



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

Case: S ECI 2021 00826

No. S ECI 2021 00826 Filed 2022 03:37 PM

B E T W E E N

IDRIS HASSAN and HAWA WARSAME

Plaintiffs

-and-

STATE OF VICTORIA

Defendants

REPLY TO DEFENCE

(filed pursuant to the orders of the Honourable John Dixon J made 13 October 2021)

Date of Document:	27 January 2022	Solicitors Code: 100187
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Preliminary

- A. In this Reply, capitalised words have the meanings assigned in the Amended Statement of Claim (ASOC) and capitalised words not assigned meanings in the ASOC are defined herein as follows.

This term:	Has the meaning given to it in paragraph:
Detention Directions	1(a)
DPCC Directions No 4	10
DPCC Directions No 5	57
Relevant Human Rights	47(b)

- B. The Plaintiffs maintain each and every claim made in the ASOC save and to the extent this Reply expressly provides otherwise.
- C. Headings are for reference purposes only.

To the Defence to the ASOC filed 20 December 2021 (the **Defence**), the Plaintiffs reply as follows.

First Detention Period

1. In answer to paragraph 8(b) of the Defence, the Plaintiffs:

- (a) admit that clause 5(2)(a) of the directions referred to in paragraph 20A of the Defence (the **Detention Directions**) made provision for the persons to whom they applied to leave their premises in the circumstances set out in paragraph 8(b) of the Defence;
- (b) say that the Detention Directions were invalid, or partly invalid, on the grounds pleaded in this Reply;
- (c) say further that:
 - i. clause 5(2)(a) of the Detention Directions does not specify who may grant permission to a person to leave the premises in which the person ordinarily resides and is thereby uncertain and invalid;

Particulars

- i. The Plaintiffs and Group Members rely upon paragraphs 26 and 28 below.
- ii. clause 5(2)(a) of the Detention Directions impermissibly purports to delegate the authority to exercise the emergency powers and is thereby invalid;

Particulars

- i. The Plaintiffs and Group Members rely upon paragraphs 27 and 28 below.
- iii. if it is valid (which is denied), clause 5(2)(a) of the Detention Directions purports to give, to an unspecified person or persons, a broad discretion to decide whether to give permission to persons to leave the premises, even if the circumstances in cl 5(2)(a)(i), (ii) or (iii) apply;
- iv. the Plaintiffs and Group Members were not informed of their entitlement to apply for permission to leave the premises or, alternatively, were not so informed at the beginning of the First Detention Period;
- v. the Plaintiffs and Group Members were not informed of how they could leave the premises in an emergency situation, in circumstances where each of the

Estate Towers was surrounded by armed police officers or, alternatively, were not so informed at the beginning of the First Detention Period;

2. In answer to paragraph 9(a)(i) of the Defence, the Plaintiffs:

(a) say that s 202(2) of the *Public Health and Wellbeing Act 2008* (Vic) (the **PHW Act**):

i. authorises an authorised officer:

1. to request assistance in relation to the exercise of a power under an authorisation given under s 199 of the PHW Act, only where that exercise of power is the subject of the request;

2. to request assistance only in relation to the exercise of a power by the authorised officer making the request;

ii. does not authorise an authorised officer to request a police officer to enforce compliance with a direction and, or alternatively, does not authorise an authorised officer to request a police officer to ensure compliance with a direction;

(b) say that the request for assistance dated 29 March 2020:

i. was made by the Chief Health Officer in general terms, and not in relation to a specified exercise of power;

ii. did not request assistance only in relation to the exercise of a power by the authorised officer making the request, but requested assistance in the exercise of a power by any authorised officer;

iii. impermissibly requested police officers to enforce compliance with directions; and

iv. in the premises, was not a request for assistance pursuant to, or authorised by, s 202 of the PHW Act.

(c) say further that the request for assistance dated 29 March 2020:

i. was not made by the authorised officer who made the Detention Directions;

ii. was made before a decision was made to make the Detention Directions (and before those directions were made); and

iii. in the premises, did not authorise Police Officers to use force, or the threat of force, to prevent the Plaintiffs and each of the Group Members from leaving their residences and, or in the alternative, from leaving the Estate Tower in

which they resided or in which they were situated, during the First Detention Period.

Second Detention Period

3. In answer to paragraph 12(a) of the Defence, the Plaintiffs:

- (a) admit that, according to their terms, each of the Diagnosed Persons and Close Contacts Directions referred to in paragraph 21A of the Defence (the **DPCC Directions**) required a “diagnosed person” (as defined) to self-isolate and a “close contact” (as defined) to self-quarantine;
- (b) say that each of the DPCC Directions is invalid or partly invalid on the grounds pleaded in this Reply;
- (c) further or in the alternative to paragraph 3(b) above, say that, on their terms, the DPCC Directions did not apply to the Second Plaintiff or any of the Group Members, except to the extent that any of them was a “diagnosed person” as defined in cl 4(1) of those directions;

Particulars

- i. The Plaintiffs and Group Members rely upon paragraphs 66 to 69 below.

(d) say that:

- i. the Second Plaintiff had not been directly informed, prior to the commencement of the DPCC Directions, that she had been diagnosed with 2019-nCoV (**COVID-19**), within cl 4(1) of the DPCC Directions;
- ii. the Second Plaintiff’s son, Ayub Hassan, was informed by text message on about 9 July 2020, that the Second Plaintiff had been diagnosed with COVID-19;
- iii. an employee or agent of the Defendant, being an employee or agent working in or for the Department, telephoned Ayub Hassan on or about 12 July 2020, and stated that the Department did not have any record of the Second Plaintiff having been diagnosed with COVID-19;
- iv. the Second Plaintiff was not informed, in the Second Detention Period, that she had been diagnosed with COVID-19;

- v. the Second Plaintiff was, in the premises, not a “diagnosed person” within the DPCC Directions during the Second Detention Period;
- (e) rely upon paragraphs 66 to 69 below and say that:
- i. the Second Plaintiff was not a “close contact” within the DPCC Directions;
 - ii. each of the Group Members was not a “close contact” within the DPCC Directions;
- (f) repeat paragraph 2 above;
- (g) say that the Defendant (through the Police Minister and others) decided to detain the Second Plaintiff and 33 Alfred Street Group Members in the Second Detention Period:

Particulars

- i. Televised press conference on 9 July 2020 at which the Premier and Police Minister spoke – see <https://www.youtube.com/watch?v=ZQzvhDykZso> (especially at 5.15ff)
- (h) say that Police Officers were not authorised by the request for assistance referred to in paragraph 9(a)(i) of the Defence, or at all, to enforce compliance with the DPCC Directions by:
- i. surrounding the 33 Alfred Street Estate Tower premises; and, or alternatively,
 - ii. preventing the Second Plaintiff and 33 Alfred Street Group Members from leaving the premises, unless they had purportedly been given permission to leave by an employee or officer of the Department.
- (i) say further that Police Officers did not permit the Second Plaintiff or the 33 Alfred Street Group Members to leave their premises or the 33 Alfred Street Estate Tower for the purposes specified under the terms of the DPCC Directions unless a servant or agent of the Defendant had authorised this;
- (j) say further that, in the premises, the conduct of Police Officers in detaining each of the Second Plaintiff and 33 Alfred Street Group Members (or any of them) in the 33 Alfred Street Estate Tower premises in the Second Detention Period was unlawful.
4. In answer to paragraph 13(a)(i) of the Defence, the Plaintiffs:
- (a) repeat paragraphs 2(a) and (b) and 3 above;
 - (b) say that the request for assistance dated 29 March 2020:

- i. was not made by the authorised officers who made the DPCC Directions;
- ii. was made before a decision was made to make the DPCC Directions;
- iii. in the premises, did not authorise Police Officers to use force, or the threat of force, to prevent the Second Plaintiff and each of the 33 Alfred Street Group Members from leaving their residences and, or in the alternative, from leaving 33 Alfred Street, North Melbourne, in the Second Detention Period;
- iv. in the premises, did not authorise Police Officers to enforce compliance with the DPCC Directions;

(c) say further that:

- i. the Second Plaintiff and the 33 Alfred Street Group Members were not informed by Police Officers, or by servants or agents of the Defendant, that they were permitted to leave the 33 Alfred Street Estate Tower for the purposes specified under, or if granted an exemption pursuant to, or given clearance under, the terms of the DPCC Directions and, or alternatively, they were not informed of this at the beginning of the Second Detention Period; and
- ii. Police Officers did not permit the Second Plaintiff or the 33 Alfred Street Group Members to leave the 33 Alfred Street Estate Tower for the purposes specified under the terms of the DPCC Directions unless a servant or agent of the Defendant had authorised this.

