

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

No. SCI 4538 of 2012

BETWEEN

KATHERINE ROWE ~~RODERIC LIESFIELD~~

Plaintiff

and

AUSNET ELECTRICITY SERVICES PTY LTD (ACN 064 651 118) (formerly SPI ELECTRICITY
PTY LTD) & ORS ACN 064 651 118 (according to the Schedule)

Defendants

STATEMENT OF DEFENCE OF THE SECOND DEFENDANT
TO THE PLAINTIFF'S SEVENTH AMENDED STATEMENT OF CLAIM
(Filed pursuant to the order of his Honour Justice Dixon on 30 October 2014)

Date of document: 28 November 2014

Filed on behalf of: The second defendant

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Ref: RHPJ/BJM/59452/2

TO THE plaintiff's seventh amended statement of claim dated 29 October 2014 (**statement of claim**), the second defendant says:

SECTION A: PRELIMINARY

1. It admits paragraph 1.

1A. It admits paragraph 1A.

2. It admits paragraph 2.

3. As to paragraph 3:

(a) It admits that on the afternoon 7 February 2009 a fire started near the Murrindindi Sawmill on Wilhelmina Falls Road at Murrindindi in the State of Victoria (**Murrindindi fire**);

(b) It otherwise denies paragraph 3.

3A. It admits paragraph 3A.

4. It does not admit paragraph 4.
5. As to paragraph 5:
 - (a) For the purposes only of responding to the allegation that the requirements of section 33C(1) of the *Supreme Court Act 1986 (Vic)* are satisfied, it admits that at the date of commencement of this proceeding there were seven or more persons who are asserting claims against it.
 - (b) It otherwise denies paragraph 5.

SECTION B: AUSNET SPI – STATUTORY DUTY AND NEGLIGENCE

6. It does not plead to paragraph 6 as it makes no allegation of material fact against it.
7. It does not plead to paragraph 7 as it makes no allegation of material fact against it.
8. It does not plead to paragraph 8 as it makes no allegation of material fact against it.
9. It does not plead to paragraph 9 as it makes no allegation of material fact against it.
10. It does not plead to paragraph 10 as it makes no allegation of material fact against it.
11. It does not plead to paragraph 11 as it makes no allegation of material fact against it.
12. It does not plead to paragraph 12 as it makes no allegation of material fact against it.
13. It does not plead to paragraph 13 as it makes no allegation of material fact against it.
14. It does not plead to paragraph 14 as it makes no allegation of material fact against it.
15. As to paragraph 15:
 - (a) Save to the extent that any persons may have had control over forces, circumstances, events or occurrences external to the Murrindindi assets and which were capable of having an impact upon or damaging the Murrindindi assets so as to cause a discharge of electricity, it admits paragraph 15(i);
 - (b) It denies paragraph 15(ii);
 - (c) It does not plead to paragraph 15(iii) as it makes no allegation of material fact against it;
 - (d) It says further that having regard to paragraph 14(e) of the statement of claim, the definition of "*fire area*" in paragraph 14(f) of the statement of claim and the definition of "*affected areas*" in paragraph 14(g) of the statement of claim, the class of persons described in paragraph 15 of the statement of claim was an indeterminate class of persons.

16. Save that it says that having regard to paragraph 14(e) of the statement of claim, the definition of "fire area" in paragraph 14(f) of the statement of claim and the definition of "affected areas" in paragraph 14(g) of the statement of claim, the alleged class described in paragraph 15 of the statement of claim was an indeterminate class of persons, it does not admit paragraph 16.

17. As to paragraph 17:

(a) Insofar as any allegation is made against UAM, it says that:

(i) at all material times UAM exercised reasonable care and skill in the provision of services pursuant to the UAM Contracts; and

(ii) it admits that any duty of care owed by the first defendant SP-(AusNet) to the claimants was a non-delegable duty of care to ensure that reasonable care was taken by any independent agents or contractors engaged by it;

(b) It otherwise does not plead to paragraph 17 as it makes no allegation of material fact against it.

17A. As to paragraph 17A:

(a) Insofar as any allegation is made against UAM, it is denied and it says that:

(i) pursuant to the UAM Contracts, ~~SP~~-AusNet engaged UAM to undertake ground level activities including pole inspection and line hardware inspection (**Asset Inspection Services**);

(ii) it carried out Asset Inspection Services in respect of the Murrindindi assets in accordance with the UAM Contracts;

(iii) it complied with all obligations under the UAM Contracts in the provision of services and in respect of Asset Inspection Services in respect of the Murrindindi assets; and

(iv) it exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets and in the provision of services pursuant to the UAM Contracts generally.

(b) It otherwise does not plead to paragraph 17A as it makes no allegation of material fact against it.

17B. It does not plead to paragraph 17B as it makes no allegation of material fact against it.

17C. It does not plead to paragraph 17C as it makes no allegation of material fact against it.

17D. As to paragraph 17D:

(a) Insofar as any allegation is made against UAM, it says that:

- (i) UAM carried out Asset Inspection Services in respect of the Murrindindi assets including pole 6 on 16 March 2005 and 28 May 2008;
- (ii) it carried out Asset Inspection Services in respect of the Murrindindi assets in accordance with the UAM Contracts;
- (iii) it complied with all obligations under the UAM Contracts in the provision of services and in respect of Asset Inspection Services in respect of the Murrindindi assets; and
- (iv) it exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets and in the provision of services pursuant to the UAM Contracts generally.

(b) It otherwise does not plead to paragraph 17D as it makes no allegation of material fact against it.

17E. As to paragraph 17E:

(a) Insofar as any allegation is made against UAM, it says that:

- (i) UAM's Asset Inspection Services in respect of the Murrindindi assets including pole 6 on 16 March 2005 and 28 May 2008 comprised visual inspections undertaken from ground level and were scheduled at a frequency determined by ~~SP~~ AusNet;
- (ii) it carried out Asset Inspection Services in respect of the Murrindindi assets in accordance with the UAM Contracts;
- (iii) it complied with all obligations under the UAM Contracts in the provision of services and in respect of Asset Inspection Services in respect of the Murrindindi assets; and
- (iv) it exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets and in the provision of services pursuant to the UAM Contracts generally.

(b) It otherwise does not plead to paragraph 17E as it makes no allegation of material fact against it.

17F. It does not plead to paragraph 17F as it makes no allegation of material fact against it.

17G. Insofar as any allegation is made against UAM, it is denied. It otherwise does not plead to paragraph 17G as it makes no allegation of material fact against it.

17H. As to paragraph 17H:

(a) Insofar as any allegation is made against UAM, it is denied and it says that:

(i) it carried out Asset Inspection Services in respect of the Murrindindi assets in accordance with the UAM Contracts;

(ii) it complied with all obligations under the UAM Contracts in the provision of services and in respect of Asset Inspection Services in respect of the Murrindindi assets; and

(iii) it exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets and in the provision of services pursuant to the UAM Contracts generally.

(b) It otherwise does not plead to paragraph 17H as it makes no allegation of material fact against it.

17HA. Insofar as any allegation is made against UAM, it is denied. It otherwise does not plead to paragraph 17HA as it makes no allegation of material fact against it.

17I. Insofar as any allegation is made against UAM, it is denied. It otherwise does not plead to paragraph 17I as it makes no allegation of material fact against it.

17J. It does not plead to paragraph 17J as it makes no allegation of material fact against it.

17K. It does not plead to paragraph 17K as it makes no allegation of material fact against it.

17L. As to paragraph 17L:

(a) Insofar as any allegation is made against UAM, it is denied and it says that:

(i) it carried out Asset Inspection Services in respect of the Murrindindi assets in accordance with the UAM Contracts;

(ii) it complied with all obligations under the UAM Contracts in the provision of services and in respect of Asset Inspection Services in respect of the Murrindindi assets; and

(iii) it exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets and in the provision of services pursuant to the UAM Contracts generally.

