IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST

Not Restricted

S ECI 2022 03265

BETWEEN:

VENITA LYNN DRIDAN & ORS
(according to the attached Schedule)

Plaintiffs

v

STOCKYARD HILL WIND FARM PTY LTD & ORS
(according to the attached Schedule)

Defendants

JUDGE:	Goulden AsJ
WHERE HELD:	Melbourne
DATE OF HEARING:	10 September 2024
DATE OF RULING:	16 December 2024
CASE MAY BE CITED AS:	Dridan v Stockyard Hill Wind Farm Pty Ltd
MEDIUM NEUTRAL CITATION:	[2024] VSC 773

PROCEDURE – Application to split trial pursuant to r 47.04 of the *Supreme Court (General Civil Procedure) Rules 2015* – Nuisance claim arising out of the operation of a wind farm – Interference with the use of farm properties in the vicinity of the wind farm – Split proposed between the determination of the questions of liability and relief – Overlap in issues and evidence – Whether 'utility, economy, and fairness to the parties beyond question' – No clear demarcation of issues – Inefficiency arising from the possibility of some of the witnesses being called twice – Unfairness to the plaintiffs as a result of the split – Application dismissed

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APPEARANCES:	Counsel	Solicitors
For the Plaintiffs	Mr M Borsky KC & Mr J Fetter	DST Legal
For the First Defendant	Mr P Solomon KC	Allens
For the Second and Third Defendants	Mr D Batt KC & Ms T Meyrick	Lander & Rogers

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HER HONOUR:

1 By their summons filed on 14 August 2024, the second and third defendants (together, 'Goldwind') seek orders under r 47.04 of the *Supreme Court (General Civil Procedure) Rules 2015* ('*Rules*'), and/or the Court's inherent powers, for the trial of this proceeding to be split between the questions of liability and relief.

2 The first defendant supports Goldwind's application. The plaintiffs oppose it.

3 The discretion to order a split trial should be exercised 'with great caution and only in a clear case'.[1] This is not such a case. For the reasons which follow in this ruling, I will dismiss Goldwind's application.

Background to the proceeding

4 The eleven plaintiffs bring claims in nuisance in respect of 'air pressure waves (perceived as sound, infrasound or vibration)'[2] allegedly emitted by turbines forming part of the Stockyard Hill Wind Farm, which the first defendant owns and Goldwind operates. In the event the defendants are found liable, the plaintiffs seek an award of damages and aggravated and exemplary damages. They also seek injunctive relief, and additionally or alternatively, damages under s 38 of the *Supreme Court Act 1986* (Vic).

5 The eleven plaintiffs claim, variously, to have an interest in six different farming properties in the broad vicinity of the wind farm. The second, third, sixth, seventh and ninth plaintiffs are corporations who sue as registered proprietors of the farms. The remaining plaintiffs, all natural persons, are individuals alleged to reside in, and have exclusive possession of, the dwellings situated on those farms. The fifth plaintiff also sues in her capacity as a joint registered proprietor of a share in another discrete parcel of land. These ownership and use arrangements give rise to issues in the proceeding about the nature of each plaintiff's proprietary interest, including whether they each have standing to bring a claim in nuisance.

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1 *Paz Stone Pty Ltd v Vincenzo Crocitti & Ors* [2017] VSC 492, [6] ('*Paz Stone*'), citing *Murphy v Victoria* (2014) 45 VR 119, [28].

2 Fourth Further Amended Statement of Claim filed on 4 April 2024, [12] ('4FASOC').

6 The various plaintiffs claim a substantial and unreasonable interference with their use and enjoyment of the land and loss and damage. The claimed interference and loss and damage differs depending on their legal personality and the nature of their proprietary interest. That is, the natural person plaintiffs allege the interference is with their personal use and enjoyment of the land and/or their possession and use of the dwellings as residences, whereas the corporate plaintiffs assert that the interference is with their possession and use of the land for the benefit of the families associated with them. The loss or damage allegedly suffered by the natural person plaintiffs is particularised as amenity loss (distress, inconvenience, annoyance and upset), whilst the corporate plaintiffs (and one natural person plaintiff) claim diminution in value of the land as the registered proprietors. The registered proprietors also claim a diminution in value of an alleged reversionary interest in respect of the dwellings.