5. In answer to paragraph 14(a) of the Defence, the Plaintiffs:

- (a) repeat paragraph 4 above;
- (b) admit that the Second Plaintiff and the 33 Alfred Street Group Members could move within their own residences;
- (c) admit that, pursuant to cl 8(2)(b) of the DPCC Directions, a person was permitted to leave the premises for specified purposes, including to obtain medical care or medical supplies and for exercise (on conditions);
- (d) say that Police Officers restrained or prevented the Second Plaintiff and Group Members from leaving the premises for the purposes specified in the DPCC Directions, unless a servant or agent of the Defendant had expressly authorised this;

- (e) admit that, pursuant to cl 9 of the DPCC Directions, a person to whom the direction applied was not required to comply with the directions if granted an exemption by the Chief Health Officer or Deputy Chief Health Officer;
- (f) say that the purported power to grant an exemption under the DPCC Directions conferred a very broad discretion upon the Chief Health Officer or Deputy Chief Health Officer;
- (g) say that the authority given to an authorised officer, under s 199(2) of the PHW Act, to exercise emergency powers, does not extend to giving a third party powers, including powers to grant an exemption from a direction;

Particulars

- i. Paragraphs 58, 61(a), 63(a) and 64 below are repeated.
 - (h) say that, in the premises, even if the DPCC Directions were not invalid in their entirety (which is denied), cl 9 of the DPCC Directions was invalid.
6. In answer to paragraph 19(c)(ii) of the Defence, the Plaintiffs:
- (a) repeat sub-paragraphs 5(d) to (h) above;
 - (b) say that the Second Plaintiff was never offered an opportunity to leave her residence for fresh air and exercise;
 - (c) say further that the Second Plaintiff and 33 Alfred Street Group Members were only permitted to leave their homes for exercise in accordance with a rostered fresh air and exercise program, commencing on the evening of 11 July 2020, by which:
 - i. residents of the 33 Alfred Street Estate Tower were permitted to exercise in designated areas for periods of about 20 to 30 minutes when rostered to do so;
 - ii. residents participating in the program were escorted to and from their homes by Police Officers and, or alternatively, servants or agents of the Defendant;
 - iii. from the evening of 11 July 2020 until its removal early on 12 July 2020, the designated exercise area was surrounded by temporary fencing;
 - iv. Police Officers and, or alternatively, servants or agents of the Defendant, surrounded the designated exercise area while the 33 Alfred Street Group Members who participated in the fresh air and exercise program were present in that area; and

- v. residents of the 33 Alfred Street Estate Tower were prohibited, at all times, from leaving the building grounds whilst accessing fresh air or exercising.

Particulars

- i. Televised broadcast at which the Premier and Minister Lisa Neville (the **Police Minister**) spoke on 9 July 2020 - <https://www.youtube.com/watch?v=ZQzvhDykZso> (especially at 7.15ff)

7. In answer to paragraph 19(c)(iii) of the Defence, the Plaintiffs:

- (a) repeat paragraph 24 of the Amended Statement of Claim; and
- (b) say that it is within the Defendant's knowledge that each of the Second Plaintiff and each of the 33 Alfred Street Group Members had inadequate fresh air and inadequate room to exercise within their premises.

False imprisonment

8. In answer to paragraphs 20A and 20B of the Defence, the Plaintiffs say that:

- (a) the detention of the Plaintiffs and the Group Members, during the First Detention Period:
 - i. was not authorised by the Detention Directions or any of them; and
 - ii. was not otherwise lawfully justified, and
- (b) each Plaintiff and each of the Group Members (or any of them) was not required to comply with the Detention Directions,

and they rely on the matters pleaded in paragraphs 9 to 54 below.

9. At all material times, the Defendant held out that Dr Annaliese van Diemen (**Dr van Diemen**) was:

- (a) an authorised officer for the purposes of Division 3 of Part 10 of the PHW Act;
- (b) a Deputy Chief Health Officer of the Defendant who had been authorised to exercise emergency powers by the Chief Health Officer under s 199(2)(a) of the PHW Act;
- (c) a public official as defined under s 4 of the *Public Administration Act 2004* (Vic); and
- (d) a public authority as defined under s 4 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

10. Dr van Diemen purported to make each of the Detention Directions and the Diagnosed Persons and Close Contacts Directions (No 4) (**DPCC Directions No 4**).

Detention Directions made under dictation

11. In the early afternoon of 4 July 2020, the Deputy Secretary for Public Health Emergency Operations informed Dr van Diemen that:

- (a) a decision had been made to commence the public health intervention in the Estate Towers later that day;
- (b) the intervention was to coincide with an announcement made during a Victorian Government press conference scheduled for 4pm.

12. Dr van Diemen was not consulted about:

- (a) commencing the public health intervention in the Estate Towers on 4 July 2020;
- (b) whether detention orders should be made;
- (c) the enforcement model adopted, including the involvement of Victoria Police in enforcing the detention of Estate Towers residents;
- (d) whether the orders should apply only to some of the Estate Towers or to all of them.

13. Before signing the Detention Directions, Dr van Diemen was aware that the Premier proposed to announce that the Detention Directions had been made at the press conference, scheduled for 4.00pm on 4 July 2020.

Particulars

- i. Dr van Diemen had been informed of this by the Deputy Secretary for Public Health Emergency Operations early on the afternoon of 4 July 2020 and, or alternatively, by other senior staff members within the Department.

14. Dr van Diemen did not provide any health advice to the Department or a Minister (or at all) that it was necessary to commence, on 4 July 2020, the intervention in the Estate Towers, whether by way of detaining the residents or otherwise.

15. In the afternoon of 4 July 2020, Dr van Diemen:

- (a) received the draft Detention Directions, the accompanying brief and the human rights assessment by email from a servant or agent of the Defendant (working in the Department), whilst travelling by car from an office of the Department on Lonsdale

Street, Melbourne to Treasury Place, East Melbourne, being the location of the imminent televised press conference;

- (b) reviewed all of those documents on her mobile telephone and suggested certain typographical corrections to the draft Detention Directions;
- (c) had less than fifteen minutes to read and consider the draft Detention Directions, the accompanying brief and the human rights assessment before the press conference was due to commence;
- (d) signed copies of the draft Detention Directions, which were printed upon her arrival at the Office of the Premier, before joining the press conference.

16. On 4 July 2020, at approximately:

- (a) 4.04pm, the press conference commenced;
- (b) 4.08pm, the Premier announced the Estate Tower lockdowns; and
- (c) 4.40pm, Dr van Diemen took to the podium to answer questions.

17. Dr van Diemen:

- (a) felt constrained to make the proposed Detention Directions by the information provided by the Deputy Secretary for Public Health Emergency Operations that a decision had been made to commence the intervention that day;
- (b) felt constrained to direct that the residents of the Estate Towers be placed in home detention, effective that day, by the decisions made by senior members of the Defendant which were communicated to her by way of the draft Detention Directions which were emailed to her;
- (c) felt constrained by the imminence of a press conference, at which the Premier was proposing to announce that the residents of the Estate Towers would be placed in home detention that day, to sign the draft Detention Directions and to make them in the form in which they were sent to her;
- (d) considered that she could not delay signing the draft Detention Directions, due to the decisions made by others to detain the residents of the Estate Towers that afternoon, and due to the imminence of the Premier's televised press conference; and, or in the alternative,
- (e) allowed the decisions of the Crisis Council of Cabinet or the Premier, or their actions and attitudes, to control the way she exercised her discretion under s 200(1) of the

PHW Act when deciding whether to make the Detention Directions, when to make them and on what terms.

