, potentially hampering firefighting efforts and interfering with drinking water supplies;



39.4 disruption to persons who rely upon electricity for medical treatment, including hospitals and persons at home;

39.5 given the prevalence of household air conditioning in South Australia, increasing the risk of dying from heat related illness by about 50%; and

39.6 loss of refrigeration and resultant property damage.

40 It denies the allegations in paragraph 40.

41 In relation to paragraph 41, it denies the allegations and (without limiting the scope of that denial) says as follows:

41.1 it refers to and repeats the matters pleaded in paragraph 28.1-28.5 above;

41.2 further, the First Respondent exercised its powers in accordance with section 53 of the *Electricity Act* in accordance with its settled protocol titled "*Policy/Procedures for Disconnecting Supply Pursuant to the Electricity Act*", having regard to the forecast weather received on 18 December 2019 and as the weather developed on 20 December 2019 at the time of the outbreak of the fire;

41.3 by reason of these policy/procedures for disconnecting supply pursuant to the *Electricity Act*:

(a) disconnection of "*other lines*" in high bushfire risk areas occurs only upon weather conditions FDL2 or FDL3 being verified;

(b) recloses on "*other lines*" in high bushfire risk areas on forecast of FDL2 are maintained in normal operation and not disabled or modified until conditions reached FDL2;

41.4 the steps taken by the First Respondent on the day prior to and on the day of the fire, in accordance with its "*Policy/Procedures for Disconnecting Supply Pursuant to the Electricity Act*", were done pursuant to the discretionary powers conferred on the First Respondent by section 53 of the *Electricity Act*;

41.5 the First Respondent acted in the manner so advised and for the purposes of which the legislation was passed;

- 41.6 the steps taken on the day before and on the day of the fire resulted in the cutting of the power following the operation of the recloses. The protocol adopted by which the power was cut was:
- (a) reasonable;
  - (b) a reasonable exercise of the statutory powers conferred on the First Respondent; and/or
  - (c) alternatively, were not so unreasonable that no authority acting with due appreciation of its discretionary responsibilities would have so exercised those responsibilities;
- 41.7 the forecast weather conditions received at approximately 4.30pm on the day prior to the fire were assessed by the First Respondent as forecast conditions FDL2 in accordance with the First Respondent's "*Policy/Procedures for Disconnecting Supply Pursuant to the Electricity Act*";
- 41.8 the conditions obtaining at the time of the commencement of the fire were characterised in accordance with the First Respondent's "*Policy/Procedures for Disconnecting Supply Pursuant to the Electricity Act*" as FDL0;
- 41.9 in these circumstances, the Policy/Procedures did not provide for disconnection or disablement of the recloses but instead provided for normal delivery of power and for normal operation of the recloses until conditions verified as FDL2 occurred;
- 41.10 if FDL2 weather conditions were established and verified, the recloses could be disabled remotely from the control room;
- 41.11 at all times the First Respondent acted lawfully and in accordance with its statutory powers;
- 41.12 in the circumstances, the First Respondent has no liability for the Cudlee Creek bushfire; and
- 41.13 further or alternatively, the First Respondent has no liability for the Cudlee Creek bushfires by reason of section 55(6) of the *Electricity Act*.

[41.3–41.5 It denies paragraph 41.3 – 41.5.](#)

41A As to paragraph 41A:

(a) the First Respondent denies paragraph 41A.

(b) the First Respondent repeats paragraph 34D above in answer to paragraph 41A.2.

42 It denies paragraph 42.

43 In answer to the allegations contained in paragraph 43 it:

43.1 says that the allegations are vague and ambiguous and absent further particulars are liable to be struck out; and

43.2 denies the allegations.

43.3 it denies paragraph 43.1. Without prejudice to its denial it says that:

(a) the Ultra-fast protection settings were in test on relays and not recloses at the date of the fire;

(b) R1589 could not be configured for Ultra-fast protection settings;

(c) replacement of R1589, once satisfactory testing occurred on recloses, required allocation of capital by the Australian Energy Regulator, which approval had not been given at the date of the fire;

43.4 as to paragraph 43.2, the First Respondent denies that the period of arcing was 2.255 seconds. Arcing occurred for 190m/s and 670m/s only.

43A It denies paragraph 43A.

44 It denies the allegations in paragraph 44.

45 As to paragraph 45:

45.1 it denies the allegations contained therein;

45.2 as to the Applicant's alleged loss and damage, it says it has sought details of the particulars and requested inspection of the Applicant's property;

45.3 it has no detail of each of the group members and their alleged loss and damage but has also made requests for details of the particulars claim and in due course will seek any requests for inspection of group member properties;

45.4 says that if, which is denied, it owed the duty of care alleged and breach that duty, any claim for personal injury must be assessed in accordance with Part 8 of the *Civil Liability Act*.

