



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

Case: S ECI 2020 03402

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S ECI 2020 03402

BETWEEN

5 BOROUGHS NY PTY LTD (ACN 632 508 304)

Plaintiff

–and–

STATE OF VICTORIA & ORS
(according to the attached Schedule)

Defendants

AMENDED DEFENCE

Filed pursuant to the order of the Honourable Justice Keogh dated ~~6 May 2024~~ 2 September 2025

Date: ~~13 May 2024~~ 3 September 2025

Filed on behalf of: the Defendants

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In answer to the further amended statement of claim dated ~~21 September 2022~~ 25 July 2025 (the **FASOC**), the defendants say as follows:

A. THE PARTIES

The plaintiff and Group Members

1. As to paragraph 1, the defendants:

- (a) do not plead to subparagraph 1(a) as it contains no allegations against them;
- (b)
 - (i) say that subparagraph 1(b) is embarrassing because it makes allegations which assume the alleged effect on the plaintiff and Group Members of numerous directions made under s 200 of the *Public Health and Wellbeing Act 2008* (Vic) (the **Public Health Act**);
 - (ii) refer to the full terms and effect of each of the instruments referred to in subparagraphs 1(e), 1(f), 1(g) and 1(h) inclusive; and
 - (iii) otherwise do not plead to the allegations in subparagraph 1(b), as it contains no allegations against them;
- (c) deny the allegations in subparagraph 1(c);
- (d) do not plead to subparagraph 1(d), as it contains no allegations against them;
- (e) refer to the full terms and effect of each of the instruments, but otherwise do not plead to subparagraph 1(e), as it contains no allegations against them;
- (f) refer to the full terms and effect of each of the instruments, but otherwise do not plead to subparagraph 1(f), as it contains no allegations against them;
- (g) refer to the full terms and effect of each of the instruments, but otherwise do not plead to subparagraph 1(g), as it contains no allegations against them; and
- (h) refer to the full terms and effect of each of the instruments, but otherwise do not plead to subparagraph 1(h), as it contains no allegations against them.

2. The defendants do not know and therefore cannot admit the allegation in paragraph 2.

The defendants

3. The defendants admit the allegation in paragraph 3, save that they say that any such liability is subject to Part II of the *Crown Proceedings Act 1958* (Vic).
4. As to the allegations in paragraph 4, the defendants:
 - (a) admit the allegation in subparagraph 4(a), and say further that the second defendant (the **Minister for Health**) was the Minister for Health from 29 November ~~19 December~~ 2018 to 26 September 2020; and
 - (b)
 - (i) admit that the second defendant was the Minister for the Coordination of Health and Human Services: COVID-19 from 3 April 2020 to 26 September 2020;
 - (ii) admit that the Minister for Health was responsible to the Victorian Parliament for the administration of the Department of Health and Human Services (**DHHS**) in accordance with the system of responsible government; and
 - (iii) otherwise deny the allegation in subparagraph 4(b).
5. As to the allegations in paragraph 5, the defendants:
 - (a) admit the allegation in subparagraph 5(a), and say further that the third defendant (the **Minister for Jobs**) was the Minister for Jobs, Innovation and Trade from 29 November 2018 to 22 June 2020; and
 - (b)
 - (i) admit that the third defendant was the Minister for the Coordination of Jobs, Precincts and Regions: COVID-19 from 3 April 2020 to 9 November 2020;
 - (ii) admit that the Minister for Jobs was responsible to the Victorian Parliament for the administration of the Department of Jobs, Precincts and Regions (**DJPR**) in accordance with the system of responsible government; and

(iii) otherwise deny the allegation in subparagraph 5(b).

6. The defendants admit the allegations in paragraph 6.
7. The defendants admit the allegations in paragraph 7, and say further that the fifth defendant ceased to be the “Department Head” as of 6 December 2022.

B. THE COVID-19 PANDEMIC AND VICTORIA’S INITIAL RESPONSE

Coronavirus disease 2019

8. As to the allegations in paragraph 8, the defendants:
 - (a) admit the allegation in subparagraph 8(a), and say further that different variants of severe acute respiratory syndrome coronavirus 2 (**SARS-CoV-2**) have emerged over time with some associated differences in the properties of the virus, including the ease and speed with which the virus spreads, the severity of the disease, and the effectiveness of vaccines with respect to the variants; and
 - (b) admit the allegation in subparagraph 8(b).
9. As to the allegations in paragraph 9, the defendants:
 - (a) ~~admit the allegation in subparagraph 9(a)~~ say that subparagraph 9(a) is embarrassing because the meaning of “short distance” is not stated, but admit that SARS-CoV-2 is capable of being transmitted through respiratory droplets over distances of 1.5m or less and otherwise deny that allegation, and:
 - (i) say further that the dominant mode of transmission of SARS-CoV-2 is via smaller aerosolised airborne infectious particles, also called aerosols, including through transmission over distances both less than and greater than 1.5 metres;
 - (ii) refer to and repeat sub paragraphs 9(e)(i) and (ii) below;
 - (b) admit the allegation in subparagraph 9(b), and:
 - (i) say further that activities such as speaking, coughing, sneezing, singing and shouting can involve the expulsion of respiratory droplets and smaller airborne

particles that suspend in the air for longer than droplets and present a risk of transmission including through transmission over distances both less than and greater than 1.5m; and

- (ii) refer to and repeat sub paragraphs 9(e)(i) and (ii) below;
- (c) admit the allegation in subparagraph 9(c) to the extent only that the defendants say that while there exists a possibility that SARS-CoV-2 may be transmitted by fomites, the risk of such transmission is very low;

Particulars

The risk of SARS-CoV-2 infection via the fomite route is generally less than 1 in 10,000, which means that each contact with a contaminated surface has less than a 1 in 10,000 chance of causing an infection: Centers for Disease Control and Prevention, Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments, 24 March 2021, updated 5 April 2021.

- (c1) admit the allegation in subparagraph 9(c1) to the extent only that:
 - (i) direct contact refers to direct physical contact between individuals; and
 - (ii) the defendants say that while there exists a possibility that SARS-CoV-2 may be transmitted by direct physical contact between individuals, the risk of such transmission is very low;
- (d) admit the allegation in subparagraph 9(d)(i), and in further answer to that paragraph refer to and repeat subparagraphs 9(a), 9(b) and 9(c1) above and subparagraphs 9(e)(i) and (ii) below;
- (e) admit the allegation in subparagraph 9(d)(ii) to the extent only that the defendants refer to and repeat subparagraph 9(c) above, and say further that:
 - (i) in addition to the matters admitted at subparagraphs 9(a) to 9(d) inclusive, SARS-CoV-2 is also readily transmitted through small aerosolised airborne infectious particles via airborne transmission (including over distances both less

than and greater than 1.5 metres); and

- (ii) airborne transmission of the kind referred to in subparagraph 9(e)(i) above can occur:
 - (1) over distances both less than and greater than 1.5 metres;
 - (2) in circumstances where a person passes through a space after an infectious person has left that space;
 - (3) because of inadequate ventilation in buildings;
 - (4) because of the movement of air within buildings, for example, under closed doors, through corridors and fire escapes, including movement of air caused by air-conditioning and heating systems;
 - (5) because infectious particles move from rooms or spaces with net positive air pressure to other rooms or spaces of relatively lower air pressure; or
 - (6) even where surgical masks are correctly worn by all workers (as defined in subparagraph 27(a)(ii)(1) below) and returned travellers (as defined in subparagraph 25(a)(ii) below).

First case of COVID-19 in Victoria detected

- 10. The defendants admit the allegation in paragraph 10.

WHO declares COVID-19 a pandemic

- 11. The defendants admit the allegation in paragraph 11.
- 12. The defendants admit the allegation in paragraph 12, and say further that the World Health Organization's COVID-19 pandemic declaration remains active.

First case of community transmission in Victoria recorded

- 13. As to the allegations in paragraph 13, the defendants:
 - (a) admit the allegation in subparagraph 13(a), and say further that:
 - (i) on 12 March 2020, the first case of COVID-19 in Victoria, with no known or

traceable source, was reported to the Chief Health Officer; and

- (ii) by this date there was community transmission in Victoria, where **community transmission** means the circumstance where:

- (1) a person was infected with SARS-CoV-2 but had not recently returned from overseas and had not been in recent contact with another confirmed case of COVID-19; and
- (2) it followed that the source of the virus was unknown and presumed to have been acquired from another case within the community; and

- (b) admit the allegation in subparagraph 13(b).

New cases in Victoria across March 2020

- 14. As to the allegation in paragraph 14, the defendants:

- (a) admit the allegation in paragraph 14; and
- (b) say further that the number of new cases of COVID-19 in Victoria reported to DHHS each day (**daily new case numbers**) fluctuated during the period between 12 March 2020 and 27 March 2020.

Particulars

Daily new case numbers were:

- (1) 15 on 13 March 2020;
- (2) 5 on 14 March 2020;
- (3) 7, 17, 37, 30, 33, 43, 46, 73, 56, 64, 58, 54 ~~64~~ from 15 to 26 March 2020; and
- (4) 106 on 27 March 2020.

- 15. The defendants admit the allegation in paragraph 15.

Particulars

By 27 March 2020, there were 465 active cases of COVID-19 in Victoria.

