

## Annexure A – Information Notice

11 JANUARY 2021 'LUCINDALE BUSHFIRE'

### NOTICE OF A CLASS ACTION

On 20 August 2021, Mr Peter Roderick Kurray ("the **Applicant**") commenced a representative proceeding or "class action" in the Supreme Court of South Australia against Benjamin Ronald John Brinkworth as Executor of the Estate of Thomas Kenneth Brinkworth and other respondents ("the **Respondents**").

On 8 October 2021, Allianz Australia Insurance Ltd, as subrogated insurer, commenced a separate proceeding on behalf of Mr Keith Higgins and a number of Applicants (listed in Annexure B) insured by Allianz against the Respondents (**Higgins / Allianz proceeding**).

On 22 October 2021, Insurance Australia Limited (IAG), as subrogated insurer, commenced a further separate proceeding on behalf of Ms Michelle Justin and a number of Applicants (listed in Annexure B) insured by IAG against the Respondents (**Justin / IAG proceeding**).

On 17 November 2021, QBE Insurance Australia Ltd, as subrogated insurer, commenced a further separate proceeding on behalf of Ms Terena Trimboli and a number of Applicants (listed in Annexure B) insured by QBE/Elders against the Respondents (**Trimboli / QBE proceeding**).

The class action is brought by the Applicant on his own behalf, and as a representative party on behalf of all persons who suffered any of the following:

- (a) personal injury (whether physical or psychiatric);
- (b) loss of or damage to property; and
- (c) persons who suffered loss of or damage to property, or economic loss in connection with the Lucindale bushfire's interference in their use or enjoyment of interests in land;

as a result of a fire in Lucindale, South Australia which started on 11 January 2021 ("the **Lucindale bushfire**"). Persons fitting that description are defined in this class action as "**group members**". The group members also include any "legal personal representatives" of the estates of any **deceased** person who would otherwise have qualified as a group member under (a), (b) or (c) above.

The Supreme Court has ordered that this notice be published for the information of persons who might be group members on whose behalf this class action is brought and who may be affected by it.

**If you think you may be a group member you should read this notice carefully as it may affect your rights.**

**If you were insured by or have been contacted by any of Allianz, IAG, QBE and/or Elders or their legal representatives, you may already be an Applicant in the Allianz, IAG and/or QBE proceedings for any property loss or damage, and any economic loss claim. If you are named in Annexure B, those claims will have been opted out of the class action on your behalf by the operation of the Court's order made on 28 January 2022.**

**You will however still be a group member in the class action in respect of any personal injury (whether physical or psychiatric) claim you may have arising out of the Lucindale bushfire. If this**

is your situation, any property loss or damage, and any economic loss claim you might have will be pursued claimed through the Allianz, IAG and/or QBE proceedings. Any personal injury claim you might have (whether physical or psychiatric) can be pursued through the class action.

**Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

### **1. What is a Class Action?**

This class action is brought by the Applicant on his own behalf and on behalf of group members against the Respondents, where the Applicant and the group members have similar claims against the Respondents.

Group members who do not opt out of the class action are bound by any judgement or settlement entered into in the class action. This means that:

- (a) If the class action is successful or settles, group members who have not opted out may be eligible for a share of any Court-awarded damages or settlement monies; and
- (b) If the class action is unsuccessful, group members who have not opted out are bound by that result.

The class action will not affect the rights of group members who opt out, however if you opt out you will not be able to share in any possible benefit flowing from the proceeding (without order of the Court).

### **2. What is the Lucindale bushfire Class Action?**

The Applicant alleges that the Lucindale bushfire started as a result of the burning off activity in one or more vegetation piles on property owned by the Respondents at 593 Carrachers Road, Blackford, South Australia. The Applicant further alleges that the Respondents breached a duty of care owed to group members. The Respondents deny liability and are defending the class action.

The Applicant's claims are made on his own behalf and on behalf of group members. The allegations are detailed in the Statement of Claim filed on 20 August 2021. The Respondents' defence is detailed in the Statement of Defence filed on 20 October 2021.

### **3. Are You a Group Member?**

You are a group member in the class action if:

- (a) You suffered personal injury (whether physical injury or psychiatric harm) as a result of the Lucindale bushfire;
- (b) You suffered loss of or damage to property as a result of the Lucindale bushfire and are not already named as an Applicant in the Allianz, IAG and/or QBE proceedings, as outlined in Annexure B;
- (c) You suffered loss of or damage to property, or economic loss arising out of the Lucindale bushfire's interference with your use or enjoyment of interests in land, and are not already named as an Applicant in the Allianz, IAG and/or QBE proceedings, as outlined in Annexure B; or
- (d) You are the legal personal representative of the estates of any persons in (a), (b) or (c) above as at the commencement of this proceeding but have since died.