As to paragraphs 45A to 45J:

45A it admits paragraph 45A;

45B it admits paragraph 45B;

45C it admits paragraph 45C;

45D it denies paragraph 45D;

45E it denies paragraph 45E;

45F it denies paragraph 45F and repeats its plea under paragraph 34D above.

45G it denies paragraph 45G;

45H it denies paragraph 45H;

45I it denies paragraph 45I;

45J it admits paragraph 45J.

***Georgious' Nuisance***

46 The First Respondent does not plead to paragraph 46 as it does not contain any allegations against it.

47 The First Respondent does not plead to paragraph 47 as it does not contain any allegations against it.

48 The First Respondent does not plead to paragraph 48 as it does not contain any allegations against it.

49 The First Respondent does not plead to paragraph 49 as it does not contain any allegations against it.

50 The First Respondent does not plead to paragraph 50 as it does not contain any allegations against it.

51 The First Respondent does not plead to paragraph 51 as it does not contain any allegations against it.

***Georgious' Negligence***

52 The First Respondent does not plead to paragraph 52 as it does not contain any allegations against it.

53 The First Respondent does not plead to paragraph 53 as it does not contain any allegations against it.

54 The First Respondent does not plead to paragraph 54 as it does not contain any allegations against it.

55 The First Respondent does not plead to paragraph 55 as it does not contain any allegations against it.

56 The First Respondent does not plead to paragraph 56 as it does not contain any allegations against it.

57 The First Respondent does not plead to paragraph 57 as it does not contain any allegations against it.

58 The First Respondent does not plead to paragraph 58 as it does not contain any allegations against it.

58A The First Respondent does not plead to paragraph 58A as it does not contain any allegations against it.

59 The First Respondent does not plead to paragraph 59 as it does not contain any allegations against it.

59A The First Respondent does not plead to paragraph 59A as it does not contain any allegations against it.

60 The First Respondent does not plead to paragraph 60 as it does not contain any allegations against it.

60A The First Respondent does not plead to paragraph 60A as it does not contain any allegations against it.

61 The First Respondent does not plead to paragraph 61 as it does not contain any allegations against it.

62 The First Respondent does not plead to paragraph 62 as it does not contain any allegations against it.

***Common Questions of Law or Fact***

63 It admits the allegations in paragraph 63 and further says that the questions of fact or law raised in this proceeding require the appointment of a sub-group to consider:

63.1 whether the claim against the First Respondent is barred by section 55(6) of the *Electricity Act*,

63.2 whether the claim against the First Respondent is barred by section 53 of the *Electricity Act*,

- 63.3 whether the power to cut off the electricity supply to avert danger pursuant to section 53 of the *Electricity Act* is a discretionary power and if so, a standard of duty required to prove breach of that duty;
- 63.4 whether the Statutory Duties and/or General Duties alleged were owed by the First Respondent to any person who resided in or had real or personal property in the Cudlee Creek Bushfire area who suffered economic loss which loss was not consequent upon injury to that person or loss or damage to their property as a result of the Cudlee Creek bushfire; and
- 63.5 whether any person who allegedly suffered personal injury is able to recover damages for non-economic loss in accordance with section 52 of the *Civil Liability Act*.

### **Relief**

- 64 The Respondent denies that the Applicant or any group member is entitled to the relief claimed or any relief at all.
- 65 To the extent that any paragraph or sub-paragraph of the Statement of Claim is not specifically dealt with above, the Respondent relies on Rule 67.6(6) of the *Uniform Civil Rules 2020* in denying the remaining parts of the Statement of Claim.

### **Apportionment**

- 66 Further, the First Respondent says that if it has any liability to the Applicant or group members in negligence (which is denied), other than in respect of a claim for personal injury, then such liability is apportionable liability within the meaning of section 8 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA) and therefore the First Respondent's liability is limited to what is fair and equitable by reason of the provisions of that section.

### **Particulars**

- 66.1 Any damage allegedly suffered by the Applicant or group members was caused by the negligent acts or omissions or conduct of the Second and/or Third Respondents, specifically in the Second and Third Respondents failure to:

- (a) identify that the Tree was at risk or falling and failing onto the powerline;
- (b) remove the Tree; or
- (c) prune the Tree so that it was no longer at risk of failing or falling onto the powerline.

Dated: ~~2 June 2021~~ 20 May 2022

Settled by:  
T Duggan QC  
T Besanko  
**Counsel for the First Respondent**

*Wotton & Kearney*

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**WOTTON + KEARNEY**  
Solicitors for the First Respondent