(b) It otherwise does not plead to paragraph 17L as it makes no allegation of material fact against it.

17M. Insofar as any allegation is made against UAM, it is denied. It otherwise does not plead to paragraph 17M as it makes no allegation of material fact against it.

17N. Insofar as any allegation is made against UAM, it is denied. It otherwise does not plead to paragraph 17N as it makes no allegation of material fact against it.

17NA. Insofar as any allegation is made against UAM, it is denied. It otherwise does not plead to paragraph 17NA as it makes no allegation of material fact against it.

17NB. It does not plead to paragraph 17NB as it makes no allegation of material fact against it.

18. As to paragraph 18:

(a) It admits that on the afternoon of 7 February 2009 the northern (red phase) conductor on the Feeder Liner on the Sawmill Span fell from around the vicinity of Pole 6;

(b) It otherwise denies paragraph 18.

18AA. Further to the denial alleged in paragraph 18, it says further as follows:

(a) the Murrindindi Fire started at the roadside reserve located between the fence (on the one part) and Wilhelmina Falls Road (on the other part), within the area identified by cross-shading in the map annexed hereto styled "Annexure 1A":

(b) the Murrindindi Fire preceded the falling of the red phase conductor;

(c) the Murrindindi Fire was started by reason of a human act.

Particulars

The human act referred to is:

- (i) an act of arson, by an at present unknown individual or individuals;
- (ii) an act of discarding an ignition source in vegetation, by an at present unknown individual or individuals;
- (iii) ignition by hot exhaust, hot exhaust particles, or by other material discharged or displaced from a hot exhaust, on the part of an at present unknown individual or individuals.

Further particulars of the act or acts relied upon will be provided after discovery is complete, and in advance of the trial of the matter.

18A. It denies paragraph 18A.

18B. It denies paragraph 18B.

18C. It denies paragraph 18C.

18D. It denies paragraph 18D.

19. Insofar as any allegation is made against UAM, it is denied. It otherwise does not plead to paragraph 19 as it makes no allegation of material fact against it.

20. It does not plead to paragraph 20 as it makes no allegation of material fact against it.

SECTION C: AUSNET SPI – PRIVATE NUISANCE

21. Save that it does not admit that the plaintiff or any other person suffered injury or death, loss of or damage to property or economic loss in connection with interference in their use and enjoyment of interests in land as a consequence of any fire which ignited on 7 February 2009 near the Murrindindi Sawmill on Wilhelmina Falls Road at Murrindindi, it does not plead to paragraph 21 as it makes no allegation of material fact against it.

22. It does not plead to paragraph 22 as it makes no allegation of material fact against it.

23. It does not plead to paragraph 23 as it makes no allegation of material fact against it.

24. It does not admit paragraph 24.

25. It does not plead to paragraph 25 as it makes no allegation of material fact against it.

SECTION D – AUSNET SPI DERIVATIVE LIABILITY – ORIGINAL CONSTRUCTION

26. It does not plead to paragraph 26 as it makes no allegation of material fact against it.
27. It does not plead to paragraph 27 as it makes no allegation of material fact against it.
28. It does not plead to paragraph 28 as it makes no allegation of material fact against it.
29. It does not plead to paragraph 29 as it makes no allegation of material fact against it.
30. It does not plead to paragraph 30 as it makes no allegation of material fact against it.
31. It does not plead to paragraph 31 as it makes no allegation of material fact against it.
32. It does not plead to paragraph 32 as it makes no allegation of material fact against it.
33. It does not plead to paragraph 33 as it makes no allegation of material fact against it.
34. It does not plead to paragraph 34 as it makes no allegation of material fact against it.
35. It does not admit paragraph 35 and says further that having regard to paragraph 14(e) of the statement of claim, the definition of "*fire area*" in paragraph 14(f) of the statement of claim and the definition of "*affected areas*" in paragraph 14(g) of the statement of claim, the class of persons described in paragraph 33 and 34 of the statement of claim was an indeterminate class of persons.
36. It does not plead to paragraph 36 as it makes no allegation of material fact against it.
37. It does not plead to paragraph 37 as it makes no allegation of material fact against it.
38. It does not plead to paragraph 38 as it makes no allegation of material fact against it.
39. It does not plead to paragraph 39 as it makes no allegation of material fact against it.

SECTION E: LOSS AND DAMAGE – CLAIMS AGAINST AUSNET SPI

40. It does not plead to paragraph 40 as it makes no allegation of material fact against it.

SECTION F: CLAIMS AGAINST UAM

41. As to paragraph 41, it refers to and repeats paragraphs 42 to 69 below.

UAM – alleged common law duty to the claimants

42. It admits paragraph 42.

42A. As to paragraph 42A, it says that:

(a) Insofar as any allegation is made against UAM, it is denied. It says further that:

- (i) it admits that a contract in writing between AusNet and Powerline Management Systems Pty Ltd (ACN 061 157 015) (PMS) dated 31 December 1999 (PMS Contract):

(A) was entitled "For the provision of an asset inspection service for the distribution network within Eastern Energy's franchise area: Agreement";

(B) contained schedules 1 to 10 inclusive;

(C) contained annexure A: General Terms and Conditions – Services.

(b) It otherwise does not plead to paragraph 42A as it makes no allegation of material fact against it.

42B As to paragraph 42B, it says that:

(a) It admits that clause 2.1 of the PMS Contract stated that "The Term of this Agreement is for six years based on two-year approvals...";

(b) It admits that clause 7(a) of the PMS Contract stated that PMS "agrees to perform the services at the request of [AusNet]...";

(c) It admits that clause 7(c) of the PMS Contract stated that PMS "shall be responsible for the management, planning and supervision of all activities relating to the provision of the services ...";

(d) It admits that clause 23.1 of the PMS Contract stated that PMS "shall provide [AusNet] with an inspection of assets that form part of the Electrical Distribution System in the Service Area, which includes, the reporting and transfer of data relating to the inspection of assets and where required by the Standards, the carrying out of preventative maintenance...";

(e) It admits that the description of work in Schedule 1, Unit Descriptions included:

(i) "The provision of performance, progress and asset condition reports to [AusNet]..."; Unit A, paragraph (a) Reporting description;

(ii) "The provision of internal auditing of all activities performed by [PMS] and it's [sic] Sub-contractors..."; Unit A, paragraph (b) Auditing description; and

(iii) "The service of packaging works identified through asset inspections into works construction files. These work files are to include, but not be limited to, maps, work instructions, project estimates and project numbers. The work to be packaged is to be based on [AusNet's]'s maintenance policies.

