



31/10
BK/JHAG

OCT 2014

FURTHER AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court Supreme Court of New South Wales
Division Common Law
List General
Registry Sydney
Case number 2014/148790

TITLE OF PROCEEDINGS

plaintiff **Sean Johnston**
defendant **Endeavour Energy (ABN 59 253 130 878)**

FILING DETAILS

Filed for Sean Johnston, the plaintiff
Legal representative Brendan Pendergast, Maddens Lawyers
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TYPE OF CLAIM

Torts - Negligence - Personal Injury - Nuisance - Property Damage

RELIEF CLAIMED

- 1 Damages.
- 2 Interest pursuant to section 100 of the *Civil Procedure Act 2005* (NSW).
- 3 Costs including interests on costs.

PLEADINGS AND PARTICULARS

THE PLAINTIFF & GROUP MEMBERS

1. The plaintiff was at all material times the sole proprietor of real property situated at 109 Buena Vista Road, Winmalee in the State of New South Wales ("**plaintiff's land**").
2. The Plaintiff brings this proceeding on his own behalf and on behalf of the group members.
3. The Springwood/Winmalee fire ("**Springwood/Winmalee fire**") is the fire that started in Linksview Road, Springwood in the State of New South Wales on 17 October 2013.
4. The group members ("**group members**") to whom this proceeding relates are:
 - 4.1. all those persons who suffered personal injury (whether physical injury, or psychiatric injury as defined below) as a result of:
 - 4.1.1. the Springwood/Winmalee; and/or

4.1.2. the death of or injury to another person as a result of the Springwood/Winmalee fire.

where "psychiatric injury" in this group definition means nervous shock or another psychiatric or psychological injury, disturbance, disorder or condition which has been diagnosed as such in a diagnosis given to the person by a medical practitioner prior to 31 December 2014; and

4.2. all those persons who suffered loss of or damage to property as a result of the Springwood/Winmalee; and

4.3. all those persons who at the time of the Springwood/Winmalee fire resided in, or had real or personal property in, the Springwood/Winmalee fire area and who suffered economic loss, which loss was not consequent upon injury to that person or loss of or damage to their property; and

4.4. the legal personal representatives of the estates of any deceased persons in 4.2 and/or 4.3 who were group members as at the date of commencement of this proceeding.

5. As at the date of commencement of this proceeding there are seven or more persons who have claims against the defendant.

ENDEAVOUR ENERGY

6. The Defendant ("**Endeavour Energy**") at all material times:
 - 6.1. is and was a company incorporated under the *Energy Services Corporations Act 1995* and capable of being sued;
 - 6.2. carried on business as a distributor of electricity to residential and business consumers in New South Wales ("**the business**");
 - 6.3. in carrying on the business was:
 - 6.3.1. an electricity distributor; within the meaning of the *Energy Services Corporation Act 1995 (NSW)*("ESC Act") and
 - 6.3.2. a network operator within the meaning of the *Electricity Supply Act 1995 (NSW)* ("ES Act");
7. In the course of and for the purposes of the business at all material times Endeavour Energy:
 - 7.1. owned, further or alternatively had the use and management of, the poles, the pole fittings, conductors, fuses, transformers, and sub stations and like installations servicing Linksview Road, Springwood, (together and severally "**installations**") comprising:
 - 7.1.1. (to pole 487086) low voltage aerial bundled conductors ("LV ABC");
 - 7.1.2. thereafter four bare or uninsulated phase and neutral low voltage conductors,

suspended from poles together with service cables to premises in Linksvievw Road, Springwood (“**power line**”);

Particulars

Further particulars of the history of the construction, installation and maintenance of the power line will be provided following discovery and interrogation.

- 7.2. caused or allowed the transmission of electricity on the power line for the purposes of *inter alia* supply to residential consumers.

STATUTORY DUTY OF CARE

8. At all material times;
- 8.1. sections 3; 45; 191 (1)(g1) and (1A)(e) of the ES Act; and
- 8.2. clauses 8, 9 and 12 of the *Electricity Supply (Safety and Network Maintenance) Regulation 2008*; and
- 8.3. section 8 of the ESC Act,
- required Endeavour Energy as network operator and energy distributor to take reasonable care to ensure that all parts of its network were safe and were operated safely (“**Statutory Duty**”).
9. The Statutory Duty imposed on Endeavour Energy obligations for the benefit and protection of a particular class of persons, being persons who from time to time, by themselves or their property:

- 9.1. approached or came into contact with any part of Endeavour Energy's network; or
- 9.2. might be injured or damaged by a discharge of electricity from any part of the said network or by the consequences of any such discharge, including but not limited to fire.