“National Cabinet” established

- 16. The defendants admit the allegation in paragraph 16, and say further that on or about 13 March

2020, the Commonwealth, State and Territory governments agreed to limit public gatherings to no more than 500 people in order to reduce community transmission of COVID-19.

Particulars

Media release issued by the Prime Minister dated 13 March 2020.

State of emergency declared in Victoria

17. The defendants admit the allegation in paragraph 17.

Particulars

Victoria Government Gazette, No. S 129, 16 March 2020, page 1.

18. The defendants admit the allegation in paragraph 18.

“Stage 1” restrictions commence in Victoria

19. As to the allegation in paragraph 19, the defendants:
- (a) admit that members of the Victorian government, in communicating in respect of directions made under the *Public Health Act*, referred to the restrictions effected by such directions in a short-hand or summary way by reference to “stages”, grouping together changes made to directions at similar times;

Particulars

- (1) *The precise details of each “stage” of restrictions effected by directions made under the Public Health Act varied from time to time.*
 - (2) *The reference to “stage 1” restrictions indicated that the directions given that description effected the first stage of the directions made under the Public Health Act in order to limit the spread of COVID-19 in Victoria.*
 - (3) *The reference to “stage 2” restrictions indicated that the directions gave effect to restrictions on activity that constituted the next stage of that response and so on in respect of the directions that effected the “stage 3” and “stage 4” restrictions.*
- (b) admit that the *Non-essential Business Closure Direction* was made on 23 March 2020 to prohibit the operation of non-essential businesses and undertakings in order to limit the spread of COVID-19;

- (c) admit that the restrictions effected by that instrument were referred to as “stage 1” restrictions;
- (d) refer to and rely on the full terms and effect of that instrument; and
- (e) otherwise deny the allegations in paragraph 19.

Particulars

Victoria Government Gazette, No. S 144, 23 March 2020, pages 1-2.

“Stage 2” restrictions commence in Victoria

20. As to the allegations in paragraph 20, the defendants:

- (a)
 - (i) admit that the *Non-Essential Activity Directions* were made on 25 March 2020 to prohibit the operation of non-essential businesses and undertakings in order to limit the spread of COVID-19;
 - (ii) refer to and rely on the full terms and effect of that instrument;
 - (iii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by that instrument were referred to as “stage 2” restrictions; and
 - (iv) otherwise deny the allegation in subparagraph 20(a); and
- (b)
 - (i) admit that the *Prohibited Gathering Directions* were made on 25 March 2020 to prohibit non-essential gatherings in order to limit the spread of COVID-19;
 - (ii) refer to and rely on the full terms and effect of that instrument;
 - (iii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by that instrument were referred to as “stage 2” restrictions; and
 - (iv) otherwise deny the allegation in subparagraph 20(b).

Particulars

Victoria Government Gazette, No. S 156, 26 March 2020,

pages 1-3; pages 4-10.

21. As to the allegations in paragraph 21, the defendants:

- (a) admit that the *Non-Essential Activity Directions (No 2)* were made on 26 March 2020 to prohibit the operation of non-essential businesses and undertakings in order to limit the spread of COVID-19;
- (b) refer to and rely on the full terms and effect of that instrument;
- (c) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by that instrument were referred to as “stage 2” restrictions; and
- (d) otherwise deny the allegations in paragraph 21.

Particulars

Victoria Government Gazette, No. S 161, 27 March 2020, pages 1-7.

“Stage 3” restrictions commence in Victoria

22. As to the allegations in paragraph 22, the defendants:

- (a)
 - (i) admit that the *Stay at Home Directions* were made on 30 March 2020 to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) refer to and rely on the full terms and effect of that instrument;
 - (iii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by that instrument were referred to as “stage 3” restrictions; and
 - (iv) otherwise deny the allegation in subparagraph 22(a); and
- (b)
 - (i) admit that the *Restricted Activity Directions* were made on 30 March 2020 to restrict the operation of certain businesses and undertakings in order to limit the spread of COVID-19;
 - (ii) refer to and rely on the full terms and effect of that instrument;

- (iii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by that instrument were referred to as “stage 3” restrictions; and
- (iv) otherwise deny the allegation in subparagraph 22(b).

Particulars

*Victoria Government Gazette, No. S 169, 31 March 2020,
pages 1-7; pages 8-13.*

23. As to the allegations in paragraph 23, the defendants:

(a)

- (i) admit that the *Stay at Home Directions* were made on 30 March 2020 to address the serious public health risk posed to Victoria by COVID-19;
- (ii) refer to and rely on the full terms and effect of that instrument;
- (iii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by that instrument were referred to as “stage 3” restrictions; and
- (iv) otherwise deny the allegation in subparagraph 23(a);

(b)

- (i) admit that the *Restricted Activity Directions* were made on 30 March 2020 to restrict the operation of certain businesses and undertakings in order to limit the spread of COVID-19;
- (ii) refer to and rely on the full terms and effect of that instrument;
- (iii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by that instrument were referred to as “stage 3” restrictions; and
- (iv) otherwise deny the allegation in subparagraph 23(b);

- (c) refer to and rely on the full terms and effect of the instruments referred to in subparagraphs 23(a)(i) and 23(b)(i) above and otherwise deny the allegation in subparagraph 23(c);

- (d) refer to and rely on the full terms and effect of the instruments referred to in subparagraphs 23(a)(i) and 23(b)(i) above and otherwise deny the allegation in subparagraph 23(d);
- (e) refer to and rely on the full terms and effect of the instruments referred to in subparagraphs 23(a)(i) and 23(b)(i) above and otherwise deny the allegation in subparagraph 23(e); and
- (f) refer to and rely on the full terms and effect of the instruments referred to in subparagraphs 23(a)(i) and 23(b)(i) above and otherwise deny the allegation in subparagraph 23(f).

Particulars

*Victoria Government Gazette, No. S 169, 31 March 2020, pages 1-7;
pages 8-13.*

C. QUARANTINE DETENTION IN VICTORIA

National Cabinet agreement

24. As to the allegations in paragraph 24, the defendants:

- (a) admit the allegation in subparagraph 24(a); and
- (b) admit the allegation in subparagraph 24(b), and say further that:
 - (i) the Prime Minister held a press conference on 27 March 2020 in which he said, among other things, that “by no later than midnight tomorrow, that is 11:59pm Saturday states and territories will be quarantining all arrivals through our airports, in hotels and other accommodation facilities for the two weeks of their mandatory self-isolation before they are able to return to their home”; and
 - (ii) the media release issued by the Prime Minister on 27 March 2020 stated, among other things, that “[i]n order to help drive down this concerning number of imported cases, National Cabinet has agreed to take action to further restrict the

movement of incoming travellers and to increase compliance checks on travellers who are already undertaking their mandatory self-isolation period at home. This is about reducing the spread of the virus in Australia and saving lives”.

Implementation of the National Cabinet agreement in Victoria

25. As to the allegations in paragraph 25, the defendants:

- (a) admit that:
 - (i) beginning on 28 March 2020, persons who were appointed by the Secretary of DHHS under s 30 of the *Public Health Act* (**authorised officers**) and authorised by the Chief Health Officer under s 199 of that Act to exercise emergency powers under s 200 of that Act issued written directions in the form of “Direction and Detention Notices”;
 - (ii) these Notices were issued to persons arriving in Victoria from overseas, on or after midnight on 28 March 2020 (**returned travellers**), excluding certain persons such as foreign diplomats and maritime workers; and
 - (iii) save for specific and exceptional circumstances, the Notices required that the recipient be detained at a specified hotel for a period of 14 days (a **quarantine hotel**) on the basis that it was reasonably necessary for the purpose of eliminating or reducing a serious risk to public health in accordance with s 200(1)(a) of the *Public Health Act*;

Particulars

Authorised officers also issued notices entitled “Direction and Detention – Alternative Location” under the Public Health Act. Those notices required detention at an alternative location (not a hotel) because of specific and exceptional circumstances.

- (b) say further that the Direction and Detention Notices described in subparagraph 25(a)(i)

above stated that the detained person must not leave the hotel room in any circumstances unless there was an emergency (for example, a fire) or permission was granted, with permission to be considered in certain specified circumstances, which included where permission was granted to leave the room because it was reasonably necessary for the person's physical or mental health or on compassionate grounds; and

(c) otherwise deny the allegations in paragraph 25.

