

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST



No S ECI 2021 00826

Case: S ECI 2021 00826

Filed on: 20/12/2021 08:46 AM

BETWEEN

IDRIS HASSAN and HAWA WARSAME

Plaintiffs

STATE OF VICTORIA

Defendant

DEFENCE

Date of document: 17 December 2021
Filed on behalf of: The Defendant
Prepared by: **Corrs Chambers Westgarth**
Lawyers
Level 22
567 Collins Street
Melbourne Vic 3000
AUSTRALIA
Solicitors Code 9973
Tel: (03) 9672 3000
Fax: (03) 9672 3010
Ref: Daniel Marquet
DJM/AR - HEAL0021-9167813
Email daniel.marquet@corrs.com.au

Preliminary

- A. Headings used in this defence are for convenience only. They do not form part of the defence of the defendant (the **State of Victoria**).
- B. Unless the context otherwise requires, and subject to the definitions in preliminary paragraph C, the State of Victoria adopts the defined terms in the amended statement of claim dated 24 September 2021, but does not admit any factual assertions contained in, or in any way implied by, any defined term used in the amended statement of claim.
- C. In this defence, the following terms have the following meanings assigned to them:
- | | |
|----------------------|---|
| Entire Period | the period identified in paragraph 2(b) of the amended statement of claim |
| First Period | the period identified in paragraph 2(b)(i) of the amended statement of claim |
| Second Period | the period identified in paragraph 2(b)(ii) of the amended statement of claim |
- D. In accordance with principle and usual practice, the State of Victoria has not pleaded to the particulars in the amended statement of claim. Nothing in this defence should be taken to be an admission of any fact alleged in the particulars to the amended statement of claim.

To the amended statement of claim of the plaintiffs, the State of Victoria says by way of defence:

A. PLAINTIFFS AND GROUP MEMBERS

1. Save that the State of Victoria admits that each of the plaintiffs was at all times capable of suing, it does not know and therefore does not admit the allegations in paragraph 1.
2. The State of Victoria does not plead to paragraph 2 of the amended statement of claim on the basis that no allegations are made against it (but, for the avoidance of doubt, denies that any Group Members were subjected to imprisonment or total restraint).
3. The State of Victoria does not plead to paragraph 3 of the amended statement of claim on the basis that no allegations are made against it.

B. DEFENDANT

4. The State of Victoria admits the allegations in paragraph 4.
5. The State of Victoria admits the allegations in paragraph 5.
6. In respect of paragraph 6, the State of Victoria:
 - (a) admits that each Victorian Minister of the Crown was an emanation of the State of Victoria;
 - (b) otherwise objects to the paragraph because the words “an extension of, and formed part of” are vague and embarrassing; and
 - (c) under cover of that objection, does not know and therefore does not admit the allegations in paragraph 6.

C. FIRST PERIOD

7. In respect of paragraph 7, the State of Victoria:
 - (a) in answer to sub-paragraph 7(a):
 - i. relies upon the full terms and effect of what was said at the press conference;
 - ii. otherwise admits the allegations in the sub-paragraph;
 - (b) admits the allegations in sub-paragraph 7(b);
 - (c) admits the allegations in sub-paragraph 7(c); and
 - (d) says that, at about 5pm, Police Officers established a perimeter around each of the Estate Towers and otherwise admits the allegations in sub-paragraph 7(d)

8. In respect of paragraph 8, the State of Victoria:

(a) admits that, during the First Period, each of the plaintiffs and Group Members was detained at the premises in which they ordinarily resided in the detention location, or in the case of visitors the premises which they were visiting (collectively, **their premises**), pursuant to the terms of the Detention Directions referred to in paragraph 20A below (the **Detention Directions**);

(b) says further that, pursuant to the Detention Directions, the Plaintiffs and Group Members were able to leave their premises:

i. if granted permission to leave their premises:

A. for the purposes of attending a medical facility to receive medical care; or

B. where it was reasonably necessary for their physical or mental health; or

C. on compassionate grounds; or

ii. if there was an emergency situation.

(c) does not know and therefore does not admit whether during the First Period:

i. any plaintiff or Group Member was detained “against their will”; or

ii. any plaintiff or Group Member did in fact desire to leave their premises or the Estate Tower building in which their premises were situated; and

otherwise denies the allegations in paragraph 8.

