FORM 5A

Rule 5.02(1)

Case: S ECI 2021 00826
Filed on: 17/12/2021 12:02 PM

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

No. S ECI 2021 00826

B E T W E E N

IDRIS HASSAN and HAWA WARSAME~~another~~
~~(according to the Schedule to the Writ)~~

Plaintiffs

-and-

STATE OF VICTORIA~~DR ANNALIESE VAN DIEMEN, IN HER CAPACITY AS AUTHORISED OFFICER UNDER THE PUBLIC HEALTH AND WELLBEING ACT 2008 (VIC) and others~~
~~(according to the Schedule to the Writ)~~

Defendants~~s~~

AMENDED WRIT
Pursuant to Order of John Dixon J dated ~~29 July~~ 16 December 2021

Date of Document:	16 December 2021	Solicitors Code: 100187
Filed on behalf of:	Plaintiffs	Telephone: 9988 5035
Prepared by:	Clemens Haskin Legal	Email: ben@clemenshaskin.com
	Suite 261, 585 Little Collins St	Ref: Detention Towers
	Melbourne VIC 3000	

~~Date of Document: 19 March 2021 Solicitors Code: 109912~~
~~Filed on behalf of: Plaintiffs~~
~~Prepared by: Serene Teffaha~~
~~C/- Advocate Me~~
~~Solicitor for Plaintiffs~~
~~Unit 805, Floor 8~~
~~220 Collins Street~~
~~Melbourne, Victoria, 3000~~
~~Telephone: 0425 754 299~~
~~Ref: Detention Towers Class Action~~
~~Email: serene.teffaha@advocateme.com.au~~

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiffs for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiffs which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

(a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and

(b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiffs may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

***THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

(a) where you are served with the writ in Victoria, within 10 days after service;

(b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;

(c) where you are served with the writ in Papua New Guinea, within 28 days after service;

(d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;

(e) in any other case, within 42 days after service of the writ.

FILED ~~19 March~~ 16 December 2021

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

SCHEDULE OF PARTIES

IDRIS HASSAN
First Plaintiff

HAWA WARSAME
Second Plaintiff

DR ANNALIESE VAN DIEMEN, IN HER CAPACITY AS AUTHORISED OFFICER UNDER THE *PUBLIC HEALTH AND WELLBEING ACT 2008* (VIC)
First Defendant

DR FINN ROMANES, IN HIS CAPACITY AS AUTHORISED OFFICER UNDER THE *PUBLIC HEALTH AND WELLBEING ACT 2008* (VIC)
Second Defendant

CHIEF COMMISSIONER OF POLICE, VICTORIA
Third Defendant

STATE OF VICTORIA
Fourth Defendant

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

No. S ECI 2021 00826

B E T W E E N

IDRIS HASSAN and HAWA WARSAME ~~another~~

Plaintiffs

-and-

STATE OF VICTORIA ~~DR ANNALIESE VAN DIEMEN, IN HER CAPACITY AS AUTHORISED OFFICER UNDER THE PUBLIC HEALTH AND WELLBEING ACT 2008 (VIC) and others~~

Defendant~~s~~

AMENDED STATEMENT OF CLAIM

Pursuant to Order of John Dixon J dated 29 July 2021

Date of Document:	24 September 2021	Solicitors Code: 100187
Filed on behalf of:	Plaintiffs	Telephone: 9988 5035
Prepared by:	Clemens Haskin Legal	Email: ben@clemenshaskin.com
	Suite 261, 585 Little Collins St	Ref: Detention Towers
	Melbourne VIC 3000	

In this Amended Statement of Claim, the following terms have the following meanings:

Term	Meaning
33 Alfred Street Estate Tower	has the meaning given to it in paragraph 2(a)(vii)
33 Alfred Street Group Members	has the meaning given to it in paragraph 3
Department	has the meaning given to it in paragraph 5(e)
Entire Detention Period	has the meaning given to it in paragraph 2(b)
Estate Towers	has the meaning given to it in paragraph 2(a)
First Detention Period	has the meaning given to it in paragraph 2(b)(i)
Group Member	has the meaning given to it in paragraph 2.
Health Worker	has the meaning given to it in paragraph 11, particular (v)
Housing Minister	has the meaning given to it in paragraph 5(a)
Police Officer	has the meaning given to it in paragraph 7(b)

Term	Meaning
PPE	has the meaning given to it in paragraph 19(d), particular(ii)
Premier	has the meaning given to it in paragraph 5(a)
Second Detention Period	has the meaning given to it in paragraph 2(b)(ii)

Plaintiffs and Group Members

1. The Plaintiffs were at all material times residents in the State of Victoria and capable of suing.

2. The Plaintiffs bring this proceeding as a group proceeding pursuant to Part IVA of the *Supreme Court Act 1986* (Vic) on their own behalf and on behalf of all other persons (**the Group Members**) who were subjected to imprisonment, confinement or total restraint against their will, at:

   (a) any of the following addresses:

      i. 12 Holland Court, Flemington 3031;

      ii. 120 Racecourse Road, Flemington 3031;

      iii. 126 Racecourse Road, Flemington 3031;

      iv. 130 Racecourse Road, Flemington 3031;

      v. 9 Pampas Street, North Melbourne 3051;

      vi. 12 Sutton Street, North Melbourne 3051;

      vii. 33 Alfred Street, North Melbourne 3051 (the **33 Alfred Street Estate Tower**);

      viii. 76 Canning Street, North Melbourne 3051;

      ix. 159 Melrose Street, North Melbourne 3051;

      (together, the **Estate Towers**); and

   (b) any time from:

      i. about 4.00pm or 4.30pm on 4 July 2020 (or shortly thereafter) until 5.00pm on 9 July 2020 (in the case of 9 Pampas Street, North Melbourne and 159 Melrose Street, North Melbourne) and about 4.00pm or 4.30pm on 4 July 2020 (or shortly thereafter) until 11:59pm on 9 July 2020 in the case of all other Estate Towers (**the First Detention Period**); and

ii. 11.59 pm on 9 July 2020 until 11:59 pm on 18 July 2020 (**the Second Detention Period**).

(together the **Entire Detention Period**)

3. A sub-group of Group Members consists of the Second Plaintiff and Group Members detained during the Second Detention Period at the 33 Alfred Street Estate Tower (**the 33 Alfred Street Group Members**).

Defendant

4. The Defendant is and was at all material times capable of being sued.

5. Each of the following was, at all relevant times, a servant or agent of the Defendant within the meaning of s 23(1)(b) of the *Crown Proceedings Act 1958* (Vic):

   (a) Victorian Ministers of the Crown, including the Victorian Premier (**the Premier**) and the Victorian Minister for Housing (**the Housing Minister**);

   (b) each authorised officer within the *Public Health and Wellbeing Act 2008*;

   (c) the Director of Housing pursuant to the *Residential Tenancies Act 1997*;

   (d) the Deputy Secretary for Public Health Emergency Operations; and

   (e) each employee, officer and agent of each Victorian government department or Victorian government agency, including the Victorian Department of Health and Human Services (as it then was) **(the Department**).

6. Further or alternatively to sub-paragraph 5(a) above, each Victorian Minister of the Crown (including the Premier and the Housing Minister) was an extension of, and formed part of, the Defendant.

First Detention Period

7. On 4 July 2020:

   (a) at or shortly after 4pm, at a televised press conference, the Premier and the Victorian Housing Minister announced the lockdown of the Estate Towers, effective immediately, for at least five days.

Particulars

i. At a televised press conference at or shortly after 4pm on 4 July 2020, the Premier Daniel Andrews MP announced that nine public housing towers in postcodes 3031 and 3051 would be the subject of a complete "hard

lockdown", effective immediately; that there would be "no reason" for any of the around 3,000 residents of those towers to leave their homes for at least five days; that there would be no one going in, apart from those residents returning home, and that no one would be allowed out;

ii. The Housing Minister, Richard Wynne MP, identified, in the press conference, each of the Estate Towers as the towers which would be locked down.

(b) during the afternoon, over a hundred police officers and, or in the alternative, protective services officers (as those terms are used in the *Victoria Police Act 2013*) (collectively, **Police Officers**) were deployed to the Estate Towers;

Particulars

The Commissioner or the Commissioner's delegate and, or in the alternative, the Assistant Commissioner directed:

i. the deployment of Police Officers to the Estate Towers on 4 July 2020;

ii. the continued deployment of Police Officers to each of the Estate Towers until 9 July 2020, at:

1. 5.00pm in the case of 9 Pampas St, North Melbourne and 159 Melrose Street, North Melbourne; and

2. 11:59pm in the case of all other Estate Towers.

iii. the use of force, or the threat of the use of force, by Police Officers, to effect the detention of the Plaintiffs and Group Members within the Estate Towers.

(c) the Police Officers deployed to the Estate Towers were armed; and

(d) at about 4pm or shortly after 4pm, Police Officers established a perimeter around each of the Estate Towers, preventing unauthorised access and egress.

8. During the First Detention Period, Police Officers detained the Plaintiffs and Group Members:

(a) against their will;

(b) in their residences or (in the case of visitors to the Estate Towers) in the residence which they were visiting;

(c) on the apartment level in which their residence was situated or (in the case of detained visitors) on the apartment level of the residence which they were visiting;

(d) in the Estate Tower building in which they were situated; and, or in the alternative,

(e) at the address of the Estate Tower building in which they were situated (including the land surrounding that building).

Particulars

i. Each of the Estate Towers was surrounded at all relevant times by Police Officers.

ii. The Police Officers prevented the Plaintiffs and Group Members from leaving their residences and, or alternatively, each Estate Tower.

iii. At all relevant times, the Police Officers were armed.

iv. Access and egress to each of the Estate Towers could only be achieved without significant risk of injury by means of the ground floor foyer entrances in each Estate Tower.

v. At all material times during the First Detention Period, Police Officers were present at the ground floor entrances to each Estate Tower and, or alternatively, at the perimeter of each Estate Tower.

vi. From time to time during the First Detention Period, a Police Officer was present on each floor of each Estate Tower and, or alternatively, on one or more floors of each Estate Tower.

9. During the First Detention Period, at all relevant times:

(a) Police Officers deployed to the Estate Towers used force, or the threat of force, to prevent the Plaintiffs and each of the Group Members from leaving their residences and, or in the alternative, from leaving the Estate Tower in which they resided or in which they were situated.

Particulars

i. The Plaintiffs and the Group Members were detained in their residences with constant supervision by Police Officers, where they were subject to fear of force or the apprehended use of force by Police Officers, should they attempt to leave their residences.

(b) the Police Officers deployed to the each of the Estate Towers were armed;

(c) Police Officers prevented unauthorised access to and egress from each of the Estate Towers;

Particulars

i. The Plaintiffs and Group Members repeat the particulars to paragraph 8 above.

10. During the First Detention Period, the Police Officers deployed to the Estate Towers subjected each of the Plaintiffs and the Group Members to a total restraint of movement.

Particulars

i. The Plaintiffs and Group Members repeat paragraph 8 (and the particulars thereto) above.

11. During the First Detention Period, the Defendant and, or alternatively, servants and agents of the Defendant, were active in promoting and causing the detention of the Plaintiffs and the Group Members.

Particulars

i. An inter-agency Emergency Management Team meeting which was convened at approximately 2:30pm on 4 July 2020 made decisions with respect to implementing and administering the detention of the Plaintiffs and Group Members (or, alternatively, some of them).

ii. The Plaintiffs and Group Members repeat and rely upon paragraphs 5, 6 and 7(a) (and the particulars thereto) above.

iii. The Premier and the Housing Minister promoted and, or alternatively, caused the detention of the Plaintiffs and Group Members by their announcements on the televised news, as pleaded in paragraph 7(a) above, and by making other public announcements and issuing press releases.

iv. The Deputy Chief Health Officer (Communicable Disease), Ms Annaliese van Diemen, promoted and, or alternatively, caused the detention of the Plaintiffs and Group Members by purporting to make detention directions under s 199(2) or s 200(1) of the PHW Act on 4 July 2020 and by participating in the televised press conference referred to in paragraph 7(a) above.

v. An authorised officer under the *Public Health and Wellbeing Act 2008* and, or alternatively, employees, officers and agents of the Defendant, acting through or on behalf of the Department (**Health Workers**), wrote, signed or otherwise authorised the sending of letters to the Plaintiffs and Group

Members on or about 7 July 2020, which stated that the recipient must not leave home unless they had been given permission to do so (on specified grounds) or there was an emergency situation.

vi. Authorised officers under the *Public Health and Wellbeing Act 2008* telephoned some of the Group Members between about 6 July 2020 and 10 July 2020, using a script prepared by Health Workers, and told them that they must not leave the premises in which they ordinarily reside in any circumstances, unless they had been granted permission to do so by an authorised officer or there was an emergency situation.

vii. The Department was the "control agency" responsible for coordinating "Operation Benessere," the response to the Covid-19 outbreaks in Flemington and North Melbourne and for managing the detention of the residents of the Estate Towers, in accordance with Victoria's emergency management framework;

viii. Operation Benessere was coordinated and administered through teams comprising senior Victorian public servants and Police Officers;

ix. Further particulars will be provided in due course.

Second Detention Period

12. During the Second Detention Period, Police Officers detained the Second Plaintiff and the 33 Alfred Street Group Members:

(a) against their will;

(b) in their residences or (in the case of visitors) in the residence which they were visiting;

(c) on the apartment level in which their residence was situated or (in the case of detained visitors) on the apartment level in which the residence which they were visiting was situated; and, or alternatively,

(d) in the 33 Alfred Street Estate Tower premises.

Particulars

i. The 33 Alfred Street Estate Tower was surrounded at all relevant times by Police Officers.

ii. Police Officers prevented the Plaintiffs and Group Members from leaving their residences and, or alternatively, the 33 Alfred Street Estate Tower premises.

13. During the Second Detention Period, at all relevant times:

(a) Police Officers deployed to the 33 Alfred Street Estate Tower used force, or the threat of force, to prevent the Second Plaintiff and each of the 33 Alfred Street Group Members from leaving their residences and, or in the alternative, from leaving 33 Alfred Street, North Melbourne.

Particulars

i. The Second Plaintiff and the 33 Alfred Street Group Members were detained in their residences with constant supervision by Police Officers, where they were subject to fear of force or the apprehended use of force by Police Officers, should they attempt to leave their residences.

(b) the Police Officers deployed to the 33 Alfred Street Estate Tower were armed;

(c) Police Officers prevented unauthorised access to and egress from the 33 Alfred Street Estate Tower;

Particulars

i. Access and egress to each of the Estate Towers could only be achieved without significant risk of injury by means of the ground floor foyer entrance in the 33 Alfred Street Estate Tower.

ii. Police Officers were present at the ground floor entrances to the 33 Alfred Street Estate Tower and, or alternatively, at the perimeter of that tower.

iii. From time to time, a Police Officer was present on each floor of the 33 Alfred Street Estate Tower and, or alternatively, on one or more floors of that Tower.

14. During the Second Detention Period, the Police Officers deployed to the 33 Alfred Street Estate Tower subjected each of the Second Plaintiff and the 33 Alfred Street Group Members to a total restraint of movement.

Particulars

i. The Plaintiffs and Group Members repeat paragraphs 12 and 13 above and the particulars thereto.

ii. Police Officers:

1. maintained a visible, 24-hour presence at the 33 Alfred Street Estate Tower;
2. controlled access to and egress from the 33 Alfred Street Estate Tower;
3. conducted foot patrols in and around the buildings comprising the 33 Alfred Street Estate Tower;
4. generally did not permit residents to leave the building for exercise.

15. During the Second Detention Period, the Defendant and, or alternatively, servants and agents of the Defendant, were active in promoting and causing the detention of the Second Plaintiff and the 33 Alfred Street Group Members.

Particulars

i. The Plaintiffs and Group Members repeat the particulars to paragraph 11 above.

ii. A Department factsheet delivered to residents on 10 July 2020 advised them that lockdown would continue until 11.59pm on 18 July 2020.

iii. The Defendant (acting through Health Workers) administered a program for residents to access fresh air and outdoor exercise which commenced on the evening of 11 July 2020.

iv. The Defendant (acting through the Health Workers) did not permit residents to leave their homes for exercise, otherwise than in accordance with the rostered fresh air and exercise program.

v. Health Workers purported to grant or refuse the Second Plaintiff and, or in the alternative, the 33 Alfred Street Group Members, permission to leave their residences, as if they had power to do so.

Conditions of Detention

16. The Plaintiffs and Group Members were not given any warning of the decision to detain them.

17. In the premises, the Plaintiffs and Group Members did not have any opportunity to prepare for an extended period of detention, including by the purchase of food and medical supplies.

18. The Defendant, acting through the Department, assumed responsibility for providing services to the Plaintiffs and Group Members during the First Detention Period, and to the

Second Plaintiff and the 33 Alfred Street Group Members during the Second Detention Period.