18. Dr van Diemen, when deciding to make the Detention Directions:

- (a) deferred to the policy of another decision-maker, being the Crisis Council of Cabinet or the Premier;
- (b) exercised her discretion at the behest of the Crisis Council of Cabinet or the Premier;
- (c) failed to exercise her discretion independently; and, or in the alternative,
- (d) acted under dictation.

19. In the premises of paragraphs 11 to 18 above:

- (a) Dr van Diemen acted in excess of power when purporting to make the Detention Directions;
- (b) the Detention Directions are and were invalid; and, or alternatively,
- (c) the detention of the Plaintiffs and Group Members in the First Detention Period was unlawful.

Detention for specified period unauthorised

20. The authorisation, by the Chief Health Officer, of an authorised officer to exercise emergency powers, pursuant to s 199(2) of the PHW Act, does not confer upon the authorised officer a power to make an instrument detaining a person or group of persons for a specified period of time.

Particulars

- i. The power to detain in s 200(1)(a) of the PHW Act is expressed to be subject to s 200 of that Act.
- ii. The power to detain is subject to regular reviews under s 200(6) of the PHW Act.

21. The Detention Directions purported to authorise the detention of residents of the Estate Towers (including the Plaintiffs and Group Members other than those who were visitors) for a period of fourteen days.

22. In the premises of paragraphs 20 and 21 above:

- (a) the Detention Directions are and were invalid; and, or alternatively,

- (b) the detention of the Plaintiffs and Group Members in the First Detention Period was unlawful.

Detention in part only of emergency area unauthorised

23. Each Detention Direction purported to detain each Plaintiff and Group Member in the premises where each person ordinarily resided in a “Detention Location”, defined in each Detention Direction to be one of the Estate Towers.
24. Each of the Detention Directions purported to require or direct the detention of persons in part only of the emergency area and in their residential premises and was thereby:
- (a) not authorised by s 199(2) or s 200(1) of the PHW Act; and
 - (b) *ultra vires*.

Particulars

- i. The emergency area was the State of Victoria.
 - ii. An authorisation to exercise emergency powers under s 199(2) of the PHW Act does not empower an authorised officer to detain or direct the detention of persons in part only of the emergency area and, or in the alternative, in their residential premises.
25. In the premises of paragraphs 23 and 24 above:
- (a) Dr van Diemen’s purported exercise of the emergency powers in s 200(1) of the PHW Act was *ultra vires* and ineffective;
 - (b) each of the Detention Directions was invalid; and, or alternatively,
 - (c) the detention of each of the Plaintiffs and Group Members in the First Detention Period was unlawful.

Uncertainty and impermissible delegation

26. Clause 5(2) of the Detention Directions:
- (a) purported to direct a person subject to the directions (the **subject person**) not to leave the premises in which the subject person ordinarily resides unless he or she had been granted permission to do so or unless there was an emergency situation;
 - (b) did not identify the person or persons by whom permission could be granted;
 - (c) did not identify what constituted an emergency situation;
 - (d) in the premises, was void, or void in part, for uncertainty.

27. Each of the Detention Directions:

- (a) purported, in clause 5(2), to confer powers on unspecified persons to give permission to a person (the **subject person**) to leave the premises in which the subject person ordinarily resides;
- (b) in the premises, impermissibly purported to delegate the power and, or alternatively, the authority to exercise the emergency powers.

28. In the premises of paragraph 26 and, or alternatively, paragraph 27 above:

- (a) clause 5(2) of the Detention Directions is and was invalid;
- (b) further or alternatively, the Detention Directions are and were invalid in their entirety; and
- (c) the detention of the Plaintiffs and Group Members, in the First Detention Period, was unlawful.

Unreasonableness

29. When Dr van Diemen made each of the Detention Directions:

- (a) only 12 households with confirmed cases of COVID-19, and 23 cases of COVID-19, or alternatively 34 cases, had been identified in the Estate Towers;
- (b) confirmed cases of COVID-19 had been identified in the Estate Towers at 12 Holland Court, Flemington; 130 Racecourse Road, Flemington and 33 Alfred Street, North Melbourne;
- (c) no cases of COVID-19 had been identified at 120 Racecourse Road Flemington, 126 Racecourse Road Flemington, 12 Sutton Street, North Melbourne, 159 Melrose Street, North Melbourne, 9 Pampas Street North Melbourne and, or alternatively, at 76 Canning Street, North Melbourne.

30. In the premises of paragraph 29 above:

- (a) the decision to detain the Plaintiffs and Group Members in their residences and the making of each of the Detention Directions was legally unreasonable; and, or alternatively,
- (b) the making of each of the Detention Directions in respect of:
 - i. 120 Racecourse Road Flemington;
 - ii. 126 Racecourse Road Flemington;

- iii. 12 Sutton Street, North Melbourne;
- iv. 159 Melrose Street, North Melbourne;
- v. 9 Pampas Street North Melbourne; and, or alternatively
- vi. 76 Canning Street, North Melbourne,

and the decisions to detain the Plaintiffs and Group Members who resided at each of those addresses in their residences, were legally unreasonable.

Failure to explain and warn - PHW Act, s 200(2)-(4)

31. Before subjecting the Plaintiffs and Group Members to detention, neither Dr van Diemen nor any other authorised officer:

- (a) briefly explained to each of the Plaintiffs and Group Members the reason why it was necessary to detain each of them;
- (b) warned each of the Plaintiffs and Group Members that a refusal or failure to comply with a direction given to them, or a requirement made of them, in the exercise of a power under an authorisation given under s 199 of the PHW Act, without a reasonable excuse, is an offence.

32. Before subjecting the Plaintiffs and Group Members to detention, it was practicable for Dr van Diemen, or another authorised officer:

- (a) to briefly explain to each of the Plaintiffs and Group Members the reason why it was necessary to detain each of them; and
- (b) to warn each of them that a refusal or failure to comply with a direction given to them, or a requirement made of them, in the exercise of a power under an authorisation given under s 199 of the PHW Act, without a reasonable excuse, is an offence.

33. In the alternative to paragraph 32(a) above, if it was not practicable to briefly explain the reason why it was necessary to detain the Plaintiffs and Group Members in the particular circumstances in which the power to detain them was exercised (which is denied), no authorised officer briefly explained to each of the Plaintiffs and Group Members the reason why it was necessary to detain each of them:

- (a) as soon as practicable after detaining each of them; and, or alternatively,
- (b) at all.

34. Alternatively, any purported brief explanation or warning that was given was not given:

- (a) to each of the Plaintiffs and Group Members;
- (b) orally, to Plaintiffs and Group Members who could not read written English;
- (c) in languages other than English, to Plaintiffs and Group Members whose first language was not English; and, or alternatively,
- (d) in a manner and form that could be readily understood by each of the Plaintiffs and Group Members.

35. In the premises of paragraphs 31 to 34 above:

- (a) Dr van Diemen failed to comply with s 200(2), s 200(3) and, or alternatively, s 200(4) of the PHW Act in respect of the exercise of the power to detain the Plaintiffs and Group Members;
- (b) no other authorised officer complied with s 200(2), 200(3) and, or alternatively, s 200(4) of the PHW Act in any exercise of the power to detain the Plaintiffs and Group Members;
- (c) the detention of the Plaintiffs and Group Members was unlawful for the whole of the First Detention Period and, or alternatively, in the case of the Second Plaintiff and 33 Alfred Street Group Members, for the whole of the Second Detention Period;
- (d) alternatively to paragraph 35(c) above, the detention of the Plaintiffs and Group Members was unlawful from the time, after the purported exercise of the power to detain the Plaintiffs and Group Members, at which it was practicable for an authorised officer to briefly explain to the Plaintiffs and Group Members the reason it was necessary to detain each of them, until the end of the detention of each of them, or until it was briefly explained to each person the reason it was necessary to detain the person.