Included in the works is the creation of projects with [AusNets]'s works management systems. [PMS] will provide all relevant data to the project within [AusNet] systems": Unit A, paragraph (c) Maintenance Packaging description;

(f) It admits that Schedule 1, Inspection Units of the PMS Contract stated that "[i]nspection activities will include the following:"

(i) "Uploading and downloading of PDE into CAMM database";

(ii) "Inspecting for evidence of defects in crossarms, insulators, conductors and their attachment ties, plus all other ancillary gear mounted on poles";

(iii) "Recording all observations via a Portable Data Entry Device";

(iv) "Record error corrections on AM/FM hardcopy plans...";

(v) "Provision of detailed assessment of pole top structures/hardware including advice on any replacement specification...";

(vi) "The service of inspection, analysis and chemical treatment of a concrete pole, including the inspection line clearance and pole top attachment, in areas designated as fire with [AusNet's] asset database...": Unit 3, Concrete Pole – Fire Area;

(vii) "Provision of the service of a visual inspection of pole top assembly and recording the asset condition, including the inspection of line clearances. (drive by check of pole top assembly)...": Unit 8, Pole Top Assembly;

(viii) "The service of physically inspecting a pole top assembly and recording the asset condition. A physical pole top inspection is when an appropriately trained person accesses the pole top physically via a ladder or EWP to assertion [sic] the asset condition... Rural area... cross arm inspection... attachments separate [sic] from cross arm...": Unit 18, Pole Top Inspections Physical;

(g) It admits that:

(i) Clause 8 of the PMS Contract stated that PMS "warrants that all Work undertaken under the terms of this Agreement shall be performed in a good and proper manner ...";

(ii) Clause 7 of the General Terms and Conditions of the PMS Contract stated that PMS "warrants that the Services provided ... comply in all respects with the quality and

description of the Services; and ... comply with all relevant statutory requirements and all relevant Australian Standards";

(h) It admits that:

(i) Clause 11(c) of the PMS Contract stated that PMS "shall carry out all work in a good, proper and professional manner and with due expedition and in accordance with good practice having regard to economy and safety...";

(ii) Clause 23.4 of the PMS Contract stated that PMS, "in providing the Service, shall at all times":

(A) "exercise due care and skill in accordance with best international practices";

and

(B) "wherever it is applicable, comply with" the items specified in clause 23.4 of the PMS Contract;

(i) It admits that clause 16(a) of the PMS Contract stated that AusNet "reserves the right to visit work sites both during and after inspections or repair work by [PMS] to audit the practices and procedures undertaken by [PMS]...";

(j) It admits that Schedule 7, Item 3 of the PMS Contract stated that "...[s]hould audits indicate that [PMS] has incorrectly inspected poles or pole assembly's [sic] [PMS] will re-inspect these assets at no cost to [AusNet]...";

(k) It admits that clause 17.1 of the General Terms and Conditions of the PMS Contract stated that "[PMS] must ensure that all personnel employed by [PMS] to perform functions pursuant to the Agreement are fully trained and competent and possess the necessary skills and ability to provide quality assurance of workmanship to ensure fulfilment of the obligations of [PMS] pursuant to the Agreement";

(l) It admits that:

(i) Clause 23.5.1 of the PMS Contract stated that "Further to clause 16 of the Conditions and in order to ensure the safety of [PMS], [AusNet] and the public, and to adhere to principals [sic] as est [sic] in the Occupational Health and Safety Act,

1985 (Victoria) (as amended or modified) all personnel working under this agreement (including [PMS's] employees and approved Sub-contractors) shall meet the minimum requirements with regard to training specified [in clause 23.5.2]";

(ii) Clause 16.1 of the General Terms and Conditions of the PMS Contract stated that:
"In order to ensure the safety of Contractors, [AusNet] and the public, and to adhere to principals [sic] as set out in the Occupational Health and Safety Act 1985 (Victoria) all personnel working under the Agreement (including [PMS's] employees and approved sub-contractors) must meet minimum requirements with regard to training...";

(m) It admits that clause 16.3 of the General Terms and Conditions of the PMS Contract stated that:

(i) "[AusNet] may, at its own cost, audit the training undertaken by personnel working under the Agreement. This shall include the right to test the knowledge and skills of any such persons to ensure that those persons are competent in the reasonable opinion of [AusNet's] Responsible Employee to carry out the provision of the Services"; and

(ii) "Where in the reasonable opinion of [AusNet's] Responsible Employee, skills and knowledge of personnel are not adequate, [AusNet's] Responsible Employee may, direct [PMS] to not allow that person to be involved in the provision of the Services until such time as he or she has obtained the required training";

(n) It admits that Schedule 7, Item 8 of the PMS Contract stated that "...[a] quality rating will apply for each audit completed. Should the average ranking of any Asset Inspector remain below the acceptable level for a period greater than one month a penalty will apply. The acceptable average for Asset Inspectors is Add figure here";

(o) It admits that Schedule 7, Item 6 of the PMS Contract stated that "[t]he bushfire mitigation indicators that relate to the Asset Inspection Contractor shall be zero during the fire declaration period approximately 1st December to the 1st of March each year...";

(p) It admits that clause 6.2 of the General Terms and Conditions of the PMS Contract stated that "[PMS] will, within a reasonable time prior to the provision of the Services, contact [AusNet's] Responsible Employee to ensure that [AusNet] personnel are available, if necessary, to provide [PMS] with instructions or directions as to the provision of the Services";

(q) It admits that clause 8 of the General Terms and Conditions of the PMS Contract stated that "[PMS] is liable for all damages, actions, claims, proceedings, injury, loss and expenses of whatsoever nature (including, but not limited to economic loss, loss of profit and consequential loss and damage) incurred by [AusNet] arising out of the failure of [PMS] to comply with its obligations under the Agreement, including, but not limited to the failure of the Services to meet the requirements of the Agreement"; and

(r) It otherwise does not plead to paragraph 42B as it makes no allegation of material fact against it.

42C. Save that UAM refers to the full terms and conditions of the "Business Purchase Agreement" dated 26 October 1999 as to its meaning and effect, it admits paragraph 42C.

42D. Save that UAM refers to the full terms and conditions of the "Business Purchase Agreement" dated 26 October 1999 as to its meaning and effect, it admits paragraph 42D.

42E. Save that UAM refers to the letter dated 24 January 2000 as to its meaning and effect, it admits paragraph 42E.

42F. Save that UAM refers to the documents set out in paragraphs 42F(g) (A) to (G) of the statement of claim as to their meaning and effect, it admits paragraph 42F.

42G. It denies paragraph 42G. It says further that pursuant to the contract in place between AusNet and UAM from about January 2000 until about April 2007 (**First UAM Contract**):

(a) UAM was engaged to perform services at the request and instruction of AusNet and as were required from time to time by AusNet;

(b) From on or about January 2000 to about April 2007, AusNet engaged UAM to undertake Asset Inspection Services;

(c) From about January 2000 to about March 2005, AusNet engaged UAM to undertake the service of packaging works identified through asset inspections into works construction files (Maintenance Packaging Services);

(d) It complied with all obligations under the First UAM Contract in the provision of Asset Inspection Services and Maintenance Packaging Services and in the provision of services pursuant to the First UAM Contract; and

(e) It exercised reasonable care and skill in carrying out Asset Inspection Services and Maintenance Packaging Services and in the provision of services pursuant to the First UAM Contract.

43. It admits paragraph 43 but says further that pursuant to the Second UAM Contract, UAM carried out such Contract Works:

(a) As were required from time to time by ~~the first defendant (SP AusNet)~~; and

(b) In accordance with the terms and conditions of the Second UAM Contract.

44. As to paragraph 44:

(a) It denies the allegations in paragraph 44(a), and says that:

(i) pursuant to the Second UAM Contract, ~~SP~~ AusNet engaged UAM to undertake Asset Inspection Services;

(ii) Asset Inspection Services were carried out by UAM in accordance with Works Orders;

(iii) each Works Order related to a pole in respect of which UAM was to provide Asset Inspection Services;

(iv) Works Orders were generated by the ~~SP~~ AusNet Q4 computer system from information contained in a works spreadsheet issued by ~~SP~~ AusNet to UAM, specifying the poles in relation to which UAM was to provide Asset Inspection Services within the period covered by the spreadsheet (~~SP AusNet Works Spreadsheet~~).

