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**SUPREME COURT OF QUEENSLAND**

CITATION: *PBR Properties Pty Ltd v Chubb Insurance Australia Limited*  
[2026] QSC 47

PARTIES: **PBR PROPERTIES PTY LTD**  
ABN 35 161 404 119  
  
(third applicant)  
  
v  
  
**CHUBB INSURANCE AUSTRALIA LIMITED**  
ACN 001 642 020  
  
(respondent)

FILE NO: BS 10850 of 2018

DIVISION: Trial Division

PROCEEDING: Hearing

ORIGINATING: Supreme Court at Brisbane

COURT:

DELIVERED ON: 13 March 2026

DELIVERED AT: Brisbane

HEARING DATE: 19 August 2024, 20 August 2024, 21 August 2024,  
  
22 August 2024, 23 August 2024, 26 August 2024, 27 August  
  
2024, 28 August 2024, 29 August 2024, 30 August 2024,  
  
18 September 2024

JUDGE: Sullivan J

ORDER: 

1. The third applicant's claim is dismissed.
2. The respondent's **counterclaim is dismissed.**

CATCHWORDS: INSURANCE – PROPERTY AND PECUNIARY LOSS INSURANCE  
– FIRE INSURANCE – CLAIMS – FRAUDULENT CLAIMS – where  
the applicant lodged an  
  
insurance claim for property loss occasioned by a fire under a  
policy of insurance with the respondent – where the claim was  
denied by the respondent – where the denial of the claim was based  
on an allegation that the fire was deliberately lit – whether the fire  
was deliberately lit – whether the insurance claim was excluded  
under the policy of insurance – whether  
  
the insurance claim was made fraudulently  
  
EVIDENCE – PROOF – STANDARD OF PROOF – STANDARD OF  
SATISFACTION – PROBATIVE VALUE – CIRCUMSTANTIAL  
EVIDENCE – where the applicant

lodged an insurance claim following a fire at a residential property – where it was not possible from the remaining physical evidence to identify what had been the cause of the fire and exactly where the fire had ignited – where the damage caused by the fire was so extensive that it was not possible to identify through physical examination and testing whether the fire had been deliberately lit – where circumstantial evidence was sought to be relied upon to establish criminal conduct – whether, applying the Briginshaw principle, it is open to the Court to be reasonably satisfied that on the balance of probabilities the fire was deliberately lit

*Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

*Briginshaw v Briginshaw* (1938) 60 CLR 336

*Cassa Bedding Pty Ltd v Insurance Australia Limited* [2022]

QSC 1

*Chamberlain v R (No 2)* (1984) 153 CLR 521

*De Gruchy v The Queen* (2002) 211 CLR 85

*Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67

ALJR 170

*NRMA Insurance Limited v Collier & Anor* (1997) 9 ANZ

Insurance Cases 61-337

*Palmer v Dolman* [2005] NSWCA 361

*Plomp v The Queen* [1964] Qd R 170

*R v Ball* [1911] AC 47.

*Richard Evans & Co Ltd v Astley* [1911] AC 674

*Transport Industries Insurance Co Ltd v Longmuir* [1997] 1

VR 125

*Trimboli & Ors v Royal Insurance Australia Limited* (1983) 2

ANZ Ins Cas 60-500

*Worth v HDI Global Speciality SE* (2021) 393 ALR 93

COUNSEL: B O'Donnell KC, with S McCarthy, for the applicant

S Couper KC, with J Simpkins, for the respondent

SOLICITORS: Allens for the applicant

HWL Ebsworth for the respondent

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**Introduction**

1. In the early morning of 28 December 2016, a fire occurred in a high-end residence

known as ‘Wirraway’, located at Beaudesert. Wirraway was a highly renovated main homestead with an adjacent ballroom, all of which shared a single roof structure. The property had been owned by the third applicant, PBR Properties Pty Ltd (“PBR”). PBR was the trustee of the Richardson’s Property Trust. The acquisition and renovation of Wirraway had been paid for by PBR through funds sourced from a sibling company, Project Gas Services (“PGS”). This had left an intercompany loan in excess of \$14 million being owed by PBR to PGS.

- [The property \[1\]](#) had originally been purchased by a contract of sale on or about 4 November 2012 for approximately \$3,575 million. Significant alterations and additions occurred at Wirraway between 2012 and 2014. In addition, other improvements were made to the property such as the construction of a guesthouse, a tennis court, an additional hangar, an upgrade to an air strip and roadworks.

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[1] Whilst referred to as ‘the property’, it was constituted by a number of separate but contiguous parcels

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- [The persons who sat behind PBR and PGS were a married couple, being Preston](#)

Richardson (“Mr Richardson”) and Miranda Richardson (“Mrs Richardson”).

Mrs Richardson had been a party to this proceeding at one stage, but had later been removed. Mr Richardson had also been a party to the proceeding, but he committed suicide on 11 November 2018 and no relief was pressed against his estate.

- [After the fire, Mr Richardson caused PBR to make a claim on a policy of insurance](#)

which had existed for Wirraway (“the Policy”). The Policy had been entered into on 15 May 2016, with a predecessor company to Chubb Insurance Australia Limited (“Chubb”). Subject to its terms, conditions and exclusions, the Policy covered PBR for loss or damage to Wirraway and attached buildings for a sum of \$10,024,000 on an “extended replacement cost” basis. The Policy also had a separate contents replacement component.

- [The period of insurance for the Policy had been 15 May 2016 to 30 June 2017.](#)

- [At the time of the fire, the only person then still living at the property was Mr Richardson. Mrs Richardson and the children of the marriage had left the property prior to December 2016, and Mrs Richardson, in effect, was separated from Mr Richardson.](#)

- [At the time of the fire, the property was the subject of a mortgage in favour of the](#)

National Australia Bank (“NAB”), and stood as security up to \$8 million for a \$10,879,734 loan debt, which PGS then owed to the NAB. It is uncontentious that the NAB has appointed receivers to PBR.

#### Issues in the proceeding

- [The real issue in this proceeding is whether Mr Richardson deliberately set fire to Wirraway in the early hours of the morning of 28 December 2016. If he is found to have done so, then it is common ground between the active parties to this proceeding that the Policy will not answer in respect to loss and damage caused by the fire due to a relevant exclusion within the Policy. If Mr Richardson is not found to have done so, then it is also common ground that the Policy will answer in respect of the loss caused by the fire.](#)
- [The second real issue arises only if the Court does not find that Mr Richardson deliberately started the fire. That second issue concerns the quantum to be paid under the Policy, both for the loss and damage to Wirraway and attached buildings, and for the contents.](#)
- [In answering the first of the real issues, it ought to be emphasised that the onus of proof lies on the insurer, Chubb, to prove on the balance of probabilities that Mr Richardson deliberately lit the fire. In discharging its onus, the \*Briginshaw\* \[2\] principle will be applicable due to the seriousness of the finding which Chubb seeks the Court to make.](#)

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[2] *Briginshaw v Briginshaw* (1938) 60 CLR 336.

11. The finding sought to be made is one which would amount to the criminal act of arson and, accordingly, such a finding should not be made by reliance on inexact proofs, indefinite testimony, or indirect inferences.
12. There was a counterclaim brought by Chubb but no evidence was led in respect of it, and no relief has been asked for. I have operated on the basis that the counterclaim has been abandoned.

### Legal principles

13. The first real issue in this case, namely whether Mr Richardson deliberately started the fire, is sought to be established by way of circumstantial evidence. In a civil case where criminal conduct is sought to be established by circumstantial evidence, the relevant approach is that identified in *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1 at 5 as follows:

“[O]f course as far as logical consistency goes many hypotheses may

be put which the evidence does not exclude positively. But this is a civil and not a criminal case. We are concerned with probabilities, not with possibilities. The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence while the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort where direct proof is not available it is enough in the circumstances appearing in the evidence give rise to a reasonable and definite inference: they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture (see per Lord Robson, *Richard Evans & Co Ltd v Astley* [1911] AC 674 at 687 ). But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusion sought then though the conclusion may fall short of certainty it is not to be

regarded as a mere conjecture or surmise...” [3]

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[3]. That statement having been approved on many occasions as summarised in *Palmer v Dolman* [2005] NSWCA 361 at [35]-[36] by Ipp JA (with whom the other members of the court agreed).

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14. In *Palmer v Dolman* [2005] NSWCA 361, Ipp JA (with whom the other members of the court agreed) identified certain principles which had become well established in civil cases where circumstantial evidence was sought to be relied upon to produce a finding of fraud by way of inference. Those principles are as follows:

“[4]...

- (a) The jury must consider “the weight which is to be given to the

united force of all the circumstances put together” (per Lord

Cairns in *Belhaven & Stenton Peerage* (1875) 1 App Cas 278 at 279 - quoted with approval by Gibbs CJ and Mason J in *Chamberlain v R (No 2)* at 535 ).

- (b) The onus of proof is only to be applied at the final stage of the

reasoning process: “[i]t is erroneous to divide the process into

stages and, at each stage, apply some particular standard of

proof. To do so destroys the integrity of [a] circumstantial case”

(per Winneke P in *Transport Industries Insurance Co Ltd v*

*Longmuir* at 129 ).

- (c) The inference drawn from the proved facts must be weighed against realistic possibilities as distinct from possibilities that might be regarded as fanciful.
- (d) Where the competing possibilities are of equal likelihood, or the choice between them can only be resolved by conjecture, the

allegation is not proved: *Bradshaw*.”

(emphasis in original)

15. The principles identified in *Palmer v Dolman* were subsequently endorsed in *Worth v HDI Global Speciality SE* (2021) 393 ALR 93 at 101-102, in respect of an insurance case where arson by an owner had been raised as an exclusion. In *Worth*, *McCallum JA* (with whom *Macfarlan JA* agreed) emphasised, amongst others, the following points:

- That it was a well-established proposition that the tribunal of fact in a circumstantial case must consider the weight which is to be given to the united force of all the circumstances put together.
- That principle applied to civil cases where the question was whether the circumstantial evidence supported the inference of fraud.
- The onus of proof is only to be applied at the final stage of the reasoning process.
- The inference drawn from the proved facts must be weighed against realistic possibilities as distinct from possibilities that might be regarded as fanciful, and where the competing possibilities are of equal likelihood, or the choice between them can only be resolved by conjecture, the allegation is not proved.

16. In *Cassa Bedding Pty Ltd v Insurance Australia Pty Ltd*, [4] *Burns J* (as his Honour then was) accepted as a useful summary the observations of *Tadgell JA* in *Transport Industries Insurance Co Ltd v Longmuir* [1997] 1 VR 125 at 141 :

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[4]. [2022] QSC 1 at [65]-[66] .

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“[T]o assess the evidence in a case like this by reference to various

individually-pleaded particulars, as though running through items on a check list, is apt to mislead. The evidence is to be evaluated as a whole in order fairly to consider whether the party bearing the onus of proof has established what is ultimately sought to be proved. The object of the exercise of evaluation is to discover whether the evidence paints a picture reflecting real life, rather than to place a tick or a cross against paragraph after paragraph of torpid pleading. A true picture is to be derived from an accumulation of detail. The overall effect of the detailed picture can sometimes be best appreciated by standing back and viewing it from a distance, making an informed, considered, qualitative appreciation of the whole. The overall effect of the detail is not necessarily the same as the sum total of the individual details: cf. *Hall (Inspector of Taxes) v Lorrimer* [1992] 1 WLR 939, at 944 ; *Shepherd v. R.* (1990) 170 CLR 573 at 579-80 .

In a civil case like this, where there is no direct evidence of a fact

that a party bearing the onus of proof seeks to prove, “it is not

possible to attain entire satisfaction as to the true state of affairs”:

*Girlock (Sales) Pty Ltd v Hurrell* (1982) 149 CLR 155 at 169, per Mason J. In such a case, however, the law does not require proof to

the “entire satisfaction” of the tribunal of fact. A definition of the

sufficiency of circumstantial evidence in a civil case to support proof by inference from the directly proved facts was given by the High Court in the unreported case of *Bradshaw v McEwans Pty Ltd* (27 April 1951) in a passage since repeatedly adopted: eg *Luxton v Vines* (1952) 85 CLR 352 at 358 ; *Holloway v McFeeters* (1956) 94 CLR

The relevant passage in *Bradshaw's case* is this:

Of course as far as logical consistency goes many hypotheses may be put which the evidence does not exclude positively. But this is a civil and not a criminal case. We are concerned with probabilities, not with possibilities. The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while in the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort, where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference: they must do more than given rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture: see per Lord Robson, *Richard Evans & Co Ltd v Astley* [(1911) AC 674 at p. 687]. But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusion sought then, though the conclusion may fall short of certainty, it is not

to be regarded as a mere conjecture or surmise...”

17. I also adopt with gratitude the summary of Tadgell JA in *Transport Industries Insurance Co.*
18. As identified previously, the onus of establishing that Mr Richardson intentionally lit the fire remains firmly on the respondent, Chubb. Further, given the nature of the findings sought, the well-understood *Briginshaw* principle applies. In such a case,

the “reasonable satisfaction” which the court needs to reach in order to make the serious finding is one which should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

19. In *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170, Mason CJ, Brennan, Deane and Gaudron JJ observed at 171 as follows:

“[T]he strength of the evidence necessary to establish a fact or facts

on the balance of probabilities may vary according to the nature of what it is sought to prove. Thus, authoritative statements have often been made to the effect that clear or cogent or strict proof is

necessary “where so serious a matter as fraud is to be found”.

Statements to that effect should not, however, be understood as directed to the standard of proof. Rather, they should be understood as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has

been guilty of such conduct.” (Footnotes omitted)

20. I turn then to the situation where the circumstantial case relies on lies which are said to exhibit consciousness of guilt, as opposed to going to credit only.
21. In such a situation, the decision-maker must first consider whether, in fact, the person has lied about the matters alleged. Even if a false story has been given, consideration then needs to be given as to whether there may be other reasons why a person may have given a false story, including the giving of a false story out of panic, based on the fear of an action appearing suspicious. This example of an explanation for a false story has been described as the paradigm example of a lie that might not demonstrate a consciousness of guilt.
22. In *Worth v HDI Global Speciality SE* (2021) 393 ALR 93, this point was emphasised by McCallum JA (with whom Macfarlan JA agreed). In that appeal, the learned trial judge was found to have engaged in impermissible reasoning in relation to what was said to be a lie in respect of a consciousness of guilt, by reason of failing to follow this process. For completeness, I note that Meagher JA dissented on this issue.

23. [Next, I turn to the principles relevant to the role of motive and opportunity in insurance cases where arson is raised as an exclusion to the policy answering for a fire event. In the present case, there is said by the respondent to be both motive and opportunity.](#)
24. [In \*NRMA Insurance Limited v Collier\* \(1997\) 9 ANZ Insurance Cases 61-337, Meagher JA \(with whom the other members of the court agreed on this issue\) observed generally that:](#)

“As this Court has often held, motive and opportunity, either together or in isolation, are not factors of overwhelming weight in this class of litigation.”

25. [In the earlier decision of \*Trimboli v Royal Insurance Australia Limited\* \(unreported decision of Rogers J of the New South Wales Supreme Court, 16 November 1982\), his Honour made the following observations:](#)

“By paragraph [10] of the statement of defence, the defendant asserts that the fire was not fortuitous and that it was occasioned by reason of the “Wilful and fraudulent act of the plaintiff”. I am not satisfied that this defence has been made out. The onus which rests on an insurer to make out an allegation of this kind is a heavy one. The defendant submits that the plaintiffs had both motive and opportunity. However, in relation to motive, I think it is important to bear in mind what Means J said in *Water Lily (Sales) Pty Ltd v The New Zealand Insurance Company Limited* (unreported) (15 March 1977), when his Honour said:

“But in considering the question of motive, one must heed the warning of the editors of the 7th edition of Wills’ principle of circumstantial evidence at pages 65 and 66...to seek out a weak case by proof of a motive apparently tending towards possible crime is a very unsatisfactory and dangerous process. Furthermore, suspicion, too readily excited by the appearance of supposed inducement, is incompatible with that even and unprejudiced state of mind which is indispensable to the formation of correct and sober judgment. While true it is that frequently “imputation and strong circumstances...lead directly to the door of truth”, it is equally true that entirely to penetrate the mind of man is out of human power, and that circumstances which apparently had presented powerful motives, may never have acted as such.”

And in considering motive, one must look at the person who has allegedly possessed them. Motives, as in Mannheim in *Comparative Criminology*, volume 2, page 297, has said, can become operative only when they are joined together with a second personality. See

also “Criminal Motivation” by Jackson Toby, *British Journal of Criminology*, volume 2 (1961-66), pages 333-4.”

26. [More recently in \*Cassa Bedding Pty Ltd v Insurance Australia Limited\* \[2022\] QSC 1, Burns J made the following observations in relation to opportunity and motive in respect of an insurance claim where arson was raised as an exclusion to the policy answering for a fire event:](#)

“[70] While the existence of opportunity and motive may bolster an insurer’s case, proof of either or both can never be

determinative, especially where the evidence connecting the insured with the fire is weak. [5] [On the other hand, the absence of any motive may be a powerful consideration against a finding of wrongdoing. Of course, it must steadfastly be kept in mind that the insured has no onus to prove an](#)

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absence of motive but where the evidence adduced in the case is such that the tribunal of fact can conclude that an insured had no motive to, for example, destroy insured property in order to make a fraudulent claim on a policy of insurance, that will be a strong factor weighing against an inference to the contrary effect.

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[5] *Trimboli & Ors v Royal Insurance Australia Limited* (1983) 2 ANZ Ins Cas 60-500, 77, 848; *NRMA Insurance Limited v Collier & Anor* (1997) 9 ANZ Ins Cas 61-337, 76, 718-9.

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[71] In this regard, there is of course a difference between a case where there is an absence of proven motive and a case where there is a proven absence of motive. As to this, and although a criminal case, the following observations made by Gaudron, McHugh and Hayne JJ in *De Gruchy v The Queen* [6] are apposite:

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[6] *De Gruchy v The Queen* (2002) 211 CLR 85.

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“Motive, if proven, is a matter from which a jury might

properly infer intention, if that is in issue, and, in every case is relevant to the question whether the accused committed the offence charged. As was observed by Lord Atkinson in *R v Ball*:

‘Evidence of motive necessarily goes to prove the fact of the homicide by the accused ... inasmuch as it is more probable that men are killed by those who have some motive for killing them than by those who have not.’ [7]

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[7] *R v Ball* [1911] AC 47, 68.

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So, too, absence of motive is equally relevant to the question whether the accused committed the offence charged and, as

observed by Menzies J in *Plomp v The Queen*, ‘...is

commonly relied upon as a circumstance tending in favour of

... a person accused of a crime’ [8]

Although absence of motive is relevant, the appellant’s

argument overlooks a critical distinction between absence of proven or apparent motive, on the one hand, and proven absence of motive, on the other. In the present case, there was no evidence of motive, which is not the same thing as proven absence of motive. And although the character evidence called on behalf of the appellant tended to negate possible motive, it by no means established the absence of motive.

The absence of evidence of possible motive is clearly a matter to be taken into account by a jury, particularly in a case based on circumstantial evidence. However, if, as in the present case, the prosecution does not have to establish motive, it is difficult to say that the absence of evidence in that regard is a matter of

in the prosecution case or a strength in the defence case. It might be otherwise if there were positive evidence that the accused lacked motive. However, that would be a most unusual case. The present is not a case of that kind. It is simply

a case where there was no evidence of motive.<sup>[9]</sup> ”

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[8]. *Plomp v The Queen* [1964] Qd R 170, 183.

[9]. *De Gruchy v The Queen* (2002) 211 CLR 85, [28]-[30].

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27. Counsel for the applicant stated that as a general point of principle, if the party alleging arson is unable to eliminate other possible innocent causes of the fire, then that is the end of the matter. It was submitted in stark terms that in such a case, motive and opportunity could not be used to produce a verdict of arson. In this respect, the decision of *Sweeney and Parkway Enterprises Pty Ltd v Zurich Insurance Company, & Anors* (unreported decision of the Newfoundland Court of Appeal, 23 June 1999) was relied upon, in particular, the statements of Marshall JA at [41] to [43], with whom Cameron JA concurred.
28. Reference was then made to the later Canadian decision of *Performance Factory Inc v Atlantic Insurance Company Ltd* (unreported decision of the Newfoundland and Labrador Court of Appeal), particularly at paragraphs [3] to [5] per Welsh JA, which was said to have qualified the earlier decision.
29. Reading those paragraphs from the reasons of Welsh JA, it seems that the earlier decision in *Sweeney* could no longer be regarded as continuing to be good law in the relevant province. The statement of principle and the articulation of the onus as set out in those paragraphs very much reflect the position that I have outlined above in how a civil case is to be determined where circumstantial evidence is relied upon. Ultimately, I think it more appropriate to continue to refer to the intermediate Court of Appeal decisions of Australia on this issue. The principles have been clearly articulated within this jurisdiction and it is appropriate to act consistently with that articulation.
30. In this proceeding, the principles discussed are to operate within a factual framework which includes the following factors:
- The expert evidence in the case has identified that it is not possible from the remaining physical evidence to identify exactly what was the physical cause of the fire and where the exact location of ignition is to be found. There was disputation between the experts as to whether an opinion could be expressed as to where the fire more likely originated in terms of a general location and where ignition could have taken place based on other factors.
  - The experts have identified that the damage was so severe to Wirraway that it is not possible to identify through physical examination and testing that the source of the fire was one which was deliberately instigated by a person or by another mechanism.
  - There was discussion by the experts about a number of ways in which the fire might possibly have been instigated, one of which was by deliberate human intervention, but others were by mechanisms whereby human intervention played no role. There was a dispute as to whether certain ways of instigation could be ruled out for reasons separate to physical examination and testing.
  - It is not in dispute that the only person who was present in the house in the early hours of 28 December 2016 was Mr Richardson. Accordingly, if the ultimate conclusion was that the fire was started deliberately by a person, the only person who could have started the fire was Mr Richardson. Neither party suggested otherwise.

### Background facts leading up to the date of the fire

31. These background facts will be broken up into a number of sub-headings dealing with findings of fact relevant to the first real issue in the case.

(a) Initial acquisition of wealth

32. A Mr Warrick Leeson gave evidence at trial. Prior to 2009, Mr Leeson had worked for Hastings Deering. He met Mr Richardson whilst Mr Richardson was working as a plant manager for a pipeline company called Delco. Mr Leeson was able to give evidence as to how Mr Richardson had originally accrued his wealth. [10]

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[10] Affidavit of W Leeson dated 1 December 2022.

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33. In 2009, Mr Richardson founded a company called Project Plant Rental Pty Ltd. This same company would later be renamed PGS.
34. In September 2009, Mr Leeson was engaged as operations manager within PGS. At different times, he was seconded to different roles within that company as needed. Mr Leeson had a management role in virtually every project which PGS became involved in.
35. PGS had originally started out as a plant hire business for civil construction projects. In 2011/2012, PGS pivoted to working in the coal seam gas industry. In particular, PGS had acquired welding machines known as Fast Fusion Machines, which were used to weld sections of gas pipelines being constructed from gas fields in the Surat Basin to processing facilities at Gladstone. The cost of each Fast Fusion Machine was approximately \$750,000.
36. In 2012 and 2013, PGS was operating under a sub-contract with Murphy Pipe and Civil Pty Ltd (“Murphy Pipe and Civil”). At one stage, PGS was employing 140 people and was running 12 Fast Fusion Machines. During this period, PGS was earning significant amounts of money. A figure of \$1 million per week was referred to. This was gross income.
37. In December 2013, Murphy Pipe and Civil advised Mr Richardson and Mr Leeson that the part of the project which PGS was involved with was to be wound down. This was a shock to PGS as it was unexpected at the time, and Mr Leeson identifies  
that it was a big financial blow to the company’s revenue.
38. The winding down of PGS’s involvement in the project was rapid. The 140 people  
employed by PGS on the project towards the end of 2013 dropped to 20, and by the middle of 2014, there were no PGS employees working on the project at all.
39. PGS then instigated litigation against Murphy Pipe and Civil, and issued a sub-contractor’s charge against QGC Pty Ltd. QGC Pty Ltd paid an amount of  
\$50 million into court. The litigation over the right to that sub-contractor’s charge was ultimately settled in the first or second quarter of 2016 with the outcome that PGS was paid less than one-tenth of the monies paid into court.
40. After the end of the sub-contract to Murphy Pipe and Civil, PGS undertook other local work in relation to pipe welding in the Surat Basin and some monies were earned. The exact amount of the monies was not identified, but in relation to a project involving an entity known as Leanfields, it was identified that in respect of an amount of approximately \$4 million worth of work performed by PGS, that Leanfields had entered into liquidation prior to PGS being paid. Ultimately, PGS was only later paid for a small portion of what it was owed for this debt, again via a  
sub-contractor’s charge.
41. Mr Leeson gave evidence that at the end of 2016, PGS was looking to do contracting work for Santos Ltd at its GLNG project at Gladstone. It appears that Mr Leeson had this date incorrect and that he was referring to the end of 2015. The other contemporaneous documents in evidence do not

corroborate that any significant tendering was underway for Santos related work at the end of 2016. An NAB Strategy Note of 9 February 2016 noted that PGS had been unsuccessful in a

tender for “Santo”, which I infer was a reference to Santos Ltd. The NAB was

PGS’s financier at all relevant times.

42. Mr Leeson identifies that he and others within PGS found out that the tender for the Santos work was not successful at the PGS Christmas party. He did not identify which year the Christmas party occurred, but it was likely 2015. I find that the tendering for Santos had occurred in 2015 and by December 2015 Mr Richardson and PGS knew the tender had been unsuccessful.

43. By the second half of 2016, a sister company to PGS had been set up in Papua New

Guinea (“PNG”) known as Project Gas Services PNG (“PGS PNG”). Its sole

purpose was to seek to undertake work in PNG. Mr Richardson controlled this company. A Mr Clint Raven, at the direction of Mr Richardson, was sent to PNG to act on behalf of PGS PNG. Mr Raven remained in this role for almost a year.

44. PGS PNG was not successful in winning any significant work in PNG. In August or September 2016, Mr Leeson was also sent by Mr Richardson to PNG. Mr

Richardson told Mr Leeson at that time that, “...we needed to pull some work over the line.” <sup>[11]</sup>

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<sup>[11]</sup> Affidavit of W Leeson dated 1 December 2022 at <sup>[50]</sup>.

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45. Mr Leeson recalls receiving a call from Mr Richardson at a time when Mr Richardson was on a family holiday at Disneyland. During this call, Mr Richardson flew off the handle and told Mr Leeson and Mr Raven to pull out and ditch

everything. He said words to the effect of, “Warrick get your arse back to Brisbane,

we’re not going to be doing PNG anymore”. <sup>[12]</sup> Mr Richardson gave evidence that

the Disneyland holiday had occurred in September 2016.

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<sup>[12]</sup> Affidavit of W Leeson dated 1 December 2022 at <sup>[51]</sup>.

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46. Mr Leeson and Mr Raven returned from PNG as a result of that call, and Mr Richardson sacked Mr Raven immediately.

47. There were no significant active contracts bringing in substantial income to PGS in the second half of 2016.

48. Right at the end of 2016 there was a small hire agreement with the company CPB Contractors Pty Ltd (“CPB”)<sup>[13]</sup> in respect of certain of the welding machinery. This

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<sup>[13]</sup> This was the entity formerly known as Leighton Contractors.

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hire agreement only extended into the beginning of 2017. This hire agreement was

generating some relatively small income.

**(b) Financial predicament from mid-2016 to December 2016**

49. With the large value work having dropped off by the beginning of 2016 and no future large productive work having been obtained by mid-2016, Mr Richardson was seeking funding from

[external sources.](#)

50. [An NAB Strategy Note of 9 February 2016 recorded in a meeting with PGS's then](#)

Chief Financial Officer, Mr Leong Teoh, amongst other things, the following interaction:

- PGS had not been successful in its tender for "Santo" (which I have found was a reference to Santos Ltd).
- PGS had purchased a trencher and eight Fast Fusion Machines through a new leasing facility in the amount of \$4.85 million in September 2015.
- PGS had no confirmed forward cash flow, and was dependant on cash reserves from a dispute which had been settled with Murphy Pipe and Civil in order to service the then existing NAB debt over the next six to 12 months.
- PGS had indicated to the NAB that it intended to sell the equipment purchased and funded by the NAB in September 2015.