Particulars

The objects of benefitting and protecting the said class are to be inferred from the ES Act (and the regulations made thereunder) and the ESC Act as a matter of the proper construction of the Acts.

10. At all material times the plaintiff and each of the group members (together and severally “**claimants**”) were:
 - 10.1. persons within the class described in the preceding paragraph; or
 - 10.2. estates or dependents of persons within the class described in the preceding paragraph; or
 - 10.3. persons likely to suffer mental injury, psychiatric injury or nervous shock as a result of the death of or injury to persons within the class described in the preceding paragraph.
11. In the premises, at all material times Endeavour Energy owed the Statutory Duty to the claimants.

GENERAL DUTIES OF CARE

12. At all material times Endeavour Energy:

- 12.1. had the ultimate responsibility for all activities associated with the planning, design, construction, inspection, modification and maintenance of the power line;
- 12.2. had the right, to the exclusion of other private persons to:
 - 12.2.1. construct, repair, modify, inspect and operate the power line; or
 - 12.2.2. give directions as construction, repair, modification, inspection or operation of the power line;
- 12.3. exercised the right referred to in 12.2 above; and
- 12.4. in the premises, had practical control over the power line.

Particulars

So far as the plaintiff is able to say prior to discovery, Endeavour Energy constructed, repaired, modified and inspected and operated the power line, and further gave directions to its contractors regarding the construction, repair, modification, inspection or operation of the power line and in particular in relation to inspection for hazardous vegetation and tree clearances so as to ensure anything which could make the power line become a potential cause of fire or potential risk to public safety was clear from the power line. Further particulars may be provided prior to trial.

13. At all material times:

- 13.1. Endeavour Energy used the power line to transmit electricity;
 - 13.2. the transmission of electricity along the power line created a risk of unintended discharges of electricity from the power line;
 - 13.3. unintended discharges of electricity from the power line were highly dangerous in that they were capable of causing death or serious injury to persons, and destruction or loss of property by:
 - 13.3.1. electrocution;
 - 13.3.2. burning by electric current; further or alternatively ;
 - 13.3.3. burning by fire ignited by the discharge of electricity;
 - 13.4. in the premises set out in “13.1” to "13.3" inclusive, the transmission of electricity along the power line was a dangerous activity;
 - 13.5. Endeavour Energy knew or ought reasonably to have known of the risks referred to in “13.1” to “13.4” above.
14. At all material times it was reasonably foreseeable to Endeavour Energy there was a risk that:
 - 14.1. interference with conductors and service cables by trees might cause a discharge of electricity from the power line;
 - 14.2. the discharge of electricity from the power line could cause ignition of flammable material in the vicinity of the point of discharge;

Particulars

Flammable material is any material capable of ignition, including without limitation ignition by the application of electric current or by contact with molten or burning metal.

- 14.3. further and in the alternative to 14.2, a discharge of electricity from the power line could cause the emission of electricity, heat or molten metal particles ("**sparks**") from the point of discharge;
- 14.4. electricity, heat or sparks emitted from a point of discharge could cause electric shock or burns to persons or property in the vicinity of the point of discharge;
- 14.5. electricity, heat or sparks emitted from a point of discharge could cause the ignition of fire in flammable material exposed to / in the vicinity of the point of discharge of the electricity, heat or sparks;
- 14.6. such ignition could produce a fire which might spread over a wide geographic area, depending on *inter alia* wind direction and velocity;

Particulars

The fire spread also depended on the amount of combustible fuel, the terrain, the environmental conditions including humidity and precipitation, the effectiveness of human fire fighting responses. Further particulars may be provided prior to trial.

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

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

14.8.1. affected by the physical consequence of fire, such as smoke or debris; or

14.8.2. the subject of emergency activity to prevent the spread of fire, including without limitation the clearing of firebreaks;

("affected areas")

14.9. such fire or its consequences could:

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

14.9.2. impede the use or amenity of property located in the fire area or affected areas; or

14.9.3. reduce the value of property or businesses located in the fire area or affected areas; and thereby cause economic loss to those persons, or the owners of those properties or businesses;

14.10. the risks referred to in 14.7, further or alternatively 14.8, further or alternatively 14.9 above were likely to be higher when the environment around the power line was dry and hot and windy than when the environment was damp or cool or windless.

