

## NOTICE OF PROPOSED SETTLEMENT

### SUPREME COURT OF NEW SOUTH WALES REPRESENTATIVE PROCEEDING REGARDING THE FIRE ON 17 JANUARY 2017 AT CURRANDOOLEY ROAD, LAKE GEORGE

#### *KUHN & ANOR v INFIGEN ENERGY LIMITED (2017 / 131194)*

On 2 May 2017, Mr Kuhn and Ms Stewart (the **plaintiffs**) commenced this representative proceeding in the Supreme Court of New South Wales against Infigen Energy Limited (**Infigen** or the **defendant**). This representative proceeding is brought by the plaintiffs on their own behalf and on behalf of persons who suffered personal injury, loss or damage to property and/or economic loss consequential to injury or damage to property as a result of the fire that commenced near Currandooley Road, Lake George, NSW, on 17 January 2017 (**Currandooley Fire**) (**Currandooley Fire Class Action**). There were no fatalities associated with the Currandooley Fire. Persons fitting that description are defined in this proceeding as “**group members**”. The group members also include any “legal personal representatives” of the estates of any deceased person who would otherwise have qualified as a group member.

The Supreme Court has ordered that this notice be published for the information of persons who might be group members on whose behalf this representative proceeding is brought and who may have suffered personal injury, loss or damage to property and/or economic loss consequential to injury or damage to property as a result of the Currandooley Fire.

**This notice explains ways in which the proposed settlement of the class action is likely to affect group members’ legal rights, especially their rights to claim compensation from the defendant. If you think you may be a group member you should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

#### **1. What is a representative proceeding?**

A representative proceeding is commonly known as a class action. It is an action that is brought by the plaintiffs on their own behalf and on behalf of group members against the defendant, where the plaintiffs and the group members have similar claims against the defendant.

Group members are bound by any judgment or settlement entered into in the representative proceeding unless they choose to not participate by “opting out” of the proceeding. This means that:

- (a) if the class action is successful or settles, group members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the defendant in separate legal proceedings unless they have opted out.

## 2. What is the Currandooley Fire Class Action?

On 17 January 2017, a bush fire commenced in the region of Currandooley Road, Lake George, NSW which affected a number of properties, Currandooley Fire. The plaintiffs in the Currandooley Fire Class Action allege that the defendant, Infigen, owed to them and the group members a duty of care to take reasonable precautions against harm to their person and property arising from Infigen's operation of overhead transmission lines in the region. The plaintiffs allege that Infigen failed to take reasonable precautions in this regard and as a result the Currandooley Fire commenced and caused the plaintiffs and group members to suffer damage.

The plaintiffs' claims are made on their own behalf and on behalf of group members. The allegations are detailed in the Further Amended Statement of Claim filed on 18 June 2018. Infigen denies liability in respect of the allegations, as detailed in the Further Amended Defence filed by Infigen on 17 July 2018.

## 3. Are you a group member?

Group members include persons who:

- (a) suffered personal injury (whether physical injury or psychiatric harm) as a result of the Currandooley Fire;
- (b) suffered loss of or damage to property as a result of the Currandooley Fire;
- (c) suffered economic loss consequential upon personal injury or property damage as a result of the Currandooley Fire; or
- (d) are the legal personal representative of the estates of any persons in (b) or (c) above as at the commencement of this representative proceeding but have since died.

Group members do not include persons who have suffered only economic loss as a result of the Currandooley Fire.

## 4. Proposed settlement of the Currandooley Fire Class Action.

The plaintiffs and Infigen have agreed to settle the Currandooley Fire Class Action. The terms of the settlement are set out in a confidential Deed of Settlement (**Settlement Deed**).

If you are a group member, a copy of the Settlement Deed that sets out the terms of the settlement is available from Maddens Lawyers if you wish to inspect a copy. Please be aware that the Deed is confidential and you may not disclose it to third parties other than an identified, permitted list of individuals set out in the Deed which includes your legal advisors.

The terms of the Settlement Deed are, in summary:

- (a) In consideration of payment of a confidential settlement sum, the plaintiffs and group members release Infigen (and those person identified in the Settlement Deed as "Infigen Released Persons" which include Renewable Power Ventures Pty Ltd (ABN 25 102 696 159) and Woodlawn Wind Pty Ltd (ABN 38 139 165 610)) from any claims made in the Currandooley Fire Class Action or arising out of the Currandooley Fire; and
- (b) Infigen does not admit any responsibility for or liability in relation to the events leading to the Currandooley Fire.

It is important that you are aware that a result of the proposed settlement is that if you are a

group member you will be bound by the settlement and not be able to commence your own proceedings against Infigen, any Infigen Released Persons or otherwise make any claim against it or them arising out of the Currandooley Fire at a later date.

Because of the Supreme Court's rules for class actions, the Settlement Deed between the plaintiffs and Infigen cannot take effect unless and until it is approved by the Court.

It is the opinion of those advising the plaintiffs that the proposed settlement is fair and reasonable and in the interests of group members.