9. In respect of paragraph 9, the State of Victoria:

(a) in answer to sub-paragraph 9(a):

i. admits that, during the First Period, in accordance with a request for assistance pursuant to section 202(2) of the *Public Health and Wellbeing Act 2008* (Vic) (the **PHW Act**) dated 29 March 2020, Police Officers were deployed to enforce compliance with the directions referred to at paragraph 20A below, including by preventing the Plaintiffs and Group Members from leaving their premises or the Estate Tower building in which their premises were situated unless granted permission to leave in accordance with the Detention Directions or if there was an emergency situation;

ii. admits that there was one arrest of a person who was charged with assaulting a police officer; resisting a police officer, committing an

indictable offence whilst on bail and failing to comply with a public health direction at 120 Racecourse Road, Flemington on 6 July 2020; and

iii. otherwise does not know and therefore does not admit the allegations;

(b) admits the allegations in sub-paragraph 9(b); and

(c) admits the allegations in sub-paragraph 9(c).

10. In respect of paragraph 10, the State of Victoria:

(a) says that the plaintiffs and Group Members could move:

i. within their premises; and

ii. outside their premises if granted permission to do so pursuant to the terms of the Detention Directions or if there was an emergency situation; and

(b) otherwise denies the allegations.

11. In respect of paragraph 11, the State of Victoria:

(a) admits that it caused the Plaintiffs and the Group Members to be detained by:

i. the Deputy Chief Health Officer (Communicable Disease), Ms Annaliese van Diemen, making the directions referred to at paragraph 20A below under section 200(1) of the PHW Act on 4 July 2020; and

ii. deploying authorised officers and/or Police Officers to enforce or assist in the enforcement of those directions;

(b) otherwise:

i. objects to the paragraph because the words “active in promoting and causing” are vague and embarrassing; and

under cover of that objection, does not know and therefore does not admit the allegation.

D. SECOND PERIOD

12. In respect of paragraph 12, the State of Victoria:

(a) admits that, during the Second Period, each of the Second Plaintiff and the 33 Alfred Street Group Members was required to self-isolate or self-quarantine in their premises except for the purposes specified under, or if granted an exemption pursuant to, or given clearance under, the terms of the Diagnosed Persons and Close Contacts Directions referred to in paragraph 21A below (the **DPCCD Directions**);

(b) admits that, in the premises of sub-paragraph 12(a) above, the movement of the Second Plaintiff and the 33 Alfred Street Group Members was confined and restrained;

(c) otherwise does not know and therefore does not admit whether:

- i. any Plaintiff or Group Member had their movement confined or restrained “against their will”; and
- ii. any Plaintiff or Group Member did in fact desire to leave their premises, or the Estate Tower building in which their premises were situated;

during the Second Period.

13. In respect of paragraph 13, the State of Victoria:

(a) in answer to sub-paragraph 13(a):

- i. admits that, in accordance with a request for assistance pursuant to section 202(2) of the PHW Act dated 29 March 2020, Police Officers were deployed to enforce compliance with the DPCCD Directions described in paragraph 21A below, including by preventing the Second Plaintiff and 33 Alfred Street Group Members from leaving their premises or the 33 Alfred Street Estate Tower except for the purposes specified under, or if granted an exemption pursuant to, or given clearance under, the terms of the DPCCD Directions;
- ii. otherwise does not know and therefore does not admit the allegations;

(b) admits the allegations in sub-paragraph 13(b); and

(c) admits the allegations in sub-paragraph 13(c).

14. In respect of paragraph 14, the State of Victoria:

(a) says that under the terms of the DPCCD Directions, the Second Plaintiff and the 33 Alfred Street Group Members could move:

- i. within their premises; and
- ii. outside their premises for specified purposes, including for medical care and supplies and exercise or if granted an exemption pursuant to, or given clearance under, the terms of the DPCCD Directions; and

(b) otherwise denies the allegations.

15. In respect of paragraph 15, the State of Victoria:

(a) admits that it caused the movement of the Second Plaintiffs and the 33 Alfred Street Group Members to be confined or restrained by:

- i. causing notice to be given, on 9 July 2020, to all residents of 33 Alfred Street that they would be treated as close contacts and required to isolate until 11.59pm on 18 July 2020;
- ii. the Deputy Chief Health Officer (Communicable Disease), Ms Annaliese van Diemen, making the direction referred to at paragraph 21A(a) below under section 200(1) of the PHW Act on 1 July 2020;
- iii. the Deputy Public Health Commander, Dr Finn Romanes, making the direction referred to at paragraph 21A(b) below under section 200(1) of the PHW Act on 15 July 2020; and
- iv. authorised officers and/or Police Officers enforcing or assisting in the enforcement of those directions; and

(b) otherwise:

- i. objects to the paragraph because the words “active in promoting and causing” are vague and embarrassing; and

under cover of that objection, does not admit the allegation.