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

15.1. were from time to time; or

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

15.3. carried on business;

in the fire area or affected areas ("the **Springwood/Winmalee Class**"):

15.3.1. had no ability, or no practical and effective ability, to prevent or minimize the risk of such discharge occurring; and

15.3.2. were vulnerable to the impact of such fire; and consequently

15.3.3. were to a material degree dependent, for the protection of their persons and property, upon Endeavour Energy ensuring that the power line was safe and operated safely in the operating conditions applying to it from time to time.

Particulars

Particulars of the area affected by the Springwood/Winmalee fire will be provided prior to trial.

The operating conditions referred to included the level of electrical current being transmitted along the power lines, the physical environment around the power lines including without limitation wind direction and speed, ambient temperature, the presence of objects capable of coming into contact with the power lines

(including without limitation trees) and the amount of combustible fuel around or below the power lines.

16. At all material times the claimants were:

16.1. persons within the Springwood/Winmalee class; or

16.2. dependents of persons within the Springwood/Winmalee class; or

16.3. persons likely to suffer mental injury, psychiatric injury or nervous shock as a result of the death of or injury to persons within the Springwood/Winmalee class.

17. In the premises set out in paragraphs 8 to 16 inclusive, alternatively paragraphs 8 and 12 to 16 inclusive, at all material times Endeavour Energy owed to claimants a duty:

17.1. to take reasonable care, by its officers, servants and agents; and

17.2. to ensure that reasonable care was taken, by its agents or contractors;

to ensure that all parts of the power line were safe and operated safely in the operating conditions that were foreseeable for the line ("**General Duties**").

~~18.~~ [not used]

~~19.~~ [not used]

STANDARD OF CARE –ENGINEERING

20. At all material times Springwood in the vicinity of the power line:

20.1. was a high bushfire risk area for the purposes of tree management.

Particulars

Springwood in the vicinity of the power line is an urban area adjacent to the Blue Mountains National Park.

A copy of the document "*Tree Management Plan*" June 2007 prepared by Endeavour Energy pursuant to clause 137 of the *Electricity Supply (General) Regulation 2001* ("**Tree Management Plan**") may be inspected by appointment at the office of the Plaintiff's solicitors.

20.2. featured a ~~large-gum-tree~~ large numbers of trees, including a large *acacia binerva* (coast myall) adjacent to pole JU 267 ("**the tree**") and bordering 108 Linksvie Road, Springwood, which was:

20.2.1. overhanging the power line; or

20.2.2. of such height and sufficiently close to the power line that if it fell or shed branches there was a material risk that it would fall onto or across the power line;

20.2.3. of such height and weight and supported branches of such size and weight, that there was a material risk that the tree or branch falling across the power line would cause:

20.2.3.1. the power line conductors or service cables to break; and/or

20.2.3.2. the power line conductors to come in contact with each other; and

20.2.3.3. electrical arcing to occur between the tree or branch and a conductor on the power line or between conductors on the power line or between a broken service cable and vegetable matter under the power line.

21. At all material times:

21.1. the conductors on the power line adjacent to pole JU 267 at 108 Linksvie Road, Springwood ("the Conductors") were bare or uninsulated low voltage aerial conductors;

21.2. the Conductors were in close proximity to each other;

21.3. there was a material risk that in the event of the Conductors being displaced in any way by a tree or branch they could arc between themselves or with the tree or branch;

21.4. there was a material risk that an arc occurring might cause the discharge of molten particles of super heated metal ("**sparks**") from the section of conductor where arcing occurred;

21.5. the protection systems regulating the power line included low voltage fuses and such other protection which is known by Endeavour Energy but is not known to the plaintiff;

Particulars

Further particulars may be provided following the completion of discovery and receipt of expert evidence.

- 21.6. the protection systems regulating the power line were such that there was a material risk that, in the event of a component of the power line breaking and falling to the ground, the protection systems would or could allow current to continue to be transmitted through the power line to cause ignition of a fire, especially in dry and windy conditions.