26. The defendants admit the allegation in paragraph 26.

Alleged IPC measures for hotel quarantine

27. The defendants deny the allegations in paragraph 27, and say further that:

(a) the allegation that it was necessary to implement the infection prevention and control (IPC) measures of the kinds pleaded at subparagraphs 27(a) to 27(m) inclusive in order to “prevent or minimise the likelihood and/or risk of transmission of SARS-CoV-2 from returned travellers at quarantine hotels to private security guards, hotel staff or other persons working at those hotels” and “between workers at those hotels” is unclear and incapable of being understood because:

(i) the pleaded allegation does not specify whether the plaintiff alleges that it was necessary that all of the IPC measures alleged at subparagraphs 27(a) to 27(m) inclusive were required to be implemented at the same time as one another and at all times; and

(ii) the meaning of the phrase “prevent or minimise the likelihood and/or risk of transmission” is unclear and incapable of being understood in the absence of an allegation as to each of:

(1) the background or prevailing likelihood and/or risk of transmission of SARS-CoV-2 from returned travellers in hotel quarantine to private security guards, hotel staff or other persons working at those hotels

(**workers**), or between workers at the hotels, in the absence of the implementation of one of the IPC measures, or some of the IPC measures or all of the IPC measures; and

(2) the degree of reduction in that background or prevailing likelihood and/or risk of transmission of SARS-CoV-2 from returned travellers in hotel quarantine to workers, or between workers, which is alleged by the plaintiff to constitute minimising the likelihood and/or risk of that transmission;

- (b) it was not possible to prevent the transmission of SARS-CoV-2 from returned travellers at quarantine hotels to workers, or the transmission between workers, for the reasons pleaded at subparagraph 9(e)(ii) above; and
- (c) the transmission of SARS-CoV-2 from returned travellers to some workers, and between workers, constituted the materialisation of an inherent risk, namely the risk of transmission of SARS-CoV-2 to some workers in hotel quarantine, being a risk which could not be avoided (that is, a risk which could not be prevented entirely or a risk the occurrence of which could not be eliminated) (the **inherent risk of virus transmission**) by the exercise of reasonable care, for the reasons pleaded at subparagraph 9(e)(ii) above.

27AAA. Under cover of the above denial and objection to EASOC paragraph 27 and in response to the allegations in EASOC paragraph 27, the defendants:

Training

- (a) say further as to the allegations in subparagraph 27(a), that ~~the training of any person~~ in the use of personal protective equipment (**PPE**), hand hygiene, ~~and~~ physical distancing and testing and isolation measures, are ~~some aspects~~ of the hierarchy of controls which may, when used in combination with other controls, be capable of

reducing the likelihood of transmission of SARS-CoV-2 from the person who undertakes that training to another person and/or vice versa, but the training of all workers in the manner alleged at subparagraph 27(a) could not have avoided the materialisation of the inherent risk of virus transmission:

- (i) from an infectious traveller to any worker who had been so trained; or
- (ii) from/to any worker who had been so trained to/from any other worker,

being risks which could not be avoided by the exercise of reasonable care for the reasons pleaded at subparagraphs 9(e)(ii), 27(b) and 27(c) above;

- (b) deny the allegations in subparagraph 27(b) and refer to and repeat subparagraph 27(a) above;

PPE usage

- (c) say further as to the allegations in subparagraph 27(c), that the wearing of a single-use surgical mask at all times (save when eating or drinking on a break during a shift) is an aspect one of the hierarchy of controls which may, when used in combination with other controls, be capable of reducing the likelihood of transmission of SARS-CoV-2 from the person who wears that single-use surgical mask to another person and/or vice versa, but the wearing of a single-use surgical mask by all workers in the manner alleged at subparagraph 27(c) could not have avoided the materialisation of the inherent risk of virus transmission:

- (i) from an infectious traveller to any worker who wore such a single-use surgical mask in the manner alleged at subparagraph 27(c)~~had been so trained~~; or
- (ii) from/to any worker who wore such a single-use surgical mask in the manner alleged at subparagraph 27(c)~~had been so trained~~ to/from any other worker,

being risks which could not be avoided by the exercise of reasonable care for the reasons pleaded at subparagraphs 9(e)(ii), 27(b) and 27(c) above;

(d) say further as to the allegations in subparagraph 27(d) in relation to the wearing of additional PPE by any worker undertaking activities that required, or were reasonably likely to require, coming within 1.5 metres of a returned traveller:

(i) the wearing of single-use eye protection by such a worker is ~~one~~ an aspect of the hierarchy of controls which may, when used in combination with other controls, be capable of reducing the likelihood of transmission of SARS-CoV-2 ~~to from~~ the person who wears that single-use eye protection from ~~to~~ another person, but the wearing of a single-use eye protection by all workers in the manner alleged at subparagraph 27(d)(i) could not have avoided the materialisation of the inherent risk of virus transmission:

(1) from an infectious traveller to any worker who wore such a single-use eye protection in the manner alleged at subparagraph 27(d) ~~had been so trained~~; or

(2) ~~from~~ to any worker who wore such a single-use eye protection in the manner alleged at subparagraph 27(d) ~~had been so trained to~~ from any other worker,

being risks which could not be avoided by the exercise of reasonable care for the reasons pleaded at subparagraphs 9(e)(ii), 27(b) and 27(c) above;

(ii) the defendants deny the allegations in subparagraph 27(d)(ii);

(iii) the wearing of a single-use long-sleeved gown by such a worker is ~~one~~ an aspect of the hierarchy of controls which may, when used in combination with other controls, be capable of reducing the likelihood of transmission of SARS-CoV-2 ~~from to~~ the person who wears that single-use long-sleeved gown ~~to~~ from another person, but the wearing of a single-use long-sleeved gown by all workers in the manner alleged at subparagraph 27(d)(iii) could not have avoided the

materialisation of the inherent risk of virus transmission:

- (1) from an infectious traveller to any worker who wore such a single-use long-sleeved gown in the manner alleged at subparagraph 27(d)(iii) ~~had been so trained~~; or
- (2) ~~from~~to any worker who wore such a single-use long-sleeved gown in the manner alleged at subparagraph 27(d)(iii) ~~had been so trained to~~ from any other worker,

being risks which could not be avoided by the exercise of reasonable care for the reasons pleaded at subparagraphs 9(e)(ii), 27(b) and 27(c) above;

- (e) say further as to the allegations in subparagraph 27(e), that the wearing of PPE when coming into contact with an object or surface touched by a returned traveller that had not been cleaned and/or disinfected is ~~one~~ an aspect of the hierarchy of controls which may, when used in combination with other controls, be capable of reducing the very low likelihood of transmission of SARS-CoV-2 from that object or surface to the person who wears that PPE and from that person to another person, but the wearing of PPE by all workers in the manner alleged at subparagraph 27(e) could not have avoided the materialisation of the inherent risk of virus transmission:

- (i) from an infectious traveller to any worker who wore PPE when coming into contact with an object or surface touched by a returned traveller that had not been cleaned and/or disinfected in the manner alleged at subparagraph 27(e) ~~had been so trained~~; or
- (ii) ~~from~~to any worker who wore PPE when coming into contact with an object or surface touched by a returned traveller that had not been cleaned and/or disinfected in the manner alleged at subparagraph 27(e) ~~had been so trained to~~ from any other worker,

being risks which could not be avoided by the exercise of reasonable care for the reasons pleaded at subparagraphs 9(e)(ii), 27(b) and 27(c) above;

- (f) say further as to the allegations in subparagraph 27(f), that the manner of donning PPE is ~~one~~ an aspect of the hierarchy of controls which may, when used in combination with other controls, be capable of reducing the likelihood of transmission of SARS-CoV-2 from the person who dons the PPE in that manner to another person and/or vice versa, but the donning of PPE by all workers in the manner alleged at subparagraph 27(f) could not have avoided the materialisation of the inherent risk of virus transmission:

- (i) from an infectious traveller to any worker who donned PPE in the manner alleged at subparagraph 27(f) ~~had been so trained~~; or
- (ii) from/to any worker who donned PPE in the manner alleged at subparagraph 27(f) ~~had been so trained~~ to/from any other worker,

being risks which could not be avoided by the exercise of reasonable care for the reasons pleaded at subparagraphs 9(e)(ii), 27(b) and 27(c) above;

- (g) say further as to the allegations in subparagraph 27(g), that the manner of doffing PPE is ~~one~~ an aspect of the hierarchy of controls which may, when used in combination with other controls, be capable of reducing the likelihood of transmission of SARS-CoV-2 from the person who doffs PPE in that manner to another person and/or vice versa, but the doffing of PPE by all workers in the manner alleged at subparagraph 27(g) could not have avoided the materialisation of the inherent risk of virus transmission:

- (i) from an infectious traveller to any worker who doffed PPE in the manner alleged at subparagraph 27(g) ~~had been so trained~~; or
- (ii) from/to any worker who doffed PPE in the manner alleged at subparagraph 27(g) ~~had been so trained~~ to/from any other worker,

being risks which could not be avoided by the exercise of reasonable care for the

reasons pleaded at subparagraphs 9(e)(ii), 27(b) and 27(c) above;

- (h) say further as to the allegations in subparagraph 27(h), that the manner of disposing or replacing of PPE is ~~one~~ an aspect of the hierarchy of controls which may, when used in combination with other controls, be capable of reducing the likelihood of transmission of SARS-CoV-2 from the person who disposes of or replaces PPE in that manner to another person and/or vice versa, but the disposing or replacing of PPE by all workers in the manner alleged at subparagraph 27(h) could not have avoided the materialisation of the inherent risk of virus transmission:

- (i) from an infectious traveller to any worker who disposed of or replaced PPE in the manner alleged at subparagraph 27(h) ~~had been so trained~~; or
- (ii) from/to any worker who disposed of or replaced PPE in the manner alleged at subparagraph 27(h) ~~had been so trained~~ to/from any other worker,

being risks which could not be avoided by the exercise of reasonable care for the reasons pleaded at subparagraphs 9(e)(ii), 27(b) and 27(c) above;