Particulars

i. The Department was the "control agency" in Operation Benessere, and was responsible for coordinating the response to the lockdown of the Estate Towers.

ii. Services were provided to the Plaintiffs and Group Members by Health Workers.

iii. Agents providing services to the Plaintiffs and Group Members included individuals engaged, provided or referred by third parties engaged by the Defendant (acting through the Department) including the Royal Melbourne Hospital and community health providers such as Cohealth.

iv. Services provided included supply of food, medicine, medical assistance, counselling, Covid-19 testing, information and telephone support, assistance, management and related services, whether or not performed onsite.

19. In the First Detention Period and, or alternatively, in the Second Detention Period, the Plaintiffs and Group Members experienced the following conditions:

(a) There were inadequate supplies of food and groceries, and the food which was supplied to them was, in many cases, deficient;

Particulars

i. The Plaintiffs and many of the Group Members only consumed halal food, or otherwise had particular dietary requirements.

ii. No food or groceries were delivered to the First Plaintiff's residence until 6 July 2020, or to the Second Plaintiff's residence until 7 July 2020.

iii. The Plaintiffs and many of the Group Members suffered distress, anxiety and discomfort as a result of not having sufficient food to eat and not knowing when they might next eat.

iv. Some of the food which was supplied was not fit for human consumption.

v. Some of the food which was supplied was not halal food or otherwise did not fulfil the dietary requirements of the Plaintiffs and Group Members.

(b) the Plaintiffs and Group Members did not have any access to medication or, alternatively, had inadequate access to medication;

Particulars

i. On 5 July 2020 the First Plaintiff and his eldest son Zuber ran out of asthma medication and telephoned a staff member of the Defendant via the Department's hotline number requesting the immediate dispatch of asthma medications for him and Zuber.

ii. The First Plaintiff did not receive the requested medication until 8 July 2020.

iii. The First Plaintiff and Zuber suffered asthma attacks and distress, anxiety and discomfort as a result of being without their asthma medication.

iv. The Second Plaintiff's husband, and the First Plaintiff's father, Mr Muheden Elmi, had been prescribed medication for deep vein thrombosis;

v. On 5 July 2020, Mr Elmi ran out of his medication and informed Police Officers of his need for medication;

vi. The First Plaintff called the Department's hotline several times between 5 July 2020 and 9 July 2020 requesting that medication;

vii. Mr Elmi's medication was not provided until 9 July 2020;

viii. Mr Elmi's leg became inflamed between 5 July 2020 and 9 July 2020;

ix. The First and Second Plaintiffs suffered stress and anxiety as a result of Mr Elmi's lack of access to medication;

x. Many of the Group Members were unable to access and obtain required medication within a reasonable time.

xi. Further particulars will be provided in due course.

(c) the Plaintiffs and Group Members were deprived of access to fresh air and exercise and, or in the alternative, their access to fresh air and exercise was unreasonably restricted.

Particulars

i. Plaintiffs and Group Members were not provided access to outdoor exercise during the First Detention Period.

ii. In the Second Detention Period, the Second Plaintiff and 33 Alfred Street Group Members could not exercise without express permission and only when accompanied by Police Officers or other persons engaged to supervise them.

iii. Many of the Plaintiffs and Group Members could not access any place to exercise and breathe fresh air.

iv. Plaintiffs and Group Members were not informed of their right to ask for permission to leave their homes to exercise.

v. Police Officers controlling entry and exit to the buildings routinely refused requests for outdoor exercise.

vi. In the Second Detention Period, cyclone fencing was installed to create an "exercise yard" for residents undertaking supervised exercise. The cyclone fencing was disassembled within a 24 hour period due to the significant trauma caused to the residents by its erection and the implied meaning of the act in evoking unfavourable memories of migration detention or detention prior to immigration to Australia for many of the residents.

(d) The Plaintiffs and Group Members were unnecessarily exposed to increased risk of illness and ill health.

Particulars

i. Communal areas including stairwells and elevators in the Estate Towers were not disinfected and/or cleaned. Communal sanitising dispensers were often empty.

ii. Basic personal protective equipment (**PPE**) such gloves and masks were not provided.

iii. There were significant delays in providing interpreters, social workers, medical professionals and health workers to support and assist the Plaintiffs and Group Members.

iv. Health Workers using PPE disposed of their used PPE in mobile garbage bins at the Estate Towers, resulting in those bins overfilling.

v. Delivery workers and volunteers visiting the Estate Towers were not required to wear, and did not wear, full PPE.

vi. Laundries were closed and access to laundries was prohibited.

vii. Large families and groups were confined to small spaces, in buildings with poor ventilation, and were not permitted to isolate elsewhere.

(e) the Plaintiffs and Group Members were not provided with adequate information about the purported basis for, and duration of, and rights in respect of, their detention.

Particulars

i. No information was provided to the Plaintiffs and Group Members regarding the directions upon which the Defendant relied to detain them in the First Detention Period until on or after 7 July 2020.

ii. Information was communicated predominantly in English, despite that the Second Plaintiff and many of the Group Members have poor English comprehension. Information in languages other than English was not was provided until on or after 8 July 2020.

iii. Many of the Group Members did not receive, or could not understand, the directions written in English.

iv. The Defendant did not provide the Plaintiffs and Group Members with qualified interpreters at the Estate Towers on 4 July 2020 or, in the alternative, there was an inadequate number of such interpreters.

v. The posters displayed at the Estate Towers on or about 5 July 2020 did not provide any information about the directions or the rights of the Plaintiffs and Group Members.

vi. No provision, or alternatively inadequate provision, was made for Plaintiffs and Group Members with special communication needs such as deafness, intellectual disabilities and speech impairment.

vii. Many Plaintiffs and Group Members did not receive or could not understand telephone calls made to them by Health Workers.

viii. The basis for the detention of the Second Plaintiff and 33 Alfred Street Group Members in the Second Detention Period was not explained to them or, alternatively, was not adequately explained to them.

ix. Many of the 33 Alfred Street Group Members did not receive a fact sheet or any other written information about the basis for their detention in the Second Detention Period until after their detention had ended.

(f) The Plaintiffs and Group Members were not provided with adequate information or support prior to or subsequent to the carrying out of Covid-19 testing.

Particulars

i. Health Workers administered more than 2,500 Covid-19 tests to residents of the Estate Towers, including the Second Plaintiff and many of the Group Members, mainly within the apartments by door-to-door engagement.

ii. Immediately prior to conducting Covid-19 tests, Health Workers provided information about the Covid-19 testing to the Second Plaintiff and Group Members orally, in English, and no interpreters were provided.

iii. The Plaintiffs and Group Members were told by the Health Workers, in English, that they would be detained in their residences for a further ten days if they refused to be tested for Covid-19;

iv. Health Workers were often accompanied by Police Officers when they visited residences to conduct Covid-19 tests, creating the impression that undergo testing was a matter the police could enforce;

v. The Plaintiffs and Group Members were not provided with sufficient information to make an informed decision about whether to consent to Covid-19 testing, or sufficient time to make that decision;

vi. On or about 6 July 2020:

1. Health Workers attended the residence of the Second Plaintiff and her husband, Mr Elmi, to conduct Covid-19 testing, accompanied by two Police Officers;

2. Health Workers spoke to them about the testing in English;

3. the Second Plaintiff has only a very limited understanding of English, so did not understand what was said to her, or only had a very limited understanding of what was said to her;

4. the Second Plaintiff did not understand her rights and obligations with respect to undergoing the testing and was initimdated by the presence of Police Officers;

5. the Second Plaintiff submitted to the Covid-19 testing because she was fearful as to the consequences of non-compliance with the Covid-19 testing.

(g) Access to mental health services and medical services was inadequate;

Particulars

i. No mental health services were offered to the First or Second Plaintiffs.

ii. Many residents were not informed about on-site mental health services which were available, when they became available.

iii. Individual medical assessments of Covid-19 symptoms experienced by each of the Plaintiffs and Group Members were not conducted.

(h) the Plaintiffs and Group Members who were employed or self-employed and could not work at home were unable to work and earn income.

Particulars

i. The First Plaintiff was unable to work during the First Detention Period and lost income as a result.

ii. Group Members lost income and their jobs were, in some cases, jeopardised as a result of their inability to attend work.

(i) In the premises of paragraphs 16, 17 and 19(a) to (h) above, and as a result of the circumstances of their detention generally, the Plaintiffs and Group Members experienced a state of fear, apprehension, trepidation, anxiety, mental distress, anguish, humiliation and, or alternatively, stress throughout their detention.

Particulars

i. The First Plaintiff was afraid for his life and the life of his son Zuber when they were unable to obtain asthma medication.

ii. The First Plaintiff was stressed and anxious for himself and his wife and three children when they were unable to obtain food or culturally-appropriate food.

iii. The First and Second Plaintiffs were anxious and distressed when Mr Muheden Elmi ran out of medication and was unable to obtain it within a reasonable time;

iv. The Second Plaintiff was afraid when she believed she heard Police knock loudly on her door, call out in English, remove her window screen and bang on the window for about twenty minutes, seeking entry.

v. The First Plaintiff and Second Plaintiff were anxious about the presence of Police Officers around their residences, especially during the first days of the detention.

vi. The Plaintiffs and many Group Members were intimidated by the presence of Police Officers surrounding their residence, and anxious about the possible actions of Police Officers, due to their experiences as refugees or escapees from repressive regimes overseas.

vii. The Plaintiffs and Group Members suffered anxiety and stress and felt humiliated, as a consequence of the conditions pleaded in sub-paragraphs 19(a) to (h) above.

viii. Further particulars will be provided in due course.

False Imprisonment

20. Throughout the First Detention Period, Police Officers, the Defendant, and, or in the alternative, servants or agents of the Defendant imprisoned, confined or restrained the Plaintiffs and Group Members:

    (a) totally;

    (b) intentionally; and

    (c) against their will.

Particulars

i. The Plaintiffs and Group Members repeat and rely upon paragraphs 7, 8, 9, 10 and 11 above (and the particulars thereto).

21. Throughout the Second Detention Period, Police Officers, the Defendant, and, or in the alternative, servants or agents of the Defendant imprisoned, confined or restrained the Second Plaintiff and the 33 Alfred Street Group Members:

    (a) totally;

    (b) intentionally; and

    (c) against their will.

Particulars

i. The Plaintiffs and Group Members repeat and rely upon paragraphs 7, 12, 13, 14 and 15 above (and the particulars thereto).

22. Each of the Plaintiffs and Group Members has suffered loss and damage as a result of his or her loss of liberty.

Particulars

i. Infringement upon their liberty, physical, mental, psychological and economic harm, humiliation and loss of dignity and reputation.

ii. Exacerbation of existing injury.

iii. Further particulars will be provided in due course.

Aggravated Damages – False Imprisonment

23. The Plaintiffs and Group Members suffered increased injury to their feelings and to their sense of dignity during the First and Second Detention Periods as a result of:

(a) the lack of warning or notice about their detention, as pleaded in paragraphs 16 and 17 above; and

(b) the conditions in which they were detained, as pleaded in paragraph 19 above.

Particulars

i. The Plaintiffs and Group Members suffered humiliation, indignity, insult, anxiety and, or alternatively, distress.

Exemplary damages – False imprisonment

24. Each apartment in the Estate Towers in which a Plaintiff or Group Member resided was:

(a) public housing; and

(b) subject to a tenancy agreement:

i. with the Director of Housing (as landlord) pursuant to the *Residential Tenancies Act 1997*; and

ii. administered by or on behalf of the Defendant.

25. At all relevant times, to the knowledge or constructive knowledge of the Defendant, Victorian Ministers of the Crown, Police Officers and, or alternatively, servants or agents of the Defendant, a high proportion of the persons residing in the Estate Towers were vulnerable persons.

Particulars

i. A high proportion of the Plaintiffs and Group Members were from non-English speaking backgrounds and, or alternatively, spoke a language other than English at home.

ii. A high proportion of the Plaintiffs and Group Members were refugees.

iii. A high proportion of the Plaintiffs and Group Members had low incomes and, or alternatively, were the recipients of welfare benefits.

iv. A high proportion of the Plaintiffs and Group Members had a mental health condition.

v. A high proportion of the Plaintiffs and Group Members had a health condition or a disability.

vi. At the press conference held on 4 July 2020, the Premier stated that "many, many" of the residents of the Estate Towers were vulnerable people.

vii. At the press conference held on 4 July 2020, the Housing Minister stated that the Estate Towers were home to some of the most vulnerable people in the community.

viii. The Director of Housing had entered into a residential tenancy agreement with each tenant in the Estate Towers pursuant to the *Residential Tenancies Act 1997* and had collected the personal information of each tenant.

ix. To the knowledge of the Director of Housing, the criteria an applicant had to meet to be eligible for an allocation of a tenancy in social housing included criteria relating to income and assets (denying eligibility if income or assets were too great).

x. The vast majority of the Plaintiffs and Group Members were, to the knowledge of the Director of Housing, the Premier and the Housing Minister, public (or social) housing tenants or immediate family members of public housing tenants.

xi. Shortly after the lockdown on 4 July 2020 and in the days following, many media reports referred to the high of residents of the Estate Towers being refugees.

xii. Senior Police Officers had knowledge of all, or alternatively some, of the matters referred to in particulars (i) to (v) above, as Victoria Police had responsibility for policing North Melbourne and Flemington.

xiii. Victoria Police supplied a Deputy State Controller (Health) to Operation Benessere, who had knowledge of all, or alternatively some, of the matters referred to in particulars (i) to (v) above, or gained such knowledge in that role.

xiv. Senior Police Officers and senior employees of the Department, including those who were responsible for coordinating and administering Operation Benessere (in the Emergency Management Team, the Incident Management Team or the Department's Leadership Team responsible for coordinating the health and human services aspects of the response) had had knowledge of all, or alternatively some, of the matters referred to in particulars (i) to (v) above.

xv. Further particulars will be provided in due course.

26. The knowledge pleaded in paragraph 25 above of:

(a) Ministers of the Crown;

(b) senior Police Officers (including the Chief Commissioner of Police, the Assistant Commissioner of Police and the Deputy State Controller (Health));

(c) the Director of Housing;

(d) Police Officers and senior public servants coordinating and administering Operation Benessere (in the Emergency Management Team, the Incident Management Team or the Department's Leadership Team responsible for coordinating the health and human services aspects of the response); and, or alternatively,

(e) senior employees of the Department (including the Secretary of the Department, the State Controller (Health), the Chief Health Officer and the Deputy Chief Health Officer),

is attributable to the Defendant.

27. In detaining the Plaintiffs and Group Members, the Defendant, Victorian Ministers of the Crown, Police Officers, Health Workers and, or alternatively, servants or agents of the Defendant, acted in contumelious disregard of the Plaintiffs' and Group Members' rights.

Particulars

i. The Plaintiffs and Group Members were not given any time to prepare for the detention.

ii. The false imprisonment continued throughout the First Detention Period or the Entire Detention Period and thus involved a prolonged continuing tort.

iii. The continuation of the false imprisonment of the Second Plaintiff and 33 Alfred Street Group Members in the Second Detention Period, when there was no direction or any other law in force which purported to authorise the detention of the Second Plaintiff or the 33 Alfred Street Group Members, constituted a flagrant abuse of power and displayed a reckless disregard for those persons' rights.

iv. The Plaintiffs and Group Members repeat paragraphs 5, 6, 7, 16, 17, 18, 19, 24, 25 and 26 above.

v. Further particulars will be provided in due course.

Assault

28. During the First Detention Period and, or alternatively, during the Second Detention Period, Police Officers threatened the Plaintiffs and the Group Members with harm or violence, should they attempt to leave their residences or, alternatively, should they attempt to leave the Estate Tower in which they resided or which they were visiting.

Particulars

i. The presence of numerous armed Police Officers at each of the Estate Towers during the First Detention Period, and at the 33 Alfred Street Estate Tower during the Second Detention Period, coupled with those officers purporting to restrain the Plaintiffs and Group Members from leaving their residences, constituted the intentional threat of the use of force, to the persons of the Plaintiffs and Group Members.

ii. Paragraphs 7, 8, 9, 10, 12, 13 and 14 above, and the particulars thereto, are repeated.

29. The threat was made by each of the Police Officers deployed to each Estate Tower by:

(a) surrounding each Estate Tower;

(b) maintaining a presence at each Estate Tower throughout the First Detention Period, and throughout the Entire Detention Period in respect of the 33 Alfred Street Estate Tower;

(c) refusing to allow the residents to leave each Estate Tower building;

(d) accompanying Health Workers conducting Covid-19 testing;

(e) being armed;

(f) being present at each Estate Tower in significant numbers.