51. [The same NAB Strategy Notes also recorded the internal thinking of the NAB officer as follows:](#)

- The secondary exit to clear exposure was that the lease limit of \$4.6 million could be recovered through asset sales over the next four to six months.
- The NAB facilities of \$8 million were secured over Wirraway.
- A valuer had indicated a value of \$16.2 million for Wirraway in January 2015.
- The valuer had also indicated that Wirraway was also overcapitalised and that a very thin market existed for the property.
- That PGS had indicated to the NAB that it had circa \$2 million available to service debts over the next six to 12 months, which would allow it to sell the equipment.
- That the prior NAB 2015 financial report in respect of PGS had been prepared on the basis that that entity had a going concern business. It also recorded that the ability of PGS to continue as a going concern was dependent on a number of factors, which included the procurement of profitable contracts and the sourcing of additional funds.

52. [On 22 April 2016, the NAB gave instructions to Colliers International \("Colliers"\)](#)

to value the property on which Wirraway stood.

53. [On 21 May 2016, Colliers produced a valuation report to the NAB, which valued the property on which Wirraway stood at \\$20 million.](#)

54. [Sometime in or about May of 2016, Mr Richardson approached his then friend, a](#)

Mr Edward Crosbie Goold ("Mr Goold") and raised the prospect of Mr Richardson seeking a loan from Mr Goold's mother. Mr Goold's mother was a Ms Joanna Baillieu ("Ms Baillieu").

55. [Ms Baillieu seems to have come from a wealthy family. The evidence supported that part of her wealth was maintained in a trust administered by an entity known as Mutual Trust.](#)

56. [Part of Mr Goold's association and friendship with Mr Richardson revolved around](#)

their regular use of illicit drugs together, particularly methylamphetamine and cocaine.

57. [Mr Richardson's discussion with Mr Goold at the time Mr Richardson wanted an](#)

introduction to his mother included the suggestion by Mr Richardson that Mr Goold would be given a management position within PGS. Mr Goold provided Mr Richardson with contact to his mother.

58. [Ms Baillieu did not give evidence in this proceeding. An affidavit was filed which shows that at the time of the trial, she was subject to an administration order made by QCAT due to issues with her](#)

mental capacity. I draw no inferences from her absence as a witness.

59. In 2016, Ms Baillieu would have been an older woman likely in her 60s, given the apparent age of her son at trial. There was no strong evidence as to what her psychological position was in 2016. Mr Goold gave some evidence that his

mother's short-term memory was not good and he thought she was an overgenerous

woman. In December 2016, Mr Richardson had told his wife that Ms Baillieu had

forgotten the then transactions he had entered into with her because of her senility.

60. In May 2016, Mr Richardson made contact with Ms Baillieu.

61. At that time, Ms Baillieu was going through a separation with her former partner. She had a solicitor acting for her in respect of the separation. The evidence supports that

- (a) Mr Richardson became aware of this; and
- (b) the circumstance of the separation became relevant to the transactions which subsequently occurred with Ms Baillieu.

62. In late May 2016, Ms Baillieu received a presentation from Mr Richardson, at

which Mr Leeson, Mr Goold and Ms Baillieu's solicitor were present.

63. The reason for this meeting and at least one subsequent meeting was for Mr Richardson to attempt to persuade Ms Baillieu to provide funds to PGS. The vehicle for this advancing of funds was proposed to be by way of a Convertible Note.

64. On 31 May 2016, Mr Richardson had sent through to a representative of Ms Baillieu a financial proposal [L4] in respect of the Convertible Note. As part of that

financial proposal under a heading "7. Projects - Overview", particularly at 7.1, a

PNG project was dealt with. The financial proposal stated in relation to PGS PNG the following:

"The company has recently successfully tendered - through the Central Supply and Tenders Board ("CSTB"), for the Kina 335 million [approximately AUD 138 million] **Namatanai West Coast Road Project.**" (emphasis in original)

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[L4] Doc ID CHU.505.001.0586 at 37/188.

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65. Mr Leeson in cross-examination identified that this statement had been false. At no stage had PGS PNG successfully tendered for such a contract. At the time the financial proposal was sent, PSG PNG was still only tendering for that project. It was ultimately unsuccessful in that tender.

66. This was a false statement about a materially important matter. It was a statement which would have been known to be untrue at the time it appeared in this document to anyone within PGS with knowledge of what was occurring in PNG. The financial proposal was an important document as it was setting out in writing the case for Ms Baillieu to advance the money. The overwhelming inference is that Mr Richardson would have been aware of the contents of this financial proposal, including the materially false statement. Mr Richardson only had a few employees left in the management team at that time and he was the person who was carrying out all the negotiations with Ms Baillieu and communication with her representatives, both

orally and in writing. PGS's financial position at that time was very poor, with no

substantial ongoing income producing work. The inference I draw is that Mr Richardson would have been aware that the financial proposal had made this materially false statement and that the statement was false.

67. It was not the only such false statement made in the document. I note under the same heading at 7J, there was also the statement:

“PGS has been operating in PNG since April 2015, undertaking a range of infrastructure and provincial government contracts.”

68. In cross-examination, Mr Leeson also accepted that this statement was untrue. Mr Leeson said that they had performed one consulting contract for the CSTB and had

recouped a little bit of money for Mr Raven’s time in PNG as a consultant. Mr Leeson said the contract which had been performed was for infrastructure work for provincial governments, but the use of the words “a range” and “contracts” was probably shining a bit of a positive light on it.<sup>[15]</sup>

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[15] T4-44 lines 6-10.

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69. Again, the second statement must have been known to be untrue by anyone with

knowledge of PGS PNG’s projects at the time it was made. For the same reasons set out above, I draw the inference that Mr Richardson would have been aware that financial proposal had made this materially false statement and that the statement was false.

70. In relation to both of those matters, Mr Leeson agreed that the intent of the document in which they appeared had been for the purpose of obtaining investment monies. The executive summary identified that the financial proposal document was directed to Ms Baillieu as an investor. I draw the inference that Mr Richardson intended Ms Baillieu and her advisors to rely upon the content of the financial proposal as part of her decision-making process as to whether to invest with PGS. In making these findings, I have had regard to the *Briginshaw* principle, due to the serious nature of the findings.

71. In cross-examination, Mr Leeson identified that Ms Baillieu was informed at some later time that the Namatanai West Coast Road project had gone to a Chinese construction company, and that PGS PNG had pulled out of PNG. Mr Leeson was unable to identify exactly when Ms Baillieu was informed of this. I am satisfied that this would have been well after this transaction was taking place.

72. Mr Goold gave evidence that his mother had been interested in the project in PNG.

73. An email dated 1 June 2016 contained a series of questions posed by a Mr Robert Hemphill of Mutual Trust relevant to the transaction proposed by Mr Richardson. Mr Richardson promptly responded to the questions.

74. The answer to those questions revealed that what was being considered at this time was an unsecured Convertible Note in the amount of \$3 million. Mr Richardson stated that the proceeds from the Convertible Note were for working capital

purposes for PGS’s operating activities in Australia directly for project purposes.

PGS was to perform the vast bulk of the work in any project PGS PNG was involved in.

75. Mr Richardson identified to Mr Hemphill that it was anticipated that PGS would have 5 million issued and fully paid shares prior to the conversion of the Convertible Note. He stated that the full conversion of the Convertible Note into shares would give Ms Baillieu about a 23 per cent shareholding in PGS.

76. Subsequent to these meetings, the giving of the final proposal document, and the answering of the questions posed by the advisers to Ms Baillieu, Ms Baillieu did enter into a Convertible Note.

77. PGS issued the Convertible Note to Ms Baillieu, pursuant to which she was to pay the amount of \$3 million. The Convertible Note provided for a minimum seven per cent interest rate with six-monthly reviews (subject to the approval of PGS), with a two per cent default rate. Interest was payable monthly in arrears, with the principal paid on maturity. Maturity was 30 June 2019, being

the third anniversary of the closing date for the note. The proceeds were expressed to be used for general corporate purposes.

78. The note was fully and unconditionally guaranteed by Mr Richardson.
79. The Convertible Note document provided for mandatory conversion into shares on the occurrence of these events, namely:
- (a) PGS accepting a third party equity investor of at least \$3 million, with a conversion rate of \$3 a share; or
  - (b) PGS obtaining at least an additional \$18 million pre-tax profit over the term of the loan, with a conversion rate of \$3 a share; or
  - (c) PGS agreed to a change of control or sale of business with Ms Baillieu's

consent, with a conversion rate of \$3 a share.

80. By 8 June 2016, the monies for the Convertible Note had been transferred to PGS in the sum of \$3 million. This occurred at a stage when PGS had no major contracts on foot, and PGS PNG was still tendering for the major project in PNG identified above.
81. Accordingly, \$3 million had been injected into PGS as at 8 June 2016, with the principal repayable effectively in three years, but with monthly interest payments calculated at seven per cent per annum.
82. The NAB was aware of the injection of those funds from at least 14 June 2016.
83. An NAB Strategic Note of 11 August 2016 recorded a meeting with Mr Teoh on behalf of PGS. Mr Teoh was recorded as requesting a further working capital advance from the NAB of \$700,000 for a new project. The note recorded the bank
- officer's surprise, given the recent injection of \$3 million. The bank officer is
- recorded as querying how much of the \$3 million was still available. Mr Teoh then advised that approximately \$780,000 was still available. It was further recorded in the note that Mr Teoh did not disclose what the other \$2.2 million had been used for.
84. That only \$780,000 then remained of the \$3 million advance illustrates how poor the financial position of PGS was in August 2016.
85. It was also recorded in the note that PGS's current NAB facilities had expired on
- 30 July 2016 and they had been extended to that date to allow contracts for the sale
- of Wirraway to be obtained.
86. The note recorded that the NAB was very concerned about the current position of the company, given that it had \$780,000 in the bank, that the salaries associated with the business were very high, and that there was no confirmed income in the pipeline.
87. This led to a further meeting on 16 August 2016 between Mr Richardson, Mr Teoh and the NAB officer, where the NAB officer expressed that the bank was very concerned about the working capital position and lack of progress in the last six months.
88. Mr Richardson at that time indicated that he was committed to selling Wirraway and would be listing the property with Colliers. He informed the bank that Colliers had indicated that he should be able to achieve \$20 million for the property. He said that he had been previously offered \$15 million for the property, but the transaction had been complicated and involved some property swaps. Mr Richardson was recorded as telling the NAB that the \$3 million investment by Mutual Trust, being

Ms Baillieu's trustee manager, had been made to back the PNG project and that the

investors (a reference to Ms Baillieu) were said to be very aware of the risks associated with those contracts. I pause to note that this statement is directly inconsistent with the finance proposal which had falsely stated that PGS PNG had successfully tendered for a named \$138 million project.

89. The NAB officer queried how cash flow would be managed if PGS only had circa \$780,000, and PGS had used \$2.2 million in the last two months. The NAB officer was informed that the largest

payment had gone to Thomson Geer Lawyers, who had represented PGS in the Murphy Pipe and Civil dispute. The payment to Thomson Geer was said to be approximately \$1.1 million.

90. The NAB officer at this stage advised that the NAB would only be prepared to extend the facility on a short-term basis on conditions including that Wirraway be marketed and sold by March 2017, with the proceeds to clear all bank debt and with

a purchase order being received from Australia Pacific LNG (“APLNG”) for work

which Mr Richardson said was going to be available. I pause to note that APLNG was a joint venture which was developing its own gas fields in the Surat Basin for export in Gladstone.

91. Further communications with the NAB then continued after this date about these matters.
92. On 26 August 2016, PBR, the owner of Wirraway, appointed Colliers as the exclusive real estate agent to sell Wirraway.
93. In September 2016, Mr Richardson with his wife and children, took a family vacation to California, and this was the occasion on which they visited Disneyland.
94. On 22 September 2016, marketing for the sale of Wirraway was commenced by Colliers.
95. The NAB Strategic Note of 30 September 2016 recorded a meeting with Mr Richardson and a NAB officer. The note recorded that PGS was running out of cash and Mr Richardson told the NAB that PGS did not have sufficient working capital to proceed with a purported APLNG contract, which was said to have been recently secured. [16] An additional \$400,000 was sought from the NAB by Mr Richardson on behalf of PGS. It was noted that the NAB facilities had previously been extended but were expiring on 30 September 2016. Internally it was noted that the NAB held

the view that it should appoint an independent accountant to confirm the NAB’s

security position as a condition of the extension.

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[16] I note that it was not established that such a contract had, in fact, been secured with APLNG.

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96. On 30 September 2016, the NAB facilities were extended to 31 October 2016, with

a condition that an investigative accountant be appointed to review the NAB’s

security position.

97. In October 2016, PGS ceased paying superannuation and payroll tax obligations to its employees.

98. In October 2016, Mr Richardson terminated Mr Teoh’s employment. Mr Teoh was

not replaced, but Mrs Richardson informally attempted to do some of his work.

99. On 6 October 2016, Mr Will Colwell of Ferrier Hodgson was appointed by the NAB to conduct a limited business review in respect of PGS and PBR.

100. On 4 November 2016, the Ferrier Hodgson business review of PGS and PBR was finalised and provided to the NAB.

101. On 11 November 2016, the expressions of interest campaign being conducted by Colliers for the sale of Wirraway closed.

- [102] On 16 November 2016, Mr Forrest of Colliers sent a marketing report to Mr Richardson, summarising the inquiries that had been received. Under the heading

“2. Marketing Activity”, details of how the property had been marketed, both in

terms of publications, the press and online were given. I am satisfied that the marketing campaign was both professional and appropriately targeted to the high end market for such a property. It identified, amongst other things, the extensive views that had occurred on YouTube, Real Commercial and realestate.com.au, with a full summary set out on page 2 of the report.

103. Three expressions of interest had been received in relation to the purchase of the property: one was for \$7.25 million; one was \$10 million from the Salerno Group; and one was for \$12 million.
104. On 17 November 2016, Mr Forrest of Colliers advised both Mr Richardson and Mrs Richardson in an email that Mr Forrest should follow up the highest expression of interest to determine if it was genuine. If it was genuine, then Mr Forrest suggested that an inspection be organised, without indicating to that person that Mr and Mrs Richardson were in agreement with anything, but just as an agent's preference.
105. In relation to the \$10 million expression of interest, Mr Forrest suggested that he see if he could get that person up to \$12 million plus.
106. In relation to the \$7.25 million expression of interest, Mr Forrest suggested that they simply ignore it.
107. On 19 November 2016, Mrs Richardson, with the assistance of her father-in-law, took the three children and left Wirraway as a family residence for good. Mrs Richardson did still attend Wirraway after this date for a time, but by sometime in early December she effectively was staying physically away from Wirraway and Mr Richardson all together.
- [108] It is apparent that by November 2016, Mr Richardson was again pursuing Ms Baillieu for further funding. As is evident from the NAB Strategy Notes, the \$3 million injection of funds by Ms Baillieu in June 2016 had not been sufficient to reduce the pressure which the bank was continuing to impose on PGS. There had been monthly extensions of the NAB facilities, but these were conditional.
109. In relation to Mr Richardson seeking to obtain further funding from Ms Baillieu, it seems apparent that Mr Richardson initially spoke to or met Ms Baillieu without any advisors. However, third party disclosure documents show that Mutual Trust ultimately became aware of a further transaction after it had been entered into. On the evidence, Mutual Trust did not appear to have undertaken an advisory role in this transaction but was involved in administratively causing a payment to be made from a trust account.
110. Mr Goold fell out with Mr Richardson at some time. Mr Goold gave evidence that Mr Richardson had been excluding him from meetings with his mother. The original enticement of a purported role within Mr Richardson's group of companies appears to have ceased to have the desired effect on Mr Goold.
111. Mr Goold gave evidence that at some time he had advised his mother not to provide Mr Richardson with further money. It is not clear from Mr Goold's evidence as to when this advice was given by him to his mother, but I infer it was after the further transaction was entered into. I will return to this evidence later in these reasons.
- [112] On 22 November 2016, Mrs Richardson made a clandestine recording of an interaction between herself and Mr Richardson at Wirraway.
- [113] Generally, caution needs to be had when one party to a conversation secretly records another party. This is because the recording party understands that their part of the interaction is being recorded, and accordingly, it cannot be accepted that their part of the interaction represents the ordinary and candid interchange which otherwise would have occurred. Further, the recording party can use the occasion to bait the other party so as to produce an adverse reaction by the other party.
- [114] Having noted that this type of caution should be exercised, I am nonetheless satisfied that the recording does accurately record a picture of:
- (a) what Mr Richardson was trying to achieve with Ms Baillieu at the time;
  - (b) his utter desperation to obtain money from her; and
  - (c) his abusive nature.

115. At this time, Mrs Richardson had good reason to record the interactions. She seems to have decided to split from Mr Richardson. She was concerned about his aggressive behaviour and was concerned for her children.

116. The recording is disturbing in the ferocious and aggressive manner displayed by Mr Richardson. It is full of Mr Richardson speaking abusively about a variety of people, including Mrs Richardson. There is a level of oscillation in the intensity of the ferocious abuse. At times it does dip down to Mr Richardson talking in a quieter, even plaintive, voice. However, the predominant picture which emerges is of Mr Richardson as a highly aggressive bully, desperate to extract money at all costs from Ms Baillieu in order to save his financial position, which was directly linked to the two entities, PGS and PBR.

117. It is evident from the recording that Mr Richardson believed that he had recently convinced Ms Baillieu to provide further funding in the millions of dollars.

Someone on Mr Richardson's behalf had retained the firm of solicitors, Tucker &

Cowen. They were retained in order to try and document a transaction which would allow these millions of dollars to be provided.

[118] Mr Richardson in the recording was expressing his frustration with Tucker & Cowen, who he said told him they were unable to document the type of transaction he was seeking in respect of the funds sought.

119. Mrs Richardson exhibited to her affidavit various file notes she had made over time. One of the file notes was of a speaker phone conversation between Mr Richardson, Mrs Richardson and the Tucker & Cowen solicitor. It is undated but records Mr Richardson talking about a loan of \$11.2 million from Ms Baillieu which was to be rolled into a new Convertible Note with the existing \$3 million. This is later referred to as \$15 million which Mr Richardson instructs is to give her 49 per cent of the shares in PGS when she chooses. Reference is made to this being after the separation with her partner. The note records that PGS is not going to repay the money but her investment is to go to equity. It records that there was no security that she will be repaid and no mortgage was on the table. I pause to note that what is being described is not reflected in the then existing Convertible Note and was, in effect, a sale agreement. Tucker & Cowen ultimately could not produce a document reflecting what Mr Richardson wanted from the transaction.

120. Returning then to the audio recording, part of the frustration being spoken of in the recording was that Mr Richardson had sacked Mr Teoh, who may have been able to assist in having the transaction undertaken. Frustration was also expressed about an external accountant who Mr Richardson used.

121. I do not intend in these reasons to go through in detail the audio recording, but I have again listened to it in full for the purposes of writing these reasons. I note that a transcript was tendered into evidence which sets out in more detail what was said.

122. The following points can be made from the recording.

- Mr Richardson was desperate for the transaction with Ms Baillieu to go through. An example of the desperation is in the following exchange:[17]

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[17] Doc ID MRI.600.002.0039 (audio recording). These extracts from the Transcript of Recording dated 22 November 2016 have been directly copied, including any typographical and grammatical errors.

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“MRS RICHARDSON: I am angry.  
MR RICHARDSON: You're angry, yeah. Well, you weren't talking to me...I was telling you what was going on...would I sell this fucking place or sort out some money otherwise neither of us have anything and at the moment, as of this minute, we've lost

fucking everything and they are all  
coming in, in two days we're out of  
here...so you might as well pack all your  
fucking things and leave right now.

MRS RICHARDSON: Okay.

MR RICHARDSON: Because you fucked it up...I'm blaming  
you for this. I've got the money sitting  
there, Miranda."

- The money which Mr Richardson was speaking of was \$12 million sought to be sourced from Ms Baillieu through her trust administered by Mutual Trust. That is evident from the following exchanges:

"MR RICHARDSON: I did a \$12 million deal in a week, and

you say I do nothing, you're hanging

down the shed. Fucking bullshit. That's

absolute fucking retard bullshit. I fucking work my arse off to get a deal over the

line, and I've still got it. I lost it on Friday

and I fucking now saved it..."

- Mr Richardson's frustration with Tucker & Cowen not being able to produce the documents he wanted to facilitate the transaction he wanted in order to source the \$12 million funds was a theme of the recording. This included Tucker & Cowen having informed him that what he was seeking to do would breach his director's duties in some way which was not fully revealed by the recording. This was evident from the following exchange:

"MR RICHARDSON: ...This guy is just a fucking idiot. He is a

fucking idiot. He is the worst fucking

moron I've ever met. I'd rather that Nat.

He is fretting with a huge bill I don't

know. So...doesn't - it is not a loan to

Joanna, you dickhead, it's an investment.

How is it breaching my director's duties

if she wants to make an investment? I just

don't understand why he keeps saying

that. He says it to me every time I say

something, he says, 'Don't, you will

breach your director's duties.' So, I don't

- what?

He doesn't help at all. He just throws up

problems. He's actually not coming up

of him 'cause it is all we've got now."

- It appears that in addition to Mr Richardson having been speaking to Ms Baillieu, Mr Richardson had been speaking to a person or persons from Mutual Trust in Melbourne. This is evident from the following exchange:

"MR RICHARDSON: ...I was sitting there with the directors of

the fucking Mutual Trust ready

to...[inaudible]...fucking deposit 12

million and they don't even want to

return a call...and I've got the [c-word

plural] on the phone. They're in their board fucking office, doing a deal...and

they can't even get the fuckwits to

fucking ring us. But I've got to ring

them...[inaudible]...while I'm doing all

that. Jesus Christ."

- There was reference in the audio to Ms Baillieu finishing with Neil. That is a

reference to Ms Baillieu's former partner. It should be noted that in an

affidavit of Mr Richardson, sworn before he passed away, he had stated that Ms Baillieu was seeking to hide assets from her former partner in their domestic relationship dispute. Those statements were not admitted for the truth of their content, but they are broadly consistent with similar such statements being made in this audio recording, and within other documents which reflect that Mr Richardson held the view that Ms Baillieu was, in part, motivated to enter into these transactions due to her breakup with her former partner.

123. On 25 November 2016, Ms Baillieu signed a document which purported to be a loan agreement with Mr Richardson. It is apparent that this is a document which was drafted by Mr Richardson, together with two associates (being Mr Leeson and a Mr Bennett, who was the then Operations Manager and Information Technology and Communications Manager for PGS). That document was taken by Mr Bennett, at the direction of Mr Richardson, to an art gallery which Ms Baillieu was involved with in Fortitude Valley, Brisbane. Ms Baillieu signed the loan agreement at that art gallery on 25 November 2016. It recorded a loan agreement, in part, to the following effect:

- Ms Baillieu agreed to lend \$12 million to Mr Richardson personally.
- The loan was to be made in two tranches: with tranche one being \$6 million on or before 28 November 2016, and tranche two being \$6 million on or before 16 December 2016.
- The loan was for a period of 60 months commencing upon receipt of the payment of the loan amount in full.
- Mr Richardson agreed to pay 7.9 per cent interest per annum with principal and interest instalments remitted monthly. The instalments were said to be deferred for 12 months and then monthly instalments in arrears until such interest was paid, together with capital at the end of the loan period. I note that this reflected an inconsistency in the terms of the document. The capital was the principal. If it was paid in unspecified monthly instalments, it was not payable only at the end of the loan term. This poor drafting probably reflects the fact that Mr Richardson and his two associates were the drafters of this document as opposed to solicitors.
- Mr Richardson was said to be entitled to repay the full balance with annual interest at any time.

- Any variation, amendment or addition had to be in writing and accepted by both Ms Baillieu and Mr Richardson.

[124] Also on 25 November 2016, Ms Baillieu signed a second document called

“Termination of subordinate Convertible Note”. This document was also signed by

Mr Richardson. It referenced to the Convertible Note of 31 May 2016 between PGS and Ms Baillieu. It stated that the Convertible Note was terminated and then

provided, in part: “[S]ubsequently no further interest instalments or repayments

would be made.”

125. I find that this termination document was, on the balance of probability, executed at the same time as the new loan agreement.

[126] Both this termination document and the new loan agreement referred to Mr Richardson having had a meeting with Ms Baillieu the day before (on 24 November 2016). Mr Leeson was asked about this meeting. He was personally unaware of one, but he could not discount that there may have been such a meeting on 24 November 2016, including possibly by telephone. However, Mr Leeson was adamant that Mr Richardson was not present on 25 November 2016 when Ms Baillieu signed the new loan agreement in Fortitude Valley.

127. At least on the face of the termination document and the new loan agreement, the \$3 million which had been advanced to PGS was not being treated as a part payment under the loan agreement between Mr Richardson and Ms Baillieu.

128. It would have been an extraordinary thing for Ms Baillieu simply to have written off the \$3 million, whilst at the same time promising to pay a further \$12 million directly to Mr Richardson. That would be an act which would make no logical or commercial sense. That complete lack of logic strongly supports that there was something else occurring here in relation to the existing \$3 million liability. The evidence generally supports the inference that something was being done in respect of the \$3 million liability that concerned her dispute with her former partner. Later in a communication between Mr Richardson and Mrs Richardson in December 2016, Mr Richardson referred to the termination document as being just for Ms Baillieu and himself. There was other evidence, such as from Mr Goold, that his mother was seeking to hide assets by what she was doing with Mr Richardson.

129. I find on the balance of probabilities that the \$3 million liability continued to exist and the termination document was a sham. Even if I were wrong on the sham issue, there was no consideration for the termination of the subordinate Convertible Note liability. Nothing was passing from PGS to Ms Baillieu which would constitute legal consideration so as to extinguish the liability. I pause to note that no evidence was provided that any adviser of Ms Baillieu knew of this termination document.

130. The first instalment under the new loan agreement was not paid on 28 November 2016.

[131] By 29 November 2016, the NAB had reviewed the Ferrier Hodgson report. An NAB Strategic Note of that date records that the PGS cashflow forecast relied on

asset sales to clear the NAB’s debt, with the equipment debt to be cleared by the

end of November 2016, and asset sales and the sale of Wirraway to clear the larger

debt by March 2017. It noted that the “customer” had requested an extension of the

larger term loan to March 2017 so as to allow for the voluntary sale of that property. It was further recorded that it was imperative that the customer successfully sells and settles the Fast Fusion Machines and the trencher machine to clear debt in the next 30 days. It was noted that three parties were negotiating with PGS in respect of six Fast Fusion Machines and the trencher.

132. The note also recorded that Ms Baillieu and Mutual Trust had issued a letter of intent to acquire a Convertible Note for \$8 million to purchase a share in the business. It was noted that this was the same entity which had injected \$3 million

earlier in the year. The “customer” had advised Ms Baillieu that he would only

consider a Convertible Note of \$12 million so all NAB facilities could be

discharged. The reference to “customer” was evidently a reference to Mr

Richardson. Mr Teoh had been sacked by this stage. No “letter of intent” was

admitted into evidence. It is unclear if one existed in truth, particularly given the

contents of Mrs Richardson’s clandestine recording. Further, by this date the new

loan agreement had been entered into. The reference to a letter of intent and its

terms seems to have been taken directly from the Ferrier Hodgson report.

[133] An amount of \$1 million on 30 November 2016 was paid by Ms Baillieu, via Mutual Trust. The monies were paid into the PBR account with the NAB. Ms

Baillieu’s actual financial position was unknown. The particular Mutual Trust

account from which the \$1 million was paid from only had just over \$1 million in it. However, third party disclosure documents had shown that this account was topped up from time to time from another source. Relevantly, it had been topped up by \$3,500,000 on the day of the first payment of \$3 million to PGS on 8 June 2016.