Hand hygiene

- (i) say further as to the allegations in subparagraph 27(i), that the use of hand hygiene is ~~one~~ an aspect of the hierarchy of controls which may, when used in combination with other controls, be capable of reducing the likelihood of transmission of SARS-CoV-2 from the person who uses hand hygiene to another person and/or vice versa, but the use of hand hygiene by all workers in the manner alleged at subparagraph 27(i):
 - (i) is an impossible standard to adhere to as it requires a worker to know:
 - (1) when a returned traveller had touched an object or surface; and
 - (2) whether or not such object or surface had been cleaned and/or disinfected; and
 - (ii) in any event, could not have avoided the materialisation of the inherent risk of

virus transmission:

- (1) from an infectious traveller to any worker who practised hand hygiene in the manner alleged at subparagraph 27(i)~~had been so trained~~; or
- (2) from/to any worker who practised hand hygiene in the manner alleged at subparagraph 27(i)~~had been so trained~~ to/from any other worker,

being risks which could not be avoided by the exercise of reasonable care for the reasons pleaded at subparagraphs 9(e)(ii), 27(b) and 27(c) above;

Physical distancing

- (j) say further as to the allegation in subparagraph 27(j), that the maintenance of physical distancing is ~~one~~an aspect of the hierarchy of controls which may, when used in combination with other controls, be capable of reducing the likelihood of transmission of SARS-CoV-2 from the person who maintains physical distancing to another person and/or vice versa, but the use of physical distancing by all workers in the manner alleged at subparagraph 27(j) could not have avoided the materialisation of the inherent risk of virus transmission:

- (i) from an infectious traveller to any worker who practised physical distancing in the manner alleged at subparagraph 27(j)~~had been so trained~~; or
- (ii) from/to any worker who practised physical distancing in the manner alleged at subparagraph 27(j)~~had been so trained~~ to/from any other worker,

being risks which could not be avoided by the exercise of reasonable care for the reasons pleaded at subparagraphs 9(e)(ii), 27(b) and 27(c) above;

- (ja) say further that there were tasks and functions required to be performed by workers in hotel quarantine which did not always permit the maintenance of physical distancing;

Particulars

For example, some workers were required to:

- (1) *respond to emergency or other incidents in relation to returned travellers in quarantine hotels, including in relation to illness, threats of self-harm, and family violence; and*
- (2) *take samples for PCR testing (swabbing).*

Testing and isolation

(j1) say further as to the allegation in subparagraph 27(j1), that the testing of persons exhibiting symptoms of COVID-19 in the manner alleged at subparagraph 27(j1) could not have avoided the materialisation of the inherent risk of virus transmission:

(i) from an infectious traveller to any worker; or

(ii) from any worker to any other worker,

being risks which could not be avoided by the exercise of reasonable care;

(j2) say further as to the allegation in subparagraph 27(j2), that the isolating of symptomatic workers in the manner alleged at subparagraph 27(j1) could not have avoided the materialisation of the inherent risk of virus transmission:

(i) from an infectious traveller to any worker; or

(ii) from any worker to any other worker,

being risks which could not be avoided by the exercise of reasonable care;

(j3A) say further as to the allegation in subparagraph 27(j3) (i) and (ii), that the isolating of workers who test positive for COVID-19 in the manner alleged at subparagraph 27(j3)(i) and (ii) could not have avoided the materialisation of the inherent risk of virus transmission:

(i) from an infectious traveller to any worker; or

(ii) from any worker to any other worker,

being risks which could not be avoided by the exercise of reasonable care;

(j3B) say further as to the allegation in subparagraph 27(j3)(iii), that the allegation is embarrassing because “all other workers who worked at the quarantine hotel” would

include workers that worked at the relevant hotel in the weeks or months before the event of the positive test result. Under cover of that objection the defendants say that the testing of workers in the manner alleged at subparagraph 27(j3)(iii) could not have avoided the materialisation of the inherent risk of virus transmission:

- (i) from an infectious traveller to any worker; or
- (ii) from any worker to any other worker,

being risks which could not be avoided by the exercise of reasonable care;

Particulars

The inherent risk of virus transmission is the result of matters including that:

- A. persons infected with SARS-CoV-2 can transmit the virus prior to the onset of symptoms; and*
- B. some persons infected with SARS-CoV-2 are asymptomatic; and*
- C. persons isolating at their residence including in the circumstances alleged at FASOC paragraph 27(j3)(i), will transmit the virus to their co-residents (including those who were also workers).*

Cleaning and disinfection

(j4) say further as to the allegation in subparagraph 27(j4) it is embarrassing absent specification as to which workers were to be tasked with cleaning and in what circumstances. Under cover of that objection, the defendants say that cleaning and disinfection in the manner alleged in subparagraph 27(j4) could not have avoided the materialisation of the inherent risk of virus transmission:

- (i) from an infectious traveller to any worker; or
- (ii) from any worker to any other worker,

being risks which could not be avoided by the exercise of reasonable care for the reasons pleaded at subparagraphs 9(e)(ii), 27(b) and 27(c) above;

(j5) refer to and repeat subparagraph 27(j4) above;

Supervision and auditing

- (k) say further as to the allegation in subparagraph 27(k), that the allegation is unclear because there is no allegation as to what the supervision would entail and who would conduct it or in what manner;
 - (i) under cover of that objection, the defendants deny the allegation in subparagraph 27(k);
 - (ii) refer to and repeat paragraph 27A below; and
 - (iii) say further that the standard of care applicable to the hotel quarantine program did not include supervision of the kind alleged at subparagraph 27(k);
- (l) say further as to the allegation in subparagraph 27(l), that the allegation is unclear because there is no allegation as to what the auditing of compliance would entail and who would conduct it or in what manner or at what intervals;
 - (i) under cover of that objection, the defendants deny the allegation in subparagraph 27(l);
 - (ii) refer to and repeat paragraph 27A below; and
 - (iii) say further that the standard of care applicable to the hotel quarantine program did not include auditing of the kind alleged at subparagraph 27(l); and
- (m) deny the allegations in subparagraph 27(m) and refer to and repeat subparagraphs 27(k) and 27(l) above.

27AA. In response to the allegations in FASOC paragraph 27, the defendants say further that the hotel quarantine program for returned travellers was a policy decision made by the State in circumstances which included the following:

- (a) the National Cabinet decided on 27 March 2020 that from midnight on 28 March 2020 all international arrivals would be required to undertake mandatory quarantine (the **National Cabinet quarantine policy decision**);

- (b) the National Cabinet quarantine policy decision was then adopted by each of the States;
- (c) the State made a policy decision on or about 28 March 2020 in order to give effect to the National Cabinet quarantine policy decision by requiring international arrivals in Victoria to be detained in a hotel (the **hotel quarantine policy decision**);
- (d) the hotel quarantine policy decision was implemented by means including:
 - (i) the making of Direction and Detention Notices under the *Public Health Act* issued by authorised officers exercising their independent discretion, in light of the serious risk to public health, to require returned travellers to be detained for 14 days in specified hotels, commencing at midnight on 28 March 2020; and
 - (ii) the establishment of a number of hotels (ranging in number between 2 and 18 such hotels during the period between 28 March 2020 and 18 June 2020, with an average of ~~14~~ 11 hotel sites operative each day in that period), including the Rydges on Swanston in Carlton (**Rydges**) and the Stamford Plaza Hotel in Melbourne (**Stamford Plaza**) as places in which mandatory periods of quarantine could be served in accordance with Direction and Detention Notices (the **hotel quarantine program**); and
- (e) the hotel quarantine policy decision was made by the State:
 - (i) in order to implement the National Cabinet quarantine policy decision;
 - (ii) in urgent and unprecedented circumstances;
 - (iii) as part of the response to a global pandemic in respect of a novel virus;
 - (iv) in order to delay and/or slow the spread of the SARS-CoV-2 virus;
 - (v) in order to reduce the community transmission of the SARS-CoV-2 virus;
 - (vi) to flatten the curve in relation to the trajectory of cases of the SARS-CoV-2 virus;
 - (vii) for the purpose of protecting the public health and wellbeing of Victorians;

(viii) in the public interest; and

((i) to (viii) inclusive, together, constitute the **public health imperative**)

(f) the implementation of the hotel quarantine policy decision was affected by:

- (i) other policy decisions also made by the State which were made with the purpose of achieving the public health imperative, including policy decisions concerning the allocation of resources to the hotel quarantine program and elsewhere in Victoria to combat the spread of COVID-19; and
- (ii) directions (made by officers authorised under the *Public Health Act*) for the purpose of addressing public health risks posed by community transmission of COVID-19.