Failure to review reasonable necessity of detention daily – PHW Act, s 200(6)

36. During the First Detention Period, neither Dr van Diemen nor any other authorised officer reviewed the question of whether the continued detention of each of the Plaintiffs and Group Members (or any of them) is reasonably necessary to eliminate or reduce a serious risk to public health:

- (a) at least once every 24 hours; or
- (b) at all.

37. In the premises of paragraph 36 above, if the detention of the Plaintiffs and Group Members was not unlawful from the outset (which is denied), the detention of each of the Plaintiffs and Group Members:

- (a) was unlawful after the first 24 hours of detention;
- (b) continued to be unlawful until a review was conducted by an authorised officer in accordance with s 200(6) of the PHW Act; and, or alternatively,
- (c) continued to be unlawful until the end of the First Detention Period.

Failure to notify CHO or advise Minister – PHW Act, s 200(7)-(10)

38. It was reasonably practicable for Dr van Diemen, or another authorised officer, to give written notice to the Chief Health Officer that the Plaintiffs and Group Members had been made subject to detention under s 200(1)(a) of the PHW Act and to include in the notice the name of each person being detained and a brief statement as to the reason why the person was being subject to detention under s 200(1)(a):

- (a) on 4 July 2020, after the press conference referred to in paragraph 7(a) of the ASOC;
- (b) alternatively, on 5 July 2020;
- (c) in the further alternative, before the Detention Directions were revoked with effect from 11.59pm on 9 July 2020.

39. In the alternative, if Dr van Diemen was acting as Chief Health Officer when she purported to make the Detention Directions, it was reasonably practicable for her to advise the Minister in writing that the Plaintiffs and Group Members had been made subject to detention under s 200(1)(a) of the PHW Act and to include in the advice the name of each person being detained and a brief statement as to the reason why the person was being subject to detention under s 200(1)(a):

- (a) on 4 July 2020, after the press conference referred to in paragraph 7(a) of the ASOC;
- (b) alternatively, on 5 July 2020;
- (c) in the further alternative, before the Detention Directions were revoked.

40. If Dr van Diemen or another authorised officer conducted a review, in accordance with s 200(6) of the PHW Act, of whether the continued detention of any of the Plaintiffs and Group Members was reasonably necessary to eliminate or reduce a serious risk to public health (which is denied), it was reasonably practicable for Dr van Diemen or the authorised officer concerned to give written notice to the Chief Health Officer in accordance with s

200(7) that, following the review under s 200(6), each of the Plaintiffs and Group Members are to continue to be subject to detention under s 200(1)(a):

- (a) within 6 hours of conducting the review;
- (b) alternatively, within 12 hours of conducting the review;
- (c) in the further alternative, within 24 hours of conducting the review.

41. During the First Detention Period, neither Dr van Diemen nor any other authorised officer gave written notice to the Chief Health Officer, as soon as was reasonably practicable (or at all):

- (a) that each of the Plaintiffs and Group Members had been made subject to detention under s 200(1)(a) of the PHW Act;
- (b) that following a review under s 200(6) of the PHW Act, each of the Plaintiffs and Group Members (or any of them) was to continue to be subject to detention under s 200(1)(a) of the PHW Act;
- (c) naming each person detained; and
- (d) providing a brief statement as to the reason why each of the Plaintiffs and Group Members is being, or continues to be, subject to detention under s 200(1)(a) of the PHW Act.

42. During the First Detention Period, the Chief Health Officer did not advise the Minister of any notice received under s 200(7) of the PHW Act.

43. In the alternative, if Dr van Diemen was acting as Chief Health Officer when she purported to make the Detention Directions, during the First Detention Period, neither Dr van Diemen nor the Chief Health Officer:

- (a) advised the Minister in writing that the Plaintiffs and Group Members had been made subject to detention under s 200(1)(a) of the PHW Act;
- (b) included in the advice the name of each person being detained and a brief statement as to the reason why the person was being, or continued to be, subject to detention under s 200(1)(a) of the PHW Act.

44. In the premises of paragraphs 38 to 43 above, the detention of the Plaintiffs and Group Members in the First Detention Period, if lawful from the outset (which is denied), became unlawful:

- (a) upon Dr van Diemen (or another authorised officer) failing to give the written notice required by s 200(7) and (8) of the PHW Act as soon as was reasonably practicable;
- (b) upon the Chief Health Officer failing to advise the Minister of any notice received under s 200(7) of the PHW Act as soon as was reasonably practicable; or
- (c) if Dr van Diemen was acting as Chief Health Officer when she purported to make the Detention Directions, upon Dr van Diemen failing to advise the Minister in writing that each of the Plaintiffs and Group Members had been made subject to detention under s 200(1)(a) of the PHW Act and include in the advice the name of each person being detained and a brief statement as to the reason why the person was being, or continued to be, subject to detention, as required by s 200(10) of the PHW Act.

Deployment of police officers to enforce detention

45. The deployment and continued deployment of Police Officers to the Estate Towers to enforce the Detention Directions during the First Detention Period and, or in the alternative, during the Second Detention Period:

- (a) was not a decision made or an act done in accordance with s 202 of the PHW Act;

Particulars

- i. The Plaintiffs repeat and rely upon paragraph 2 above.

- (b) was not authorised by s 229(1) of the PHW Act;
- (c) was not authorised by any other law; and, or alternatively,
- (d) was unlawful.

Particulars

- i. The Police Officers were not authorised to take action to ensure compliance with the Detention Directions, in circumstances where s 229 of the PHW Act did not apply.

46. In the premises of paragraph 45 above, the detention of the Plaintiffs and Group Members by Police Officers was unlawful.

Breach of Charter rights

Dr van Diemen

47. When deciding, on 4 July 2020, whether to exercise the power in s 200(1)(a) of the PHW Act, to detain the Plaintiffs and Group Members for the period reasonably necessary to eliminate or reduce a serious risk to public health, and whether to make the Detention Directions (or similar directions) and, if so, in what form, Dr van Diemen was obliged to:

- (a) act in a way that was not incompatible with a human right of each of the Plaintiffs and Group Members; and, or alternatively,
- (b) give proper consideration to each of the following human rights of each of the Plaintiffs and Group Members (together, the **Relevant Human Rights**):
 - i. the right not to be treated in a degrading way, pursuant to s 10(b) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the **Charter**), (**right to non-degrading treatment**);
 - ii. the right to move freely within Victoria, to enter and leave it and to have the freedom to choose where to live, pursuant to s 12 of the Charter (**right to freedom of movement**);
 - iii. the right to freedom of association with others, pursuant to s 16(2) of the Charter (**right to freedom of association**);
 - iv. the right to liberty and security, and the right not to be deprived of liberty except on grounds, and in accordance with procedures, established by law, pursuant to s 21 of the Charter (**right to liberty**); and
 - v. the right, having been deprived of liberty, to be treated with humanity and with respect for the inherent dignity of the human person (**right to humane treatment**), pursuant to s 22(1) of the Charter.

Particulars

- i. Charter, ss 38(1).
- ii. The Relevant Human Rights were all relevant human rights to consider in circumstances where it was proposed to subject the Plaintiffs and Group Members to home detention.

48. In deciding to exercise and purporting to exercise the emergency powers in s 200(1) of the PHW Act to detain the Plaintiffs and Group Members, through making the Detention Directions, Dr van Diemen:

- (a) failed to give proper consideration to each or any of the Relevant Human Rights; and, or in the alternative,

(b) acted in a way that was incompatible with each or any of the Relevant Human Rights,
contrary to s 38(1) of the Charter.