134. On 30 November 2016, the NAB had written to PGS advising that PGS had failed to make its statutory PAYG payments and that this constituted a breach of its facility agreement with the NAB.

135. Also on 30 November 2016, the NAB separately wrote to Mr and Mrs Richardson advising that no funds had come into the account overnight. It is clear that the NAB had been told that further monies would be paid by Ms Baillieu.

[136] In response, on 1 December 2016, Mr Richardson wrote to the NAB officer as follows:[18]

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[18] Affidavit of A Wessels dated 24 July 2023 at Exhibit AW-1 at p. 5. This extract of the email has been directly copied, including any typographical and grammatical errors.

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“Sophie

Just finished with Joanna and she did not sign part of the release authority yesterday or something to do with the release and it was overlooked with the other documents, the signature is now in place and Mutual Trust is expected to be making the deposit today, from what I have been told all the paperwork is now in place. It is a large deposit and bound to have a few hiccups, the signing of the documents have been done out of office for Joanna and not in mutual trust offices in Melbourne which may have contributed to the delay, all should be ready to be deposited today, she and I will maintain communication to Mutual trust throughout the day to ensure this

happens...”

137. On the same day, Mr Richardson requested an extension of the loan facilities for one month, to the end of December 2016.

138. On 2 December 2016, that extension was granted by the NAB until 31 December 2016.

139. On the same day, Mr Richardson emailed the NAB stating relevantly as follows:[19]

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[19] Affidavit of A Wessels dated 24 July 2023 at Exhibit AW-1 at p. 9. This extract of the email has been directly copied, including any typographical and grammatical errors.

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“...We have received 1 mil so far as you can see it is happening, a

few hold ups with the trust, we are on it and we will keep you

posted...”

140. On 5 December 2016, an NAB officer wrote to Mr Richardson by email, noting that only \$552,118 had been credited to an identified account instead of the \$1 million, and that the officer was also concerned about transfers out of the account. The officer stated, in part:[\[20\]](#)

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[\[20\]](#) Affidavit of A Wessels dated 24 July 2023 at Exhibit AW-1 at p. 8. This extract of the email has been directly copied, including any typographical and grammatical errors.

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“...Preston, NAB cannot continue to support the voluntary sale of assets if we do not have visibility over your strategy. We were expecting \$6 mill last week, which has not materialised.

...

As discussed, please provide me with correspondence from Joanna/Mutual Trust, confirming her intention to invest \$12 million and firm dates for receipt of those funds.

NAB also needs assurance that once funds are received, that it will be applied to reduce NAB debts and not applied elsewhere, otherwise we will not be able to support the current strategy and we will have to consider other options.

Please provide me with an urgent update...”

141. The NAB continued to make similar inquiries with Mr Richardson on 12 December 2016.

142. In the period 13 December 2016 to 15 December 2016, Mr Richardson was sending particularly hurtful and offensive text messages to his wife. They were sent in the context of their marriage ending. There was discussion of him requiring her to execute a deed where she would get \$100,000 and walk away, or she would otherwise get nothing. A picture of the family dog was sent, where the dog was obviously dead on the ground. Immediately below it was a text stating that Mrs Richardson had destroyed his relationship with his daughters and his father, and that

Mrs Richardson had taken away his family. Mr Richardson then stated, “I found pebbles”, a reference to the dead dog.[\[21\]](#)

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[\[21\]](#) Affidavit of M Richardson dated 26 June 2023, Exhibit MR35 at pp. 3220 - 3230.

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143. Amongst these texts, Mrs Richardson replied:[\[22\]](#)

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[\[22\]](#) Affidavit of M Richardson dated 26 June 2023, Exhibit MR35 at p. 3228. This text message extract has been directly copied, including any typographical and grammatical errors.

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“Preston, this is impossible with all the threats, all the violence, all the drug use. I have tried everything to manage it between us for the sake of the girls but you have left me no choice, I am seeking legal advice.”

144. Mr Richardson’s responses included:[\[23\]](#)

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[\[23\]](#) Affidavit of M Richardson dated 26 June 2023, Exhibit MR35 at p. 3228. These extracts of text messages have been directly copied, including any typographical and grammatical errors.

“That is a lie you left won’t let me you are not telling the truth. No

drug use I have done everything

...

No threats I wanted to see my kids you took”

145. In a text message, Mr Richardson identified he had Thynne + Macartney who were going to act for him.

[146] On 15 December 2016, Mrs Richardson informed Mr Richardson that she had engaged a family lawyer. Mrs Richardson identified her lawyer and asked Mr Richardson to have Thynne + Macartney to forward the deed to her lawyers for perusal. The response to that from Mr Richardson was:[24]

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[24] Affidavit of M Richardson dated 26 June 2023, Exhibit MR35 at p. 3229. This text message extract has been directly copied, including any typographical and grammatical errors.

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“I don’t have thyn Mac

Did Bruce organize that

The deed won’t work I lost the deal this morning

I will just leave

I don’t have anyone”

147. The respondent submits that the reference to “the deal” was presumably a reference to the agreement with Ms Baillieu. It is simply not clear from these texts what “the

deal” being referred to was. It is only a possibility that it was a reference to the

dealings with Ms Baillieu.

148. Also on 15 December 2016, Mr Richardson emailed an NAB officer, setting up a meeting later in December 2016.

[149] By 16 December 2016, the tone of the emails from Mr Richardson to Mrs Richardson had altered. They were generally not as offensive and were accommodating in relation to Mrs Richardson receiving property. Relevantly, a large text message stated as follows:[25]

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[25] Affidavit of M Richardson dated 26 June 2023, Exhibit MR35 at p. 3230. This text message extract has been directly copied, including any typographical and grammatical errors.

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“Next Thursday, I will be in Brisbane all day, that is the time to

organize removers, start at 9 and be finished completely by 4, keep the gate locked and only let people through lock behind you, get all your personnel things and absolutely whatever you want to take from

wirraway, don’t hold back and don’t miss anything, that will be the

chance you get to recover what you can. Focus on the house there will be three shipping containers also that you can load with stuff you may want later, not critical and have them there. Bring three padlocks to put on them and label them so a truck can get them without anyone needing to be there, spray paint, Organize a financial plan for any money to be able to pay ALL yyoouurrr;-/entitlements, ALL OF THEM, please organize mine in the plan to be paid to you

as well as my holiday pay etc, anything, I won't be able to keep it and you and girls can use it, I won't be able to take it with me where

I am going, have it ready to go for anytime but Wednesday afternoon I think will be the time. If it does not work out I will take the

authorization of it as director don't care about consequence, pay the

boys as well in the plan so it is rounded;-/ prepare to payback all Personal loans and get the best plan you can together and have it

ready, you know this, Don't give me a single cent I will loose it

anyway. Don't let onto anyone what you are doing and this will be

your only chance to get your stuff, people coming on Wednesday and all will be normal. I will text you Wednesday and let you know when to go. I will tidy up what is left for inspections.

I will approve whatever you need. Get ready, horses livestock anything outside can be done later. Invoice invoice invoice!!! It makes no difference to me I can offer this to you as settlement for the divorce, you can tell everyone how bad I was and bad dad etc you have the proof, I need to adjust my will by Tuesday to give anything that I may have left to you and the girls, Just do it, and you be my power of attorney have it so you can assign it as well, orgsinise the will and I will sign. I will have your settlement letter and wedding ring under the Christmas tree for you on the day, Don't forget the

will. Check g email later today need one other doc.”

150. Later on 16 December 2016, Mrs Richardson asked Mr Richardson, “Are you ok”

and he identified, “No I am struggling”.<sup>[26]</sup>

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<sup>[26]</sup> Affidavit of M Richardson dated 26 June 2023, Exhibit MR35 at p. 3231. These text message extracts have been directly copied, including any typographical and grammatical errors.

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151. On 16 December 2016, Mr Richardson had a telephone call with Mrs Richardson, about which she made contemporaneous notes. They included the following:<sup>[27]</sup>

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<sup>[27]</sup> Affidavit of M Richardson dated 26 June 2023, Exhibit MR25. The quoted parts of the diary note extracts have been directly copied, including any typographical and grammatical errors.

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- That Mr Richardson informed her the NAB had stepped in and was threatening to shut him down at any time.
- He had a meeting with the NAB on Wednesday or Thursday.
- He wanted to do two things: that is, look after Mrs Richardson and the girls; and that he wanted nothing. He said to her that he wanted her to get as much as she could as soon as possible, and again reiterated his prior communications about her taking entitlements out of the company.
- He again talked about needing a simple will and could get one downloaded, but he wanted it to be binding. He said that he just wanted to make sure it was done.
- Mrs Richardson asked if there was a way they could sell Wirraway

themselves and he said, “I’m going to try and do that. I don’t trust anyone else.”

- Mr Richardson said words to the effect, “I’m trying my best to get an extension until the end of January from NAB. That is what the meetings are about this week - but it’s not looking good. I’m going to be alone and they are going to make it the worst week of my life.”
- Mrs Richardson’s notes then record as follows:  

“I ask him what is happening with Joanna. He replies that Joanna has completely forgotten (due to senility) about the whole deal - Ed is trying to resurrect it but Preston has told him not to worry about it. He said that he had Warrick send me those documents so I have them. I ask him if he is worried about Joanna but he replies he is confident that he is safe due to those documents.”

The reference to “Ed” was likely to be Mr Goold.
- Later on, the notes record a conversation about litigation where Mr Richardson was being sued personally by an entity known as Lease Plus Operations Pty Ltd (“Leaseplus”). The notes record:  

“He then says he is waiting for the Leaseplus judgement. He says he is trying to come up with something - he said he doesn’t want to pay them a cent but he has a personal guarantee on it. He said he is trying to work out a way that PBR Properties won’t go bankrupt. He then starts to talk about the possibility of bringing me in as director or something... I ask him if he would like someone to help him with the plan - like Marlon or the possibility of going into voluntary. He says no - he hasn’t had any good advice from anyone and he doesn’t want to pay them anything. He wants to come up with the plan himself and just make sure that we move quickly so we are prepared if NAB steps in at any time.”
- Mr Richardson keeps saying to Mrs Richardson, “Just get as much as you can for the girls, I am done, it doesn’t matter about me. I won’t need anything.”

152. On 16 December 2016, Mr Richardson called Mr Bennett and requested that Mr Bennett provide him with a copy of the insurance policies for Wirraway. Mr Richardson told him they were needed for a contract for sale for Wirraway that he was working on for lawyers. Mr Bennett then spoke to Mr Leeson who proceeded to obtain copies of the insurance policies requested from a Mr Mitchell, who was an insurance broker. Mr Mitchell emailed the policies to Mr Bennett. Mr Richardson then asked for them to be printed out and brought to him at Wirraway. This occurred. I pause to note that the then retained real estate agent gave evidence at trial that for high-end properties such as Wirraway it can be difficult to obtain insurance on signing a contract, and for this reason the ability to provide a purchaser with a current insurance policy would aid the purchaser in obtaining immediate coverage. There could have been a logical reason then for Mr Richardson requesting the existing policies for the purposes of a potential sale.

[153] On the same day, Mrs Richardson received a voicemail message from Mr Richardson stating, “I’ve just made a discovery. Thank you. I love you. Bye.” This was then followed by a telephone call between Mr Richardson and Mrs Richardson, during which Mr Richardson told her that he had made a discovery regarding the insurance documents and they should be able to make a substantial claim with all of their legal expenses. He said that he had to put a claim in that day.

154. It is not exactly clear what this claim is. One possibility is that it related to a number of fires that Mr Richardson had previously started on his property to burn off certain vegetation. Those fires had gotten away and at least one neighbour had identified that he would be claiming damages in relation to one of the fires. Beyond this, it is speculation as to what the claim may have been. It clearly was not a reference to the burning down of Wirraway as that event had not yet happened. There was some

evidence led from PGS's insurance broker of Mr Teoh having inquired about a

potential claim for unpaid accounts and associated legal costs. Given Mr Teoh had been sacked well before December 2016, this is unlikely to have been the possible claim referred to.

155. The tone of the text messages that continued on 16 December 2016 between Mr Richardson and Mrs Richardson reflect Mr Richardson being under extreme

pressure and articulating a level of sadness. For example, in one text he said, "Don't really have anywhere to go. Need to try and keep going, it's going to get harder and

harder. I hope its not too long until it sells." And in another text message he stated,

"Don't get too much hope that is bad, won't end well for me just need to get through,

than walk off the place I guess. Finding it hard now to keep going. Been out of food

for a week. No time to go to town." The next text messages from Mr Richardson

read, "You don't need to here it sorry", and "I will go now I will have to leave

phone in the office, people keep calling to hang shit on me and now it is getting

around beaudesert I am dumped and broke. I don't want to go there, world's biggest

loser. Bye".<sup>[28]</sup>

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<sup>[28]</sup> Affidavit of M Richardson dated 26 June 2023, Exhibit MR35 at p. 3232. These text message extracts have been directly copied, including any typographical and grammatical errors.

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156. On 18 December 2016, Mr Richardson sent Mrs Richardson a text message to the

following effect, "Getting it ready for inspection now. I have the yard and guest

house perfect now just need to finish the pool and the house, I will pack yours and the girls things and store them there, I will polish the floors over Christmas, hired a floor polisher on Thursday so I will move the furniture to one place, do the ballroom, the pool house, verandas bedrooms, then move the furniture back and do office tv room, hallway and area around kitchen. I will get it ready for inspection

move out the rest of our personal things and stuff stored if you haven't already

collected it and not go into the house until it is sold. It won't take so much work

getting it ready all the time. I will get bulk cleaning stuff tomorrow and do all the outdoor areas including driveways over Christmas. Just need to do a quick now after

that and I will be on top of it."<sup>[29]</sup>

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<sup>[29]</sup> Affidavit of M Richardson dated 26 June 2023, Exhibit MR35 at p. 3238. These text message extracts have been directly copied, including any typographical and grammatical errors.

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157. These statements about cleaning the house and getting it ready for an inspection were consistent with other prior records made of communications with Mrs Richardson, or evidence given by Mrs Richardson at trial. These included:

- On 5 December 2016, a statement by Mr Richardson about cleaning the home.
- On 6 December 2016, Mr Richardson asking Mrs Richardson for their

cleaner's number.

- On 12 or 13 December 2016, Mrs Richardson giving Mr Richardson the cleaner's details.
- On 13 December 2016, in the context of an inspection of Wirraway being delayed a week, Mr Richardson changing his mind on the cleaner, but referring to his having worked his "butt off" for the last month to have the property ready.
- Mrs Richardson accepted in cross-examination that by 17 December 2016, Mr Richardson had committed to the sale of Wirraway.

158. On 18 December 2016, Mr Richardson called Mr Leeson and asked him where PGS purchased its isopropanol from.

159. Isopropanol is a chemical fluid used for, amongst other things, the cleaning of gas pipes. Mr Leeson identified that isopropanol is generally an excellent chemical cleaning product for a whole range of things.

160. On 19 December 2016, four 20-litre containers of isopropanol were purchased by Mr Richardson.

[161] On 19 December 2016, Mr Richardson wrote to an NAB officer. That email included the following statements:<sup>[30]</sup>

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<sup>[30]</sup> Affidavit of A Wessels dated 24 July 2023 at Exhibit AW-1 at p. 13. This email extract has been directly copied, including any typographical and grammatical errors.

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"...Having some frustrating delays with the Joanna agreement which

I am trying to get cleaned up before Christmas, however trying to get the right people together is a hard task at this time of year, I have the agreement with Joanna and term sheet we agreed on signed by her, which I will bring with me on Wednesday, I will have to give her an

extension to get this finished and funds drawn down as I don't want

to give her a breach notice at this point, they don't seem concerned at all and don't mind if it gets finished in January, which is no help to

me, I will be in touch with her today and tomorrow and keep

working on it, I have to be realistic that I don't believe this will

happen before Christmas and it will be January when the office done, I am sure it will not be a problem and they have paid 1 million to show they are committed, this will take more time than I was told and also people have been unavailable on their end that has dragged

opens back up that it will be done.

it out..."

162. That email, amongst other things, recorded Mr Richardson inquiring of the NAB officer as to whether the first mortgage over Wirraway would be released if the \$8 million facility which PBR had guaranteed was paid out. He identified that he had Wirraway ready and the floors were being polished that week with all personal

things being removed. He stated that he would have it presented to be sold 'as is',

which would include any remaining furniture. Mr Richardson said he would finalise the contract for sale the first week back. He asked for the interest payments to be extended for one month until the end of January 2017 so that the agreement could be finalised with Ms Baillieu, and also so he could get the property inspected and an offer on it. He said that one party was getting where he needed it, and he was planning an open house at the end of the first or second week in January as he had had a lot of interest from the right people. He stated that it would need to be ready at the end of the first week of January.

163. This email came in advance of the meeting which was shortly to take place between Mr Richardson and the NAB.

164. Mr Forrest was the relevant real estate agent from Colliers who had been retained to sell Wirraway. He gave evidence at trial. He confirmed in cross-examination that he knew nothing of an open house being planned in January 2017, and he equally knew nothing of there being a lot of interest from the right people. He confirmed that at the end of 2016 there was interest from only one genuine potential buyer at the \$10 million mark, and that there were no other genuinely interested buyers who wanted to inspect Wirraway in January 2017.<sup>[31]</sup>

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<sup>[31]</sup> T5-19 lines 24-49.

165. Mrs Richardson separately gave evidence that Mr Forrest had said in response to Mr Richardson wanting more than the \$10 million contained in the one genuine expression of interest that, "...we had to be realistic and it was a good deal."<sup>[32]</sup> This

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<sup>[32]</sup> Affidavit of M Richardson dated 26 June 2023, at [111], p. 16.

was said to have occurred at a time when that particular interested buyer was scheduled for an inspection.

166. Mr Forrest also accepted that at some stage he would have told Mr Richardson that the \$12 million was not a genuine offer. This must have been prior to the fire as there would have been no point saying this after the fire.

[167] In text messages from 20 December 2016, there was a mix of highly emotional texts, and texts seeking financial information about PGS for the purpose of Mr

Richardson's imminent meeting with the NAB.

168. The emotional texts articulate Mr Richardson's feelings of abandonment, sadness,

loneliness and desperation. There are a number of them, and they are sent throughout the day. These texts and others like them were said by Mrs Richardson to be part of Mr Richardson trying to manipulate her to return to Wirraway.

169. At one stage on 20 December 2016, Mr Richardson identifies that there is to be a meeting with the NAB in Brisbane at 10.30 am the next day, being 21 December 2016.

170. Mr Richardson began texting Mrs Richardson about helping him to prepare for the meeting with the NAB. One of the texts stated:<sup>[33]</sup>

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<sup>[33]</sup> Affidavit of M Richardson dated 26 June 2023, Exhibit MR35 at p. 3234. These text message extracts have been directly copied, including any typographical and grammatical errors.

"Cash flow and all accounts, tax position, internal audit brief,

PBR Properties Pty Ltd v Chubb Insurance Australia Limited [2026] QSC 47 - BarNet Jade - BarNet Jade  
 financial strategy to support our cash flow. Are inclusions to be entered on the deed of  
 overarch loans. Need this for meeting please summary of Joanna agreement.  
 Explanation of reporting failures and

update reporting to submit. I don't know how to do this stuff this is

just some things she asked for.”

171. About 1.02 pm, a text was sent by Mr Richardson which stated:[34]

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[34] Affidavit of M Richardson dated 26 June 2023, Exhibit MR35 at p. 3246. These text message extracts have been directly copied, including any typographical and grammatical errors.

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“Just do a cash flow please it is the smallest part and not really a help

but thank you anyway

I will try and deal with the other items

Stop doing that, you first said you knew nothing about a deed and I

never mentioned it now you are saying its' was not proper

instruction, you are just trying to be really difficult and disagree and argue with everything and blame me in every single sentence you speak you lead to a personal attack on me, I have already accepted it is all my fault why do you have to keep twisting it I know it is my fault, stop doing that with everything.

Need a term sheet on Joanna's loan agreement please, you have the

agreement should be easy to put a term sheet together. You will need

to call me with a variation to it.”[35]

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[35] This text message extract has been directly copied, including any typographical and grammatical errors.

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172. I note that Mr Richardson had already told the NAB that he had a terms sheet in respect of Ms Baillieu's loan.

173. Mrs Richardson, in her affidavit, separately exhibited a handwritten note she had made on 20 December 2016. She produced a typed copy of the handwritten note on 19 September 2019. That typed document separately went into evidence. In that typed document, Mrs Richardson had separately added in certain commentary in italics. The italicised comments had been added on 19 September 2019 when she had typed the document.

174. Relevantly, the typed document provided, in part, as follows:[36]

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[36] Doc ID CHU.601.002.1003 at 0004/0015. This typed diary note extract has been directly copied, including any typographical and grammatical errors.

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“20 December 2016

Phone call from Preston re cash flow. Notes taken as he speaks:

- Rest of that first \$6mil will come in at end of January (19.09.2019

- *he is talking about Joanna's money - he told me he was still*

*stage.)*

- P & I November / BS November
- Work ramp up again after March 2017
- Payout PR entitlements
- Marsh Insurance - Chubb Insurance (19/09/2019 - *I cannot recall why he mentioned Chubb Insurance in this phone call, but it definitely is of significance now if he was clearly aware of who the insurer of WW was prior to the fire.*)
- email it all to Preston and he will take it with him tomorrow”

175. That file note is consistent with the text messages of 20 December 2016, which were asking Mrs Richardson to prepare certain financial information for the NAB meeting.

176. I will return to this typed document later in these reasons.

177. On 21 December 2016, Mr Richardson met with a Ms Wessels of the NAB. She later emailed Mr Richardson following that meeting. That email noted the following matters:

- That the NAB facilities for PGS had been extended on a month-by-month basis for some four months as the facilities could not be renewed due to the absence of a sustainable income stream.
- At the meeting, the NAB discussed its concerns about the viability of the PGS business.
- There was a discussion that the timing and likelihood of the equity investment from Mutual Trust and Joanna Baillieu remained uncertain, specifically considering the milestone dates per the loan agreement dated 25 November 2016 had lapsed.
- The timing and sale price of the Wirraway property were also unpredictable.
- That since the completion of the Ferrier Hodgson review, the strategy for the PGS group had changed from the sell down of assets, including leased equipment and Wirraway, to retaining the equipment whilst securing an equity partner for the business. It recorded that the NAB expected the sell down of equipment to be completed by 31 January 2017 at the latest, and the sale of the Wirraway property to follow soon thereafter.
- It recorded that as a result of the change in Mr Richardson’s forward strategy

for the business and the successful negotiation of additional finance through a personal loan by Joanna Baillieu to him, the NAB had reconsidered its position and was willing to consider a six month extension of facilities, provided that the Wirraway property was linked to the asset finance lease

liabilities. It remained the NAB’s preference to enter into a Deed of

Forbearance on the following terms:

- o extend current banking facilities until 30 June 2017;
- o voluntary sale of Wirraway by 30 June 2017;
- o sale or refinance of leased equipment by 30 June 2017, or PGS providing evidence that sufficient work had been secured to return the business to a viable operation;
- o equity injection/sale share agreement to Mutual Trust to be finalised on or before 30 June 2017;
- o PBR Properties sign a guarantee and indemnity in favour of PGS, supported by the Wirraway property; and

- o all payments on facilities to be maintained for the period of the deed.

178. The email from the NAB indicated that the matters set out above were not formally approved and were the subject of discussion only.

[179] Mr Richardson responded to this email on 22 December 2016. In that email response he noted the following matters:

- He indicated that he had a better understanding of what the NAB was asking for and said that he would like to take a few days to consider the Deed of Forbearance and its terms which had been listed.
- He referred to there being an inspection booked on 28 December 2016. It was said to be with one of the persons who had registered an expression of interest who was possibly the most serious party.
- He said that he and his wife had booked a family Christmas elsewhere to ensure that they could present the property in its best condition.
- He made some comments about the profit and loss which had been presented.
- Finally, he said that he would like to provide the balance of the documents requested after 28 December 2016 to allow him time to get the property ready for inspection.

180. By this email, it was clear that Mr Richardson had not accepted, even in principle, the entering into a type of the Forbearance Deed discussed at the meeting with the NAB.

181. No NAB document was tendered at trial identifying that the NAB facilities had, in fact, been extended to 31 January 2017. However, Ms Wessels was sure that approval had been given and communicated. She indicated that not all communications to customers were documented. She identified that another NAB officer within the bank had to approve such an extension, but it was one which she was recommending and her expectation was it would have been granted.

182. I find that this evidence supports that Mr Richardson was likely orally informed of the extension prior to the fire.

*(c) Ms Baillieu as a prospect of a source of funds in December 2016*

183. Mr Goold had set up the initial meeting between Mr Richardson and his mother

after Mr Richardson had told him, "It's going to benefit you, do you not believe? I will give you a job. It will give you incentive. We'll position you in a real good

spot."<sup>[37]</sup>

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<sup>[37]</sup> Affidavit of EJ Crosbie Goold dated 11 July 2023 at<sup>[27]</sup>.

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184. I will cover in slightly more depth Ms Baillieu's transactions.

[185] Mr Goold attended that first meeting in the PBR office at Loganholme with his mother and Mr Richardson. He recalled there was some mention during the initial meeting of PBR servicing an \$8 million debt to the NAB.

[186] Mr Goold recalled another meeting occurring in a shed at Wirraway where Mr Richardson gave a presentation about PGS and its business opportunities in PNG. He recalled that during that meeting Ms Baillieu told Mr Richardson that she was separating from her partner. Ms Baillieu discussed with Mr Richardson that her partner was trying to take everything from her. Mr Goold recalled that one of Mr

Richardson's pitches to convince Ms Baillieu to invest was that she could hide her money in PBR so that her partner could not get it.

187. Mr Goold gave evidence that Mr Richardson then started to exclude Mr Goold from meetings between Mr Richardson and his mother. He did this by giving Mr Goold incorrect times or locations

[188] Mr Goold became aware that his mother had entered into a Convertible Note whereby he thought \$3.5 million had been paid towards a venture in PNG.

189. Mr Goold recalled that after that transaction had been entered into his mother told him at some stage that Mr Richardson had asked her for more money. Mr Goold had

then said to his mother, "Don't give it to him." Mr Goold recalls he said words to the effect, "You've put enough risk there. You serviced something he asked, and you did that to 100 per cent of what he asked for. He's run out of money. That's what's happened." [38]

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[38] Affidavit of EJ Crosbie Goold dated 11 July 2023 at [37].

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[190] Mr Goold also recalled at some stage that Mr Richardson wanted another \$4 million, but Mr Goold said he stepped in and stopped that and told his mother not to lend it because he felt Mr Richardson could not be trusted, particularly as repayments had not been made.

191. Mr Goold gave evidence that at some stage Mr Richardson was constantly calling his mother about money. Mr Goold says that he remembered telling his mother not to answer the phone. He recalled that (presumably at about the same time) Mr

Richardson said to him words to the effect, "Your mother's not answering my phone calls. Where is she?". Mr Goold stated that he would give excuses such as she was having her hair done. He also recalls saying words to the effect of, "You're starting to look desperate, mate, and desperate people do desperate things." [39]

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[39] Affidavit of EJ Crosbie Goold dated 11 July 2023 at [39].

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192. Mr Goold also recalled telling his mother, "Don't do it, mum. He's not been right. He's being a cowboy. Not only that, he's using drugs and he's putting it on me as

well, that I'm using drugs. I'll tell you straight up, mum, I have been using drugs. I'm not using it today. I'll - if you want me to go to rehab, I'll go to rehab for you, but I've been there three times. Mum, that fella's using too much drugs." [40]

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[40] Affidavit of EJ Crosbie Goold dated 11 July 2023 at [40].

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193. I accept the evidence of Mr Goold that at certain stages he was warning his mother off providing further funding to Mr Richardson. The problem is that Mr Goold was largely non-specific as to when these conversations happened. Their content indicates that they happened at least after the original \$3 million had been paid. In cross-examination he faintly thought they may have occurred after November 2016 but said he could not be sure.