Particulars

- (A) ~~SP~~-AusNet Works Spreadsheets were generated by the ~~SP~~-AusNet Q4 System.
 - (B) They were issued by ~~SP~~ AusNet to UAM annually and updated by ~~SP~~ AusNet on an ongoing basis.
 - (C) Each ~~SP~~ AusNet Works Spreadsheet further specified the window of time within the period covered by the Works Spreadsheet during which the Asset Inspection Services were to be performed by UAM.
 - (D) From the information contained in the ~~SP~~ AusNet Works Spreadsheet, UAM created a works package (**Works Package**) comprising a number of poles in relation to which Asset Inspection Services were to be carried out within the window of time specified by ~~SP~~ AusNet in the ~~SP~~ AusNet Works Spreadsheet.
- (v) pursuant to the Second UAM Contract, UAM, from time to time when engaged by ~~SP~~ AusNet, provided aerial activities including aerial inspection and pole-top inspection (**Aerial Inspection Services**) which were carried out:
- (A) at the instruction of ~~SP~~ AusNet;
 - (B) in relation to poles in respect of which there was a reported defective and / or deteriorated cross-arm; and / or
 - (C) to ascertain sound wood measurements and / or the presence of termite damage at heights inaccessible to normal asset inspection; and
 - (D) in North and East areas, only in relation to poles in areas that were easily accessible to an Elevating Work Platform (**EWP**).

Particulars

"Aerial Inspections", Schedule 2, UAM Contract

- (vi) at all material times, UAM was not required by ~~SP~~ AusNet to perform aerial inspections of the Sawmill Span;

Particulars

At all material times, ~~SP~~-AusNet did not instruct UAM to perform any aerial inspections of the Sawmill Span.

- (b) Save that it says that pursuant to the Second UAM Contract, UAM reported on maintenance items to ~~SP~~ AusNet and carried out minor maintenance tasks as required by ~~SP~~ AusNet, it denies the allegations in paragraph 44(b).
 - (c) It admits that it employed and trained persons to conduct asset inspections. It otherwise denies paragraph 44(c).
 - (d) It admits that at least bi-monthly internal auditing of asset inspectors and at least annual independent auditing of asset inspectors and internal auditors were required under the Second UAM Contract, it otherwise denies paragraph 44(d).
 - (e) It admits that monthly reporting to ~~SP~~-AusNet was required under the Second UAM Contract. It otherwise denies paragraph 44(e).
45. Save that UAM refers to the full terms and conditions of the Second UAM Contract as to their meaning and effect, it admits paragraph 45.
46. Save that UAM refers to the full terms and conditions of the Second UAM Contract as to their meaning and effect, it admits paragraph 46.
47. Save that UAM refers to the full terms and conditions of the Second UAM Contract as to their meaning and effect, it admits paragraphs 47(a), (b), (d), and (e). It otherwise denies paragraph 47 and says further that:
- (a) it was a requirement of the Second UAM Contract that asset inspectors complete Training as set out in the Second UAM Contract;
 - (b) between in or around December 1999 and in or around April 2007 training of asset inspectors was to be in accordance with clause 23.5 of the PMS Contract ~~a contract between Texas Utilities (Eastern Energy Limited) and Powerline Management Systems Pty Ltd dated 31 December 1999, as amended from time to time (First UAM Contract).~~

Particulars

~~A copy of the First UAM Contract may be inspected at the offices of the solicitors for UAM by appointment.~~

48. Save that Schedule 2 to the Second UAM Contract contained the matters referred to in paragraphs 48(a), 48(b), 48(c)(i) and (ii), 48(d), 48(e), 48(h), 48(i), 48(j), 48(k), 48(l), and 48(m), it otherwise denies paragraph 48 and refers to and repeats paragraphs 42A to 43 and 44 above.
49. It admits paragraph 49.
50. Save that it admits that it was an implied term of the UAM Contracts that UAM would exercise reasonable care and skill in the provision of services pursuant to the UAM Contracts, it otherwise denies paragraph 50.
51. Save that it admits that UAM held itself out to SP AusNet to be fully experienced, competent and qualified with respect to carrying out the Contract Works, it otherwise denies paragraph 51.
52. Save that throughout the term of the UAM Contracts, UAM provided to SP AusNet Asset Inspection Services under the UAM Contract throughout the distribution network including in respect of the Murrindindi assets, it otherwise denies paragraph 52.

Particulars

UAM refers to and repeats paragraphs 42A to 44 above.

53. As to paragraph 53:
- (a) It denies paragraph 53 and says that at all material times SP AusNet had responsibility for and control over:
- (i) The distribution network, including the Murrindindi assets, including asset inspection throughout the distribution network;

Particulars

UAM refers to and repeats paragraph 12 of the plaintiff's statement of claim.

- (ii) Determining the scope and timing of the Contract Works to be provided by UAM under the UAM Contracts and the manner in which the services were to be provided;

Particulars

UAM refers to and repeats paragraph 42A to 43 and 44 above.

- (iii) Setting requirements for asset inspection to be provided by UAM under the UAM Contracts; and

Particulars

- (A) the asset inspection requirements were contained in an ~~SP~~ AusNet asset inspection manual;
- (B) new versions of the ~~SP~~-AusNet asset inspection manual were issued by ~~SP~~-AusNet to UAM from time to time;
- (C) each version of the ~~SP~~ AusNet asset inspection manual was updated by ~~SP~~ AusNet from time to time;
- (D) the asset inspection requirements applicable from the date of the First UAM Contract and at the time of the 16 March 2005 Asset Inspection Services were those contained in the Eastern Energy Line Inspection Manual dated August 1997 and numbered ESV-4111 (1997 Asset Inspection Manual) (as updated by ~~SP~~ AusNet from time to time);
- ~~(D) the asset inspection requirements applicable from the date of the UAM Contract to in or about August 2007 were those contained in the ~~SP~~ AusNet asset inspection manual dated March 2006 and numbered ESV 4111 (as updated by ~~SP~~ AusNet from time to time) (2006 Asset Inspection Manual); and~~
- (E) the asset inspection requirements applicable from in or about August 2007 and at the time of the 28 May 2008 Asset Inspection Services were contained in the AusNet Asset Inspection Manual dated 1 July 2007 and numbered 4111 (as updated by ~~SP~~-AusNet from time to time) (2007 Asset Inspection Manual).

- (iv) Setting minimum requirements for asset inspection training under the UAM Contracts;

Particulars

Requirements for asset inspection training were detailed in the Asset Inspection Manuals and the UAM Contracts.

- (v) Setting requirements for Maintenance Packaging Services to be provided by UAM under the First UAM Contract.

Particulars

It refers to and repeats paragraph 42 above.

- (b) Further and in the alternative it says that:

- (i) At all material times UAM exercised reasonable care and skill in the provision of services pursuant to the UAM Contracts; and
- (ii) Any duty of care owed by ~~SP~~ AusNet to the claimants was a non-delegable duty of care to ensure that reasonable care was taken by any independent agents or contractors engaged by it.

54. To the extent that it admits the terms of the UAM Contracts above, paragraph 54 is admitted. It otherwise denies paragraph 54.

55. It objects to paragraph 55 on the basis that it is vague, oppressive and cannot be pleaded to. Under cover of that objection, it denies paragraph 55.

56. It objects to paragraph 56 on the basis that it is vague, oppressive and cannot be pleaded to. Under cover of that objection, it denies paragraph 56.

57. As to paragraph 57:

(a) It admits paragraph 57(a).

(b) It denies paragraph 57(b) to (f) and says further that:

- (i) at all material times, ~~SP~~ AusNet had responsibility for and control over the Murrindindi assets. It refers to and repeats paragraph 53(a) and 53(b)(ii) above.

58. As to paragraph 58:

(a) Save to the extent that any persons may have had control over forces, circumstances, events or occurrences external to the assets and component parts of the Murrindindi assets and which were capable of having an impact upon or damaging the Murrindindi assets so as to cause a discharge of electricity, it admits paragraph 58(a).

(b) It denies paragraph 58(b).