E. CONDITIONS OF CONFINEMENT OR RESTRAINT

16. In respect of paragraph 16, the State of Victoria:

(a) says that:

- i. the lockdown of the Estate Towers was announced in the televised press conference referred to in paragraph 7(a) of the amended statement of claim; and
- ii. no warning of the lockdown was provided prior to that press conference; and

(b) otherwise denies the allegations.

17. In respect of paragraph 17, the State of Victoria:

(a) admits that any of the Plaintiffs or Group Members who were already on the premises of the Estate Towers at or about 5pm on 4 July 2020 did not have an opportunity to prepare for an extended period in which their movement was confined or restrained, including by purchasing food and medical supplies, prior to the lockdown being implemented; and

(b) otherwise does not know and therefore does not admit the allegations.

18. In respect of paragraph 18, the State of Victoria:

(a) admits the allegations in paragraph 18; and

(b) says further that community groups and individuals could and did provide services to the plaintiffs, Group Members and 33 Alfred Street Group Members with authorisation from the State of Victoria or its servants or agents.

19. In respect of paragraph 19, the State of Victoria:

(a) denies the allegations in sub-paragraph 19(a);

(b) denies the allegations in sub-paragraph 19(b);

(c) in answer to sub-paragraph 19(c):

i. admits that in the First Period the plaintiffs and Group Members were required to remain in their premises unless they were granted permission to leave pursuant to the terms of the Detention Directions or if there was an emergency situation;

ii. admits that in the Second Period, the plaintiffs and Group Members were able to leave their premises for the purposes specified under the terms of the DPCCD Directions, including for medical care and supplies and exercise or if granted an exemption pursuant to, or given clearance under, the terms of the DPCCD Directions;

iii. does not know and therefore does not admit whether individual plaintiffs or group members had fresh air or room to exercise in their premises; and

iv. otherwise denies the allegations;

(d) denies the allegations in sub-paragraph 19(d);

(e) denies the allegations in sub-paragraph 19(e);

(f) denies the allegations in sub-paragraph 19(f);

(g) denies the allegations in sub-paragraph 19(g);

(h) in answer to sub-paragraph 19(h):

i. admits that any Plaintiff or Group Member who “could not work at home” was therefore “unable to work”; and

ii. otherwise does not know and therefore does not admit the allegations; and

does not know and therefore does not admit the allegations in sub-paragraph 19(i).

F. ALLEGED FALSE IMPRISONMENT

20. In respect of paragraph 20, the State of Victoria:

(a) admits that, throughout the First Period, it detained those Plaintiffs and Group Members who were present at the Estate Towers;

(b) does not know and therefore does not admit:

i. whether any individual Plaintiff or Group Member had their movement confined or restrained against their will at any given time;

ii. whether any individual Police Officer confined or restrained the movement of any individual plaintiff or Group Member at any given time; and

(c) otherwise denies the allegations.

20A. The detention admitted in paragraphs 8(a), 11(a) and 20(a) above was authorised by or under the following directions made under section 200(1) of the PHW Act:

(a) Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (9 Pampas Street, North Melbourne);

(b) Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (159 Melrose Street, North Melbourne);

(c) Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (130 Racecourse Road, Flemington);

(d) Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (76 Canning Street, North Melbourne);

(e) Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (126 Racecourse Road, Flemington);

(f) Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (120 Racecourse Road, Flemington);

- (g) Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (33 Alfred Street, North Melbourne);
- (h) Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (12 Sutton Street, North Melbourne); and
- (i) Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (12 Holland Court, Flemington).

20B. By reason of the matters pleaded in paragraph 20A and section 203(1) of the PHW Act, the Plaintiffs and the Group Members were required to comply with the Detention Directions.

21. In respect of paragraph 21, the State of Victoria:

(a) admits that, throughout the Second Period, it intentionally confined or restrained the movement of the Second Plaintiff and the 33 Alfred Street Group Members who were present at the 33 Alfred Street Estate Tower by:

- i. causing notice to be given to all residents of 33 Alfred Street that they would be treated as close contacts and required to isolate until 11.59pm on 18 July 2020; and
- ii. requiring the Second Plaintiff and those 33 Alfred Street Group Members to self-isolate or self-quarantine;

(b) does not know and therefore does not admit:

- i. whether the Second Plaintiff or any individual 33 Alfred Street Group Member had their movement confined or restrained against their will at any given time; and
- ii. whether any individual Police Officer confined or restrained the movement of the Second Plaintiff or any individual 33 Alfred Street Group Member at any given time; and

(c) otherwise denies the allegations.