Particulars

- i. The pleadings at paragraphs 16 and 17 of the ASOC are repeated.
- ii. The Detention Directions and a human rights assessment, prepared by a servant of the Defendant working in the Department, were emailed to Dr van Diemen at 3.46pm on 4 July 2020.
- iii. Dr van Diemen had insufficient time, after being provided with the draft directions and human rights assessment, to give proper consideration to the Relevant Human Rights, before exercising the emergency powers in s 200(1) of the PHW Act by signing the Detention Directions, prior to the press conference which commenced at approximately 4.04pm.
- iv. The Detention Directions were incompatible with the rights of the Plaintiffs and Group Members to freedom of movement and to liberty, because the Plaintiffs and Group Members were not permitted to leave their residences pursuant to those directions unless there was an emergency situation or they had been granted permission to do so. This limited the rights to freedom of movement and to liberty in a manner which was not reasonable and demonstrably justified within s 7(2) of the Charter.
- v. The Detention Directions were incompatible with the rights of the Plaintiffs and Group Members to freedom of association because the Detention Directions prohibited them from permitting any other person to enter their premises, unless an exception applied, and prohibited them from leaving the premises, unless an exception applied. This limited the right to freedom of association in a manner which was not reasonable and demonstrably justified within s 7(2) of the Charter.
- vi. The making of Detention Directions with retrospective effect was incompatible with the rights of the Plaintiffs and Group Members to non-degrading treatment, because the imposition of immediate detention, with no warning or opportunity to prepare for it, constituted being treated in a degrading way. This limited the right to non-degrading treatment in a

manner which was not reasonable and demonstrably justified within s 7(2) of the Charter.

49. In the premises of paragraphs 47 and 48 above:

- (a) each of the Detention Directions was and is invalid; and, or alternatively
- (b) the detention of each of the Plaintiffs and Group Members in the First Detention Period was unlawful.

50. When exercising the power under s 200(1)(a) of the PHW Act to detain the Plaintiffs and Group Members for the period reasonably necessary to eliminate or reduce a serious risk to public health, throughout the First Detention Period, Dr van Diemen was obliged to:

- (a) act in a way that was not incompatible with a human right of each of the Plaintiffs and Group Members; and, or alternatively,
- (b) give proper consideration to each of the Relevant Human Rights.

Particulars

- i. Charter, ss 38(1).
- ii. The Relevant Human Rights were all relevant human rights to consider in circumstances where it the Plaintiffs and Group Members were subject to home detention.

51. When omitting or failing to review whether the continued detention of each of the Plaintiffs and Group Members was reasonably necessary to eliminate or reduce a serious risk to public health at least once every 24 hours, and continuing to detain the Plaintiffs and Group Members during the First Detention Period, Dr van Diemen:

- (a) failed to give proper consideration to each of the Relevant Human Rights or any of them in relation to each Plaintiff and Group Member; and, or in the alternative,
- (b) acted in a way that was incompatible with each of the Relevant Human Rights or any of them,

contrary to s 38(1) of the Charter.

Particulars

- i. The continued detention of each of the Plaintiffs and Group Members, without a review of the detention of each of them every 24 hours, was incompatible with the rights of the Plaintiffs and Group Members to freedom of movement and to liberty, because s 200(6) of the PHW Act

- required such a review, and the Plaintiffs and Group Members were not permitted to leave their residences pursuant to the Detention Directions unless there was an emergency situation or they had been granted permission to do so. Their continued detention, in the circumstances, limited their rights to freedom of movement and to liberty in a manner which was not reasonable and demonstrably justified within s 7(2) of the Charter.
- ii. The continued detention of each of the Plaintiffs and Group Members, without a review of the detention of each of them every 24 hours, was incompatible with the rights of the Plaintiffs and Group Members to freedom of association because s 200(6) of the PHW Act required such a review, and the Detention Directions prohibited them from permitting any other person from entering their premises, unless an exception applied, and prohibited them from leaving the premises, unless an exception applied. Their continued detention, in the circumstances, limited their right to freedom of association in a manner which was not reasonable and demonstrably justified within s 7(2) of the Charter.
 - iii. The failure to review the detention of the Plaintiffs and Group Members every 24 hours, as required by s 200(6) of the PHW Act, was a form of degrading treatment, in circumstances where they were public housing tenants and the failure to review their detention as required by law could reasonably be interpreted as indicating an attitude that it was not important to do so in their case. Their continued detention, in the circumstances, limited their right to non-degrading treatment in a manner which was not reasonable and demonstrably justified within s 7(2) of the Charter.
 - iv. The continued detention of the Plaintiffs and Group Members, in the circumstances pleaded in paragraph 19 of the Amended Statement of Claim, was incompatible with the right of the Plaintiffs and Group Members to humane treatment. Their continued detention, in the circumstances, limited their right to humane treatment in a manner which was not reasonable and demonstrably justified within s 7(2) of the Charter.

- v. Dr van Diemen did not consider each of the Relevant Human Rights of each Plaintiff and Group Member (or any of them) after she had made the Detention Directions.

52. In the premises of paragraphs 50 and 51 above, the detention of each of the Plaintiffs and Group Members in the First Detention Period (or, alternatively, in part of that period) was unlawful.

Enforcement of detention

53. During the First Detention Period, the Chief Commissioner of Police, and, or alternatively, the Assistant Commissioner of Police, Mick Hermans, when:

- (a) effecting the detention of each of the Plaintiffs and Group Members;
- (b) deploying, or deciding to deploy, Police Officers to the Estate Towers to enforce their detention; and, or in the alternative,
- (c) maintaining the deployment of Police Officers at the Estate Towers,

was obliged to:

- (d) act in a way that was not incompatible with the human rights of each of the Plaintiffs and Group Members; and, or alternatively,
- (e) give proper consideration to each of the Relevant Human Rights of each of the Plaintiffs and Group Members.

Particulars

- i. Charter, ss 38(1).

54. In authorising the deployment of Police Officers to enforce the detention of the Plaintiffs and Group Members during the First Detention Period, or to enforce compliance with the Detention Directions, the Chief Commissioner of Police and, or alternatively, the Assistant Commissioner of Police, Mick Hermans:

- (a) failed to give proper consideration to each or any of the Relevant Human Rights; and, or in the alternative,
 - (b) acted in a way that was incompatible with each or any of the Relevant Human Rights,
- contrary to s 38(1) of the Charter.

Particulars

- i. Paragraph 45 above is repeated.
- ii. The enforcement of the Detention Directions, by Police Officers, prior to an irrespective of any anticipated breach of those directions by any of the Plaintiffs and Group Members, amounted to degrading treatment of the Plaintiffs and Group Members and was incompatible with their right to non-degrading treatment.
- iii. The enforced detention of the Plaintiffs and Group Members, by Police Officers, was incompatible with the rights of the Plaintiffs and Group Members to freedom of movement and to liberty.

Second Detention Period – detention unlawful

55. In answer to paragraphs 21A and 21B of the Defence, the Plaintiffs say that:

(a) the detention of the Second Plaintiff and each of the 33 Alfred St Group Members and, or alternatively, the confinement or restraint of movement of those persons, during the Second Detention Period:

- i. was not authorised by the DPCC Directions; and
- ii. was not otherwise lawfully justified, and, or alternatively,

(b) the Second Plaintiff and each of the 33 Alfred Street Group Members (or any of them) was not required to comply with the DPCC Directions,

and they rely upon the pleadings in the following paragraphs 56 to 77 (inclusive) herein.

56. At all material times between 1 July 2020 and 31 July 2020, the Defendant held out that Dr Finn Romanes (**Dr Romanes**) was:

- (a) an authorised officer for the purposes of Division 3 of Part 10 of the PHW Act;
- (b) a Deputy Chief Health Officer of the Defendant who had been authorised to exercise emergency powers by the Chief Health Officer under s 199(2)(a) of the PHW Act;
- (c) a public official as defined under s 4 of the *Public Administration Act 2004* (Vic);
and
- (d) a public authority as defined under s 4 of the Charter.

