



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

Case: S ECI 2020 03402

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No. S ECI 2020 03402

BETWEEN

**5 BOROUGHS NY PTY LTD (ACN 632 508 304)**

Plaintiff

AND

**STATE OF VICTORIA & ORS**

Defendants

### Statement of Claim

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## A. THE PARTIES

### The plaintiff and Group Members

1. The plaintiff brings this proceeding as a group proceeding pursuant to Part IVA of the *Supreme Court Act* 1986 (Vic) on its own behalf and on behalf of all other persons:
    - (a) who as at 1 July 2020 carried on a business (a **retail business**) the ordinary operations of which involved:
      - (i) the supply of goods or services at premises physically located within Victoria; and
      - (ii) the attendance by members of the general public at those premises for the acquisition of the goods or services supplied at those premises;
    - (b) who were prevented or prohibited from supplying, or were restricted in their ability to supply, goods or services to members of the general public at such premises, or who operated such premises the attendance by members of the general public at which was prohibited or restricted, by one or more of:
      - (i) the “**stage 3**” **restrictions** put in place in certain postcodes of Melbourne from 2 July 2020, and in Melbourne and the Mitchell Shire local government area from 9 July 2020;
      - (ii) the “**stage 4**” **restrictions** put in place in Melbourne from 2 August 2020, including the **workplace closures** put in place from 6 August 2020; and
      - (iii) the **regional “stage 3” restrictions** put in place in Victoria outside of Melbourne from 6 August 2020;
    - (c) who have suffered economic loss by reason of one or more of the matters in sub-paragraph (b); and
    - (d) who are not any of the persons mentioned in s 33E(2) of the *Supreme Court Act* 1986 (Vic)
- (**Group Members**), where:

- (e) “**stage 3**” **restrictions** means the restrictions imposed by one or more of the following directions given pursuant to s 200 of the *Public Health and Wellbeing Act* 2008 (Vic) (the **PHW Act**):
- (i) the *Stay at Home Directions (Restricted Postcodes)* given on 1 July 2020;
  - (ii) the *Restricted Activity Directions (Restricted Postcodes)* given on 1 July 2020;
  - (iii) clause 5(2)(d) of the *Stay Safe Directions (No 3)* given on 1 July 2020;
  - (iv) the *Stay at Home Directions (Restricted Areas)* given on 8 July 2020;
  - (v) the *Restricted Activity Directions (Restricted Areas)* given on 8 July 2020;
  - (vi) clause 5(2)(d) of the *Stay Safe Directions (No 4)* given on 8 July 2020;
  - (vii) the *Stay at Home Directions (Restricted Areas) (No 2)* given on 10 July 2020;
  - (viii) clause 5(2)(d) of the *Stay Safe Directions (No 5)* given on 10 July 2020;
  - (ix) the *Stay at Home Directions (Restricted Areas) (No 3)* given on 19 July 2020;
  - (x) the *Restricted Activity Directions (Restricted Areas) (No 2)* given on 19 July 2020;
  - (xi) clause 5(2)(d) of the *Stay Safe Directions (No 6)* given on 19 July 2020;
  - (xii) the *Stay at Home Directions (Restricted Areas) (No 4)* given on 22 July 2020;
  - (xiii) the *Restricted Activity Directions (Restricted Areas) (No 3)* given on 22 July 2020;
  - (xiv) clause 5(2)(d) of the *Stay Safe Directions (No 7)* given on 22 July 2020;
  - (xv) the *Stay at Home Directions (Restricted Areas) (No 5)* given on 30 July 2020; and

- (xvi) clause 5(2)(d) of the *Stay Safe Directions (No 8)* given on 30 July 2020;
- (f) **“stage 4” restrictions** means the restrictions imposed by one or more of the following directions given pursuant to s 200 of the PHW Act:
  - (i) the *Stay at Home Directions (Restricted Areas) (No 6)* given on 2 August 2020;
  - (ii) the *Stay at Home Directions (Restricted Areas) (No 7)* given on 2 August 2020;
  - (iii) the *Restricted Activity Directions (Restricted Areas) (No 4)* given on 2 August 2020;
  - (iv) the *Restricted Activity Directions (Restricted Areas) (No 5)* given on 2 August 2020;
  - (v) clause 5(2)(e) of the *Stay Safe Directions (No 9)* given on 2 August 2020;
  - (vi) the *Stay at Home Directions (Restricted Areas) (No 8)* given on 5 August 2020;
  - (vii) the *Restricted Activity Directions (Restricted Areas) (No 6)* given on 5 August 2020;
  - (viii) the *Stay at Home Directions (Restricted Areas) (No 9)* given on 6 August 2020;
  - (ix) the *Stay at Home Directions (Restricted Areas) (No 10)* given on 8 August 2020;
  - (x) the *Stay at Home Directions (Restricted Areas) (No 11)* given on 13 August 2020;
  - (xi) the *Restricted Activity Directions (Restricted Areas) (No 7)* given on 13 August 2020;
  - (xii) the *Stay at Home Directions (Restricted Areas) (No 12)* given on 16 August 2020;

- (xiii) the *Restricted Activity Directions (Restricted Areas) (No 8)* given on 16 August 2020;
- (xiv) the *Stay at Home Directions (Restricted Areas) (No 13)* given on 20 August 2020;
- (xv) the *Stay at Home Directions (Restricted Areas) (No 14)* given on 27 August 2020;
- (xvi) the *Restricted Activity Directions (Restricted Areas) (No 9)* given on 13 September 2020;
- (xvii) the *Stay at Home Directions (Restricted Areas) (No 15)* given on 13 September 2020;
- (xviii) the *Restricted Activity Directions (Restricted Areas) (No 10)* given on 27 September 2020;
- (xix) the *Stay at Home Directions (Restricted Areas) (No 16)* given on 27 September 2020;
- (xx) the *Restricted Activity Directions (Restricted Areas) (No 11)* given on 4 October 2020;
- (xxi) the *Stay at Home Directions (Restricted Areas) (No 17)* given on 4 October 2020;
- (xxii) the *Restricted Activity Directions (Restricted Areas) (No 12)* given on 11 October 2020;
- (xxiii) the *Stay at Home Directions (Restricted Areas) (No 18)* given on 11 October 2020;
- (xxiv) the *Restricted Activity Directions (Restricted Areas) (No 13)* given on 18 October 2020;
- (xxv) the *Stay at Home Directions (Restricted Areas) (No 19)* given on 18 October 2020; and
- (xxvi) the *Restricted Activity Directions (Restricted Areas) (No 14)* given on 26 October 2020.

- (g) **workplace closures** means the forced closure of certain workplaces pursuant to the directions referred to at sub-paragraphs (f)(vii), (f)(xi), (f)(xiii), (f)(xvi), (f)(xviii), (f)(xx), (f)(xxii), (f)(xxiv), and (f)(xxvi) above; and
- (h) **regional “stage 3” restrictions** means the restrictions imposed by one or more of the following directions given pursuant to s 200 of the PHW Act:
- (i) the *Stay at Home Directions (Non-Melbourne)* given on 5 August 2020;
  - (ii) the *Restricted Activity Directions (Non-Melbourne)* given on 5 August 2020;
  - (iii) the *Stay at Home Directions (Non-Melbourne) (No 2)* given on 13 August 2020;
  - (iv) the *Restricted Activity Directions (Non-Melbourne) (No 2)* given on 13 August 2020;
  - (v) the *Stay at Home Directions (Non-Melbourne) (No 3)* given on 16 August 2020;
  - (vi) the *Restricted Activity Directions (Non-Melbourne) (No 3)* given on 16 August 2020;
  - (vii) the *Stay at Home Directions (Non-Melbourne) (No 4)* given on 27 August 2020;
  - (viii) the *Restricted Activity Directions (Non-Melbourne) (No 4)* given on 13 September 2020;
  - (ix) the *Stay at Home Directions (Non-Melbourne) (No 5)* given on 13 September 2020;
  - (x) the *Restricted Activity Directions (Non-Melbourne) (No 5)* given on 16 September 2020;
  - (xi) the *Stay Safe Directions (Non-Melbourne)* given on 16 September 2020;
  - (xii) the *Restricted Activity Directions (Non-Melbourne) (No 6)* given on 27 September 2020;



- (xiii) the *Stay Safe Directions (Non-Melbourne) (No 2)* given on 27 September 2020;
- (xiv) the *Stay Safe Directions (Non-Melbourne) (No 3)* given on 4 October 2020;
- (xv) the *Restricted Activity Directions (Non-Melbourne) (No 7)* given on 11 October 2020;
- (xvi) the *Stay Safe Directions (Non-Melbourne) (No 4)* given on 11 October 2020;
- (xvii) the *Restricted Activity Directions (Non-Melbourne) (No 8)* given on 18 October 2020; and
- (xviii) the *Stay Safe Directions (Non-Melbourne) (No 5)* given on 18 October 2020; and
- (xix) *Restricted Activity Directions (Non-Melbourne) (No 9)* given on 25 October 2020.

2. The plaintiff carries on, and has at all material times carried on, a bar and restaurant business known as “5 Districts NY” at premises located at Unit 5, 2 Thomsons Road, Keilor Park in the State of Victoria.

### **The defendants**

3. By s 23(1)(b) of the *Crown Proceedings Act 1958 (Vic)*, the first defendant (the **State of Victoria**) is liable for the torts of its servants or agents, or of independent contractors employed by it, as nearly as possible in the same manner as a subject is liable for the torts of his or her servants or agents or of independent contractors employed by him or her.
4. The second defendant (the **Minister for Health**):
  - (a) was from December 2018 to 26 September 2020 a Minister responsible for the Department of Health and Human Services (**DHHS**);
  - (b) was from 3 April 2020 to 26 September 2020 the Minister for the Coordination of Health and Human Services: COVID-19, having responsibility in that role for leading all activities of DHHS in response to the COVID-19 pandemic; and

### Particulars

Media release issued by the Premier of Victoria on 3 April 2020 entitled “Crisis Council of Cabinet set up to combat coronavirus”.

- (c) was from December 2018 to 26 September 2020 the Minister responsible for administering the PHW Act.
5. The third defendant (the **Minister for Jobs**):
- (a) was from December 2018 to 22 June 2020, as Minister for Jobs, Innovation and Trade in that period, the Minister responsible for the Department of Jobs, Precincts and Regions (**DJPR**); and
  - (b) was on 3 April 2020 sworn in as “Minister for the Coordination of Jobs, Precincts and Regions: COVID-19”, having responsibility in that role for leading all activities of DJPR in response to the COVID-19 pandemic.

### Particulars

Media release issued by the Premier of Victoria on 3 April 2020 entitled “Crisis Council of Cabinet set up to combat coronavirus”.

6. The fourth defendant (the **Secretary of DHHS**), at all material times:
- (a) was the “Department Head”, within the meaning of the *Public Administration Act* 2004 (Vic), of DHHS; and
  - (b) had the role and functions set out in s 17 of the PHW Act, including to administer the PHW Act in accordance with the objectives and guiding principles specified in the PHW Act.
7. The fifth defendant (the **Secretary of DJPR**) is and was at all material times the “Department Head”, within the meaning of the *Public Administration Act* 2004 (Vic), of DJPR.
8. Officers of DHHS included at all material times:
- (a) the Chief Health Officer (**CHO**) appointed by the Secretary of DHHS pursuant to s 20 of the PHW Act; and

- (b) the Deputy Chief Health Officer (Communicable Disease) (**DCHO**) appointed by the Secretary of DHHS to be an authorised officer for the purposes of the PHW Act pursuant to s 30 of the PHW Act.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Annaliese van Diemen, Deputy Chief Health Officer, to the Hotel Quarantine Inquiry dated 9 September 2020 at paragraph 17. Further particulars may be provided following discovery.

## **B. THE COVID-19 PANDEMIC AND VICTORIA'S INITIAL RESPONSE**

### **Modes of SARS-CoV-2 transmission**

- 9. Coronavirus disease 2019 (**COVID-19**) is and was at all material times:
  - (a) a highly infectious disease caused by severe acute respiratory syndrome coronavirus 2 (**SARS-CoV-2**); and
  - (b) capable of causing the death of infected persons.
- 10. SARS-CoV-2 is and was at all material times:
  - (a) capable of being transmitted through respiratory droplets;
  - (b) capable, in particular circumstances leading to the generation of airborne particles (**aerosols**), such as in the course of certain medical procedures, of being transmitted through aerosols;
  - (c) capable of being transmitted through fomites, being contaminated objects or surfaces (including the surface of the hands);
  - (d) by reason of the foregoing, capable of being transmitted:
    - (i) directly by contact with infected people; and
    - (ii) indirectly by contact with contaminated objects or surfaces; and
  - (e) capable of being transmitted by an asymptomatic person.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Professor Lindsay Grayson, Professor of

Infectious Diseases at Austin Health, to the Hotel Quarantine Inquiry dated 10 August 2020 at paragraphs 40–45, 47(c), and 55–56. Further particulars may be provided following expert evidence.

### **First case of COVID-19 in Victoria detected**

11. On 25 January 2020, the first case of COVID-19 in Victoria (and in Australia) was detected.

#### **Particulars**

Media release issued by the Commonwealth Minister for Health on 25 January 2020 entitled “First confirmed case of novel coronavirus in Australia”.

### **WHO declares COVID-19 a pandemic**

12. On 30 January 2020, the World Health Organisation (**WHO**) declared COVID-19 to be a public health emergency of international concern.

#### **Particulars**

WHO media release entitled “Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV)” issued 30 January 2020.

13. On 11 March 2020, the WHO declared COVID-19 to be a pandemic.

#### **Particulars**

Speech of Dr Ghebreyesus, Director General of the WHO, entitled “WHO Director General’s opening remarks at the media briefing on COVID-19” made 11 March 2020.

### **First case of community transmission in Victoria recorded**

14. By 12 March 2020:
  - (a) there was a total of 26 active cases of COVID-19 in Victoria; and
  - (b) Victoria’s first case of community transmission of COVID-19 had been recorded.

### **Particulars**

Data published by DHHS.

#### **Upward trend in new cases in Victoria across March**

15. From 9 March 2020 to 27 March 2020, Victoria experienced an upwards trend in daily new COVID-19 cases, moving from three new cases on 9 March 2020 to 106 new cases on 27 March 2020.

### **Particulars**

Data published by DHHS.

16. By 27 March 2020, there was a total of 466 active cases of COVID-19 in Victoria.

### **Particulars**

Data published by DHHS.

