

**Electricity Networks Corporation v Herridge Parties [2022] HCA 37**

**FACTS**

The Matter of *Electricity Networks Corporation v Herridge Parties [2022] HCA 37* involved a dispute over loss and damage resulting from a bush fire in Parkerville, Western Australia. The fire was caused by an electrical power pole being affected by fungal decay, on a private property serviced by a private contractor, employed by Western Power.

Certain inspection procedures, intended to detect decay, had not been followed by the contractor, and the trial judge found that Western Power had a duty to take reasonable care to inspect the PA pole to ascertain whether it was in a safe and fit condition for use in the supply of electricity.

The matter was then appealed to the Western Australian Supreme Court of Appeal, with the finding being that Western Power owed to persons in the vicinity of its electricity distribution system a duty of care to avoid or minimise the risk of ignition and spread of fire in connection with the delivery of electricity.

Western Power then sought special leave to appeal to the high court on the basis that the Court of Appeal erred in holding that Western Power owed a duty of care requiring it to have a system for inspecting wooden point of attachment poles owned by consumers.

**ISSUE**

Whether Western Power had a duty of care extending to the inspection of facilities on consumer property?

**FINDING**

The High Court Rejected the appeal unanimously, with the joint judgment from Kiefel CJ, Gageler, Gordon, Edelman and Steward JJ stating:

“32. ... *As these reasons emphasise, the starting point of any inquiry about whether or when a statutory authority owes a common law duty to take reasonable care will be the statute and, where the authority has entered the field, what statutory powers it has exercised and in what circumstances....*

49... *Western Power was therefore given the power to enter and re-enter land or premises on which any works, apparatus or system (including any meter, fitting or connection) used by Western Power for the purpose of distributing energy to a consumer were lawfully situated[77].*

50 *Western Power exercised its powers in performing its statutory functions of undertaking, operating, managing and maintaining the SWIS electricity distribution system and any works, system, facilities, apparatus or equipment required for those purposes. In the exercise of those powers, Western Power's service cable, fuses and meter were on Mrs Campbell's land and, in particular, attached to her PA pole and those apparatus remained there as Western Power exercised its powers in performing its statutory functions of undertaking, operating, managing and maintaining the SWIS electricity distribution system.*

53 *Western Power's contentions did not grapple with the fact that it had stepped into the arena and exercised specific statutory powers in performing its statutory functions; ...Thus, although Western Power appeared to accept that it had a duty to exercise reasonable care to minimise*



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*the risk of fire arising from its distribution system, it then sought to limit that duty to harm arising only from its own property over which it exercised physical control.*

### IMPACT

This decision suggests that the statutory may have a duty of care for all relevant systems within their control; particularly where they have ‘stepped into the arena’ in exercise of their duties, which as per the High Court’s interpretation may be a very large arena indeed!

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