(c) It denies paragraph 58(c) and says that if any dependency existed (which is denied), the dependency was upon ~~SP~~-AusNet meeting the duties owed by it as set out in paragraphs 8 and 17 of the plaintiff's statement of claim and/or upon the DEPI Secretary (as defined in paragraph 72 of the ~~SP~~ AusNet's defence and counterclaim), the CFA and/or Victoria Police as alleged in the plaintiff's statement of claim and ~~SP~~-AusNet's defence and counterclaim. It refers to and repeats paragraph 53 above.

(d) It otherwise refers to and repeats paragraph 15(d) above.

59. As to paragraph 59:

- (a) It denies that it owed the UAM Duty or any duty of care to the claimants and says further that:
 - (i) having regard to paragraph 14(e) of the plaintiff's statement of claim, the definition of "*fire area*" in paragraph 14(f) of the statement of claim and the definition of "*affected areas*" in paragraph 14(g) of the statement of claim, the class of persons to whom it is alleged UAM owed a duty of care was indeterminate;
 - (ii) further and in the alternative, it denies that it owed the UAM Duty or any other duty of care:
 - (A) to a class of persons of such magnitude; and / or
 - (B) to avoid acts and omissions which could cause loss and damage so remote, that the potential class of persons or potential loss and damage would be out of all proportion to the seriousness of the act or omission or the extent of the want of care, if any, which resulted in the act or omission;
 - (iii) further and in the alternative, it denies that it owed the UAM Duty or any other duty of care to any persons who were not vulnerable to the risk of property damage or economic loss including those persons who, by reason of measures which ought to have been taken by ~~SP~~ AusNet, the DEPI Secretary (as defined in paragraph 72 of ~~SP~~ AusNet's defence and counterclaim), the CFA and/or Victoria Police as alleged in the plaintiff's statement of claim and ~~SP~~ AusNet's defence and counterclaim, in accordance with the duties owed by ~~SP~~ AusNet, the DEPI Secretary, the CFA and/or Victoria Police as set out in the plaintiff's statement of claim or in ~~SP~~ AusNet's defence and counterclaim, would not otherwise have suffered personal injury loss or damage, property damage or economic loss;
 - (iv) it denies that it owed the UAM Duty or any other duty of care to persons who were too physically remote from the Sawmill Span for it to be reasonably foreseeable that they may be subjected to the UAM risks; and
 - (v) the claimants and the real and personal property in which they had an interest were located too remotely from the Sawmill Span such that they fall within the class of

persons referred to in the sub-paragraph (iv), to whom UAM did not owe a duty of care.

(b) Further and alternatively, if it did owe a duty of care to the claimants (which is denied), it says that:

- (i) the duty of care was to exercise reasonable care and skill in the provision of services pursuant to the UAM Contracts;
- (ii) any duty of care which it owed to the claimants (which is denied) did not extend to taking precautions against a risk of harm unless:
 - (A) the risk was foreseeable;
 - (B) the risk was not insignificant; and
 - (C) in the circumstances a reasonable person in UAM's position would have taken those precautions.

Particulars

UAM relies upon section 48(1) of the *Wrongs Act 1958 (Vic)* (**Wrongs Act**).

(iii) it denies that:

- (A) the risk of harm alleged to have been suffered by the claimants was foreseeable;

Particulars

It refers to and repeats paragraph 57.

- (B) the risk of harm, alleged to have been suffered by the claimants was not insignificant;

Particulars

It refers to and repeats paragraph 57.

- (C) in the circumstances a reasonable person in UAM's position would have taken those precautions, and says further that in the circumstances, the precautions a reasonable person in UAM's position would have taken were to exercise reasonable care and skill in providing services under the UAM Contracts.

60. It denies paragraph 60 and refers to and repeats paragraph 59 above.

UAM Inspections

60A. Save that it admits that UAM carried out Asset Inspection Services in respect of the Murrindindi assets including Pole 6 on 16 March 2005 and 28 May 2008, it otherwise denies paragraph 60A.

61. It denies paragraph 61 and says further that:

16 March 2005 Asset Inspection Services

- (a) As part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 16 March 2005, it reported stock items on pole 5;
- (b) Other than as referred to in (a) above, no reportable matters existed in respect of the Murrindindi assets on 16 March 2005;
- (c) Further and in the alternative, other than as referred to in (a) above, if there were any reportable matters, they were not capable of being observed as part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 16 March 2005;
- (d) Further and in the alternative, as at 16 March 2005, there was no defect, fault, deterioration in condition or incorrect assembly of the conductor or associated assets forming part of the Murrindindi assets such that they were at risk of failure and ought be replaced before the next scheduled asset inspection;
- (e) Further and in the alternative, if there was any defect, fault, deterioration in condition or incorrect assembly of the conductor or associated assets forming part of the Murrindindi assets such that they were at risk of failure and ought be replaced before the next scheduled asset inspection, they were not capable of being observed as part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 16 March 2005;
- (f) It carried out Asset Inspection Services in respect of the Murrindindi assets on 16 March 2005 in accordance with the First UAM Contract;
- (g) It complied with all obligations under the First UAM Contract in the provision of services and in respect of Asset Inspection Services in respect of the Murrindindi assets on 16 March 2005; and

(h) It exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets on 16 March 2005 and in the provision of services pursuant to the First UAM Contract generally;

28 May 2008 Asset Inspection Services

(i) As part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it reported an HV insulator on Pole 5;

(j) As part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it reported conductor fittings on Pole 6;

(k) As part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it took photographs of Pole 6 and the pole top assets on Pole 6 and provided these photographs to AusNet;

(l) Other than as referred to in (i) – (k) above, no reportable matters existed in respect of the Murrindindi assets on 16 March 2005;

(m) Further and in the alternative, other than as referred to in (i) – (k) above, if there were any reportable matters, they were not capable of being observed as part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008;

(n) Further and in the alternative, as at 28 May 2008, there was no defect, fault, deterioration in condition or incorrect assembly of the conductor or associated assets forming part of the Murrindindi assets such that they were at risk of failure and ought be replaced before the next scheduled asset inspection;

(o) Further and in the alternative, if there was any defect, fault, deterioration in condition or incorrect assembly of the conductor or associated assets forming part of the Murrindindi assets such that they were at risk of failure and ought be replaced before the next scheduled asset inspection, they were not capable of being observed as part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008;

(p) It carried out Asset Inspection Services in respect of the Murrindindi assets on 28 May 2008 in accordance with the Second UAM Contract;

(q) It complied with all obligations under the Second UAM Contract in the provision of services and in respect of Asset Inspection Services in respect of the Murrindindi assets on 28 May 2008; and

(r) It exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets on 28 May 2008 and in the provision of services pursuant to the Second UAM Contract generally;

Maintenance Packaging Services

(s) It was not required to prioritise or package matters for maintenance which had not been identified through asset inspections;

(t) It complied with all obligations under the First UAM Contract in the provision of Maintenance Packaging Services; and

(u) It exercised reasonable care and skill in carrying out Maintenance Packaging Services and in the provision of services pursuant to the First UAM Contract generally.