27A. In response to the allegations in FASOC paragraph 27, the defendants say further that during the relevant period alleged by the plaintiff (namely 30 March 2020 to 18 June 2020, the **plaintiff's relevant period**), the content of the standard of care applicable to the establishment and operation of a hotel quarantine program for returned travellers (the **applicable standard of care**) was not comprised of the matters alleged at FASOC paragraph 27 and was determined by a number of matters including each of the following matters and circumstances:

- (a) the hotel quarantine policy decision was made in response to a global pandemic;
- (b) the hotel quarantine program was established urgently, in order to implement the National Cabinet quarantine policy decision made on 27 March 2020, to commence operation from midnight on 28 March 2020;
- (c) the hotel quarantine policy decision was made for the purpose of the public health imperative;
- (d) the hotel quarantine policy decision was one of a number of measures implemented in Victoria for the purpose of “flattening the curve”, namely:
 - (i) delaying and/or slowing the spread of the SARS-CoV-2 virus; and

- (ii) reducing the community transmission of the SARS-CoV-2 virus;
- (e) the hotel quarantine program involved the establishment of a number of hotels (ranging in number between 2 and 18 such hotels during the period between 28 March 2020 and 18 June 2020, with an average of 11 ~~14~~ hotel sites operative each day in that period), including Rydges and Stamford Plaza as places in which mandatory periods of quarantine could be served in accordance with Direction and Detention Notices;
- (f) the state of knowledge (including medical and scientific research and knowledge) reasonably available to the defendants from time to time as to:
 - (i) the nature of the SARS-CoV-2 virus (and its different variants);
 - (ii) the modes of transmission of SARS-CoV-2, including airborne transmission;
 - (iii) the IPC measures that may be capable of reducing the likelihood of transmission of SARS-CoV-2; and
 - (iv) any divergences in expert opinion in relation to (i) to (iii) immediately above inclusive,

and the fact that the state of knowledge (including medical and scientific research and knowledge) in existence and reasonably available to the defendants evolved during the plaintiff's relevant period and after the plaintiff's relevant period;
- (f1) the reasonable requirements for testing, isolation and the supervision and/ or auditing of the same;
- (g) the nature of the IPC measures that could be implemented as part of the hotel quarantine program was dependent upon the use and allocation of finite levels of PPE and finite levels of human resources (in the form of doctors, nurses and persons with IPC expertise) available to be deployed at each quarantine hotel which were required to be allocated by the State in order to respond to a global pandemic in urgent circumstances and the State was required to undertake such allocation:

- (i) across the hotel quarantine program generally, and not just at Rydges and Stamford Plaza; and
- (ii) throughout Victoria, including in its hospitals, other health service providers, aged and disability care facilities operating in the State, prison system and youth justice facilities;
- (h) as at 18 June 2020, there had been approximately 17,535 people detained pursuant to the hotel quarantine program;
- (i) on each day in the period between 28 March 2020 and 18 June 2020, there were between approximately 466 and 3,886 returned travellers in detention at any one time as part of the hotel quarantine program; and
- (j) between 28 March 2020 and 18 June ~~17 July~~ 2020, ~~234~~ 183 cases of COVID-19 were detected in hotel quarantine among approximately 17,535 ~~20,000~~ returned travellers (1.2%).

Particulars

- ~~(1) During the period 28 March 2020 to 1 May 2020, approximately 8,344 returned travellers were admitted to hotel quarantine and 59 cases of COVID-19 were detected (of those persons tested) (0.7%).~~
- ~~(2) During the period 2 May 2020 to 17 July 2020, approximately 13,500 returned travellers were admitted to hotel quarantine and 175 cases of COVID-19 were detected (of those persons tested) (1.3%).~~

28. As to the allegations in paragraph 28, the defendants:

- (a) deny the allegations in subparagraph 28(a), and say further that the meaning of the phrase “increase the likelihood and/or risk of transmission of SARS-CoV-2 from returned travellers at quarantine hotels to workers” is unclear and incapable of being understood in the absence of an allegation as to each of:
 - (i) the background or prevailing likelihood and/or risk of transmission of SARS-CoV-2 from returned travellers in hotel quarantine to workers; and

- (ii) the degree of increase in that background or prevailing likelihood and/or risk of transmission of SARS-CoV-2 from returned travellers in hotel quarantine to workers which is alleged by the plaintiff to constitute increasing the likelihood and/or risk of that transmission; and
- (b) deny the allegations in subparagraph 28(b), and say further that the meaning of the phrase “the more substantial the failure” is unclear and incapable of being understood in the absence of an allegation by the plaintiff as to each of:
 - (i) the particular failure or failures alleged to be “substantial”; and
 - (ii) the manner in which each such alleged “substantial” failure is alleged to have constituted a breach by the defendants of the applicable standard of care.

D. PURPORTED DUTY OF CARE

DHHS and hotel quarantine

DHHS and quarantine hotels

29. As to the allegations in paragraph 29, the defendants:

- (a) admit that during the plaintiff’s relevant period:
 - (i) authorised officers, who were authorised by the Chief Health Officer under s 189 of the *Public Health Act* to exercise public health risk powers under s 190 and/or under s 199 of that Act to exercise emergency powers under s 200 of that Act, were present at quarantine hotels at times for the purpose of exercising powers under the *Public Health Act*;
 - (ii) for the purposes of the hotel quarantine program, DHHS sourced persons to a perform a role referred to as “Team Leader” at quarantine hotels;
 - (iii) DHHS engaged nurses, mental health nurses and doctors to provide services for the purposes of the hotel quarantine program at quarantine hotels; and
 - (iv) otherwise deny the allegation in subparagraph 29(a); and

(b)

- (i) say that the allegation in subparagraph 29(b) is embarrassing because no specific allegation is made in relation to:
 - (1) the meaning of “representatives of DHHS”;
 - (2) the particular role of the alleged representatives of DHHS;
 - (3) the specific hotel or hotels to which the allegation relates;
 - (4) the time at which the observation is alleged to have occurred within the plaintiff’s relevant period; and
 - (5) the person or persons whom it is alleged were observed by the representatives; and
- (ii) otherwise deny the allegation in subparagraph 29(b).

DHHS’s procurement of services at quarantine hotels

30. The defendants admit the allegations in paragraph 30.

PPE to certain workers at quarantine hotels

31. As to the allegations in paragraph 31, the defendants:

- (a) say that the paragraph is embarrassing, because no specific allegation is made which identifies:
 - (i) the quarantine hotel or hotels at which it is alleged that DHHS supplied PPE;
 - (ii) the role or roles of the “certain workers” to whom it is alleged PPE was provided;
 - (iii) the type of PPE the plaintiff alleges was provided by DHHS; and
 - (iv) when, during the plaintiff’s relevant period, it is alleged that DHHS supplied PPE;
- (b) admit that during the plaintiff’s relevant period DHHS supplied PPE:
 - (i) to nurses and mental health nurses engaged by it when providing services at

quarantine hotels;

- (ii) to doctors providing face to face services at quarantine hotels;
 - (iii) to Team Leaders onsite at quarantine hotels;
 - (iv) to authorised officers onsite at quarantine hotels; and
 - (v) from time to time, to security companies engaged by the State; and
- (c) otherwise deny the allegations in paragraph 31.

DJPR and hotel quarantine

32. As to the allegations in paragraph 32, the defendants:

- (a) admit that the State entered into agreements between 28 March 2020 and 28~~0~~ May 2020 with the companies that owned or operated 29 hotels to provide services in relation to hotel quarantine, including Rydges and Stamford Plaza;
- (b) say further that of the 29 hotels initially procured to provide services, 10 hotels were not ultimately used in the hotel quarantine program and three hotels which were initially used to provide services for the hotel quarantine program were ultimately discontinued;
- (c) say further that the Comfort Inn Richmond Henty was used to quarantine ship workers during the relevant period but did not accept any returned travellers during the plaintiff's relevant period;
- (d) otherwise deny the allegations in subparagraph 32(a); and
- (e) admit the allegation in subparagraph 32(b).

The defendants' knowledge

33. As to the allegations in paragraph 33, the defendants:

- (a) admit that each of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR knew or ought to have known of the matters pleaded in EASOC paragraphs 8, 16, 17, 24 and 26;

- (b) refer to and repeat the following paragraphs of this defence and admit that the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR knew or ought to have known of the matters pleaded therein:
 - (i) subparagraph 14(a);
 - (ii) paragraph 15;
 - (iii) subparagraphs 19(a) to 19(c) inclusive;
 - (iv) subparagraphs 20(a)(i) to 20(a)(iii) inclusive and 20(b)(i) to 20(b)(iii) inclusive;
 - (v) subparagraphs 21(a) to 21(c) inclusive;
 - (vi) subparagraphs 22(a)(i) to 22(a)(iii) inclusive and 22(b)(i) to 22(b)(iii) inclusive;
 - (vii) subparagraphs 23(a)(i) to 23(a)(iii) inclusive and 23(b)(i) to 23(b)(iii) inclusive;
 - (viii) subparagraphs 23(c) to 23(f) inclusive; and
 - (ix) subparagraph 25(a); and
 - (c) otherwise deny the allegations in paragraph 33.
34. As to the allegations in paragraph 34, the defendants:
- (a) admit that the Secretary of DHHS knew of the matters pleaded by the defendants in subparagraphs 29(a)(i) to 29(a)(iii) inclusive, save that she could not and did not know by 30 March 2020 the matters that occurred after 30 March 2020;
 - (b) deny that the Minister for Health knew of, or ought to have known, the matters pleaded by the defendants in subparagraphs 29(a)(i) to 29(a)(iii) inclusive by 30 March 2020; and
 - (c) otherwise deny the allegations in paragraph 34.
35. As to the allegations in paragraph 35, the defendants:
- (a) admit that, by 30 March 2020, the Minister for Jobs knew of the matters pleaded in EASOC subparagraph 32(a), save that he could not and did not know by 30 March 2020 the services of hotel operators that were procured after 30 March 2020; and

