



HIGH COURT OF AUSTRALIA

7 December 2022

ELECTRICITY NETWORKS CORPORATION T/AS WESTERN POWER v HERRIDGE
PARTIES & ORS
[2022] HCA 37

Today, the High Court unanimously dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of Western Australia. The appeal relevantly concerned whether the appellant ("Western Power") owed a duty of care in connection with a bushfire which occurred in Parkerville, Western Australia, in January 2014.

Western Power was a statutory corporation which, under an interconnected statutory framework, undertook, operated, managed and maintained an electricity distribution system used to deliver electricity to consumers' premises, including that of the fourth respondent ("Mrs Campbell"). A large number of plaintiffs claimed loss and damage resulting from the bushfire which was caused when a wooden point of attachment pole ("PA pole") owned by Mrs Campbell and situated on her land, to which an electrical cable and other apparatus of Western Power were attached, fell to the ground due to fungal decay and termite damage. Western Power contracted the fifth respondent ("Thiess") to undertake works in the vicinity of Mrs Campbell's property in July 2013, which included replacing Western Power's service cable between its termination pole and the PA pole. In undertaking those works, an employee of Thiess did not adequately perform necessary inspection tests on the PA pole to identify signs of deterioration. The trial judge found Thiess and Mrs Campbell liable in negligence and nuisance, and apportioned liability as 70 per cent to Thiess and 30 per cent to Mrs Campbell. All claims against Western Power were dismissed. On appeal, the Court of Appeal held that Western Power owed to persons in the vicinity of its electricity distribution system a duty to take reasonable care to avoid or minimise the risk of injury to those persons, and loss or damage to their property, from the ignition and spread of fire in connection with the delivery of electricity through that system. The Court of Appeal held that Western Power breached that duty by failing to have a system for the periodic inspection of wooden consumer-owned PA poles used to support its system's live electrical apparatus. In the High Court, Western Power challenged the imposition on it of that duty of care.

In dismissing the appeal, the High Court held that there is no freestanding common law rule which fixes whether and when a duty of care upon a statutory authority might, or might not, arise, and that the starting point is the terms, scope and purpose of the applicable statutory framework. The critical feature of the appeal was that Western Power exercised specific statutory powers in performing its statutory functions in relation to its electricity distribution system, and pursuant to those powers attached and energised Mrs Campbell's premises to that system. Western Power's exercise of those powers created a relationship between it and all other persons within the vicinity of its system, a critical feature of which was its exercise of those powers in a manner which created or increased the risk of harm to those persons, whom it had the power to protect. Accordingly, the common law imposed the duty of care found by the Court of Appeal which operated alongside the rights, duties, and liabilities created by statute. Further, the duty was not inconsistent or incompatible with the statutory framework, and that framework gave Western Power ample power to discharge the duty.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*