7 Goldwind provided to the Court a map of the area intended for use as a visual aid. Despite some identified inaccuracies or omissions, I am satisfied that the map is sufficient to illustrate generally the geographical spread of the various farms and dwellings and of the clusters of turbines comprising the wind farm. This in turn serves to demonstrate visually a matter that is uncontroversial, being that the relevant interference allegedly experienced by each plaintiff will likely differ having regard to, at least, the topographical and environmental features of the area and the proximity of the turbines and their relative location to each different parcel of land and dwelling. As will be seen later in this ruling, Goldwind contends that the number of plaintiffs, the differing claims and circumstances of each, coupled with the issue of their standing, creates complexity in anticipating and dealing with various permutations in the potential outcomes on liability which in turn gives rise to permutations in the appropriate relief (if any) that would need to be considered. Goldwind maintains this complexity contributes to the unfairness it will experience absent the split.

The legal principles relating to split trials

8 The parties broadly agree as to the legal principles that apply to applications of this type, starting with the 'usual' position that all issues of fact and law in a dispute are

determined in one trial at the one time.[3] The differences between them are as to matters of emphasis and in the consequences of applying those principles to the circumstances of this proceeding.

9 Rule 47.04 of the *Rules* provides:

> **47.04 Separate trial of question**
>
> The Court may order that–
>
> (a) any question in a proceeding be tried before, at or after the trial of the proceeding, and may state the question or give directions as to the manner in which it shall be stated;
>
> (b) different questions be tried at different times or places or by different modes of trial.

The rule confers a specific power, which is in addition to the Court's inherent jurisdiction, to make orders concerning the manner of conduct of a trial.

10 For the purposes of this rule, 'question' means 'any question, issue or matter for determination by the Court, whether of fact or law or of fact and law, raised by the pleadings or otherwise at any stage of a proceeding by the Court [or] by any party...'[4] There are numerous authorities, in this and in other jurisdictions with like powers, identifying the considerations which guide the exercise of this discretion. Its exercise is also conditioned by ss 8 and 9 of the *Civil Procedure Act 2010*. The Court can make orders to control the manner of trial that it considers most conducive to the just, efficient, timely and cost effective resolution of the real issues in dispute.

11 The authorities warn that split trials should only be embarked upon when their 'utility, economy, and fairness to the parties [is] beyond question.'[5] That caution is particularly apt in a case concerning nuisance in which, like some other torts, damage is the gist of the action and the questions of liability, damages and remedy are intertwined. As the parties acknowledge, to establish liability in this nuisance proceeding, the plaintiffs must show an unreasonable and substantial interference with their property rights.[6] In reaching a conclusion on liability, the Court will

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3 *Inpex Operations Australia Pty Ltd v AIG Insurance Ltd (No 2)* [2023] WASC 61, [57] ('*Inpex*').
4 *Rules*, r 1.13(1).
5 *Tepko Pty Ltd v Water Board* (2001) 206 CLR 1, 55 [170] (Kirby and Callinan JJ) ('*Tepko*').
6 *Uren v Bald Hills Wind Farm Pty Ltd* [2022] VSC 145, [15] ('*Uren*').

consider, amongst other things, the nature and extent of the interference, the reasonableness of the defendants' conduct including in taking precautions to prevent or minimise the interference, and the type of damage suffered.[7] Assuming liability is established, those issues will arise again when considering remedy. For example, the Court will consider the availability of reasonable measures to reduce or eliminate the nuisance in crafting an injunction, if ordered, and it also will consider the nature and extent of the interference and the type of damage suffered in granting an injunction and/or damages.

12 The parties used various words at the hearing to describe the intertwining of issues and evidence in a nuisance action - such as 'overlap', 'cross-over', and 'dual-relevance'. The overlap is acknowledged by both Goldwind and the first defendant. However, they argue that, despite the overlap, the issues are clearly demarcated and so can be split and the proceeding managed to fairly reduce or eliminate any inefficiency or unfairness to the plaintiffs that otherwise might arise. They further maintain that the split removes unfairness for them. A clear line of demarcation between the issues proposed to be split makes it more likely that the determination of one in isolation from the other will result in savings in time and costs. Goldwind submits that there is demarcation in this case despite the overlap in evidence concerning each question because there is no blurring of what is relevant to each question, nor any related difficulty of treatment of the evidence by reason of that blurring. Conversely, the plaintiffs submit there is no ready demarcation and the split will lead to inefficiency and unfairness, including because of a real risk of blurring.