#### **National Cabinet established**

17. On 13 March 2020, a body called the “National Cabinet” was established following a meeting of the Council of Australian Governments.

### **Particulars**

Media release issued 13 March 2020 by the Prime Minister, Commonwealth Minister for Health, and Commonwealth Chief Medical Officer entitled “Advice on Coronavirus”.

#### **State of Emergency declared in Victoria**

18. On 16 March 2020, the Minister for Health declared a state of emergency throughout Victoria pursuant to s 198(1) of the PHW Act arising out of the serious risk to public health in Victoria from SARS-CoV-2 (the **State of Emergency**).

### **Particulars**

Declaration of a State of Emergency dated 16 March 2020 and signed by the Minister for Health.

19. The declaration of the State of Emergency was extended to remain in force at all material times.

### **Particulars**

The plaintiff refers to the Extension of Declaration of a State of Emergency dated 29 January 2021 and to the list therein of prior extensions of the declaration of the state of emergency.

20. At all material times from 17 March 2020, pursuant to s 199 of the PHW Act, the DCHO was authorised by the CHO to exercise any of the public risk powers and emergency powers under the PHW Act.

### **Particulars**

Instrument of authorisation under section 199 dated 17 March 2020. Particulars of any extension to that instrument or successive instruments may be provided following discovery.

### **“Stage 1” restrictions commence in Victoria**

21. On 23 March 2020, “stage 1” restrictions were put in place in Victoria, requiring the closure of certain businesses, including pubs, bars, clubs, gyms, indoor sporting centres, cinemas, nightclubs, entertainment venues, restaurants, and cafes.

### **Particulars**

*Non-essential Business Closure Direction* given on 23 March 2020 under s 200 of the PHW Act.

### **“Stage 2” restrictions commence in Victoria**

22. On 25 March 2020, “stage 2” restrictions were put in place in Victoria, which restrictions, *inter alia*:
- (a) maintained the business closures that occurred under “stage 1” restrictions and expanded the businesses required to close to include, *inter alia*, beauty and personal care facilities, auction houses, market stalls not supplying food or drink, accommodation facilities, swimming pools, and zoos; and
  - (b) prohibited owners of premises in Victoria from allowing a gathering of 100 or more persons to occur in a single undivided indoor space.

### **Particulars**

*Non-Essential Activity Directions* given on 25 March 2020 under s 190 and s 200 of the PHW Act

*Prohibited Gathering Directions* given on 25 March 2020 under s 200 of the PHW Act.

23. On 26 March 2020, the list of businesses required to close under “stage 2” restrictions was amended.

**Particulars**

*Non-Essential Activity Directions (No 2)* given on 26 March 2020 under s 190 and s 200 of the PHW Act.

**“Stage 3” restrictions commence in Victoria**

24. On 30 March 2020, “stage 3” restrictions were put in place in Victoria, which restrictions, *inter alia*:
- (a) prohibited persons from leaving their homes except for certain reasons; and
  - (b) maintained the business closures that occurred under “stage 2” restrictions and expanded the categories of businesses required to close.

**Particulars**

*Stay at Home Directions* given on 30 March 2020 under s 200 of the PHW Act.

*Restricted Activity Directions* given on 30 March 2020 under s 190 and s 200 of the PHW Act.

25. The effect of those “stage 3” restrictions on the plaintiff and Group Members included:
- (a) prohibiting or restricting attendance by members of the general public at the premises at which the plaintiff and Group Members supplied goods or services, by reason of the prohibition they placed on persons in Victoria leaving their places of residence save for certain limited reasons;

**Particulars**

*Stay at Home Directions* given on 30 March 2020, clause 5.

- (b) in the case of those (including the plaintiff) who were operating pubs, bars, clubs, and other “licensed premises”, prohibiting them from operating those premises subject to certain limited exceptions;

### **Particulars**

*Restricted Activity Directions* given on 30 March 2020, clause 5.

- (c) in the case of those operating gyms, fitness centres, yoga studios, play centres, and other “recreational facilities”, prohibiting them from operating those facilities subject to certain limited exceptions;

### **Particulars**

*Restricted Activity Directions* given on 30 March 2020, clause 6.

- (d) in the case of those operating theatres, cinemas, and other “entertainment facilities”, prohibiting them from operating those facilities subject to one limited exception;

### **Particulars**

*Restricted Activity Directions* given on 30 March 2020, clause 7.

- (e) in the case of those operating beauty and personal care facilities and other “restricted retail facilities”, prohibiting them from operating those facilities subject to one limited exception; and

### **Particulars**

*Restricted Activity Directions* given on 30 March 2020, clause 9.

- (f) in the case of those (including the plaintiff) operating cafes, restaurants, and other “food and drink facilities”, prohibiting them from operating those facilities subject to certain limited exceptions.

### **Particulars**

*Restricted Activity Directions* given on 30 March 2020, clause 10.



## C. QUARANTINE DETENTION IN VICTORIA

### Detention of returned travellers

26. On 27 March 2020, the Prime Minister announced that the National Cabinet had agreed, *inter alia*, that by no later than 11:59 pm on 28 March 2020:
- (a) returned travellers to Australia would be required to undertake 14-day isolation at “designated facilities”, such as hotels, to be determined by the relevant State or Territory government; and
  - (b) this would be implemented using State and Territory legislation and would be enforced by State and Territory governments, with the support of the Australian Defence Force and the Australian Border Force where necessary.

#### Particulars

Media release issued by the Prime Minister and dated 27 March 2020.

27. In accordance with that agreement of National Cabinet, after midnight on 28 March 2020, the DCHO, acting in her capacity as an authorised officer under the PHW Act authorised to exercise emergency powers under s 199 of the PHW Act, directed persons arriving in Victoria from overseas (**returned travellers**) to be detained for a period of 14 days in a room in a specified hotel (**quarantine hotel**), on the basis that the detention was reasonably necessary for the purpose of eliminating or reducing a serious risk to public health, namely the COVID-19 pandemic, pursuant to s 200(1)(a) of the PHW Act (**quarantine detention**).

#### Particulars

Direction and Detention Notice (undated) signed by Dr Annaliese van Diemen, DCHO.

### The role of DHHS and DJPR in implementing quarantine detention at quarantine hotels

28. The quarantine hotels included:
- (a) Rydges on Swanston located in Carlton (**Rydges**); and
  - (b) Stamford Plaza Melbourne located in the Melbourne central business district (**Stamford Plaza**).

29. For the purposes of implementing the quarantine detention, DJPR contracted with:
- (a) private security companies to provide services at quarantine hotels as pleaded in paragraphs 30 to 31 below; and
  - (b) the operators of Rydges and Stamford Plaza as pleaded in paragraphs 32 to 33 below.
30. On or about 29 March 2020, DJPR engaged Unified Security Group (Australia) Pty Ltd (**Unified Security**) to provide services at quarantine hotels.

#### **Particulars**

- (i) Agreement for Professional Services with Unified Security dated 9 April 2020 and executed by the Secretary of DJPR (Annexures to the witness statement of Simon Phemister to the Hotel Quarantine Inquiry dated 13 August 2020 at DJP.105.003.0793) (**Unified Security contract**).
  - (ii) The plaintiff refers to the matters set out in the witness statement of Simon Phemister, Secretary of DJPR, to the Hotel Quarantine Inquiry dated 13 August 2020 at paragraph 115.
  - (iii) The plaintiff refers to the matters set out in the witness statement of Katrina Currie, Executive Director, Employment, Inclusion Group at DJPR, to the Hotel Quarantine Inquiry dated 24 August 2020 at paragraph 23.
31. On or about 6 April 2020, DJPR engaged MSS Security Pty Ltd (**MSS Security**) to provide services at quarantine hotels.

#### **Particulars**

- (i) Purchase Order Contract with MSS Security executed by the Secretary of DJPR (undated) (Annexures to the witness statement of Simon Phemister to the Hotel Quarantine Inquiry dated 13 August 2020 at DJP.105.003.1020) (**MSS Security contract**); Annexures to the witness statement of Simon Phemister to the Hotel Quarantine Inquiry dated 13 August 2020 at DJP.110.002.6652.
- (ii) The plaintiff refers to the matters set out in the witness statement of Simon Phemister, Secretary of DJPR, to the Hotel Quarantine Inquiry dated 13 August 2020 at paragraph 115.

- (iii) The plaintiff refers to the matters set out in the witness statement of Katrina Currie, Executive Director, Employment, Inclusion Group at DJPR, to the Hotel Quarantine Inquiry dated 24 August 2020 at paragraph 24.

32. On or about 30 March 2020, DJPR entered into a written contract with Charlor Pty Ltd, the operator of Rydges, in relation to the use of Rydges as a quarantine hotel.

**Particulars**

- (i) Agreement for the Provision of Accommodation dated 30 March 2020 at RYD.0001.0010.0003 of the Annexures to the witness statement of Rosswyn Menezes, General Manager of Rydges, to the Hotel Quarantine Inquiry dated 17 August 2020 (**Rydges contract**).
- (ii) The Rydges contract was extended and varied on or about 22 April 2020 (Annexures to the witness statement of Rosswyn Menezes, General Manager of Rydges, to the Hotel Quarantine Inquiry dated 17 August 2020 at RYD.0001.0010.0094).
- (iii) The Rydges contract was further extended and varied on or about 22 May 2020 (Annexures to the witness statement of Rosswyn Menezes, General Manager of Rydges, to the Hotel Quarantine Inquiry dated 17 August 2020 at RYD.0001.0001.0252).

33. On or about 11 April 2020, DJPR entered into a written contract with SPM (1994) Pty Ltd, the operator of Stamford Plaza, in relation to the use of Stamford Plaza as a quarantine hotel.

**Particulars**

- (i) Agreement for the Provision of Accommodation dated 11 April 2020 found at STAM.0001.0001.0304 of the Annexures to the witness statement of Karl Unterfrauner, General Manager of Stamford Plaza, to the Hotel Quarantine Inquiry dated 19 August 2020 (**Stamford Plaza contract**).
- (ii) The Stamford Plaza contract was extended and varied on or about 15 May 2020 and on or about 29 May 2020 (Annexures to the witness statement of Karl Unterfrauner, General Manager of Stamford Plaza, to the Hotel Quarantine Inquiry dated 19 August 2020 at STAM.0001.0001.0161).

34. From about 29 March 2020 until about 16 June 2020, one or more representatives of DHHS were present at each quarantine hotel at all times for the purpose of implementing quarantine detention of returned travellers.

**Particulars**

- (i) The plaintiff refers to the matters set out in the transcript of evidence of Merrin Bamert, Operation Soteria Commander, to the Hotel Quarantine Inquiry at page 1285, line 47 to page 1286, line 5.
- (ii) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 1, page 188, paragraph 159; page 275, paragraph 158; page 276, paragraph 176.
- (iii) Further particulars may be provided following discovery.

**Quarantine detention commences at Rydges and Stamford Plaza**

35. On 12 April 2020, Rydges began operating as a quarantine hotel.

**Particulars**

The plaintiff refers to the matters set out in the witness statement of Rosswyn Menezes, General Manager of Rydges, to the Hotel Quarantine Inquiry dated 17 August 2020 at paragraph 18.

36. On or around 22 April 2020, Rydges was designated as a “hot hotel”, being a quarantine hotel to which persons confirmed to have COVID-19 were sent.

**Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Pam Williams, Commander, Operation Soteria, to the Hotel Quarantine Inquiry dated 9 September 2020 at paragraph 41(f).
- (ii) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 2, page 12, paragraph 42.
- (iii) Further particulars may be provided following discovery.

37. From around late April 2020, Rydges was operating as a hot hotel.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Pam Williams, Commander, Operation Soteria, to the Hotel Quarantine Inquiry dated 9 September 2020 at paragraph 41(f). Further particulars may be provided following discovery.

38. On 30 April 2020, Stamford Plaza began operating as a quarantine hotel.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Karl Unterfrauner, General Manager of Stamford Plaza, to the Hotel Quarantine Inquiry dated 19 August 2020 at paragraph 11.

## **D. DUTY OF CARE**

### **The defendants' knowledge**

39. At all material times from no later than 29 March 2020, each of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR knew or ought to have known the matters pleaded in paragraphs 9 to 28 above.

### **Particulars**

- (i) As to the matters pleaded in paragraphs 9 and 11 to 27 above, these were matters of public knowledge and/or publicly announced at the time.
- (ii) As to the matter pleaded in paragraph 10 above the plaintiff refers to:
  - 1. Publicly available WHO guidance published on 29 March 2020 and entitled “Modes of transmission of virus causing COVID-19: implications for IPC precaution recommendations”.
  - 2. Australian Health Protection Principal Committee statement on novel coronavirus issued 29 January 2020.
  - 3. The plaintiff refers to the matters set out in the witness statement of the “Infection Control Consultant” to the Hotel Quarantine Inquiry dated 18 September 2020 at paragraphs 34 to 36.
- (iii) As to the matter pleaded in paragraph 28 above:
  - 1. The knowledge of the Minister for Health and the Secretary of DHHS may be inferred from the role of

each as the Minister responsible for DHHS and the head of DHHS, respectively, and from the continuous presence of representatives of DHHS at each quarantine hotel pleaded in paragraph 34 above.

2. As to the knowledge of the Minister for Jobs and the Secretary of DJPR, the plaintiff refers to the particulars to paragraph 40 below.

(iv) Further particulars may be provided following discovery and/or expert evidence.

40. At all material times from no later than 11 April 2020, each of the Minister for Jobs and the Secretary of DJPR knew or ought to have known the matters pleaded in paragraphs 29 to 33 above.

#### **Particulars**

(i) The Secretary of DJPR executed each of the Unified Security contract and the MSS Security contract, and authorised Mr Unni Mennon to execute each of the Rydges contract and the Stamford Plaza contract (Annexures to the witness statement of Unni Menon, Executive Director at DJPR, to the Hotel Quarantine Inquiry dated 24 August 2020 at DJP.101.004.5136).

(ii) The plaintiff refers to the matters set out in the witness statement of the Honourable Martin Pakula MP to the Hotel Quarantine Inquiry dated 21 September 2020, paragraphs 13 to 14.

(iii) Further particulars may be provided following discovery.

41. At all material times from about 30 March 2020 until about 16 June 2020, each of the Minister for Health and the Secretary of DHHS knew or ought to have known the matter pleaded at paragraph 34 above.