194. Ultimately, I find that a person in the position of Mr Richardson could not have had any reasonable expectation as at the date of the fire that Ms Baillieu was going to pay any further monies. I say it for these reasons.

195. First, only \$1 million had been paid in respect of the new loan agreement. Both of the instalment dates for the two \$6 million payments had been missed.

[196] Secondly, I am satisfied that Mr Goold had, in effect, warned his mother off providing any further monies to Mr Richardson. Mr Richardson would not have been privy to these warnings, but he would have been aware of the non-payments by Mrs Richardson, and the fact that she was, for significant periods avoiding him, including avoiding his telephone calls. There were some contemporaneous

documents in December 2016 which referred to “Ed” seeking to help with his

mother. That Mr Goold may have given that impression to Mr Richardson and Mr Leeson does not detract from Mr Goold at the same time warning his mother off Mr Richardson. Mr Richardson was a man prone to violence and Mr Goold knew this. It is understandable that Mr Goold would not seek to provoke Mr Richardson directly or indirectly.

197. Thirdly, that whilst contact was obviously remade with Ms Baillieu at some stage during mid-December 2016, by 16 December 2016, she had given the impression to Mr Richardson that she had completely forgotten about the transactions. This is where Mr Richardson is recorded as telling Mrs Richardson that this was due to senility. Whether in truth Ms Baillieu was suffering from senility cannot be

assessed. It is equally possible that Ms Baillieu’s claim to have forgotten all about

the transactions was a device by her to avoid having to continue to deal with Mr Richardson. This may especially be so, given that her son had warned her off Mr Richardson at various times.

198. Fourthly, I do not think the best interpretation of Mrs Richardson’s 20 December

2016 handwritten note is that it was recording Mr Richardson actually telling her that Ms Baillieu was going to pay the first \$6 million by January 2017. The same

note states, “Work ramp up again after March 2017.” Presumably this was

requesting this to be shown in the case flow document which he wanted Mrs Richardson to draft. There was no basis at that time for showing such a ramp up at March 2017.

199. When one looks at the various texts which were sent on 20 December 2016 and read them together with the note, the better understanding is that Mr Richardson was asking Mrs Richardson to put together a cash flow document, either for his use for, or to present at, the meeting with NAB which was to take place on the following day. He wanted it to show the rest of the \$6 million being paid at the end of January 2017 and work ramping up in March 2017. He was trying to stave off the NAB at this time.

200. The comments which had been made in italics by Mrs Richardson had been inserted by Mrs Richardson two years after the phone call. I accept Mrs Richardson as a truthful witness, however Mrs Richardson may have been mistaken as to her actual recollection of what she was told in the phone call two years after the event. The italics may represent what she interpreted Mr Richardson to have been saying at the relevant time she typed her document by looking at the notes. Even if this was said by Mr Richardson, I cannot be sure it was true. The applicant asked rhetorically why would he lie about this to Mrs Richardson. One obvious reason would be that Mrs Richardson may not have been prepared to produce an overly false document.

201. Even if I were incorrect on this, I do not accept that Mr Richardson had a real belief the transaction would go through. Ms Baillieu had not paid the two instalments as per the new loan agreement, she had been avoiding contact with Mr Richardson and she had claimed only four days before that she did not remember the transactions at all. None of that conduct provided any sound basis for believing that Ms Baillieu would actually carry through with further payments, assuming this is what she had said on or about 20 December 2016.

202. Fifthly, there was no written document after 20 December 2016 and before the fire which corroborated that Ms Baillieu had agreed to pay the rest of the first \$6 million by the end of January 2017. No variation document was produced by Mr Richardson. Mr Richardson was requesting Mrs Richardson to create a terms document for the loan in circumstances where Mr Richardson had told the NAB the day before that it existed.

*(d) Potential alternative source of funds in December 2016*

[203] The applicant submitted that in December 2016 Mr Richardson had a possible outside investor in PGS other than Ms Baillieu. This was said to be a wealthy Hong Kong businessman, Mr Stanley Chan, via his company, Standok Capital Holdings

Pty Ltd (“Standok”).

204. A draft memorandum of understanding between PGS and Standok was tendered. It was unsigned. It contemplated an initial \$2 million payment to PGS within two days of the execution of the memorandum of understanding and a further \$18 million within 14 days of the execution date. The memorandum was said to facilitate

Standok obtaining shares in PGS, together with a director's position.

205. A meeting agenda document dated 8 December 2016 was also tendered. The agenda contemplated a meeting between Mr Chan, Mr Richardson and other invited guests at the Sofitel Hotel Gold Coast. It contemplated a discussion about the draft memorandum of understanding.

206. An email was sent on 14 December 2016 by Mr Richardson to two addresses which seem to be associated with Standok. It stated:[41]

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[41] Doc ID PGS.001.022.6233. This email extract has been precisely replicated, including any typographical and grammatical errors.

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“Stanley

I am committed to getting this offer to where you are comfortable to make a deposit and secure this investment

The revised offer, this will be much more what you are after and it gives you a large stake in the company.

It is safe and offers no risk however need a deposit to secure.

I will revise the MOU tomorrow and try and contact you.

I understand you are busy, however it will be good to have a meeting even for a couple of hours, I can come to you anywhere anytime...”

207. That email annexed an 8 December 2016 letter by Mr Richardson to Stanley Chan of Standok.

[208] It presented an offer for Standok to take a 30 per cent shareholding in PGS. It

represented that by that offer Mr Richardson was reducing PGS's value by half of

its actual market value. The actual market value of PGS was said to be \$120 million, based on an alleged previous offer to purchase PGS for that sum. The reduced \$60 million value attributed to PGS for the purposes of the offer was said to be used only for negotiation as a goodwill gesture from PGS to make it attractive to Standok and to complete Stage 1 very quickly without risk to Standok.

209. It can immediately be seen that the statement that PGS had a market value of \$120 million, or even \$60 million, was ludicrous. Mr Leeson, in cross-examination, identified he knew of no basis for there being a \$60 million valuation of PGS. Later in these reasons I will set out an adjusted Table 32 which broadly illustrates that PGS was in dire financial circumstances. PGS had no significant ongoing incoming- producing work and no real prospects at that time of new significant incoming- producing work. Both Mr Leeson and Mr Bennett confirmed in evidence that PGS had no such real prospects during December 2016.

210. That there had been contact of some sort made by Mr Richardson with Mr Chan of

Standok can be accepted. Mr Leeson's evidence was consistent with this contact

having occurred. However, the prospects of any ordinary businessperson offering to pay \$20 million for a 3 per cent stake in PGS was ludicrous, given its dire financial position as at December 2016. Mr Richardson could not have held any real belief that the contact with Standok was likely to produce any such investment as articulated in the draft memorandum of understanding or the 8 December 2016 letter.

211. Any passing due diligence of PGS and PBR would have shown that what was being represented in the documents referred to above bore no resemblance to the true financial position of PGS.

212. I do not accept that Mr Richardson would have subjectively held the view that there was any realistic prospect of Mr Chan investing in PGS, and certainly not on the urgent basis which Mr Richardson sought.

(e) General financial position of PBR, PGS and Mr Richardson as at the date of

*the fire*

213. Mr Ehlers was an accounting expert called on behalf of the respondent. His expert report was initially relied on to support the submission that Mr Richardson would

have known at the time of the fire that PGS's financial difficulties were not capable

of being cured by the sale of the property on which Wirraway stood to the prospective buyer who was inspecting the property on 28 December 2016. That was the Salerno Group which had provided the expression of interest at \$10 million.

214. It is fair to say that the cross-examination of Mr Ehlers was so thorough that his report, *per se*, was of little use in terms of its final conclusions. Ultimately, the respondent did not seek to substantially rely upon its final conclusions in its closing submissions.

215. However, the damage to the report's final conclusions did not destroy the utility of

all of the information contained in it. Indeed, the applicant produced three adjusted tables derived from certain of the information in the report. They were adjusted Table 31, adjusted Table 32 and adjusted Table 33.

[216] Adjusted Table 31 was said to roughly represent PBR's assets and liabilities

position at the time of the fire on three scenarios, namely if Wirraway was sold at \$10 million, at \$12 million or at \$14 million. A copy of adjusted Table 31 is set out on the following page for reference:

<u>Description</u>	<u>Sale at \$10m</u>	<u>Sale at \$12m</u>	<u>Sale at \$14m</u>
<u>PBR</u>			
<u>Assets</u>			
<u>Cash</u>	\$881,195	\$881,195	\$881,195
Loans and related <u>party receivables</u>	\$0	\$0	\$0
Real property - 390 <u>Spencer Road</u>	\$10,000,000	\$12,000,000	\$14,000,000
<u>Plant and equipment</u>	\$0	\$0	\$0
<u>Other assets</u>	\$0	\$0	\$0
<u>Assets Available</u>	\$10,881,195	\$12,881,195	\$14,881,195
Less - selling costs @ <u>2%</u>	\$200,000	\$240,000	\$280,000
<u>Estimated surplus to secured creditors Secured creditors</u>	\$10,681,195	\$12,641,195	\$14,601,195
<u>NAB</u>	\$7,995,000	\$7,995,000	\$7,995,000
Estimate surplus (shortfall) to <u>unsecured creditors</u>	\$2,686,195	\$4,646,195	\$6,606,195
<u>Unsecured Unrelated Creditors</u>	-	-	-
<u>Unrelated creditors</u>	\$48,210	\$48,210	\$48,210

Estimate available to	\$2,637,985	\$4,597,985	\$6,557,985
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related creditors

## Unsecured related

creditors

<u>Related creditors</u>	<u>\$6,396,821</u>	<u>\$6,396,821</u>	<u>\$6,396,821</u>
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Estimated surplus or	(\$3,758,836)	(\$1,798,836)	+\$161,164
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shortfall to related

creditors

[217] Adjusted Table 32 was said to roughly represent PGS's assets and liabilities

position at the time of the fire based on the same three scenarios. A copy of adjusted

Table 32 is set out below for reference:

<u>Description</u>	<u>Sale at \$10m</u>	<u>Sale at \$12m</u>	<u>Sale at \$14m</u>
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PGSAssets

<u>Cash</u>	<u>\$20,203</u>	<u>\$20,203</u>	<u>\$20,203</u>
<u>Trade receivers - related</u>	<u>\$2,637,985</u>	<u>\$4,597,985</u>	<u>\$6,557,985</u>
<u>Trade receivers - unrelated</u>	<u>\$0</u>	<u>\$51,560</u>	<u>\$103,119</u>
<u>8 Fast Fusion machines - T1055 Trencher</u>	<u>\$3,200,000</u>	<u>\$3,600,000</u>	<u>\$4,000,000</u>
<u>(less GST)</u>	<u>(\$290,909)</u>	<u>(\$327,273)</u>	<u>(\$363,636)</u>
<u>Remaining plant and equipment</u>	<u>\$387,000</u>	<u>\$394,500</u>	<u>\$402,000</u>
<u>(less GST)</u>	<u>(\$38,182)</u>	<u>(\$35,864)</u>	<u>(\$36,545)</u>
<u>Assets Available</u>	<u>\$5,916,097</u>	<u>\$8,301,111</u>	<u>\$10,683,126</u>

Secured Liabilities

<u>NAB - asset finance</u>	<u>\$2,884,734</u>	<u>\$2,884,734</u>	<u>\$2,884,734</u>
<u>NAB - business loan (if remaining after</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

property sale).

<u>Estimate surplus (shortfall) to employee</u>	<u>\$3,061,363</u>	<u>\$5,416,377</u>	<u>\$7,798,392</u>
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creditorsEmployee liabilities

<u>Employee priority claim</u>	<u>\$129,000</u>	<u>\$129,000</u>	<u>\$129,000</u>
<u>Estimated surplus (shortfall) to unsecured</u>	<u>\$2,902,363</u>	<u>\$5,287,377</u>	<u>\$7,669,392</u>

creditorsUnsecured unrelated creditors

<u>Unrelated creditors</u>	<u>\$356,441</u>	<u>\$356,441</u>	<u>\$356,441</u>
<u>Taxation liabilities</u>	<u>\$415,766</u>	<u>\$415,766</u>	<u>\$415,766</u>
<u>JB Loan</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<b><u>Total unsecured unrelated creditors</u></b>	<b><u>\$772,207.</u></b>	<b><u>\$772,207.</u></b>	<b><u>\$772,207.</u></b>
<b><u>Return to unsecured creditors</u></b>	<b><u>\$772,207.</u></b>	<b><u>\$772,207.</u></b>	<b><u>\$772,207.</u></b>
<b><u>% return</u></b>	<b><u>100%</u></b>	<b><u>100%</u></b>	<b><u>100%</u></b>
<b><u>Shortfall to unsecured creditors</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>
<b><u>% write-off</u></b>	<b><u>0%</u></b>	<b><u>0%</u></b>	<b><u>0%</u></b>
<b><u>Return to shareholders</u></b>	<b><u>\$2,130,156</u></b>	<b><u>\$4,515,170</u></b>	<b><u>\$6,897,185</u></b>

218. Finally, adjusted Table 33 was said to roughly represent Mr Richardson's assets and liabilities position at the time of the fire based on the same three scenarios. A copy of adjusted Table 33 is set out below for reference:

<b><u>Description</u></b>	<b><u>Sale at \$10m</u></b>	<b><u>Sale at \$12m</u></b>	<b><u>Sale at \$14m</u></b>
<b><u>50% share of distribution</u></b>	<b><u>\$1,065,078</u></b>	<b><u>\$2,257,585</u></b>	<b><u>\$3,448,593</u></b>
<b><u>Shares in the group</u></b>	<b><u>=</u></b>	<b><u>=</u></b>	<b><u>=</u></b>
<b><u>Other assets</u></b>	<b><u>TBD</u></b>	<b><u>TBD</u></b>	<b><u>TBD</u></b>
<b><u>Assets Available</u></b>	<b><u>\$1,065,078</u></b>	<b><u>\$2,257,585</u></b>	<b><u>\$3,448,593</u></b>

#### **Unrelated Creditors**

<b><u>Credit Cards</u></b>	<b><u>\$18,552</u></b>	<b><u>\$18,552</u></b>	<b><u>\$18,552</u></b>
<b><u>JB Loan</u></b>	<b><u>\$1,000,000</u></b>	<b><u>\$1,000,000</u></b>	<b><u>\$1,000,000</u></b>
<b><u>Estimated Surplus to Related Creditors</u></b>	<b><u>\$46,526</u></b>	<b><u>\$1,239,033</u></b>	<b><u>\$2,430,041</u></b>
<b><u>Loans including division 7a</u></b>	<b><u>\$1,036,365</u></b>	<b><u>\$1,036,365</u></b>	<b><u>\$1,036,365</u></b>
<b><u>Return to Related Creditors</u></b>	<b><u>\$46,526</u></b>	<b><u>\$1,036,365</u></b>	<b><u>\$1,036,365</u></b>
<b><u>% return to Related Creditors</u></b>	<b><u>4%</u></b>	<b><u>100%</u></b>	<b><u>100%</u></b>
<b><u>Surplus / (Deficiency) for Mr Richardson</u></b>	<b><u>(\$989,839)</u></b>	<b><u>\$202,668</u></b>	<b><u>\$1,393,676</u></b>

219. It was submitted by the applicant that:

- (a) adjusted Table 31 demonstrated that a sale at both \$10 million and at

\$12 million as at the date of the fire would have had all of PBR's unrelated creditors paid and would only result in a shortfall to a related creditor, namely PGS via the intercompany loan; [42] and

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[42] It was pointed out that PGS was controlled by Mr Richardson himself.

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- (b) adjusted Table 32 demonstrated that PGS had a surplus asset position even at a sale of \$10 million as at the date of the fire.

220. In relation to the tables, I make the following comments.

221. As to adjusted Table 32, in the assets section and in the line described as "Trade receivers - related", the reason why the line figures increased for the \$10 million,

\$12 million and \$14 million sale scenarios, was because of the effect of the intercompany loan between PBR and PGS. The increasing amounts across the three scenarios represented the amount which PBR would have been able to pay to PGS

222. Again, in the assets section of adjusted Table 32 and the lines for "8 Fast Fusion machines - T1055 Trencher", it can be seen that across the three scenarios the monetary figure changes from \$3.2 million for a sale at \$10 million, \$3.6 million for a sale at \$12 million and \$4 million for a sale at \$14 million. As a matter of fact, those increasing amounts are not linked to the three sale scenarios for the Wirraway property. They simply represent the low, medium and high attributed values for those pieces of equipment. The T1055 Trencher is identified in Mr Ehlers' report as having been sold for \$1 million, the original market price for 8 Fast Fusion machines was identified as being \$3 million, with the auction value said to be \$2.2 million.
223. Importantly, in relation to adjusted Table 32, there was no provision made for the \$3 million which had been advanced via the Convertible Note by Ms Baillieu to PGS. None of the principal of that \$3 million sum had ever been repaid. I have found that the 24 November 2016 termination document was likely a sham, or was not supported by consideration so as to extinguish the \$3 million liability.
224. The proposition that Ms Baillieu had simply agreed to forgive the \$3 million at the same time as agreeing to lend another \$12 million to Mr Richardson is an untenable proposition. The overwhelming inference, which I accept, is that Ms Baillieu retained the right to pursue at least PGS for those monies, and possibly Mr Richardson himself. There would be a question as to whether that sum could be pursued before the expiry of the original term of the Convertible Note.
- [225] I note in the chronology I have set out above that in mid-December 2016, Mrs Richardson inquired of Mr Richardson whether he should be concerned about Joanna. His response was no, because he had the documents. I think it likely that a person in Mr Richardson's position would have harboured concerns about Ms Baillieu pursuing him.
226. Further, I find that objectively, a person in the position of Mr Richardson would have reason to be concerned that he might be pursued for the \$3 million and the \$1 million by Ms Baillieu.
- [227] Objectively, a person in the position of Mr Richardson would have held that concern, not simply because of the legal position of creditor and debtor, but because the original financial proposal document which had been provided to Ms Baillieu for the purpose of inducing her to pay the \$3 million had contained material which was misleading and deceptive. Most importantly, the financial proposal document had included a statement that PGS PNG had successfully tendered in relation to the specified project in PNG valued at over \$138 million (AUD). That was identified as an untrue statement by Mr Leeson. There was real scope to have sought repayment of at least the first \$3 million via the [Australian Consumer Law](#), or for deceit.
228. I accept that Mr Richardson was a very tough businessman and had the benefit of the documents discussed above which purported to create extended terms for repayment on the debts, and in one case, a purported termination of the repayment obligation under the Convertible Note. This possibly diminished somewhat the concern of Mr Richardson that Ms Baillieu might have pursued him, but I do not accept that it would have significantly diminished it or removed it entirely.
229. Once the \$3 million is introduced into the liability section of adjusted Table 32, it can be seen that there is a negative deficit of approximately \$869,000 at a sale price of \$10 million for Wirraway.
- [230] In my view, the appropriate scenario figure to use in adjusted Table 32 was \$10 million. This represented the expression of interest from the only genuine potential buyer which then existed. There was no obvious leverage available to Mr Richardson to seek to materially increase the amount which might be offered. Mr Richardson was aware that the NAB was pressuring him for a sale.
231. There was a further item missing from adjusted Table 32. The table did not record a liability which PGS had to the company Leaseplus. The Victorian Court of Appeal handed down its judgment in the matter of *Project Gas Services Pty Ltd v Leaseplus Operations Pty Ltd* [2017] VSCA 55 on 20 March 2017, being a date after the fire. However, the hearing before that Court of Appeal had occurred on 20 October 2016. The appeal concerned a trial which had occurred in the Victorian County Court in February 2016. A formal offer pursuant to the Victorian Court Rules had been made by PGS during that trial. At lunch on 19 February 2016, PGS informed Leaseplus it intended to apply for leave to

withdraw the offer and sought a listing from the court for that application. Before that application had been listed, Leaseplus accepted the offer of compromise. The application for leave to withdraw the offer of compromise was subsequently heard and refused. The offer which had been accepted had been in the amount of \$525,000.

232. The appeal concerned a challenge to the exercise of the judge's discretion to refuse

to set aside the offer. That \$525,000 was therefore a crystallised liability, albeit it seems no judgment had been entered in respect of it prior to the determination of the appeal.

233. It must have been apparent to Mr Richardson that PGS was at real risk of being liable for the \$525,000.

234. PGS's liability position should, in my view, have relevantly included this amount as

a liability to properly reflect the asset liability position. It worsened the position.

235. It would have been apparent to Mr Richardson that, until the sale of Wirraway or the separate sale of equipment, there would be ongoing monthly interest liabilities on the NAB facilities. The only income which seems to have been anticipated at this time was a relatively small amount derived from the contract with CPB in relation to the hire of certain of the equipment.

236. Whilst at one stage there had been a quantity of cattle on the property, most of those had been progressively sold all throughout 2016. Only about 70 head of cattle remained, mostly bulls. The cattle did not represent a significant asset source at the time of the fire. Mr Richardson ascribed a value of \$300,000 to the cattle. I do not accept that this figure was correct for 70 head of cattle in 2016. The NAB accounts had a net cash position of \$901,398.46 across two assets, but that sum would have been reducing due to monthly interest payments, ongoing running costs of PGS, living expenses for the Richardsons (now across two households) and potential liabilities such as the Leaseplus liability. The monthly interest repayments for the NAB were \$135,000. The running costs of the rural side of the property were approximately \$32,000 a month, subject to some abatement if stock were agisted on the property.

*(f) Finding on view of Mr Richardson's financial position*

237. At the time of the fire, the NAB was owed the combined figure of \$10,879,734 by PGS. The NAB had been prepared to extend those facilities on an ad hoc monthly basis from mid-2016. I am satisfied that the NAB had agreed to extend the facilities to the end of January 2017.

238. I find that Mr Richardson would have remained significantly concerned about his poor personal financial position and that of his entities, PBR and PGS at the time of the fire.

239. The findings I have previously set out above establish the following matters:

- By mid-2016, PGS had no significant income producing work. It was, at that stage, meeting outgoings on the basis of monies that it had obtained through settlement of a court action or actions. Through the second half of 2016, PGS continued to not have any significant income producing work. An attempt to obtain significant income producing work in PNG had been unsuccessful. That PNG prospect had terminated by September 2016. The only work that PGS had at the end of 2016 into 2017, was a small contract with CPB for the hire of certain equipment. The income from this contract was inconsequential to the poor financial position of PGS.
- Mr Richardson was, in fact, greatly concerned throughout that six month period about the financial predicament which he, his family, PBR and PGS found themselves in. From May 2016, Mr Richardson was actively seeking funds from sources other than from significant income producing work or the NAB. Ms Baillieu was one such source and Standok was another such source.
- But for the obtaining of the \$4 million from Ms Baillieu (in the amount of \$3 million by 8 June 2016 and \$1 million on 30 November 2016), PGS would not have been able to meet its obligations under various NAB facilities, without the sale of work equipment owned by PGS, or the property on which Wirraway stood.

240. The submission of the applicant was that the further extension of PGS's facilities,

obtained from the NAB to the end of January 2017, would have provided relief to Mr Richardson in terms of his financial concerns. Part of that submission suggested that Mr Richardson would have

perceived that there were real prospects that Ms Baillieu may have ultimately advanced further monies pursuant to the new loan agreement of 25 November 2016.

241. That submission generally should be rejected for the reasons I have already given. I do not accept that Mr Richardson would have believed there were such realistic prospects. I also do not accept that Mr Richardson would have believed that there were reasonable prospects that Standok would supply any funding, again for the reasons previously given.
242. I am satisfied on the evidence that Mr Richardson was a very tough and charismatic businessman. Each of the former employees of his group who were called as witnesses gave evidence which supported this assessment. The evidence also supports, as I have found above, that Mr Richardson was a person prepared to engage in misleading and deceptive conduct in his business dealings. He had engaged in this via the content of the financial proposal provided to Ms Baillieu prior to the obtaining of the Convertible Note. He was also prepared to take advantage of Ms Baillieu's desire to conceal her asset position from her former partner during their separation dispute. He was also prepared to make misleading and deceptive statements to Mr Chan.
243. I am fortified in this position, because it is evident that Mr Richardson was also making misleading statements to the relevant NAB officer at the meeting on 21 December 2016 in relation to there being multiple persons being interested in purchasing Wirraway, there being arrangements in place for inspections for Wirraway and an open house for Wirraway in January 2017. All of these statements were false.
244. I find that Mr Richardson was financially desperate by the end of 2016, as he had been for some time. The further extension of the facilities and the prospect of a Forbearance Deed did not, in my view, change the position. I find that Mr Richardson believed prior to the fire that he had no real possibility of meeting the conditions which had been proposed in principle by the NAB for the forbearance deed. In particular, I find that Mr Richardson would have believed that there was no reasonable possibility that either Ms Baillieu or Mr Chan were going to inject further funds into PGS after 21 December 2016.
245. I find that Mr Richardson would have known, as was the fact, that PGS, PBR and himself were in significant financial danger as at 28 December 2016. This was consistent with the concern he had demonstrated through the second half of 2016. He had been able to stave off the NAB solely because of monies he had obtained from Ms Baillieu in the sum of \$4 million.
246. I find that Mr Richardson would also have been aware:
- (a) that whilst PBR had only guaranteed some \$8 million of the PGS debt owed to the NAB, PBR was fully exposed to PGS because of the intercompany loan of \$14 million owed by PBR to PGS; and
  - (b) a collapse of PGS into an insolvency regime would necessarily have exposed the full value of the assets of PBR beyond the guaranteed amount to the NAB.

*(g) Second side of the motive equation*

- [247] In examining whether there was a motive for Mr Richardson to burn down Wirraway for insurance proceeds, it is important to identify that the existence of a substantial concern as to PGS's, PBR's and his financial predicament is only one part of a potential motive equation.
248. A further part of the equation concerns what Mr Richardson thought the fire would achieve in terms of recovered insurance proceeds and his overall position.
- [249] There is evidence that Mr Richardson had possession of the relevant policy of insurance for Wirraway, which this proceeding concerns. He had requested all insurance policies during December 2016.
250. Mr Richardson rang the insurance broker, Mr Mitchell, on the day of the fire to start the claim process. During that call, he said to Mr Mitchell words to the effect, "I

think the house is under insured. I couldn't rebuild the house for \$10.5 million.

There are only two builders in Australia who would be qualified to rebuild it." This

indicates that Mr Richardson had an awareness of the approximate policy limit.

251. In his police statement of 28 December 2016, Mr Richardson was able to tell police that the policy was with Chubb for \$10,024,000.
252. The contention of the respondent is that Mr Richardson knew from the policy he had that he could take a case settlement and that his motive to burn down Wirraway was to have access to the proceeds to pay to the NAB whilst still retaining the property and being able to live in the guesthouse.
253. The applicant submitted that Mr Richardson could not be assured that the insured would be immediately paid on the policy. Indeed, to burn Wirraway down would risk no payment at all and possibly criminal prosecution.
254. The risks were ones the applicant says would have been obvious to Mr Richardson. The applicant contrasted these risks to the surety that a sale would provide in terms of immediate money with no adverse risks. The applicant submitted that a \$10 million sale, together with the existing cash balance would have paid out the NAB and left the equipment unencumbered and able to be used for work and as future security.

[255] The respondent raised a counter contention on this issue by submitting that the applicant was examining the actions of Mr Richardson from the position that he was rationally considering these consequences. It was submitted that this did not actually reflect his state of mind at the time. In effect, it was submitted that he was not in a rational frame of mind. The nature of the communications between Mr Richardson and Mrs Richardson in the days before the fire have already been dealt with above.

They provide some insight into Mr Richardson's state of mind in the period before the fire. I deal with other aspects of Mr Richardson's personal conduct and state of mind below.

*(h) Mr Richardson's drug use and violence*

- [256] Mr Richardson, both before and after the fire, had a significant drug habit. Specifically, he was a significant user of particularly cocaine and methylamphetamine, but he also used other drugs.
257. Mr Craig Brook was a friend of Mr Richardson from approximately 2012 and then up to and after the fire. Mr Brook identified that Mr Richardson had used cocaine from when he first met him in or about 2012. Mr Brook identified that Mr Richardson started using 'ice'<sup>[43]</sup> six to 12 months before Mrs Richardson separated

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<sup>[43]</sup> A reference to methylamphetamine; Affidavit of CM Brook dated 13 October 2017 at [12]-[13].