13 Goldwind submits that, in reaching its decision on the application, factors regarded as relevant to the exercise of the discretion in cases involving the preliminary determination of discrete issues as set out in *Murphy v State of Victoria*,[8] ought be put to one side by the Court, as they were by Mukhtar AsJ in *Paz Stone*.[9] However, in my view, they ought not be completely disregarded here, because what is ultimately proposed is a split trial on the questions of liability and relief *save for* the evidence to be given by the plaintiffs' lay witnesses, all of which will be given at the liability trial,

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7 *Southern Properties (WA) Pty Ltd v Executive Director of the Department of Conservation and Land Management* (2012) 42 WAR 287, 310 [118].

8 (2014) 45 VR 119, 126 [28].

9 *Paz Stone* [3].

even where that evidence concerns relief. This, coupled with the overlap in issues in a nuisance proceeding, means some of the risks that have troubled the courts in the cases involving the determination of purely preliminary questions, such as those associated with calling witnesses twice, a lack of demarcation, fragmentation and prolongation, also loom large in this case. Regardless, in my view, many of those factors would be engaged in considering whether the proposed split is consistent with the overarching purpose and in undertaking the 'careful balancing of the prospective advantages and disadvantages'[10] of the split to determine whether it is just and convenient.

The question of efficiency

14 To support its application for a split, Goldwind relies principally upon the asserted complexity of the proceeding. Goldwind submits that a separate trial on relief will be more efficient and streamlined because the defendants will know what liability has been established, and thus, will not have to prepare evidence which traverses the 'innumerable'[11] permutations in outcome, nor risk failing to prepare evidence pertinent to the findings that come to be made. As for the overlap in issues, Goldwind seeks to ameliorate any inefficiency (or unfairness) in the plaintiffs' lay witnesses being called to give evidence twice at the separate trials by giving the assurance that, other than in one limited and discrete respect,[12] the plaintiffs will be able to adduce all of their lay evidence on all issues at the trial on liability.

15 Two experienced legal practitioners, one acting on behalf of the first defendant and the other, Goldwind, have given evidence that is directed solely towards identifying the substantial costs and the additional use of court time that will be avoided if a trial on relief is not required at all. In that event, the efficiency gain is self-evident. However, the Court is not exclusively concerned with assessing the time and costs saved by avoiding any trial on the question of relief,[13] because it is equally self-evident

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10 *Inpex* [63].

11 Transcript of Proceedings, *Venita Lynn Dridan & Ors. v. Stockyard Hill Wind Farm Pty Ltd & Ors* (Supreme Court of Victoria, S ECI 2022 03265, Goulden AsJ, 10 September 2024) T25.30 ('*Transcript*').

12 The asserted exception concerns evidence of an oral conversation between one or more plaintiffs and one or more representatives of the defendant which will be relevant to the issue of aggravated and exemplary damages.

13 See discussion in *Inpex* [60]; *Landsdale Pty Ltd v Moore* [2009] WASCA 176, [20] (Newnes JA, Buss JA agreeing).

that separate trials, in the event the defendants are found liable, will not necessarily lead to the overall action being resolved sooner or at a lesser cost. In undertaking the balancing exercise, the Court is concerned to know that if a second trial is required following the conclusion of the first, that it will not be *more* expensive and *more* time consuming in the aggregate than a single trial of all issues, or if that be so, then there is some other efficiency gained or unfairness avoided which justifies that result. There is, in my view, a gap[14] in the evidence relied upon by the defendants to justify the efficiency of the proposed split in respect of the potential costs and time savings, making it difficult to assign much weight to this possible advantage.

