

LAND OWNERS BEWARE-UTILITIES INFRASTRUCTURE ON YOUR PROPERTY IS YOUR RESPONSIBILITY TOO

2 MAY 2019 | STATE & LOCAL AUTHORITIES

The 2014 Parkerville bushfires, in which 57 homes were destroyed, started when a privately-owned wooden power pole fell, predominately due to decay and termite damage. The Supreme Court of Western Australia was asked to consider the liability of the electricity distributor, its maintenance contractor and the residential land owner for the ensuing damage.

In Issue

- Was the electricity distributor liable for failing to inspect the consumer's electricity pole or for failing to supervise the maintenance contractor undertaking works on the pole?
- Was the electricity distributor liable for failing to advise the land owner of her responsibility to inspect and maintain the pole?
- Was the maintenance contractor liable for failing to undertake an inspection of the consumer's pole with due care and skill in accordance with its contractual obligations and industry standards?
- Was the landowner liable for failing to inspect and maintain the private power pole on her property?
- Were any of the defendants liable in nuisance?

The Background

On 12 January 2014, a timber power pole located on a residential property fell when it failed below the ground line due predominately to fungal decay and damage by termites. The pole had been installed by the land owner's husband at least 30 years prior. As the pole fell, a cable which ran from the pole was damaged, causing a short circuit fault resulting in arcing. Hot molten metal globules dropped to the ground, igniting the Parkerville bushfire.

Six months prior to the incident, the electricity distributor had arranged for its maintenance contractor to conduct works on a neighbouring asset. These works involved detaching and reattaching a cable from and to the land owner's pole. It was alleged the maintenance contractor failed to properly inspect the timber pole, and that by reattaching the electricity supply to the landowner's premises, left the pole in a condition that was unsafe and unfit for use.

The Decision

The trial judge held the electricity distributor owed a duty of care when carrying out works to the land owner's pole to inspect the pole to ascertain whether it was in a safe and fit condition for use in the supply of electricity.

The electricity distributor did not, however, owe the plaintiffs a duty to ensure reasonable care was taken by its maintenance contractor when inspecting the consumer's pole. In this case, the electricity distributor discharged the duty it owed the plaintiffs by engaging the maintenance contractor to inspect the pole and perform the works.

Further, the trial judge held the electricity distributor did not owe a duty of care to carry out regular inspections of consumer's power poles, nor did it owe a duty of care to advise owners of wooden poles of their responsibilities with respect to the inspection and maintenance of the poles. The claims against the electricity distributor were dismissed.

Both the maintenance contractor and land owner were held liable to the plaintiffs. Liability was apportioned 70% to the maintenance contractor, and 30% to the land owner.

Under the contract between the electricity distributor and the maintenance contractor, the maintenance contractor was responsible for training and inducting its employees to perform the work in accordance with the electricity distributor's work practices. The trial judge held the maintenance contractor breached the duty it owed to the plaintiffs by failing to properly inspect the pole prior to undertaking the works, and for failing to train and supervise its employees to do so.

The land owner was held liable for failing to take reasonable care to inspect and maintain the pole in a safe and serviceable condition.

In respect of the claim in nuisance, the trial judge held the maintenance contractor was liable in nuisance for allowing the pole to remain in service when it was unsafe and unserviceable. Similarly, the land owner was found to have participated in the creation of the nuisance by retaining and continuing to use the pole to receive electricity.

Implications for you

Insurers of property on which private power poles sit need to be aware that land owners are responsible for ensuring the poles are inspected regularly, and that the poles and private electrical infrastructure is maintained in a safe and serviceable condition.

[*Daniel Herridge & Ors v Electricity Networks Corporation t/as Western Power \[No 4\] \[2019\] WASC 94*](#)

AUTHORS



DIAN TURNER
SPECIAL COUNSEL

+61 3 9909 6305

dian.turner@bnlaw.com.au