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from Mr Richardson. By that reference point, Mr Brook was aware of Mr Richardson commencing to use ice sometime between December 2015 and May 2016.

258. Mr Brook's evidence was that he saw Mr Preston use ice over 100 times. He had also witnessed Mr Richardson paying for ice and other drugs. He gave evidence that Mr Richardson would have Mr Brook or other people purchase the drugs for Mr Richardson.
259. Mr Brook said that sometimes Mr Richardson would make Mr Brook go and pick up two or three "balls" a week and bring them back to him. Mr Brook gave evidence that a "ball" or "eight ball" was approximately 3.5 grams of methylamphetamine, and that he estimated that Mr Richardson was at times consuming a full eight ball - that is, 3.5 grams of methylamphetamine - approximately every two to three days.

260. In the six months leading up to the fire, Mr Brook observed Mr Richardson in a

state he described as “frizzled” or psychotic. [\[44\]](#) [He said he observed Mr Richardson’s](#)

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[\[44\]](#) Affidavit of CM Brook dated 13 October 2017 at [\[22\]](#).

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state became progressively worse leading up to the fire.

261. Associated with this drug use, Mr Brook gave evidence that there were occasions when Mr Richardson would be violent.

262. He gave evidence of a particular occasion about three weeks prior to the fire. It occurred at the machinery sheds near a hangar on Wirraway. Mr Richardson wanted Mr Brook to buy drugs and Mr Brook refused. At that stage, Mr Richardson leaned on his ute and pulled out a rifle. Mr Brook observed Mr Richardson turn towards

him, with Mr Richardson’s finger on the guard. Mr Richardson said words to the

effect, “Yes, you are”. He recalls he then went and bought the methylamphetamine

for Mr Richardson.

263. In the days before the fire, Mr Brook had seen an ice pipe in Mr Richardson’s ute

and his observation of Mr Richardson was that Mr Richardson looked as if he had been using ice. He described that he could see it in the eyes and face of Mr Richardson, and it appeared that Mr Richardson had not slept for days.

264. Mr Brook identified that Mr Richardson would make him purchase ice before and after the fire. Mr Brook identified that the cost was approximately \$1,200 for an

“eight ball”. He also identified that most of the time the money to buy the drugs

came from Mr Richardson.

265. Mr Goold also gave evidence of Mr Richardson’s drug use. Mr Goold identified that

he had been friends with Mr Richardson for a number of years prior to the fire. He identified that he would drink and use drugs with Mr Richardson. He said that sometimes this would occur with Mr Brook and with another named person who he identified. Sometimes it was just with Mr Richardson. He stated that they would drink alcohol, snort cocaine and smoke ice.

266. Mr Goold said that he had personally witnessed Mr Richardson using cocaine and

smoking ice on “countless” occasions. [\[45\]](#)

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[\[45\]](#) Affidavit of EJ Crosbie Goold dated 11 July 2023 at [\[16\]](#).

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267. Mr Goold said that he would often supply drugs to Mr Richardson or would “hook”

Mr Richardson up with other people who could supply the drugs. [\[46\]](#)

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[\[46\]](#) Affidavit of EJ Crosbie Goold dated 11 July 2023 at [\[19\]](#).

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268. Mr Leeson also gave evidence that he had seen Mr Richardson use cocaine, ice and MDMA on various occasions. He described Mr Richardson suffering from a cocaine addiction which turned into ice use. He had thought that Mr Richardson was happy and jovial when on ice.

269. Mrs Richardson gave evidence that she never personally witnessed Mr Richardson using drugs, but she believed he was using drugs. In the period immediately before

she left home in November 2016, she had found a glass pipe in Mr Richardson's

desk at Wirraway. She gave evidence that prior to her leaving, Mr Richardson would gather with other men down near the guesthouse until the early hours of the morning and there would be yelling and shooting occurring.

270. I accept all of the above evidence. I find that Mr Richardson was a significant user of both cocaine and methylamphetamine. In relation to the ice, I accept that Mr Richardson had been using it from May 2016 at the latest.

271. I find that at least in relation to the methylamphetamine that Mr Richardson was at times using significant quantities as described by Mr Brook, namely 3.5 grams every two or three days.

272. While Mr Leeson may have experienced a happy and jovial side of Mr Richardson, I find that he could be a violent and aggressive man. That is certainly reflected in the evidence of Mrs Richardson, Mr Brook and Mr Goold.

(i) *Mr Richardson's abusive and aggressive conduct*

[273] Mr Brook gave evidence that he witnessed that Mr Richardson was negatively affected when he was using ice. He described Mr Richardson as becoming increasingly irrational and aggressive when using ice. He observed Mr Richardson slamming doors and acting aggressively towards him and others at Wirraway. Mr Brook gave evidence that on one occasion he saw Mr Richardson throw a chainsaw at a shed for no apparent reason, and that Mr Richardson would just smash things up

when he was on ice. This is what Mr Brook referred to as Mr Richardson "flipping out".<sup>[47]</sup>

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<sup>[47]</sup> Affidavit of CM Brook dated 13 October 2017 at <sup>[21]</sup>.

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274. Whilst Mrs Richardson had been in California on the family trip in September 2016, there had been an episode of violence by Mr Richardson. It was described in Mrs

Richardson's police statement at paragraphs [22] to [25]. On that trip, Mr

Richardson had not been observed to use drugs, but Mrs Richardson described him as intoxicated for a lot of the time.

275. Mr Goold had been friends with Mr Richardson since about June or July of 2015.

His initial impression of Mr Richardson was he was an "entertaining bloke, larger than life in all aspects" and came across as a "good guy."<sup>[48]</sup> Mr Goold stated that

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<sup>[48]</sup> Affidavit of EJ Crosbie Goold dated 11 July 2023 at [8]-[9].

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when Mr Richardson was not affected by drugs he was a good guy and came across as a person who was a family man who loved his kids.

[276] However, Mr Goold also stated that Mr Richardson was a completely different person when he was on drugs.

277. Ultimately, Mr Goold stated that the friendship between himself, Mr Brook and Mr Richardson failed due to drugs and romantic relationships, and also issues to do with Mr Richardson's dealings with Mr Goold's mother, Ms Baillieu.

278. Mr Goold gave evidence that Mr Richardson could be a violent man when he didn't

get his own way. He said on one occasion in 2016 Mr Richardson attacked him. Mr Goold identified this as being related to an investment that his mother, Ms Baillieu, had made and the lack of further funds coming from his mother. On that occasion,

Mr Richardson came into a shed situated on Mr Goold's property. Mr Goold described Mr Richardson as being very bold and looking very aggressive on this occasion. Mr Richardson went to grab him whilst saying words to the effect, "What - what's going on? Why hasn't the money gone across?". The content of that conversation indicates that it must have occurred after the new loan agreement had been entered into, that is, after 25 November 2016.<sup>[49]</sup>

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<sup>[49]</sup> Affidavit of E] Crosbie Goold dated 11 July 2023 at [21]-[23].

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### **Uncontentious matters concerning the immediate lead up to 28 December 2016**

279. Mr Richardson had indicated to Mrs Richardson that he was intending to prepare Wirraway for presentation for an inspection late in December 2016. This discussion seems to have first commenced by 6 December 2016 at the latest.

280. Between 6 December 2016 and 27 December 2016, work had been performed by at least Mr Richardson and Mr Brook to prepare the property for an inspection. The work included preparing the guesthouse and the surrounding grounds, as well as preparing Wirraway itself.

[281] Mr Richardson had bought a significant amount of isopropanol, being the four 20-litre containers.

282. In the week leading up to and including 27 December 2016, Mr Richardson had started cleaning Wirraway itself. This included working with the assistance of Mr Brook. Mr Brook, for most of that week, would work during the day but return to his residence at night as he had milking obligations each morning. Mr Brook identified that he had originally arranged to stay with Mr Richardson at Wirraway overnight on 27 December 2016. He was able to do so because he did not have his usual milking obligations on the morning of 28 December 2016.

283. Prior to 27 December 2016, some furniture had been moved into storage in one of the sheds or hangars. Mr Brook also identified in an interview with Mr Walsh, a loss adjuster, that boxes of items were also moved out of Wirraway. These boxes were said to be of personal items.

[284] At different times over that week, the remaining furniture was stacked in the hallway within the residential portion of Wirraway. The hallway divided certain bedrooms on one side from certain bedrooms and the kitchen on the other side. A photograph was put into evidence, which showed the stacking of furniture up to a significant height in the hallway. The stacking appears close to, or at the level of the sconced lights which protrude in the hallway. There were six of these sconced lights, three on each side of the hallway.

285. At around midnight on 27 December 2016, Mr Richardson told Mr Brook to go home. Mr Brook gave evidence that this was contrary to what he had previously understood to be the arrangement with Mr Richardson. Nonetheless, in accordance with that request, Mr Brook left. I will return to this factual issue later in these reasons.

286. On 27 December 2016 and in the early morning of 28 December 2016, the floors of most of the living areas of the house had been cleaned and polished with the benefit of the isopropanol mixed with water. Various photos and videos were sent to Mrs Richardson by Mr Richardson during the early morning of 28 December 2016 showing the various rooms in their cleaned state. Those photos show that the wooden floors were indeed clean with a high gloss finish. It is fair to say that the use of isopropanol with the polisher presented the interior in an extremely impressive fashion. A video of a microwave with fire in it was also sent in this period. No one suggests this microwave was the cause of the fire.

[287] At 3.17 am on 28 December 2016, Mr Richardson sent a final video to Mrs Richardson of the polished floors.

288. At 3.31 am on 28 December 2016, the fire alarm sounded in the home and was remotely recorded as having been triggered. The triggering of the fire alarm automatically turned on all the lights in the residence.
289. Further, three seconds after the fire alarm has been recorded as triggered, a motion detector in the bedroom which Mr Richardson says that he had retired to is triggered and recorded. On the western side of the bedroom, there was a door which opened on to the hallway where the furniture was stacked. On the eastern side of the bedroom there was a door which opened onto the verandah of Wirraway.
290. At 3.32 am on 28 December 2016, Mr Richardson instigates a call to Triple-0 to report the fire.
291. At 3.39 am on 28 December 2016, the power at Wirraway was de-energised.
292. At approximately 4.00 am on 28 December 2016, the first fire unit arrives at the property with Captain Cameron Spalding. Captain Spalding observed that the residential portion of Wirraway was probably 80 per cent involved in fire. At that time, there was thick smoke in the breezeway, but no flame was seen there.
293. At approximately 4.07 am on 28 December 2016, the second fire unit arrives at the property with Officer Mitchell Rogers. The observations of Officer Rogers will be detailed later in these reasons.
294. Despite the best efforts of the fire department, the residential portion of Wirraway was essentially burnt to the ground, while the ballroom which shared the same roof with Wirraway was damaged but its wooden floor and most of its walls were still intact, albeit fire damaged. The roof structure of the ballroom was partially collapsed, with the collapse most evidently sagging to the centre of the ballroom.
295. It should be noted that after the initial fire event, a fire broke out again on a later date, causing further damage to the ballroom. For this reason, caution needs to be exercised when looking at photos of the ballroom damage. Some of the photos show damage to the ballroom caused by the later fire break out.

#### **Expert evidence concerning the fire**

- [296] To assist with explaining the evidence in relation to the fire, attached to these reasons and marked Annexure "B" are four photographs, taken from one of the reports of the fire expert, Mr Holohan.
297. Figure 1 shows the general estate on which Wirraway stands. Wirraway can be seen on the hill with the guesthouse to the left, next to the tennis court, and on the far left-hand side the hangars can be seen.
298. Figure 2 gives an overhead view of the insured residence, with labelling so as to identify the location of certain rooms.
299. Figure 3 gives a front view of the insured residence. On the right-hand side is the residential part of Wirraway, with the ballroom in the centre part and the pool room on the far left.
300. Figure 4 gives a rear view from the other side of Wirraway. In that photograph, the residential portion of Wirraway is to the left, with the ballroom in the centre and the pool room on the right.
301. Annexure "A" is the same plan with red markings made by or on behalf of Mr Richardson at a later date. The red markings were said by him to be his movements after the fire alarm had occurred.
302. Annexure "C" contains a floor plan marked 'Figure 7'. The blue pen markings on that floor plan were made by Mr Richardson in the presence of the respondent's expert, Mr Holohan. The residential portion of Wirraway is on the left, with the ballroom in the centre and the pool room on the right.
303. These various pictures and plans allow for an appropriate orientation of the room layout of Wirraway. Wirraway was not laid out on a north-south axis, but rather was tilted off that axis. However, the end constituted by the residential area was

sometimes referred to as 'south', and the area in the vicinity of the pool room was

sometimes referred to as 'north'.

304. Whilst those directional descriptors are not accurate, for the purposes of describing orientation within the plan of Wirraway, I will use "south" as indicating the left-hand side of Figure 7 in Annexure "C", and "north" as indicating the right-hand side of Figure 7 in Annexure "C".

305. Three experts were called in respect of the cause of the fire. They were:

- (a) Mr Holohan, an experienced forensic scientist and fire analyst, called by the respondent;
- (b) Mr Denham, an experienced fire investigator and electrical safety consultant, called by the respondent; and
- (c) Mr Kelly, an experienced fire analyst, called by the applicant.

306. All were suitably qualified to express their various opinions.

[307] The starting point in relation to the cause of the fire is that two principal fire experts, Mr Holohan and Mr Kelly, both agreed that the destruction at Wirraway was so significant that it was impossible to determine from the physical remains what the immediate cause of the fire was. That includes that it was impossible to determine whether there was something about the instigation of the fire which physically indicated that it was instigated by intentional human intervention.

308. Further, the two experts agreed that the physical evidence which was examined did not allow a determination of the exact location of the ignition point of the fire.

309. Both experts agreed that there was no remaining physical evidence of an accelerant having been used. This agreement was neutral on the issue of whether an accelerant had, in fact, been used. Both experts agreed that the destruction was so significant that it was unlikely that any accelerant, if one had been used, would have left any detectable residue after the fire.

310. I turn then to the physical state of the structure after the fire.

311. The pool room located at the far north of Wirraway was largely undamaged.

312. The internal part of the flooring in the ballroom was not destroyed in the initial fire event. The walls of the ballroom, whilst fire-damaged, were still standing after the initial fire event. The roof structure above the ballroom had been damaged with the roof itself having collapsed or sagged towards the centre of the ballroom. The roof structure for the ballroom had not been completely destroyed.

313. The verandah area just prior to the pool room had some fire damage, but its ceiling largely remained intact. As that ceiling area for the verandah moved south to the area where the ballroom ended and the breezeway started there was significant damage to the ceiling, and the balcony roof structure had partially collapsed as it moved towards the residential area.

[314] The area of the breezeway between the ballroom and the residential portion of Wirraway was effectively destroyed, including the electrical services cupboard ("ESC"), which is marked as "Service Cabinet" on Figure 2 of Annexure "B".

[315] It is relevant to note, as illustrated in Figure 2 to Annexure "B", that the roof structure of the residential portion of Wirraway and the ballroom portion of Wirraway was one uninterrupted area. Underneath the roof and above the ceiling to the ground floor areas was a single large internal space.

316. What this meant is that if there was a fire within that internal roof space, there was no physical structure which partitioned off part of the roof space from another part of the roof space. A fire could, therefore, spread uninterrupted through the roof space, but subject, obviously, to the three dimensional features of the space. Part of

the three dimensional features are illustrated in Figure 2 to Annexure "A", which

317. In terms of the critical timing, what is able to be determined is as follows:

- On 28 December 2016 at 3.17 am, Mr Richardson records and sends a video of polished floors to Mrs Richardson.
- On 28 December 2016 at 3.31.55 am, the fire alarm goes off. That is

approximately 15 minutes after the video was sent. On Mr Richardson's

version, he has not heard, seen or smelt any fire activity, including smoke.

- In that 15 minute period, Mr Richardson is said to have at some stage, been turning off lights remotely using his phone. This was a feature of the house which allowed this to be done remotely. Mr Richardson is said to have retired

to his child's bedroom. This can be seen on the floor plan in Annexure "C" on

the eastern side of the residence.

- At approximately three seconds after the fire alarm triggering, the motion

detector in the child's bedroom detects motion.

- On 28 December 2016 at 3.32.22 am, Mr Richardson initiates his Triple-o call. This call takes place 27 seconds after the fire alarm has gone off.

- In the Triple-o call, at approximately 52 seconds into the call, Mr Richardson

says, "...I can see the flames now..."

- On 28 December 2016 at 3.39 am, the AC power purportedly fails and the alarm system ceases reporting to its offsite base. The failure of the AC at this point is somewhat ambiguous. Evidence was led that the alarm had a backup battery power source. Whilst it was plugged into the AC power system, it very well may have continued to work. The failure of the alarm system may not indicate that this is when the AC de-energised, but rather this was when the alarm system de-energised. This allows for the possibility that the AC de-energised at an earlier point. Indeed, Mr Richardson had said that he had turned the power off at some earlier point from a point in the garage vent to the pool room.
- On 28 December 2016 at 4.00 am, the first fire unit arrives.
- It is estimated that 80 per cent of the residential portion of Wirraway is engulfed in the fire.
- On 28 December 2016 at 4.07 am, the second fire unit arrives.
- After the second fire unit arrives, Officer Rogers of that crew observed a well-developed fire at Wirraway in the residential area to the south. Heavy smoke and fire were seen coming from the house and his observation at that point in time was that the ballroom did not look involved.
- Officer Rogers and another officer put on breathing apparatus. It is not clear how long this took. Accordingly, at some time after their arrival at 4.07 am, the two officers entered from the eastern side of Wirraway where the stairs led up to the verandah which ran along the residential portion of Wirraway. The gate to the stairs was locked and chained, and there was mesh along the verandah. After having broken in through the gate, they moved along the verandah into the breezeway from east to west and positioned themselves on the western verandah immediately next to where the main bedroom was adjacent to the ESC. In effect, they were on the verandah next to the south-eastern corner of the pool.
- Officer Rogers and the other officer had been instructed to position themselves at that location to try and keep the fire from the residential portion of the building spreading to the ballroom.
- In that position, the officers encountered heavy fire. Officer Rogers could hear the fire in the roof space above him. He looked up at that time and noticed the ceiling starting

to sag. The sag in the ceiling, he estimated, had occurred no more than five minutes after the two officers had moved to that position.

- Officer Rogers observed that the fire had not penetrated the external walls to the residential portion of Wirraway. He could not categorically say that there was fire in the rooms that bordered the breezeway, but given the heat he experienced, he surmised there was heavy fire in the rooms.
- In cross-examination, Officer Rogers stated that the wooden doors to the ESC had not been penetrated by fire at that time.
- Officer Rogers observed that there was smoke in the breezeway but there were no flames visible in the breezeway.
- Almost immediately after noticing the ceiling sagging, the ceiling came down

on both officers, with a section striking Officer Rogers' right shoulder and

knocking him to the ground. The officers were then able to move backwards in an easterly direction through the breezeway which ran between the residential house and the ballroom towards where their truck was parked.

- As Officer Rogers made his way backwards through the breezeway, he noted that there were two doors to what he understood to be bathroom facilities. Both of those doors were locked.
- At that point in time, Officer Rogers opened a door to the ballroom. When he opened the door, he observed that the fire had already been through the ballroom. He observed there was very little fuel load through the ballroom and that the fire had already consumed what limited fuel had been there, and essentially the fire had burnt out. He identified that the roof structure of the ballroom was still intact. I took his reference to the roof structure as a reference to the ceiling of the ballroom.
- Prior to these observations being made, Officer Rogers had been operating on the understanding and expectation that the ballroom had not yet been involved in fire. He said that at no point did he see any active fire or flames in the ballroom.

318. I turn now to possible causes of the fire in terms of ignition.

319. The first source of ignition is via intentional human instigation. If that had been the cause of the fire, it could only have been Mr Richardson.

[320] The second possible cause of ignition is via the ESC. The ESC contained two separate banks of electrical equipment.

[321] The photographs in Mr Denham's report at Figure 5.1 showed the two separate

banks. In front of those banks were two solid wooden doors. There was a solid vertical piece of wood running down the centre of the front of the cabinet. Each door is hinged to the centre piece of wood.

[322] Figure 7.1 of the report of Mr Denham then shows the right-hand side bank of equipment filled up most of the depth of the right-hand side of the cabinet. The same photo shows the left-hand side bank only filled the back portion of the depth of the cabinet.

323. The same photo shows a divider at the centre of the cabinet which rises about two-thirds of the way to the ceiling. It is possible that this is a separate dividing structure, but it may also simply be the side of the right-hand bank of equipment. The photo is inconclusive.

324. The left-hand side bank contained the electrical distribution board and the C-Bus home automation system control centre. The right-hand side of the bank contained the central supply and control hub for audio visual and IT equipment.

325. There were multiple electronic devices within the ESC. As Mr Holohan observed in his 24 August 2017 report:<sup>[50]</sup>

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[50]

Further Expert Report of M Holohan dated 24 August 2017 at p. 12.

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“There were many electrical components within the services

cupboard in which a fire could originate...

Some items such as cable insulation, are made from PVC, which has very good flame retardant properties, however, the material will continue to burn with a flame if a heat source, such as an overheating electrical connection is present and energised. The arrangement of nearby combustibles, including other cable insulation, will determine whether or not a particular fire will self-extinguish or continue to spread. A vertical orientation of cables in relatively close proximity

can continue to burn and spread a fire upwards.”

326. Mr Kelly gave evidence to the effect that there would have been material within the ESC which could have burned and been fuel for a fire. He identified that one source of ignition within the ESC could have been via a hot joint. I will deal with this particular concept more fully below.
327. The doors to the ESC were not sealed such that air, containing oxygen, could access the ESC.
328. Further, and somewhat surprisingly, the project manager for the refurbishment and additions undertaken between 2012 and 2014, a Mr Dick, identified that he did not think that those holes had been sealed up where the bundled cables for each of the two banks vertically exited through the ceiling of the ESC into the roof space. Mr Dick gave evidence that the sealing of such holes was standard practice for multi-storey buildings, but he had never seen it done in a residential house. He further emphasised in his evidence that it was not done for residential houses. Accordingly, on the balance of probabilities, I find that the exit point for each of the bundled cables had not been sealed, such that there were holes with gaps between the sides of the holes and the cable bundles in the sealing of the ESC leading directly into the roof space.
329. The presence of those unsealed gaps meant that the super-heated fumes from any fire would naturally seek to flow upwards into the roof space with the possibility of those fumes causing ignition of other fuel sources which may have been within that roof space.
330. It was accepted that within the roof space there may have been a variety of fuel sources present.
331. Mr Denham in his report had opined that the ESC was unlikely to be the source of ignition. This opinion was based on an assumption that the hot gasses released from combustion would not have been able to penetrate the ceiling of the ESC for at least 20 minutes. That assumption was based on any holes for cable bundles being fully sealed, and the ceiling material used having at least a burn through fire rating consistent with building regulations. This assumption was incorrect.
- [332] Mr Denham had opined that, based on his assumption, the accumulated super-heated gas would have impacted upon the electrical equipment so as to cause a de-powering of the equipment well before the 20 minutes burn through had expired.
333. As the lights had come on at the time of the fire alarm, he reasoned that ignition in the ESC could be ruled out.
334. This opinion was based on the incorrect assumption that there was a ceiling rated to 20 minutes burn through with no unsealed gaps around any penetration. As this assumption is incorrect, Mr Denham’s opinion loses a not insignificant part of its force.
335. Mr Denham still relied on a likelihood that any fire in the ESC would have caused a triggering of a number of safety devices, both within discrete electrical items and also within the electrical system itself. He opined that a short circuit would have triggered a safety switch and depowered the system, or if an overheated item caused a fire, insulation on wires would have then failed, thereby causing a short circuit which would have triggered the electrical system safety switch and depowered the system.
336. There is some force to this residual position given that super-heated gases can reach temperatures of 600 degrees Celsius. However, the evidence was at a high level of abstraction. No testing or modelling was relied on. I can accept that it makes a fire in the ESC less likely but it is difficult to use it to wholly exclude the ESC as a possible source of ignition.
337. I turn to Mr Holohan on this issue. Mr Holohan thought that the doors to the ESC looked to be unsealed. Accordingly, he thought there was scope for smoke to escape from the ESC.

- [338] Mr Richardson had informed Mr Holohan that the French doors to the main bedroom had been left open at the time of the fire. Mr Holohan thought that any smoke which escaped the ESC (assuming an initial fire in the ESC) could possibly have set off a smoke alarm if it had entered through the open French doors to the main bedroom, which were situated immediately to the front and the left of the ESC.
339. I accept (assuming an initial fire in the ESC) that it was certainly possible for smoke to have travelled in this direction, although it ought to be recognised that if there was a fire in the ESC, there would likely have been some type of a chimney effect by the hot gases rising and seeking to escape through the unsealed gaps in the ceiling of the ESC. Nonetheless, I think it would be likely that smoke would be escaping from the ESC towards the main bedroom.
340. Again, on the assumption of an initial fire in the ESC, an alternative scenario for the triggering of the smoke detector from Wirraway is via the flexible air-conditioning ducting which existed in the roof space. Once fire had occurred in the roof space, then the flexible air-conditioning ducting was susceptible to be penetrated by fire and itself igniting. This would have been a possible mechanism by which smoke may have entered below ceiling areas.
- [341] Mr Kelly opined that whether smoke at any given time could travel through particular ducting might depend not just on access to the internal portion of the ducting but also whether there were dampers in the ducting which were open or closed. Dampers are physical partitions which can be adjusted to reduce or increase airflow through a ducted air-conditioning system. Mr Dick gave evidence that such dampers existed for the ducted system at Wirraway. Where any particular damper was or may have been present was not identified.
- [342] Mr Kelly expressed the view that if a damper was closed then no smoke might move down through a particular upstream portion of the air-conditioning ducting, whilst at the same time smoke may move through another section of ducting which was not restricted by a damper.
343. At a theoretical level, Mr Holohan accepted this as a possibility, but he thought it unlikely that there would have only been selective presence of smoke through only some of the ducting. This would have required only a localised fire in the roof space.
344. The third possible ignition source was described by Mr Kelly as a “hot joint” in a wiring system. He described a hot joint as a point in the wiring system at which, for a variety of reasons, a joint becomes particularly hot. Mr Kelly referred to hot joints as being, in his experience, the main cause of electrical fires. He contrasted this to a short circuit situation.
345. Mr Kelly described the hot joint as being the deterioration of a connection or the development of a high resistant joint.
346. Mr Kelly explained that a hot joint could form in a way so as to cause ignition to a fuel source, but without the insulation to the cable failing. He opined that cables are rated accordingly to the current they can safely operate at. If the parameters for the safe operation of that cable are exceeded, then the efficiency of the insulation used for the cable can, but will not inevitably, be compromised. He gave an example of a cable which is rated as v75 or v90. He explained that this meant the cable was rated up to 75 degrees Celsius or 90 degrees Celsius respectively. He said that this did not mean that the temperature the insulation melted at would be 75 or 90 degrees Celsius. It meant that at temperatures up to 75 or 90 degrees Celsius respectively, the efficiency of the insulation was maintained. Mr Denham thought that insulation would generally melt at 100 degrees Celsius.
347. Mr Kelly said that as a fire develops, at some point the insulation on wires will fail but they won't all fail simultaneously.
348. Mr Kelly opined that there could have been a hot joint in the roof cavity itself, which may have ignited a fuel source. A fire in the roof space could cause ignition below by a variety of means. This could include melting metal or plastics which might then ignite a fuel load below.
349. Mr Kelly contrasted short circuits with hot joints. Mr Kelly accepted that where there was a short circuit situation, it is accurate to say that generally circuit breakers which are built into the switchboard would de-energise the system and prevent it progressing to the point of combustion. He went on to explain that in contrast, a hot joint may be present and cause ignition whilst still allowing for a sufficient current to pass through the cable so as to not trigger the circuit breaker. That was why, in his experience, hot joints were the main cause of building fires. He gave evidence that some insurance companies were requiring thermal imaging to be performed for the purposes

of the granting of certain policies. The purpose of the thermal imaging was to determine the potential presence of hot joints.

