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DEFENCE (REVISION 1 2 3)

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			
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Further Amended Defence

The further 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.

SECOND FURTHER 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.~~ It admits 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, that the trees were part of a *pinus radiata* plantation, and that the plantation had been on the property for some years before the Georgious purchased the property in February 2021, 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.~~ in respect of paragraph 13.2, admits that some of the trees of the plantation were of sufficient height that, if they fell in the direction of the powerline, they would hit some of the infrastructure on the powerline, including the eastern conductor.

- 14 ~~It does not admit the allegation in paragraph 14.~~ It admits the allegations in paragraph 14.
- 15 ~~It does not admit the allegation in paragraph 15.~~ It admits the allegation in paragraph 15, save that it does not admit the precise location of the trunk of the Tree relative to the eastern conductor and Middle Pole set out at (i) & (ii) respectively.
- 16 ~~It does not admit the allegation in paragraph 16.~~ ~~It denies paragraph 16.~~ Admits that since at least the end of the previous bushfire season (2018 – 19) the Tree was dead and at risk of failing and falling onto the powerline, and otherwise does not admit 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 responded 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 [In relation to paragraph 24:](#)

[24.1 It denies the allegations in paragraph 24.A1:](#)

[24.2 It admits the allegations in paragraph 24.1:](#)

[24.3 It does not know and therefore does not admit the allegations in paragraph 24.2.](#)

[~~It does not know and therefore does not admit the allegations in paragraph 24.~~](#)

25 [In relation to paragraph 25:](#)

[25.1 It denies the allegations in paragraph 25.A1:](#)

[25.2 It otherwise does not know and therefore does not admit the allegations in paragraphs 25.1 and 25.2.](#)

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 the allegations in 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 paragraphs 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;

43.2 as to paragraph 43.1A, the First Respondent refers to and repeats the matters pleaded in paragraph 24.1 above;

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

(a) the Ultra-fast protection settings were in test 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.

43.5 the First Respondent say that the fire started by arcing occurring prior to the response time of the Ultra-fast protection settings.

43.6 otherwise denies the allegations contained therein.

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. Without prejudice to its denial, it says that it was not required to foresee interference or detachments in excess of the requirements prescribed AS 1154 Part 1 1972.

45E(1) it denies paragraph 45E(1);

45E(2) it denies paragraph(2) and says that the 1985 version of AS 1154.2 was not operative at the time of installation of the Southern Pole eastern insulator.

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

45G it denies paragraph 45G. In further answer to paragraph 45G.2, it says that the connection between the Southern Pole eastern insulator and the insulator pin was not designed, nor required, to tolerate the forces generated by the fall of the Tree and that the connection would have failed irrespective of the extent to which the insulator was screwed onto the threaded polymer head/sleeve of the insulator pin;

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.

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 of falling and falling 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.

Second and Third Respondents' Negligence

67 Further to the plea at paragraph 66 of this Defence and without prejudice to its denials and pleas at paragraphs 1 to 65 of this Defence, the First Respondent pleads as follows.

68 At all material times, the Second and Third Respondents knew, or as the owners and occupiers of the property ought reasonably to have known:

68.1 that the powerline ran through the property;

68.2 that the First Respondent transmitted electricity at high voltage along the powerline;

68.3 that the conductors of the powerline were bare, uninsulated, aerial conductors;

68.4 each of the matters pleaded by the Applicant in paragraphs 12 to 16A in the Applicant's Statement of Claim (Revision 4) filed on 11 August 2025 (**Applicant's Statement of Claim**).

69 At all material times, it was reasonably foreseeable to the Second and Third Respondents that:

- 69.1 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;
- 69.2 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;
- 69.3 a tree falling from the plantation and contacting the powerline, could cause the unintended discharge of electricity from the powerline;
- 69.4 an unintended discharge of electricity from the powerline could cause a bushfire by the manners alleged in subparagraphs 31.3 to 31.7 of the Applicant's Statement of Claim;
- 69.5 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.
70. The First Respondent refers to and repeats the allegations in paragraphs 8, 12 to 16A (inclusive) of the Applicant's Statement of Claim, and paragraphs 68 and 69 of this Defence.
71. At all material times since in or about February 2012, the Second and Third Respondents:
- 71.1 had the right, to the exclusion of other private persons to inspect, assess, maintain, nurture and/or manage the plantation; or
- 71.2 exercised the said right; and
- 71.3 in the premises, had control over the plantation.
72. At all material times the Cudlee Creek class (as defined in paragraph 32 of the Applicant's Statement of Claim):
- 72.1 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
- 72.2 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;

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

72.4 were dependent on the Second and Third Respondents 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.

73. In the premises, at all material times, the Second and Third Respondents owed to persons within the Cudlee Creek class a duty to exercise reasonable care:

73.1 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;

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

74. At all material times, the Second and Third Respondents 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:

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

74.2 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;

74.3 request that the First Respondent 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.

75. The burden of taking any of the precautions in paragraph 74 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.

76. In the circumstances, compliance with the Occupiers Duty required the Second and Third Defendants to:
- 76.1 identify dead trees within the plantation at risk of falling and failing onto the powerline;
and
 - 76.2 remove dead trees on the western edge of the plantation; or alternatively
 - 76.3 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
 - 76.4 request that the First Respondent 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.
77. In breach of the Occupiers Duty, prior to 20 December 2019 the Second and Third Respondents failed to:
- 77.1 identify that the Tree was at risk of falling and failing onto the powerline; and
 - 77.2 remove the Tree; alternatively
 - 77.3 prune the Tree so that it was no longer at risk of failing and falling onto the powerline;
 - 77.4 request that First Respondent 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.
78. Had the Second and Third Respondents not breached the Occupiers Duty as alleged in paragraph 77 above, the Tree would not have fallen onto the powerline and the Cudlee Creek bushfire would not have occurred.
79. In the premises, the Cudlee Creek bushfire was caused by the Second and Third Respondents' negligence.
80. By reason of the Second and Third Respondents' negligence, the Applicant and each of the group members suffered loss and damage.

Dated: ~~2 June 2021~~ ~~6 November 2024~~ 5 November 2025

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

Wotton + Kearney

WOTTON + KEARNEY
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