If you wish to register as a group member and make a claim for loss or damage you claim to have suffered as a result of the Lucindale bushfire, you should contact Maddens Lawyers as follows:

Postal:	Kathryn Emeny Maddens PO BOX 320 Warrnambool VIC 3280	Lawyers
Email:	<a href="mailto:kae@maddenslawyers.com.au">kae@maddenslawyers.com.au</a>	

### **4. What is Opt Out?**

The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf. However, group members must opt out in order not to participate in the class action. If a group member opts out they will not be eligible for a share of any Court-awarded damages or settlement monies.

An explanation of how group members are able to “opt out” is found in section 5, Option ‘A’, below.

## **5. What Group Members Should Do**

If you fit the definition of a “group member” in the class action you must choose one of the following two options:

### **Option A – Do something**

If you wish to “opt out”, then you must:

- (a) complete the Form A “**Notice of Opting Out**” below;
- (b) send your completed Form A notice to Maddens Lawyers and/or the Court **before the Opt Out date of 15 March 2022**.

You must send your “Opt Out Notice” to Maddens Lawyers and/or the Court so that it arrives **before** that deadline.

It is possible to opt out of the class action in relation to:

- (a) economic loss and property damage;
- (b) personal injury; or
- (c) both economic loss and property damage and personal injury.

If you decide to opt out you must nominate on your Opt Out Notice which of the above is applicable.

You do not need to opt out of the class action for economic loss and property damage claims if you are already named as an Applicant in the Allianz, IAG and/or QBE proceedings and listed in Annexure B. If you are already a named Applicant in those proceedings, your insurer will have written to you either directly or via their legal representatives, Hall & Wilcox Lawyers (for Allianz and IAG) or Moray & Agnew (for QBE/Elders).

### **Option B – Do nothing**

If you do nothing (i.e. you do not complete and return an opt out notice), you will:

- (a) be a group member for any person injury claim;
- (b) be a group member for any economic loss or property damage, unless you are listed in Annexure B;
- (c) be able to share in any possible benefit flowing from the proceeding;
- (d) be bound by any order, judgment or settlement in the representative proceeding.

**It is very important that you act promptly** in deciding what you want to do. If you are not sure whether you are a group member, or you want further information or advice, you can contact Maddens Lawyers on (03) 5560 2000 or email [kae@maddenslawyers.com.au](mailto:kae@maddenslawyers.com.au). Please **do not** contact the Court.

## **6. What if you had insurance?**

Many group members had insurance and received insurance payments arising out of the Lucindale bushfire.

Your insurance company may register with Maddens Lawyers separately to assist in recovery of compensation for the insurance payout made to you. You or your insurer on your behalf are entitled to “opt out” your claim, if either of you wishes to do so. Your insurer will be notified about its rights in this regard.

#### **7. Will you be liable for costs?**

Group members will **not become liable** for any legal costs simply by participating in the proceeding.

However, if the class action is successful and there is a judgment or settlement that results in compensation becoming payable to group members, then:

- (a) If the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Maddens Lawyers or other solicitors to do that work for you. You may be liable for costs associated with the determination of issues concerned only with your claim;
- (b) If any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicant in running the class action but which are not able to be recovered from the Defendant. Mr Kurray will ask the Court to make such an Order if the occasion arises; and
- (c) Class actions are often settled out of Court. If this occurs in this representative proceeding, you may be able to claim from the settlement amount without retaining a lawyer.

#### **8. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the Statement of Claim and Defence, may be obtained by:

- (a) Telephoning Maddens Lawyers on 1800 815 228 and requesting a copy be provided to you; or
- (b) Inspecting them by visiting the Registry of the Supreme Court at Lower Ground Floor, Sir Samuel Way Building, 241—259 Victoria Square, Adelaide, South Australia

Please consider the above matters carefully. If you are not sure whether you are a group member or want further information, you can contact Maddens Lawyers on 1800 815 228 or seek your own legal advice. You should not delay in making your decision, as the deadline for opting out is 15 March 2022.