350. In cross-examination, Mr Holohan expressed the view that Mr Richardson's account

of the different types of smoke seen within a short period of each other was inconsistent with a fire in the roof space. Mr Holohan rejected the proposition of smoke only having travelled into the home through selective ducting in the hallway or a western bedroom, whilst not producing any sound, smell or sight of a fire or smoke prior to Mr Richardson going to bed and whilst Mr Richardson was in bed in

his daughter's room. Mr Holohan therefore did not agree with Mr Kelly's view that

smoke may have only penetrated into and travelled down a particular ducting.

351. Mr Denham again said if it had been a fire in the roof the super-heated gases would have likely caused a short circuit prior to penetrating below the ceiling.

352. Mr Kelly did not agree with this. He gave the example that the wines may well have been protected by insulation batts.

[353] The fourth possible source of ignition was the light sconces which were in the hallway. There were six of these, and they protruded out of the wall horizontally and then curved up vertically with antique-type dual sconces. The furniture had been stacked at a significant height and looked to be up to at least the level of these six light fittings. Mr Denham expressed the opinion that whilst he believed it to be unlikely and remote, he could not exclude mechanical damage to these light fittings as a source of ignition.

354. Mr Denham was of the view that the light sconces were unlikely as an ignition

source in part because he had been asked to assume that they were 'extra low

voltage'. This indicated to him that the light fittings likely incorporated a type of

voltage converter known as an ELV power supply, and that the lights were likely LED lamps which produced heat around 70 degrees Celsius. Mr Denham said this reduced heat, as compared to incandescent light sources, and thereby created less potential for the ignition of fire from functional heat. That instructional assumption

about there being "extra low voltage" for those lights was not proved by evidence.

Electrical plans did appear in the evidence, but Mr Denham accepted that they did not show the lights as extra low voltage. Mr Denham said in oral evidence that he could see some LED lights, and given when the refurbishment and additions occurred, it was reasonable to assume that the sconces had LED lights. In cross-examination, he accepted that he could not tell from photos if the sconces actually had LED lights and could not exclude that possibility that they were incandescent lights (although he maintained it was unlikely for the reasons identified).

[355] Mr Denham also made assumptions about the likely protective nature of the casing/framework of the sconce lights. He assumed a design and construction which would reduce the likelihood of them being the ignition source. This was evidence at a very general level, and not by way of any design documents, *per se*.

356. Mr Denham opined on this issue that "...electrical parts can breakdown/malfunction

due to mechanical damage but the possibility of the event causing ignition is still a

remote possibility, but one that I cannot entirely rule-out." [51]

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[51] Report of M Denham dated 25 July 2022 at 7:35, p. 17.

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357. Contributing to Mr Denham's view as to the unlikelihood of these lights being the

ignition source was the presence of modern circuit breakers and safety switches which he said would likely have rapidly de-energised the circuit in the event of a short circuit fault in one of the light fittings.

[358] This evidence of Mr Denham did not appear to deal with the possibility that mechanical damage may have caused a hot joint to form by some deformation to the cable due to mechanical damage. A hot joint may still allow sufficient current to move through the cable so as to not trigger the circuit breaker or safety switches.

359. Mr Holohan gave evidence on this issue from a different perspective. He did so from the point of view of seeking to exclude specific areas from being the possible location of the initial ignition.

360. In doing so, Mr Holohan relied on the subsequent versions of Mr Richardson as to his observations before and after the fire, as opposed to the Triple-o call. Mr Holohan referred to Mr Richardson initially seeing smoke at the kitchen window and the smoke being white/grey, flowing like water along the ceiling, moving north to south. He then referred to Mr Richardson saying that he saw thick dark smoke filling the breezeway a short time later, and then within a further tens of seconds, he walked around the side of the ballroom, seeing thick dark smoke in the area adjacent to the ESC.

361. Mr Holohan reasoned that if the fire had started in the fuel load in the hallway, one would not have expected to simply see the grey/white smoke to only the one foot level flowing north to south, and shortly afterwards have seen the large quantities of dark smoke throughout the breezeway and outside the main bedroom. He used this reasoning to exclude that the fire had started in the hallway. He did not accept Mr

Kelly's reasoning that this may have been caused by a discrete air conditioning duct which took the smoke only to the position of the hallway or western bedroom, and not to the child's bedroom.

362. There was a debate as to generally where the fire is likely to have commenced.

[363] More generally, Mr Holohan was of the view that it was likely the fire had commenced in the vicinity of the residential portion of Wirraway. This was largely due to the absolute destruction that had occurred to the residential part of Wirraway as opposed to the lesser damage to the ballroom. That fact that the second fire crew

saw the fire had been through the ballroom did not alter Mr Holohan's view, given the time at which this was seen. He reasoned that the fire would have reached the roof space well before that observation.

364. Mr Kelly, at a theoretical level, was of the view that the fire could have started in the vicinity of the residential portion of Wirraway, but said he could not rule out that it may have been possible for the fire to have started in the roof space above the ballroom.

365. Mr Kelly accepted that it was unlikely that the initial ignition started within the ballroom itself. No one suggested that the internal ballroom had been the place of ignition.

366. Mr Kelly accepted that he had not tested his roof space hypothesis. The reason he gave for not testing the hypothesis was that there was simply insufficient data for such a test to be undertaken, but he maintained that at a theoretical level, this may have occurred as a possibility.

367. Mr Holohan's evidence in one respect was very focussed on demonstrating what he considered to be problems with Mr Richardson's later version of events.

368. For the reasons previously explained, I have formed the view that Mr Richardson's later versions of events were lies.

369. On my assessment of the competing expert evidence, each of the theories of the fire instigation, namely:

- (a) a fire through human intervention; or
- (b) a fire in the roof space; or
- (c) a fire as a result of mechanical damage to the lighting sconces within the hallway; or
- (d) a fire in the ESC;

remain possibilities which are not fanciful.

370. The problem with the expert evidence is that the destruction of the residential area was so complete that reliance had to be made to numerous assumptions, all at a high level of abstraction. Some of the assumptions proved incorrect and other assumptions could not be verified. I am not satisfied that the expert evidence itself was capable of meeting the onus of proof which the respondent bore to establish that the fire was instigated by Mr Rich. That does not mean that the respondent cannot discharge its onus by other events in its circumstantial case.
371. Given my finding on the later versions of events by Mr Richardson as being untrue, the Triple-o call supports a finding of fire below the ceiling and in the hallway. There is no reason to conclude that this part of the Triple-o call was a false construct.
372. For completeness, the fact that the power to the alarm did not de-energise until 7 minutes after the alarm sounded does not mean the AC power was actually on for the full 7 minutes. The alarm and the call out to the external monitoring system likely had a backup battery system which itself must have failed at 7 minutes and the alarm and the call out mechanism were likely not connected to the ESC.

**Features associated with the circumstances of the fire relied upon by the respondent as circumstantial evidence that Mr Richardson intentionally started the fire in Wirraway**

*(a) Mr Brook being asked to go home on the night of the fire*

373. Mr Brook, in his evidence-in-chief, stated that he had been helping clean out the house on the day before the fire. He indicated that his understanding was that he was going to stay the night on 27 December 2016 and continue to clean up because he did not have to do the milking the next day.
374. Mr Brook's evidence was that he had understood that both he and Mr Richardson were going to work as late as they could and then crash out in the guesthouse. He said that just before midnight they had a beer and Mr Richardson told him to go home.
375. Mr Brook gave evidence in his affidavit that Mr Richardson had said at the time that he was "buggered" and couldn't keep his eyes open and was going to bed. Mr Brook stated that this was strange, as the plan had been for Mr Brook to stay the night, but Mr Richardson was insistent on Mr Brook leaving. Mr Brook left in accordance with that request.<sup>[52]</sup>

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<sup>[52]</sup> Affidavit of CM Brook dated 31 October 2022, Exhibit CB-3 at [24], p. 9.

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- [376] Under cross-examination, Mr Brook accepted that he could not recall when the conversation occurred about him staying over that night. He agreed that it was too long ago.
377. Further, Mr Brook agreed that he had stated to the loss adjusters on 16 January 2017 that in the 15 minutes before he had left on that evening, "[Mr Richardson] just said he was going to keep going and keep cleaning. Get it ready." He was asked in cross-examination whether that is what Mr Richardson had told him on that evening, and Mr Brook answered, "Yeah, he said just go home, he'd do the rest."<sup>[53]</sup>

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<sup>[53]</sup> T3-90 line 18.

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- [378] This evidence in cross-examination was inconsistent with Mr Richardson having told him that he was going straight to bed.
379. This is one example of the uncertain nature of some of the evidence of Mr Brook.

380. I do not doubt that Mr Brook came to the Court to give honest evidence. However, the events that Mr Brook was seeking to recall were some time ago.

381. On this issue, I cannot find that Mr Richardson in fact said to Mr Brook that he was tired and was going straight to bed as he was exhausted. The more accurate account is likely to be what Mr Brook told the loss adjuster on 16 January 2017.

382. Mr Brook's evidence-in-chief that he had understood that the two of them would be staying in the guesthouse on the evening of 27 December 2016 was also challenged in cross-examination.

[383] In cross-examination, Mr Brook accepted that he did not know whether Mr Richardson had cleaned the guesthouse prior to 27 December 2016.

384. Mr Brook was then taken to an answer he had given to the loss adjuster on an earlier date where he was asked about why Mr Richardson might have sent him home. Mr Brook had stated to the loss adjuster, "And I don't know if that's - that's because he didn't want to dirty the guesthouse because of the inspection."<sup>[54]</sup> Mr Brook accepted

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<sup>[54]</sup> T3-91 lines 18-24.

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that this explanation might have occurred to him a little bit when he gave it to the loss adjuster.

385. Relevantly, there was a separate communication with Mrs Richardson days before the fire where Mr Richardson had told her that he had finished cleaning the guesthouse.

386. In light of this evidence, I find that the guesthouse had been cleaned prior to the evening of 27 December 2016.

387. I observe two matters about this evidence. It is unclear why Mr Richardson would not have wished to take full advantage of Mr Brook for the cleaning work which was ongoing at the time he left. It is also not clear what mess could have occurred to the guesthouse by Mr Brook sleeping there which could not be cleaned up before the inspection later on 28 December 2016. The furniture in the hallway still had to be unpacked for the inspection. Having Mr Brook immediately available at Wirraway would be more efficient than sending him home and having him return later in the day.

*(b) Mr Brook's post-fire conversation near the tractor*

388. Mr Brook, in his evidence-in-chief, described a very bizarre conversation with Mr Richardson which occurred after the fire at the property.<sup>[55]</sup>

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<sup>[55]</sup> Affidavit of CM Brook dated 13 October 2017 at [55]-[59].

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389. In terms of timing, Mr Brook identified that it occurred in the weeks after the fire. He said that during the period leading up to this occasion, Mr Richardson had been isolating himself and would lock himself in the guesthouse. Mr Brook knew this because he would go out and check on Mr Richardson.

390. Mr Brook stated that at this time Mr Richardson was fretting that he was going to be charged with starting the fire.

391. Mr Brook recalled that at one stage after Mr Richardson got off the phone with his lawyer, a solicitor, Bill Potts, he told Mr Brook to leave his mobile phone on the tractor tyre. Mr Brook did so. Mr Brook recalled that Mr Richardson put his phone on the tractor, and then pulled Mr Brook about 15 metres away from the tractor and the phones.

392. Mr Brook gave evidence that Mr Richardson then said, "I just got off the phone to

my lawyer, Bill Potts. He reckons they are going to charge one of us. He says that

we have to be careful because our phones will be tapped."

393. Mr Brook stated that Mr Richardson then said, "You do the time and I'll look after you. I'll visit you every day." Mr Brook took that to mean that Mr Richardson was

wanting him to take the rap for the fire. Mr Brook stated that Mr Richardson started

getting emotional and that Mr Richardson then said, "I've got the kids. I can't go to

gaol. I need to be there for them."

394. Mr Brook stated, "I didn't think much of it at the time, but later I got thinking and I

was pretty gutted at what he said. I thought Preston was my mate, but it sounded

like he wanted me to go to gaol for him. I didn't have anything to do with the fire. Preston had a way of manipulating you and getting you to do things you didn't want

to. I was very concerned that he was going to make me admit to starting the fire."

395. Mr Brook also stated that Mr Richardson was very paranoid and kept telling him that the phones were tapped. He said that Mr Richardson, at some stage, had found a device attached to his Sahara LandCruiser, which Mr Brook described as the size of

a matchbox and was called a "SPOT Trace". Mr Brook saw the device without its

cover on and described it as having a red and yellow greenish light. Mr Brook recalled that Mr Richardson also found one of these devices on his ute, and that on one day Mr Richardson made Mr Brook look through all the farm vehicles and machinery for other such tracking devices.

396. Mr Brook recalled that Mr Richardson was very angry when Mr Richardson had found the first device and was paranoid afterwards. He stated that it was all Mr Richardson would talk about for a while.

[397] Mr Brook did not identify whether the locating of the tracking device and the subsequent related conduct had occurred prior to the discussion near the tractor.

398. The respondent seeks to use the conversation near the tractor as conduct illustrating a consciousness of guilt, or as constituting an implicit admission.

399. Mr Brook was cross-examined on this issue. Mr Brook was taken to a record of his prior discussions with Mr Walsh, the loss adjuster, where Mr Brook had said that Mr Richardson had been sucked into a pretty dark hole after the fire. He confirmed that Mr Richardson went and hid for days on his own. Mr Brook agreed that Mr Richardson was depressed at times, but he said Mr Richardson would always pick himself up again and bounce back.

400. Specifically, in relation to the conversation near the tractor, in cross-examination

Mr Brook was taken to that part of his evidence where he said, "I didn't think much

of it at the time..."[56]. Mr Brook agreed it was a bizarre suggestion that he would take

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[56] T4-4 line 45.

responsibility for the fire. Mr Brook stated, "Yeah, I think it might've been just,

like, little bit of panic, paranoid, erratic. Like - - -"[57].

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[57] T4-5 lines 1-2.

401. It was put to Mr Brook that Mr Richardson was “all over the shop” at the time, to

which Mr Brook answered, “Understandably. But, like, it was just - you just had to sit there and listen, like, whether you made sense of it or not, or he was...I – I just had to sit there and listen to him as a mate sitting at the time, you know? Like, I just felt like I was just someone to – for him to vent to, and – like, yeah, it didn’t make sense to me.”<sup>[58]</sup>

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<sup>[58]</sup> T4-5 lines 4-10.

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402. It was then suggested that it was bizarre because Mr Brook was not there (meaning at Wirraway when the fire occurred) and Mr Richardson knew that, and the police knew that. Mr Brook agreed with that suggestion. This line of cross-examination ultimately culminated in the following exchange:<sup>[59]</sup>

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<sup>[59]</sup> T4-5 lines 22-27.

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“So it was really a ludicrous suggestion, wasn’t it?---I don’t know.

No, it’s ---

Yes?--- --- because of the drugs or – I don’t know. I don’t know.

And it was – you didn’t think much of this at the time because you’d put this statement down to your drug use, didn’t you?---Yeah.”

403. It is also relevant to note that Mr Brook in evidence-in-chief had given evidence

that, at a different time, Mr Richardson had asked Mr Brook, “Did you burn the house down. If not where you in it with [NAME OMITTED]” To which Mr Brook had said he replied, “No and no.”<sup>[60]</sup>

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<sup>[60]</sup> Affidavit of CM Brook dated 13 October 2017, Exhibit CB-3 at p. 11. This extract has been directly copied, including any typographical and grammatical errors

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*(c) Pictures sent to Mrs Richardson after the fire*

404. On 9 January 2017, Mr Richardson sent a set of photographs from the evening of the fire to Mrs Richardson to be sent on to the Queensland Fire and Emergency

Services (“QFES”) fire investigator. One of the photographs was of the polished floor, but it also showed one of the isopropanol containers.

405. Mrs Richardson made a note of a phone call received by her from Mr Richardson about the photographs. The note records the following:<sup>[61]</sup>

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<sup>[61]</sup> Doc ID CHU.601.002.1003 at 0010/0015. This extract of the diary note is precisely replicated, including any typographical and grammatical errors.

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“Diary Notes - Phone call from Preston 09/01/2017 Notes taken as

he speaks:

...

- Then he phoned back and said he was sending me the images that I need to forward to Gail.
- He then said he had sent me the wrong image - because it had a big bottle of isoprope in it - he said make sure you don't send her that one - they can't see that.
- just delete the whole string of texts from me - delete the whole thing
- I just said okay and that I had to go..."

406. The 'Gail' referred to was a fire investigator. This conduct was relied upon by the respondent as post-fire conduct showing a consciousness of guilt.

407. It is clear that Mr Richardson did not want the photo with the isopropanol sent to the fire investigator.

(d) Materially differing versions of what occurred at the time when Mr

*Richardson became aware of the fire*

408. An important feature of the evidence is the fact that Mr Richardson gave materially different versions of what he experienced and observed at the time of the fire.

409. At 3.17 am on 28 December 2016, Mr Richardson had taken a video of the polished floors and sent it through to Mrs Richardson.

410. At 3.31.55 am on 28 December 2016, the fire alarm triggered.

411. At 3.31.58 am on 28 December 2016, the motion detector sensed movement in the room which Mr Richardson says he was sleeping in. That room had a door to the west into the hallway where all of the furniture had been stacked and a door to the east which had opened onto the verandah.

412. At 3.32.22 am, Mr Richardson's first call to Triple-o commenced. It is worth setting out all of that call:[\[62\]](#)

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[\[62\]](#) Doc ID ALL.002.001.0001. The contents of this transcript of the Triple-o call on 28 December 2016 are precisely replicated, including any typographical and grammatical errors.

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“OPERATOR: Queensland Fire what's your location?

PRESTON RICHARDSON (PR): Sorry, I'd like to report a fire in my house please?

OPERATOR: Yup, what suburb are you at?

PR: Uh Beaudesert, uh Biddaddaba.

OPERATOR: Yup, what's the address?

PR: Uh 351 Armstrong Road Biddaddaba.

OPERATOR: Okay and what's on fire there?

PR: Um, I don't know I just, I was just finishing doing some cleaning and the fire alarm went off and I walked inside and it's smoke everywhere.

OPERATOR: Okay, so it's in the kitchen is it? Something...

PR: No it's like I've got a computer, like a server and... there's a lot of smoke coming out now actually.

OPERATOR: Okay, alright.

PR: I don't quite know where it's coming from. I can't actually see it. It's just a lot of smoke.

OPERATOR: Okay, alright so be safe and get outside

PR: Do you need me to turn the power off or the gas?

OPERATOR: If you could do that that would be good, yup. What's your name please?

PR: I can see the flame now, I'm just walking around. Oh mate it's huge.

OPERATOR: Okay, okay. Alright, what's your name please?

PR: Preston, Preston Richardson.

OPERATOR: And just your telephone number?

PR: [REDACTED].

OPERATOR: Okay.

PR: I'll have to go up and unlock the gate for you. I'll do that right now.

OPERATOR: Yup. Okay, just make sure everyone is safe and we'll be there shortly.

PR: I'm here by myself. Thank you, bye."

(underlining added)

413. At 4.00 am on 28 December 2016, the first fire unit arrives.

414. At 4.07 am on 28 December 2016, the second fire unit arrives.

[415] Later in the day on 28 December 2016, Mr Richardson gave a version to the Queensland Police in the form of a signed statement of what occurred immediately before and after the fire. The relevant extract is as follows:[63]

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[63] Doc ID CHU.601.002.1002. The contents of this extraction from the Queensland Police Service Statement of Witness of Mr Richardson dated 28 December 2016 are precisely replicated, including any typographical and grammatical errors.

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"[28] ...I finished up at around 2:30am.

[29]

I had a shower and went through the house and checked everything at around 3:15am. I took a video of the work I did and sent it to Miranda to show her. I checked everything, all the doors were locked and windows shut.

[30]

I checked the kitchen quite extensively and nothing appeared out of the ordinary.

[31]

I turned off the lights and went to [child's] bedroom because she still had a bed in there and I didn't do the floors in there. There were no other beds set up so I went to sleep in her bed. I crashed out.

[32] I hadn't quite fallen asleep yet and the siren and alarm went off.

[33]

The entire house is digitally controlled, I have an app on my phone which allows me to monitor everything from the alarms to the television. When the alarms go off it triggers all the lights in the house to turn on.

[34]

I checked my phone straight away and realised it wasn't the security alarm, I thought it might have been a false alarm because about 6-12 months ago the fire alarm went off and it was found to be a faulty sensor.

[35]

I got up and walked out of [child's] room onto the veranda and went to go towards the keypad in the kitchen. As I walking along the veranda towards the kitchen I looked through the window into the kitchen and I noticed there was smoke coming out of the hallway on the ceiling. The smoke was a white grey colour. It was tracking along the ceiling towards the dining room quite quickly.

[36]

I called triple o straight away and asked for the fire brigade. While I was talking to the guy on the phone I turned around and ran away from the kitchen along the veranda, I picked up a bag that I had sitting on the veranda just outside [child's] room.

[37]

I noticed there was a lot of smoke coming out of the breezeway between the house and the ball room.

[38]

I have kept following the veranda around towards the pool house. I have come right around and gone over the bridge over the pool and exited the residence. I stopped a few times and looked back and saw smoke everywhere. At this time I didn't see any flames. I noticed the smoke kept increasing.

[39]

I have gone and checked the emergency post for the water to check if there was a tap on the fitting so the fire brigade could drain the pool to access water.

[40]

I have gone straight to my car, the land cruiser wagon that was parked in the middle of the car parking area and driven anti clockwise around the whole house. I noticed there was a lot of smoke coming out of the house. I didn't see any flames at this time.

[41]

When I got back to the car parking area I turned off the main power switch for the house which is in the car port area. I unlocked my gun safe which was next to the power switch and took out two rifles from there and put them in the car with me.

[42]

I have driven around the property the same way again and I noticed the smoke was increasing again. When I got on the Southern side of the house I could see the glow of the flames in the sky light in the vicinity of the main en-suite and laundry area.

[43]

I then proceeded as fast as I could to the front gate to unlock the gates for the fire brigade.

[44]

I then came back up towards the house. As I came over the hill I could see flames coming out of the roof..."  
(underlining added)

[416] Mr Richardson then gave a later version to the loss adjuster Mr Walsh on 6 February 2017 as to what occurred immediately before and after the fire. It was as follows:[64]

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[64]. Doc ID CHU.002.0012. The contents of this extract from the transcript of the Record of Interview between Mr Walsh, the Chubb Investigations Manager, and Mr Richardson dated 6 February 2017 are precisely replicated, including any typographical and grammatical errors.

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“WALSH: Okay. What happened?  
RICHARDSON: So, I lay down. I sort of just started to doze off. Like, I crashed, and the alarm went off. The smoke alarm went off. So, I thought, bloody hell, it's a false alarm. Because, we've had plenty of - well, not plenty, but we've had false alarms before, due to one sensor that was faulty. I think Ash replaced it and said there was insects in it, or something like that. So, I was just thinking, bugger, you know? I'd just gone to bed, and I'd just done all this work, and I've got to get up in a few hours and finish this. Put everything back, and clean the pool. And,

then drive to Brisbane with Miranda's

furniture. So, the alarm went off. So, I walked

out [child's]. - the easiest way for me to get to

the keypad to press the buttons, was just to walk out the veranda, and walk towards where the keypad was in the kitchen. Or, the kitchen, family room. So, as I walked out and down the

veranda, right, it's not very far, I looked

through the window of the kitchen. Which, it's

like a big window that went up into the ceiling. And, as I looked through there, I stopped and I could see smoke. And, with the alarm system

that we've got, the - like, all the lights come on.

Because it's zoned - so, if the security system

goes off, all the lights start to come on, as part of the settings on it. So, the alarm was obviously zoned on that. Like, it was I6, or something. So, the lights were all coming on. So, I could actually see through the kitchen, and I could see the smoke. Like, a fair bit of

smoke, coming around the corner from the

hallway.

WALSH: So, the smoke wasn't in the kitchen where the microwave was?

RICHARDSON: Definitely not. I could actually look over the island bench, over the top of the microwave. And, there was already a bit of smoke in there.

WALSH: What type of smoke?

RICHARDSON: It was - it was - it was different. It was, like, a - it wasn't dark. Yeah. It wasn't dark smoke. But, it's hard to say, because that window's pretty severely tinted.

WALSH: How much smoke was there?

RICHARDSON: There was - there was - it was along the roof, and it was moving - like, it looked like it was - it almost looked like water. But, as it came around the corner, there was a lot. Probably - maybe a foot thick. Probably a bit more.

WALSH: Where did it look as if it was coming from?

RICHARDSON: Well, it was definitely moving from the hallway.

WALSH: Okay.

RICHARDSON: Or, from the front entrance, or from the library area. But, around that - where the kitchen - what do you call it? Like, a run? The kitchen run comes out, and it stopped where the island bench was. And, I looked over that way, and it was coming around the corner.

WALSH: What did you think at the time?

RICHARDSON: I shit myself. I absolutely - that's - on the spot, grabbed my phone, called ooo. I didn't know what was going on.

WALSH: And, where were you when you were doing that?

RICHARDSON: Right there. I didn't move. As soon as I saw it, I stopped, and I didn't move my feet until I called them.

WALSH: So, where was that?

RICHARDSON: Just outside the kitchen. That's the window that goes up into the ceiling. Yeah.

WALSH: Okay. And, what happened then?

RICHARDSON: I turned around, and 'cause the - like, when I spoke to 000 - I was talking to them as I was walking. And, I went back up. And, I was walking in the other way, I could see smoke coming through the area between the ballroom, which is sort of a separate building under the same roof, and the laundry end, where the server is on the other side. And, smoke started coming through there. Like, out - like, a lot of smoke started coming through there. A lot of smoke. Like, a lot.

WALSH: Give me some type of timeframe between you first noticing the smoke, dialling 000, and you noticing the smoke there.

RICHARDSON: It probably would have been 30 seconds that I dialled 000. Because, my phone was in my hand and it was open. As soon as I saw the smoke, that's the first thing I did.

WALSH: Yeah.

RICHARDSON: I knew straight away, as soon as I saw the smoke, that's not right. There was that much of it. It was just not right. And - and, what was the next thing?

WALSH: And, when you described seeing more smoke.

RICHARDSON: Probably - it wouldn't have been, maybe, a minute. Like, I've just turned around, and started walking up the other end. And, it was just coming through.

WALSH: And, you're still on the deck?

RICHARDSON: I'm still on the veranda.

WALSH: Still on the veranda.

RICHARDSON: Yeah.

WALSH: Okay. What did you do then?

RICHARDSON: Then I started to panic. I went up to go, and go through that area where the smoke was coming from, to see what was going on. I knew in my head that I had to go up and open the gate for the firies, 'cause it was locked. So - but, as I got closer to that corner, I could see that I wasn't going to go through there. So, I went right around the ballroom, and came back down the other end. And, I went onto the bridge of the pool.

WALSH: Okay. So - - -

RICHARDSON: And, then there was lots of smoke.

WALSH: Okay. So, take me back to where you were before you moved?

RICHARDSON: Can I draw it?

WALSH: Yeah. What did you do when you were there?

RICHARDSON: What do you mean, sorry?

WALSH: Well, did you look? Did you assess? Did you - when you walked inside to look a bit closer, just tell me what you saw, exactly.

RICHARDSON: I didn't walk inside.

WALSH: You didn't go inside? Okay.

RICHARDSON: No.

WALSH: Sorry.

RICHARDSON: No, I was on my way to the keypad alarm. But, when I saw the smoke, I dialled 000 and turned around and went the other way.

WALSH: Okay. So, you never went into the house when you saw the smoke?

RICHARDSON: No, sir. Definitely not.

WALSH: No. And, why was that?

RICHARDSON: Because, I saw the smoke.

WALSH: All right.