~~(a) as part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it reported an HV insulator on Pole 5;~~

~~(b) as part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it reported conductor fittings on Pole 6;~~

~~(c) as part of the Asset Inspection Services carried out in respect of the Murrindindi assets on 28 May 2008, it took photographs of Pole 6 and the pole top assets on Pole 6 and provided these photographs to SP AusNet;~~

~~(d) it carried out Asset Inspection Services in respect of the Murrindindi assets in accordance with the UAM Contract;~~

~~(e) it complied with all obligations under the UAM Contract in the provision of services and in respect of Asset Inspection Services in respect of the Murrindindi assets; and~~

~~(f) it exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets and in the provision of services pursuant to the UAM Contract generally;~~

62. As to paragraph 62: It denies paragraph 62 and refers to and repeats paragraph 61 above.

- (a) It denies paragraph 62(a) and refers to and repeats paragraph 61 above;
- (b) It denies paragraph 62(b) and refers to and repeats paragraph 61 above. It says further that, at all material times:
- (i) it complied with all obligations under the UAM Contracts in the provision of services and in respect of training of asset inspectors; and
- (ii) it exercised reasonable care and skill in the provision of services pursuant to the UAM Contracts and in respect of training of asset inspectors.
- (c) It denies paragraph 62(c) and refers to and repeats paragraph 61 above. It says further that:
- 16 March 2005 Asset Inspection Services*
- (i) it complied with all asset inspection requirements contained in the 1997 Asset Inspection Manual;
- (ii) it exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets on 16 March 2005 and in the provision of services pursuant to the First UAM Contract generally;
- 28 May 2008 Asset Inspection Services*
- (iii) it complied with all asset inspection requirements contained in the 2007 Asset Inspection Manual;
- (iv) it exercised reasonable care and skill in carrying out Asset Inspection Services in respect of the Murrindindi assets on 28 May 2008 and in the provision of services pursuant to the Second UAM Contract generally.
- (d) It denies paragraph 62(d) and refers to and repeats paragraph 62(b) above.
- (e) It denies paragraph 62(e) and refers to and repeats paragraph 61 above.
- (f) It denies paragraph 62(f) and refers to and repeats paragraph 61 above.
- (g) It denies paragraph 62(g) and refers to and repeats paragraph 61 above.

62A. It denies paragraph 62A and repeats paragraph 61 above.

62B. It refers to and repeats paragraphs 18 to 18C above.

62C. It denies paragraph 62C and repeats paragraph 61 above.

62D. It denies paragraph 62D and repeats paragraph 61 above.

63. It denies paragraph 63 and refers to and repeats paragraph 61 above. Further and in the alternative, it says that if the Murrindindi fire was associated with a break in the conductor on the Sawmill Span (which is denied), then it was not caused by a breach of the UAM Duty or any duty which UAM may have owed to the claimants (which duties are denied). Further and in the alternative, it says that:

- (a) The weather conditions on 7 February 2009;
- (b) The conductor breaking on a high fire danger day;
- (c) A fire being ignited as the result of the conductor breaking (which is denied);
- (d) The speed and/or extent of the spread of the resulting fire;
- (e) The destruction caused by the resulting fire,

were acts of God or alternatively were inevitable events and/or accidents.

UAM – Alleged Loss and Damage

64. It denies paragraph 64 and refers to and repeats paragraph 59, 61 and 63 above.

65. It denies paragraph 65 and refers to and repeats paragraph 63 above.

66. It denies paragraph 66.

Apportionability and apportionment

67. As to paragraph 67:

- (a) Save that it refers to the full terms and conditions of the UAM Contracts as to their meaning and effect, it does not plead to paragraph 67(a) as it makes no allegation of material fact against it;
- (b) Save that it refers to and repeats paragraph 53 above, it does not plead to paragraph 67(b) as it makes no allegation of material fact against it;
- (c) Save that it refers to and repeats paragraph 53 above, it does not plead to paragraph 67(c) as it makes no allegation of material fact against it;
- (d) Save that it refers to and repeats paragraph 53 above, it does not plead to paragraph 67(d) as it makes no allegation of material fact against it;
- (e) Save that it refers to and repeats paragraph 53 above, it does not plead to paragraph 67(e) as it makes no allegation of material fact against it;

(f) Save that it refers to and repeats paragraphs 67(a) to (d) above, it does not plead to paragraph 67(f) as it makes no allegation of material fact against it.

68. It does not plead to paragraph 68 as it makes no allegation of material fact against it.

69. As to paragraph 69:

(a) Save that it refers to and repeats paragraphs 67 and 68 above, it does not plead to paragraph 69 as it makes no allegation of material fact against it;

(b) Insofar as paragraph 69(b) makes allegations against UAM, it denies paragraph 69(b) and refers to and repeats paragraphs ~~42~~ 43 to 66 above. It says further that UAM has no responsibility for the claimants' economic loss and property damage the subject of the ELPD reasonable care claims as alleged or at all. It otherwise does not plead to paragraph 69(b) as it otherwise makes no allegation of material fact against it; and

(c) It denies paragraph 69(c) and refers to and repeats paragraphs ~~42~~ 43 to 66 above. It says further that UAM has no responsibility for the claimants' economic loss and property damage the subject of the ELPD reasonable care claims as alleged or at all.

SECTION G: FUEL MANAGEMENT BY DEPI SECRETARY

70. It does not plead to paragraphs 70 to 120 as they make no allegation of material fact against it.

71. As to paragraph 121, it says:

(a) It does not plead to paragraph 121(a) as it makes no allegation of material fact against it;

(b) Insofar as any allegation is made against UAM, it denies paragraph 121(b) and refers to and repeats paragraphs ~~42~~ 43 to 69 above. It otherwise does not plead to paragraph 121(b) as it makes no allegation of material fact against it.

SECTION H: FAILURE TO WARN – VICTORIA POLICE (VIC POL) AND CFA

72. It does not plead to paragraphs 122 to 173 as they make no allegation of material fact against it.

73. It does not plead to paragraphs 174 to 209 as they make no allegation of material fact against it.

SECTION I: FAILURE TO WARN – DEPI SECRETARY

74. It does not plead to paragraphs 210 to 241 as they make no allegation of material fact against it.

SECTION J: JOINT TORTFEASANCE BY CFA AND DEPI SECRETARY

75. It does not plead to paragraphs 242 to 245 as they make no allegation of material fact against it.

SECTION J K: COMMON QUESTIONS OF LAW AND FACT

~~75.~~ 76. Insofar as any allegation is made against UAM, it denies paragraph ~~242~~ 246 and refers to and repeats paragraphs ~~42~~ 43 to 69 above. It otherwise does not plead to paragraph ~~242~~ 246 as it makes no allegation of material fact against it.

SECTION ~~K~~ L: CONCURRENT WRONGDOING CLAIMS – *WRONGS ACT 1958* (VIC) PART IVAA

~~76.~~ 77. Further and in the alternative to paragraphs 69(b) and 69(c) and in answer to the whole of the claimants' ELPD reasonable care claims, UAM says that:

- (a) The ELPD reasonable care claims are claims for economic loss and/or damage to property made in an action for damages arising from alleged failures by UAM to take reasonable care (which failures are denied);
- (b) The ELPD reasonable care claims are apportionable claims within the meaning of sections 24AE and 24AF(1)(a) of the *Wrongs Act* to which Part IVAA of the *Wrongs Act* applies;
- (c) If UAM is liable to the claimants in respect of the claimants' economic loss and property damage the subject of the ELPD reasonable care claims (which is denied):
 - (i) UAM's liability is limited to the amount reflecting that proportion of liability which the court considers just having regard to the extent of ~~the~~ UAM's responsibility (if any) for such liability; and
 - (ii) the following parties are concurrent wrongdoers in relation to the ELPD reasonable care claims within the meaning of section 24AH(1) of the *Wrongs Act*:
 - (A) ~~SP~~ AusNet;
 - (B) the Secretary to the Department of Sustainability and Environment (**DEPI Secretary**).

~~77.~~ 78. Defined terms in the plaintiff's statement of claim have the same meaning in the remainder of this defence and in the UAM counterclaim.

SECTION ~~K~~ L1: ~~SP~~-AUSNET

~~78.~~ 79. Further and in the alternative to paragraphs ~~42~~ 43 to 69, by reason of Part IVAA of the *Wrongs Act*, UAM says as against the first defendant (~~SP~~-AusNet) as set out below.