#### **Particulars**

The knowledge of the Minister for Health and the Secretary of DHHS may be inferred from the role of each as the Minister responsible for DHHS and the head of DHHS, respectively. Further particulars may be provided following discovery.

42. At all material times from no later than 30 April 2020, each of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR knew or ought to have known the matters pleaded at paragraphs 35 to 38 above.

### **Particulars**

- (i) It may be inferred that each of the Minister for Health and the Secretary of DHHS knew or ought to have known these matters from the role of each as the Minister responsible for DHHS and the head of DHHS, respectively, from the continuous presence of representatives of DHHS at each quarantine hotel pleaded in paragraph 34 above, and in the case of the designation and operation of Rydges as a hot hotel, from the fact that the DCHO agreed to that designation as set out in the witness statement of Pam Williams, Commander, Operation Soteria, to the Hotel Quarantine Inquiry dated 9 September 2020 at paragraph 41(f).
  - (ii) It may be inferred that each of the the Minister for Jobs and the Secretary of DJPR from the role of each as the Minister responsible for DJPR and the head of DJPR, respectively, and the role of DJPR in contracting with the hotel operator of Rydges and the hotel operator of Stamford Plaza as pleaded in paragraphs 32 and 33 above.
  - (iii) Further particulars may be provided following discovery.
43. At all material times, it was reasonably foreseeable, and each of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR knew or ought to have known that:
- (a) unless effective infection prevention and control measures were implemented in respect of quarantine detention at quarantine hotels, it was likely, or there was a substantial risk (which likelihood or risk was heightened in the case of a hot hotel such as Rydges), that:
    - (i) COVID-19 would spread from returned travellers at quarantine hotels to the Victorian community; and
    - (ii) if that occurred, “stage 3” or greater COVID-19 restrictions would continue to be imposed in Victoria or, to the extent that such restrictions had been eased, would be re-imposed;

- (b) the continued imposition, or the re-imposition, of “stage 3” or greater COVID-19 restrictions in Victoria would likely:
  - (i) involve the closure or restricted operation of retail businesses in Victoria;
  - (ii) involve restrictions on the reasons for which members of the general public in Victoria would be permitted to leave their homes, and/or the duration of time for which members of the general public in Victoria would be permitted to leave their homes, impeding the ability of the general public in Victoria to attend the premises of retail businesses; and
  - (iii) thereby prohibit or prevent the plaintiff and Group Members from supplying, or restrict the ability of the plaintiff and Group Members to supply, goods or services to members of the general public at premises in Victoria and/or prohibit or restrict attendance by members of the general public at such premises to acquire goods or services; and
- (c) the plaintiff and Group Members were likely to suffer economic loss if such restrictions continued to be imposed, or were re-imposed.

#### **The vulnerability of the plaintiff and Group Members**

44. At all material times, the plaintiff and Group Members:
- (a) were unable to protect themselves from the consequences of COVID-19 restrictions that prohibited or prevented them from supplying, or restricted their ability to supply, goods or services to members of the general public at premises in Victoria, or prohibited or restricted the attendance by members of the general public at those premises; and
  - (b) were thus vulnerable to any want of care leading to the continued imposition or re-imposition of those prohibitions or restrictions.

#### **Duty of care owed to the plaintiff and Group Members**

45. By reason of the matters pleaded in paragraphs 39 to 44 above, each of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR owed the plaintiff and Group Members a duty to take reasonable care to ensure that effective



infection prevention and control measures were implemented in respect of quarantine detention at quarantine hotels.

46. At all material times, the implementation of effective infection prevention and control measures in respect of quarantine detention at quarantine hotels required:
- (a) that all persons working in quarantine hotels were adequately trained in infection prevention and control, including in hand hygiene, social distancing, and the proper use of personal protective equipment (**PPE**);
  - (b) that such training was regularly reinforced, not one-off or sporadic;
  - (c) that those delivering such training had expertise in infection prevention and control so as to be capable of delivering such training to a standard adequate for those working in a quarantine environment;
  - (d) that all persons working in quarantine hotels were supplied with PPE:
    - (i) of appropriate types and quality; and
    - (ii) in sufficient quantities;
  - (e) that cleaning and disinfection effective against SARS-CoV-2 was regularly carried out:
    - (i) in areas of quarantine hotels through which returned travellers had passed or in which they had resided, including lifts used by returned travellers and rooms in which they had resided; and
    - (ii) in respect of high-touch surfaces at quarantine hotels;
  - (f) that there was ongoing, on-site oversight or supervision of infection prevention and control practices at quarantine hotels by a person or persons appropriately qualified in infection prevention and control, including oversight or supervision of:
    - (i) whether infection prevention and control training was being delivered to all persons working in the hotel;
    - (ii) the standard and frequency of that training;
    - (iii) whether PPE was being used correctly or at all;

- (iv) whether hand hygiene and social distancing were being observed; and
  - (v) whether cleaning and disinfection effective against SARS-CoV-2 was being carried out in areas of the hotel where such cleaning was required; and
- (g) that regular audits of infection prevention and control practices at quarantine hotels were conducted.

### **Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Professor Lindsay Grayson, Professor of Infectious Diseases at Austin Health, to the Hotel Quarantine Inquiry dated 10 August 2020 at paragraphs 61–67, 75.
- (ii) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 1, page 219, paragraph 46; page 229, paragraphs 120–122; page 230, paragraph 125, paragraph 129; page 234, paragraph 159; page 235, paragraph 166; page 307, paragraphs 369–370; volume 2, page 20, paragraphs 96, 98–100.
- (iii) The plaintiff refers to the matters set out in the witness statement of Simone Alexander, Chief Operating Officer of Alfred Health, to the Hotel Quarantine Inquiry dated 1 September 2020 at paragraphs 58–65.
- (iv) The plaintiff refers to the matters set out in the transcript of evidence of Simone Alexander to the Hotel Quarantine Inquiry, page 1029, line 32 to page 1030, line 27; page 1030, line 36 to page 1032, line 30; page 1040, lines 18–22.
- (v) WHO guidance published on 29 March 2020 and entitled “Modes of transmission of virus causing COVID-19: implications for IPC precaution recommendations”, which guidance, *inter alia*: (a) emphasised the importance of the appropriate use of PPE; (b) emphasised the importance of training staff, particularly in the appropriate use of PPE and hand hygiene; and (c) emphasised the “utmost importance” of environmental cleaning.
- (vi) The plaintiff refers to the matters set out in the transcript of the evidence of Michael Girgis, General Manager of IKON Services Australia Pty Ltd, page 1251, line 40 to page 1253, line 26.

(vii) Further particulars may be provided following expert evidence.

47. In the premises, each of the Minister for Health and the Secretary of DHHS was required by the duty pleaded in paragraph 45 above to procure that DHHS, through its representatives present at quarantine hotels as pleaded in paragraph 34 above or otherwise:

- (a) identify whether or not ongoing, on-site oversight or supervision of infection prevention and control practices at quarantine hotels was being conducted by a person or persons appropriately qualified in infection prevention and control, including oversight or supervision of the matters referred to in paragraph 46(f) above;
- (b) to the extent that it was identified that such oversight or supervision was not being conducted, procure such oversight or supervision to be conducted;
- (c) identify whether or not regular audits of infection prevention and control practices at quarantine hotels were being conducted; and/or
- (d) to the extent that it was identified that such audits were not being carried out, procure such audits to be conducted.

48. Further or alternatively, in the premises, each of the Minister for Health and the Secretary of DHHS was required by the duty pleaded in paragraph 45 above to procure that DHHS, through its representatives present at quarantine hotels as pleaded in paragraph 34 above or otherwise:

- (a) identify whether or not the organisations whose staff worked at quarantine hotels had the expertise and capability to implement effectively the infection prevention and control measures pleaded in paragraph 46 above, including in respect of the provision of:
  - (i) training in infection prevention and control, including in hand hygiene, social distancing, and the proper use of PPE; and
  - (ii) PPE of appropriate types and quality, and in sufficient quantities; and
- (b) to the extent such organisations did not have the expertise or capability to implement effectively the infection prevention and control measures pleaded in

paragraph 46 above, ensure that adequate advice and assistance was provided to those organisations in relation to those matters.

49. Further, in the premises, each of the Minister for Jobs and the Secretary of DJPR was required by the duty pleaded in paragraph 45 above to procure that DJPR, through the process of contracting with private security companies and the operators of quarantine hotels as pleaded at paragraphs 29 to 33 above:

- (a) identify whether or not the private security companies and operators of quarantine hotels had the expertise and capability to implement effectively the infection prevention and control measures pleaded in paragraph 46 above, including in respect of the provision of:
  - (i) training in infection prevention and control, including in hand hygiene, social distancing, and the proper use of PPE; and
  - (ii) PPE of appropriate types and quality, and in sufficient quantities; and
- (b) to the extent a private security company or operator of a quarantine hotel did not have the expertise or capability to implement effectively the infection prevention and control measures pleaded in paragraph 46 above:
  - (i) contract with another organisation or organisations with appropriate expertise and capability to implement effectively the infection prevention and control measures pleaded in paragraph 46 above at the relevant quarantine hotel; or
  - (ii) alternatively:
    1. procure the provision of adequate advice or assistance to the relevant private security company or operator of a quarantine hotel to enable them to implement effectively the infection prevention and control measures pleaded in paragraph 46 above at the relevant quarantine hotel; and
    2. monitor whether or not the relevant private security company or operator of a quarantine hotel was able to implement and follow that advice or utilise that assistance.

## **E. BREACH OF DUTY**

### **Lack of oversight and auditing at Rydges and Stamford Plaza**

50. Prior to 26 May 2020 when the outbreak at Rydges began (as pleaded at paragraph 88 below):

- (a) no person with expertise in infection prevention and control and responsibility for oversight or supervision of infection prevention and control practices at Rydges was stationed at that hotel, either regularly or at all; and
- (b) no audit of infection prevention and control measures, including compliance with those measures by private security guards and hotel staff, was ever carried out.

#### **Particulars**

- (i) The plaintiff refers to the matters set out in the transcript of evidence of Dr Simon Crouch, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry at page 1072, lines 3–7.
- (ii) The plaintiff refers to the matters set out in the transcript of evidence of Simone Alexander, Chief Operating Officer of Alfred Health, to the Hotel Quarantine Inquiry, page 1029, lines 34–38.
- (iii) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 1, page 234, paragraph 160; volume 2, page 17, paragraph 70; page 32, paragraph 199; page 33, paragraphs 200–201.
- (iv) The plaintiff refers to the matters set out in the witness statement of Dr Annaliese van Diemen, Deputy Chief Health Officer, to the Hotel Quarantine Inquiry dated 9 September 2020 at paragraph 148.
- (v) Further particulars may be provided following discovery.

51. Prior to 16 June 2020 when the outbreak at Stamford Plaza began (as pleaded at paragraph 99 below):

- (a) no person with expertise in infection prevention and control and responsibility for oversight or supervision of infection prevention and control practices at Stamford Plaza was stationed at that hotel, either regularly or at all; and

- (b) no audit of infection prevention and control measures, including compliance with those measures by private security guards and hotel staff, was ever carried out.

#### **Particulars**

- (i) The plaintiff refers to the matters set out in the transcript of evidence of Dr Simon Crouch, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry at page 1072, lines 9–13.
- (ii) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 1, page 234, paragraph 160; volume 2, page 17, paragraph 70; page 32, paragraph 199; page 33, paragraphs 200–201.
- (iii) The plaintiff refers to the matters set out in the witness statement of Dr Analiese van Diemen, Deputy Chief Health Officer, to the Hotel Quarantine Inquiry dated 9 September 2020 at paragraph 148.
- (iv) Further particulars may be provided following discovery.

#### **Lack of expertise of security firms and the operators of Rydges and Stamford Plaza**

52. At all material times, Unified Security (which was engaged to provide private security guards at Rydges from 12 April 2020 as pleaded at paragraph 71 below) did not have the expertise in infection prevention and control necessary:

- (a) to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Rydges; or
- (b) to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Rydges.

#### **Particulars**

- (i) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 1, page 231, paragraph 135; page 308, paragraph 380.
- (ii) Outbreak Management Plan – Rydges Swanston (Exhibit HQI0104a\_RP at the Hotel Quarantine Inquiry).

- (iii) Further particulars may be provided following discovery and expert evidence.

53. At all material times, MSS Security (which was engaged to provide private security guards at Stamford Plaza from 30 April 2020 as pleaded at paragraph 73 below) did not have the expertise in infection prevention and control necessary:

- (a) to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Stamford Plaza; or
- (b) to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Stamford Plaza.

#### **Particulars**

- (i) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 1, page 185, paragraph 138; page 231, paragraph 135; page 308, paragraph 380.
- (ii) Outbreak Management Plan – Stamford Plaza (last updated 19 July 2020), found at DHS.0001.0036.0203 of the Annexures to the witness Statement of Dr Sarah McGuinness, Senior Medical Adviser to DHHS, to the Hotel Quarantine Inquiry dated 21 August 2020 (**Outbreak Management Plan – Stamford Plaza**).
- (iii) Further particulars may be provided following discovery and expert evidence.

54. At all material times, the hotel operator of Rydges did not have the expertise in infection prevention and control necessary:

- (a) to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Rydges; or
- (b) to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Rydges.

#### **Particulars**

- (i) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 1, page 231, paragraph 135.

- (ii) Further particulars may be provided following discovery and expert evidence.

55. At all material times, the hotel operator of Stamford Plaza did not have the expertise in infection prevention and control necessary:

- (a) to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Stamford Plaza; or
- (b) to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Stamford Plaza.

#### **Particulars**

- (i) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 1, page 231, paragraph 135.
- (ii) Further particulars may be provided following discovery and expert evidence.

#### **Lack of advice provided to security firms and the operators of Rydges and Stamford Plaza**

56. Prior to 26 May 2020 when the outbreak at Rydges began (as pleaded at paragraph 88 below), the only advice that DHHS (or any other department of the Victorian Government) provided to Unified Security as to the infection prevention and control measures to be observed by private security guards was a document entitled “PPE Advice for Hotel-Based Security Staff & AOs in Contact with Quarantined Clients” **(May PPE document)**.

#### **Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of David Millward, Director of National Operations at Unified Security, to the Hotel Quarantine Inquiry dated 31 August 2020 at paragraph 72.
- (ii) Annexures to the witness statement of David Millward to the Hotel Quarantine Inquiry dated 31 August 2020 at USG.0001.0001.3783 and USG.0001.0001.2955.
- (iii) Further particulars may be provided following discovery.