**Notice of Opting Out**

**Case number: CIV-21-009439**

SUPREME COURT OF SOUTH AUSTRALIA  
CIVIL JURISDICTION

**PETER RODERICK KURRAY**  
Applicant

**BENJAMIN RONALD JOHN BRINKWORTH As Executor of the Estate of THOMAS KENNETH BRINKWORTH**  
First Respondent

**ANGUS THOMAS KENNETH BRINKWORTH As Executor of the Estate of THOMAS KENNETH BRINKWORTH**  
Second Respondent

**JOHN CHARLES FINNIS As Executor of the Estate of THOMAS KENNETH BRINKWORTH**  
Third Respondent

**PATRICIA ANN BRINKWORTH**  
Fourth Respondent

**NOTICE OF OPTING OUT**

**To:** Maddens Lawyers  
PO Box 320  
Warrnambool VIC 3280

**And to:** The Registrar  
Supreme Court of South Australia - Registry  
Lower Ground Floor, Sir Samuel Way Building,  
241—259 Victoria Square  
Adelaide SA 5000

Name \_\_\_\_\_ of \_\_\_\_\_ Group \_\_\_\_\_ Member:  
Address of Group Member: \_\_\_\_\_  
\_\_\_\_\_

The abovenamed Group Member (or his, her or its insurer) gives notice that the Group Member is **opting out** of this proceeding in relation to claims for the following:

Please tick the applicable box/es

All claims in relation to the Group Member's economic loss and property damage

All claims in relation to the Group Member's personal injuries

Dated: ..... 2022

Signed: .....

Name of person .....  
signing (print)

Name of insurer (if .....  
relevant) (print)

Telephone .....

Email .....

Postal address .....

.....