~~79.~~ 80. UAM refers to and repeats paragraphs 6 to 39 of the plaintiff's statement of claim.

~~80.~~ 81. If the plaintiff and / or any claimant and / or any subgroup member (as the case may be) has suffered any loss and damage as a result of the Murrindindi fire (which is not admitted) such loss and damage was caused by:

- (a) The breach by ~~SP~~-AusNet of the SPI Statutory Duty;
- (b) The breach by ~~SP~~ AusNet of the SPI General Duties; further and alternatively
- (c) The ~~SP~~ AusNet nuisance; further and alternatively
- (d) The breaches of the SECV duty for which ~~SP~~-AusNet is liable.

~~81.~~ 82. The Murrindindi fire was a natural and foreseeable consequence of the breaches of duty alleged in paragraphs ~~80~~ 81(a) to ~~80~~ 81(d) above.

~~82.~~ 83. By reason of the matters set out:

- (a) In paragraphs ~~80 and~~ 81 and 82, ~~SP~~ AusNet is liable for the claimants' loss and damage in respect of the ELPD reasonable care claims; further and in the alternative
- (b) In paragraphs ~~80 and~~ 81 and 82, (regarding ~~SP~~-AusNet), paragraphs ~~85 and~~ 86 and 87 (regarding the DEPI Secretary), if (which is denied), UAM is liable to the claimants in respect of the ELPD reasonable care claims, ~~SP~~ AusNet is, together with one or more persons, a person whose act or omissions caused the claimants' loss and damage within the meaning of Part IVAA of the *Wrongs Act*, and accordingly liable in proportion to its responsibility.

SECTION ~~K L~~2: DEPI SECRETARY

~~83.~~ 84. Further and in the alternative to paragraphs 42 ~~43~~ to 69, by reason of Part IVAA of the *Wrongs Act*, UAM says as against the third defendant (**DEPI Secretary**) as set out below.

~~84.~~ 85. UAM refers to and repeats paragraphs 71 to 121 of the plaintiff's statement of claim.

~~85.~~ 86. Further and in the alternative to paragraphs ~~80 to~~ 81 to 82 (regarding ~~SP~~-AusNet), if the plaintiff and / or any claimant has suffered loss and damage as a result of the Murrindindi fire (which is not admitted) such loss and damage was caused by the breach by the DEPI Secretary of:

- (a) The First DEPI Fire Duty; and / or
- (b) The Second DEPI Fire Duty; and / or
- (c) The DEPI Duty.

~~86.~~ 87. The Murrindindi fire was a natural and foreseeable consequence of the breaches of duty alleged in the preceding paragraph.

~~87.~~ 88. By reason of the matters set out:

- (a) In paragraphs ~~85 and~~ 86 and 87, the DEPI Secretary is liable for the claimants' loss and damage; further and in the alternative
- (b) In paragraphs ~~80 to~~ 81 to 82 (regarding ~~SP~~-AusNet), paragraphs ~~85 to~~ 86 to 87 (regarding the DEPI Secretary), and, if (which is denied), UAM is liable to the claimants in respect of the ELPD reasonable care claims, the DEPI Secretary is, together with one or more persons, a person whose acts or omissions caused the claimants' loss and damage within the meaning of Part IVAA of the *Wrongs Act*, and accordingly liable in proportion to its responsibility.

UAM's liability limited pursuant to section 24AI of the Wrongs Act

~~88.~~ 89. In the premises, if UAM is liable to the plaintiff and/or any group member in respect of the ELPD reasonable care claims (which is denied) then pursuant to section 24AI of the *Wrongs Act*, such liability is limited to an amount reflecting that proportion of the loss and damage the subject of the ELPD reasonable care claims that the Court considers just having regard to the extent of UAM's responsibility for that loss and damage and judgment must not be given against UAM for more than that amount in relation to the economic loss and property damage claims.

COUNTERCLAIM

SECTION ~~L~~ M: CONCURRENT WRONGDOINGS – *WRONGS ACT 1958 (VIC) PART IV*

~~89.~~ 90. UAM as the plaintiff by counterclaim (**UAM counterclaim**) refers to and repeats paragraphs 15 to 18 and 42 to 69 of its defence.

SECTION ~~L~~ M1: PLAINTIFF

~~90.~~ 91. Having regard to the matters set out in paragraphs ~~76~~ 77 to ~~88~~ 89 of its defence, UAM seeks the declaratory relief set out in paragraphs H and I of the prayer for relief against the plaintiff and other claimants as the fifth defendant to the UAM counterclaim.

SECTION ~~L~~ M2: ~~SP~~ AUSNET

~~91.~~ 92. Having regard to the matters set out in paragraphs ~~76~~ 77 to ~~82~~ 83 and ~~88~~ 89, UAM seeks the declaratory relief set out in paragraph A, alternatively paragraph B of the prayer for relief against ~~SP~~ AusNet as the first defendant to the UAM counterclaim.

~~92.~~ 93. Further and in the alternative, if UAM is held liable to the personal injury claimants in respect of any loss and damage in respect of personal injury and death (**personal injury loss and damage**):

- (a) On the grounds set out in paragraphs ~~76~~ 77 to ~~82~~ 83 above, by reason of Part IV of the *Wrongs Act*, UAM is entitled to recover contribution from ~~SP~~ AusNet in respect of that personal injury loss and damage in such amount as may be found by the court to be just and equitable having regard to the extent of ~~SP~~ AusNet's responsibility for the personal injury loss and damage; and
- (b) The contribution from ~~SP~~ AusNet in respect of personal injury loss and damage for which ~~the~~ ~~SP~~ AusNet may be held liable to the claimants which would be just and equitable having regard to the extent of ~~SP~~ AusNet's responsibility for the personal injury loss and damage would be such as would amount to a complete indemnity to UAM.

SECTION ~~L~~ M3: DEPI SECRETARY

~~93.~~ 94. Having regard to the matters set out in paragraphs ~~83~~ 84 to ~~87~~ and 88 ~~and 89~~ of its defence, UAM seeks the declaratory relief set out in paragraph D of the prayer for relief against the DEPI Secretary as the second defendant to the UAM counterclaim.

~~94.~~ 95. Further and in the alternative, if UAM is held liable to the personal injury claimants in respect of any loss and damage in respect of personal injury loss and damage:

- (a) On the grounds set out in paragraphs ~~84~~ 85 to ~~87~~ 88 above, by reason of Part IV of the *Wrongs Act* UAM is entitled to recover contribution from the DEPI Secretary in respect of that personal injury loss and damage in such amount as may be found by the court to be just and equitable having regard to the extent of the DEPI Secretary's responsibility for the personal injury loss and damage; and
- (b) The contribution from the DEPI Secretary in respect of personal injury loss and damage for which the DEPI Secretary may be held liable to the claimants which would be just and equitable having regard to the extent of the DEPI Secretary's responsibility for the personal injury loss and damage would be such as would amount to a complete indemnity to UAM.

SECTION M N: FAILURE TO WARN CLAIMS - *WRONGS ACT 1958* (VIC) PART IV

SECTION M N1: STATE OF VICTORIA

~~95.~~ 96. Further and in the alternative to paragraphs 42 to ~~94~~ 95, by reason of Part IV of the *Wrongs Act*, UAM says as against the fourth defendant to the UAM counterclaim (**State**) as follows.

~~96.~~ 97. UAM refers to and repeats paragraphs 122 to 173 of the plaintiff's statement of claim.