57. The May PPE document:

- (a) was not provided by DHHS to Unified Security until 12 May 2020, one month into the operation of Rydges as a quarantine hotel;
- (b) was erroneous in material respects; and

**Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Professor Lindsay Grayson, Professor of Infectious Diseases at Austin Health, to the Hotel Quarantine Inquiry dated 10 August 2020 at paragraph 76.
- (ii) Further particulars may be provided following expert evidence.
- (c) was not sufficient advice to equip Unified Security with the means to deliver adequate infection prevention and control training to all personnel employed or engaged by Unified Security to work at Rydges, or to determine what constituted appropriate PPE to supply those personnel.

**Particulars**

- (i) Annexures to the witness statement of David Millward, Director of National Operations at Unified Security, to the Hotel Quarantine Inquiry dated 31 August 2020 at USG.0001.0001.3783 and USG.0001.0001.2955.
- (ii) The plaintiff refers to the matters set out in the witness statement of David Millward to the Hotel Quarantine Inquiry dated 31 August 2020 at paragraph 107.
- (iii) Outbreak Management Plan – Rydges Swanston (Exhibit HQI0104a\_RP at the Hotel Quarantine Inquiry).
- (iv) Further particulars may be provided following expert evidence.

58. Prior to 16 June 2020 when the outbreak at Stamford Plaza began (as pleaded at paragraph 99 below), the only advice that DHHS (or any other Victorian Government department) provided to MSS Security as to infection prevention and control measures to be observed by private security guards was:

- (a) the May PPE document; and

- (b) a second version of the May PPE document likewise entitled “PPE Advice for Hotel-Based Security Staff & AOs in Contact with Quarantined Clients” (**June PPE document**).

**Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Sam Krikelis, Business Manager, Event Services at MSS Security, to the Hotel Quarantine Inquiry dated 17 August 2020 at paragraph 65.
- (ii) Annexures to the witness statement of Sam Krikelis to the Hotel Quarantine Inquiry dated 17 August 2020 at MSSS.0001.0005.1029, .1030, .0253 and .0254.
- (iii) Further particulars may be provided following discovery.

59. The May PPE document:

- (a) was provided to MSS Security through a DJPR representative on 29 May 2020, approximately one month after Stamford Plaza began operating as a quarantine hotel (see paragraph 71 below); and

**Particulars**

The plaintiff refers to the particulars to paragraph 58 above.

- (b) was not sufficient advice to equip MSS Security with the means to deliver adequate infection prevention and control training to all personnel employed or engaged by MSS Security to work in quarantine hotels, including Stamford Plaza, or to determine what constituted appropriate PPE to supply to those personnel.

**Particulars**

- (i) Outbreak Management Plan – Stamford Plaza.
- (ii) Further particulars may be provided following expert evidence.

60. The June PPE document:

- (a) was provided to MSS Security through a DJPR representative on 11 June 2020;

### **Particulars**

The plaintiff refers to the particulars to paragraph 58 above.

- (b) was materially the same document as the May PPE document;
- (c) was thus likewise erroneous in material respects; and

### **Particulars**

The plaintiff refers to the particulars to paragraph 57(b) above.

- (d) was thus likewise not sufficient to equip MSS Security with the means to deliver adequate infection prevention and control training to all personnel employed or engaged by MSS Security to work in quarantine hotels, including Stamford Plaza, or what constituted appropriate PPE to supply to those personnel.

### **Particulars**

- (i) Outbreak Management Plan – Stamford Plaza.
- (ii) Further particulars may be provided following expert evidence.

61. Prior to 26 May 2020 when the outbreak at Rydges began (as pleaded at paragraph 88 below), neither DHHS nor any other department of the Victorian Government provided to the hotel operator of Rydges any infection prevention and control advice directed to the tasks to be performed by hotel workers at quarantine hotels, including no:

- (a) advice as to PPE; and
- (b) advice as to cleaning and disinfection tailored to the hotel quarantine environment.

### **Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Rosswyn Menezes, General Manager of Rydges, to the Hotel Quarantine Inquiry dated 17 August 2020.
- (ii) Further particulars may be provided following discovery.

62. Prior to 16 June 2020 when the outbreak at Stamford Plaza began (as pleaded at paragraph 99 below), neither DHHS nor any other department of the Victorian Government provided to the hotel operator of Stamford Plaza any infection prevention

and control advice directed to the tasks to be performed by hotel workers at quarantine hotels, including no:

- (a) advice as to PPE; and
- (b) advice as to cleaning and disinfection tailored to the hotel quarantine environment.

### **Particulars**

- (i) The plaintiff refers to the witness statement of Karl Unterfrauner, General Manager of Stamford Plaza, to the Hotel Quarantine Inquiry dated 19 August 2020.
- (ii) Further particulars may be provided following discovery.

### **Breaches of duty: Secretary of DHHS**

*Failure to procure any oversight, supervision, or auditing of infection prevention and control practices at quarantine hotels*

63. In the period 12 April 2020 to 16 June 2020 (the **relevant period**), the Secretary of DHHS breached the duty of care pleaded in paragraphs 45 and 47 above by:
- (a) failing to procure that DHHS identify whether any person with expertise in infection prevention and control and responsibility for oversight or supervision of infection prevention and control practices at Rydges was stationed at that hotel, either regularly or at all, as pleaded in paragraph 50(a) above, in circumstances where such enquiry would have revealed that no such person was stationed at the hotel;
  - (b) by reason of such failure, failing to procure that DHHS provide or arrange for a person or persons with responsibility for oversight or supervision of infection prevention and control measures, suitably qualified to perform that role, or any person with that responsibility, to be present at Rydges;
  - (c) failing to procure that DHHS identify whether audits of infection prevention and control measures, including compliance with those measures by private security guards and hotel staff, were carried out at Rydges, as pleaded at paragraph 50(b) above, in circumstances where such enquiry would have revealed that no such audits had ever been carried out;

- (d) by reason of such failure, failing to procure that DHHS provide or arrange for audits of infection prevention and control measures at Rydges;
- (e) failing to procure that DHHS identify whether any person with expertise in infection prevention and control and responsibility for oversight or supervision of infection prevention and control practices at Stamford Plaza was stationed at that hotel, either regularly or at all, as pleaded in paragraph 51(a) above, in circumstances where such enquiry would have revealed that no such person was stationed at the hotel;
- (f) by reason of such failure, failing to procure that DHHS provide or arrange for a person or persons with responsibility for oversight or supervision of infection prevention and control measures, suitably qualified to perform that role, or any person with that responsibility, to be present at Stamford Plaza;
- (g) failing to procure that DHHS identify whether audits of infection prevention and control measures, including compliance with those measures by private security guards and hotel staff, were carried out at Stamford Plaza, as pleaded at paragraph 51(b) above, in circumstances where such enquiry would have revealed that no such audits had ever been carried out; and
- (h) by reason of such failure, failing to procure that DHHS provide or arrange for audits of infection prevention and control measures at Stamford Plaza.

64. In the relevant period, the Secretary of DHHS breached the duty of care pleaded in paragraphs 45 and 48 above by:

- (a) failing to procure that DHHS identify whether Unified Security had the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Rydges or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Rydges, as pleaded in paragraph 52 above, in circumstances where such enquiry would have revealed that Unified Security lacked such expertise;
- (b) by reason of such failure, failing to procure that DHHS provide any or sufficient advice as to infection prevention and control to Unified Security;

### **Particulars**

The plaintiff refers to paragraphs 56 to 57 above.

- (c) failing to procure that DHHS identify whether MSS Security had the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Stamford Plaza or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Stamford Plaza, as pleaded in paragraph 53 above, in circumstances where such enquiry would have revealed that MSS Security lacked such expertise;
- (d) by reason of such failure, failing to procure that DHHS provide any or sufficient advice as to infection prevention and control to MSS Security;

### **Particulars**

The plaintiff refers to paragraphs 58 to 60 above.

- (e) failing to procure that DHHS identify whether the hotel operator of Rydges had the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Rydges or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Rydges, as pleaded in paragraph 54 above, in circumstances where such enquiry would have revealed that the hotel operator of Rydges lacked such expertise;
- (f) by reason of such failure, failing to procure that DHHS provide any or sufficient advice as to PPE or cleaning and disinfection tailored to the hotel quarantine environment to the hotel operator of Rydges;

### **Particulars**

The plaintiff refers to paragraph 61 above.

- (g) failing to procure that DHHS identify whether the hotel operator of Stamford Plaza had the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Stamford Plaza or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Stamford Plaza, as

pleaded in paragraph 55 above, in circumstances where such enquiry would have revealed that the hotel operator of Stamford Plaza lacked such expertise; and

- (h) by reason of such failure, failing to procure that DHHS provide any or sufficient advice as to PPE or cleaning and disinfection tailored to the hotel quarantine environment to the hotel operator of Stamford Plaza.

### **Particulars**

The plaintiff refers to paragraph 62 above.

### **Breaches of duty: Minister for Health**

*Failure to make basic inquiries and consequential failure to procure the taking of appropriate steps*

- 65. Prior to 26 May 2020 when the outbreak at Rydges began, the Minister for Health did not know that private security companies were being used to provide services at quarantine hotels.

### **Particulars**

The plaintiff refers to the matters set out in the transcript of evidence of the Hon Jenny Mikakos MLC to the Hotel Quarantine Inquiry at page 2066, lines 14 to 17.

- 66. In the premises, prior to 26 May 2020, the Minister for Health did not know:
  - (a) what infection prevention and control measures had been implemented in respect of guards being used at quarantine hotels, including arrangements as to the infection prevention and control training of guards; and

### **Particulars**

The plaintiff refers to the particulars to paragraph 65 above and to the matters set out in the transcript of evidence to the Hotel Quarantine Inquiry at page 2068, lines 11–46.

- (b) what infection prevention and control measures had been implemented at quarantine hotels at all.

## Particulars

The Minister for Health's lack of knowledge can be inferred from the matter pleaded at paragraph 65 above. It is improbable that the Minister for Health was unaware that private security companies were being used to provide various services at quarantine hotels and yet knew something about what infection prevention and control measures were being implemented at those hotels. Inquiries as to infection prevention and control measures implemented at quarantine hotels would have yielded the fact that private security companies were being used to provide various services at those hotels.

67. In the premises, in the relevant period, the Minister for Health breached the duty of care pleaded at paragraphs 45 and 47 and/or 48 by:
- (a) failing to make any or any adequate inquiries of DHHS, the department for which she was responsible, as to what infection prevention and control measures were in place at quarantine hotels, including Rydges and/or Stamford Plaza; and
  - (b) by reason of the failure to make those inquiries, failing to procure that DHHS take the actions referred to in paragraphs 63 and/or 64 above.

### **Breaches of duty: Secretary of DJPR**

*Allocation of infection prevention and control responsibility to security firms and hotel operators despite no identification of expertise or provision of appropriate advice*

68. In the relevant period, the Secretary of DJPR breached the duty of care pleaded at paragraphs 45 and 49 by:
- (a) failing to procure that DJPR identify whether Unified Security had the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Rydges or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Rydges, as pleaded in paragraph 52 above, in circumstances where such enquiry would have revealed that Unified Security lacked such expertise;
  - (b) notwithstanding the said lack of Unified Security's expertise:
    - (i) executing on behalf of DJPR the Unified Security contract, which allocated to Unified Security responsibility for ensuring that all



personnel employed or engaged by Unified Security received adequate infection prevention and control training and were supplied with appropriate PPE; and

**Particulars**

Unified Security contract, clauses 7.2(1)(a) and 6.1.

- (ii) failing to procure that DJPR procure the provision of any or sufficient advice as to infection prevention and control to Unified Security;

**Particulars**

The plaintiff refers to paragraphs 56 to 57 above.

- (c) failing to procure that DJPR identify whether MSS Security had the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Stamford Plaza or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Stamford Plaza, as pleaded in paragraph 53 above, in circumstances where such enquiry would have revealed that MSS Security lacked such expertise;
- (d) notwithstanding the said lack of MSS Security's expertise:
  - (i) executing on behalf of DJPR the MSS Security contract, which allocated to MSS Security responsibility for ensuring that all personnel employed or engaged by MSS Security received adequate infection prevention and control training and were supplied with appropriate PPE; and

**Particulars**

MSS Security contract, Schedule 3, Part 2, "Provision of Services generally", item 3 ("Service Provider Personnel training"); clause 3.12(a) read with Schedule 14 (first row of the table).

- (ii) failing to procure that DJPR procure the provision of any or sufficient advice as to infection prevention and control to MSS Security;

**Particulars**

The plaintiff refers to paragraphs 58 to 60 above.

- (e) failing to procure that DJPR identify whether the hotel operator of Rydges had the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Rydges or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Rydges, as pleaded in paragraph 54 above, in circumstances where such enquiry would have revealed that the hotel operator of Rydges lacked such expertise;
- (f) notwithstanding the said lack of the hotel operator of Rydges' expertise:
  - (i) authorising the execution on behalf of DJPR of the Rydges contract, which allocated to the hotel operator of Rydges responsibility for ensuring that all personnel employed or engaged by it received adequate training in workplace health and safety and risk management in relation to COVID-19 and were supplied with appropriate PPE, and for ensuring that rooms in which returned travellers had resided were cleaned and disinfected "to a standard consistent with the most recent recommended public health standards in respect of COVID-19", save in the case of rooms in which returned travellers confirmed to have COVID-19 had resided; and

**Particulars**

Rydges contract, clauses 2.1(h), 2.1(d)–(e).

- (ii) failing to procure that DJPR procure the provision of any or sufficient advice as to advice as to PPE or cleaning and disinfection tailored to the hotel quarantine environment to the hotel operator of Rydges;

**Particulars**

The plaintiff refers to paragraph 61 above.

- (g) failing to procure that DJPR identify whether the hotel operator of Stamford Plaza had the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Stamford Plaza or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Stamford Plaza, as

pleaded in paragraph 55 above, in circumstances where such enquiry would have revealed that the hotel operator of Stamford Plaza lacked such expertise;

- (h) notwithstanding the said lack of the hotel operator of Stamford Plaza's expertise:
  - (i) authorising the execution on behalf of DJPR of the Stamford Plaza contract, which allocated to the hotel operator of Stamford Plaza responsibility for ensuring that all personnel employed or engaged by it received adequate training in workplace health and safety and risk management in relation to COVID-19 and were supplied with appropriate PPE, and for ensuring that rooms in which returned travellers had resided were cleaned and disinfected "to a standard consistent with the most recent recommended public health standards in respect of COVID-19", save in the case of rooms in which returned travellers confirmed to have COVID-19 had resided; and

#### **Particulars**

Stamford Plaza contract, clauses 2.1(h), 2.1(d)-(e).