57. Dr Romanes purported to make the Diagnosed Persons and Close Contacts Directions (No 5) (**DPCC Directions No 5**).

DPCC Directions invalid

58. Each of the DPCC Directions:

- (a) purported to confer powers on unspecified persons to make a diagnosis in relation to a person and to communicate that to the person, with the effect that the DPCC Direction applied to that person (clause 4(1));
- (b) purported to confer powers on officers of the Department to make a determination in relation to a person, the effect of which was to make the DPCC Direction inapplicable to the person (clause 5(2) and 5(4));
- (c) purported to confer powers upon officers of the Department to make a determination, the effect of which was to make the DPCC Direction applicable to that person and to determine the time at which the DPCC Direction would cease to apply to the person (clause 6(2) and (3));
- (d) purported to confer powers upon authorised officers to review determinations of officers of the Department made under clause 6(2) and, upon that review, to vary the determination as to whether the person is a “close contact” and therefore whether the DPCC Direction applies to the person (clause 6(9));
- (e) purported to confer, upon the Chief Health Officer and the Deputy Chief Health Officer, a power of exemption (clause 9); and
- (f) in the premises, impermissibly purported to delegate the power and, or alternatively, the authority to exercise the emergency powers.

59. Each of the DPCC Directions was made for a purpose other than a purpose for which the power was conferred, which was unauthorised or improper in that:

- (a) the purpose of the DPCC Directions was to create a body of rules applicable to the people of Victoria that were designed to create ongoing obligations on persons who were diagnosed with Covid-19 to self-isolate (even if that obligation arose after each direction was made) and ongoing obligations on persons who are living with a diagnosed person, or who have been in close contact with a diagnosed person, to self-quarantine (even if that situation arose after each direction was made);
- (b) such a purpose was unauthorised and improper in that:
 - (i) the purpose is legislative;
 - (ii) the powers under s 200(1) of the PHW Act cannot lawfully be exercised for a legislative purpose;

(iii) the legislative purpose amounts to an usurpation of the general lawmaking function of the Parliament to make the laws of Victoria, and of the delegated law-making function of the Governor in Council to make regulations under Division 6 of Part 11 of the PHW Act.

60. Each of the DPCC Directions:

- (a) purported to define a “diagnosed person” by reference to a person having “been informed” that they have been diagnosed with 2019-nCoV;
- (b) did not identify the person or persons whose act of informing a person (the **informed person**) that the informed person has been diagnosed with 2019-nCoV gave rise to the informed person becoming a “diagnosed person” within the directions;
- (c) was thereby uncertain, or was uncertain insofar as each direction purported to apply to diagnosed persons.

61. In purporting to make the DPCC Directions No 4, Dr van Diemen exceeded the powers and authority conferred upon her under s 199(2) of the PHW Act, to exercise any of the emergency powers, in that she purported:

- (a) to delegate the power, in s 200(1)(b) of the PHW Act, to restrict the movement of any person or group of persons within the emergency area, and, or alternatively, the power, in s 200(1)(d), to give any other direction that the authorised officer considers is reasonably necessary to protect public health, to others;

Particulars

- i. The Plaintiffs and Group Members repeat paragraph 58 above.
- (b) to exercise the powers in s 200(1)(b) and (d) for a purpose other than the purpose for which those powers were conferred.

Particulars

- i. The Plaintiffs and Group Members repeat paragraph 59 above.
- (c) to exercise the powers in s 200(1)(b) and, or alternatively, s 200(1)(d), in respect of persons or groups of persons:
 - i. whom she had not identified when she made the direction; and
 - ii. who, at the time the direction was made, were unascertainable.
- (d) to exercise the powers in s 200(1)(b) and, or alternatively, s 200(1)(d), in respect of events or circumstances which may occur in the future;

- (e) to exercise the powers in s 200(1)(b) and, or alternatively, s 200(1)(d), in respect of persons to whom the direction had not been given or communicated;
- (f) to exercise the emergency powers in respect of a group of persons, the identity of whom was uncertain;

Particulars

- i. The Plaintiffs and Group Members repeat paragraph 60 above.
62. In the premises of sub-paragraphs 61(a) to (f) above (or in the premises of any of those sub-paragraphs), Dr van Diemen exceeded her authority by purporting to exercise a legislative function and, or alternatively, to make a legislative instrument.
63. In purporting to make the DPCC Directions No 5, Dr Romanes exceeded the powers and authority conferred upon him under s 199(2) of the PHW Act, to exercise any of the emergency powers, in that he purported:

- (a) to delegate the power, in s 200(1)(b) of the PHW Act, to restrict the movement of any person or group of persons within the emergency area, and, or alternatively, the power, in s 200(1)(d), to give any other direction that the authorised officer considers is reasonably necessary to protect public health, to others;

Particulars

- i. The Plaintiffs and Group Members repeat paragraph 58 above.
- (b) to exercise the powers in s 200(1)(b) and (d) for a purpose other than the purpose for which those powers were conferred.

Particulars

- i. The Plaintiffs and Group Members repeat paragraph 59 above.
- (c) to exercise the powers in s 200(1)(b) and, or alternatively, s 200(1)(d), in respect of persons or groups of persons:
 - i. whom he had not identified when he made the direction; and
 - ii. who, at the time the direction was made, were unascertainable.
 - (d) to exercise the powers in s 200(1)(b) and, or alternatively, s 200(1)(d), in respect of events or circumstances which may occur in the future;
 - (e) to exercise the powers in s 200(1)(b) and, or alternatively, s 200(1)(d), in respect of persons to whom the direction had not been given or communicated;

- (f) to exercise the emergency powers in respect of a group of persons, the identity of whom was uncertain.

Particulars

- i. The Plaintiffs and Group Members repeat paragraph 60 above.
64. In the premises of sub-paragraphs 63(a) to (f) above (or in the premises of any of those sub-paragraphs), Dr Romanes exceeded his authority by purporting to exercise a legislative function and, or alternatively, to make a legislative instrument.
65. In the premises of paragraphs 58 to 64 above (or in the premises of any of those paragraphs):
- (a) each of the DPCC Directions is invalid or, alternatively, each of the DPCC Directions is invalid in part; and, or alternatively,
 - (b) the detention of the Second Plaintiff and each of the 33 Alfred Street Group Members (or any of them) in the Second Detention Period was unlawful.

DPCC Directions did not apply on their terms

66. At all material times, during the Second Detention Period, the Second Plaintiff and the 33 Alfred Street Group Members were detained by or on behalf of the Defendant, through its servants and agents, without any person conducting an individual assessment of each of them to determine whether each of them was a “close contact” or “diagnosed person.”

Particulars

- i. The Plaintiffs and Group Members were detained in their residences under supervision by armed Police Officers.
67. When deciding, on or about 9 July 2020, to designate the Second Plaintiff and, or alternatively, each of the 33 Alfred Street Group Members as a “close contact” within the DPCC Directions No 4, or as a close contact or diagnosed person, Dr van Diemen, or, if she did not make that decision, the decision-maker:
- (a) did not give individual consideration to the circumstances of each of the Second Plaintiff and the 33 Alfred Street Group Members;

Particulars

- i. Media Release by the Hon Daniel Andrews MP, Premier of 9 July 2020 entitled “Stage 3 Restrictions for Flemington and North Melbourne Estates.”