21A. The confinement or restraint of movement by requiring self-isolation or self-quarantine admitted in paragraphs 12(a), 15(a) and 21(a) above was authorised by or under one or more of the following directions made under section 200(1) of the PHW Act:

(a) Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Diagnosed Persons and Close Contacts Directions (No 4); and

(b) Direction from Deputy Public Health Commander in accordance with emergency powers arising from declared state of emergency – Diagnosed Persons and Close Contacts Directions (No 5).

21B. By reason of the matters pleaded in paragraph 21A and section 203(1) of the PHW Act, the Second Plaintiff and the 33 Alfred Street Group Members were required to comply with the confinement or restraint of movement, through self-isolation or self-quarantine, as prescribed by the DPCCD Directions.

22. In respect of paragraph 22, the State of Victoria:

(a) says that, by reason of section 28LE of the *Wrongs Act 1958* (Vic), the Plaintiffs and Group Members are not entitled to recover damages for non-economic loss unless they have suffered significant injury; and

(b) otherwise does not know and therefore does not admit the allegations in paragraph 22.

G. AGGRAVATED DAMAGES – ALLEGED FALSE IMPRISONMENT

23. In respect of paragraph 23, the State of Victoria:

(a) refers to and repeats paragraphs 20A, 20B, 21A and 21B above, and says that the Plaintiffs, Group Members and 33 Alfred Street Group Members were not falsely imprisoned; and

(b) in the alternative to sub-paragraph 23(a), if any of the Plaintiffs, Group Members and 33 Alfred Street Group Members was falsely imprisoned, then:

i. the State of Victoria refers to and repeats paragraph 19 above; and

ii. otherwise does not know and therefore does not admit the allegations.

H. EXEMPLARY DAMAGES – ALLEGED FALSE IMPRISONMENT

24. The State of Victoria admits the allegations in paragraph 24.

25. In respect of paragraph 25, the State of Victoria:

(a) objects to the paragraph because it is vague and embarrassing; and

(b) under cover of that objection:

i. admits that the State of Victoria knew that at least some persons residing in the Estate Towers:

1. were from non-English speaking backgrounds;
 2. spoke a language other than English at home;
 3. had been found to be a refugee; and
 4. had low incomes or were recipients of welfare benefits; and
- ii. otherwise does not know and therefore does not admit the allegations.
26. In respect of paragraph 26, the State of Victoria:
- (a) admits that the knowledge of the persons identified in the Plaintiffs' further and better particulars (paragraphs 1 to 8 in response to 26) may be attributed to the State of Victoria; and
 - (b) otherwise does not know and therefore does not admit the allegations.
27. The State of Victoria denies the allegations in paragraph 27.

I. ALLEGED ASSAULT

28. In respect of paragraph 28, the State of Victoria:
- (a) says that Police Officers did not permit the Plaintiffs and Group Members to leave their premises other than in accordance with the Detention Directions or DPCCD Directions;
 - (b) specifically denies that Police Officers threatened the plaintiffs or Group Members "with harm or violence"; and
 - (c) otherwise denies the allegations.
29. In respect of paragraph 29, the State of Victoria:
- (a) admits that, in accordance with a request for assistance pursuant to section 202(2) of the PHW Act dated 29 March 2020, Police Officers were deployed to enforce the compliance with the directions described in paragraph 21 above and the DPCCD Directions described in paragraph 21A above, in the course of which they:
 - i. surrounded each Estate Tower;
 - ii. maintained a presence at each Estate Tower throughout the First Period and at the 33 Alfred Street Estate Tower throughout the Entire Period;
 - iii. accompanied Health Workers conducting Covid-19 testing from time to time; and
 - iv. were armed;

(b) does not know and therefore does not admit whether Police Officers were present at each Estate Tower in “significant numbers”;

(c) specifically denies the allegation that, in the circumstances admitted, a threat of harm or violence was made; and

(d) otherwise denies the allegations.

30. The State of Victoria denies the allegations in paragraph 30.

31. The State of Victoria denies the allegations in paragraph 31.

32. In respect of paragraph 32, the State of Victoria:

(a) refers to and repeats paragraphs 28 to 31 above; and

(b) otherwise denies the allegations.

33. In respect of paragraph 33, the State of Victoria:

(a) does not know and therefore does not admit the allegations as to what each of the Plaintiffs and Group Members believed; and

(b) otherwise denies that the belief alleged, if held, was reasonable.