30. Further or alternatively to paragraph 29 above, the threat was made by the Chief Commissioner of Police, the Assistant Commissioner of Police or other Police Officer who:

(a) deployed armed Police Officers to each Estate Tower;

(b) directed or ordered each Police Officer to be present there;

(c) directed or ordered each Police Officer not to allow residents to leave.

31. The threat was made with the intention of arousing an apprehension of physical contact by Police Officers and, or alternative, the use of physical force by Police Officers in the Plaintiffs or Group Members; or, alternatively, the Police Officers should reasonably have foreseen that such an apprehension would be aroused.

Particulars

i. Paragraphs 7, 9, and 13 above, and the particulars thereto, are repeated.

32. The Defendant and, or alternatively, employees or agents of the Defendant, promoted or participated in the assault.

Particulars

i. The Premier and Ministers of the Crown made public announcements supportive of the presence of Police Officers at the Estate Towers to enforce the lockdown.

ii. The teams of senior public servants administering and managing Operation Benessere supported the police presence to enforce the detention of the Plaintiffs and Group Members.

iii. Further particulars will be provided in due course.

33. Each of the Plaintiffs and Group Members reasonably believed that Police Officers would use force to physically restrain them and, or alternatively, commit a battery on them, if they

attempted to leave the premises of the Estate Towers in which they resided, during the First Detention Period.

34. The Second Plaintiff and each of the 33 Alfred Street Group Members reasonably believed that Police Officers would use force to physically restrain them and, or alternatively, commit a battery on them, if they attempted to leave the premises of 33 Alfred Street, North Melbourne, during the Second Detention Period.

Damages, including aggravated damages, for Assault

35. The Plaintiffs and Group Members suffered humiliation, indignity, insult, anxiety and, or alternatively, distress as a result of the intentional threat of the use of force by Police Officers, during the First Detention Period.

36. The Second Plaintiff and the 33 Alfred Street Group Members suffered humiliation, indignity, insult, anxiety and, or alternatively, distress as a result of the intentional threat of the use of force by Police Officers, during the Second Detention Period.

37. The Plaintiffs and Group Members who had been refugees and, or alternatively, who had escaped repressive regimes overseas, experienced additional trauma, anxiety and, or alternatively, distress as a result of the intentional threat of the use of force by Police Officers, during the First and Second Detention Periods.

38. The Plaintiffs and Group Members suffered increased humiliation, indignity, insult, anxiety and, or alternatively, distress in the context of the assault pleaded in paragraphs 28 to 34 above during the First and Second Detention Periods as a result of:

    (a) the sudden surrounding of their residences by armed Police Officers, without warning, as pleaded in paragraphs 7 and 16 above; and, or alternatively,

    (b) the effect of the assault, being that they were subjected to home detention in the conditions pleaded in paragraph 19 above.

Exemplary damages – Assault

39. In assaulting the Plaintiffs and Group Members, Police Officers acted in contumelious disregard of the Plaintiffs' and Group Members' rights.

Particulars

i. The Plaintiffs and Group Members repeat paragraphs 7, 16, 17, 19, 24, 25 and 26 above and the particulars thereto.

40. Further or alternatively to paragraph 39 above, in participating in or promoting the assault of the Plaintiffs and Group Members by Police Officers, the Defendant and, or alternatively, employees or agents of the Defendant, acted in contumelious disregard of the Plaintiffs' and Group Members' rights.

Particulars

i. The Plaintiffs and Group Members repeat paragraphs 7, 11, 15, 16, 17, 19, 24, 25 and 26 above and the particulars thereto.

Liability of the Defendant for torts

41. The tort of false imprisonment, as pleaded in paragraphs 20 to 21 above, was committed by:

(a) the Defendant (through Ministers of the Crown) in the performance or purported performance of their duties or, alternatively, in the course or scope of their employment or agency;

Particulars

i. The Plaintiffs and Group Members repeat paragraphs 5(a), 6, 7(a), 11, 15 and 18 above and the particulars thereto.

(b) the servants or agents of the Defendant in the course or scope of their employment or agency; and, or alternatively,

Particulars

i. The Plaintiffs and Group Members repeat paragraphs 5, 11 and 15 above and the particulars thereto.

(c) Police Officers in the performance or purported performance of their duties.

Particulars

i. The Plaintiffs and Group Members repeat paragraphs 7 to 10 and 12 to 14 and the particulars thereto.

42. In the premises of paragraph 41 above, the Defendant is liable for the tort of false imprisonment, as committed by:

(a) the Defendant (through Ministers of the Crown);

Particulars

i. The Defendant is directly liable for the tortious actions of Ministers of the Crown, as they are an extension of the Defendant; alternatively, the

Defendant is liable for their tortious actions as they are servants or agents of the Defendant.

(b) the servants or agents of the Defendant; and, or alternatively,

Particulars

i. The Defendant is liable for their actions or omissions pursuant to s 23(1)(b) of the *Crown Proceedings Act 1958*.

(c) Police Officers.

Particulars

i. The Defendant is liable for their actions or omissions pursuant to s 74 of the *Victoria Police Act 2013*.

43. The tort of assault, as pleaded in paragraphs 28 to 34 above, was:

(a) committed by Police Officers in the performance or purported performance of their duties; and, or alternatively,

(b) committed by the Defendant and, or alternatively, by employees or agents of the Defendant, through their promotion of and, or alternatively, their participation in the assault by Police Officers.

Particulars

i. The Plaintiffs and Group Members repeat paragraphs 28 to 31 and 34 above and the particulars thereto.

44. In the premises of paragraph 43 above, the Defendant is liable for the tort of assault.

Particulars

i. The Defendant is liable for the tortious actions or omissions of Police Officers pursuant to s 74 of the *Victoria Police Act 2013*.

ii. The Defendant is liable for the actions or omissions of its servants and agents pursuant to s 23(1)(b) of the *Crown Proceedings Act 1958*.

iii. The Defendant is directly liable for the actions or omissions of Ministers of the Crown.

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

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

    (a) whether the facts relating to the decisions to lock down and to enforce the lock down of the Estate Towers, and the facts relating to the lock down itself, are as pleaded at paragraphs 7 to 15 above;

    (b) whether Police Officers and, or alternatively, Ministers of the Crown, or the servants or agents of the Defendant caused the total restraint of the liberty of each of the Plaintiffs and Group Members against their will in the First Detention Period;

    (c) whether Police Officers and, or alternatively, Ministers of the Crown, or the servants or agents of the Defendant caused the total restraint of the liberty of the Second Plaintiff and each of the 33 Alfred Street Group Members against their will in the Second Detention Period;

    (d) whether the Defendant is liable for the false imprisonment of the Plaintiffs and Group Members;

    (e) whether the Plaintiffs and Group Members are entitled to damages for false imprisonment, including aggravated and exemplary damages;

    (f) whether Police Officers assaulted the Plaintiffs and Group Members (or some of them) by threatening them with the use of force during the First and Second Detention Periods;

    (g) whether the Plaintiffs and Group Members are entitled to damages for assault, including aggravated and exemplary damages.

Relief

46. On the grounds set out in this Statement of Claim, the Plaintiffs and Group Members are entitled to the following relief:

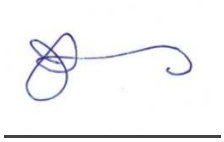
    (a) Damages for false imprisonment, including aggravated and exemplary damages.

    (b) Damages for assault, including aggravated and exemplary damages.

    (c) Costs.

    (d) Interest.

    (e) Such other or further orders as the Court deems fit.



DR JULIET LUCY

.....
Clemens Haskin Legal
Solicitor for the Plaintiffs

1. Place of trial— Melbourne.

2. Mode of trial—Judge alone.

3. This writ (as amended) was filed for the plaintiffs by Clemens Haskin Legal, Suite 261, 585 Little Collins St, Melbourne Victoria 3000.

4. The address of the plaintiffs is— C/- Clemens Haskin Legal, Suite 261, 585 Little Collins St, Melbourne Victoria 3000.

5. The address for service of the plaintiffs is— C/- Clemens Haskin Legal, Suite 261, 585 Little Collins St, Melbourne Victoria 3000.

6. The address of the defendant is — C/- Corrs Chambers Westgarth, Level 22, 567 Collins St, Melbourne Victoria 3000.

STATEMENT OF CLAIM

Date of Document: 19 March 2021 Solicitors Code: 109912

Filed on behalf of: Plaintiffs

Prepared by: Serene Teffaha
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Plaintiffs and Group Members

47. The Plaintiffs bring this proceeding as a group proceeding pursuant to Part IVA of the *Supreme Court Act 1986* (Vic) on their own behalf and on behalf of all other persons (the **Group Members**) who:

(a) were, at all relevant times, either:

i. residents in apartments located at one of the following addresses:

1. 9 Pampas Street, North Melbourne;

2. 159 Melrose Street, North Melbourne;

3. 33 Alfred Street, North Melbourne;

4. 76 Canning Street, North Melbourne;

5. 12 Sutton Street, North Melbourne;

6. 120 Racecourse Road, Flemington;

7. 126 Racecourse Road, Flemington;

8. 130 Racecourse Road, Flemington;

9. 12 Holland Court, Flemington,

(together, the **Estate Towers**); or

ii. persons who were visitors to one of the Estate Towers on the afternoon of 4 July 2020 and who were detained in one of the Estate Towers from about 4.00pm on that day or shortly afterwards (**Detained Visitors**);

(b) were detained in a residence at the Estate Towers, without their consent, between about 4.00pm or 4.30pm on 4 July 2020 (or shortly thereafter) and:

i. 5.00pm on 9 July 2020 (in the case of residents of 9 Pampas St, North Melbourne and 159 Melrose Street, North Melbourne and Detained Visitors at those locations);

ii. 11:59 pm on 18 July 2020 (in the case of residents of 33 Alfred Street, North Melbourne and Detained Visitors at those locations);

iii. 11:59pm on 9 July 2020 (in the case of all other residents of the Estate Towers and all other Detained Visitors);

(c) were detained from between about 4.00pm or 4.30pm on 4 July 2020 (or shortly thereafter) and 5.00pm on 9 July 2020 (in the case of residents of, and Detained Visitors, at 159 Melrose Street, North Melbourne and 9 Pampas Street, North Melbourne) or 11.59pm on 9 July 2020 (in the case of all other Plaintiffs and Group Members) (the **First Detention Period**) purportedly pursuant to one of the following directions:

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

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

iii. Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (33 Alfred Street, North Melbourne);

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

v. Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (12 Sutton Street, North Melbourne);

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

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

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

ix. Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Detention Directions (12 Holland Court, Flemington),

(together, the **Detention Directions**);

(d) were, in the case of the Second Plaintiff and the other residents of 33 Alfred Street, North Melbourne and Detained Visitors at that address (**33 Alfred Street Group Members**), detained (or, in the alternative, subject to significant restrictions on their freedom of movement) from 11.59pm on 9 July 2020 until 11:59 pm on 18 July 2020 (the **Second Detention Period**), purportedly pursuant to:

i. the "Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Diagnosed Persons and Close Contacts Directions (No 4)" (the **Close Contacts Directions (No 4)**), between 11.59pm on 9 July 2020 and 11.59pm on 15 July 2020; and

ii. the "Direction from Deputy Public Health Commander in accordance with emergency powers arising from declared state of emergency – Diagnosed Persons and Close Contacts Directions (No 5)" (the **Close Contacts Directions (No 5)**), between 11.59pm on 15 July 2020 and 11:59 pm on 18 July 2020.

48. The Group Members are persons to whom paragraph 47(a) to (c) above applies and, in the case of the 33 Alfred Street Group Members, persons to whom paragraph 47(d) above also applies.

Plaintiffs' Circumstances

49. The Plaintiffs:

(a) were born in Somalia;

(b) spoke Somalian as their first language;

(c) experienced the civil war in Somalia in 1990;

(d) fled their village in 1990, with the First Plaintiff's six siblings, when it was targeted by rebel soldiers;

(e) arrived in Australia on 28 February 1998, on humanitarian refugee visas, when the First Plaintiff was fourteen years old.

50. The Plaintiffs are Muslim and:

(a) only eat halal food;

(b) only or primarily eat food prepared at home and foods which do not contain processed sugars, excessive fats or processed flour.

51. At all relevant times the First Plaintiff:

(a) resided with his wife and three children aged about 9, 7 and 4 years at an apartment at 12 Sutton Street, North Melbourne;

(b) was employed full-time as a Freight Forwarder;

(c) suffered from asthma;

(d) required regular asthma medication.

52. At all relevant times, the First Plaintiff's eldest son, Zuber Hassan (**Zuber**):

(a) suffered from asthma;

(b) was prone to severe anaphylaxis;

(c) was gluten and lactose intolerant;

(d) required regular asthma medication.

53. At all relevant times, the Second Plaintiff:

(a) was retired;

(b) received social security benefits;

(c) did not understand or speak English;

(d) communicated with her husband, Mr Muheden Elmi (**Mr Elmi**), and with her family in Somali;

(e) relied upon Mr Elmi or her children to interpret English to her;

(f) ordinarily resided with Mr Elmi and their daughters, Asiya Hassan and Ebyon Hassan, in their apartment at 33 Alfred Street, North Melbourne.

54. At all relevant times, Mr Elmi:

(a) understood limited English;

(b) could not speak English;

(c) could not read English;

(d) suffered from Deep Vein Thrombosis (**DVT**) and Chronic Obstructive Pulmonary Disease;

(e) was regularly prescribed and had regularly taken various medications, including Xarelto 20mg for the prevention of blood clots and the treatment of blood clots as an antithrombotic agent for DVT.

Defendants

55. The First Defendant was at all material times an individual actually and, or in the alternative, apparently:

(a) employed under Part 3 of the *Public Administration Act 2004* (Vic);

(b) appointed as an authorised officer for the purposes of the *Public Health and Wellbeing Act 2008* (Vic) (the **PHW Act**) by the Secretary of the Victorian Department of Health and Human Services (the **Department**) under s 30(1) of the PHW Act; and

(c) appointed to the office of Deputy Chief Health Officer (Communicable Disease), within the Department;

(d) authorised by the Chief Health Officer under s 199(2)(a) of the PHW Act to exercise emergency powers under s 200 of the PHW Act;

(e) a public authority within s 38 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**the Charter**).

56. The Second Defendant was at all material times an individual actually and, or in the alternative, apparently:

(a) employed under Part 3 of the *Public Administration Act 2004* (Vic);

(b) appointed as an authorised officer for the purposes of the PHW Act by the Secretary of the Department under s 30(1) of the PHW Act; and

(c) appointed to the office of Deputy Public Health Commander, within the Department;

(d) authorised by the Chief Health Officer under s 199(2)(a) of the PHW Act to exercise emergency powers under s 200 of the PHW Act;

(e) a public authority within s 38 of the Charter.

57. Victoria Police:

(a) is a body established by s 6 of the *Victoria Police Act 2013* (Vic);

(b) is a public authority within the Charter;

(c) was the agency responsible for issues of enforcement and security associated with the detention or quarantine of residents in the Estate Towers between about 4 July 2020 and 18 July 2020.

58. The Third Defendant is:

(a) the chief constable and the chief executive officer of Victoria Police;

(b) subject to the direction of the Minister administering s 10 of the *Victoria Police Act 2013* (Vic), made under s 10 of that Act, responsible for the management and control of Victoria Police; and

(c) a public authority within the Charter.

59. The Department is:

(a) an administrative body which forms part of the Fourth Defendant;

(b) the Victorian Government department responsible for administering the PHW Act and the *Housing Act 1983* (Vic);

(c) the Victorian Government department responsible for leading the Victorian Government's response to the COVID-19 pandemic, known as the "Control Agency," including the operation relating to the detention or quarantine of residents in the Estate Towers.

Particulars

COVID-19 Outbreak Management Plan, Version 1.0, approved by Chief Health Officer, 5 June 2020, p 9

Declaration of State of Emergency

60. On 16 March 2020, under section 198(1) of the PHW Act, the Victorian Minister for Health (**Minister for Health**) declared a state of emergency throughout the State of Victoria arising out of the serious risk to public health in Victoria from Novel Coronavirus 2019 (2019-nCoV) or COVID-19 (**State of Emergency Declaration**).

61. On each of 12 April 2020, 11 May 2020, 31 May 2020, 21 June 2020 and 19 July 2020, the Minister for Health extended the State of Emergency Declaration under section 198(7)(c) of the PHW Act, such that a state of emergency existed in Victoria, under the PHW Act, at all relevant times.

Victorian response to COVID-19 and cases in North Melbourne and Flemington

62. On 1 July 2020, the First Defendant made the Close Contacts Directions (No 4), purportedly pursuant to s 200(1)(b) and (d) of the PHW Act, to commence at 11.59pm on 1 July 2020.

Particulars

The Close Contacts Directions (No 4) is located at Special Gazette No. S 339, Thursday 2 July 2020.