- (ii) failing to procure that DJPR procure the provision of any or sufficient advice as to advice as to PPE or cleaning and disinfection tailored to the hotel quarantine environment to the hotel operator of Stamford Plaza.

#### **Particulars**

The plaintiff refers to paragraph 62 above.

#### **Breaches of duty: Minister for Jobs**

*Failure to make basic inquiries and consequential failure to procure the taking of appropriate steps*

- 69. Prior to 26 May 2020 when the outbreak at Rydges began, the Minister for Jobs:
  - (a) knew that DJPR, the department for which he was responsible, had entered into contractual arrangements with hotel operators as to making their hotels available as quarantine hotels;

- (b) despite having the knowledge pleaded at subparagraph (a) above, failed to make any inquiry of the Secretary of DJPR or any other officer of DJPR as to whether or not DJPR had identified whether the hotel operator of Rydges or the hotel operator of Stamford Plaza had the expertise and capability to implement effectively the infection prevention and control measures pleaded in paragraph 46 above, including in respect of the provision of:
  - (i) training in infection prevention and control, including in hand hygiene, social distancing, and the proper use of PPE; and
  - (ii) PPE of appropriate types and quality, and in sufficient quantities;
- (c) by reason of such failure, failed to make any inquiry of the Secretary of DJPR or any other officer of DJPR as to:
  - (i) whether or not DJPR should take any of the steps referred to in paragraph 49(b) above in respect of the hotel operator of Rydges and/or the hotel operator of Stamford Plaza; or
  - (ii) whether or not the contractual terms in place between DJPR and each of the hotel operator of Rydges or the hotel operator of Stamford Plaza in relation to infection prevention and control were appropriate having regard to the respective counter-party's level of expertise and capability to implement effectively the infection prevention and control measures pleaded in paragraph 46 above;
- (d) did not know that DJPR, the department for which he was responsible, had entered into contractual arrangements with private security companies to provide services at quarantine hotels; and
- (e) by reason of that ignorance, failed to make any inquiry of the Secretary of DJPR or any other officer of DJPR as to:
  - (i) whether or not DJPR should take any of the steps referred to in paragraph 49(b) above in respect of Unified Security and/or MSS Security; or
  - (ii) whether or not the contractual terms in place between DJPR and each of Unified Security or the hotel operator of Stamford Plaza in relation to

infection prevention and control were appropriate having regard to the respective counter-party's level of expertise and capability to implement effectively the infection prevention and control measures pleaded in paragraph 46 above.

### **Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of the Honourable Martin Pakula MP to the Hotel Quarantine Inquiry dated 21 September 2020, paragraphs 13–15.
- (ii) The plaintiff refers to the matters set out in the transcript of evidence of the Honourable Martin Pakula MP to the Hotel Quarantine Inquiry, page 1929, lines 1–38.
- (iii) Further particulars may be provided following discovery.

70. In the premises, in the relevant period, the Minister for Jobs breached the duty of care pleaded at paragraphs 45 and 49 by:

- (a) failing to make any inquiries of DJPR, the department for which he was responsible, as to the expertise and capability of its contractual counter-parties to contracts providing for infection prevention and control measures to be put in place at Rydges and Stamford Plaza; and
- (b) by reason of the failure to make those inquiries, failing to procure that DJPR take the actions referred to in paragraph 68 above.

## **F. CAUSATION**

### **Duties of security guards at Rydges and Stamford Plaza**

71. DJPR engaged Unified Security to provide private security guards at Rydges in the period 12 April 2020 to 30 June 2020.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of David Millward, Director of National Operations at Unified Security, to the Hotel Quarantine Inquiry dated 31 August 2020 at paragraph 73.

72. The tasks that private security guards engaged by Unified Security at Rydges performed in that period included:

- (a) handling the luggage of returned travellers;
- (b) delivering food and other items to the rooms of returned travellers;
- (c) taking returned travellers on fresh-air breaks; and
- (d) dealing with incidents involving guests, which involved coming into contact with the guests.

#### **Particulars**

The plaintiff refers to the matters set out in the witness statement of David Millward, Director of National Operations at Unified Security of Unified Security, to the Hotel Quarantine Inquiry dated 31 August 2020 at paragraph 108. Further particulars may be provided following discovery.

73. DJPR engaged MSS Security to provide private security guards at Stamford Plaza in the period 30 April 2020 to 2 July 2020.

#### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Sam Krikelis, Business Manager, Event Services at MSS Security, to the Hotel Quarantine Inquiry dated 17 August 2020 at paragraph 14.

74. The tasks that private security guards engaged by MSS Security at Stamford Plaza performed in that period included:
- (a) monitoring potential exit site points to ensure that returned travellers did not leave unless authorised;
  - (b) escorting returned travellers on authorised trips to and from their rooms for fresh-air breaks and smoke breaks; and
  - (c) delivering parcels and meals to returned travellers.

#### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Sam Krikelis, Business Manager, Event Services at MSS Security, to the Hotel Quarantine Inquiry dated 17 August 2020 at paragraphs 28–34. Further particulars may be provided following discovery.

## **First wave subsidies and restrictions are eased**

75. Between 12 April 2020 and 22 June 2020, new daily confirmed COVID-19 cases in Victoria never exceeded 25 cases.

### **Particulars**

Data published by DHHS.

76. On 11 May 2020, the Premier of Victoria announced that certain of the “stage 3” restrictions in Victoria would be lifted and that the situation would be reviewed through the month of May.

### **Particulars**

Statement from the Premier on 11 May 2020.

77. On 17 May 2020, the Victorian Government announced that, from 1 June 2020, restaurants and cafes would be able to resume dine-in service.

### **Particulars**

Announcement entitled “Victoria’s plan to reopen restaurants and cafes” dated 17 May 2020.

78. On 24 May 2020, the Victorian Government announced that a gradual easing of restrictions was planned for social events and ceremonies, fitness, sport and recreation, personal services, cafes and restaurants, travel and leisure, and culture and entertainment from 1 June 2020.

### **Particulars**

Announcement entitled “Victoria’s Restriction Levels” published on 24 May 2020.

79. From 1 June 2020:
- (a) restrictions on the permissible purposes for which Victorians could leave their homes were no longer imposed; and
  - (b) certain dine-in services for food and drink facilities, and limited operation of other entertainment and other retail facilities, were permitted.

### **Particulars**

*Stay Safe Directions* given on 31 May 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (No 9)* given on 31 May 2020 under s 200 of the PHW Act.

80. From 22 June 2020, restrictions in respect of the operation of retail businesses, including restaurants, cafes, licensed premises, and entertainment and retail facilities, were further eased.

### **Particulars**

*Restricted Activity Directions (No 10)* given on 21 June 2020 under s 200 of the PHW Act.

### **Outbreak at Rydges**

81. On 9 May 2020:
- (a) a family of four returned travellers commenced hotel quarantine at the Crown Promenade, staying together in the same room; and
  - (b) one of those family members started showing symptoms of COVID-19.

### **Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 81.
  - (ii) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 2, page 7, paragraph 5.
82. From 10 May 2020 to 12 May 2020, the other three family members started showing symptoms of COVID-19.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 81.

83. On 14 May 2020, two of the four family members tested positive for COVID-19.



### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 82.

84. On 15 May 2020, the whole family of four was moved from Crown Promenade to Rydges.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 83.

85. On 17 May 2020, a third member of the family tested positive for COVID-19.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 84.

86. On 18 May 2020, the fourth and final member of the family tested positive for COVID-19.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 85.

87. On 25 May 2020, three people who worked at Rydges, two private security guards and one hotel worker, began to experience COVID-19 symptoms, each of whom was subsequently diagnosed with COVID-19.

### **Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 86.
- (ii) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 2, page 7, paragraph 5.

88. On 26 May 2020, the first case of what was to be classified by DHHS as a COVID-19 outbreak at Rydges was notified to DHHS.

**Particulars**

Outbreak Management Plan – Rydges Swanston (Exhibit HQI0104a\_RP at the Hotel Quarantine Inquiry), page 2.

89. By 18 June 2020, 17 COVID-19 cases in Victoria had been epidemiologically linked to the outbreak at Rydges:
- (a) of whom eight worked at Rydges, comprising:
    - (i) six private security guards engaged by Unified Security;
    - (ii) one hotel worker; and
    - (iii) one nurse; and
  - (b) the remaining nine of whom were household or social contacts of the eight persons who worked at Rydges.

**Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 87.
- (ii) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 2, page 7, paragraph 5.
- (iii) Outbreak Management Plan – Rydges Swanston (Exhibit HQI0104a\_RP at the Hotel Quarantine Inquiry), pages 2–5.
- (iv) The plaintiff refers to the matters set out in the witness statement of Sorav Aggarwal, director of Sterling Pixxel Pty Ltd, to the Hotel Quarantine Inquiry dated 20 August 2020 at paragraph 80.
- (v) The plaintiff refers to the matters set out in the witness statement of David Millward, Director of National Operations at Unified Security, to the Hotel Quarantine Inquiry dated 31 August 2020 at paragraph 133.

- (vi) Further particulars may be provided following discovery and expert evidence.

90. As at 18 August 2020:

- (a) DHHS had procured successful genomic sequencing of 4,981 COVID-19 cases since 26 May 2020; and
- (b) of those, 3,594 clustered genomically with genomic clusters associated with Rydges.

#### **Particulars**

The plaintiff refers to the matters set out in the transcript of the evidence of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry at page 106, lines 13–27.

91. In the premises, prior to 26 May 2020, one or more transmission events occurred at Rydges.

#### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraphs 115 to 117. Further particulars may be provided following expert evidence.

#### **Outbreak at Stamford Plaza**

92. On 1 June 2020, a returned traveller:

- (a) commenced detention at Stamford Plaza; and
- (b) started showing symptoms of COVID-19.

#### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 95.

93. On 4 June 2020, that same returned traveller was diagnosed with COVID-19.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 95.

94. On 10 June 2020, a private security guard working at Stamford Plaza started showing symptoms of COVID-19.

### **Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 97.
- (ii) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 2, page 8, paragraph 6.
- (iii) The plaintiff refers to the matters set out in the witness Statement of Dr Sarah McGuinness, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry dated 21 August 2020 at paragraph 98.

95. On 11 June 2020:

- (a) two returned travellers (a couple) commenced detention at Stamford Plaza; and
- (b) one of them started showing symptoms of COVID-19.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 96.

96. On 12 June 2020, the second of those two returned travellers started showing symptoms of COVID-19.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 96.

97. On 14 June 2020, the private security guard referred to in paragraph 94 above tested positive for COVID-19.

### **Particulars**

- (i) The plaintiff refers to the matters set out in the Witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 97.
- (ii) The plaintiff refers to the matters set out in the witness Statement of Dr Sarah McGuinness, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry dated 21 August 2020 at paragraph 98.

98. On 15 June 2020 and 16 June 2020 respectively, each of the two returned travellers referred to in paragraph 95 above were diagnosed with COVID-19.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 96.

99. On 16 June 2020, the first case (a private security guard) of what was to be classified by DHHS as a COVID-19 outbreak at Stamford Plaza was notified to DHHS.

### **Particulars**

- (i) Outbreak Management Plan – Stamford Plaza, pages 2, 3, and 14.
- (ii) The plaintiff refers to the matters set out in the witness Statement of Dr Sarah McGuinness, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry dated 21 August 2020 at paragraph 98.

100. By 13 July 2020, a total of 46 COVID-19 cases in Victoria had been epidemiologically linked to the outbreak at Stamford Plaza:

- (a) 27 of whom worked at Stamford Plaza comprising:
  - (i) 26 private security guards; and
  - (ii) one healthcare worker; and
- (b) the remaining 19 of whom were social or household contacts of the 27 persons who worked at Stamford Plaza.

### **Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 98.
- (ii) Outbreak Management Plan – Stamford Plaza, page 2.
- (iii) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 2, page 8, paragraph 6.
- (iv) Further particulars may be provided following discovery and expert evidence.

101. As at 18 August 2020:

- (a) DHHS had procured successful genomic sequencing of 4,981 COVID-19 cases since 26 May 2020; and
- (b) of those, 110 clustered genomically with genomic clusters associated with Stamford Plaza.

### **Particulars**

The plaintiff refers to the matters set out in the transcript of the evidence of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry at page 106, lines 13–36.

102. In the premises, prior to 16 June 2020, at least two transmission events occurred at Stamford Plaza.

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraphs 123 to 125. Further particulars may be provided following expert evidence.

## **The start of the second wave in Victoria**

103. Between 22 June 2020 and 30 June 2020, there was an upward trend in new daily confirmed cases of COVID-19 in Victoria.

### **Particulars**

Data published by DHHS. New daily confirmed cases of COVID-19 were:

- 17 on 22 June 2020
- 18 on 23 June 2020
- 33 on 24 June 2020
- 28 on 25 June 2020
- 40 on 26 June 2020
- 47 on 27 June 2020
- 69 on 28 June 2020
- 61 on 29 June 2020
- 76 on 30 June 2020.

104. On 30 June 2020, the Premier of Victoria:

- (a) stated that genomic sequencing revealed a number of coronavirus cases can be linked to “staff members in hotel quarantine breaching well-known and well-understood infection control protocols” and that “[c]learly there has been a failure in the operation of this program”;
- (b) announced that “stage 3” restrictions would be re-imposed in respect of certain postcodes in Melbourne;
- (c) stated that he had ordered the establishment of an inquiry, led by a former judge, into the operation of the hotel quarantine program; and
- (d) stated that he had asked the Prime Minister to divert flights to other cities for the next two weeks while the hotel quarantine program was “reset ... under the supervision of Corrections Victoria”.

### **Particulars**

Statement from the Premier made on 30 June 2020.

105. From 2 July 2020, “stage 3” restrictions were re-imposed in respect of certain postcodes in Melbourne.

**Particulars**

*Stay at Home Directions (Restricted Postcodes)* given on 1 July 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Restricted Postcodes)* given on 1 July 2020 under s 200 of the PHW Act.