- ii. Televised broadcast at which the Premier and the Police Minister spoke on 9 July 2020 - <https://www.youtube.com/watch?v=ZQzvhDykZso> (especially at 2.32)
- (b) did not form a state of satisfaction, within cl 6(2) of the DPCC Directions No 4, having regard to “Departmental Requirements” (as defined), as to whether the Second Plaintiff and each of the 33 Alfred Street Group Members had had close contact with another person who:
 - i. since the time of last contact, had become a diagnosed person; or
 - ii. at the time of last contact, was a diagnosed person;
- (c) in the alternative to (b) above, formed a state of satisfaction which was legally unreasonable;

Particulars

- i. It was legally unreasonable to designate all residents of the 33 Alfred Street Estate Tower as being either close contacts or diagnosed persons within the DPCC Directions No 4, without conducting an individual assessment of any of them.
 - ii. It was not reasonable to conclude, without conducting an individual assessment of the Second Plaintiff and, or alternatively, each 33 Alfred Street Group Member, that each resident had had face-to-face contact with a diagnosed person for more than a total of 15 minutes over the course of a week or had shared a closed space with a diagnosed person for a prolonged period (for example, more than 2 hours).
- (d) did not make a “determination” within cl 6(2) of the DPCC Directions No 4 in relation to the Second Plaintiff and each of the 33 Alfred Street Group Members (or any of them);
- (e) did not provide the Second Plaintiff or each of the 33 Alfred Street Group Members with a notice under clause 5(1)(b) and 5(3) of the DPCC Directions before the commencement of the Second Detention Period (or at all); and, or in the alternative,
- (f) acted under dictation, in that Dr van Diemen, or the decision-maker (if that was not Dr van Diemen):
 - i. deferred to the policy of another decision-maker, being the Chief Health Officer, the Police Minister and, or alternatively, the Premier;

- ii. exercised his or her discretion at the behest of another decision-maker, being the Chief Health Officer, the Police Minister and, or alternatively, the Premier; and
- iii. failed to exercise his or her discretion independently.

68. When deciding, on or about 15 July 2020, to designate each of the Second Plaintiff and the 33 Alfred Street Group Members as a “close contact” within the DPCC Directions No 5, or to treat each of them as a diagnosed person or close contact, Dr Romanes and, or in the alternative, the employee of the Department or other servant or agent of the Crown making that decision:

- (a) failed to give individual consideration to the circumstances of the Second Plaintiff and each of the 33 Alfred Street Group Members;

Particulars

- i. Media Release by the Hon Daniel Andrews MP, Premier of 9 July 2020 entitled “Stage 3 Restrictions for Flemington and North Melbourne Estates.”
- ii. Televised broadcast at which the Premier and Minister Lisa Neville (the Police Minister) spoke on 9 July 2020 - <https://www.youtube.com/watch?v=ZQzvhDykZso> (especially at 2.32)

- (b) did not form a state of satisfaction, within cl 6(2) of the DPCC Directions No 5, having regard to “Departmental Requirements” (as defined), that each of the Second Plaintiff and the 33 Alfred Street Group Members was a diagnosed person or had had close contact with another person who:

- i. since the time of last contact, had become a diagnosed person; or
- ii. at the time of last contact, was a diagnosed person;

- (c) in the alternative to paragraph 68(b) above, formed a state of satisfaction which was legally unreasonable;

Particulars

- i. It was legally unreasonable to designate all residents of the 33 Alfred Street Estate Tower as being either close contacts or diagnosed persons within the DPCC Directions No 4, without conducting an individual assessment of any of them.

- ii. It was not reasonable to conclude, without conducting an individual assessment of the Second Plaintiff and, or alternatively, each 33 Alfred Street Group Member, that each resident had had face-to-face contact with a diagnosed person for more than a total of 15 minutes over the course of a week or had shared a closed space with a diagnosed person for a prolonged period (for example, more than 2 hours).
- (d) did not make a “determination” within cl 6(2) of the DPCC Directions No 5 in relation to each of the Second Plaintiff and the 33 Alfred Street Group Members (or any of them);
 - (e) did not provide the Second Plaintiff or each of the 33 Alfred Street Group Members with a notice under clause 5(1)(b) and 5(3) of the DPCC Directions before the commencement of the DPCC Directions No 5 (or at all); and, or alternatively,
 - (e) acted under dictation, in that Dr Romanes, or the decision-maker (if that was not Dr Romanes):
 - i. deferred to the policy of another decision-maker, being the Chief Health Officer, the Police Minister or the Premier;
 - ii. exercised his or her discretion at the behest of another decision-maker, being the Chief Health Officer, the Police Minister or the Premier; and
 - iii. failed to exercise his or her discretion independently.

69. In the premises of paragraphs 3(d), 66, 67 and 68 above:

- (a) the Second Plaintiff was not a “diagnosed person” within the DPCC Directions;
- (b) neither the Second Plaintiff nor any of the 33 Alfred Street Group Members was a “close contact” within the DPCC Directions No 4;
- (c) neither the Second Plaintiff nor any of the 33 Alfred Street Group Members was a “close contact” within the DPCC Directions No 5;
- (d) to the extent that the DPCC Directions did not validly apply to the Second Plaintiff or any of the 33 Alfred Street Group Members on the basis that any of them was a “diagnosed person,” the detention of (or, in the alternative, the restriction of the movement of) the Second Plaintiff and the 33 Alfred Street Group Members within the Second Detention Period was unlawful.

Police officers unlawfully detained Plaintiffs and Group Members

70. Further or alternatively, Police Officers, by preventing or restraining the Second Plaintiff and each of 33 Alfred St Group Members from leaving their residences in the Second Detention Period, unlawfully precluded the Second Plaintiff and each of 33 Alfred St Group Members from:

- (a) choosing the premises at which they were to:
 - i. self-isolate, in the case of diagnosed persons; or
 - ii. self-quarantine, in the case of close contacts;
- (b) leaving the 33 Alfred Street Estate Tower for the purposes of:
 - i. obtaining medical care or medical supplies; or
 - ii. exercise; or
 - iii. visiting a patient in hospital, if permitted to do so under the *Hospital Visitor Directions (No 7)*,unless given express permission to do so by a servant or agent of the Defendant.

71. In the premises of paragraph 70 above, Police Officers:

- (a) detained the Second Plaintiff and each of 33 Alfred St Group Members in their residences, during the Second Detention Period, in circumstances where the DPCC Directions authorised them to leave their residences; and
- (b) detained the Second Plaintiff and each of 33 Alfred St Group Members without lawful authorisation to do so, during the Second Detention Period.

Breach of Charter Rights

72. The servants or agents of the Defendant or Police Officer who decided, on or about 9 July 2020, to continue to detain the Second Plaintiff and the 33 Alfred Street Group Members in their residences, in reliance on DPCC Direction No 4, by continuing to deploy Police Officers to the 33 Alfred Street Estate Tower:

- (a) did not give proper or lawful consideration to each of the Relevant Human Rights or any of them; and, or in the alternative,
- (b) acted in a way that was incompatible with each of the Relevant Human Rights or any of them,

contrary to s 38(1) of the Charter.

Particulars

- i. The Plaintiffs and Group Members repeat paragraph 67 above.
- ii. The detention of the Second Plaintiff and the 33 Alfred Street Group Members, through the use of Police Officers, where the DPCC Directions only authorised (at most) self-isolation and self-quarantine, and where the residents were permitted to leave the premises for purposes including exercise in accordance with the DPCC Directions, was incompatible with the right to non-degrading treatment, the right to liberty, the right to freedom of movement, the right to freedom of association and the right to humane treatment. Those rights were limited in a manner which was not reasonable and demonstrably justified within s 7(2) of the Charter.

73. The servants or agents of the Defendant who decided to continue to detain the Second Plaintiff and the 33 Alfred Street Group Members in their residences, on or about 15 July 2020, pursuant to the DPCC Direction No 5:

- (a) did not give proper or lawful consideration to each of the Relevant Human Rights or any of them; and, or in the alternative,
- (b) acted in a way that was incompatible with each of the Relevant Human Rights or any of them,

contrary to s 38(1) of the Charter.