~~97.~~ 98. In the premises, if UAM is held liable to the personal injury claimants in respect of any personal injury loss and damage then, on the grounds pleaded in paragraph ~~96~~ 97:

- (a) UAM is entitled pursuant to the provisions of Part IV of the *Wrongs Act* to recover contribution from the State in respect of that personal injury loss and damage in such amount as may be found by the Court to be just and equitable having regard to the extent of the State's responsibility for the personal injury loss and damage.
- (b) The contribution from the State in respect of personal injury loss and damage for which UAM may be held liable to the personal injury claimants which would be just and equitable having regard to the extent of the State's responsibility for the personal injury loss and damage would be such as would amount to a complete indemnity to UAM.

SECTION M N2: CFA

~~98.~~ 99. Further and in the alternative to paragraphs 42 to ~~97~~ 98, by reason of Part IV of the *Wrongs Act*, UAM says as against the third defendant to the UAM counterclaim (**CFA**) as follows.

~~99.~~ 100. UAM refers to and repeats paragraphs 174 to 209 and 242 to 245 of the plaintiff's statement of claim.

~~100.~~ 101. In the premises, if UAM is held liable to the personal injury claimants in respect of any personal injury loss and damage then, on the grounds pleaded in paragraph ~~99~~ 100:

- (a) UAM is entitled pursuant to the provisions of Part IV of the *Wrongs Act* to recover contribution from the CFA arising from the acts or omissions of the CFA in respect of that personal injury loss and damage in such amount as may be found by the Court to be just and equitable having regard to the extent of the CFA's responsibility for the personal injury loss and damage.

- (b) The contribution from the CFA in respect of the personal injury loss and damage for which UAM may be held liable to the personal injury claimants which would be just and equitable having regard to the extent of the CFA's responsibility for the personal injury loss and damage would be such as would amount to a complete indemnity to UAM.

SECTION M N3: DEPI SECRETARY

~~101.~~ 102. Further and in the alternative to paragraphs 42 to ~~100~~ 101, by reason of Part IV of the *Wrongs Act*, UAM says as against the second defendant to the UAM counterclaim (**DEPI Secretary**) as follows.

~~102.~~ 103. UAM refers to and repeats paragraphs 210 to ~~241~~ 245 of the plaintiff's statement of claim.

~~103.~~ 104. In the premises, if UAM is held liable to the personal injury claimants in respect of any personal injury loss and damage then, on the grounds pleaded in paragraph ~~102~~ 103:

- (a) UAM is entitled pursuant to the provisions of Part IV of the *Wrongs Act* to recover contribution from the DEPI Secretary arising from the acts or omissions of the DEPI Secretary in respect of that personal injury loss and damage in such amount as may be found by the Court to be just and equitable having regard to the extent of the DEPI Secretary's responsibility for the personal injury loss and damage.
- (b) The contribution from the DEPI Secretary in respect of the personal injury loss and damage for which UAM may be held liable to the personal injury claimants which would be just and equitable having regard to the extent of the DEPI Secretary's responsibility for the personal injury loss and damage would be such as would amount to a complete indemnity to UAM.

AND THE PLAINTIFF BY THE UAM COUNTERCLAIM CLAIMS:

AS AGAINST ~~SP~~ AUSNET:

- A In respect of the ELPD reasonable care claims, a declaration that ~~SP~~ AusNet is a concurrent wrongdoer within the meaning of section 24H of the *Wrongs Act*.
- B Alternative to A, in respect of the ELPD reasonable care claims (if any) for which UAM is held liable to the plaintiff and/or any group member:

- (1) A declaration that UAM is entitled pursuant to provisions of Part IV of the *Wrongs Act* to recover contribution from ~~SP~~-AusNet in such amount as may be found by the court to be just and equitable having regard to the extent of ~~SP~~-AusNet's responsibility for the personal injury loss and damage; and
- (2) Contribution from ~~SP~~ AusNet which would be just and equitable having regard to the extent of ~~SP~~-AusNet's responsibility for the personal injury loss and damage to the extent of a complete indemnity to UAM.

C Further, in respect of the personal injury loss and damage (if any) for which UAM is held liable to the plaintiff and / or any other group member:

- (1) A declaration that UAM is entitled pursuant to the provisions of Part IV of the *Wrongs Act* to recover contribution from ~~SP~~-AusNet in such amount as may be found by the court to be just and equitable having regard to the extent of ~~SP~~ AusNet's responsibility for the personal injury loss and damage; and
- (2) Contribution from ~~SP~~ AusNet which would be just and equitable having regard to the extent of ~~SP~~ AusNet's responsibility for the personal injury loss and damage to the extent of a complete indemnity to UAM.

AS AGAINST THE DEPI SECRETARY:

D. In respect of the ELPD reasonable care claims, a declaration that the DEPI Secretary is a concurrent wrongdoer within the meaning of the section 24H of the *Wrongs Act*.

E. Further or in the alternative, in respect of the personal injury loss and damage (if any) for which UAM is held liable to the plaintiff and / or any other group member:

- (1) A declaration that UAM is entitled pursuant to the provisions of Part IV of the *Wrongs Act* to recover contribution from the DEPI Secretary in such amount as may be found by the court to be just and equitable having regard to the extent of the DEPI Secretary's responsibility for the personal injury loss and damage; and
- (2) Contribution from the DEPI Secretary which would be just and equitable having regard to the extent of the DEPI Secretary's responsibility for the personal injury loss and damage to the extent of a complete indemnity to UAM.

AS AGAINST THE CFA:

F. Further or in the alternative, in respect of the personal injury loss and damage (if any) for which UAM is held liable to the plaintiff and / or any other group member:

- (1) A declaration that UAM is entitled pursuant to the provisions of Part IV of the *Wrongs Act* to recover contribution from the CFA in such amount as may be found by the court to be just and equitable having regard to the extent of the CFA's responsibility for the personal injury loss and damage; and
- (2) Contribution from the CFA which would be just and equitable having regard to the extent of the CFA's responsibility for the personal injury loss and damage to the extent of a complete indemnity to UAM.

AS AGAINST THE STATE OF VICTORIA:

G. In respect of the personal injury loss and damage (if any) for which UAM is held liable to the plaintiff and / or any other group member:

- (1) A declaration that UAM is entitled pursuant to the provisions of Part IV of the *Wrongs Act* to recover contribution from the State in such amount as may be found by the court to be just and equitable having regard to the extent of the State's responsibility for the personal injury loss and damage; and
- (2) Contribution from the State which would be just and equitable having regard to the extent of the State's responsibility for the personal injury loss and damage to the extent of a complete indemnity to UAM.

AS AGAINST THE PLAINTIFF AND OTHER GROUP MEMBERS:

H. In respect of the ELPD reasonable care claims, a declaration that ~~SP~~ AusNet is a concurrent wrongdoer within the meaning of section 24H of the *Wrongs Act*.

I. In respect of the ELPD reasonable care claims, a declaration that the DEPI Secretary is a concurrent wrongdoer within the meaning of section 24H of the *Wrongs Act*.

AS AGAINST ALL DEFENDANTS TO THE UAM COUNTERCLAIM

J. Costs.

K. Such further or other relief as the Court deems fit.

W R RAY

E. BRIMER

Holman Fenwick Willan

HOLMAN FENWICK WILLAN

Solicitors for the second defendant / plaintiff by UAM counterclaim

DELIVERED this 28th day of November 2014

Schedule of parties

KATHERINE ROWERODERIC LIESFIELD

Plaintiff

- and -

**AUSNET ELECTRICITY SERVICES PTY LTD (ACN 064 651 118) (formerly SPI
ELECTRICITY PTY LTD) (ACN 064 651 118)**

First Defendant

**ACN 060 674 580 PTY LTD
(ACN 060 674 580)**

Second Defendant

**SECRETARY TO THE DEPARTMENT
OF ENVIRONMENT AND PRIMARY INDUSTRIES**

Third Defendant

COUNTRY FIRE AUTHORITY

Fourth Defendant

STATE OF VICTORIA

Fifth Defendant