Particulars

So far as the plaintiff is able to say prior to discovery, interrogation, and receipt of expert evidence, the protection systems on the power line were such that after a cable failure, electricity would or could continue to be transmitted, during which ignition of dry vegetation could occur.

- 21.7. there was material risk that:

21.7.1. sparks; or

21.7.2. heat or electrical discharge from a fallen service cable;

could ignite dry vegetation in the vicinity of the sparks, heat or discharge;

21.8. the risk referred to in "21.7" was higher when conditions around the power lines were dry and hot and windy than when conditions were moist, cool and calm;

21.9. the dry, hot and windy conditions which increased the risk referred to in "21.8" above were also likely to increase the risks of a tree falling, or shedding branches, across the power line.

22. At all material times Endeavour Energy:

22.1. knew; or

22.2. being the network operator ought reasonably to have known;

the matters set out in the two preceding paragraphs.

23. In the premises set out in paragraph 20 to 22, at all material times:

23.1. the Statutory Duty; further or alternatively

23.2. the General Duties;

required Endeavour Energy to:

23.2.1 ensure that appropriate clearance distances were maintained between the Conductors and service cables, and vegetation at near pole JU 267;

23.2.2 insulate low voltage conductors on the power line, alternatively the conductors on the section of the power line near pole JU 267.

PARTICULARS

Installation of LV ABC on the power line near pole JU 267 would have obviated the risk identified in paragraphs 21.3 and 21.4 above:

- (a) LV ABC as was installed on the line to pole 487086 but not thereafter consists of three individual phase cables, each made of a stranded conductor and surrounded by insulation, such as extruded cross linked polyethylene, and a neutral conductor. The cables are helically wrapped to form a bundle.
- (b) the insulation of the LV ABC prevents:
 - (i) contact between the bare conductor(s) and vegetation. LV ABC will not arc over with trees or branches;
 - (ii) contact between bare conductors. LV ABC will not arc over between themselves if touched by tree branches.

STANDARD OF CARE - VEGETATION ASSESSMENT

24. At all material times Endeavour Energy:

24.1. knew; or

24.2. being the network operator ought reasonably to have known;

of the matters set out in paragraphs 20 and 21 above.

25. At all material times Endeavour Energy in accordance with:

25.1. *Industry Safety Steering Committee (ISSC 3) Guideline for Managing Vegetation Near Power Lines, December 2005; and*

Particulars

A copy of the document *ISSC3 Guideline for Managing Vegetation Near Power Lines, December 2005* ("**ISSC 3**") may be inspected by appointment at the office of the Plaintiff's solicitors.

25.2. its Network Management Plan lodged with the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services in accordance with the *Electricity Supply (Safety and Network Management) Regulation 2008; and*

Particulars

The Network Management Plan is in the possession of Endeavour Energy. Further particulars may be provided upon completion of discovery.

25.3. the Tree Management Plan;

25.4. pursuant to powers vested in it under the ES Act;

acting reasonably was required to:

25.4.1. inspect for hazardous vegetation;

Particulars

The inspections, *inter alia*, include a requirement to:

- (a) inspect the space, outside the clearance space (prescribed by ISSC 3), in which trees or a parts of trees constitute a potential serious hazard to network assets including the power line under a range of weather conditions that can be reasonably expected to prevail;
- (b) inspect the space in (a) to evaluate potential hazards within the space including:
 - (i) dead and dangerous limbs;
 - (ii) physical defects in trees;
 - (iii) other trees or limbs that may be unstable and could fall on network assets under the range of weather conditions that could reasonably be expected to prevail in the locality of the power line.

25.4.2. ensure that appropriate clearance distances are maintained between conductors and vegetation;

25.4.3. prune vegetation;

25.4.4. where vegetation is on private property monitor such vegetation and advise property owners when safety clearances have been compromised and where safety clearances have not been maintained to undertake pruning works for the maintenance thereof.

26. Further and in the alternative, if Endeavour Energy has reasonable cause to believe that a tree situated on any premises:

26.1. could destroy, damage or interfere with its electricity works, or

26.2. could make its electricity works become a potential cause of bush fire or a potential risk to public safety;

as a network operator Endeavour Energy:

26.2.1. may serve a written notice (“notice”) on the owner or occupier of the premises requiring the owner to trim or remove the tree, or

26.2.2. in an emergency, may, at its own expense, trim or remove the tree itself; and

26.2.3. if the work is not carried out as required by the notice, Endeavour Energy may carry out the work itself.