63. The Close Contacts Directions (No 4):

(a) required a person who has been informed that he or she has been diagnosed with 2019-nCoV, who had not been given clearance from self-isolation, to self-isolate;

(b) provided that a person who is a "close contact" of a diagnosed person must self-quarantine;

(c) provided that a person who was required to self-isolate at premises or self-quarantine at premises:

i. must reside at the premises for the entirety of the period of self-isolation or self-quarantine, as the case requires, except for any period that the person is admitted to a hospital or other facility for the purposes of receiving medical care;

ii. must not leave the premises, except in specified circumstances;

iii. must not permit any other person to enter the premises, except in specified circumstances;

(d) provided that a person was not required to comply with a requirement of the Close Contacts Directions (No 4) if granted an exemption from the requirement;

(e) made provision for Departmental officers to determine which persons were "close contacts."

64. The First Defendant did not make a request, pursuant to s 202 of the PHW Act, to the Third Defendant, or his delegate, for police assistance in relation to the exercise or purported exercise of the emergency power in s 200(1), constituted by the making of the Close Contacts Directions (No 4).

Victorian Government Response to COVID-19 cases at the Estate Towers

65. On 4 July 2020, the First Defendant was acting as Victoria's Chief Health Officer.

66. In the early afternoon of 4 July 2020, the Deputy Secretary for Public Health Emergency Operations informed the First Defendant that:

(a) a decision had been made to commence the public health intervention in the Estate Towers later that day;

(b) the intervention was to coincide with an announcement made during a Victorian Government press conference scheduled for 4pm.

67. The First Defendant was not consulted about:

(a) commencing the public health intervention in the Estate Towers on 4 July 2020;

(b) whether detention orders should be made;

(c) the enforcement model adopted, including the involvement of Victoria Police in enforcing the detention of Estate Towers residents;

(d) whether the orders should apply only to some of the Estate Towers or to all of them.

68. The First Defendant did not:

(a) request assistance from any police officer, under s 202 of the PHW Act, when exercising or purporting to exercise the emergency powers under s 200(1) of the PHW Act by making the Detention Directions;

(b) make any request for assistance to the Third Defendant or a delegate of the Third Defendant, under s 202 of the PHW Act.

69. Some time on 4 July 2020, prior to 3.30pm, the Third Defendant decided to deploy hundreds of Victoria Police officers to the Estate Towers to enforce the detention of the residents of those towers.

70. Before signing the Detention Directions, the First Defendant was aware that the Premier of Victoria (the **Premier**) proposed to announce that the Detention Directions had been made at the press conference, scheduled for 4.00pm on 4 July 2020.

71. The Detention Directions, in draft form, prepared by the Department's Legal Services team, were emailed to the First Defendant, together with a brief relating to the COVID-19 pandemic and a 15-page human rights assessment, at approximately 3.46pm on 4 July 2020.

72. The First Defendant:

(a) received the draft Detention Directions, the accompanying brief and the human rights assessment whilst travelling by car from an office of the Department on Lonsdale Street, Melbourne to Treasury Place, East Melbourne, being the location of the imminent televised press conference;

(b) reviewed all of those documents on her mobile telephone and suggested certain typographical corrections to the draft Detention Directions;

(c) had less than fifteen minutes to read and consider the draft Detention Directions, the accompanying brief and the human rights assessment before the press conference was due to commence;

(d) signed copies of the draft Detention Directions, which were printed upon her arrival at the Office of the Premier, before immediately joining the press conference.

73. The Detention Directions were expressed to commence at 3.30pm on 4 July 2020, prior to the time at which they were signed and made.

74. The press conference commenced at approximately 4.04pm.

75. The First Defendant:

(a) felt constrained to make the proposed Detention Directions by the information provided by the Deputy Secretary for Public Health Emergency Operations that a decision had been made to commence the intervention that day;

(b) felt constrained to direct that the residents of the Estate Towers be placed in home detention, effective that day, by the decisions made by senior members of the Fourth Defendant and of the Victorian Government which were communicated to her, including by way of the draft Detention Directions which were emailed to her;

(c) felt constrained by the imminence of a press conference, at which the Premier was proposing to announce that the residents of the Estate Towers would be placed in home detention that day, to sign the draft Detention Directions and to make them in the form in which they were sent to her;

(d) considered that she could not delay signing the draft Detention Directions, due to the decisions made by others to detain the residents of the Estate Towers that afternoon, and due to the imminence of the Premier's televised press conference; and, or in the alternative,

(e) allowed the decisions of third parties, or their actions and attitudes, to control the way she exercised her discretion under s 200(1) of the PHW Act when deciding whether to make the Detention Directions, when to make them and on what terms.

76. The First Defendant, when deciding to make the Detention Directions:

(a) deferred to the policy of another decision-maker, being the Crisis Council of Cabinet or the Premier, or a person whom she understood to be a senior public servant or a Minister;

(b) exercised her discretion at the behest of the Executive;

(c) failed to exercise her discretion independently; and, or in the alternative,

(d) acted under dictation.

77. Each of the Detention Directions provided that each person who ordinarily resided in any of the Estate Towers was, from 3.30pm on 4 July 2020 until 3.30pm on 18 July 2020:

(a) to be detained at the premises where the person ordinarily resides for fourteen days;

(b) to be detained for a further period of 10 days from the end of that period if the person refused to be tested for COVID-19 on the request of an Authorised Officer;

(c) immediately to return to the premises where the person ordinarily resides if he or she was not at those premises;

(d) not to leave the premises in any circumstances unless:

i. he or she had been granted permission to do so:

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

2. where it was reasonably necessary for the person's physical or mental health; or

3. on compassionate grounds; or

ii. there was an emergency situation.

(e) with limited exceptions, not to permit any other person to enter the premises.

Particulars

Detention Directions, cl 3, 4(4), 4(5), 5(1), 5(2), 5(3) and 5(4)

78. The First Defendant did not:

(a) provide, or procure the provision of, the Detention Directions to each Plaintiff and Group Member who was made subject to them;

(b) identify each individual to whom the Detention Directions applied, prior to exercising the power under s 200(1)(a) of the PHW Act (or at all);

(c) communicate, or arrange for the communication of, the requirement that each resident of each of the Estate Towers be detained in the resident's residence, to each person the subject of the Detention Directions.

79. Neither the First Defendant nor any other authorised officer briefly explained the reason why it was necessary to detain each of the Plaintiffs and Group Members, prior to their detention, in accordance with s 200(2) of the PHW Act, or caused that explanation to be given to them.

80. Before exercising the emergency powers under s 200(1) to make the Detention Directions, the First Defendant did not warn the Plaintiffs and Group Members, or cause them to be warned, that it is an offence to refuse or fail to comply with the Detention Directions without a reasonable excuse, within s 200(4) of the PHW Act.

81. Before making the Detention Directions, it was practicable:

(a) to briefly explain to each of the Plaintiffs and Group Members the reason why it was necessary to detain them, within s 200(3) of the PHW Act; and

(b) to warn them that a refusal or failure to comply without a reasonable excuse, is an offence.

Particulars

i. The decision not to inform the residents of these matters was not governed by questions of practicability, but was a deliberate decision made to ensure that the residents did not go elsewhere.

ii. Various means of communication could have been used, including announcement by loudspeaker, over the PA system in each apartment tower, by text messages, email or other electronic communication to tenants, by use of a radio or through a television channel, or on a dedicated website.

iii. There was no necessity to make the Detention Directions before the press conference. They could have commenced at a later time.

82. In the alternative to paragraph 81(a) above, if it was not practicable to briefly explain the reason why it was necessary to detain the Plaintiffs and Group Members in the particular circumstances in which the power to detain them was exercised (which is denied), neither the First Defendant nor any other authorised officer did so as soon as was practicable, within s 200(3) of the PHW Act.

83. The Premier publicly announced the decision to detain the residents of the Estate Towers during the televised press conference at approximately 4:08pm on 4 July 2020.

Detention of the Plaintiffs and Group Members – First Detention Period

84. The Plaintiffs and Group Members were not given any prior warning of the decision to detain them in their residences.

85. Shortly prior to, at about the time of, or immediately following the press conference over a hundred police officers and, or in the alternative, protective services officers of Victoria Police (collectively, **Victoria Police Officers**) were deployed to the Estate Towers.

86. The Third Defendant authorised:

(a) the deployment of Victoria Police Officers to the Estate Towers on 4 July 2020;

(b) the continued deployment of Victoria Police Officers to each of the Estate Towers until:

i. 5.00pm on 9 July 2020 (in the case of 9 Pampas St, North Melbourne and 159 Melrose Street, North Melbourne);

ii. 11:59 pm on 18 July 2020 (in the case of 33 Alfred Street, North Melbourne);

iii. 11:59pm on 9 July 2020 (in the case of all other Estate Towers); and, or in the alternative,

(c) the use of force, or the threat of the use of force, by Victoria Police Officers, to detain the Plaintiffs and Group Members in their residences.

87. The Third Defendant deployed Victoria Police Officers to the Estate Towers and continued that deployment of officers:

(a) to enforce the Detention Directions, in the First Detention Period;

(b) to enforce the Close Contacts Directions (No 4) and Close Contacts Directions (No 5) (together, the **Close Contacts Directions**), in the Second Detention Period; and, or in the alternative,

(c) to detain the Plaintiffs and Group Members in their residences.

88. On or shortly after 4pm on 4 July 2020, Victoria Police Officers established a perimeter around each of the Estate Towers, restricting access and egress.

89. From about 4pm on 4 July 2020, or shortly afterwards, Plaintiffs and Group Members approaching the perimeters established by Victoria Police Officers were:

(a) notified by Victoria Police Officers of the lockdown of the Estate Towers; and

(b) directed by Victoria Police Officers to immediately return to their residences.

90. From about 4.00pm on 4 July 2020, or shortly afterwards, Plaintiffs and Group Members of the Estate Towers seeking to leave the building in which they resided were prevented from doing so by Victoria Police Officers.

91. The Plaintiffs and Group Members were not provided with a copy of the applicable Detention Direction, and the Plaintiffs and Group Members did not receive a copy of that direction:

(a) before the individual's detention commenced;

(b) when the individual's detention commenced;

(c) within a reasonable time after the individual's detention commenced;

(d) in some cases, at all.

92. During the First Detention Period, about 170 Victoria Police Officers:

(a) maintained a visible, 24-hour presence at each of the Estate Towers;

(b) controlled access to and egress from each of the Estate Towers;

(c) conducted foot patrols in and around the buildings comprising the Estate Towers.

93. During the First Detention Period, the First Defendant did not review the question of whether the continued detention of each of the Plaintiffs and Group Members (or any of them) is reasonably necessary to eliminate or reduce a serious risk to public health:

(a) at least once every 24 hours;

(b) before 8 July 2020; or

(c) at all.

94. During the First Detention Period, no authorised officer (as that term is used in the PHW Act) reviewed the question of whether the continued detention of each of the Plaintiffs and Group Members (or any of them) is reasonably necessary to eliminate or reduce a serious risk to public health:

(a) at least once every 24 hours;

(b) before 8 July 2020; or

(c) at all.

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

(a) that each of the Plaintiffs and Group Members had been made subject to detention under s 200(1)(a) of the PHW Act;

(b) that following a review under s 200(6) of the PHW Act, each of the Plaintiffs and Group Members (or any of them) was to continue to be subject to detention under s 200(1)(a) of the PHW Act;

(c) informing the Chief Health Officer of the name of each person detained;

(d) providing a brief statement as to the reason why each of the Plaintiffs and Group Members is being, or continues to be, subject to detention under s 200(1)(a) of the PHW Act.

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

97. When the First Detention Period commenced:

(a) the Second Plaintiff was in her residence with her husband;

(b) Asiya Hassan and Ebyon Hassan were not at the residence.

98. Some time after 4.00pm on 4 July 2020, Ebyon Hassan:

(a) approached the apartment tower at 33 Alfred Street, North Melbourne in her vehicle;

(b) saw armoured police vehicles, Victoria Police Officers surrounding the building and tents erected outside the building;

(c) drove away from 33 Alfred Street, North Melbourne and did not return to her residence during the First or Second Detention Periods.

99. Ebyon Hassan spent part or all of the First and Second Detention Periods living in her car.

100. On 4 July 2020, Asiya Hassan:

(a) was about eight months pregnant;

(b) had been residing with her partner, for a period of approximately a month, who was assisting her with her pregnancy at his premises located outside of the Estate Towers;

(c) became aware of the lockdown of the Estate Towers;

(d) remained at her partner's residence during the First or Second Detention Periods.

101. In the premises, the Second Plaintiff was, during the First and Second Detention Periods:

(a) deprived of the assistance, support and companionship of Ebyon Hassan and Asiya Hassan;

(b) distressed and anxious about the welfare of Ebyon Hassan.

102. At approximately 5:00pm on 4 July 2020:

(a) the First Plaintiff and his wife and three children returned home from an outing;

(b) the First Plaintiff observed that Victoria Police Officers armed with guns were stationed around the apartment tower in which he resided at 12 Sutton Street, North Melbourne;

(c) the First Plaintiff asked a Victoria Police Officer for permission to leave the Estate Tower to purchase groceries, fresh produce and medical supplies;

(d) the Victoria Police Officer:

i. refused to give the First Plaintiff permission to leave the premises; and

ii. directed him and his wife and children to go to their residence and remain there.

103. No food deliveries were made between 4 July 2020 and:

(a) 6 July 2020, to the First Plaintiff's residence;

(b) 7 July 2020, to the Second Plaintiff's residence.

104. On or about 5 July 2020, Victoria Police Officers or, alternatively, servants or agents of the Fourth Defendant, refused the Australian Muslim Social Services Agency permission to deliver culturally-appropriate food supplies to the residents (including the Plaintiffs and many of the Group Members).

105. On 5 July 2020:

(a) the First Plaintiff and Zuber ran out of asthma medication;

(b) the First Plaintiff telephoned a staff member of the Department on the hotline number, that he obtained from the televised news, and requested the immediate dispatch of asthma medications for him and Zuber.

106. The First Plaintiff did not receive the requested medication on 5 July 2020.

107. On or about 5 July 2020, Mr Elmi:

(a) ran out of his medication for DVT;

(b) informed the First Plaintiff and informed the Second Plaintiff's and Mr Elmi's son, Ayub Hassan, of this;

(c) walked downstairs to the building foyer to inform one of the Victoria Police Officers of his urgent need for medication;

(d) was told by the Victoria Police Officer to return to his residence.

108. Between about 5 July 2020 and 9 July 2020:

(a) the First Plaintiff and Ayub Hassan made numerous calls to officers of the Department requesting the urgent provision of DVT medication for Mr Elmi;

(b) Mr Elmi's health deteriorated and his leg became inflamed as a result of not having his medication;

(c) officers acting on behalf of the Department and the Fourth Defendant did not provide Mr Elmi with any medication until 9 July 2020;

(d) the First and Second Plaintiffs suffered distress and anxiety as a result of Mr Elmi's lack of medication and declining health.

109. On 6 July 2020:

(a) the First Plaintiff and Zuber experienced asthma attacks;

(b) the First Plaintiff and Zuber would not have experienced asthma attacks if they had had their asthma medication;

(c) the First Plaintiff informed representatives of the Department, via the hotline number, that he and his son were experiencing asthma attacks;

(d) the First Plaintiff and Zuber suffered distress, anxiety and discomfort as a result of being without their asthma medication;

(e) the First Plaintiff and his wife and children ran out of fresh milk and food supplies;

(f) the First Plaintiff, his wife and his children did not receive any medical supplies, fresh food or groceries;

(g) the First Plaintiff, his wife and his children survived on limited dried foods such as nuts and beans;

(h) the First Plaintiff, his wife and his children suffered distress, anxiety and discomfort as a result of not having sufficient food to eat and not knowing when they might next eat.

110. During the First Detention Period, Health workers employed by the Crown, or acting as servants of or for or on behalf of an independent contractor employed by the Crown (**Health Workers**), administered COVID-19 tests to the Second Plaintiff and many of the Group Members.

Particulars

COVID-19 testing was conducted by staff or contractors of the Royal Melbourne Hospital, or employees of the Crown working in the Department (**Departmental Employees**), with the assistance of community health providers such as Cohealth.

111. Between 5 July 2020 and 8 July 2020, Health Workers:

(a) attended the residences of many Group Members asking them to undergo COVID-19 testing;

(b) told many Group Members, in English, that they would be detained in their residences for a further ten days if they refused to be tested for COVID-19;

(c) administered more than 2,500 COVID-19 tests to residents of the Estate Towers, including the Second Plaintiff and many of the Group Members.

112. At all material times, the administration of a COVID-19 test involved:

(a) inserting a swab into one nostril and rotating it against the nasal wall;

(b) repeating this procedure in the other nostril; and, or in the alternative,

(c) swabbing the tonsillar beds and the back of the throat.