- (b) deny that the Minister for Jobs knew of, or ought to have known, the matters pleaded in FASOC subparagraph 32(b) by 30 March 2020.
36. The defendants admit the allegation in paragraph 36, save that the Secretary of DJPR could not and did not know by 30 March 2020 the services of hotel operators and the services of private security companies that were procured after 30 March 2020.
37. As to the allegations in paragraph 37, the defendants:
- (a) deny the allegations in subparagraph 37(a), refer to and repeat subparagraphs 9(e)(ii), 27(b), 27(c), and paragraphs 27AA and 27A above, and say further that:
 - (i) the implementation of the IPC measures described in FASOC paragraph 27 was not necessary to discharge the applicable standard of care, if any, for the implementation of the hotel quarantine program;
 - (ii) there always existed a substantial, or alternatively not insignificant, risk that COVID-19 would spread from returned travellers at quarantine hotels to workers at those hotels and from infected workers to other members of the community; and
 - (iii) the decision whether or not to make a direction or directions (and as to the content of any direction so made) in response to transmission of COVID-19 in the community was an independent decision of authorised officers, authorised under s 199 of the *Public Health Act* to exercise emergency powers under s 200 of that Act, and not a decision for any or all of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, or the Secretary of DJPR;
 - (b) the defendants deny the allegations in subparagraph 37(b); and
 - (c) the defendants deny the allegation in subparagraph 37(c).

Alleged vulnerability of the plaintiff and Group Members

38. As to the allegations in paragraph 38, the defendants:

- (a) deny the allegation in subparagraph 38(a); and
- (b) deny the allegation in subparagraph 38(b), and say further that:
 - (i) directions that were imposed or re-imposed were made by authorised officers exercising independent powers under the *Public Health Act*;
 - (ii) no absence of reasonable care on the part of those authorised officers led to the imposition or reimposition of directions made under that Act, nor is any absence of reasonable care alleged against such authorised officers; and
 - (iii) the extent of the vulnerability of the plaintiff or of any Group Member to economic loss following the imposition or reimposition of directions by authorised officers depended upon various factors including:
 - (1) decisions made and steps taken by the plaintiff and/or Group Members about the operation of their business during the plaintiff's relevant period and after the directions were made, including in relation to offering online and delivery services to customers;
 - (2) access to State and Commonwealth government financial support packages including, for example, the State's Business Support Fund (round 1), the State's payroll tax reimbursement for small and medium businesses for the 2019-20 financial year, and the Commonwealth's JobKeeper payments; and
 - (3) the operation of any applicable insurance policies, to the extent that the policies permitted recovery for business interruption losses caused by the restrictions imposed in response to the COVID-19 pandemic.

Purported duty of care to avoid economic loss

39. The defendants deny the allegations in paragraph 39, and say further that:

- (a) the defendants did not owe the plaintiff and/or Group Members a duty to take reasonable care in relation to the implementation of IPC measures at quarantine hotels to avoid foreseeable economic loss to the plaintiff and/or Group Members (the **purported duty of care to avoid economic loss**);
- (b) the purported duty of care to avoid economic loss was not owed by the defendants because the imposition of such a duty of care would have constrained the State (and/or each or all of the second to fifth defendants) in the exercise of its (and/or their) powers to make policy decisions in the public interest and in the interests of the Victorian community generally for the purpose of the public health imperative;
- (c) the purported duty of care to avoid economic loss would have required the State (and/or each or all of the second to fifth defendants) to act in favour of the economic interests of one group in the Victorian community, rather than in what it (and/or they) determined to be in the public interest and in the interests of the Victorian community for the purpose of the public health imperative;
- (d) the implementation of the IPC measures alleged by the plaintiff is inextricably linked to the hotel quarantine policy decision made by the State (and/or each or all of the second to fifth defendants) for the purpose of the public health imperative;
- (e) the merits of the hotel quarantine policy decision are non-justiciable;
- (f) the merits of the public health imperative are non-justiciable;
- (g) the merits of the policies adopted for the purposes of the public health imperative are non-justiciable;
- (h) the imposition of the purported duty of care to avoid economic loss would create incoherence in the law because it would distort the performance of the functions of

authorised officers who exercise emergency powers under s 200 of the *Public Health Act* and who would be constrained in the proper exercise of those powers;

- (i) the imposition of the purported duty of care to avoid economic loss would create incoherence in the law because it is inconsistent with the specific provision in s 204 of the *Public Health Act*, which confines the basis upon which compensation is payable to circumstances where there were insufficient grounds for the Chief Health Officer to authorise the authorised officers with emergency powers under s 200 of the *Public Health Act*;
- (j) the imposition of the purported duty of care to avoid economic loss would create incoherence in the law because it would distort the functions of authorised officers who:
 - (i) exercise emergency powers under s 200 of the *Public Health Act*; and
 - (ii) in relation to people affected by the exercise of powers which are administrative in character, are required to both act compatibly with human rights and, in making a decision, give proper consideration to relevant human rights, including the rights protected by s 9 (right to life), s 12 (freedom of movement) and s 21 (liberty and security) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic);
- (k) the imposition of the purported duty of care to avoid economic loss would give rise to indeterminate liability for economic loss on the part of the defendants; ~~and~~
- (l) the portfolio functions of the second to fifth defendants required the performance of a broad range of functions and activities, each required to be performed and exercised in the public interest; and
- (m) the purported duty of care to avoid economic loss was not owed by the second to fifth defendants because the nature of their powers and functions was such that the second

to fifth defendants lacked control over the risk and/or the cause of the harm.

Particulars

- (1) *Wrongs Act 1958 (Vic), s 83.*
- (2) *As to paragraph (m), by reason of the nature of their powers and functions as Ministers of the Crown in a Westminster system of government (in the case of the second and third defendants) and Secretaries of Departments appointed under the Public Administration Act 2004 (Vic) (in the case of the fourth and fifth defendants), none of the second to fifth defendants had practical control over, oversight of, and/or responsibility for:*
 - A. operational decisions made in relation to, or affecting, the Hotel Quarantine Program;*
 - B. the formulation and/or deployment of IPC measures to be adopted in the Hotel Quarantine Program,**and relied upon officers of their Departments to identify and escalate to them material risks and issues relating to the Hotel Quarantine Program as and when they arose.*

What the purported duty of care is alleged to have required of the defendants

40. The defendants refer to and repeat paragraphs 4 to 7, 37 and 39 above and deny the allegations in paragraph 40, and say further that the precautions pleaded at paragraph 40 of the FASOC were not precautions that:

- (a) a reasonable Minister for Health or a reasonable Minister for Jobs would have taken in all the circumstances, including given the nature of their powers and functions as Ministers of the Crown in a Westminster system of government; and
- (b) a reasonable Secretary of DHHS or a reasonable Secretary of DJPR would have taken in all the circumstances, including given the nature of their powers and functions as Secretaries of Departments appointed under the *Public Administration Act 2004* (Vic).

Particulars

Wrongs Act 1958 (Vic), s 48(1)(c)

E. ALLEGED BREACHES OF PURPORTED DUTY

Rydges commences operation as a quarantine hotel

41. The defendants admit the allegation in paragraph 41, but say further that the agreement was between the State and Charlor Pty Ltd (**Charlor**), and further say that during the plaintiff's relevant period the agreement was varied on 22 April 2020 and 23 May 2020.

Particulars

- (1) *Agreement for the provision of accommodation, between the State and Charlor, 30 March 2020.*
- (2) *Extension and variation of the agreement for the provision of accommodation, 22 April 2020.*
- (3) *Extension and variation of the agreement for the provision of accommodation, 23 May 2020.*

42. The defendants admit the allegation in paragraph 42.
43. The defendants admit the allegation in paragraph 43, but say further that the agreement for the provision of services was between the State and Unified Security Group (Australia) Pty Ltd (**Unified Security**).

Particulars

Agreement for services, between the State and Unified Security, 9 April 2020.

44. The defendants admit the allegation in paragraph 44.

Stamford Plaza commences operation as a quarantine hotel

45. The defendants admit the allegation in paragraph 45, but say further that the agreement was between the State and SPM (1994) Pty Ltd and further say that during the plaintiff's relevant period the agreement was varied on 15 May 2020 and 16 June 2020.

Particulars

- (1) *Agreement for the provision of accommodation, between the State and SPM (1994) Pty Ltd, 11 April 2020.*
- (2) *Extension and variation of the agreement for the provision of accommodation, 15 May 2020.*
- (3) *Extension and variation of the agreement for the provision of*

accommodation, 16 June 2020.

46. The defendants admit the allegation in paragraph 46.
47. The defendants admit the allegation in paragraph 47, but say further that the agreement for the provision of services was between the State and MSS Security Pty Ltd (**MSS Security**).

Particulars

Agreement for the provision of services, between the State and MSS Security, on or around 22 April 2020.

Alleged breaches of purported duty: Minister for Health and Secretary of DHHS

48. The defendants deny the allegations in paragraph 48, refer to and repeat subparagraphs 9(e)(ii), 27(a), 27(b) and 27(c) and paragraphs 39 and 40 above, and say further that it was not possible to prevent the transmission of SARS-CoV-2 from returned travellers at quarantine hotels to workers, or to prevent the transmission of SARS-CoV-2 between workers at quarantine hotels.