Particulars

The plaintiff relies upon Section 48 of the ES Act.

27. In or about:

27.1. July 2012; and further

27.2. July 2013;

Endeavour Energy through its inspectors carried out an inspection of trees and vegetation adjacent to pole JU 267 on the power line (“the

inspections") identified that the tree adjacent to pole JU 267 of the power line was a hazardous tree (~~"hazardous tree"~~)

Particulars

~~Further particulars may be provided upon completion of discovery~~

28. Immediately, Subsequent ~~subsequent to the inspections to the~~ identification of the hazardous tree, in or about:

28.1. July 2012; and further

28.2. July 2013;

Endeavour Energy through its inspectors served upon the occupiers ("occupiers") of:

28.2.1. 108 Linksview Road, Springwood; and

28.2.2. 110 Linksview Road, Springwood

a Customer Vegetation Report requiring them to "trim foliage near the service line". ~~written notice requiring pruning or removal of the hazardous tree.~~

Particulars

The notices were served pursuant to section 48 of the ES Act.

Copies of the notices are in the possession of Endeavour Energy.

Further particulars may be provided upon completion of discovery.

The foliage referred to in the report included foliage from the tree.

29. That despite there being no pruning or removal of the foliage and/or the tree hazardous-tree-by the occupiers Endeavour Energy did not:
- 29.1. at its own expense, trim or remove the tree itself in accordance with Section 48(2)(b) of ES Act
- 29.2. within 21 days and/or a reasonable time carry out the work itself in accordance with Section 48(5) of ES Act.
30. In the course of the inspections the tree was or should have been identified by the inspectors as a tree that was a hazardous tree in that: At all-material-times-subsequent-to-the-inspection-in-or-about-July-2012 Endeavour-Energy-knew-the-tree-immediately-adjacent-pole-JU-267-was-a hazardous-tree-in-that:
- 30.1. its location was such that if it fell it represented a serious risk to network assets;
- 30.2. its health was such that it was a potential serious hazard under the range of weather conditions that could reasonably be expected to prevail in the locality; and
- 30.3. if it fell onto the power line it had the propensity to cause a bush fire.

Particulars of the tree

The tree was approximately 30 years old.

The tree suffered from a brown rot fimghi affecting the trunk of the tree from below ground level and affecting the integrity of the tree. This brown rot fimghi further meant that boring insects including witchety grubs became more active and further reduced the integrity of the tree.

Signs that the tree was at risk of failing upon an appropriate inspection included:

- (a) fissures at the base of the tree;
- (b) visible rot at the base of the tree near the fissures;
- (c) frass (castings) of borers and grubs at the base of the tree;
- (d) sap leakage at the base of the tree;
- (e) wood tissue growth being seen as knobs of wood where the tree was putting down healthy wood so as to reinforce the integrity of the tree;
- (f) the lean of the tree from perpendicular;

Upon one or more of the above signs being observed which indicated dry rot or other health issues with the tree there should have been further inspection would have involved at least:

- (i) tapping the tree trunk with an inspection mallet which would have resulted in an obvious hollow sound indicating the extent of the dry rot; and

(ii) if further proof of the dry rot and its extent was needed pushing a screw driver into the tree at the site of the fissures which would clearly demonstrate the dry rot and its extent;

31. In the premises set out in the previous paragraph at all material times:

31.1. the Statutory Duty; further or alternatively

31.2. General Duties

required Endeavour Energy acting reasonably to:

31.2.1. ensure that appropriate clearance distances were maintained between the Conductors and vegetation at pole JU 267;

31.2.2. ensure that persons trim or remove the hazardous tree, or if persons did not do so;

31.2.3. remove the hazardous tree.

BREACHES OF DUTIES OF CARE

32. In the premises set out in paragraphs 20 to 31 inclusive above, as at 17 October 2013 Endeavour Energy had failed to:

32.A1. insulate the low voltage conductors on the power line, alternatively the conductors on the section of the power line including pole JU 267;

Particulars

So far as the plaintiff is able to say prior to discovery, interrogation, and receipt of expert evidence, installation of LV ABC on the power line at pole JU 267 would have obviated the risk identified in sub-paragraphs 21.3 and 21.4 above.