16 As noted above, Goldwind asserts that the plaintiffs' witnesses are unlikely to be required to return to give evidence at the second trial. However, it is not clear whether defence witnesses will be treated the same way. On the one hand, in oral submissions, Counsel for Goldwind submitted that cross examination of defence lay witnesses for liability purposes 'could and would stand to include all aspects relevant to relief'[15] because of the overlap. At an earlier point, however, having submitted that the plaintiffs would not need to give evidence twice, Counsel for Goldwind submitted that at the relief stage:

> there may be cross-examination of defendant witnesses, but that of course, is a matter that stands to affect the defendants, not the plaintiffs, in that occurring.[16]

Goldwind's written submissions also do not foreclose a bifurcation in the evidence to be given at the different trials by the same defence witnesses. For example, it is not submitted that a relevant officer who will give evidence about operational matters concerning the wind farm at the liability trial,[17] will be a different officer to the one called to give evidence about operational and regulatory constraints relevant to abatement measures at the relief trial.[18] A related issue arises where documents are tendered at the liability stage for example, and whether cross examination can occur in relation to those documents at the time of tender in circumstances where the

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14 Cf *Inpex* [134]. The evidence led by the plaintiff in *Inpex* included a comparative analysis demonstrating a reduction in total trial time of around 4 weeks *in aggregate* in the split trial scenario, and of around 7 weeks if the second trial was not required, making the saving in overall trial time a positive factor.

15 *Transcript* T53.24–T54.9.

16 *Transcript* T39.14–T39.17.

17 Goldwind's written submissions filed on 15 August 2024, [41.3] ('Goldwind Submissions').

18 Goldwind Submissions [42.3(i)(A)].

substance of the cross examination may by reason of the overlap relate mostly, but not exclusively, to issues of relief.

17 Even if the defendants are content to accept the inefficiency of their own witnesses potentially being called twice because it will obviate the unfairness they say they will otherwise experience absent the split, that inefficiency is not theirs alone to tolerate. The inefficiency affects the Court, which must be available to conduct two separate trials if required. It also affects the plaintiffs, whose Counsel must prepare for two cross-examinations and who may ultimately bear more costs. Allowing the evidence of some witnesses to be split is also apt to cause the very confusion, inefficiencies and risks that are sought to be avoided by proceeding as a single trial – where will the line be drawn in the running of each trial, what objections will be taken at each stage, and what will be the impact of adverse credit findings, if any, made in the first trial.[19]

18 In any event, the plaintiffs submit that their witnesses may need to return to give evidence if it is proposed that damages be awarded in lieu of an injunction to compensate for future nuisance. It is submitted, in that event, evidence will be needed as to the plaintiffs' likely future use of the land so that those damages can be assessed. Goldwind submitted that the prospect of damages for future use is not 'asserted, or even alluded to or suggested in [the plaintiffs'] pleadings and nor is there in their witness outlines any such suggestion'.[20] They further submitted that it was 'not correct [doctrinally] that such evidence [about future use] could relevantly be given to bear upon the court's decision as to any injunction it might order.'[21] Whilst the authorities cited by the defendants support the proposition that injunctive relief would not be shaped on account of asserted future conduct, that is not the use to which the plaintiffs suggest such evidence would be put. They submit that the Court may determine to grant damages *in lieu of* an injunction,[22] such that evidence about future use would be relevant to establishing the prospective losses for which those damages

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19 See *POS Media Online Ltd v Queensland Investment Corporation* [2000] FCA 1451, [6]; *Fleming's Nurseries Pty Ltd v Hannaford* [2008] FCA 591, [28]; *Tallglen Pty Ltd v Pay TV Holdings Pty Ltd* (1996) 22 ACSR 130, 141–142;

20 *Transcript* T51.9–T51.11.

21 *Transcript* T51.23–T51.25.

22 Although the plaintiffs do not cite any power or authority in support of this proposition in their submissions, s 38 of the *Supreme Court Act 1986* provides that where the Court has jurisdiction to entertain the grant of injunctive relief, it may grant damages in substitution for, or in addition to, an injunction.

may be awarded.[23] That claim is included in their prayer for relief in the 4FASOC and depending upon the progress of the case to and at trial, the possibility of the plaintiffs' witnesses being recalled for this purpose cannot be confidently discounted.