Particulars

- i. The Plaintiffs and Group Members repeat paragraph 67 above.
- ii. The detention of the Second Plaintiff and the 33 Alfred Street Group Members, through the use of Police Officers, where the DPCC Directions only authorised (at most) self-isolation and self-quarantine, and where the residents were permitted to leave the premises for purposes including exercise in accordance with the DPCC Directions, was incompatible with the right to non-degrading treatment, the right to liberty, the right to freedom of movement, the right to freedom of association and the right to humane treatment. Those rights were limited in a manner which was not reasonable and demonstrably justified within s 7(2) of the Charter.

74. In the premises of paragraphs 72 and 73 above, the detention of the Second Plaintiff and the 33 Alfred Street Group Members, in the Second Detention Period, was unlawful.

Enforcement of detention

75. During the Second Detention Period, the Chief Commissioner of Police and, or alternatively, the Assistant Commissioner of Police, Mick Hermans, when:

- (a) effecting the detention of the Second Plaintiff and each of the 33 Alfred Street Group Members;
- (b) deploying, or deciding to deploy, Police Officers to the 33 Alfred Street Estate Tower to enforce their detention; and, or in the alternative, and, or alternatively,
- (c) maintaining the deployment of Police Officers at the 33 Alfred Street Estate Tower,

was obliged to:

- (d) act in a way that was not incompatible with the human rights of the Second Plaintiff and each of the 33 Alfred Street Group Members; and, or alternatively,
- (e) give proper consideration to each of the Relevant Human Rights of the Second Plaintiff and each of the 33 Alfred Street Group Members.

Particulars

- i. Charter, ss 38(1).

76. In authorising the deployment of Police Officers to enforce the detention of the Second Plaintiff and 33 Alfred Street Group Members during the Second Detention Period, the Chief Commissioner of Police and, or alternatively, the Assistant Commissioner of Police, Mick Hermans:

- (a) failed to give proper consideration to each or any of the Relevant Human Rights of the Second Plaintiff and 33 Alfred Street Group Members; and, or in the alternative,
- (b) acted in a way that was incompatible with each or any of the Relevant Human Rights,

contrary to s 38(1) of the Charter.

Particulars

- i. Paragraph 45 above is repeated.
- ii. The enforcement of the DPCC Directions, by Police Officers, prior to an irrespective of any anticipated breach of those directions by the Second

Plaintiff or any of the 33 Alfred Street Group Members, and in circumstances where those directions did not purport to authorise the detention of the Second Plaintiff or any of the 33 Alfred Street Group Members, amounted to degrading treatment of the Second Plaintiff and each of the 33 Alfred Street Group Members and was incompatible with their right to non-degrading treatment. That right was limited in a manner which was not reasonable and demonstrably justified within s 7(2) of the Charter.

- iii. The enforcement of the DPCC Directions, by Police Officers, in the Second Detention Period, was incompatible with the rights of the Second Plaintiff and each of the 33 Alfred Street Group Members to liberty, to freedom of movement, to freedom of association and to humane treatment, to the extent that those rights had not been lawfully curtailed by the DPCC Directions. Those rights were limited in a manner which was not reasonable and demonstrably justified within s 7(2) of the Charter.
- iv. The concepts and requirements of self-isolation and self-quarantine in the DPCC Directions are incompatible with police enforcement.

77. In the premises of paragraphs 75 and 76 above, the detention of the Second Plaintiff and the 33 Alfred Street Group Members, in the Second Detention Period, was unlawful.

Application of Wrongs Act

78. In answer to paragraph 22 of the Defence, the Plaintiffs and Group Members say that s 28LE of the *Wrongs Act 1958* (Vic) has no application to the damages sought for infringement upon their liberty, and, or alternatively, for loss of reputation, because those damages are not in respect of an “injury” to a person.

79. Further, and in the alternative to paragraph 78 above, the Plaintiffs and Group Members say, in answer to paragraph 22 of the Defence:

- (a) s 28LE of the *Wrongs Act 1958* (Vic) does not apply to a claim for the recovery of damages for non-economic loss where the fault concerned is, or relates to, an intentional act that is done with intent to cause death or injury;

Particulars

- i. *Wrongs Act 1958* (Vic), s 28LC(2)(a).

- (b) the acts by which the Defendant, through its agents and servants, detained the Plaintiffs and Group Members, were intentional acts;
- (c) the Defendant, through its servants and agents, was recklessly indifferent as to causing injury to the Plaintiffs and Group Members;

Particulars

- i. If “injury” includes infringement upon liberty and loss of reputation (which is denied), the intended injury included the personal injury of the confinement of the persons of the Plaintiffs and Group Members within their homes and the psychological injury, humiliation and loss of dignity and reputation flowing from their detention and confinement.
 - ii. The Defendant, through its servants and agents, was aware that a risk of such injury existed and took no action, or insufficient action to avoid such injury and, or alternatively, was indifferent to whether that risk was averted.
- (d) further and alternatively to sub-paragraph 79(c) above, the actions and omissions of the servants and agents of the Defendant in detaining the Plaintiffs and Group Members were acts and omissions calculated (that is, naturally adapted in the circumstances) to produce injury to them and, or alternatively, likely to have an effect of producing injury to them;
- (e) in the premises of sub-paragraphs 79(c) and (d) above, the Defendant, through its servants and agents, intended to cause injury to the Plaintiffs and Group Members;
- (f) in the premises:
- i. the fault concerned in the Plaintiffs’ false imprisonment claim is, or relates to, an intentional act that is done with intent to cause injury within s 28LC(2)(a) of the *Wrongs Act 1958* (Vic); and
 - ii. s 28LE of the *Wrongs Act 1958* (Vic) does not apply to the false imprisonment claim made by the Plaintiffs and Group Members.

Assault

- 80. In answer to paragraph 28(a) of the Defence, the Plaintiffs and Group Members repeat paragraphs 1, 2, 3 and 4 above.
- 81. In answer to paragraph 29(a) of the Defence, the Plaintiffs and Group Members repeat paragraphs 2 and 4(b) above.

Damages, including aggravated damages, for assault

82. In answer to paragraphs 35(b), 36(b), 37(b) and 38(b) of the Defence, the Plaintiffs and Group Members say that:

- (a) s 28LE of the *Wrongs Act 1958* (Vic) does not apply to a claim for the recovery of damages for non-economic loss where the fault concerned is, or relates to, an intentional act that is done with intent to cause death or injury;

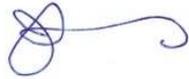
Particulars

- i. *Wrongs Act 1958* (Vic), s 28LC(2)(a).
- (b) the conduct by Police Officers, as pleaded in paragraphs 28 to 31 of the Amended Statement of Claim, comprised intentional acts;
- (c) Police Officers, when engaging in the conduct pleaded in paragraphs 28 to 31 of the Amended Statement of Claim, were recklessly indifferent as to causing injury to the Plaintiffs and Group Members;

Particulars

- i. The injury to which they were recklessly indifferent included the humiliation, indignity, insult, anxiety and, or alternatively, distress, flowing from the assault.
- ii. Police Officers (including the Chief Commissioner of Police and the Assistant Commissioner of Police, Mick Hermans) were aware that a risk of such injury existed and took no action, or insufficient action to avoid such injury and, or alternatively, were indifferent to whether that risk was averted.
- (d) further and alternatively to (c) above, the actions of Police Officers, as pleaded in paragraphs 28 to 31 of the Amended Statement of Claim, were acts calculated (that is, naturally adapted in the circumstances) to produce injury to the Plaintiffs and Group Members and, or alternatively, likely to have an effect of producing injury to them;
- (e) in the premises of 82(c) and (d) above, the Police Officers' acts, as pleaded in paragraphs 28 to 31 of the Amended Statement of Claim, were done with intent to cause injury;
- (f) in the premises:

- i. the fault concerned in the Plaintiffs' assault claim is, or relates to, an intentional act that is done with intent to cause injury within s 28LC(2)(a) of the *Wrongs Act 1958* (Vic); and
- ii. section 28LE of the *Wrongs Act 1958* (Vic) does not apply to the assault claim made by the Plaintiffs and Group Members.



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