Alleged breaches of purported duty: Minister for Jobs and Secretary of DJPR

49. The defendants deny the allegations in paragraph 49 and refer to and repeat paragraph 48 above.

F. ALLEGED CAUSATION AND LOSS

First wave subsidies and restrictions are eased

50. The defendants admit the allegation in paragraph 50.
51. As to the allegations in paragraph 51, the defendants:
 - (a) admit that the Premier of Victoria made an announcement on 11 May 2020 that, from 11:59pm on 12 May 2020, Victorians would be permitted to leave home to visit friends and family with a maximum gathering of up to 10 people outdoors and up to five visitors at home;
 - (b) refer to and rely on the full terms of the announcement; and
 - (c) otherwise deny the allegations in paragraph 51.

52. As to the allegations in paragraph 52, the defendants:
- (a) admit that an announcement was made by the Victorian government on 17 May 2020 referring to a proposed staged plan to reopen restaurants and cafes, in that those businesses were to be able to resume dine-in service from 1 June 2020 (with up to 20 patrons per enclosed space) and from 22 June 2020 (with up to 50 patrons per enclosed space);
 - (b) refer to and rely on the full terms of the announcement; and
 - (c) otherwise deny the allegations in paragraph 52.
53. The defendants admit the allegations in paragraph 53, but refer to and rely on the full terms of the announcement and say further that as at 24 May 2020 the DHHS webpage entitled “Victoria’s restriction levels” included statements that: “[t]he Victorian Government has announced the gradual easing of restrictions ...” and that “[f]rom 1 June gradual easing of restrictions is planned for social events and ceremonies, fitness, sport and recreation, personal services, cafes and restaurants, travel and leisure, culture and entertainment”.
54. As to the allegations in paragraph 54, the defendants:
- (a) admit that the *Stay Safe Directions* were made on 31 May 2020 in order to address the serious public health risk posed to Victoria by COVID-19;
 - (i) refer to and rely on the full terms and effect of that instrument; and
 - (ii) otherwise deny the allegation in subparagraph 54(a);
 - (b) admit that the *Restricted Activity Directions (No 9)* were made on 31 May 2020 in order to restrict the operation of certain businesses and undertakings in order to limit the spread of COVID-19;
 - (c) refer to and rely on the full terms and effect of that instrument; and
 - (d) otherwise deny the allegation in paragraph 54.

Particulars

*Victoria Government Gazette, No. S 267, 1 June 2020, pages 18-32;
pages 33-37.*

55. As to the allegations in paragraph 55, the defendants:
- (a) admit that the *Restricted Activity Directions (No 10)* were made on 21 June 2020 in order to restrict the operation of certain businesses and undertakings in order to limit the spread of COVID-19;
 - (b) refer to and rely on the full terms and effect of that instrument; and
 - (c) otherwise deny the allegations in paragraph 55.

Particulars

Victoria Government Gazette, No. S 297, 22 June 2020, pages 25-44.

Alleged tasks performed at Rydges by private security guards and hotel staff

56. As to the allegations in paragraph 56, the defendants:
- (a) admit the allegation in subparagraph 56(a), and say further that:
 - (i) fresh air breaks required the permission of an authorised officer; and
 - (ii) the defendants deny that any of the six security guards (the subject of the allegations in paragraphs 70, 71, 72, 73 and 75) took any member of the family of four (the subject of allegations in paragraphs 67, 68 and 69) for a fresh air break, or otherwise supervised a fresh air break taken by any member of the family of four;

Particulars

- (1) *The family of four was permitted to take a fresh air break on 18 May 2020 at around 11:30am.*
- (2) *Five of the six security guards were not rostered to work at Rydges on 18 May 2020.*
- (3) *The sixth security guard was rostered to work at Rydges on 18 May 2020, but was not rostered to commence work until 6pm.*

- (b) admit the allegation in subparagraph 56(b), and say further that:
- (i) the agreement for the provision of services referred to in paragraph 43 above required that the security services Unified Security was to supply included responding to routine and emergency incidents; and
 - (ii) a private security guard engaged by Unified Security (or engaged by the companies to which Unified Security subcontracted the provision of its services) to work at Rydges (together, **Rydges guards**) performed that service at Rydges, at least once;
 - (iii) but say that while there were attendances at the room in which the family of four (the subject of allegations in paragraphs 67, 68 and 69) was staying at Rydges, the defendants deny that any of the six security guards (the subject of the allegations in paragraphs 70, 71, 72, 73 and 75) attended that room;

Particulars

- (1) *On 17 May 2020, nurses attended the room in which the family of four was staying.*
 - (2) *On 18 May 2020, a midwife attended the room in which the family of four was staying.*
 - (3) *On 19 May 2020, nurses attended the room in which the family of four was staying.*
- (c) admit the allegation in subparagraph 56(c), but say further that:
- (i) the agreement for the provision of services referred to in paragraph 43 above required that the security services Unified Security was to supply included assisting with luggage if returned travellers required that assistance;
 - (ii) from time to time, Rydges guards performed that service at Rydges; and
 - (iii) the defendants deny that any of the six security guards (the subject of the allegations in paragraphs 70, 71, 72, 73 and 75) handled the luggage of the family of four (the subject of allegations in paragraphs 67, 68 and 69) at Rydges;

- (d) deny the allegation in subparagraph 56(d), and say further that:
 - (i) the agreement for the provision of services referred to in paragraph 43 above did not require Unified Security to provide cleaning services; and
 - (ii) on 27 May 2020, after the Rydges outbreak, private security guards engaged by Unified Security were observed cleaning surfaces in common areas at Rydges; and
 - (e) say further that while Rydges guards did from time to time perform tasks of the kind alleged at subparagraphs 56(a) to 56(c) inclusive, it is denied that any of the transmission events alleged at EASOC paragraph 79 were caused by any of the six security guards (the subject of the allegations in paragraphs 70, 71, 72, 73 and 75) doing any of the things alleged at paragraph 56.
57. As to the allegations in paragraph 57, the defendants:
- (a) admit the allegation in subparagraph 57(a), and say further that:
 - (i) the cleaning of hotel rooms following the exit of a COVID-19 positive case from Rydges was undertaken by a cleaning company, Ikon Services Australia; and
 - (ii) the defendants deny that the hotel worker (the subject of the allegations in paragraph 70) cleaned any surface at the hotel on a day that it could have been touched by any member of the family of four (the subject of allegations in paragraphs 67, 68 and 69);

Particulars

- (1) *On 15 May 2020, the family of four arrived at Rydges. The hotel worker did not work at Rydges on that day.*
- (2) *On 18 May 2020, the family of four went on a fresh air walk. The hotel worker did not work at Rydges on that day.*
- (3) *On 25 May 2020, the family of four departed Rydges. The hotel worker did not work at Rydges on that day.*

- (b)
 - (i) admit that at least one member of the staff engaged by the operator of Rydges (**Rydges staff**) removed double bagged rubbish left by COVID-19 positive cases;
 - (ii) admit that this occurred prior to 25 May 2020; and
 - (iii) otherwise deny the allegations in subparagraph 57(b);
- (c) the defendants deny that the hotel worker the subject of the allegations in paragraph 70 removed rubbish from the room in which the family of four was staying at Rydges; and
- (d) say further that they deny that any of the transmission events alleged at FASOC paragraph 79 were caused by the one hotel worker (the subject of the allegations in paragraph 70) doing any of the things alleged at paragraph 57.

Allegations as to IPC standards at Rydges prior to the outbreak

Training

58. As to the allegations in paragraph 58, the defendants:

- (a) say that the paragraph is embarrassing because of the rolled up nature of the allegations made in relation to numerous Rydges guards and numerous Rydges staff in the period prior to 25 May 2020;

Particulars

- (1) *Over 250 Rydges guards worked at Rydges from 12 April to 30 June 2020.*
 - (2) *Approximately 20 Rydges staff were involved in the hotel quarantine program.*
- (b) refer to and repeat paragraphs 27, 27AA and 27A above, and say further that the training alleged in FASOC subparagraphs 27(a), ~~and~~ 27(b) and 27(j5) was not necessary to be implemented as part of the content of the standard of care applicable to the establishment and operation of a hotel quarantine program with the features pleaded

in paragraphs 27AA and 27A above;

- (c) subject to the matters pleaded in subparagraph 60(c) below, say further that before 25 May 2020 steps were taken in relation to the training of Rydges guards and Rydges staff, including the following:
- (i) Unified Security were informed by DJPR that the private security guards engaged by it to work at Rydges were required to complete the Commonwealth's COVID-19 Online Training Course;

Particulars

The Commonwealth's COVID-19 Online Training Course was entitled "How to protect yourself and the people you are caring for from infection with COVID-19" and covered four topics: COVID-19 – what is it?; signs and symptoms; keeping safe – protecting yourself and others; and myth busting.