32.1. ensure that appropriate clearances~~s~~ distances were maintained between the Conductors and vegetation ~~at pole JU-267~~ the tree;

32.2. ensure that the occupiers trim or remove the hazardous-tree so that appropriate clearance distances were maintained between the Conductors and vegetation at pole JU 267; or

32.3. (if the occupiers did not do so) trim or remove the hazardous-~~tree~~ so that appropriate clearance distances were maintained between the Conductors and vegetation at the tree near pole JU 267;

33. In the premises, as at 17 October 2013 Endeavour Energy had breached, and continued to be in breach of:

33.1. the Statutory Duty; further or alternatively

33.2. the General Duties.

Particulars

But for the breaches of duty:

(a) each of the Conductors would have been insulated and would not have arced with objects coming into contact with it or close proximity to it; and/or

- (b) the hazardous tree would have been removed or trimmed, such that the appropriate clearance distances were maintained between the Conductors and vegetation-at the tree near pole JU 267 on 17 October 2013.

BREACHES OF DUTY CAUSED SPRINGWOOD / WINMALEE FIRE

34. At approximately 1.30pm on 17 October 2013 at Linksview Road, Springwood:

- 34.1. vegetation in and adjacent to Linksview Road was dry;
- 34.2. there was low humidity in local atmospheric conditions;
- 34.3. there was a very high ambient temperature;
- 34.4. there were strong winds blowing.

35. Each of the:

- 35.1. dry vegetation;
- 35.2. low humidity;
- 35.3. ambient temperature;
- 35.4. wind speed and direction;

on 17 October 2013 were within the range of foreseeable operating conditions for the power line.

36. At approximately 1.30pm on 17 October 2013:

- 36.1. the hazardous tree fell onto and remained upon the Conductors on the power line;
 - 36.2. the Conductors arced with each other and/or the tree causing the discharge of sparks and/or ignited bark from the tree;
 - 36.3. further and in the alternative to 36.1 to 36.2, the hazardous tree fell onto and broke the service cable(s) to premises at 108 Linksview Road, Springwood;
 - 36.4. the live service cable(s) fell onto the ground and discharged electricity and heat into vegetable matter on the ground, alternatively caused arcing between the fallen cable and vegetable matter on the ground beneath the power line;
 - 36.5. the sparks or ignited bark or broken service cable(s) ignited vegetable matter on the ground beneath the power line;
 - 36.6. the sparks or ignited bark or broken service cable(s) thereby started a fire which subsequently spread over a wide geographic area being the Springwood/Winnmalee fire.
37. If the actions referred to in the particulars to paragraph 33 had been undertaken by Endeavour Energy the Springwood/Winnmalee fire would not have occurred.
- ~~38.~~ [not used]
39. In the premises the Springwood/Winnmalee fire was caused by Endeavour Energy's breaches of:

39.1. the Statutory Duty; further or alternatively

39.2. the General Duties.

40. The Springwood/Winmalee fire was a natural and foreseeable consequence of the breaches of duty alleged in this proceeding.

SUB GROUP CLAIM –PRIVATE NUISANCE

41. Further to paragraph 4 above, the Plaintiff brings this proceeding on behalf of those group members ("sub group members") who suffered loss of or damage to property, further or alternatively economic loss, in connection with the Springwood/Winmalee fire's interference in their use and enjoyment of interests in land.

42. At all material times each of:

42.1. the risks referred to in paragraph 13 above; and

42.2. the risks that a fire ignited by a discharge of electricity from the power line would unreasonably interfere with the use or enjoyment of interests in land:

42.2.1. over which the fire passed; further or alternatively

42.2.2. that was affected by physical consequences of the fire or by emergency responses to the fire;

42.2.3. by the persons entitled to the said use or enjoyment;

were reasonably foreseeable to Endeavour Energy.

43. By transmitting electric current along the power line, alternatively doing so at a time, being the afternoon of 17 October 2013, when the power line was not safe or operating safely, Endeavour Energy created or-increased the risk referred to in the preceding paragraph.
44. Endeavour Energy by the conduct alleged in the preceding paragraph in fact caused a fire beside Linksview Road being the Springwood/Winmalee fire, which fire spread to *inter alia* land in which the Plaintiff and sub group members had interests ("**sub group lands**").
45. The Springwood/Winmalee fire unreasonably interfered with the Plaintiff's and sub group members' use and enjoyment of their interests in sub group lands.
46. In the premises the Plaintiff and sub group members suffered a nuisance created by Endeavour Energy ("**nuisance**").