**ANNEXURE B**

**LIST OF PERSONS AND/OR ENTITIES NAMED AS  
APPLICANTS IN THE ALLIANZ, IAG AND/OR QBE PROCEEDINGS**

**\*\*\*PLEASE NOTE THAT IF YOU ARE LISTED BELOW YOU ARE NOT REQUIRED TO OPT  
OUT OF THE MADDENS CLASS ACTION\*\*\***

**ALLIANZ PROCEEDING - CIV-21-011444**

**Keith Charles Higgins**  
First Applicant

**Karena Rose Higgins**  
Second Applicant

**Grant Higgins**  
Third Applicant

**K C & K R Higgins t/a Patanga Pastoral Co  
(ABN 55 352 255 269)**  
Fourth Applicant

**Lisa Bawden**  
Fifth Applicant

**Simon Mark Bawden**  
Sixth Applicant

**Catherine Gill**  
Seventh Applicant

**Michael Goldsworthy**  
Eighth Applicant

**Craig M. Lewis**  
Ninth Applicant

**Kylie M. Lewis**  
Tenth Applicant

**Harry Kolpondinos**  
Eleventh Applicant

**Joy Kolpondinos**  
Twelfth Applicant

**Morris Lynton Oliver**  
Thirteenth Applicant

**Oliver Nominees Pty Ltd (ACN 077 262 643)**  
Fourteenth Applicant

**Joe Riggs**  
Fifteenth Applicant

**Michael Garratt Ringshaw**  
Sixteenth Applicant

**John William Rivett**  
Seventeenth Applicant

**Rosemary Dawn Rivett**  
Eighteenth Applicant

**The Trustee for the K C & K R Higgins Family  
Trust (ABN 51 434 223 704)**  
Nineteenth Applicant

**Craig M & Kylie M Lewis (ABN 79 365 292  
419)**  
Twentieth Applicant

**Michele Oliver**  
Twenty-first Applicant

**IAG PROCEEDING - CIV-21-011906**

**MICHELLE CATHERINE JUSTIN**  
First Applicant

**PETER RAYMOND JUSTIN**  
Second Applicant

**A.G CANE & D.M CANE (ABN 77 527 033 847)**  
Third Applicant

**ANDREW WAYNE WILKS T/AS AW & JE  
WILKS**

Fourth Applicant

**B.N. & J.M. BELLS & SONS (ABN 99 923 959  
332)**  
Fifth Applicant

**RH & MTC BAINGER**  
Sixth Applicant

**MAIGREAD TERESA CLARE BAINGER**  
Seventh Applicant

**ROBERT HUGH BAINGER**

Eighth Applicant

**DAVID JOHN COX**  
Tenth Applicant

**D & COX**  
Eleventh Applicant

**DANIEL JOHN LANE T/AS LANEVILLE PTY LTD**  
Twelfth Applicant

**DAVIDSON, LEIGHTON SCOTT T/AS M & H DAVIDSON (ABN 68 542 019 255)**  
Thirteenth Applicant

**ELSDEN, IAN WALTER T/AS ELSDEN CONTRACT FARMING (ABN 88 342 854 919)**  
Fourteenth Applicant

**BENJAMIN GLATZ**  
Fifteenth Applicant

**SAMANTHA SHIRLEY GLATZ**  
Sixteenth Applicant

**MICHAEL GOLDSWORTHY**  
Seventeenth Applicant

**GREG AND VERITY INGHAM T/AS VM & GM INGHAM**  
Eighteenth Applicant

**NICK AND JANELLE EDWARDS T/AS NJ & JEH EDWARDS**  
Nineteenth Applicant

**REX AND KAY HOCKING T/AS RK & KE HOCKING**  
Twentieth Applicant

**S.F. & R.K. HOCKING PTY LTD (ACN 008 104 989)**  
Twenty-first Applicant

**GRANT HIGGINS**  
Twenty-second Applicant

**JAMES HIGGINS**  
Twenty-third Applicant

**REXTON KENNETH HOCKING**  
Twenty-fourth Applicant

**STEVE HYLAND**  
Twenty-fifth Applicant

**CINDY KAREN LAMBDEN**  
Twenty-sixth Applicant

**DAVID WILLIAM LAMBDEN**  
Twenty-seventh Applicant

**LITTLE JULES PTY LTD (ACN 008 180 443)**  
Twenty-eighth Applicant

**M.D GRAETZ & V.A STONE (ABN 88 658 764 041)**

Twenty-ninth Applicant

**ROBERT JOHN MICKAN**  
Thirtieth Applicant

**RJ MICKAN & CO (ABN 41 918 233 586)**  
Thirty-first Applicant

**OGILVIE GROUP PTY LTD (ACN 105 003 174)**  
Thirty-second Applicant

**TRUSTEE OF THE PHILLIPS FAMILY TRUST**  
Thirty-fourth Applicant

**PHILIP IAN PILGRIM**  
Thirty-fifth Applicant

**ROSEMARIE PILGRIM**  
Thirty-sixth Applicant

**TREVOR POMERY**  
Thirty-seventh Applicant

**TC & M POMERY**  
Third-eighth Applicant

**SA & GE SMITH (ABN 42 410 648 845)**  
Thirty-ninth Applicant

**CYNTHIA MARIE SAVAGE**  
Fortieth Applicant

**ROBERT JOHN SAVAGE**  
Forty-first Applicant

**BRADLEY SCOTT SHEATHER**  
Forty-second Applicant

**GLENDIA ELIZABETH SMITH**  
Forty-third Applicant

**STEPHEN ANTHONY SMITH**  
Forty-fourth Applicant

**SAMANTHA STRUTHERS**  
Forty-fifth Applicant

**JAY VEARING**  
Forty-sixth Applicant

**TG, Z, KE, RJ, AE, GL & PA SMITH T/AS SHADY GROVE PARTNERS**  
Forty-seventh Applicant

**GEOFF SMITH**  
Forty-eighth Applicant

**PATRINA SMITH**  
Forty-ninth Applicant

**CLINTON WARNER**



Fiftieth Applicant

**NATASHA WARNER**

Fifty-first Applicant

**CHRISTINE KAYE WATTS**

Fifty-second Applicant

**NEIL ALEXANDER WATTS**

Fifty-third Applicant

**RH & MTC BAINGER & THE HUGH BAINGER  
FAMILY TRUST AS TRUSTEE FOR CR  
BAINGER FARM TRUST T/A HILLCREST  
PASTORAL COMPANY (ABN 31 373 002 130**