113. Due to the threat of a further ten days of home detention, or their lack of understanding of the consequences of refusing to undergo a COVID-19 test, many of the Group Members submitted to COVID-19 testing:

(a) without giving their free and informed consent; and, or in the alternative,

(b) under duress.

114. The First Plaintiff was not approached for a COVID-19 test and was not tested.

115. On or about 6 July 2020:

(a) two Victoria Police Officers and an employee or agent or independent contractor of the Crown, apparently being a Health Worker, attended the Second Plaintiff's residence;

(b) one or more of these persons told Mr Elmi and the Second Plaintiff, in English, that they were there to administer the COVID-19 test to Mr Elmi and the Second Plaintiff;

(c) no interpreters were present;

(d) the Second Plaintiff and Mr Elmi did not understand the requirements for testing, or their rights and obligations with respect to undergoing the testing;

(e) the Health Worker did not communicate to the Second Plaintiff her rights and obligations with respect to undergoing the testing, or did not do so in a way she could understand;

(f) the Second Plaintiff and Mr Elmi were fearful as to the possible consequences of non-compliance with the COVID-19 testing;

(g) the Second Plaintiff and Mr Elmi submitted to COVID-19 tests administered by a person acting for or on behalf of the Fourth Defendant:

i. without giving full and free informed consent; and, or in the alternative,

ii. under duress.

116. Later on 6 July 2020:

(a) a Health Worker advised Ayub Hassan orally and in English that both Mr Elmi and the Second Plaintiff had tested positive for COVID-19;

(b) Ayub Hassan told Mr Elmi and the Second Plaintiff that they had had both tested positive for COVID-19.

117. At all times during the First Detention Period and the Second Detention Period, the Second Plaintiff and Mr Elmi were asymptomatic for COVID-19.

118. On or about 7 July 2020, in the evening, the First Plaintiff and his wife and children received their first notification of the basis for and conditions of their detention by having a physical copy of one of the Detention Directions dated 5 July 2020, in English, placed underneath the door of their residence.

119. On or about 7 July 2020, late at night, the First Plaintiff found four partially-defrosted sausage rolls left at the door step of his residence, in an unsealed bag on the floor on top of a piece of paper.

120. The sausage rolls:

(a) appeared to have spoiled;

(b) were not fit for human consumption;

(c) were not halal food;

(d) did not meet Zuber's dietary requirements.

121. There were no other food items or groceries left at the First Plaintiff's residence on 7 July 2020.

122. The First Plaintiff, his wife and children did not eat the sausage rolls.

123. On or about 8 July 2020, the Second Plaintiff found some partially-defrosted sausage rolls left at the door step of her residence, in an unsealed bag on the floor on top of a piece of paper.

124. The sausage rolls:

(a) appeared to have spoiled;

(b) were not fit for human consumption;

(c) were not halal food.

125. There were no other food items or groceries left at the Second Plaintiff's residence on 8 July 2020.

126. The Second Plaintiff and Mr Elmi did not eat the sausage rolls.

127. On 8 July 2020:

(a) the First Plaintiff and Zuber received the requested asthma medication;

(b) no deliveries of fresh food or groceries were made to the First Plaintiff's residence.

128. On or about 8 July 2020:

(a) an employee or agent of the Fourth Defendant, apparently a Health Worker, told Ayub Hassan that the Second Plaintiff was classified as a close contact but that she had not tested positive for COVID-19;

(b) Ayub Hassan communicated this to the Second Plaintiff.

129. No person acting for or on behalf of the Fourth Defendant:

(a) communicated with the Second Plaintiff about the results of her test on or about 6 July 2020 for COVID-19 with the aid of an interpreter or in Somali or at all;

(b) provided the Second Plaintiff with any results of her test in writing.

130. On 9 July 2020, Department officers or representatives came to the Second Plaintiff's residence, asking Mr Elmi, in English, to go with them to hospital.

131. Mr Elmi refused to go to hospital and did not go on that day.

132. On 9 July 2020, the First Defendant revoked each of the Detention Directions, purportedly pursuant to s 200 of the PHW Act.

Particulars

Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Revocation of Detention Directions (9 Pampas Street, North Melbourne); Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Revocation of Detention Directions (159 Melrose Street, North Melbourne);

Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Revocation of Detention Directions (33 Alfred Street, North Melbourne);

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

Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Revocation of Detention Directions (12 Sutton Street, North Melbourne)

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

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

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

Direction from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency – Revocation of Detention Directions (12 Holland Court, Flemington);

(together, the **Revocation of Detention Directions**).

133. At 11:59 pm on 9 July 2020, the First Plaintiff, his wife and his children were released from detention.

Detention of the Plaintiffs and Group Members – Second Detention Period

134. On or about 9 July 2020, the First Defendant, or an employee of the Crown in right of Victoria (the **Crown**) working in the Department, or a Victorian government Minister (the **Decision-maker**):

(a) decided to continue the detention of residents at 33 Alfred Street, North Melbourne; and, or in the alternative

(b) decided that the residents of 33 Alfred Street, North Melbourne would be confined to their homes, after 9 July 2020, on the basis that they were all either "diagnosed persons" or "close contacts" under the Close Contacts Directions (No 4), without conducting an individual assessment of each of them.

Particulars

Media release, the Hon Daniel Andrews MP, Premier, 9 July 2020, "Stage 3 Restrictions for Flemington and North Melbourne Estates"

135. Neither the Decision-maker nor any other servant or agent of the Fourth Defendant undertook an individual assessment of the Second Plaintiff or of each of the 33 Alfred Street Group Members to determine whether each was a diagnosed person or close contact, before deciding to treat each as being subject to the Close Contacts Directions (No 4).

136. On 9 July 2020, the Premier issued a media release:

(a) advising that at least 53 of the residents of 33 Alfred Street, North Melbourne had tested positive for COVID-19; and

(b) announcing that residents at 33 Alfred Street, North Melbourne would be classed as "close contacts" of people diagnosed with COVID-19 and required to self-isolate for fourteen days in total.

137. The Second Plaintiff and each of the 33 Alfred Street Group Members (or any of them) were prevented by the Fourth Defendant's servants or agents, including Departmental Employees, and by Victoria Police Officers, from choosing whether to self-isolate, or to self-quarantine, at a premises, other than their residence, which was suitable for them to reside in for the purpose of self-isolation or self-quarantine, contrary to cl 4(4) and cl 6(5) of the Close Contacts Directions.

138. Some of the 33 Alfred Street Group Members were permitted to choose whether to self-isolate in a hotel, but were not permitted a choice of another suitable location other than a hotel or their residence.

139. Victoria Police Officers deployed to 33 Alfred Street, North Melbourne used force, or the threat of force, to prevent the Second Plaintiff and each of the 33 Alfred Street Group Members from leaving their residences during the Second Detention Period.

Particulars

i. The Second Plaintiff and the 33 Alfred Street Group Members were detained in their residences with constant supervision by Victorian Police Officers and health workers from the Department, where they were subject to the potential application of force by Victoria Police Officers, should they attempt to leave their residences.

~~140. Victoria Police Officers deployed to 33 Alfred Street, North Melbourne detained the Second Plaintiff and the 33 Alfred Street Group Members and, or in the alternative, confined them to their residences, during the Second Detention Period, purportedly pursuant to:~~

~~(a) the Close Contacts Directions (No 4) between 11.59pm on 9 July 2020 and 11.59pm on 15 July 2020;~~

~~(b) the Close Contacts Directions (No 5) after 11.59pm on 15 July 2020 and until 11:59 pm on 18 July 2020.~~

~~141. Departmental Employees detained the Second Plaintiff and the 33 Alfred Street Group Members at 33 Alfred Street, North Melbourne, or assisted Victoria Police Officers to detain them there, in the Second Detention Period, by:~~

~~(a) informing them that they were required to remain at that address;~~

~~(b) purporting to grant or refuse the Second Plaintiff and, or in the alternative, the 33 Alfred Street Group Members, permission to leave their residences, as if they had power to do so;~~

~~(c) administering the Close Contacts Directions as if they authorised the detention of the Second Plaintiff and the 33 Alfred Street Group Members.~~

~~142. The First Defendant did not procure or effect the provision of a copy of the Close Contacts Directions (No 4) to the Second Plaintiff or to any of the 33 Alfred Street Group Members.~~

~~143. The Second Defendant did not procure or effect the provision of a copy of the Close Contacts Directions (No 5) to the Second Plaintiff or to any of the 33 Alfred Street Group Members.~~

~~144. On or after 9 July 2020, persons employed by or acting for or on behalf of the Fourth Defendant sent to the Second Plaintiff and the 33 Alfred Street Group Members a generic fact sheet (the **fact sheet**) stating that each of them would be treated as close contacts and required to isolate for a further nine days until 11.59pm on Saturday 18 July 2020.~~

~~145. The fact sheet did not refer to the Close Contacts Directions (No 4) by name or inform the Second Plaintiff or the 33 Alfred Street Group Members of the source of the purported exercise of power, by any of the Defendants, or by the Defendants' servants or agents, or by Victoria Police Officers, to confine the Second Plaintiff or the 33 Alfred Street Group Members to their homes.~~

~~146. Many of the 33 Alfred Street Group Members did not receive the fact sheet until after their detention had ended.~~

~~147. Between about 10 July 2020 and 18 July 2020, the Second Plaintiff and Mr Elmi were provided with food supplies, but these were generally nutritionally inadequate, the food items were mismatched and did not contain halal meats (with the exception of the last two food deliveries on 17 and 18 July 2020) that would ordinarily be consumed as part of their diet.~~

~~148. On 15 July 2020, Health Workers administered COVID-19 tests to most of the 33 Alfred Street Group Members.~~

~~149. On or about 15 July 2020, Health Workers:~~

~~(a) attended the Second Plaintiff's residence;~~

~~(b) asked the Second Plaintiff, in English, to undergo a test for COVID-19;~~

~~(c) did not provide her with any information about the testing in Somali.~~

~~150. Mr Elmi explained the request to the Second Plaintiff but she did not understand her rights and obligations and whether she would be required to undergo a further 10-day period of detention or suffer any other consequences if she refused the test.~~

~~151. The Second Plaintiff:~~

~~(a) was fearful as to the consequences of non-compliance with the COVID-19 testing;~~

~~(b) submitted to the COVID-19 test administered by a Health Worker;~~

~~(c) did not give full and free informed consent to the administration of the COVID-19 test; and, or in the alternative~~

~~(d) submitted to the administration of the COVID-19 test under duress.~~

~~152. Each of the 33 Alfred Street Group Members who submitted to COVID-19 testing by Health Workers on 15 July 2020 or, alternatively, some of those group members, did so without giving their full, free and informed consent and, or in the alternative, under duress:~~

~~(a) due to the threat of a further ten days of detention; and, or in the alternative~~

~~(b) because their right to refuse the test was not communicated to them and they reasonably considered they were required to submit to the COVID-19 test.~~

~~153. On 15 July 2020, the Second Defendant made the Close Contacts Directions (No 5).~~

154. The Close Contacts Directions (No 5) imposed requirements and made provision in the same terms as the Close Contacts Directions (No 4), as pleaded in paragraph 63 above, with the addition of a note at cl 8(2)(b)(iii) of the direction, providing: "Where a person is unable to take reasonable steps to maintain a distance of 1.5 metres from any other person when exercising, an authorised officer may direct that person to comply with another exercise program in order to mitigate a risk to public health, if that person wishes to exercise during their period of self-isolation or self-quarantine, as the case may be."

155. The Second Defendant, when making the Close Contacts Directions (No 5) or, in the alternative, a Departmental Employee, or another servant or agent of the Crown:

(a) decided to continue the detention of the Second Plaintiff and each of the 33 Alfred Street Group Members on the basis that each was a "close contact" or "diagnosed person," within the Close Contacts Directions (No 5);

(b) did not consider any of the individual circumstances of the Second Plaintiff or the 33 Alfred Street Group Members when classifying each as a close contact or diagnosed person.

156. The Second Defendant did not request assistance by a police officer, or make a request to the Chief Commissioner of Police or a delegate, for such assistance, within s 202 of the PHW Act, when exercising the emergency power under s 200(1) to make the Close Contacts Directions (No 5).

157. The fact of the making of the Close Contacts Directions (No 5) was not communicated to the Second Plaintiff or each or any of the 33 Alfred Street Group Members.

158. On or about 16 July 2020, Ayub Hassan:

(a) was advised on the telephone by a representative of the Department, in English, that the Second Plaintiff had tested positive for COVID-19;

(b) communicated that information to the Second Plaintiff.

159. Departmental Employees did not provide any advice to the Second Plaintiff or offer any medical support to her regarding her positive result status prior to the end of the Second Detention Period.

160. During the First and Second Detention Periods, the Second Plaintiff was not offered any fresh air breaks by Departmental Employees or Victoria Police Officers and was not permitted to leave her home for exercise.

Conditions affecting Plaintiffs and Group Members

161. At all material times, during the First Detention Period, the Plaintiffs and Group Members were subjected by the Fourth Defendant and its servants and agents, and by Victoria Police Officers, to the following conditions and circumstances:

(a) Being confined to their residences for an extended period subject to the provisions of the Detention Directions, against their will.

Particulars

The Plaintiffs and Group Members were detained in their residences with constant supervision by Victorian Police Officers and Health Workers, where they were subject to the potential application of force by Victoria Police or the Fourth Defendant's servants or agents, should they attempt to leave their residences.

(b) Having their residences surrounded by Victoria Police Officers and being prevented from moving freely within the Estate Tower in which their residence was located, and going beyond that Estate Tower, by police;

(c) Having the Detention Directions interpreted and enforced against them by Victoria Police Officers;

(d) Being denied permission to leave their homes save only in limited circumstances as set out in cl 5(2) of each of the Detention Directions and only at the discretion of Victoria Police Officers and other servants and agents of the Fourth Defendant;

(e) Being denied permission to allow any persons into their residences, other than in accordance with the Detention Directions and only at the discretion of Victoria Police Officers and by servants and agents of the Fourth Defendant;

Particulars

i. The Plaintiffs and Group Members were separated from their families, friends and loved ones including persons who were not part of their residence but who were reliant upon them, and persons upon whom they relied, whether outside of the Estate Towers or within the Estate Towers.

ii. No risk assessment or classification was conducted on individuals.

iii. The Detention Directions prohibited the Plaintiffs and Group Members from permitting other persons to enter their premises, except in the circumstances set out in cl 5 of those directions, but did not authorise any

third party to prevent persons from entering the premises, or to determine whether prospective entrants met the requirements of cl 5 of the Detention Directions.

(f) Being dependent on the Fourth Defendant's servants and officers for access to medical and health services and for access to medication.

Particulars

i. Plaintiffs and some Group Members experienced disruption of the care of residents with existing care arrangements, such as persons with disabilities. Some Group Members could not leave the Estate Towers for medical reasons and there were significant delays with delivery of medication and medical supplies.

ii. Plaintiffs and some Group Members who are vulnerable persons including the elderly, persons with disability, those with pre-existing mental and physical health concerns, children, migrants, refugees, people experiencing domestic violence and Aboriginal and Torres Strait Islander peoples were particularly prone to mental health risks faced with heavy presence of armed police and duress.

(g) Not being provided with timely and reasonable access to required medication whilst detained;

Particulars

The Plaintiffs and Group Members repeat and rely upon paragraphs 102, 105, 106 to 109 and 127 above.

(h) Being deprived of access to fresh air, exercise and occupational activities for part or all of the First Detention Period and being dependent on the Fourth Defendant's employees, servants, officers and agents for access to fresh air, exercise and occupational activities.

Particulars

i. Plaintiffs and Group Members were not provided access to outdoor exercise during the First Detention Period, or were provided with extremely limited access, increasing risks to health and wellbeing.

ii. Plaintiffs and Group Members could not exercise without express permission and only when accompanied by police or other persons engaged to supervise them.

iii. Many of the Plaintiffs and Group Members could not access places to exercise and breathe fresh air.

iv. Plaintiffs and Group Members were not informed of their right to ask for permission to leave their homes to exercise.

v. Personnel controlling entry and exit to the buildings routinely refused requests for outdoor exercise.

(i) Being denied the opportunity to prepare for an extended period of detention, including by the purchase of food and medical supplies, by the decision not to provide residents with any warning of the lockdown;

(j) Being subjected to overcrowding, in some cases;

Particulars

i. Large families and groups were confined to small spaces with limited laundry services. The conditions within the Estate Towers include poor or lack of ventilation, limited access points (one shared lift per 160 apartments), limited access to sanitation facilities (two washing machines per eight households) – which were also closed – and no balconies to outdoor spaces.

ii. These issues were exacerbated by the detention as large families with as many as nine persons were confined to one apartment.