34. In respect of paragraph 34, the State of Victoria:

(a) does not know and therefore does not admit the allegations as to what the Second Plaintiff and the 33 Alfred Street Group Members believed; and

(b) otherwise denies that the belief alleged, if held, was reasonable.

34A. In complete answer to the claim of assault, the State of Victoria refers to and repeats paragraphs 20A, 20B, 21A and 21B above.

J. DAMAGES, INCLUDING AGGRAVATED DAMAGES, FOR ALLEGED ASSAULT

35. In respect of paragraph 35, the State of Victoria:

(a) refers to and repeats paragraphs 28 to 31 and 34A above;

(b) says that, by reason of section 28LE of the *Wrongs Act 1958* (Vic), the Plaintiffs and Group Members are not entitled to recover damages for non-economic loss unless they have suffered significant injury; and

(c) otherwise denies the allegations.

36. In respect of paragraph 36, the State of Victoria:

(a) refers to and repeats paragraphs 28 to 31 and 34A above;

(b) says that, by reason of section 28LE of the *Wrongs Act 1958* (Vic), the Plaintiffs and Group Members are not entitled to recover damages for non-economic loss unless they have suffered significant injury; and

(c) otherwise denies the allegations.

37. In respect of paragraph 37, the State of Victoria:

(a) refers to and repeats paragraphs 28 to 31 and 34A above;

(b) says that, by reason of section 28LE of the *Wrongs Act 1958* (Vic), the Plaintiffs and Group Members are not entitled to recover damages for non-economic loss unless they have suffered significant injury; and

(c) otherwise denies the allegations.

38. In respect of paragraph 38, the State of Victoria:

(a) refers to and repeats paragraphs 28 to 34A above;

(b) says that, by reason of section 28LE of the *Wrongs Act 1958* (Vic), the Plaintiffs and Group Members are not entitled to recover damages for non-economic loss unless they have suffered significant injury; and

(c) otherwise denies the allegations.

K. EXEMPLARY DAMAGES – ALLEGED ASSAULT

39. The State of Victoria denies the allegations in paragraph 39.

40. In respect of paragraph 40, the State of Victoria:

(a) refers to and repeats paragraphs 28 to 31 above; and

(b) otherwise denies the allegations.

L. LIABILITY OF THE DEFENDANT FOR ALLEGED TORTS

41. In respect of paragraph 41, the State of Victoria:

(a) admits that, if any of the Plaintiffs, Group Members or 33 Alfred Street Group Members was falsely imprisoned in the circumstances alleged in the amended statement of claim (which is denied), then that false imprisonment was by the State of Victoria, servants or agents of the State of Victoria in the course or scope of their employment or agency, and/or Police Officers in the performance or purported performance of their duties; and

(b) otherwise denies that any of the Plaintiffs, Group Members or 33 Alfred Street Group Members was falsely imprisoned.

42. In respect of paragraph 42, the State of Victoria:

- (a) admits that, if any of the Plaintiffs, Group Members or 33 Alfred Street Group Members was falsely imprisoned in the circumstances alleged in the amended statement of claim (which is denied), then the State of Victoria is liable for that false imprisonment whether committed by Ministers of the Crown, servants or agents of the State of Victoria or Police Officers; and
- (b) otherwise denies that any of the Plaintiffs, Group Members or 33 Alfred Street Group Members was falsely imprisoned.

43. In respect of paragraph 43, the State of Victoria:

(a) in answer to sub-paragraph 43(a):

- i. admits that the Police Officers were performing or purporting to perform their duties; and
- ii. otherwise denies that the Police Officers committed the tort of assault;

(b) in answer to sub-paragraph 43(b):

- i. refers to and repeats paragraphs 28 to 31 above; and
- ii. otherwise denies the allegations.

44. In respect of paragraph 44, the State of Victoria:

- (a) admits that, if the Police Officers committed the tort of assault in the circumstances alleged in the amended statement of claim (which is denied), then the State of Victoria is liable for that tort; and
- (b) otherwise denies the allegations.

M. QUESTIONS OF LAW OR FACT COMMON TO THE CLAIMS OF THE GROUP MEMBERS

45. In respect of paragraph 45, the State of Victoria :

- (a) admits that sub-paragraphs 45(a), 45(b) and 45(c) raise common questions of fact or law; and
- (b) otherwise denies that the balance of the sub-paragraphs raise common questions of fact or law.

N. RELIEF

46. The State of Victoria denies the allegations in paragraph 46.

Date: 17 December 2021



Signed by Daniel John Marquet
Lawyer for the defendant

This pleading was prepared by Peter Hanks QC, Georgina Costello QC, Eugenia Levine and Christopher Tran of counsel.