19 The plaintiffs also submit that they may need to return to give evidence about the adequacy of any proposed abatement measures, most particularly, where acoustic treatment works are in contemplation which will affect their homes. Whilst such measures will undoubtedly be the subject of further expert acoustic evidence concerning their efficacy, there may be aspects of the proposed measures and the impacts on the plaintiffs about which they would give evidence. For example, in *Seidler v Luna Park Reserve Trust*,[24] the adverse impact of the proposed acoustic treatments upon the architectural design quality of one of the affected apartments was considered in assessing the reasonableness of the proposal, as well as the personal impact on the plaintiffs being required to remain inside their homes with their acoustically treated doors and windows shut against the sound.

20 Goldwind concedes that expert witnesses may need to be recalled to give evidence at the second trial, including experts called by the plaintiffs.[25] However, it submits that expert witnesses stand quite differently to lay witnesses, and that the inconvenience (if any) they would experience in being called back would be minor and outweighed by the clear advantage of having those experts provide more targeted assistance to the Court. There is no evidence to support the assertion that the inconvenience to an expert witness will be minor, although it is a submission that likely rests on the presumption that no matter how great the inconvenience in terms of time or travel, the experts will be compensated by payment of their costs. Viewed in this way, the so called minor inconvenience is not necessarily commensurate with minor inefficiency,

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23 In other jurisdictions exercising equivalent statutory powers to s 38 of the *Supreme Court Act 1986*, damages for prospective losses have been awarded in lieu of or in addition to injunctive relief, including in cases concerning nuisance. See, eg, *Leeds Industrial Co-operative Society v Slack* [1924] AC 851, 859–60 (Viscount Finlay, Lord Birkenhead agreeing), 864–65 (Lord Dunedin); *Travis v Vanderloos* (1984) 54 LGRA 268, 272–73; *Barbagallo v J&F Catelan Pty Ltd* (1986) 1 Qd R 245, 250–52, 256 (McPherson J, de Jersey J agreeing), 265–66, 268–69 (Thomas J, de Jersey J agreeing).

24 *Seidler v Luna Park Reserve Trust* (Supreme Court of New South Wales, Hodgson J, 21 September 1995) ('*Luna Park*').

25 Goldwind Submissions [70].

for whether it will be less costly and more efficient to call the experts twice rather than once is simply unknown.

21 The authorities warn that the efficiencies promised on the split may be 'more chimerical than real'.[26] The Court would have greater confidence in the foreshadowed efficiencies becoming real were there entirely separate issues in this case as between liability and relief, as there were in *Paz Stone*. However, in this case, acoustic experts will be called to give evidence at the trial on liability concerning the existence of a substantial and unreasonable interference, including the availability of reasonable precautions to abate any interference with the plaintiffs' use and enjoyment of their land. In the event liability is established, acoustic experts, most likely the same ones, would then be called to give evidence at the trial on relief about the effectiveness of proposed measures to abate that interference. Given the overlap in these issues, and bearing in mind the cautions in the authorities borne from experience, the Court cannot be confident that the asserted clear advantage in calling the experts twice, because their evidence on the second occasion will be more targeted, will eventuate, let alone outweigh any inconvenience or other inefficiency that might arise.

22 Having regard to the above, it cannot be said with confidence at this early stage that the efficiencies to be gained from the split are beyond question. On the contrary, there appears to be a very real risk, by reason of the overlap in issues and evidence in respect of the questions of liability and relief, that there will be considerable inefficiencies as a result of the split.

The question of unfairness

Will there be unfairness to the plaintiffs?

23 The plaintiffs submit that the split trial will be unfair to them because:

(a) they will be exposed to the emotional and mental toll of giving evidence twice and that of participating in litigation that will likely be prolonged if there are two appeals and other delays between trials;

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26 *Tepko* 55 [168]-[170] (Kirby and Callinan JJ), 18 [52] (Gaudron J agreeing).