RICHARDSON: There was heaps of it. So, I went around the other way. Well, that's where the switchboard is, and that's where the master switch is. And, there's a fire extinguisher there, and all sorts of bits and pieces. I don't know. So, I went around the other way, and then I saw the other smoke. And, then I really panicked. And, then I went right around the ballroom, to try and see what was going on. Because, I never saw any flame, or anything. So, I thought, "This is - we've just got to put this out, quickly."

WALSH: At the time, where do you think the smoke was coming from?

RICHARDSON: Well, the first - the first time, when I first saw it was coming out of the hallway, or the entrance way. And, then when I - second was coming through the breezeway. But, I couldn't, sort of, see where it was coming from. It was definitely going through the breezeway from north to south.

WALSH: What did you think at the time?

RICHARDSON: I just absolutely freaked out.

WALSH: Okay. But, did you think - - -

RICHARDSON: I've got to put this out quickly.

WALSH: Okay, yeah. That's what I'm getting at. What did you think?

RICHARDSON: Yeah, that we've just got to put this out

quickly. I can't wait for the firies, I've just got

to put this out quickly.

WALSH: So, what did you do?

RICHARDSON: So, I went around - when I went up to that breezeway area, I could see there was a lot of smoke. Like, a lot of smoke coming out. Starting to really come out. So, I've gone all the way around the ballroom, and then I've come down, and then I've gone - and, I could see that that whole area was full of smoke, where the server room was, and looking into where our bedroom area is. So, I've gone out onto the bridge, because there was a hose there. I had a big hose wrapped up there, with an inch hose. Excuse me. With - from - it was a bore water hose. And, I - and - but, then there was just so much smoke, I didn't know what to do. So, I've gone out over the bridge, down the walkway, and my car was in the carport. No, it was in the driveway area. So, I've gone and got in my car, and I've gone and driven out and around, and trying to see if I could see something, or what was going on. Just trying to get an idea of what the hell was going on. And, the smoke's really starting to - it's - it's - what's the best way to describe it? It's building. It was accelerating.

WALSH: So, what did you think?

RICHARDSON: I thought I had to go and open the gate for the firies. And, then I - as I drove around, I thought, "No, I've got to go and turn the power off." 'Cause, that was my first - like, that's what I wanted to do. So, as I drove around, the first time I came back around and I parked on the driveway, and I ran over to the switchboard, and I turned the power off. Just hit the master switch in the carport.

WALSH: Okay. And, how long are we now after - so, now, you're in the carport, between the alarm going off - - -

RICHARDSON: Not very long.

WALSH: Roughly?

RICHARDSON: I don't know. Not long. As long as it took me to get around the ballroom onto the bridge. I stood on the bridge for a little bit, just trying to work out to do. What the plan was. And, I'm going - I was quite shaken, and panicked.

WALSH: Are we talking, like, five minutes?

RICHARDSON: I don't think so. It would have been less than that.

WALSH: Just a rough - - -

RICHARDSON: I have no idea. I've got no idea. It's impossible to say. As long as - I went around the ballroom quite quickly. Like, I ran.

WALSH: You ran around the ballroom?

RICHARDSON: Yes.

WALSH: Okay. And, when you're running around the ball - what was the purpose of you running around the ballroom?

RICHARDSON: To get around the other side, to find out where the smoke was coming from.

WALSH: And, when you got around the other side, where did you think the smoke was coming from?

RICHARDSON: Sort of coming from that bedroom area, where the server area is. Well, that's - it was just smoke there. I don't know if it was coming from there.

WALSH: Yep.

RICHARDSON: But, it as a lot of smoke there.

WALSH: Okay. And, was the smoke high up, low down?

RICHARDSON: No, it was starting to - it was probably half way down, then. And, that's when I knew I couldn't get to the switchboard.

WALSH: Okay. And, was the furniture close to the server room.

RICHARDSON: No, not really.

WALSH: Not really?

RICHARDSON: No, not at all.

WALSH: Okay.

RICHARDSON: Well, there was nothing in our bedroom.

WALSH: Yeah.

RICHARDSON: Except one cabinet in the corner. Glass cabinet in the corner, and the two - I think there was the two glass - what do you call them? Bedside tables next to it. But, no, that whole room was cleaned. It was polished, as well.

WALSH: Okay.

RICHARDSON: And, our ensuite was empty, and obviously our - what do you call it - walk in robe was right there. Like, on the other side of the server room was our walk in robe. But, I'd already taken out all our clothes. And, I'd cleaned it all, and all the shelves, and racking, and everything.

WALSH: Okay.

RICHARDSON: And, I'd already detailed and sterilised the bathroom.

WALSH: So, my understanding is, you went to let the firies in. You mentioned about letting the firies in?

RICHARDSON: Yeah. When I turned the switchboard off, I  
went back around the house.

WALSH: Yeah.

RICHARDSON: And, then as I came around the other side, I took off up the hill. And, I went and drove up. Straight up. I waited for the gate. I went up, and then I unlocked the gate. And, as I was coming back, on top of the hill, you could see - I could see the fire through the roof.

WALSH: So, which gate are we talking about?

RICHARDSON: Just that double gate down there.

WALSH: The gate with the pin code?

RICHARDSON: Yeah.

WALSH: Okay. The gate. Okay. So, that's the gate that you opened, is it?

RICHARDSON: Yes.

WALSH: 'Cause, there's a number of different gates.

RICHARDSON: No, I went through that gate. I waited for it to open on - you know how you drive onto the thing?

WALSH: Yep.

RICHARDSON: And, then it opened. I waited - 'cause, it's pretty slow. And, then I - it was the gate - the Wirraway gates that I had to unlock.

WALSH: The main gate with the W on it?

RICHARDSON: Yes. We always locked them. Because, you know, for security reasons. Always.

WALSH: Okay. How long did it take you to get up to the gate, roughly?

RICHARDSON: I - I absolutely flew. I would have been doing 100 kilometres an hour by the time I got to the top of the hill. Probably more.

WALSH: Okay. Can you give me a time? Put a time around that?

RICHARDSON: As long as it takes to drive from there to - well, from that gate, and it opens, as fast as I could up the hill. I don't know. 35, 42 seconds.

WALSH: Okay. Okay. And, then what did you do when you got to the main gate?

RICHARDSON: I opened the main gate, and left it open. Both - I opened both gates. One kept coming closed. Like, not with the wind or anything, it sort of kept, just, on the angle of the gate, it kept closing. So, I got back out of my car, and I put something there. Like, there was a bit of stick there, or something. And, I got back in my car, and I drove - went - came back. And, as I came to the top of the hill, that's when I saw it.

WALSH: Okay.

RICHARDSON: That's when I - that's the first time I saw

flames, really.

- WALSH: Where did you see flames?
- RICHARDSON: Through the roof.
- WALSH: What part of the roof?
- RICHARDSON: The southern side. I don't know roughly where it was, 'cause it was dark. But you could see - probably about halfway along the house..."

(underlining added)

[417] On 4 July 2018, Mr Richardson through his solicitors, gave answers to specific questions and marked on a plan of Wirraway marked number 5 what he allegedly did that night. I have combined the questions and answers below,<sup>[65]</sup> and at the back of these reasons, I reproduce the plan marked number 5, and I have also marked it

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<sup>[65]</sup> Doc ID CHU.002.002.1003. The contents of the extract from Annexure "A" to the letter from HWL

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Annexure "A":<sup>[66]</sup>

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<sup>[66]</sup> For ease of reference, the questions are displayed in *italics* and the corresponding answers are in **bold**.

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*"91.Q Without limiting your response to questions/requests 69 and 70 above, please indicate on the enclosed document marked Floor Plan 5 where exactly you went from the time the alarm sounded until the time the first emergency services (ambulance or fire service) arrived at the Property on 28 December 2016.*

**91.A Refer to Floor Plan 5. That is to the best of my recollection.**

*92.Q In addition to indicating your movements on Floor Plan 5, please provide a detailed description of your movements and precisely what you observed to have occurred in relation to the fire (and smoke from the fire) between the activation of the smoke alarms and the attendance of emergency services. In your description, please address the following:*

...

*d.Q Where were you situated when you first saw smoke after the fire alarm activated? Where was smoke coming from at that time? How much smoke was there?*

**d.A I was on the veranda outside the kitchen window and there was a substantial amount of smoke that I could see moving along the ceiling above the dining room;**

*e.Q When you drove around the house, how many laps of the house did you do?*

**e.A Two laps. On the first I went round and turned off the power in the carport and I did a second lap to make sure the gate was open for the fire brigade;**

*f.Q When did you first notice the flash from the skylight (on your first lap of the house or after)?*

**f.A I do not recall;**

g.Q *What did you see on your first lap of the house (please*

*provide detail in relation to any smoke, fire or flashes*

*seen)?*

g.A **I do not recall;**

h.Q *What did you see on any other lap of the house?*

h.A **I do not recall the detail of what I saw. I was in shock and panicking. I can picture seeing a massive amount of smoke and some flames and that is about all."**

418. There are three material divergences in the Triple-o call and the later accounts.

419. The first is that in the Triple-o call, Mr Richardson says "I was just finishing doing some cleaning and the fire alarm went off."

420. In the subsequent versions, Mr Richardson was in bed and not quite asleep. He had finished the cleaning at about 2.30 am, had a shower, taken a video about 15 minutes prior to the alarm, and then gone to bed.

421. The second is that in the Triple-o call, Mr Richardson says, "...the fire alarm went off and I walked inside and it's smoke everywhere." This occurs right near the start

of the call when the subsequent versions have him at the kitchen window. Further, the subsequent versions have Mr Richardson in bed when the alarm goes off, and he was not seeing smoke or smelling smoke at that stage.

422. The third is that at approximately 52 seconds into the Triple-o call, Mr Richardson

said, "I can see the flame now, I'm just walking around. Oh mate it's huge." I have

listened to the tape and have formed the view that the words "it's huge", were

referring to the flames he saw, no doubt, in conjunction with smoke.

423. In the subsequent versions, Mr Richardson identified with specificity that he had not seen flames until much later. Flames were only identified as having been seen at a time after when he had eventually travelled down to the front gate of the property and opened it for the fire services.

424. There was a time when Mr Richardson said he saw a glow through a skylight when he was driving around the house for a second time. Again, he did not see flames but only a glow in the skylight.

425. This glow through the skylight was not said by Mr Richardson to have been seen by him whilst he was on foot. It was suggested in argument that this could have been seen whilst Mr Richardson was on the phone and on foot. I reject this contention. It could not have physically occurred. The skylight being referred to was the one above the ensuite and the main bedroom. That is on the eastern side of the residential portion of Wirraway and could only have been viewed from the eastern side looking west. That skylight is broadly above the laundry and ensuite which is situated off the breezeway in the residential portion of the house on the eastern side. It cannot be seen from the verandah due to the ceiling and roof structure. The eastern verandah has security mesh all along its length with metal gates at an exit point from the verandah. Those metal gates were found to be chained shut by the fire team when they arrived. There would have been no opportunity for Mr Richardson to have exited the residence from the eastern verandah in order to see the glow in that skylight whilst he was on the Triple-o call. In any event, none of the statements suggested that he did this on foot.

426. There is a skylight on the opposite side of the roof above the main bedroom, but it is not the skylight referred to in the later version, and it would have been angled away from a viewer in the pool area.

427. A Triple-o call would usually represent the best contemporaneous record of what Mr Richardson says he was actually observing at the time. I do not agree that Mr Richardson was overcome by the event. He spoke clearly on the phone and was not overcome by emotion.

428. The material differences in the versions are notable.

[429] Counsel for the applicant asked rhetorically, what possible reason or adverse inference could be drawn from the inconsistencies?

430. One answer would be that if the fire had simply been in the roof space of Wirraway at the time of the call, then flames would not have been seen.

[431] If Mr Richardson saw flames, then the only real explanation for this is that the flames would have existed between the floor and the ceiling. If the fire had existed in the hallway space where the furniture had been stacked, then it is possible that Mr Richardson could have seen those flames. He could have done so by having proceeded down the breezeway or around the ballroom until he was outside the main bedroom on the northern side of the residential portion of Wirraway. There are French doors to that bedroom which Mr Richardson had told Mr Holohan were open at the time of the fire. If the main bedroom door to the hallway was open, then the hallway and stacked furniture would have been visible. Any flames could not have been visible from the ESC, as the fire crew observed that the wooden doors to the ESC had not been penetrated by flames more than 27 minutes later.

432. The respondent contends that the change in the versions is conduct amounting to a consciousness of guilt. That is, Mr Richardson appreciated that by saying he could see the flames at ground level, he was identifying evidence which would have pointed to a fire in the furniture in the hallway, which was deliberately set by him. The respondent submitted that by lying in the subsequent versions, Mr Richardson was attempting to divert attention from the hallway as a likely point of ignition.

*(e) Outdoor furniture*

[433] There was a suggestion by the respondent that the outdoor furniture had been moved into the house simply to provide fuel, and that there implicitly was no other reason for it being inside. This particular argument ought to be rejected.

434. Mr Brook, in an interview with the loss adjuster Mr Walsh, had identified that a range of furniture had been stacked in the house. He gave examples of lounges, tables and chairs and all the outdoor furniture from the verandahs. He said the stacking had started on Christmas Day. He indicated the verandah furniture was stacked inside because the verandahs were being hosed off the next day, being Boxing Day. In oral evidence, Mr Brook confirmed he had seen that the verandahs had been hosed off after Christmas. Mr Leeson had seen a similar cleaning of the verandahs.

435. There was a logical reason for the outdoor furniture to have been stacked in the hallway inside of Wirraway.

*(f) Mattress*

436. It was said by the respondent that the single photograph which shows the front end of the stacked hallway from the kitchen end showed a mattress was present. It was submitted that it was common ground that there was no bed frame stacked in the hallway. The suggestion was that the mattress was deliberately stacked so as to provide fuel for a deliberately lit fire.

437. The contention that it was common ground that there was no bed frame was said to have arisen in the applicant's opening. I do not accept that the applicant had accepted that there was no bed frame anywhere in the hallway in its opening.

438. In the items claimed as destroyed chattels, there was a bedhead claimed from the main bedroom, and from the girls' bedrooms there was a Sammy bed, trundle beds, and a mattress claimed.

439. The single picture which exists does not allow a visual assessment of the majority of the items stacked in the hallway.

440. The respondent has not established that there was no bed frame or bedhead present, in the stacked furniture. Given the findings I make in the quantum section below, I am satisfied that there was the bedhead and bed frames I have identified above stacked in the hallway.

*(g) Alleged "lie" about the identity of the insurer*

[441] The respondent sought to rely upon the allegation that Mr Richardson had purportedly lied in his interview with Mr Walsh about his lack of knowledge of the insurance policy. The relevant exchange relied upon was as follows:[\[67\]](#)

[67] The contents of this extract from the transcript of the Record of Interview between Mr Walsh, the Chubb Investigations Manager, and Mr Richardson dated 6 February 2017 are precisely replicated, including any typographical and grammatical errors.

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“WALSH: Do you know - the insurance policy, the Chubb policy - - -

RICHARDSON: Yeah. Yeah.

WALSH: - - - who took it out?

RICHARDSON: I don't know. Leon or Miranda.

WALSH: Okay. Okay.

RICHARDSON: I didn't know we were insured with Chubb.

WALSH: Who did you think you were insured with?

RICHARDSON: I don't know. I didn't think - I didn't know Chubb was in - I didn't really have much to do with the insurance.”

442. The applicant says that when asked on 6 February 2017 a direct question as to when he first became aware that Chubb was the insurer, Mr Richardson responded that this was when Mr Bennett had provided him with the policies on 16 December 2016.

443. I also note that in the police statement taken on 28 December 2016 (the day of the fire), Mr Richardson expressly stated that the policy was a Chubb policy and stated that the policy limit for the destruction to the buildings and structures was \$10,024,000.

[444] I am not satisfied that on this issue Mr Richardson was lying to Mr Walsh on 6 February 2017. The extract set out above was consistent with him saying that he was not involved and did not know who the insurer was at the time the policy had been taken out. Both before and after his 6 February 2017 meeting with Mr Walsh, Mr Richardson made statements identifying that he knew the name of the insurer at the time of the fire.

(h) Alleged “lie” about why certain furniture had been moved to shipping

*containers prior to the fire*

445. The respondent sought to rely upon what were said to be inconsistent accounts by Mr Richardson as to why he had removed the furniture from the house prior to the date of the fire. These were said to be lies demonstrating a consciousness of guilt in respect of these different versions.

446. It was uncontentious that furniture had been moved by Mr Richardson in the days prior to the fire down to shipping containers housed in a hangar.

447. Prior to the fire, Mr Bennett had seen two shipping containers in a hangar which had furniture in them. Mr Bennett asked Mr Richardson why the furniture had been removed from Wirraway. Mr Richardson responded that he and Mr Brook had moved the furniture and loaded it into the container so that Mr Richardson could clean and polish the floor.

448. Mr Brook, via his affidavit and also his police statement, identified that furniture had been moved out by himself and Mr Richardson, together with boxes of items belonging to Mr and Mrs Richardson and their children.

449. Mr Brook had told police on 13 October 2017 that Mr Richardson had told him that they were moving the furniture out of the house because buyers on an inspection had said they wanted the furniture to remain in the house when it was sold, and he wanted to keep it himself. This was said to be untrue.

450. The subsequent lie relied upon for the submission of a consciousness of guilt was the statement made to Mr Mitchell, the insurance broker. When Mr Richardson contacted Mr Mitchell on 28 December 2016, Mr Mitchell accepted that their exchange had occurred to the following effect:[68]

[\[68\]](#)

“On the morning that he called me, he did say that a lot of the contents were out of the house because they had it ready for sale.

...

On the morning when I first spoke to him, he mentioned that a lot of the contents were out because they were getting ready. They’d actually had a sale - a contract fall through, and they’d already started moving things out in preparation for that settlement.”

[451] Again, it was submitted by the respondent that the explanation given by Mr Richardson for the removal of the furniture was untrue.

452. Finally, the real estate agent Mr Forrest gave evidence that he had never discussed with Mr Richardson the removal of furniture before an inspection. At a general level, Mr Forrest agreed that the removal of furniture would be disadvantageous if that had been done.

[453] My understanding of what Mr Forrest was saying was that a furnished house presented better than an unfurnished house. It was not a comment on how furnished the house should be.

454. The contention of the respondent was that Mr Richardson had removed the chattels he wished to keep in anticipation of burning Wirraway down. The false stories were lies told to conceal this. I will deal with this further in my conclusion.

*(i) End of life video*

455. Mr Richardson made a video recording prior to taking his own life.

456. The applicant seeks to rely on the contents of the video recording to the extent it contained an express statement that he did not cause the fire.

457. The applicant submits that as this was his last statement, there is no reason why he would have lied about the matter at this stage.

458. I do not accept this submission. While I did not have psychiatric or psychological expert evidence in this case, I was able to form my own opinion of the nature of Mr Richardson from the evidence which was received.

459. Based on this evidence, I find that Mr Richardson was a self-centred narcissistic man. He was, when it suited him, dishonest or prepared to engage in misleading and deceptive conduct.

460. I note from the video recording that whilst he, at a shallow level, seems to accept that he was not a perfect man and had done wrong things in his life, he used the video to again blame a whole range of people for where he ended up in his life.

461. This included blaming and attacking his former wife and his father.

462. The only persons who Mr Richardson spoke positively about in the video were his children and the woman he had been in a relationship with in the months prior to his death.

463. If Mr Richardson had, in truth, been the person who had deliberately lit the fire in Wirraway on 28 December 2016, he consistently denied having done so after the event. He did not strike me as the type of man who would suddenly confess to having done it as some form of dying declaration. This video recording was no doubt produced in part for his children to potentially view at a later stage and it is unlikely he would have confessed to having engaged in this conduct. Such a confession would have diminished him in the eyes of his children, and his self-centred and narcissistic personality was unlikely to have motivated him to make such a confession.

464. I treat this video recording simply as a neutral factor. It neither supports nor detracts from the assessment of probability that must be undertaken as to whether Mr Richardson deliberately lit the fire at Wirraway.

**Conclusions on the instigation of the fire**

465. The starting position is to once again recognise the principles which are applicable to the decision-making process in a civil case which relies on circumstantial evidence in support of a finding of serious conduct amounting to a criminal offence. The onus firmly lies on the respondent in accordance with the *Briginshaw* principle. [I have previously set out the relevant legal principles and I do not intend to repeat them in full here.](#)

466. I have concluded in this case that the circumstantial evidence supports a finding that Mr Richardson deliberately lit the fire at Wirraway in the early morning of 28 December 2016, and that fire caused the loss which the applicant seeks the Policy to answer for. My reasoning is as follows.

467. First, I will deal with motive and opportunity.

[468] There was obviously opportunity for Mr Richardson to light the fire. The fire occurred at a time when he was the only person in the residence.

469. I am also satisfied that there was a reasonably strong motive to have started the fire.

[470] For the reasons that I have previously set out, the financial positions of Mr Richardson, PGS and PBR were dire, and Mr Richardson was financially desperate by the end of 2016, as he had been for some time. The fact that there was some \$900,000 still available in the two corporate accounts does not alter this conclusion. It is but part of a larger financial picture which emerges by an analysis over an extended period before the fire.

471. I am not satisfied that the NAB's preparedness to extend the facilities again until the

end of January 2017, with the possibility of a forbearance deed, alters the dire position. As I have found, Mr Richardson would not have believed that there was a reasonable possibility that either Ms Baillieu or Mr Chan were going to inject further funds into PGS after 28 December 2016, or that he could meet the conditions required for the in principle forbearance deed to go forward.

472. I find that Mr Richardson would have known that PGS, PBR and himself were in significant financial danger as at 28 December 2016.

473. They had been for some time, and Mr Richardson had only been able to stave off the NAB because of the monies he had obtained from Ms Baillieu in the sum of \$4 million.

474. Added to this is evidence relevant to what I have called the other side of the motive equation. Mr Richardson had obtained all of the insurance policies associated with Wirraway earlier in December 2016. On the day of the fire, he had a discussion with

Mr Mitchell, the insurance broker, where he said words to the effect, "I think the house is underinsured. I couldn't rebuild the house for \$10.5 million. There are only

two builders in Australia who would be qualified to undertake the rebuild."<sup>[69]</sup>

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<sup>[69]</sup> Affidavit of C Mitchell dated 16 September 2022 at<sup>[39]</sup>.

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475. That statement indicated a knowledge of the limit of the Policy, namely something under \$10.5 million. I also note that on the same day of the fire Mr Richardson was able to tell the police that the Policy was with Chubb and it was for \$10,024,000.

476. In circumstances where Mr Richardson held a belief on 28 December 2016 shortly after the fire that the cost of reconstruction was beyond the total of the insurance coverage, then the burning down of the house offered him the opportunity of a better return than the sale of the house at \$10 million, less real estate commission and legal fees.

[477] A payout of the full proceeds of the insurance policy would have produced a payment of an amount figure slightly more than a sale of Wirraway at the \$10 million figure would have produced. The sale figure of \$10 million was the realistic sale figure then known to Mr Richardson. In addition to receiving the proceeds of the Policy, the property on which Wirraway stood, which included the guesthouse, would still remain. The proceeds of the Policy would themselves come close to paying out the NAB, and Mr Richardson would still have been left with the property and an ability to continue to reside at the property in the guesthouse.

478. The applicant makes the point that if a person were to commit arson, there would be the risk that any payment from the insurance company may be delayed, significantly or entirely if the claim was denied based on the relevant exclusion. Further, there would be the risk that the person who instigates the fire may be criminally prosecuted and ultimately convicted. These were contrasted to the prompt certainty of obtaining the \$10 million on a sale of the property to the apparently ready buyer.

[479] These are certainly risks which exist and would provide counter reasons for a person not to commit arson. They are factors that I will consider as part of the determination process. However, they do not remove the objective fact that there was a reasonably strong financial motive to instigate the fire.

480. The existence of a motive is a matter which forms part of the overall united force of all the circumstances put together when deciding whether an inference is to be drawn that Mr Richardson instigated the fire. However, I note the caution which the authorities urge in respect of the use of motive and opportunity in a case such as the present. As Meagher JA stated:<sup>[70]</sup>

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<sup>[70]</sup> *NRMA Insurance Limited v Collier* (1997) 9 ANZ Insurance Cases 61-337.

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“...motive and opportunity, either together or in isolation, are not factors of overwhelming weight in this class of litigation.”

481. In *Trimboli & Ors v Royal Insurance Australia Limited*, Rogers J also urged caution on too ready a reliance on the existence of motive. He approved comments made in an earlier decision to the effect that:<sup>[71]</sup>

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<sup>[71]</sup> *Trimboli & Ors v Royal Insurance Australia Limited* (1983) 2 ANZ Ins Cas 60-500.

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“[S]uspicion, too readily excited by the appearance of supposed inducement, is incompatible with that even and unprejudiced state of mind which is indispensable to the formation of correct and sober judgment. While true it is that frequently, imputation and strong circumstance...lead directly to the door of truth, is equally true that entirely to penetrate the mind of man is out of human power, and that circumstances which apparently had presented powerful motives, may never have acted as such.”

482. These are part of the principles I will apply in coming to the ultimate determination.

483. I note that Rogers J went on to say that when considering motive, one must look at the person who is allegedly possessed of them, and that motives can only be operative when they are joined together with a second personality.

484. I simply pause to note in this case that I have found Mr Richardson to have been a self-centred and narcissistic man who, in his commercial dealings, was prepared at times to act dishonestly and engage in misleading and deceptive conduct. He was a strong user of illicit drugs and was, at times, a violent man. In the period leading up to the fire, his wife (together with the children) had left him, he was at times exhibiting significant aggression and hostility, he was expressing sadness and loneliness and, at times, was making statements consistent with suicidal ideation.

[485] During this period, Mr Richardson was likely to have been using significant quantities of drugs, particularly methylamphetamine.

486. The evidence did not support that Mr Richardson had any medical psychosis on the morning of 28 December 2016. He was able to interact in a clear way with the Triple-o operator, Mr Mitchell the insurance broker, and police later on that day.

487. Nonetheless, these various features or aspects of Mr Richardson described above were manifesting in the period leading up to the fire. Whilst I cannot penetrate the actual mind of Mr Richardson, these factors support a finding that he was in an unstable state where he was capable of doing things which would favour his position over that of others, even if those things were immoral or anti-social.

488. Secondly, I turn to the outcome of the analysis of the expert evidence in relation to the potential source of the instigation of the fire.

489. Put shortly, that expert evidence did not, in my view, establish that the fire could only have been started by human instigation. There were other possible innocent modes of fire instigation which had not been excluded as being fanciful. They were:

- (a) a fire in the roof space via a hot joint;
- (b) a fire in the ESC by a hot joint; or
- (c) a fire instigated by mechanical damage to a sconce light in the hallway, possibly creating a hot joint or other heat source.

490. The fact that the expert evidence could not exclude these innocent instigation modes does not mean that the circumstantial case must fail.

491. Thirdly, the material inconsistencies between the Triple-o call and the subsequent versions given by Mr Richardson did, in my view, constitute lies which showed a consciousness of guilt.

492. I have made the finding that those inconsistencies were lies. The statements made in the Triple-o call were clear and unconfused. They purported to be evidence of what was being experienced by Mr Richardson at the time. The Triple-o call was recorded, so the quality of that evidence is strong for that reason.

493. Equally, the statement made to the police was in writing, and was made on the day of the fire. For that reason, the police statement was contemporaneous with the fire, and was again recorded in emphatic terms and was not simply evidence of a recollection years after the event.

494. The answers given to Mr Walsh, the loss adjuster, were recorded by Mr Walsh to

Mr Richardson's knowledge. The interview was less than two months after the fire.

The transcript of the version given on that occasion was again strong contemporaneous evidence and was not reliant upon the memory of Mr Walsh or Mr Richardson years after the event.

[495] The lies told by Mr Richardson in the subsequent versions were, in effect, the

fabricating or concealing of evidence. Of course, Mr Richardson's lies did not prove

the opposite of his untruthful evidence. But they are capable of being probative of the critical issue as they may show that Mr Richardson lied because he knew that the truth of the matter would implicate him in the offending conduct in question.