#### **5. How will the settlement sum be distributed?**

The settlement sum is less than the total amount claimed by the plaintiffs and the group members. This means that each group member's compensation sum must be adjusted to reflect the amount of the settlement.

The payment that you will receive under the settlement, if approved, would represent your share of the settlement sum calculated in accordance with a Settlement Distribution Scheme (**Scheme**) which will be reviewed by the Court as part of the approval process.

The Scheme provides that the plaintiffs will receive \$25,000 to compensate them for the personal burden of being lead plaintiffs which role has benefitted the class as a whole.

If you are a group member, a copy of the Scheme can be obtained on the website of Maddens Lawyers at the following web address: <http://maddenslawyers.com.au/class-actions/2017CurrandooleyFire/legal-documents>. Because it is confidential, access to this document is password protected. To obtain the password, you will need to contact Annie Condon of Maddens Lawyers on (03) 5560 2000.

A copy of the Scheme is also available for inspection at Maddens Lawyers if you wish to inspect a hard copy.

#### **6. Will group members be liable for legal costs?**

The costs which the plaintiffs have incurred in running the class action for the benefit of all of the eligible group members will be paid out of the overall settlement sum received from Infigen. There will not be any additional liability, in respect of those costs for group members.

In relation to the costs associated with assessing each group member's entitlement to compensation, the Scheme proposes a procedure for assessing individual claims according to various guidelines and information you have provided or will provide to us.

The assessment procedures are intended to minimise the overall costs of the process, and also to minimise the need for group members to engage separate lawyers to represent them. It is expected that most group members will not need to or want to engage separate lawyers. For those group members the costs of having their claims assessed will be paid as "administration costs" of the Scheme.

Group members will be entitled to engage separate lawyers to represent them in the claims assessment process, if they wish, but they will need to pay the costs charged by those lawyers.

#### **7. What group members must do**

There are only two (2) options which you must consider.

**Option A** *If you support the settlement* then you do not need to do anything. If the settlement is approved, you will be entitled to receive your share of the settlement sum in accordance with the Scheme.

**Option B** *If you oppose the settlement and wish to object* then you must complete the “Notice of Objection to Proposed Settlement” which is Annexure A to this Notice. You must return the Notice to Maddens Lawyers before **5.00PM on Wednesday 28 November 2018**, and be ready to come to Court to argue your objection. Please note: even if you take this Option B and the Court approves the settlement, you will still be entitled to receive your share of the settlement sum in accordance with the Scheme.

If you are not sure what to do, you should contact Maddens Lawyers or seek independent legal advice. You must act quickly because the deadline for registrations (or objections) is **5.00PM on Wednesday 28 November 2018**.

### **8. What will happen in the coming weeks?**

The Court has ordered that any objections to the proposed settlement (from group members who take Option B above) will be heard by the Court at Law Courts Building, 184 Phillip Street, Sydney, NSW, at **10.00am on 7 December 2018**.

If there are no objections, or the objections are overruled, then the proposed settlement will be given final approval by the Court. It will then take effect. When it takes effect, group members who have registered claims with Maddens Lawyers will have their claims assessed to determine their compensation entitlements.

### **9. Addresses for questions.**

If you have any questions about the settlement or this notice, you can contact Maddens Lawyers at any time, or seek your own independent legal advice.

#### **Contact details for Maddens Lawyers**

Att: Brendan Pendergast  
 Currandooley Fire Class Action  
 Maddens Lawyers  
 219 Koroit Street  
 Warrnambool VIC 3280  
 Telephone: (03) 5560 2000  
 Email: [blm@maddenslawyers.com.au](mailto:blm@maddenslawyers.com.au)

#### **Contact details for the Supreme Court of NSW**

**Note:** Questions should not be directed to the Court.

Level 5, Law Courts Building, 184 Phillip Street, Sydney NSW 2000  
 GPO Box 3, Sydney NSW 2001  
 Telephone: 1300 679 272  
 Email: [supremecourt.enquiries@courts.nsw.gov.au](mailto:supremecourt.enquiries@courts.nsw.gov.au)



**Annexure A*****KUHN & ANOR v INFIGEN ENERGY LIMITED (2017 / 131194)****Currandooley Fire Class Action***NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

The person identified below:

1. Was affected by the Currandooley bushfire
2. Is a group member in this class action;
3. Wishes to object to the proposed settlement of the class action.

The group member's contact details are as follows:

Name:

Telephone number:

Postal address:

Email address:

Medicare No:

Signed:

(If not the named group member, please state the relationship to the named group member:

The group member has also registered as a group member: Yes / No (circle one)

The group member has read the "Notes for Objectors" below: Yes / No (circle one)

***Notes for Objectors:*** Order 5 of the Court's Orders made on Monday 13 November 2018 require that Objectors deliver to Maddens Lawyers, by **5.00PM on Wednesday 28 November 2018**, any written submissions (not exceeding 2 pages in length) and any affidavit evidence the Objector wishes to rely on in support of their objection to the proposed settlement.