(b) they will likely be exposed to increased costs arising from, amongst other things, the need to travel to give evidence twice, in their legal representatives preparing to conduct separate trials, and in paying expert witnesses to attend at two trials;

(c) final determination of the proceeding across two separate trials will likely be delayed in circumstances where the plaintiffs allege an ongoing nuisance; and

(d) the split gives the defendants the opportunity to appeal twice on each trial outcome should they lose, which would be productive of delay, greater stress and increased costs.

24 The defendants submit that the plaintiffs will not be prejudiced by a split trial. First, they submit that because of the clear demarcation of issues, this is not a case where a separate and dispositive question falls to be determined without the benefit of all of the evidence, rather, the evidence on demarcated issues relating to relief will simply be deferred. Second, they submit the contention that the plaintiffs will be delayed in accessing relief should be given little weight because of the length of time that the plaintiffs have so far taken in the prosecution of this proceeding, delays which are of their own making.

25 I accept that the plaintiffs will experience some or all of the unfairness they identify if the trial is split, depending on the outcome at each stage. I also do not consider that the defendants can confidently discount the prospect of any forensic disadvantage affecting the plaintiffs as a result of the split. As the authorities reveal, often the problems which emerge are unforeseen, especially if the decision to split is made at an early stage. Further, the defendants' submission that the plaintiffs' concerns about delay in obtaining relief should be given little weight because the plaintiffs have so far delayed in their prosecution of the proceeding and so cannot complain about delay in the outcome, is unfounded. Past delays (if any, and no matter whose fault) are not relevant – what is relevant is whether *by reason of* the split, there will be delay, and if there is, whether that is unfair. In circumstances where there is alleged to be an ongoing, substantial and unreasonable interference with the use and enjoyment of the plaintiffs' land, and an injunction is sought to restrain that ongoing nuisance, I consider there would be unfairness to the plaintiffs as a result of the delay caused by

the split. If, having established liability at the first trial, the plaintiffs then have to await the outcome of any appeal before the trial on the question of relief can proceed, there's little that can be done to compensate the plaintiffs for the adverse impacts of continuing nuisance caused by the delay. By comparison, if the claimed remedy was damages, the adverse impact of delay could be ameliorated through a payment of interest. Admittedly, the delay only causes actual unfairness if the plaintiffs are successful. However, they may be successful and the prospective unfairness should be taken into account in determining whether this is a case in which a split is justified.

Will there be unfairness to the defendants?

26 The defendants contend they face six different claims made by six different sets of plaintiffs, some of whom may lack standing, for alleged nuisance affecting six different parcels of land located in different locations relevant to turbines operating on the wind farm. For those reasons, the defendants submit that in a single trial they must address multiple hypothetical scenarios for injunctive relief without any knowledge of the dimensions and details of the wrong such relief would be designed to address. Goldwind submits that there is substantial unfairness in having to call evidence and make submissions in respect of every permutation of possible injunctive relief when the nature, source and extent of the nuisance (if any) to be abated in respect of each plaintiff is unknown.[27] Goldwind submits the defendants should be granted a fair opportunity to contend for a restraining order that is apposite to the liability actually established at the first trial, tailored to be neither wider nor narrower than is warranted in light of those findings.

27 The plaintiffs submit that there is no unfairness to the defendants in being required to put on their full case at a single trial, despite their having strategic or tactical reasons for wanting to defer doing so for as long as possible. They describe the defendants'

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27 Goldwind placed considerable reliance on *Brisbane Airport Corporation Pty Ltd v Arup Pty Ltd* [2020] QSC 202, in which a split trial was ordered in a large and complex action for negligence and/or misleading and deceptive conduct in connection with engineering defects affecting the runway. In granting the application, Applegarth J placed considerable weight on the fact that the plaintiff's case on quantum was in a state of flux, depending on the staging and costs of rectification works. The split was between liability and relief as to damages (as distinct from an injunction). The peculiar circumstances of that case, including the impact of COVID-19 on its preparation, are apt to distinguish it from the present. Here, the plaintiffs' case on relief is not in a state of flux, as it is not contingent on the scheduling of flight operations or similar events. It has simply not yet been presented in full as it will be by the time of the trial.

complaint about having to defend against every possible permutation of nuisance and to address multiple scenarios for relief, as exaggerated, and further contend that it is routine for defendants to claims in tort to run a defence prior to knowing the outcomes on liability. The plaintiffs argue that, to the extent there is unfairness, it will be able to be avoided and managed through careful case management by the trial judge. The plaintiffs also point to *Uren* and *Luna Park* as examples of complex nuisance cases determined on single trials despite involving multiple claimants where differing abatement measures were proposed and ordered.