Fifty-fourth Applicant

**CHARLES ROBERT BAINGER**

Fifty-fifth Applicant

**GLATZ PASTORAL PTY LTD (ACN 120 038  
244)**

Fifty-sixth Applicant

**C.M SAVAGE & R.J SAVAGE (ABN 53 900  
355 784)**

Fifty-seventh Applicant

**QBE PROCEEDING - CIV-21-012765**

**TERENA TRIMBOLI**

First Applicant

**IAN ELSDEN**

Second Applicant

**JOSEPH KEYNES**

Third Applicant

**G.R KEYNES & J.L KEYNES & M.G KEYNES & S.A KEYNES & G.M KEYNES T/AS KEYNETON STATION (ABN 66 192 540 351)**

Fourth Applicant

**JK KEYNETON PTY LTD ATF KEYNEYTON STATION (ABN 42 818 213 781)**

Fifth Applicant

**SALLY KEYNES**

Sixth Applicant

**GEORGINA KEYNES**

Seventh Applicant

**KEYNETON ESTATE PTY LTD**

Eighth Applicant

**G.R & M.G KEYNES T/AS KEYNES PASTORAL (ABN 56 263 671 908)**

Ninth Applicant

**S.J & E.L COPPING AND SONS (ABN 29 475 140 647)**

Tenth Applicant

**JG & CD PINKERTON T/AS PINKERTON'S BUTCHERY (ABN 49 297 138 938) AS TRUSTEE FOR THE PINKERTON BUSINESS TRUST**

Eleventh Applicant

**M.T.C BAINGER & R.H BAINGER & H BAINGER FAMILY TRUST AND THE TRUSTEE FOR THE CR BAINGER FARM TRUST T/AS HILLCREST PASTORAL COMPANY (ABN 31 373 002 130)**

Twelfth Applicant

**RH & MC BAINGER PROPRIETORS HILLCREST (ABN 31 373 002 130)**

Thirteenth Applicant

**R.H, M.T.C, & C.R BAINGER (ABN 19 906 395 073)**

Fourteenth Applicant

**ROBERT HUGH BAINGER**

Fifteenth Applicant

**MAIGREAD THERESA CLARE BAINGER**

Sixteenth Applicant

**CHARLES ROBERT BAINGER**

Seventeenth Applicant

**ANTHONY HURST**

Eighteenth Applicant

**ANTHONY HURST T/AS SERISTON PASTORAL COMPANY (ABN 47 867 958 933) IN HIS OWN RIGHT AND AS TRUSTEE FOR THE SERISTON PASTORAL COMPANY**

Nineteenth Applicant

**DJ, SC & AJ BROOKER (ABN 90 644 832 546)**

Twentieth Applicant

**DAVID BROOKER**

Twenty-first Applicant

**STEPHANIE BROOKER**

Twenty-second Applicant

**AUDREY BROOKER**

Twenty-third Applicant

**A.J TREGOWETH & G.P TREGOWETH & P.J TREGOWETH R.A TREGOWETH & S TREGOWETH T/AS ALAN TREGOWETH AND R & S TREGOWETH (ABN 37 348 934 059)**

Twenty-fourth Applicant

**ALAN TREGOWETH**

Twenty-fifth Applicant

**PETER TREGOWETH**

Twenty-sixth Applicant

**ROB TREGOWETH**

Twenty-seventh Applicant

**SHIRLEY TREGOWETH**

Twenty-eighth Applicant

**A.G & N HUNTER T/AS HUNTER BROS (ABN 28 253 509 927)**

Twenty-ninth Applicant

**A.G HUNTER & D HUNTER & E.B HUNTER & E.J HUNTER & J.A HUNTER & L HUNTER & N HUNTER T/AS HUNTER BROS (ABN 34 986 658 840)**

Thirtieth Applicant

**NAGEB PTY LTD (ACN 621 536 678)**

Thirty-first Applicant

**NAGEB ATF HUNTER PARTNERSHIP SUPERANNUATION FUND (ABN 12 629 147 313)**

Thirty-second Applicant

**NEIL HUNTER**

Thirty-third Applicant

**A.K JARDINE & M J JARDINE T/AS K M JARDINE & CO (ABN 41 577 036 331)**

Thirty-fourth Applicant

**ELIZA HANDBURY**

Thirty-fifth Applicant

**ROBERT HANDBURY**

Thirty-sixth Applicant

**ROB & ELIZA HANDBURY**

Thirty-seventh Applicant

**RJ & EM HANDBURY RURAL PROPERTY AS TRUSTEE FOR THE RJ & EM HANDBURY RURAL PROPERTY FAMILY TRUST (ABN 63 236 416 719)**

Thirty-eighth Applicant

**RJ & EM HANDBURY RURAL PROPERTY AS TRUSTEE FOR THE RJ & EM HANDBURY FAMILY TRUST (ABN 43 484 711 811)**

Thirty-ninth Applicant

**R.C COPPING & G.C COPPING T/AS REX WILLIAM COPPING AND GILLIAN CAROL COPPING (ABN 59 255 795 854)**

Fortieth Applicant

**REX WILLIAM COPPING**

Forty-first Applicant

**GILLIAN CARROL COPPING**

Forty-second Applicant

**THE TRUSTEE FOR THE COPPING FAMILY TRUST T/AS AD COPPING & SONS (ABN 25 710 018 656)**

Forty-third Applicant