106. Pursuant to the said “stage 3” restrictions:
- (a) certain businesses located in the relevant postcodes were not permitted to operate, or were restricted in their operations; and
  - (b) a person who ordinarily resided in the relevant postcodes was only permitted to leave the premises where the person ordinarily resided for certain specified reasons.

**Particulars**

*Restricted Activity Directions (Restricted Postcodes)*, clauses 5-7, 9-13.

*Stay at Home Directions (Restricted Postcodes)*, clauses 5-10.

107. By reason of the said “stage 3” restrictions:
- (a) the Plaintiff was not permitted to operate, other than by the supply of takeaway food and drink;
  - (b) Group Members whose premises were located in the relevant postcodes were prohibited or prevented from supplying, or were restricted in their ability to supply, goods or services to members of the general public at those premises; and
  - (c) residents of the relevant postcodes were prohibited from leaving their premises for the purposes of acquiring goods and services from Group Members, to the extent that doing so did not fall within the specified permissible reasons to leave their premises.



### **Melbourne goes back into lockdown (stage 3 restrictions reinstated)**

108. Between 1 July 2020 and 7 July 2020, new daily confirmed cases of COVID-19 in Victoria continued to rise in an upward trend.

#### **Particulars**

Data published by DHHS. New daily confirmed cases of COVID-19 were:

- 73 on 1 July 2020
- 62 on 2 July 2020
- 100 on 3 July 2020
- 68 on 4 July 2020
- 98 on 5 July 2020
- 168 on 6 July 2020
- 122 on 7 July 2020.

109. On 7 July 2020, the Premier of Victoria announced that “stage 3” restrictions would be reinstated across the metropolitan Melbourne area (including the Mornington Peninsula) (**metropolitan Melbourne**) and Mitchell Shire from 9 July 2020.

#### **Particulars**

Statement from the Premier made on 7 July 2020.

110. From 9 July 2020, “stage 3” restrictions were imposed on metropolitan Melbourne and Mitchell Shire.

#### **Particulars**

*Stay at Home Directions (Restricted Areas)* given on 8 July 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Restricted Areas)* given on 8 July 2020 under s 200 of the PHW Act.

111. Pursuant to the said “stage 3” restrictions:
- (a) certain businesses located in metropolitan Melbourne and Mitchell Shire were not permitted to operate, or were restricted in their operations; and
  - (b) a person who ordinarily resided in metropolitan Melbourne and Mitchell Shire was only permitted to leave the premises where the person ordinarily resided for certain specified reasons.

### **Particulars**

*Restricted Activity Directions (Restricted Areas)*, clauses 5-7, 9-13.

*Stay at Home Directions (Restricted Areas)*, clauses 5-10.

112. By reason of the said “stage 3” restrictions:

- (a) the Plaintiff continued not to be permitted to operate, other than by the supply of takeaway food and drink;
- (b) Group Members whose premises were located in metropolitan Melbourne were prohibited or prevented from supplying, or were restricted in their ability to supply, goods or services to members of the general public at those premises; and
- (c) residents of metropolitan Melbourne were prohibited from leaving their premises for the purposes of acquiring goods and services from Group Members, to the extent that doing so did not fall within the specified permissible reasons to leave their premises.

### **“Stage 4” lockdown in Melbourne and “stage 3” lockdown for the rest of Victoria**

113. From 8 July 2020 to 1 August 2020, new daily confirmed COVID-19 cases in Victoria continued to trend progressively upwards.

### **Particulars**

Data published by DHHS. New daily confirmed cases of COVID-19 were:

- 149 on 8 July 2020
- 143 on 9 July 2020
- 290 on 10 July 2020
- 256 on 11 July 2020
- 167 on 12 July 2020
- 248 on 13 July 2020
- 218 on 14 July 2020
- 295 on 15 July 2020
- 379 on 16 July 2020
- 211 on 17 July 2020
- 337 on 18 July 2020
- 262 on 19 July 2020
- 341 on 20 July 2020
- 436 on 21 July 2020

- 374 on 22 July 2020
- 287 on 23 July 2020
- 333 on 24 July 2020
- 408 on 25 July 2020
- 492 on 26 July 2020
- 358 on 27 July 2020
- 274 on 28 July 2020
- 626 on 29 July 2020
- 549 on 30 July 2020
- 368 on 31 July 2020
- 598 on 1 August 2020.

114. On 2 August 2020, the Premier of Victoria declared a state of disaster in relation to the whole of Victoria under s 23 of the *Emergency Management Act 1986* (Vic).

**Particulars**

Premier’s Declaration of a State of Disaster dated 2 August 2020.

115. From 2 August 2020, “stage 4” restrictions were imposed on metropolitan Melbourne.

**Particulars**

*Stay at Home Directions (Restricted Areas) (No 6)* given on 2 August 2020 under s 200 of the PHW Act.

*Stay at Home Directions (Restricted Areas) (No 7)* given on 2 August 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Restricted Areas) (No 4)* given on 2 August 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Restricted Areas) (No 5)* given on 2 August 2020 under s 200 of the PHW Act.

*Stay Safe Directions (No 9)* given on 2 August 2020 under s 200 of the PHW Act.

116. Pursuant to the said “stage 4” restrictions:

- (a) certain businesses located in metropolitan Melbourne were not permitted to operate, or were restricted in their operations;
- (b) a person who resided in metropolitan Melbourne was only permitted to leave the premises where the person ordinarily resided:

- (i) for certain specified reasons;
  - (ii) to travel no further than 5 km from their premises;
  - (iii) once a day; and
  - (iv) subject to a curfew between the hours of 8:00 pm and 5:00 am (the **curfew**); and
- (c) a person who resided outside metropolitan Melbourne was only permitted to enter metropolitan Melbourne in the circumstances set out in (b).

### **Particulars**

*Restricted Activity Directions (Restricted Areas) (No 4) and Restricted Activity Directions (Restricted Areas) (No 5), clauses 5-7, 9-13.*

*Stay at Home Directions (Restricted Areas) (No 6) and Stay at Home Directions (Restricted Areas) (No 7), clauses 5-10.*

*Stay Safe Directions (No 9), clause 5(2)(e).*

117. By reason of the said “stage 4” restrictions:

- (a) the Plaintiff continued not to be permitted to operate, other than by the supply of takeaway food and drink, and could not operate after 8:00 pm;
- (b) Group Members whose premises were located in metropolitan Melbourne were prohibited or prevented from supplying, or were restricted in their ability to supply, goods or services to members of the general public at those premises;
- (c) residents of metropolitan Melbourne were prohibited from leaving their premises for the purposes of acquiring goods and services from Group Members, to the extent that doing so did not fall within the specified permissible reasons to leave their premises or could not be done in accordance with the “stage 4” restrictions”; and
- (d) residents of Victoria outside metropolitan Melbourne were prohibited from leaving their premises for the purposes of acquiring goods and services from Group Members whose premises were located in metropolitan Melbourne, to the extent that doing so did not fall within the specified permissible reasons to

leave their premises or could not be done in accordance with the “stage 4” restrictions.

118. From 2 August 2020 to 5 August 2020, new daily confirmed COVID-19 cases in Victoria continued to be in triple-digit figures.

#### **Particulars**

Data published by DHHS. New daily confirmed cases of COVID-19 were:

- 352 on 2 August 2020
- 403 on 3 August 2020
- 687 on 4 August 2020
- 444 on 5 August 2020.

119. From 6 August 2020:

- (a) workplace closures were imposed on businesses operating in metropolitan Melbourne as part of the “stage 4” restrictions, resulting in the forced closure or restricted operation of a range of businesses; and
- (b) “stage 3” restrictions were re-imposed on all of Victoria outside these areas.

#### **Particulars**

*Stay at Home Directions (Restricted Areas) (No 8)* given on 5 August 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Restricted Areas) (No 6)* given on 5 August 2020 under s 200 of the PHW Act.

*Stay at Home Directions (Non-Melbourne)* given on 5 August 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Non-Melbourne)* given on 5 August 2020 under s 200 of the PHW Act.

120. Pursuant to the said workplace closures, “stage 4” and “stage 3” restrictions:

- (a) certain businesses located in metropolitan Melbourne (**Closed Work Premises**) were not permitted to permit persons to attend their premises except for certain purposes;
- (b) certain businesses located outside metropolitan Melbourne were not permitted to operate, or were restricted in their operations;

- (c) a person who ordinarily resided in metropolitan Melbourne was only permitted to leave the premises where the person ordinarily resided:
  - (i) for certain specified reasons;
  - (ii) to travel no further than 5 km from their premises;
  - (iii) once a day; and
  - (iv) subject to the curfew; and
- (d) a person who ordinarily resided outside metropolitan Melbourne was only permitted to leave the premises where the person ordinarily resided for certain specified reasons; and
- (e) a person who resided outside metropolitan Melbourne was only permitted to enter metropolitan Melbourne in the circumstances set out in (c).

### **Particulars**

*Restricted Activity Directions (Restricted Areas) (No 6)*, clause 7.

*Stage 4 Restrictions – Permitted Work Premises* located at [www.dhha.vic.gov.au/business-industry-stage-4-restrictions-covid-19](http://www.dhha.vic.gov.au/business-industry-stage-4-restrictions-covid-19) as amended from time to time.

*Restricted Activity Directions (Non-Melbourne)*, clauses 5-7, 9-13.

*Stay at Home Directions (Restricted Areas) (No 8)*, clauses 5-10.

*Stay at Home Directions (Non-Melbourne)*, clauses 5-10.

121. By reason of the said workplace closures, “stage 4” and “stage 3” restrictions:
- (a) the Plaintiff continued not to be permitted to operate, other than by the supply of takeaway food and drink, and continued not to be permitted to operate after 8:00 pm;
  - (b) Group Members whose premises were located in metropolitan Melbourne and were Closed Work Premises were prohibited or prevented from supplying, or

were restricted in their ability to supply, goods or services to members of the general public at those premises;

- (c) Group Members whose premises were located outside metropolitan Melbourne were prohibited or prevented from supplying, or were restricted in their ability to supply, goods or services to members of the general public at those premises;
- (d) residents of metropolitan Melbourne were prohibited from leaving their premises for the purposes of acquiring goods and services from Group Members, to the extent that doing so did not fall within the specified permissible reasons to leave their premises or could not be done in accordance with the “stage 4” restrictions”; and
- (e) residents of Victoria outside metropolitan Melbourne were:
  - (i) prohibited from leaving their premises for the purposes of acquiring goods and services from Group Members whose premises were located outside metropolitan Melbourne, to the extent that doing so did not fall within the specified permissible reasons to leave their premises; and
  - (ii) prohibited from leaving their premises for the purposes of acquiring goods and services from Group Members whose premises were located in metropolitan Melbourne, to the extent that doing so did not fall within the specified permissible reasons to leave their premises or could not be done in accordance with the “stage 4” restrictions”.

122. From 6 August 2020 to 16 August 2020, new daily confirmed COVID-19 cases in Victoria continued to be in triple-digit figures.

### **Particulars**

Data published by DHHS. New daily confirmed cases of COVID-19 were:

- 421 on 6 August 2020
- 455 on 7 August 2020
- 374 on 8 August 2020
- 310 on 9 August 2020
- 321 on 10 August 2020
- 400 on 11 August 2020
- 256 on 12 August 2020
- 360 on 13 August 2020
- 301 on 14 August 2020

- 267 on 15 August 2020
- 266 on 16 August 2020.

123. On 16 August 2020, “stage 4” restrictions for metropolitan Melbourne (including the workplace closures) and “stage 3” restrictions for the rest of Victoria were extended until 13 September 2020.

#### **Particulars**

*Stay at Home Directions (Restricted Areas) (No 12)* given on 16 August 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Restricted Areas) (No 8)* given on 16 August 2020 under s 200 of the PHW Act.

*Stay at Home Directions (Non-Melbourne) (No 3)* given on 16 August 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Non-Melbourne) (No 3)* given on 16 August 2020 under s 200 of the PHW Act.

124. New daily confirmed COVID-19 cases in Victoria:

- (a) continued to be in triple-digit figures until about 27 August 2020;
- (b) thereafter, continued to be at least 20 cases per day until about 18 September 2020; and
- (c) thereafter, gradually fell to steady single-digit figures by about 13 October 2020.

#### **Particulars**

Data published by DHHS.

125. On 20 August 2020, those “stage 4” restrictions imposed by the *Stay at Home Directions (Restricted Areas) (No 12)* given on 16 August 2020 under s 200 of the PHW Act were revoked and immediately reimposed subject to a clarification regarding exercise.

#### **Particulars**

*Stay at Home Directions (Restricted Areas) (No 13)* given on 20 August 2020 under s 200 of the PHW Act.



126. On 27 August 2020:

- (a) those “stage 3” restrictions imposed by the *Stay at Home Directions (Restricted Areas) (No 13)* given on 20 August 2020 under s 200 of the PHW Act were revoked and immediately reimposed subject to a clarification regarding access to funerals; and
- (b) those “stage 3” restrictions imposed by the *Stay at Home Directions (Non-Melbourne) (No 3)* given on 16 August 2020 under s 200 of the PHW Act were revoked and immediately reimposed subject to a clarification regarding access to funerals.

#### **Particulars**

*Stay at Home Directions (Restricted Areas) (No 14)* given on 27 August 2020 under s 200 of the PHW Act.

*Stay at Home Directions (Non-Melbourne) (No 4)* given on 27 August 2020 under s 200 of the PHW Act.

127. On 13 September 2020, “stage 4” restrictions for metropolitan Melbourne (including the workplace closures) and “stage 3” restrictions for the rest of Victoria were extended until 11 October 2020.

#### **Particulars**

*Stay at Home Directions (Restricted Areas) (No 15)* given on 13 September 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Restricted Areas) (No 9)* given on 13 September 2020 under s 200 of the PHW Act.

*Stay at Home Directions (Non-Melbourne) (No 5)* given on 13 September 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Non-Melbourne) (No 4)* given on 13 September 2020 under s 200 of the PHW Act.

128. On 16 September 2020:

- (a) those “stage 3” restrictions imposed by the *Stay at Home Directions (Non-Melbourne) (No 5)* given on 13 September 2020 under s 200 of the PHW Act were revoked and replaced by the *Stay Safe Directions (Non-Melbourne)* given

on 16 September 2020, ending restrictions on leaving home for persons outside metropolitan Melbourne subject to prohibitions on travelling to metropolitan Melbourne; and

**Particulars**

*Stay Safe Directions (Non-Melbourne)* given on 16 September 2020 under s 200 of the PHW Act.