496. In this case, if Mr Richardson had lit the fire in the hallway, there would have been good reason for him to alter his version of events such that he was no longer identifying having seen flames. As I have explained above, the identification of flames would likely have been in respect of flames in the hallway area, and would have supported ignition in an area Mr Richardson could easily access and where a fuel load existed.

497. I take into account that I must consider whether there is an alternative explanation for the lies which I have found were made. In particular, it is said by the applicant that Mr Richardson would have been exhausted at this time after having worked for many days and being woken up in the early hours of the morning to be presented with a fire event and all the confusion that might be associated with such a discovery.

498. I do not accept that contention in the circumstances of this case.

499. As I have said, I have listened to the Triple-o call carefully and I do not discern a lack of clarity, exhaustion or confusion on the part of Mr Richardson. He is clear in what he is saying about what he is observing. He speaks in a way which causes me no concern about his ability to observe and describe what he saw.

500. In saying this, I obviously do not accept the truth of that part of the Triple-o call which suggests that Mr Richardson did not know how the fire started.
501. In relation to any suggestion of panic, I do not accept that if Mr Richardson had not started the fire that he would have panicked and given the different subsequent versions.
502. If Mr Richardson was innocent, he would not have known what the cause of the fire was, and I think it unlikely he would have gone through some panicked reasoning process that he should construct such a significantly different and detailed version.
- [503] Fourthly, I refer to the motion detector evidence in the room in which Mr Richardson said he had been sleeping. In my view, this evidence is neutral. That evidence does not establish that he was in the bed. All that it establishes is that three seconds after the alarm goes off there is movement in that room. There is a door from that room into the hallway. It is equally open, in my view, that Mr Richardson was in the hallway igniting the fire and he then proceeded into the bedroom shortly after the smoke alarm had gone off.
- [504] The applicant submitted that this was unlikely because of the fuel load in the hallway and the danger which would arise from him having lit the fire. Whether there was any immediate danger to him in that location cannot now be determined. If, for example, he had spread the accelerant towards the end of the hallway, then his position outside of that bedroom in the hallway may well have been a safe location from which he could ignite the fire by, for example, throwing a lighted object towards the accelerant.
505. Fifthly, I do find that the text message sent by Mr Richardson in early January 2017 where he asked his wife to destroy the photo which showed a container of isopropanol so that the photo would not be given to the fire investigator, was conduct which showed a consciousness of guilt. It is akin both to the destruction of evidence and the concealing of evidence.
- [506] I do take into account the submission made by the applicant to the effect that everyone knew Mr Richardson was using isopropanol, and in particular, Mr Brook knew. The problem with that submission is that Mr Richardson obviously thought that the fire investigator did not know at that time about the isopropanol and he did not want her to know about it. The fact that the use of the chemical came out later did not detract from the nature of his conduct at this time in early January 2017.
507. Here, the conduct is not the telling of a lie, rather it is the concealing and attempted destruction of information which Mr Richardson knew was imminently going to be given to a fire investigator.
508. This conduct, in my view, evinced a consciousness of guilt and I treat it in this way. I can think of no innocent explanation for this conduct.
509. Sixthly, I refer to the conversation between Mr Richardson and Mr Brook near the tractor, which occurred after Mr Richardson had received a call from his lawyer.
510. Again, that conversation was to the effect that Mr Richardson said:[72]

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[72] Affidavit of CM Brook dated 13 October 2017 at [55]-[59].

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“I just got off the phone to my lawyer, Bill Potts. He reckons they are going to charge one of us. He says we have to be careful because our phones will be tapped. You do the time and I’ll look after you. I’ll visit you every day...I’ve got the kids. I can’t go to jail, I need to be there for them.”

511. I also take this evidence as evincing a consciousness of guilt on the part of Mr Richardson.
- [512] I accept that he had been in a depressive state after the fire, that he had been exhibiting a level of paranoia and that he was probably taking significant amounts of drugs, however, this conversation has embedded in it an implicit admission that Mr Richardson was guilty. It reflects, in my view, an attempt at manipulating Mr Brook into accepting criminal liability for an act that Mr Brook did not commit.

- [513] Mrs Richardson had given evidence during the trial of how manipulative Mr Richardson could be. She had given evidence that in the period leading up to the fire and even after the fire that Mr Richardson would try and manipulate her to return to Wirraway. This particular conversation is another example of that type of conduct.
514. The fact that Mr Brook did not think much of it at the time and thought, at the time, that it might have been the drugs, does not change my view. When Mr Brook reflected on the matter, he did come to think that it sounded like Mr Richardson wanted him to go to gaol for him, and that he was seeking to manipulate him to do this. That type of conduct is akin to fabricating evidence. It is seeking to manipulate an innocent man into confessing to a crime which it was known he did not commit.
515. It is relevant to note that Mr Brook later went to police and gave a written statement in relation to this conversation. It is reflective of the seriousness of the event and the view which Mr Brook had come to about the nature of the conversation and what Mr Richardson was asking him to do.
- [516] The innocent explanation contended for by the applicant is that it was panicked bizarre talk by a depressed and paranoid man. I have considered this and reject it. I don't doubt that Mr Richardson was depressed and paranoid at this time, but it is clear, in my view, what he was trying to achieve. It was consistent with the manipulative nature of Mr Richardson.
517. Seventhly, the applicant says a counter to the circumstantial case is the fact that Mr Richardson had, for some time, been cleaning and maintaining Wirraway, the guesthouse and the surrounding grounds. The evidence does establish that Mr Richardson had for many weeks been doing cleaning and maintaining work, starting with the guesthouse and the surrounding grounds and then moving on to Wirraway itself. I accept that this was consistent with preparing the house and the grounds for a potential sale which the NAB was urging on Mr Richardson.
518. Further, the removal of part of the furniture and the subsequent removal of personal items in numerous boxes was also consistent with a potential sale of Wirraway, and also with the fact that there had been a separation in November 2016 between Mrs Richardson and Mr Richardson.
519. I do not regard the movement of part of the furniture to the shipping containers and the personal items to the shipping containers as factors which materially support a circumstantial case that the fire was intentional.
520. However, the fact that some furniture and personal items were removed at some time or that works were done at certain times for a potential sale do not diminish my conclusions that at some stage Mr Richardson had formed an intention to instigate the fire.
521. Eighthly, for similar reasons to the seventh point, I do not find the initial purchase of the isopropanol in the four 20-litre drums support the ultimate finding that Mr Richardson instigated the fire. Isopropanol was a good cleaning agent. I accept that there was legitimate cleaning and maintaining undertaken at some stage by Mr Richardson for the purposes of a potential sale of Wirraway which the NAB had been urging. Whilst 80 litres of isopropanol is a significant amount, it appears a significant amount had been used by Mr Richardson and Mr Brook. Based on an estimation derived from Mr Brook's evidence, he thought there were only two containers left and they were each only partially full.
522. I accept therefore there was, on the balance of probability, an innocent reason for the initial purchase of the significant quantity of isopropanol. However, as stated above, at some stage, I find that Mr Richardson had formed an intention to instigate the fire. At that point in time, the isopropanol would have been present and would have been an available accelerant.
523. Its purchase, however, was not significant as a discrete event.
524. Ninthly, I refer to the direction of Mr Richardson to Mr Brook just before midnight. Mr Richardson directed Mr Brook to return to his own residence.
525. As I have set out earlier in the reasons, I am not satisfied that I can make a finding that Mr Brook had been told by Mr Richardson that Mr Richardson was going straight to bed as he was "buggered".<sup>[73]</sup> Nonetheless, I am satisfied that Mr

[73].

Richardson requested Mr Brook to leave and go back to his own residence, in circumstances where there had been a prior arrangement between Mr Brook and Mr Richardson for Mr Brook to stay the night at the property.

526. Even though Mr Brook could not recall the date or circumstances of where that arrangement had been made, I am satisfied that such an arrangement had, in fact, been made. Mr Brook had reason to recall that it had been made because he had not on previous nights been able to stay the night because of milking commitments. The night of 27 December 2016 was different. He had no milking commitments the next morning. Mr Brook, when interviewed in the weeks after the fire, had identified that such an arrangement had been made.

527. That request, in my view, was unusual, both because of the prior arrangement and

because, on Mr Richardson's subsequent versions of what had occurred, Mr

Richardson said that he had continued to work until 2.30 am on 28 December 2016. It does not make sense that Mr Richardson would have sent Mr Brook home rather than have Mr Brook do what he was there to do, namely assist in the work.

[528] The contention raised by the applicant is that there was a good reason why Mr Brook was asked to go home, namely that the guesthouse had been previously cleaned and Mr Richardson did not want to get it dirty.

[529] I accept that the guesthouse had previously been cleaned a few days before. However, this was not an explanation which Mr Richardson gave to Mr Brook. Further, as I stated above in the reasons, it is difficult to see what mess Mr Brook could have caused from sleeping in the guesthouse which could not have easily been cleaned up the next morning. If Mr Brook had stayed in the guesthouse, he would have been immediately available to move the furniture stacked in the hallway back into the various rooms prior to the inspection which was scheduled on 28 December 2016. Sending Mr Brook away to his own residence meant that he would not be immediately available at the behest of Mr Richardson.

[530] The obvious reason why Mr Brook was sent away, contrary to the original arrangement, was because Mr Richardson had formed the view that he was going to instigate the fire.

531. Ninthly, I do not find that Mr Richardson lied to Mr Walsh about his knowledge of who the insurer was. This purported lie was said to be a lie evincing a consciousness of guilt. Simply put, I do not accept that the evidence on this matter established that what was said to Mr Walsh was a lie.

532. Tenthly, I note that there were a variety of other matters which were touched upon at various times by the respondent in support of its case. None of these matters, in my view, relevantly supported the case that Mr Richardson instigated the fire.

533. They included:

- One or more fires which Mr Richardson had instigated in 2016 for the purpose of burning off vegetation. The fires had gotten away from him. The existence of those fires were not propensity evidence which would support a finding of the instigation of the fire at Wirraway.
- That certain property had been left in Wirraway because of the suggestion of a personal animosity on the part of Mr Richardson. I find this contention to be entirely unpersuasive in respect of the ultimate finding which the respondent sought to be made.
- The timing of two alleged text messages sent by Mr Richardson to Mr Brook in the early morning of 28 December 2016. I have dealt with the basis for rejecting this contention earlier in these reasons.

534. Eleventhly, the respondent contended that the earlier request in December 2016 for all of the insurance policies for Wirraway was conduct which should be taken into account as evidencing a then existing intention to instigate a fire at Wirraway.

535. This evidence was suspicious, but there was evidence led from Mr Frost and Mr Mitchell which combined to identify that there could well have been a legitimate reason to ask for these insurance

policies. That reason is that if Wirraway was to be sold, it may have been difficult to obtain insurance for the new purchaser on the signing of the contract. It was identified that if insurance policies were provided to a new purchaser, that purchaser would be better able to seek to simply then take over the insurance policies with the existing insurer. The explanation which Mr Richardson gave to Mr Bennett at the time of his request for the policies was that effectively he wanted the policies for a contract of sale which he was doing for the lawyers.

536. The evidence on this issue, whilst suspicious, is not such as to allow me to regard the obtaining of the policies as a matter which contributes to the ultimate discharge of the onus by the respondent and the making of the critical finding it seeks.

537. The obtaining of the Policy was, however, relevant because once it was obtained there was an opportunity for Mr Richardson to see the coverage available in relation to Wirraway. That is information which was therefore available to Mr Richardson at the time at which I find he did have an intention to instigate the fire, namely by the evening of 27 December 2016 at the latest.

538. Twelfthly, reliance was placed on the video made by Mr Richardson immediately prior to his suicide. It was submitted that, in effect, it is likely that if he had instigated the fire he would have confessed to it in the video and that there was no impediment to him doing so. I have rejected that proposition earlier in these reasons. The issue was simply neutral for the reasons I have previously explained.

539. Thirteenthly, I note the submission of the applicant that Mr Richardson wished to rebuild Wirraway. It was said that Mr Richardson had a preference to rebuild Wirraway rather than take the proceeds of the insurance policy. In support of this contention, the applicant relied on the evidence of Mr Forrest in his affidavit at paragraphs [27] to [30]. This included a conversation after the fire at some time

when Mr Richardson said words to the effect, "Look, I'm probably going to rebuild

this", and Mr Forrest then wrote a draft press release on 16 January 2017 consistent

with what he then understood to be the instructions he had received from Mr Richardson. Reliance was also placed on the evidence of Mr Mitchell, the insurance broker, and the statement made to him to the effect that the house was under- insured, was not able to be rebuilt for \$10.5 million and that there were only two builders in Australia who would be qualified to undertake the rebuild.

540. In relation to that last evidence, I did not understand that statement attributed to Mr Richardson as articulating a then intention to rebuild the house, as opposed to Mr Richardson saying the house would be very expensive to rebuild, in part because only two builders in Australia would be qualified to undertake the rebuild. At best the evidence was equivocal on there being a firm intention to rebuild.

541. In relation to the evidence relied upon from Mr Forrest, I note that the press release was written on 16 January 2017.

542. In a diary note of 9 January 2017 that Mrs Richardson made of a conversation with Mr Richardson, it is evident that he was not talking about rebuilding the house. He stated, in part, as follows:[74].

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[74]. CHU.601.002.1003 at 0009/0015. This diary note extract has been directly copied, including any typographical and grammatical errors.

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" ...

- is it ok if I get the carpenter out to fix up the guest houses - c'mon,

I have live here - I have to, I have to live here. I have to spend money on the place

...

- definitely going to build down these two ends of the guesthouses,

then I can take all the furniture

...

- in 2019 onwards we should have 300 - 400 income each year

- plus we have a beautiful asset there

- then I want to build another house in a few years

...”

543. The sentiments in this note seem inconsistent with wanting the proceeds to be used to immediately rebuild Wirraway.

544. I do not accept that there was a constant preference expressed after the fire for the rebuilding of Wirraway.

545. In conclusion then, I must consider the weight which is to be given to the united force of all the circumstances I have identified and put together above.

546. I find that a consideration of the weight to be given to the united force of all the circumstances put together is such that I am satisfied they give rise to a reasonable and definite inference of arson on the part of Mr Richardson and that he instigated the fire at Wirraway on the morning of 28 December 2016. I am satisfied of this to the high degree which the *Briginshaw* [principle demands](#).

### Quantum

547. Even though an assessment of quantum is not strictly necessary given my finding on the first real issue, I nonetheless set out my findings on quantum.

548. The disputed issues on quantum in this case were greatly reduced by negotiation between the parties during the trial.

549. The quantum issues involve determinations about two different types of property.

[550] The first type of property is the recoverable reconstruction costs of the building damaged by the fire.

551. The second type of property is the recoverable replacement costs of the contents damaged by the fire.

552. I will commence with the first type of property.

553. In relation to the reconstruction costs, the only issue was whether an actual costs- based methodology should be used instead of a methodology based on the well- known costing publication, Rawlinsons.

554. The actual costs base methodology was anchored on an analysis of the actual costs incurred for the alteration and additions work done on Wirraway between 2012 and 2014. That methodology used actual invoices which broadly identified the work and actual costs. It also involved a further uplift on the calculations of those actual costs to account for inflationary effects for material and labour.

[555] The alternative methodology used data taken from the Rawlinsons publication. Rawlinsons is a well-regarded industry publication which provides estimates across a wide range of construction tasks. It often provides ranges within particular tasks. It regularly uses square metreage figures for particular identified tasks. Rawlinsons is used for the estimation of construction costs across a wide variety of buildings and structures. As a publication, it is periodically reissued so that at different points in time it will seek to reflect the then costs for construction. Inflationary effects also have to be factored in, depending on the date of the possible publication relied upon.

556. The following schedule illustrates, amongst other things, the differences between the results of the two methodologies for the reconstruction costs:

<u>Actual Costs Base Case</u>	<u>Rawlinsons Base Case</u>
<u>(Second Scenario)</u>	<u>(Second Scenario)</u>

of the reconstruction costs which went beyond the actual costs incurred for the alterations and additions.

560. Because of this gap in the information as to the value representing the retained value of the original works, Mr Paul Roberts considered that it was likely that the value of the reconstruction costs would be higher than his estimate based solely on the actual costs of the alterations and additions. He

561. Mr Perry Roberts, the quantity surveyor called by the respondent, in his report of 17 October 2022, at paragraphs [9.1] through to [9.8], in effect, agreed that there was missing information.

562. Mr Perry Roberts stated at paragraph [9.5] of his report:[75]

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[75]. Expert Report of P Roberts dated 17 October 2022 at [9.5], p. 16.

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“In other words, it is not possible to determine from the documents provided with the Paul Roberts Report how much of the original residence was retained during the 2013-2014 refurbishment, the replacement cost of which is not included in the 2013-2014 invoicing.”

563. Ultimately, Mr Perry Roberts concluded at paragraph [9.8] of his report:[76]

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[76]. Expert Report of P Roberts dated 17 October 2022 at [9.8], p. 17.

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“I have concluded that the rebuilding of the main residence is likely to be a greater scope than the refurbishment and alterations scope undertaken in 2013-2014, as the 2013-2014 alterations scope would not have included replacement of the portions of the original building which was incorporated into the refurbished design. However, I am unable to identify the additional scope or quantify the additional costs of the additional scope for the original portion of fire damaged premises.”

[564] Given that the actual costs-based methodology is inaccurate due to the missing information as to the extent and value of the retained original structure, it is more appropriate then to adopt the Rawlinsons methodology in order to arrive at the best assessment of the recoverable reconstruction costs.

565. Accordingly, on the Rawlinsons methodology, I assess the total reconstruction costs which the Policy would have answered for as being \$6,439,262.39.

566. I then turn to the second type of property, being the replacement costs of contents.

567. In relation to the lost contents, the respondent’s position is that the onus of proof lies on the applicant to establish that the claimed contents were, in fact, lost in the fire.

568. Predominantly, this is done by way of an affidavit of Mr Richardson, which was placed into evidence.

569. There are a small number of items about which some limited evidence is identified to further support that they were destroyed in the fire. This additional evidence was usefully summarised in a spreadsheet supplied to the Court by the applicant.

570. Mr Richardson, of course, has passed away and is unable to be cross-examined. On a number of other aspects, Mr Richardson’s conduct has displayed a level of dishonesty or a preparedness to engage in misleading and deceptive conduct in a commercial setting. The respondent’s submission is that Mr Richardson is therefore

[571] Whilst acknowledging this unsatisfactory aspect of Mr Richardson's conduct

nonetheless, on this issue I have accepted the evidence of Mr Richardson for the following reasons.

572. First, all the assets which are identified in the contents spreadsheet are accepted as having existed. Their quantum is agreed. These assets were, at some stage prior to the fire, at Wirraway. That much can be accepted.
573. Secondly, even though the evidence shows that some contents of Wirraway were moved from Wirraway itself to shipping containers located in one of the hangars or a shed on the property, the evidence did not identify any occasion where those items had been removed from the property prior to the fire. That is, whatever chattels had been moved into those shipping containers were open for identification immediately after the fire. Mr Richardson contacted the insurance broker, Mr Mitchell, on the day of the fire to make a claim. The insurer had representatives at Wirraway promptly thereafter. The police were interviewing Mr Richardson on the day of the fire itself.
574. There was no evidence to support that whatever chattels had been moved into those shipping containers were not present at Wirraway after the fire at the time when the insurer had representatives at Wirraway, including Mr Walsh. Whilst I am cautious not to reverse the onus of proof on this issue, where there was an active loss adjuster investigating a suspicious fire, it would have been expected that an assessment would have been made of what was still present in the vicinity of Wirraway. No evidence was presented in the form of photos or other descriptions of exactly what was in the shipping containers at that time. The respondent did not lead a positive case that any named chattel could be shown to have survived the fire. The respondent predominantly relies on the applicant failing to satisfy its onus.
- [575] Thirdly, Mrs Richardson had written correspondence to Mr Richardson in early January 2017, providing him with a list of contents to be claimed where she had already removed certain contents from the claim. Mrs Richardson exhibited to her affidavit draft notes which she made of that correspondence. In those notes, Mrs Richardson is recorded as emphasising to Mr Richardson in the correspondence that the claim for the contents needed to be accurate otherwise the claim would be in peril, presumably by the risk of falsely claiming for contents which were not destroyed within the fire. The same note records the correspondence being couriered to Mr Richardson at Wirraway.
576. Fourthly, there clearly was within the hallway at Wirraway tightly packed furniture, said to be for the full length of that hallway. The one photograph which exists only presents a view from the south looking north into the front of the hallway where a mattress, outside furniture and cushions can be seen. This photo does not assist either way as to what furniture lay behind.
577. Mr Brook gave evidence at trial that furniture had been moved and stacked from various rooms during the preceding days. He identified that it had included chairs and lounges. He had identified that some items had been moved down to the shed. He said that these were mostly in boxes and were personal things. They were transported by ute.
578. Mrs Richardson identified that at some date after the fire she was able to pick up furniture and personal effects from two of the three children's rooms. Her evidence was not specific on what had been picked up.
579. On balance, Mrs Richardson writing to Mr Richardson emphasising that the obvious risk that falsely claiming on the contents may have put the whole claim at risk, and the fact that Mr Richardson would have been aware that representatives of the insurer were quickly on the scene makes it more probable than not that Mr Richardson would not have falsely claimed the contents when swearing the affidavit.
580. I do note that one contemporaneous note produced by Mrs Richardson recorded Mr Richardson as having stated that he had told the loss adjuster that all the wine had been in the cellar, whilst in fact he had taken out at least a large portion of it and had it in a trailer which he urged Mrs Richardson to take. It is relevant to note that Mr Richardson did not end up claiming for the purported lost wine.

[581] Accordingly, I assess the total replacement costs which the Policy would have answered for as being \$198,816.15.

**Relief**

[582] Given my conclusion is that Mr Richardson intentionally instigated the fire at Wirraway in order to burn it down for the insurance proceeds, the relevant exclusion

within the Policy is met and the applicant's claim must fail.

583. Accordingly, then, the applicant's claim is dismissed.

[584] As I articulated at the commencement of these reasons, no evidence was led in support of the counterclaim which was brought by the respondent. In that circumstance, the counterclaim ought to be dismissed.

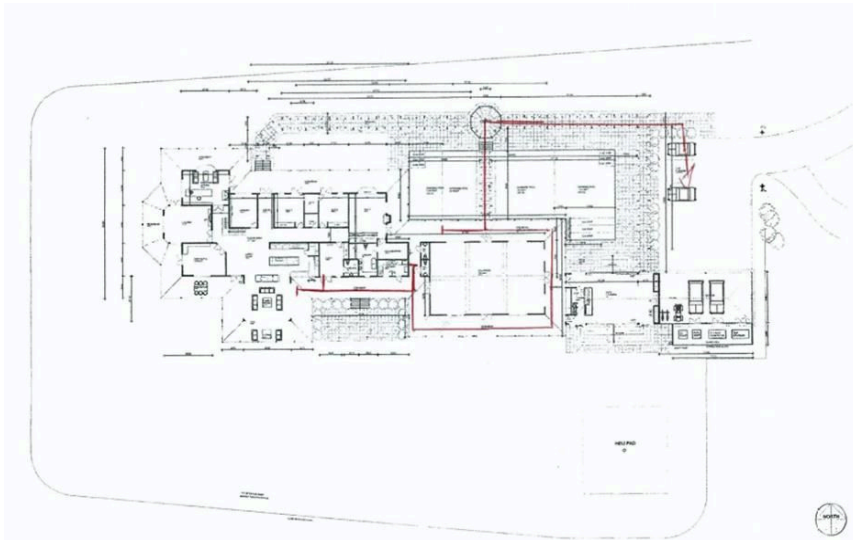
585. I will hear the parties on costs.

586. The orders in relation to both the claim and the counterclaim will be as follows:

1. The third applicant's claim is dismissed.
2. The respondent's counterclaim is dismissed.

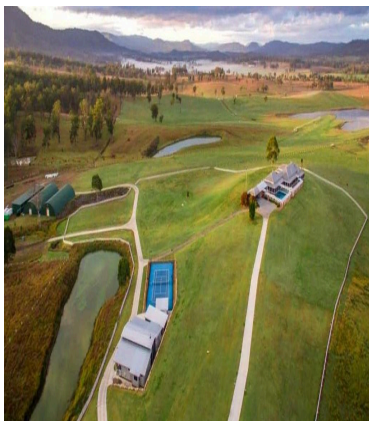
**Annexure "A"**

587. This floor plan has annotations in red made by Mr Richardson, detailing the route he took when the fire alarm went off:

**Annexure "B"**

588. These descriptions and photographs are taken from a report of Mr Holohan.

589. Figure 1 shows the general estate on which Wirraway stands. Wirraway can be seen on the hill with the guesthouse to the left, next to the tennis court, and on the far left-hand side can be seen the sheds:



[590] Figure 2 gives an overhead view of the insured residence, with labelling so as to identify the location of certain rooms:

[Child :  
s]



591. Figure 3 gives a front view of the insured residence. On the right-hand side is the residential part of Wirraway, with the ballroom in the centre part and the pool room on the far left:

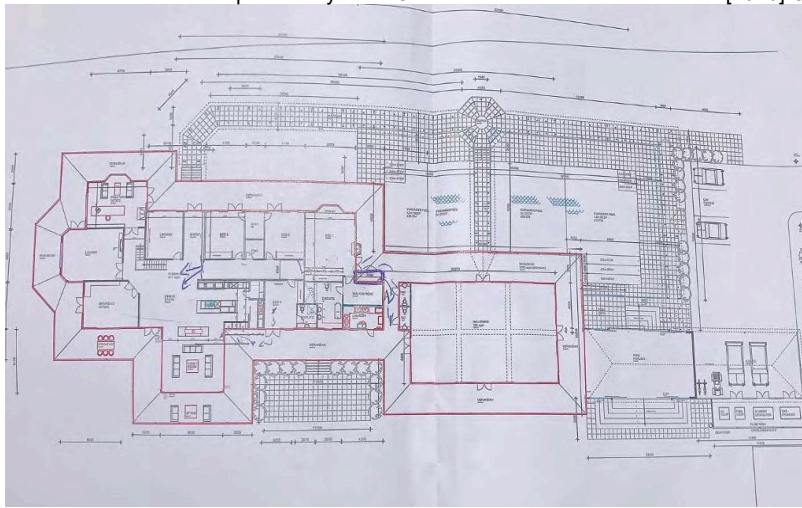


[592] Figure 4 gives a view from the other side of Wirraway. In that photograph, the residential portion of Wirraway is to the left, with the ballroom on the right and the pool room on the far right:



Annexure "C"

[593] Floor plan of Wirraway with annotations in blue by Mr Richardson during his interview with Mr Holohan. The directional descriptors in the reasons require this plan to be turned 90 degrees in a clockwise fashion:



of Torrens Title land.

Ebsworth dated 16 January 2018 and the extract from the written statement in reply from Mr Richardson dated 4 July 2018 are precisely replicated, including any typographical and grammatical errors.

Total Reconstruction	\$5,402,918.67	\$6,439,262.39
<u>Costs</u>		
Total Replacement	\$198,816.15	\$198,816.15
<u>Costs</u>		
<b><u>TOTAL</u></b>	<b><u>\$6,161,977.82</u></b>	<b><u>\$7,301,886.61</u></b>

557. I find that the appropriate value for the reconstruction costs is to be arrived at by the use of the Rawlinsons methodology. This results in a figure of \$6,439,262.39. I do so for the following reasons.

558. First, the two quantity surveyor experts both agreed that, if possible, an actual costs- based methodology would give the most accurate costs for total reconstruction. However, both experts agreed that it was not possible for this methodology to be applied across the full reconstruction costs.

[559] Mr Paul Roberts, the quantity surveyor called by the applicant, identified at paragraphs [57] to [59] of his first report of 16 June 2022 that his estimate of reconstruction costs-based on actual costs only included costs for the prior alteration and additions to the existing residence. He expressed the view that there was insufficient information via fully detailed invoices and contemporaneous diaries to effectively work out or value that part of the original building that had continued to form part of the finished product. This meant that he could not calculate the extent