(k) Being exposed to increased risk of infection and illness;

Particulars

i. Communal areas including stairwells and elevators were not disinfected and/or cleaned. Communal sanitising dispensers were often empty.

ii. Basic personal protective equipment (**PPE**) such gloves and masks were not provided.

iii. There were significant delays in providing interpreters, social workers, medical professionals and health workers to support and assist.

(l) Being subjected to serious breaches of Infection Prevention and Control;

Particulars

i. Used and contaminated PPE was inappropriately disposed of by servants or agents of the Fourth Defendant, resulting in the mobile garbage bins

overfilling and in turn causing an increased risk of transmitting the virus via physical contact upon disposal and airborne particles being blown around with the lid been left marginally open and contaminated PPE hanging out.

ii. Non-compliance with the PPE Disposal Guidelines endorsed by the National Biohazard Waste Industry (BWI) Committee within the division of the Waste Management and Resource Recovery Association of Australia.

iii. Delivery workers and volunteers with the Department were deliberately not wearing, and not being required to wear, full PPE.

(m) Being subjected to inadequate provision of culturally-appropriate food or being deprived of food;

Particulars

i. The provision of food to Plaintiffs and Group Members was delayed for many days;

ii. The food provided had spoiled in some cases;

iii. Food was not provided to meet special dietary needs, acceptability of food within a given culture and accessibility of foods (particularly for vulnerable groups).

iv. There were serious breaches of food safety laws and regulations.

v. The Plaintiffs and Group Members repeat and rely upon paragraphs 103, 104, 109 and 119 to 126 above.

(n) Being denied access to information about the basis for detention, the nature and extent of the detention, the rights of the Plaintiffs and Group Members during the period of detention and other matters concerning the detention, for some or all of the period of detention;

Particulars

i. No communication and no information about the detention and the rights of the Plaintiffs and Group Members was provided until, at the earliest, 7 July 2020. Information was communicated predominantly in English, meaning that non-English speakers (or readers) did not have access to the information and, where information was communicated in languages other than English, this did not occur until, at the earliest, the fifth day of the detention.

ii. There were no qualified interpreters at the Estate Towers on 4 July 2020 acting for or on behalf of The Fourth Defendant or, in the alternative, there was an inadequate number of such interpreters;

iii. The posters displayed at the Estate Towers on or about 5 July 2020 did not provide any information about the rights of the residents or about the source of the power upon which The Fourth Defendant relied to detain the residents (that is, the Detention Directions).

iv. Communication was lacking for the Plaintiffs and Group Members with complex communication needs such as deafness, intellectual disabilities and speech impairment and people from culturally and linguistically diverse backgrounds.

v. Telephone calls were made to some of the Group Members between 6 July 2020 and 10 July 2020, on behalf of the Fourth Defendant (acting through the Department). Many Plaintiffs and Group Members did not receive telephone calls and those who did received them after they had already been detained for 36 hours or more. The telephone calls used complex language which some residents could not understand.

vi. Copies of the Detention Directions were delivered to the residences of some Group Members and Plaintiffs, but not before 5 July 2020. Many did not receive a copy of the Detention Directions and, if they did, they were in English, a language which many Plaintiffs and Group Members could not read and understand.

(o) Not being notified that they had a right to complain about aspects of their treatment under s 185(1) of the PHW Act and not being informed about the ways in which they could complain;

(p) Not being provided with any information, or being provided with inadequate information, with regard to COVID-19 testing requirements;

Particulars

i. Plaintiffs and Group Members were not informed about their rights and obligations in relation to participation in COVID-19 testing, or in the alternative, in some cases, they were not informed in a language they could understand.

ii. The telephone calls made to some of the Group Members between 6 July 2020 and 10 July 2020, did not refer to the Group Members' rights and obligations in respect of COVID-19 testing.

iii. The letter provided to some of the Group Members, signed by an authorised officer, did not refer to the Group Members' rights and obligations in respect of COVID-19 testing, some did not receive it until 9 July 2020 and some did not receive it at all.

(q) Being required to undergo COVID-19 testing, by Departmental Employees or independent contractors of the Crown, without providing their free and informed consent, or under duress.

Particulars

i. COVID-19 testing was conducted by staff or contractors of the Royal Melbourne Hospital, or Departmental Employees, with the assistance of community health providers such as Cohealth.

ii. Many residents were not made aware of their rights and obligations in relation to COVID-19 testing and many were told they would be subject to another ten days of detention if they refused to take the test.

(r) Being placed under duress of the threat of a further ten days' detention if they refused to consent to a COVID-19 test;

Particulars

i. Detention Directions, cl 4(5).

ii. Plaintiffs and Group Members were intimidated and had a reasonable apprehension that they did not have any means of objecting to or refusing the testing, that they would not be released from detention without submitting to the testing and that, if they refused the testing, they may be subject to the use of force in relation to testing and/or submitting to the testing was required by law. As such, the Group Members did not give free, voluntary or informed consent to the testing.

(s) Being subjected to the threat of a fine of 600 penalty points (up to $19,800) for non-compliance with the Detention Directions;

Particulars

Section 203 of the PHW Act; Detention Directions, cl 9.

(t) Being denied a regular 24-hour review of the detention;

Particulars

Each 24-hour review required under s 200(6) of the PHW Act, and referred to in cl 6 of the Detention Directions, was not carried out.

(u) In the case of residents who were living alone, being denied access to meaningful human contact;

(v) In the case of residents who were employed or self-employed and could not work at home, being denied the opportunity to work and earn income;

Particulars

iii. The First Plaintiff was unable to work during the First Detention Period and lost income as a result.

iv. Group Members lost income and their jobs were, in some cases, jeopardised as a result of their inability to attend work.

(w) Intimidating conduct by Victoria Police Officers, triggering pre-existing trauma for some of the Plaintiffs and Group Members;

Particulars

i. The presence of armed police officers restricting ingress to and egress from the Estate Towers was intimidating.

ii. There were various incidents in which particular Victoria Police Officers acted in an intimidating or aggressive manner, with a lack of cultural sensitivity.

iii. On or about 9 July 2020, Victoria Police Officers knocked on the Second Plaintiff's door, called out in English, removed the Second Plaintiff's window screen and banged on the window for about twenty minutes, seeking entry (which was refused).

iv. The conduct of Victoria Police Officers was traumatic for the Second Plaintiff, including because it reminded her of her traumatic experiences in Somalia.

(x) Being placed in circumstances which exacerbated existing mental health conditions or physical health conditions, with no access or inadequate access to mental health services and medical services;

(y) Having no access or restricted access to legal advice.

162. At all material times, during the Second Detention Period, the Second Plaintiff and the 33 Alfred Street Group Members were subjected by the Fourth Defendant and its officers, employees and contractors to the following conditions:

(a) Being confined to their residences for an extended period subject to the provisions of the Close Contacts Directions, against their will, and without any person conducting an individual assessment of each of them to determine whether each of them were "close contacts" or "diagnosed persons."

Particulars

The Plaintiffs and Group Members were detained in their residences with constant supervision by Victorian Police Officers and health workers from the Department, where they were subject to the potential application of force by the Fourth Defendant's servants, officers, employees and agents, should they attempt to leave their residences.

(b) Having their residences surrounded by Victoria Police Officers and being prevented from moving freely within the premises of 33 Alfred Street, North Melbourne, or going outside that address, by police;

(c) Having the Close Contacts Directions interpreted and enforced against them by Victoria Police Officers;

(d) Being denied permission to leave their homes save only in limited circumstances as set out in each of the Close Contacts Directions and only at the discretion of Victoria Police Officers or servants and agents of the Fourth Defendant;

(e) Being denied permission to allow any persons into their residences, other than in accordance with the Close Contacts Directions and only at the discretion of Victoria Police Officers or other servants and agents of the Fourth Defendant;

Particulars

i. The Plaintiffs and Group Members were separated from their families, friends and loved ones including persons who were not part of their residence but who were reliant upon them.

ii. No risk assessment or classification was conducted on individuals.

(f) Being dependent on the Fourth Defendant's servants and officers for access to medical and health services and for access to medication;

Particulars

i. Plaintiffs and Group Members experienced disruption of the care of residents with existing care arrangements, such as persons with disabilities. Other Group Members could not leave the Estate Towers for medical reasons and there were significant delays with delivery of medication and medical supplies.

ii. Plaintiffs and Group Members who are vulnerable persons including the elderly, persons with disability, those with pre-existing mental and physical health concerns, children, migrants, refugees, people experiencing domestic violence and Aboriginal and Torres Strait Islander peoples were particularly prone to mental health risks faced with heavy presence of armed police and duress.

(g) Not being provided with timely and reasonable access to required medication;

(h) Being subjected to inadequate provision of culturally-appropriate food or being deprived of food;

(i) Being exposed to infection;

Particulars

i. During the Second Detention Period, Victoria Police Officers and Department personnel were not regularly wearing PPE, they wore low-grade masks and did not maintain social distancing.

ii. Residents who were not diagnosed with COVID-19 were not segregated from residents diagnosed with COVID-19 or given the option to move.

(j) Additional unsanitary conditions;

Particulars

i. Food for distribution was left in laundry facilities to thaw and/or left on the floor or in trolleys in hallways and packaged in leaking plastic containers and bags that are not vacuum sealed.

ii. The communal laundry facility closed and restricted substituted laundry services provided for the week (two laundry bags with eight items each per household).

(k) Further inadequate communication about basis of detention or confinement;

Particulars

i. The residents were informed of the determination made by officers of the Department (or others) to classify residents as "close contacts" by way of a factsheet delivered to households after the Second Detention Period had already commenced;

ii. The factsheet did not refer to the Close Contacts Directions (No 4), include information about how to access the direction, nor provide the residents with information about their rights or obligations during the Second Detention Period.

iii. Announcements regarding coordination for testing were only made in English leaving many of the residents who came from culturally and linguistically diverse backgrounds without information and confused and distressed.

iv. No information was provided about the Close Contacts Directions (No 5), when it commenced.

(l) Oppressive treatment;

Particulars

i. Care packages prepared by community organisations or family members of the residents were searched by police for "contraband."

ii. Cyclone fencing was installed to create an "exercise yard" for residents undertaking supervised exercise. The cyclone fencing was disassembled within a 24 hour period due to the significant trauma caused to the residents by its erection and the implied meaning of the act in evoking unfavourable memories of migration detention.

(m) Intimidating conduct by Victoria Police Officers, triggering pre-existing trauma for some of the Plaintiffs and Group Members;

Particulars

i. The presence of armed police officers restricting ingress and egress from the Estate Towers was intimidating.

ii. There were various incidents in which particular Victoria Police Officers acted in an intimidating or aggressive manner, with a lack of cultural sensitivity.

iii. On or about 9 July 2020 (in the First Detention Period), Victoria Police Officers had knocked on the Second Plaintiff's door, called out in English, removed the Second Plaintiff's window screen and banged on the window for about twenty minutes, seeking entry (which was refused).

iv. On or about 10 July 2020, two paramedics and several Victoria Police officers again attended at the Second Applicant's residence and threatened to take Mr Elmi to hospital by force, before deciding not to do so.

v. The conduct of Victoria Police Officers was traumatic for the Second Plaintiff, including because it reminded her of her traumatic experiences in Somalia.

(n) Inconsistent communication to residents in relation to close contact notices by the Department to self-quarantine and date of release from quarantine.

Particulars

i. Some Group Members were advised via an Update for Residents dated 15 July 2020 that they were required to isolate until notified by a Department Representative and did not receive close contact notices.

ii. Some Group Members received close contact notices that required them to self-quarantine until 14 days after last exposure to the infectious person and that they would be subject to a '*virus clearance test*' before being released.

iii. This created confusion as to whether or not quarantine effectively ended at 11:59pm on 18 July 2020 or whether Group Members needed to be notified by the Department before release and whether release was contingent on a Group Member's COVID-19 test result.

(o) Compromised access to and distribution of the Public Housing Restrictions Relief Payments for two weeks rental relief and once-off payments of $750 for general disruption and employment, respectively, and the Coronavirus (COVID-19) Worker Support Payment if the resident is diagnosed with COVID-19 and/or is a close contact (**Hardship Payments**).

Particulars

i. Some Group Members, who are impacted by family violence and/or elder abuse may have been prevented from accessing economic relief as the

Hardship Payments were directed to a household rather than to an individual.

ii. The Hardship Payments do not take into account other adults living in the home or those visiting friends or family that were prevented from leaving.

iii. As close contact notices were not issued to all residents of 33 Alfred Street, North Melbourne, some 33 Alfred Street Group Members did not obtain their entitlements.

(p) The administration of COVID-19 testing to the Second Plaintiff and the 33 Alfred Street Group Members, without their free consent or under duress, and without lawful authorisation to require the Plaintiffs and Group Members to undergo the tests;

Particulars

i. The Close Contacts Directions did not authorise COVID-19 testing, or detention for a further period of 10 days, if a person refused to undergo COVID-19 testing.

ii. Notwithstanding this, many residents were told that if they did not submit to a test, they would be detained for a further period of 10 days, or were not informed of their rights and obligations in respect of COVID-19 testing.

(q) The restriction, by Victoria Police Officers or servants or agents of the Fourth Defendant, of the right to go outside and to exercise, other than in accordance with the rostered fresh air and exercise program (when that commenced on 11 July 2020), for a period of 20 to 30 minutes, and not being allowed outside the building grounds, contrary to the broader right conferred or recognised by cl 8(2)(b)(iii) of:

i. the Close Contacts Directions (No 4); and, or in the alternative,

ii. the Close Contacts Directions (No 5);

Particulars

i. Residents were generally not permitted to exercise prior to the commencement of the fresh air and exercise program on the evening of 11 July 2020.

ii. When the fresh air and exercise program commenced, temporary fencing was used to restrict the movement of residents. Residents were escorted to and from the building by Victoria Police Officers and Victoria Police

Officers were stationed around the designated exercise area. This made residents feel humiliated and degraded.

iii. A booking system operated, and some bookings for the fresh air and exercise program were not fulfilled, meaning that those residents were not permitted to exercise at all.

iv. Through the implementation of the fresh air and exercise program, and the refusal to allow residents access to fresh air and exercise in any other way, the Fourth Defendant detained the Second Plaintiff and the 33 Alfred Street Group Members, or restricted their liberty, without lawful authorisation.

(r) Being required, unlawfully, to obtain the permission of a representative of the Department to leave the premises for the purposes of obtaining medical care or medical supplies;

Particulars

i. The Fourth Defendant was not lawfully entitled to prevent a person leaving his or her premises for the purposes of obtaining medical care or medical supplies (see Close Contacts Directions, cl 5(2)(a)).

ii. The Fourth Defendant's servants or agents purported to prevent people from leaving 33 Alfred Street, North Melbourne for medical purposes, unless they had first been given permission.

(s) In the case of Group Members who were employed or self-employed and could not work at home, being denied the opportunity to work and earn income;

(t) Being placed in circumstances which exacerbated existing mental health conditions or physical health conditions, with no access or inadequate access to mental health services and medical services;

(u) Having no access or restricted access to legal advice.

Detention was ultra vires or unlawful

Detention Directions did not authorise detention

163. The making of each of the Detention Directions by the First Defendant, being a purported exercise of emergency powers under the PHW Act, was:

(a) not authorised by s 199(2) or s 200(1) of the PHW Act; and

(b) *ultra vires*.

Particulars

i. The First Defendant misapprehended the nature of the power she was exercising by purporting to make a legislative instrument, when that was not authorised by s 199(2) or s 200(1) of the PHW Act.

ii. The Detention Directions purported to require or direct the detention of persons in part only of the emergency area (being the State of Victoria) and in their homes.

iii. An authorisation to exercise emergency powers under s 199(2) does not empower an authorised officer to detain or direct the detention of persons in part only of the emergency area and, or in the alternative, in their homes.

iv. The purported exercise of the emergency powers in s 200(1) was invalid because the requirements of s 200(2) and, or in the alternative s 200(4), were not complied with.

v. The First Defendant acted under dictation when purporting to exercise the emergency powers in s 200(1)(a), (b) and (d), by making the Detention Directions in the circumstances pleaded at paragraphs 65 to 76 above.

vi. Further particulars will be provided in due course.

164. In the premises of paragraph 163 above:

(a) the First Defendant's purported exercise of the emergency powers in s 200(1) of the PHW Act was *ultra vires* and ineffective;

(b) each of the Detention Directions was invalid.

165. Further and alternatively, the requirements of subsections 200(2) to (9) of the PHW Act (or any of them) were not complied with in relation to the detention of each of Plaintiffs and Group Members in the First Detention Period;

Particulars

Paragraphs 78 to 82, 91 and 93 to 96 above are repeated.