- (b) those “stage 3” restrictions imposed by the *Restricted Activity Directions (Non-Melbourne) (No 4)* given on 13 September 2020 under s 200 of the PHW Act were revoked and immediately reimposed subject to the loosening of certain restrictions.

**Particulars**

*Restricted Activity Directions (Non-Melbourne) (No 5)* given on 16 September 2020 under s 200 of the PHW Act.

129. On 27 September 2020:

- (a) those “stage 4” restrictions imposed by the *Stay at Home Directions (Restricted Areas) (No 15)* given on 13 September 2020 under s 200 of the PHW Act were revoked and immediately reimposed subject to certain changes, including the removal of the curfew;

**Particulars**

*Stay at Home Directions (Restricted Areas) (No 16)* given on 27 September 2020 under s 200 of the PHW Act.

- (b) those “stage 4” restrictions imposed by the *Restricted Activity Directions (Restricted Areas) (No 9)* (including the workplace closures) given on 13 September 2020 under s 200 of the PHW Act were revoked and immediately reimposed subject to certain changes;

**Particulars**

*Restricted Activity Directions (Restricted Areas) (No 10)* given on 27 September 2020 under s 200 of the PHW Act.

- (c) those restrictions imposed by the *Stay Safe Directions (Non-Melbourne)* given on 16 September 2020 were revoked and immediately reimposed subject to certain changes; and

**Particulars**

*Stay Safe Directions (Non-Melbourne) (No 2)* given on 27 September 2020 under s 200 of the PHW Act.

- (d) those restrictions imposed by the “stage 3” *Restricted Activity Directions (Non-Melbourne) (No 5)* given on 16 September 2020 under s 200 of the PHW Act were revoked and immediately reimposed subject to certain changes.

**Particulars**

*Restricted Activity Directions (Non-Melbourne) (No 6)* given on 27 September 2020 under s 200 of the PHW Act.

130. On 4 October 2020:

- (a) the *Stay at Home Directions (Restricted Areas) (No 16)* given on 27 September 2020 under s 200 of the PHW Act;
- (b) the *Restricted Activity Directions (Restricted Areas) (No 10)* given on 27 September 2020 under s 200 of the PHW Act; and
- (c) the *Stay Safe Directions (Non-Melbourne) (No 2)* given on 27 September 2020 under s 200 of the PHW Act;

was each revoked and immediately reimposed subject to certain changes.

**Particulars**

*Restricted Activity Directions (Restricted Areas) (No 11)* given on 4 October 2020 under s 200 of the PHW Act.

*Stay at Home Directions (Restricted Areas) (No 17)* given on 4 October 2020 under s 200 of the PHW Act.

*Stay Safe Directions (Non-Melbourne) (No 3)* given on 4 October 2020 under s 200 of the PHW Act.

131. On 11 October 2020, “stage 4” restrictions for Melbourne (including the workplace closures) and “stage” 3 and other restrictions were extended until 8 November 2020.

### **Particulars**

*Stay at Home Directions (Restricted Areas) (No 18)* given on 11 October 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Restricted Areas) (No 12)* given on 11 October 2020 under s 200 of the PHW Act.

*Stay Safe Directions (Non-Melbourne) (No 4)* given on 11 October 2020 given under s 200 of the PHW Act.

*Restricted Activity Directions (Non-Melbourne) (No 7)* given on 11 October 2020 given under s 200 of the PHW Act.

132. On 18 October 2020, the directions set out in the particulars to paragraph 131 above were revoked and immediately reimposed subject to certain changes.

### **Particulars**

*Stay at Home Directions (Restricted Areas) (No 19)* given on 18 October 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Restricted Areas) (No 13)* given on 18 October 2020 under s 200 of the PHW Act.

*Stay Safe Directions (Non-Melbourne) (No 5)* given on 18 October 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Non-Melbourne) (No 8)* given on 18 October 2020 under s 200 of the PHW Act.

133. On 25 October 2020, the *Restricted Activity Directions (Non-Melbourne) (No 8)* given on 18 October 2020 under s 200 of the PHW Act were revoked and immediately reimposed subject to certain changes.

### **Particulars**

*Restricted Activity Directions (Non-Melbourne) (No 9)* given on 25 October 2020 under s 200 of the PHW Act.

134. On 26 October 2020, the *Restricted Activity Directions (Restricted Areas) (No 13)* given on 18 October 2020 under s 200 of the PHW Act were revoked and immediately reimposed subject to certain changes to allow for “essential pre-opening activities”.

### **Particulars**

*Restricted Activity Directions (Restricted Areas) (No 14)* given on 26 October 2020 under s 200 of the PHW Act.

135. On 27 October 2020:

- (a) the *Stay at Home Directions (Restricted Areas) (No 19)* given on 18 October 2020 under s 200 of the PHW Act; and
- (b) the *Restricted Activity Directions (Restricted Areas) (No 14)* given on 26 October 2020 under s 200 of the PHW Act;

were revoked, ending 112 days of the second-wave lockdown in metropolitan Melbourne.

### **Particulars**

*Stay Safe Directions (Melbourne)* given on 27 October 2020 under s 200 of the PHW Act.

*Restricted Activity Directions (Melbourne)* given on 27 October 2020 under s 200 of the PHW Act.

### **Stage 3 and 4 restrictions were caused by the second wave**

136. Each of:

- (a) the “stage 3” restrictions imposed in certain postcodes from 1 July 2020 as pleaded in paragraphs 105 to 107 above;
- (b) the “stage 3” restrictions imposed in metropolitan Melbourne and Mitchell Shire from 9 July 2020 as pleaded in paragraphs 110 to 112 above;
- (c) the “stage 4” restrictions imposed in metropolitan Melbourne from 2 August 2020 as pleaded in paragraphs 115 to 117, 120, 121, 123, 124, 127, 129 to 132 and 134 to 135 above;
- (d) the workplace closures imposed on businesses in metropolitan Melbourne from 6 August 2020 as pleaded in paragraphs 119 to 121, 123, 127 and 129 to 132 and 134 to 135 above; and

- (e) the “stage 3” restrictions imposed in Victoria outside metropolitan Melbourne from 6 August 2020 as pleaded in paragraphs 119 to 121, 126, 128 to 133 and 135 above;

was substantially caused by the trend of increasing new daily cases of COVID-19 in Victoria that arose from about 22 June 2020 (the **second wave**) pleaded in paragraphs 103, 108, 113, 118, 122 and 124 above.

#### **Particulars**

The plaintiff refers to the matters pleaded at paragraphs 75 to 80, 104, 109 and 114 above.

#### **The second wave was caused by the outbreaks at Rydges and Stamford Plaza**

137. Almost all COVID-19 cases in Victoria as at 4 August 2020 (approximately 99 per cent) could be traced to the transmission events at Rydges and Stamford Plaza pleaded in paragraphs 91 and 102 above.

#### **Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19 Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraphs 114 and 122.
- (ii) The plaintiff refers to the matters set out in the transcript of evidence Dr Charles Alpren to the Hotel Quarantine Inquiry at page 109, lines 19–23; page 110, lines 29–31.
- (iii) Further particulars may be provided following discovery and expert evidence.

138. Of those approximately 99 per cent of cases:

- (a) approximately 90 per cent are likely to be attributable to the outbreak at Rydges;
- (b) just under 10 per cent are likely to be attributable to the outbreak at Stamford Plaza.

#### **Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Dr Charles Alpren, COVID-19

Intelligence/Epidemiology Lead at DHHS, to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraphs 122 and 130.

- (ii) Further particulars may be provided following discovery and expert evidence.

139. In the premises, the transmission events at Rydges and Stamford Plaza pleaded in paragraphs 91 and 102 above caused the second wave.

### **The defendants' breaches of duty caused the outbreaks at Rydges and Stamford Plaza**

#### *The state of affairs at Rydges at the time of the outbreak*

140. Prior to 26 May 2020 when the outbreak at Rydges began:

- (a) cleaning of communal areas of Rydges, including lifts used to transport COVID-positive returned travellers, was carried out by hotel staff and/or private security guards using products unlikely to be effective against SARS-CoV-2;

#### **Particulars**

- (i) Outbreak Management Plan – Rydges Swanston (Exhibit HQI0104a\_RP at the Hotel Quarantine Inquiry), pages 10, 12.
- (ii) The plaintiff refers to the matters set out in the transcript of evidence of Dr Simon Crouch, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry at page 1073, lines 5–8.
- (iii) Further particulars may be provided following discovery.

- (b) private security guards at Rydges were using inappropriate or inadequate PPE, including wearing vinyl gloves and inadequate masks;

#### **Particulars**

- (i) Outbreak Management Plan – Rydges Swanston (Exhibit HQI0104a\_RP at the Hotel Quarantine Inquiry), pages 10, 12.
- (ii) The plaintiff refers to the matters set out in the transcript of evidence of Dr Simon Crouch, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry at page 1072, lines 27–29.
- (iii) Further particulars may be provided following discovery.

- (c) private security guards were being supplied with an inadequate amount of PPE, being one mask and one set of gloves to use for the whole of their shifts;

**Particulars**

The plaintiff refers to the matters set out in the transcript of evidence of Dr Simon Crouch, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry at page 1072, lines 31–34. Further particulars may be provided following discovery.

- (d) private security guards were instructed to remove PPE and then use that same PPE on either side of taking a break, which heightened the risk that such PPE would not operate to protect the user from infection;

**Particulars**

The plaintiff refers to the matters set out in the transcript of evidence of Dr Simon Crouch, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry at page 1072, lines 36–41. Further particulars may be provided following discovery.

- (e) private security guards were not observing social distancing while on duty and when taking breaks, which heightened the risk that they would be infected;

**Particulars**

The plaintiff refers to the matters set out in the transcript of evidence of Dr Simon Crouch, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry at page 1072, lines 43–46 and page 1073, lines 1–3. Further particulars may be provided following discovery.

- (f) private security guards and/or hotel staff working at Rydges had not received adequate education in infection prevention and control, including in the proper use of PPE and what to do when experiencing symptoms of COVID-19; and

**Particulars**

- (i) The plaintiff refers to sub-paragraphs (a)–(e) above.
- (ii) Outbreak Management Plan – Rydges Swanston (Exhibit HQI0104a\_RP at the Hotel Quarantine Inquiry), page 10.
- (iii) The plaintiff refers to paragraphs 50, 52, 54, 56–57 and 61 above.



- (iv) Further particulars may be provided following discovery and expert evidence.
- (g) inadequate infection prevention and control measures, the use of poor cleaning products, the use of inappropriate PPE, and/or lack of education in relation to cleaning practices created a high likelihood of person-to-person and potentially fomite spread of COVID-19 at Rydges.

**Particulars**

- (i) Outbreak Management Plan – Rydges Swanston (Exhibit HQI0104a\_RP at the Hotel Quarantine Inquiry), pages 12–13.
- (ii) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 2, page 26, paragraph 145 to page 27, paragraph 156.
- (iii) Further particulars may be provided following expert evidence.

*The state of affairs at Stamford Plaza at the time of the outbreak*

141. Prior to 16 June 2020 when the outbreak at Stamford Plaza began:

- (a) private security guards and hotel staff working at Stamford Plaza were not adequately educated in hand hygiene and the use of PPE;

**Particulars**

Outbreak Management Plan – Stamford Plaza, page 3. Further particulars may be provided following discovery and expert evidence.

- (b) work areas at Stamford Plaza were not visibly zoned for the safe containment of COVID-19 cases or suspected cases;

**Particulars**

Outbreak Management Plan – Stamford Plaza, page 3. Further particulars may be provided following discovery and expert evidence.

- (c) there was a lack of clearly designated areas or zones for handling clean and soiled items;

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Sarah McGuiness, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry dated 21 August 2020 at paragraph 76. Further particulars may be provided following discovery.

- (d) clinical waste bins were not present on every floor of Stamford Plaza;

### **Particulars**

Outbreak Management Plan – Stamford Plaza, page 8.

- (e) private security guards working at Stamford Plaza were not observing physical distancing requirements, which heightened the risk of infection;

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Sarah McGuiness, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry dated 21 August 2020 at paragraph 74. Further particulars may be provided following discovery.

- (f) private security guards working at Stamford Plaza were sharing video and playing on phones while wearing soiled gloves, which heightened the risk of infection;

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Sarah McGuiness, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry dated 21 August 2020 at paragraph 74. Further particulars may be provided following discovery.

- (g) such PPE and hygiene material as were present at the hotel were not readily accessible to people with limited literacy, in circumstances where English was not the first language of some security guards and/or hotel staff;

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Sarah McGuiness, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry dated 21 August 2020

at paragraph 75. Further particulars may be provided following discovery.

- (h) private security guards were gathering during shift handovers in large groups of up to 70 private security guards in a single room six-by-six metres in size, including on 14 June 2020, which heightened the risk that one or more of them would become infected;

### **Particulars**

- (i) The plaintiff refers to the matters set out in the witness statement of Dr Sarah McGuinness, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry dated 21 August 2020 at paragraph 77.
  - (ii) Email dated 17 June 2020 (author redacted) at pinpoint DHS.5000.0076.5215 of the attachments to the witness statement of Dr Sarah McGuinness to the Hotel Quarantine Inquiry dated 21 August 2020.
  - (iii) The plaintiff refers to the matters set out in the transcript of evidence of Dr Sarah McGuinness to the Hotel Quarantine Inquiry at page 1114, lines 23–25.
  - (iv) The plaintiff refers to the matters set out in the Final Report of the Hotel Quarantine Inquiry, volume 2, page 31, paragraph 184 and the evidence there cited.
- (i) the following arrangements at Stamford Plaza increased the risk of person-to-person infection:
    - (i) the common use of a security guard room (that is, the use of that room by persons working at the hotel who were not private security guards);
    - (ii) the use of non-disposable food utensils;
    - (iii) the use of a shared coffee machine in the security guard room;
    - (iv) the fact that private security guards had access to the room used by nurses and DHHS staff;
    - (v) the shared use of elevators; and
    - (vi) the shared use of some bathrooms;

### **Particulars**

The plaintiff refers to the matters set out in the witness statement of Dr Sarah McGuinness, Senior Medical Adviser at DHHS, to the Hotel Quarantine Inquiry dated 21 August 2020 at paragraph 78. Further particulars may be provided following discovery and expert evidence.