CAUSATION AND LOSS AND DAMAGE

47. By reason of:

47.1. the breaches of the Statutory Duty;

47.2. the breaches of the General Duties; further or alternatively

47.3. the nuisance;

by Endeavour Energy alleged herein, the Plaintiff and each of the group members or sub group members as the case may be suffered loss and damage of the kinds referred to in sub-paragraphs 14.7 to 14.9 (inclusive) above.

Particulars of loss and damage of Plaintiff

The Plaintiff has lost upon the property his house, its contents, a garden shed and the contents thereof fences and garden. The Plaintiff further has suffered inconvenience.

Further particulars of the Plaintiff's loss and damage will be provided prior to trial.

Particulars relating to individual group members will be provided following the trial of common questions.

COMMON QUESTIONS OF LAW OR FACT

48. The questions of law or fact common to the claims of the Plaintiff and each of the group members or sub group members are:
 - 48.1. how the Springwood/Winmalee fire started;
 - 48.2. whether the Statutory Duty was owed by Endeavour Energy to the Plaintiff and group members and if so the content of those duties;
 - 48.3. whether the General Duties were owed by Endeavour Energy to the Plaintiff and group members and if so the content of the duty;
 - 48.4. whether the Springwood/Winmalee fire was caused by a breach by Endeavour Energy of the Statutory Duty and/or the General Duties;
 - 48.5. whether the Plaintiff and sub group members suffered actual nuisance created by Endeavour Energy;

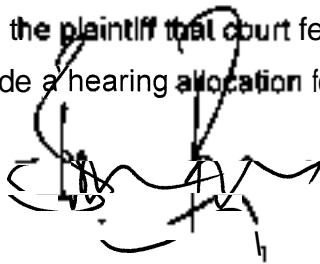
48.6. what are the principles for identifying and measuring compensable losses suffered by the claimants resulting from the breaches of duty or negligence alleged herein.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under section 347 of the Legal Profession Act 2004 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised ~~the plaintiff that~~ court fees may be payable during these proceedings. These fees may include a hearing ~~allocation~~ fee.

Signature



BRENDAN FRANCIS PENDERGAST
of **Maddens Lawyers 219 Koroi Street,**
Warrambool, an Australian Legal Practitioner
under the Legal Profession Act 2004

Capacity

Date of signature

29/9/14

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 **If you intend to dispute the claim or part of the claim**, by filing a defence and/or making a cross-claim.
- 2 **If money is claimed, and you believe you owe the money claimed**, by:
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 **If money is claimed, and you believe you owe part of the money claimed**, by:
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales Law Courts Building, Queens Square 184 Phillip Street, Sydney NSW 2000 Australia
Postal address	Supreme Court of New South Wales GPO Box 3 Sydney NSW 2001 Australia DX: 829 Sydney
Telephone	(02) 9230 8111

AFFIDAVIT VERIFYING

Name Brendan Francis Pendergast
Address 219 Koroit Street, Warrnambool, Victoria 3280
Occupation Lawyer
Date 29.09.14

I, Brendan Francis Pendergast of 219 Koroit Street, Warrnambool, Victoria, Solicitor, make oath and say as follows:

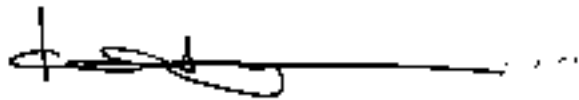
- 1 I have previously sworn an affidavit in this proceeding on 16 May 2014 verifying the Statement of Claim filed with this Honourable Court on even date.
- 2 I have also previously sworn an affidavit on 21 July 2014 in this proceeding, verifying the amended Statement of Claim filed with this Honourable Court on even date.
- 3 Pursuant to an Order of Garling J made 29 August 2014, the plaintiff has now filed a further amended Statement of Claim. As to any allegations of fact pleaded therein, I believe that the allegations are true.

SWORN at Warrnambool,
Victoria 29 **fcflo^**

Signature of deponent

2014 

Signature of witness



Name of witness

Address of witness

Capacity of witness

KATHRYN AMY EMERY
of Madders Lawyers 219 Koroit Street,
Warrnambool, an Australian Legal Practitioner
under the Legal Profession Act 2004