166. Alternatively to paragraph 165 above, if the detention of the Plaintiffs and Group Members was lawful for the first 24 hours, it was thereafter unlawful for the remainder of the First Detention Period.

Particulars

i. Neither the First Defendant nor any other authorised officer reviewed whether the continued detention of each of the Plaintiffs and Group Members was reasonably necessary to eliminate or reduce a serious risk to public health, as required by s 200(6) of the PHW Act and cl 6 of each of the Detention Directions. The Plaintiffs and Group Members repeat paragraphs 93 and 94 above.

ii. Neither the First Defendant nor any other authorised officer gave written notice to the Chief Health Officer in relation to each of the Plaintiffs and Group Members as required by s 200(7) and (8) of the PHW Act and cl 4(7) of each of the Detention Directions, as soon as was reasonably practicable, within the first 24 hours of their detention, or at all, and the Chief Health Officer did not provide advice to the Minister as required by s 200(9). The Plaintiffs and Group Members repeat paragraphs 95 and 96 above.

iii. Neither the First Defendant nor any other authorised officer explained the reason why it was necessary to detain each of the Plaintiffs and Group Members before detaining each of them, or as soon as was practicable afterwards, contrary to s 200(2) and (3) of the PHW Act.

167. In the premises of paragraph 164, paragraph 165 and, or in the alternative, paragraph 166, the detention of the Plaintiffs and Group Members was unlawful during the First Detention Period.

Close Contacts Directions

168. The Second Plaintiff and the 33 Alfred Street Group Members were detained in their residences in the Second Detention Period by or on behalf of the Third Defendant, by Victoria Police Officers deployed to 33 Alfred Street, North Melbourne and by Departmental Employees.

Particulars

iii. Paragraphs 86, 87, 134, 137 to 141, 155 and 160 above are repeated.

iv. Departmental Employees administered the Close Contacts Directions, and communicated with the Second Plaintiff and the 33 Alfred Street Group Members about their obligations and entitlements under those directions.

v. Health Workers supervised the confinement of the Second Plaintiff and the 33 Alfred Street Group Members to their residences.

vi. Victoria Police Officers enforced home detention and prevented the Second Plaintiff and the 33 Alfred Street Group Members from leaving the premises, even where this was permitted by the Close Contacts Directions.

vii. The effect of the presence of Victoria Police Officers at 33 Alfred Street, North Melbourne during the Second Detention Period was a total deprivation of the liberty of each of the Second Plaintiff and the 33 Alfred Street Group Members.

viii. Further particulars will be provided in due course.

169. The detention of the Second Plaintiff and the 33 Alfred Street Group Members, in the Second Detention Period, was not authorised by the Close Contacts Directions or any other law.

Particulars

i. The Close Contacts Directions are not expressed to be made under s 200(1)(a) of the PHW Act and do not purport to authorise the detention of individuals.

ii. Neither the First Defendant, nor the Second Defendant, made any request for police assistance under s 202 of the PHW Act. Paragraphs 64, 68 and 156 above are repeated.

iii. The Close Contacts Directions do not contemplate or authorise enforcement of their provisions by Victoria Police Officers.

170. Further, or in the alternative, when deciding to designate each of the Second Plaintiff and the 33 Alfred Street Group Members as a "close contact" within the Close Contacts Directions (No 4), on or about 9 July 2020, the Decision-maker and, or in the alternative, the Departmental Employee making that decision:

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

(b) did not form a state of satisfaction, within cl 6(2) of the Close Contacts Directions (No 4), having regard to "Departmental Requirements" (as defined), that each of the Second Plaintiff and the 33 Alfred Street Group Members had had close contact with another person who:

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

ii. at the time of last contact, was a diagnosed person;

(c) in the alternative to 170(b) above, formed a state of satisfaction which was legally unreasonable; and, or in the alternative,

(d) did not make a "determination" within cl 6(2) of the Close Contacts Directions (No 4) in relation to each of the Second Plaintiff and the 33 Alfred Street Group Members (or any of them).

171. When deciding to designate each of the Second Plaintiff and the 33 Alfred Street Group Members as a "close contact" within the Close Contacts Directions (No 5), on or about 15 July 2020, the Second Defendant and, or in the alternative, the Departmental Employee or other servant or agent of the Crown making that decision:

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

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

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

ii. at the time of last contact, was a diagnosed person;

(c) in the alternative to 171(b) above, formed a state of satisfaction which was legally unreasonable; and, or in the alternative,

(d) did not make a "determination" within cl 6(2) of the Close Contacts Directions (No 5) in relation to each of the Second Plaintiff and the 33 Alfred Street Group Members (or any of them).

172. In the premises of paragraphs 170 and 171 above:

(a) neither the Second Plaintiff nor any of the 33 Alfred Street Group Members was a "close contact" within the Close Contacts Directions (No 4);

(b) neither the Second Plaintiff nor any of the 33 Alfred Street Group Members was a "close contact" within the Close Contacts Directions (No 5);

(c) the detention of (or, in the alternative, the restriction of the movement of) the Second Plaintiff and the 33 Alfred Street Group Members within the Second Detention Period was unlawful.

173. Further, or in the alternative:

(a) the making of the Close Contacts Directions (No 4) (or part thereof) by the First Defendant was:

i. not authorised by s 199(2) or s 200(1) of the PHW Act; and

ii. *ultra vires*.

(b) the making of the Close Contacts Directions (No 5) (or part thereof) by the Second Defendant was:

i. not authorised by s 199(2) or s 200(1) of the PHW Act; and

ii. *ultra vires*.

Particulars to (a) and (b)

i. The First Defendant and the Second Defendant misapprehended the nature of the power they were exercising when making each of the Close Contacts Directions by purporting to make a legislative instrument, when that was not authorised by s 199(2) or s 200(1) of the PHW Act.

ii. The authorisation or purported authorisation of the First Defendant and the Second Defendant by the Chief Health Officer to exercise emergency powers, pursuant to s 199(2) of the PHW Act, did not empower the First Defendant or the Second Defendant to confer powers on others.

iii. Clauses 5 and 6 of each of the Close Contacts Directions impermissibly purported to delegate, to a third party, the power to determine the persons to whom the direction applied, by purporting to confer powers upon officers of the Department.

iv. Clause 9 of the Close Contacts Directions impermissibly purported to confer, upon the Chief Health Officer and the Deputy Chief Health Officer, a power of exemption.

v. Further particulars will be provided in due course.

174. In the premises of paragraph 173 above, each of the Close Contacts Directions was invalid, or partly invalid.

175. In the premises of paragraphs 168 to 174 above (or any of them), the detention of the Second Plaintiff and each of the 33 Alfred Street Group Members in the Second Detention Period was unlawful.

Failure to consider relevant human rights

176. In exercising or purporting to exercise the emergency powers in s 200(1) of the PHW Act to detain the Plaintiffs and Group Members, through making the Detention Directions, the First Defendant failed to give proper consideration to each or any of:

(a) the right to move freely within Victoria and to enter and leave it and to have the freedom to choose where to live, pursuant to s 12 of the Charter;

(b) the right not to be treated in a degrading way, pursuant to s 10(b) of the Charter;

(c) the right to liberty and security, and the right not to be deprived of liberty except on grounds, and in accordance with procedures, established by law, pursuant to s 21 of the Charter; and, or in the alternative,

(d) the right, having been deprived of liberty, to be treated with humanity and with respect for the inherent dignity of the human person, pursuant to s 22(1) of the Charter,

(collectively, the **Applicable Human Rights**),

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

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

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

(b) acted in a way that was incompatible with each of the Applicable Human Rights or any of them,

contrary to s 38(1) of the Charter

178. The Decision-maker, when making the decision to continue to detain the Second Plaintiff and the 33 Alfred Street Group Members in their residences, on or about 9 July 2020:

(a) did not give proper or lawful consideration to each of the Applicable Human Rights or any of them; and, or in the alternative,

(b) acted in a way that was incompatible with each of the Applicable Human Rights or any of them,

contrary to s 38(1) of the Charter.

179. Further, or in the alternative, when making the decision on or about 9 July 2020 to classify the Second Plaintiff and 33 Alfred Street Group Members as "close contacts" under the Close Contacts Directions (No 4), the Decision-maker:

(a) did not give proper or lawful consideration to each of the Applicable Human Rights or any of them; and, or in the alternative,

(b) acted in a way that was incompatible with each of the Applicable Human Rights or any of them,

contrary to s 38(1) of the Charter.

180. In the premises of paragraphs 176 to 179 above (or any of them):

(a) the First Defendant's exercise or purported exercise of the emergency powers to detain the Plaintiffs and Group Members, through the making of the Detention Directions, was unlawful;

(b) the First Defendant's omission or failure to review whether the continued detention of each of the Plaintiffs and Group Members was reasonably necessary to eliminate or reduce a serious risk to public health at least once every 24 hours, during the First Detention Period, was unlawful;

(c) the detention or continued detention of the Plaintiffs and Group Members during the First Detention Period was unlawful;

(d) each of the Detention Directions is invalid;

(e) the Decision-maker's decision made on or about 9 July 2020 to classify the Second Plaintiff and the 33 Alfred Street Group Members as "close contacts" under the Close Contacts Directions (No 4) was unlawful;

(f) the Decision-maker's decision made on or about 9 July 2020 to continue to detain the Second Plaintiff and the 33 Alfred Street Group Members was unlawful;

(g) the detention or continued detention of the Second Plaintiff and the 33 Alfred Street Group Members in the Second Detention Period was unlawful.

Police enforcement of detention was unlawful

181. The decision of the Third Defendant to deploy Victoria Police Officers to the Estate Towers to enforce the detention of the residents of the Estate Towers, and the act of deploying them for that purpose and continuing to deploy them for that purposes during the First Detention Period:

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

(b) was not authorised by any law;

(c) was unlawful.

182. Victoria Police Officers were not lawfully entitled to:

(a) confine the Plaintiffs and Group Members to their residences and prevent them from leaving; or

(b) restrict entry to the Estate Towers during the First Detention Period and, or in the alternative, during the Second Detention Period.

Particulars

i. The *Emergency Management Act 1986* (Vic) did not provide a lawful basis for this conduct in the circumstances.

ii. This conduct was not authorised by the Detention Directions nor by the Close Contacts Directions.

iii. The Plaintiffs and Group Members repeat and rely upon paragraphs 163 to 175 above.

183. In deploying, or deciding to deploy, Victoria Police Officers to the Estate Towers, and in maintaining the deployment of Victoria Police Officers at the Estate Towers in the First Detention Period and, in the Second Detention Period, at the 33 Alfred Street, North Melbourne tower, for the purpose of detaining the Plaintiffs and Group Members in their residences, the Third Defendant:

(a) did not give proper consideration to each of the Applicable Human Rights or any of them; and, or in the alternative,

(b) acted in a way that was incompatible with each of the Applicable Human Rights or any of them,

contrary to s 38(1) of the Charter.

184. The decision of the Third Defendant to continue to deploy Victoria Police Officers to the Estate Tower at 33 Alfred Street, North Melbourne to enforce the Close Contacts Directions during the Second Detention Period:

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

(b) was not authorised by any law;

(c) was unlawful.

185. In the alternative, Victoria Police Officers, and the servants and agents of the Fourth Defendant, unlawfully used force or the threat of force to deprive the Second Plaintiff and each of the 33 Alfred Street Group Members of their freedom of movement in the Second Detention Period.

Particulars

i. Departmental Employees administered the Close Contacts Directions, and communicated with the Second Plaintiff and the 33 Alfred Street Group Members about their obligations and entitlements under those directions.

ii. Victoria Police Officers enforced or purported to enforce the Close Contacts Directions, with no lawful authority to do so.

iii. Victoria Police Officers prevented Plaintiffs and Group Members from leaving the premises, even where this was permitted by cl 4(4), 6(5) or 8(2) of the Close Contacts Directions.

186. In the premises of paragraphs 181 to 185 above (or each or any of them):

(a) the Third Defendant's decision to deploy Victoria Police Officers to the Estate Towers and to maintain the deployment of those officers there in the First and Second Detention Periods was unlawful;

(b) the Third Defendant's deployment of Victoria Police Officers to the Estate Towers in the First and Second Detention Periods was unlawful;

(c) the enforcement of the Detention Directions by Victoria Police Officers was unlawful;

(d) the enforcement of the Close Contacts Directions by Victoria Police Officers was unlawful; and, or in the alternative,

(e) the use of force or the threat of force, by Victoria Police Officers, to:

i. detain the Plaintiffs and Group Members in their residences during the First Detention Period;

ii. detain the Second Plaintiff and the 33 Alfred Street Group Members in their residences during the Second Detention Period; and, or in the alternative,

iii. enforce the self-quarantine or self-isolation of the Second Plaintiff and the 33 Alfred Street Group Members, and to restrict their freedom of movement, in the Second Detention Period,

was unlawful.

False Imprisonment

187. The First Defendant, through the making of the Detention Directions, has:

(d) directly and intentionally caused the total restraint of the liberty of each of the Plaintiffs and Group Members;

(e) done so without lawful justification.

188. The Decision-maker, by making the decision to continue to detain the residents at 33 Alfred Street, North Melbourne, has:

(a) directly and intentionally caused the total restraint of the liberty of the Second Plaintiff and each of the 33 Alfred Street Group Members;

(b) done so without lawful justification.

189. The Third Defendant, through his management and control of Victoria Police officers, has:

(a) directly and intentionally caused the total restraint of the liberty of each of the Plaintiffs and Group Members;

(b) done so without lawful justification.

Particulars

The Plaintiffs and Group Members repeat and rely upon paragraphs 69, 85 to 90, 92, 102, 107, 137 to 140, 161(b), (c), (d), (e) and (w), 162(b), (c), (d), (e), (m) and (q), 167, 175 and 181 to 186 (and the particulars thereto) above.

190. The decisions and actions of the Fourth Defendant's servants and agents, and the conduct of Victoria Police Officers, as pleaded above, has:

(a) directly and intentionally caused the total restraint of the liberty of each of the Plaintiffs and Group Members;

(b) done so without lawful justification.

Particulars

The Plaintiffs and Group Members repeat and rely upon the whole of this pleading but in particular paragraphs 65 to 95, 134 to 140, and 163 to 189 above.

191. Each of the Plaintiffs and Group Members has suffered loss and damage as a result of his or her loss of liberty.

Particulars

iv. The Plaintiffs and Group Members suffered physical, psychological and economic harm, humiliation and loss of dignity.

v. Further particulars of loss and damage will be provided in due course.

192. By reason of the matters pleaded above, and particularly at paragraphs 161 and 162, whilst being unlawfully detained, each of the Plaintiffs and the Group Members suffered injury and harm or exacerbation of existing injury.

Negligence

193. The Fourth Defendant owed the Plaintiffs and Group Members a duty to take reasonable care to avoid or minimise the risk of harm, loss or damage to them whilst in detention (whether psychological, physical or economic) in circumstances where:

(a) the Plaintiffs and Group Members were a vulnerable group of people, to the knowledge or constructive knowledge of the Fourth Defendant;

Particulars

The Plaintiffs repeat and rely upon paragraph 215 below.

(b) servants and, or in the alternative, agents of the Fourth Defendant, or persons acting for or on behalf of the Fourth Defendant, including the Premier, had decided to detain the Plaintiffs and Group Members in their residences in the Estate Towers, without giving them prior notice of the decision;

(c) the Fourth Defendant owned the premises in which the Plaintiffs and Group Members lived and were detained and, or in the alternative, it was public housing for which the Department was responsible;

(d) the decision to detain the Plaintiffs and Group Members in their residences, without notice, created a significant risk to each of those persons' health and welfare, including their mental health;

(e) the Fourth Defendant had knowledge or constructive knowledge of that danger or risk;

(f) the Fourth Defendant had a high degree of control over the Plaintiffs and Group Members, the timing of their detention, the lack of warning about the detention and the conditions in which they were detained;

(g) the risk of harm, loss or damage to them, as a result of the detention, was foreseeable and not insignificant.

194. In the premises, the Fourth Defendant had a duty to take reasonable steps during the First Detention Period and the Second Detention Period to:

(a) ensure that the circumstances of the detention of the Plaintiffs and Group Members, or the restrictions on their freedom of movement, did not exceed what was lawfully authorised;

(b) ensure that the Plaintiffs and Group Members were provided with timely and reasonable access to:

i. culturally-appropriate food supplies;

ii. food which met the dietary requirements of each Plaintiff and Group Member;

iii. medication;

iv. fresh air and exercise;

v. medical care;

vi. mental health services.