- (j) private security guards and/or hotel staff working at Stamford Plaza had not received adequate education in infection prevention and control practices, including in hand hygiene and what to do when experiencing symptoms of COVID-19; and

### **Particulars**

- (i) Outbreak Management Plan – Stamford Plaza, pages 3, 8.
  - (ii) The plaintiff refers to sub-paragraphs (a)–(i) above.
  - (iii) The plaintiff refers to paragraphs 51, 53, 55, 58–60 and 62 above.
  - (iv) Further particulars may be provided following expert evidence.
- (k) there was a high risk of person-to-person and potentially fomite transmission at Stamford Plaza.

### **Particulars**

Outbreak Management Plan – Stamford Plaza, page 3. Further particulars may be provided following discovery and expert evidence.

#### *The omissions of DHHS and DJPR*

142. Prior to 26 May 2020 when the outbreak at Rydges began, DHHS failed to:

- (a) identify that no person with expertise in infection prevention and control and responsibility for oversight or supervision of infection prevention and control practices at Rydges was stationed at that hotel, either regularly or at all, as pleaded in paragraph 50(a) above;
- (b) provide or arrange for a person or persons with responsibility for oversight or supervision of infection prevention and control measures, suitably qualified to

perform that role, or any person with that responsibility, to be present at Rydges either regularly or at all;

- (c) identify that no audit of infection prevention and control measures, including compliance with those measures by private security guards and hotel staff, was ever carried out at Rydges, as pleaded at paragraph 50(b) above;
- (d) provide or arrange for audits of infection prevention and control measures at Rydges;
- (e) identify that Unified Security did not have the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Rydges or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Rydges, as pleaded in paragraph 52 above;
- (f) provide any or sufficient advice as to infection prevention and control to Unified Security;

#### **Particulars**

The plaintiff refers to paragraphs 56 to 57 above.

- (g) identify that the hotel operator of Rydges did not have the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Rydges or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Rydges, as pleaded in paragraph 54 above; and
- (h) provide any or sufficient advice as to PPE or cleaning and disinfection tailored to the hotel quarantine environment to the hotel operator of Rydges.

#### **Particulars**

The plaintiff refers to paragraph 61 above.

143. Prior to 16 June 2020 when the outbreak at Stamford Plaza began, DHHS failed to:
- (a) identify that no person with expertise in infection prevention and control and responsibility for oversight or supervision of infection prevention and control

practices at Stamford Plaza was stationed at that hotel, either regularly or at all, as pleaded in paragraph 51(a) above;

- (b) provide or arrange for a person or persons with responsibility for oversight or supervision of infection prevention and control measures, suitably qualified to perform that role, or any person with that responsibility, to be present at Stamford Plaza either regularly or at all;
- (c) identify that no audit of infection prevention and control measures, including compliance with those measures by private security guards and hotel staff, was ever carried out at Stamford Plaza as pleaded at paragraph 51(b) above;
- (d) provide or arrange for audits of infection prevention and control measures at Stamford Plaza;
- (e) identify that MSS Security did not have the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Stamford Plaza or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Stamford Plaza, as pleaded in paragraph 53 above;
- (f) provide any or sufficient advice as to infection prevention and control to MSS Security;

### **Particulars**

The plaintiff refers to paragraphs 58 to 60 above.

- (g) identify that the hotel operator of Stamford Plaza did not have the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Stamford Plaza or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Stamford Plaza, as pleaded in paragraph 55 above; and
- (h) provide any or sufficient advice as to PPE or cleaning and disinfection tailored to the hotel quarantine environment to the hotel operator of Stamford Plaza.

144. Prior to 26 May 2020 when the outbreak at Rydges began, DJPR failed to:

- (a) identify that Unified Security did not have the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Rydges or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Rydges, as pleaded in paragraph 52 above;
- (b) provide, or procure the provision of, any or sufficient advice as to infection prevention and control to Unified Security;

**Particulars**

The plaintiff refers to paragraphs 56 to 57 above.

- (c) identify that the hotel operator of Rydges did not have the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Rydges or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Rydges as pleaded in paragraph 54 above; and
- (d) provide, or procure the provision of, any or sufficient advice as to advice as to PPE or cleaning and disinfection tailored to the hotel quarantine environment to the hotel operator of Rydges.

**Particulars**

The plaintiff refers to paragraph 61 above.

145. Prior to 16 June 2020 when the outbreak at Stamford Plaza began, DJPR failed to:

- (a) identify that MSS Security did not have the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Stamford Plaza or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Stamford Plaza as pleaded in paragraph 53 above;
- (b) provide, or procure the provision of, any or sufficient advice as to infection prevention and control to MSS Security;

**Particulars**

The plaintiff refers to paragraphs 58 to 60 above.

- (c) identify that the hotel operator of Stamford Plaza did not have the expertise in infection prevention and control necessary to provide adequate training in infection prevention and control to all personnel employed or engaged by it to work at Stamford Plaza or to identify and supply appropriate PPE to all personnel employed or engaged by it to work at Stamford Plaza, as pleaded in paragraph 55 above; and
- (d) provide, or procure the provision of, any or sufficient advice as to advice as to PPE or cleaning and disinfection tailored to the hotel quarantine environment to the hotel operator of Stamford Plaza.

### **Particulars**

The plaintiff refers to paragraph 62 above.

#### *The consequences of the defendants' breaches of duty*

146. Had:

- (a) the Secretary of DHHS not breached her duty of care in the manner pleaded at paragraphs 63 and/or 64 above; or
- (b) further or alternatively, the Minister for Health not breached her duty of care in the manner pleaded in paragraph 67 above;

DHHS would not have omitted to take one or more of the actions referred to in paragraphs 142 and/or 143 above.

147. In the premises, DHHS would have:

- (a) provided, or arranged for the provision of, ongoing, on-site oversight or supervision of infection prevention and control practices at each of Rydges and Stamford Plaza by a person or persons appropriately qualified in infection prevention and control, including oversight or supervision of:
  - (i) whether infection prevention and control training was being delivered to all persons working in the hotel;
  - (ii) the standard and frequency of that training;
  - (iii) whether PPE was being used correctly or at all;



- (iv) whether hand hygiene and social distancing were being observed; and
  - (v) whether cleaning and disinfection effective against SARS-CoV-2 was being carried out in areas of the hotel where such cleaning was required; and
- (b) conducted, or arranged for the conduct of regular audits of infection prevention and control practices at each of Rydges and Stamford Plaza; or
- (c) in the alternative to sub-paragraphs (a) and/or (b), provided, or arranged for the provision of:
- (i) advice or assistance as to infection prevention and control to each of Unified Security and MSS Security; and
  - (ii) advice or assistance as to PPE and cleaning and disinfection tailored to the hotel quarantine environment to each of the hotel operator of Rydges and the hotel operator of Stamford Plaza;

so as to cause each of Unified Security, MSS Security, the hotel operator of Rydges, and the hotel operator of Stamford Plaza to arrange ongoing, on-site oversight or supervision of infection prevention and control practices by a person or persons appropriately qualified in infection prevention and control and regular audits of infection prevention and control practices at each respective hotel.

148. Further or alternatively, had:

- (a) the Secretary of DJPR not breached his duty of care in the manner pleaded in paragraph 68 above; or
- (b) further or alternatively, the Minister for Jobs not breached his duty of care in the manner pleaded in paragraph 70 above;

DJPR would not have omitted to take one or more of the actions referred to in paragraphs 144 and/or 145 above.

149. In the premises, DJPR would have provided, or arranged for the provision of:

- (a) advice or assistance as to infection prevention and control to each of Unified Security and MSS Security; and

- (b) advice or assistance as to PPE and cleaning and disinfection tailored to the hotel quarantine environment to each of the hotel operator of Rydges and the hotel operator of Stamford Plaza;

so as to cause each of Unified Security, MSS Security, the hotel operator of Rydges, and the hotel operator of Stamford Plaza to arrange ongoing, on-site oversight or supervision of infection prevention and control practices by a person or persons appropriately qualified in infection prevention and control and regular audits of infection prevention and control practices at each respective hotel.

150. Had DHHS taken the actions set out in paragraph 147 and/or DJPR taken the actions set out in paragraph 149:

- (a) the state of affairs at Rydges prior to 26 May 2020 would not have been as pleaded at paragraph 140 above;
- (b) effective infection prevention and control measures in respect of quarantine detention as pleaded in paragraph 46 above would have been in place at Rydges, or alternatively more effective infection prevention and control measures would have been in place at Rydges than were in fact in place;
- (c) the state of affairs at Stamford Plaza prior to 16 June 2020 would not have been as pleaded at paragraph 141 above; and
- (d) effective infection prevention and control measures in respect of quarantine detention as pleaded in paragraph 46 above would have been in place at Stamford Plaza, or alternatively more effective infection prevention and control measures would have been in place at Stamford Plaza than were in fact in place.

151. The lack of effective infection prevention and control measures:

- (a) was a necessary condition of;
- (b) in the alternative, materially contributed to; or
- (c) in the further alternative, materially increased the risk of;

the transmission events at Rydges and Stamford Plaza pleaded in paragraphs 91 and 102 above.

152. By reason of the matters pleaded in paragraphs 136 to 151 above, each of the breaches of duty by the Secretary of DHHS, the Minister for Health, the Secretary of DJPR, and the Minister for Jobs:

- (a) was a necessary condition of;
- (b) in the alternative, materially contributed to; or
- (c) in the further alternative, materially increased the risk of;

each of:

- (d) the “stage 3” restrictions imposed in certain postcodes from 1 July 2020 as pleaded in paragraphs 105 to 107 above;
- (e) the “stage 3” restrictions imposed in Melbourne and Mitchell Shire from 9 July 2020 as pleaded in paragraphs 110 to 112 above;
- (f) the “stage 4” restrictions imposed in Melbourne from 2 August 2020 as pleaded in paragraphs 115 to 117, 120, 121, 123, 124, 127, 129 to 132 and 134 to 135 above;
- (g) the workplace closures imposed on businesses in Melbourne from 6 August 2020 as pleaded in paragraphs 119 to 121, 123, 127 and 129 to 132 and 134 to 135 above; and
- (h) the “stage 3” restrictions imposed in Victoria outside Melbourne from 6 August 2020 as pleaded in paragraphs 119 to 121, 126, 128 to 133 and 135 above.

## **G. LOSS AND DAMAGE**

153. The imposition of:

- (a) the “stage 3” restrictions imposed in certain postcodes from 1 July 2020 as pleaded in paragraphs 105 to 107 above;
- (b) the “stage 3” restrictions imposed in Melbourne and Mitchell Shire from 9 July 2020 as pleaded in paragraphs 110 to 112 above;
- (c) the “stage 4” restrictions imposed in Melbourne from 2 August 2020 as pleaded in paragraphs 115 to 117, 120, 121, 123, 124, 127, 129 to 132 and 134 to 135 above; and

- (d) the workplace closures imposed on businesses in Melbourne from 6 August 2020 as pleaded in paragraphs 119 to 121, 123, 127 and 129 to 132 and 134 to 135 above;

caused the plaintiff to suffer economic loss for the reasons set out in paragraphs 107, 112, 117 and 121 above.

### **Particulars**

From 2 July 2020 until 27 October 2020 (inclusive), the plaintiff closed its dine-in operations entirely and there was a dramatic decrease in the number of customers using its takeaway service. Further particulars will be furnished prior to trial.

154. The imposition of:

- (a) the “stage 3” restrictions imposed in certain postcodes from 1 July 2020 as pleaded in paragraphs 105 to 107 above;
- (b) the “stage 3” restrictions imposed in Melbourne and Mitchell Shire from 9 July 2020 as pleaded in paragraphs 110 to 112 above;
- (c) the “stage 4” restrictions imposed in Melbourne from 2 August 2020 as pleaded in paragraphs 115 to 117, 120, 121, 123, 124, 127, 129 to 132 and 134 to 135 above;
- (d) the workplace closures imposed on businesses in Melbourne from 6 August 2020 as pleaded in paragraphs 119 to 121, 123, 127 and 129 to 132 and 134 to 135 above; and
- (e) the “stage 3” restrictions imposed in Victoria outside Melbourne from 6 August 2020 as pleaded in paragraphs 119 to 121, 126, 128 to 133 and 135 above;

caused Group Members to suffer economic loss for the reasons set out in paragraphs 107, 112, 117 and 121 above.

### **Particulars**

The losses suffered by Group Members include lost profits and wasted expenditure. Further particulars will be furnished following the determination of the common questions.

155. In the premises, the negligence of each of the Secretary of DHHS, the Minister for Health, the Secretary of DJPR, and Minister for Jobs caused the plaintiff and Group Members to suffer economic loss within the meaning of s 51 of the *Wrongs Act 1958* (Vic).

## **H. VICARIOUS LIABILITY OF THE STATE OF VICTORIA**

156. Each of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR is and was at all material times a “servant or agent” of the State of Victoria within the meaning of s 23(1)(b) of the *Crown Proceedings Act 1958* (Vic).

157. Each of the torts of those defendants alleged herein was committed in the course or scope of their employment or agency.

158. In the premises, pursuant to s 23(1)(b) of the *Crown Proceedings Act 1958* (Vic), the State of Victoria is liable for the torts, constituted by the matters pleaded above, of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR.

## **I. COMMON QUESTIONS**

### **Questions of law or fact common to the claims of the Group Members**

159. The questions of law or fact common to the claims of the Group Members are as follows:

- (a) whether the facts concerning the implementation of quarantine detention at quarantine hotels are as pleaded in paragraphs 50 to 62, 71 to 74, 81 to 100 and 137 to 145 above;
- (b) whether one or more of the Minister of Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR owed a duty to take reasonable care to avoid foreseeable loss to the Group Members;
- (c) whether one or more of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR breached any such duty of care;
- (d) whether any such breach caused loss to the Group Members within the meaning of s 51 of the *Wrongs Act 1958* (Vic); and

- (e) whether the State of Victoria is vicariously liable for any negligence of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR.

**AND THE PLAINTIFF CLAIMS ON ITS OWN BEHALF AND ON BEHALF OF GROUP MEMBERS:**

1. Damages.
2. Interest.
3. Costs.
4. Such other or further order as the Court thinks fit.

**W. A. HARRIS**  
**A. M. HOCHROTH**  
**H. C. WHITWELL**



.....  
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