28 I do not accept that the uncertainty faced by the defendants in framing appropriate injunctive relief in the absence of findings of liability on some or all of the plaintiffs' claims is either especially unusual, or insurmountably unfair. I do not accept that the defendants will ultimately need to deal with innumerable permutations in outcome. The proceeding is at an early stage, with discovery in progress and the filing of lay and expert evidence still some time away. The defendants will not be putting on their evidence and submissions concerning relief in a vacuum. They will be doing so with the benefit of the evidence and submissions filed by the plaintiffs, which, at least in the usual or expected course of events, will give greater precision to the plaintiffs' case and commensurately reduce the range of prospective outcomes. For example, the evidence will likely identify the conditions in which each plaintiff experiences the alleged nuisance, such as the times of day, weather conditions and seasons. The defendants need do no more than respond to the case put against them. There will be even greater precision at the time of closing submissions after trial when the question of relief will be in much sharper focus having regard to the evidence that would have been adduced in the course of the trial.

29 There is also a multitude of case management tools, designed to deal with complex cases involving many issues, which may be deployed to ensure any of the asserted unfairness can be minimised, if not eliminated. Such case management tools can be deployed in the interlocutory management of the proceeding and by the trial judge in response to issues raised by the parties, as appropriate. Their application will likely bring the issues in the proceeding into clearer focus. The ordering of a split is a blunt instrument to resolve the asserted unfairness at this early stage when the extent of the problems cannot be foreseen.

Disposition

30 In my view, Goldwind has not discharged its burden of persuading the Court to exercise the discretion to order that there be a separate trial on the question of liability and relief. I am not convinced that the utility, economy and fairness of a split trial as proposed by Goldwind, and supported by the first defendant, has been established.

31 For the reasons given, I dismiss the summons, and order that Goldwind pay the plaintiffs' costs of and incidental to the summons.

SCHEDULE OF PARTIES

S ECI 2022 03265

BETWEEN:

VENITA LYNN DRIDAN	First Plaintiff
WOODSHAWK PTY LTD (IN ITS CAPACITY AS TRUSTEE OF THE WOODSHAWK FAMILY TRUST)	Second Plaintiff
ALSKYNONSI PTY LTD (IN ITS CAPACITY AS TRUSTEE OF THE ANDREW & PATRICIA GABB FAMILY TRUST)	Third Plaintiff
~~TARNAWA PTY LTD~~	~~Fourth Plaintiff~~
PATRICIA ANNE GABB	Fifth Plaintiff
MALANGI PTY LTD (IN ITS CAPACITY AS TRUSTEE OF THE LANGI WILLI TRUST)	Sixth Plaintiff
MOALLAACK SPRINGS PTY LTD (IN ITS CAPACITY AS TRUSTEE OF THE MOALLACK SPRINGS PROPERTY TRUST)	Seventh Plaintiff
~~NIAWANDA PASTORAL HOLDINGS PTY LTD~~	~~Eighth Plaintiff~~
MAEDAN HOLDINGS PTY LTD (IN ITS CAPACITY AS TRUSTEE OF THE EURALLA TRUST)	Ninth Plaintiff
SHANE DRIDAN	Tenth Plaintiff
PHILIP HAWKER	Eleventh Plaintiff
STEPHEN MITCHELL	Twelfth Plaintiff
EWAN READ	Thirteenth Plaintiff
- v -	
STOCKYARD HILL WIND FARM PTY LTD	First Defendant
GOLDWIND AUSTRALIA PTY LTD	Second Defendant
GOLDWIND SCIENCE & TECHNOLOGY CO LTD	Third Defendant

CERTIFICATE

I certify that the 14 preceding pages are a true copy of the reasons for ruling of Goulden AsJ of the Supreme Court of Victoria delivered on 16 December 2024.

DATED this sixteenth day of December 2024.

Shashwat Makhija
Associate