(c) avoid exposing the Plaintiffs and Group Members to COVID-19 infection, including by ensuring that health workers and Victoria Police Officers on site wore PPE and that PPE was appropriately discarded;

(d) ensure that reasonably prompt and effective communication as to the content and effect of the Detention Directions and the Close Contacts Directions and the rights and obligations of the Plaintiffs and Group Members during detention, was made to them, including by communicating in languages other than English where relevant;

(e) ensure that each Plaintiff and Group Member was provided with regular welfare checks;

(f) reasonably identify and attend to the needs of Plaintiffs and Group Members who were vulnerable, including because of their health status, age or mental health conditions;

(g) generally take reasonable steps to maintain and support the health and welfare of each Plaintiff and Group Member.

195. The Fourth Defendant breached its duty of care to the Plaintiffs and Group Members, through the acts and omissions of its servants and agents, by:

(a) placing the Plaintiffs and Group Members in home detention without prior notice to them;

(b) causing or permitting or inviting Victoria Police Officers to enforce the Detention Directions;

(c) causing or permitting or encouraging Victoria Police Officers forcibly to detain the Second Plaintiff and 33 Alfred Street Group Members in the Second Detention Period or, in the alternative, causing or permitting or encouraging Victoria Police Officers to forcibly restrict the freedom of movement of the Second Plaintiff and 33 Alfred Street Group Members in that period;

(d) placing the Plaintiffs and Group Members in the conditions or circumstances pleaded at paragraphs 161 and 162 above and taking insufficient action to remedy the deficiencies in those circumstances or conditions; and

(e) failing to take each of the reasonable steps referred to in each sub-paragraph of paragraph 194 above or failing to do so within a reasonable time.

196. As a result of the Fourth Defendant's breach of its duty of care to each of the Plaintiffs and Group Members, each of the Plaintiffs and Group Members suffered loss and damage.

Particulars

i. Many of the Plaintiffs and Group Members had inadequate food supplies for some or all of the period during which they were detained.

ii. Many of the Plaintiffs and Group Members had inadequate access to medical supplies and were deprived of necessary medication.

iii. Plaintiffs and Group Members were exposed to the risk of COVID-19 infection through the failure of health workers and Victoria Police Officers to take adequate precautions.

iv. Communication to residents was inadequate and often ineffective.

v. Existing physical and mental health conditions were exacerbated by the conditions of detention.

vi. Further particulars will be provided in due course.

Battery

197. The administration of COVID-19 tests to the Second Plaintiff and to each of the Group Members who were tested, by Health Workers, directly and intentionally caused some offensive physical contact with the person of each of them.

Particulars

The Plaintiffs and Group Members repeat and rely upon paragraphs 110 to 115 and 148 to 152 above.

198. The Second Plaintiff and each of the Group Members who submitted to a COVID-19 test did so:

(a) without providing free and informed consent; and, or in the alternative,

(b) under duress.

Particulars

The Plaintiffs and Group Members repeat and rely upon paragraphs 110 to 115 and 148 to 152 above.

199. The Second Plaintiff and each of the Group Members who submitted to the COVID-19 test suffered loss and damage as a result of the administration of the test.

Particulars

The Second Plaintiff and affected Group Members suffered physical pain and humiliation.

Assault

200. The presence of Victoria Police Officers at each of the Estate Towers during the First and Second Detention Periods, coupled with those officers purporting to restrain the Plaintiffs and Group Members from leaving their residences, constituted the use of force, or the intentional threat of the use of force, to the persons of the Plaintiffs and Group Members.

201. Each of the Plaintiffs and Group Members reasonably believed that Victoria Police Officers would use force to physically restrain them if they attempted to leave the premises of the Estate Towers in which they resided, during the First Detention Period.

202. The Second Plaintiff and each of the 33 Alfred Street Group Members reasonably believed that Victoria Police Officers would use force to physically restrain them if they attempted to leave the premises of 33 Alfred Street, North Melbourne, during the Second Detention Period.

203. The Plaintiffs and Group Members suffered loss and damage as a result of the use of force, or the intentional threat of the use of force, by Victoria Police Officers, in the circumstances pleaded above, during the First Detention Period and, or in the alternative, during the Second Detention Period.

Particulars

Particulars of loss and damage will be provided in due course.

Vicarious liability of State of Victoria

204. Each of the First Defendant and the Second Defendant is and was at all material times a "servant or agent" of the Fourth Defendant within the meaning of s 23(1)(b) of the *Crown Proceedings Act 1958* (Vic).

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

206. Each Departmental Employee is and was at all material times a servant of the Fourth Defendant within the meaning of s 23(1)(b) of the *Crown Proceedings Act 1958* (Vic).

207. Each Health Worker is and was at all material times a servant or agent or independent contractor of the Fourth Defendant within the meaning of s 23(1)(b) of the *Crown Proceedings Act 1958* (Vic).

208. The Decision-maker is and was at all material times a servant or agent of the Fourth Defendant within the meaning of s 23(1)(b) of the *Crown Proceedings Act 1958* (Vic).

209. Each of the torts of those employees and agents and independent contractors alleged herein was committed in the course or scope of his or her employment or agency or within the scope of the relevant contract.

210. In the premises, pursuant to s 23(1)(b) of the *Crown Proceedings Act 1958* (Vic), the Fourth Defendant is liable for the torts alleged herein, constituted by the matters set out

above, of the First Defendant, the Second Defendant, the Decision-maker and each Departmental Employee, Health Worker and other servant or agent of the Crown.

211. Each tort, constituted by the matters set out above, of:

(a) the Third Defendant;

(b) each of the Victoria Police Officers who was on duty at the Estate Towers at any time in the period between about 4pm on 4 July 2020 and:

i. 5.00pm on 9 July 2020 (in relation to 9 Pampas St, North Melbourne and 159 Melrose Street, North Melbourne);

ii. 11:59 pm on 18 July 2020 (in the case of 33 Alfred Street, North Melbourne);

iii. 11:59pm on 9 July 2020 (in the case of all other Estate Towers),

was committed in the performance or purported performance of the officer's duties.

212. The Fourth Defendant is liable for each tort referred to in paragraph 211 above by operation of s 74 of the *Victoria Police Act 2013* (Vic).

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

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

(a) whether the facts relating to the decisions to lock down and to continue the lock down of the Estate Towers, and the facts relating to the lock down itself, are as stated at paragraphs 60 to 162 above;

(b) whether the First Defendant acted under dictation when making the Detention Directions;

(c) whether s 200(1) of the PHW Act authorised the making of the Detention Directions;

(d) whether the First Defendant failed to give proper consideration to certain human rights before making the Detention Directions;

(e) whether the Detention Directions are *ultra vires* and invalid, or partly invalid;

(f) whether the Close Contacts Directions are *ultra vires* and invalid, or partly invalid;

(g) whether the deployment of Victoria Police Officers to the Estate Towers to enforce the Detention Directions, and the enforcement of those directions by Victoria Police Officers, was unlawful, during the First and Second Detention Periods;

(h) whether any of the defendants, or their servants and agents, caused the total restraint of the liberty of each of the Plaintiffs and Group Members in the First Detention Period;

(i) whether any of the defendants, or their servants and agents, caused the total restraint of the liberty of the Second Plaintiff and the 33 Alfred Street Group Members in the Second Detention Period;

(j) whether the detention of the Plaintiffs and Group Members was unlawful during the First Detention Period;

(k) whether the Decision-maker gave proper consideration to certain human rights when classifying the Second Plaintiff and 33 Alfred Street Group Members as "close contacts" under the Close Contacts Directions (No 4), and deciding to continue to detain them in the Second Detention Period;

(l) whether the Close Contacts Directions authorised the detention of the Second Plaintiff and the 33 Alfred Street Group Members;

(m) whether the detention of the Second Plaintiff and the 33 Alfred Street Group Members in the Second Detention Period was unlawful;

(n) whether the Fourth Defendant is liable for the false imprisonment of the Plaintiffs and Group Members;

(o) whether the Fourth Defendant owed the Plaintiffs and Group Members a duty to take reasonable care to avoid or minimise the risk of harm, loss or damage to them whilst in detention;

(p) if so, whether the Fourth Defendant breached that duty;

(q) whether Health Workers committed a battery on the Plaintiffs and Group Members (or some of them) by administering COVID-19 tests to them;

(r) whether Victoria Police Officers assaulted the Plaintiffs and Group Members (or some of them) by using force on them or threatening them with the use of force during the First and Second Detention Periods;

(s) whether the Fourth Defendant is vicariously liable for the torts of the First, Second and Third Defendants, those of Departmental officers and Health Workers, and Victoria Police Officers, as alleged;

(t) whether the plaintiffs are entitled to damages, including aggravated and exemplary damages.

Aggravated and Exemplary Damages

214. Each apartment in the Estate Towers in which a Plaintiff or Group Member resided was:

(c) public housing; and

(d) subject to a tenancy agreement:

i. with the Director of Housing (as landlord) pursuant to the *Residential Tenancies Act 1997* (Vic); and

ii. administered by the Department.

215. To the knowledge or constructive knowledge of the Fourth Defendant, or its servants, officers and agents, a higher proportion of persons residing at the Estate Towers, as compared to the general population of Victoria:

(a) were from non-English speaking backgrounds;

(b) spoke a language other than English at home;

(c) spoke English only as a second language (or not at all);

(d) were refugees;

(e) were economically disadvantaged;

(f) were recipients of welfare benefits;

(g) were children;

(h) had disabilities; and, or in the alternative,

(i) had a mental health condition.

216. The false imprisonment of the Plaintiffs and Group Members was aggravated by:

(c) the decision to detain them without warning or notice, on 4 July 2020;

(d) the conditions or circumstances in which they were placed, as pleaded in paragraphs 161 and 162 above;

(e) the Fourth Defendant's knowledge, or constructive knowledge, of the matters referred to in paragraph 217 above (or each or any of them);

(f) the Fourth Defendant's knowledge, or constructive knowledge, that the Plaintiffs and Group Members were vulnerable persons.

217. The battery of the Second Plaintiff and each of the 33 Alfred Street Group Members, as pleaded in paragraphs 197 to 199 above, was aggravated by:

(a) the unlawfulness of their detention;

(b) the circumstances in which the tests were administered;

(c) the lack of communication, including in their native languages, about their rights and obligations with respect to the administration of COVID-19 tests.

218. The assault of the Plaintiffs and Group Members, as pleaded in paragraphs 200 to 202 above, was aggravated by:

(a) the unlawfulness of the police presence at each of the Estate Towers and the actions of Victoria Police Officers in detaining or enforcing the home detention or self-quarantine or self-isolation of each of the Plaintiffs and Group Members;

(b) the circumstances in which the Plaintiffs and Group Members were detained or in which their movement was restricted, as pleaded in paragraphs 161 and 162 above.

219. Further or alternatively, the First Defendant, Second Defendant and Third Defendant, Victoria Police Officers and, or in the alternative, the Fourth Defendant's servants, agents and independent contractors, acted in contumelious disregard of the Plaintiffs' and Group Members' rights.

Particulars

vi. The false imprisonment continued throughout the First Detention Period and, subsequently, the Second Detention Period, and thus involved a prolonged continuing tort;

vii. The First Defendant and the Fourth Defendant and its servants and agents deliberately decided not to give any notice to the Plaintiffs and Group Members of their impending detention in advance of the lockdown, depriving them of the opportunity to obtain adequate food and medical supplies.

viii. The First Defendant, the Fourth Defendant and its servants and agents did not ensure that 24 hourly reviews were conducted, in the First Detention Period, in accordance with s 200(6) of the PHW Act;

ix. The First Defendant and the Fourth Defendant and its servants and agents failed to conduct an individual assessment of whether each of the Second Plaintiff and 33 Alfred Street Group Members was a diagnosed person or

close contact, within the Close Contacts Directions (No 4), before confining them to their residences with the use of force, purportedly under that direction.

x. The continuation of the false imprisonment of the Second Plaintiff and 33 Alfred Street Group Members in the Second Detention Period, after the revocation of the Detention Directions, constituted a flagrant abuse of power and displayed a reckless disregard for those persons' rights.

xi. The conduct of the Fourth Defendant, through its servants and agents, increased the risk of infection of COVID-19 to the Plaintiffs and Group Members.

xii. Further particulars will be provided in due course.

Relief

220. On the grounds set out in this Statement of Claim, the Plaintiffs and Group Members are entitled to the following relief against the Defendants:

(a) A declaration that each of the Detention Directions, purportedly made pursuant to s 200(1) of the *Public Health and Wellbeing Act 2008* (Vic), is *ultra vires* and invalid.

(b) A declaration that each of the Close Contacts Directions is *ultra vires* and invalid, or partly invalid.

(c) A declaration that the First Defendant's exercise or purported exercise of the emergency powers to detain the Plaintiffs and Group Members, through the making of the Detention Directions, was unlawful under s 38(1) of the Charter.

(d) A declaration that the First Defendant's omission or failure to review whether the continued detention of each of the Plaintiffs and Group Members was reasonably necessary to eliminate or reduce a serious risk to public health at least once every 24 hours, during the First Detention Period, was unlawful under s 38(1) of the Charter.

(e) A declaration that the decision made by a servant or agent of the Fourth Defendant on or about 9 July 2020 to classify the Second Plaintiff and 33 Alfred Street Group Members as "close contacts" under the Close Contacts Directions (No 4), was unlawful under s 38(1) of the Charter.

(f) A declaration that neither the Second Plaintiff nor any of the 33 Alfred Street Group Members was a "close contact" within the Close Contacts Directions.

(g) A declaration that the decision made by a servant or agent of the Fourth Defendant, on or about 9 July 2020, to continue to detain the Second Plaintiff and the 33 Alfred Street Group Members in their residences pursuant to the Close Contacts Directions (No 4), was unlawful under s 38(1) of the Charter.

(h) A declaration that the decision made by the Third Defendant to deploy, and to continue to deploy, Victoria Police Officers to the Estate Towers in the First Detention Period and to 33 Alfred Street, North Melbourne in the Second Detention Period, for the purpose of detaining the Plaintiffs and Group Members in their residences, was unlawful under s 38(1) of the Charter.

(i) A declaration that the decision of the Third Defendant to deploy Victoria Police Officers to the Estate Towers on 4 July 2020 to enforce the detention of the Plaintiffs and Group Members, and the act of deploying them for that purpose and continuing to deploy them for that purposes between 4 July 2020 and 18 July 2020 or, in the alternative, between 10 July 2020 and 18 July 2020, was unlawful.

(j) A declaration that the detention of:

i. the Plaintiffs and the Group Members in their residences between 4 and 9 July 2020; and, or in the alternative,

ii. the Second Plaintiff and the Group Members resident at 33 Alfred Street, North Melbourne, in their residences between 10 July 2020 and 18 July 2020,

was unlawful.

(k) Costs.

221. On the grounds set out in this Statement of Claim, the Plaintiffs and Group Members are entitled to the following relief against the Fourth Defendant:

(f) Damages for false imprisonment;

(g) Damages for battery;

(h) Damages for assault;

(i) Damages for negligence;

(j) Aggravated damages;

(k) Exemplary damages;

(l) Costs.

(m)Interest.

(n) Such other or further orders as the Court deems fit.

MARK ROBINSON SC

DR JULIET LUCY

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SERENE TEFFAHA
ADVOCATE ME
Solicitor for the Plaintiffs

1. Place of trial – Melbourne.

2. Mode of trial – Judge alone.

3. This writ was filed for the plaintiffs by Serene Teffaha, Advocate Me, Unit 805, Floor 8, 220 Collins Street, Melbourne Victoria 3000 and serene.teffaha@advocateme.com.au.

4. The address of the plaintiffs is – Unit 805, Floor 8, 220 Collins Street, Melbourne Victoria 3000.

5. The address for service of the plaintiffs is – C/- Serene Teffaha, Advocate Me, Unit 805, Floor 8, 220 Collins Street, Melbourne Victoria 3000 and serene.teffaha@advocateme.com.au (due to COVID-19 restrictions business address for service is electronic).

6. The email address for service of the plaintiffs is – C/- Serene Teffaha, Advocate Me, serene.teffaha@advocateme.com.au.

7. The addresses of the defendants are – C/- Alex Murphy, Victorian Government Solicitor's Office, Level 39, 80 Collins Street, Melbourne Victoria 3000, DX 300077, and alex.murphy@vgso.vic.gov.au (due to COVID-19 restrictions business address for service is electronic).

SCHEDULE OF PARTIES

IDRIS HASSAN
First Plaintiff

HAWA WARSAME
Second Plaintiff

DR ANNALIESE VAN DIEMEN, IN HER CAPACITY AS AUTHORISED OFFICER UNDER THE *PUBLIC HEALTH AND WELLBEING ACT 2008* (VIC)
First Defendant

DR FINN ROMANES, IN HIS CAPACITY AS AUTHORISED OFFICER UNDER THE *PUBLIC HEALTH AND WELLBEING ACT 2008* (VIC)
Second Defendant

CHIEF COMMISSIONER OF POLICE, VICTORIA
Third Defendant

STATE OF VICTORIA
Fourth Defendant