- (ii) Rydges guards also received "on-the-job" training and guidance:
- (1) from nurses onsite;
 - (2) in the course of daily site meetings onsite, by the attendees of those meetings; and
 - (3) other written advice, such as posters;
- (iii) Rydges staff undertook and received training in PPE usage, hand hygiene and physical distancing; and

Particulars

For example, in around late March 2020/early April 2020 before returned travellers arrived at Rydges, the General Manager of Rydges:

- (1) *provided senior managers with a toolkit entitled "Coronavirus (COVID-19) Toolkit Hotels (General Managers)" and advised senior managers at Rydges to share the information with their teams;*
- (2) *sent an email to all Rydges staff attaching a memorandum on social distancing and a guide on cleaning and disinfecting and specified that staff must follow the guidelines; and*

(3) *prepared a number of standard operating procedures concerning the tasks of Rydges staff, such as the checking in of guests,*
and, once the hotel started receiving returned travellers, Rydges staff received “on-the-job” training.

(d) otherwise deny the allegations in paragraph 58.

59. As to the allegations in paragraph 59, the defendants do not know and cannot say what the Rydges guards (or some or all of them) and the Rydges staff (or some or all of them) did or did not “understand” and otherwise deny the allegations in paragraph 59.

PPE usage

60. As to the allegations in paragraph 60, the defendants:

(a) say that the paragraph is embarrassing because of the rolled up nature of the allegations made in relation to numerous Rydges guards and numerous Rydges staff in the period prior to 25 May 2020;

Particulars

The defendants refer to and repeat the particulars to subparagraph 58(a) above.

(b) refer to and repeat paragraphs 27, 27AA and 27A above, and say further that the manner of PPE usage alleged in FASOC subparagraphs 27(c) to 27(h) inclusive was not necessary to discharge the standard of care applicable to the establishment and operation of a hotel quarantine program with the features pleaded in paragraphs 27AA and 27A above; and

(c) say further that PPE supply to, and training of, Rydges guards and Rydges staff was not the responsibility of the defendants:

(i) as a term of the agreement with Unified Security, the State required that the company provide all necessary PPE equipment and training in IPC for its guards; and

Particulars

- (1) *Clause 6.2 of the agreement between the State and Unified Security.*
 - (2) *The defendants refer to and repeat the particulars to subparagraph 43 and subparagraph 58(c)(i) above.*
- (ii) Charlor was responsible for training Rydges staff in PPE usage and steps were taken to provide that training; and

Particulars

The defendants refer to and repeat the particulars to subparagraph 58(c)(iii) above.

- (d) otherwise deny the allegations in paragraph 60.
61. As to the allegations in paragraph 61, the defendants:
- (a) say that subparagraph 61(a) is embarrassing because of the rolled up nature of the allegations made in respect of the conduct of numerous Rydges guards on each of their shifts on each day of hotel quarantine prior to 25 May 2020 and because the meaning of the term “often” is unclear and incapable of being understood;
 - (b) say that subparagraph 61(b) is embarrassing because of the rolled up nature of the allegations made in respect of the conduct of numerous Rydges staff on each of their shifts on each day of hotel quarantine prior to 25 May 2020;
 - (c) refer to and repeat subparagraphs 58(c) and 60(c) above; and
 - (d) otherwise deny the allegations in paragraph 61.

Hand hygiene

62. As to the allegations in paragraph 62, the defendants:
- (a) refer to and repeat subparagraph 27AAA(i) above, and say further that paragraph 62 is embarrassing because of the rolled up nature of the allegations made in respect of the conduct of numerous Rydges guards and Rydges staff on each of their shifts on each day of hotel quarantine prior to 25 May 2020 and the meaning of the term “regularly”

is unclear and incapable of being understood;

- (b) refer to and repeat paragraphs 27, 27AA and 27A above, and say further that the manner of hand hygiene alleged in FASOC subparagraph 27(i) was not necessary to implement as part of the content of the standard of care applicable to the establishment and operation of a hotel quarantine program with the features pleaded in paragraphs 27AA and 27A above;
- (c) refer to and repeat subparagraphs 58(c) and 60(c) above; and
- (d) otherwise deny the allegations in paragraph 62.

Supervision and auditing

63. As to the allegations in paragraph 63, the defendants:

- (a) refer to and repeat paragraphs 27AA and 27A above, and say further that each of the:
 - (i) supervision measure alleged at FASOC subparagraph 27(k);
 - (ii) auditing measure alleged at FASOC subparagraph 27(l); and
 - (iii) rectification measure alleged at FASOC subparagraph 27(m),
 were not necessary to be implemented as part of the content of the standard of care applicable to the establishment and operation of a hotel quarantine program with the features pleaded in paragraphs 27AA and 27A above;
- (b) say further that prior to 25 May 2020, supervision and auditing of the implementation of IPC measures was carried out at Rydges; and

Particulars

For example, IPC consultants, Infection Prevention Australia, were engaged by DHHS to audit the policies, procedures and implementation of IPC at quarantine hotels.

On 11 April 2020, Infection Prevention Australia undertook a site visit to Rydges and subsequently advised on IPC measures for the operation of Rydges.

- (1) *In mid-late April 2020, Infection Prevention Australia conducted reviews of the IPC processes and PPE arrangements at quarantine hotels, including at Rydges.*

- (2) *Infection Prevention Australia provided a summary of findings dated 5 May 2020 to DHHS.*
- (3) *Infection Prevention Australia was engaged again on 17 May 2020 to undertake a review of IPC and PPE use by healthcare workers across a number of quarantine hotels and performed extra random checks at Rydges to check continued compliance of the Rydges guards' use of PPE.*

Before 25 May 2020:

- (4) *Rydges guards were supervised by persons engaged by Unified Security;*
- (5) *further supervision of workers at Rydges was provided by nurses onsite at Rydges; and*
- (6) *reminders as to IPC measures were provided in the course of site meetings by participants in those meetings, including DHHS Team Leaders and authorised officers.*

- (c) say further that prior to 25 May 2020 there were insufficient resources in the form of doctors, nurses and persons with IPC expertise available to be stationed at each quarantine hotel to supervise the implementation of IPC measures or to audit the implementation of IPC measures at all times; and
- (d) otherwise deny the allegations in paragraph 63.

Advice as to IPC measures

64. As to the allegations in paragraph 64, the defendants:

- (a) admit that guidelines entitled “PPE Advice for Hotel-Based Security Staff & AOs in Contact with Quarantined Clients” were approved on 5 May 2020 (the **May 2020 PPE Guidelines**) and provided to Unified Security on 12 May 2020;
- (b) otherwise deny the allegations in paragraph 64; and
- (c) subject to the matters pleaded in subparagraph 60(c) above, say further that Rydges guards also received “on-the-job” training and guidance:
 - (i) from nurses onsite;
 - (ii) from other workers onsite, including in the course of daily site meetings; and
 - (iii) other written advice, such as posters.

65. As to the allegations in paragraph 65, the defendants:

(a)

- (i) admit that returned travellers first arrived for quarantine detention at Rydges on 12 April 2020;
- (ii) admit that the May 2020 PPE Guidelines were provided to Unified Security on 12 May 2020;
- (iii) refer to and repeat subparagraphs 58(c) and 60(c) above; and
- (iv) otherwise deny the allegations in subparagraph 65(a); and

(b)

- (i) say that the content of the May 2020 PPE Guidelines must be assessed by having regard to the state of knowledge reasonably available to the defendants as at May 2020 in respect of the matters set out in subparagraph 27A(f) above; and
- (ii) otherwise deny the allegation in subparagraph 65(b).

66. The defendants deny the allegations in paragraph 66, and, subject to the matters pleaded in subparagraph 60(c) above, say further that advice was provided by the Victorian government to Rydges as to the IPC measures to be observed by Rydges staff.

Particulars

For example:

- (1) *In April 2020, before the arrival of the first returned travellers, DHHS provided information to Rydges that asked staff to assume that all quarantine guests were COVID-19 positive. The information included advice as to maintaining distance from returned travellers when delivering meals to rooms and the requirement to wear PPE.*
- (2) *Also in April 2020, IPC consultants engaged by DHHS arranged for PPE stations to be placed around the hotel and provided posters and instructions as to how to correctly don and doff PPE. The information provided by the consultants included a document entitled “COVID-19 Mandatory Quarantine PPE Advice for Hotel Security Staff and AOs in Contact with Quarantined Individuals, Version 2.1”, which was used to provide training to Rydges staff.*

66A. The defendants say further that if the defendants owed the plaintiff and/or Group Members

the purported duty of care to avoid economic loss (which is denied), then the steps set out at paragraphs 58 to 66 above were sufficient to discharge the applicable standard of care (which was not the standard of care for the implementation of IPC measures alleged by the plaintiff at EASOC paragraph 27).

Outbreak at Rydges

Family of four arrives at Rydges

- 67. As to the allegation in paragraph 67, the defendants admit the allegations in paragraph 67, save that they say only one of the family members had tested positive for COVID-19 as at 15 May 2020.
- 68. The defendants admit the allegation in paragraph 68, save that they say two more family members tested positive for COVID-19 on 17 May 2020.
- 69. As to the allegation in paragraph 69, the defendants admit the allegation in paragraph 69, save that they say the fourth family member tested positive for COVID-19 on 19 May 2020.

Epidemiological links to Rydges

- 70. The defendants admit the allegation in paragraph 70.
- 71. The defendants admit the allegation in paragraph 71.
- 72. The defendants admit the allegation in paragraph 72.
- 73. The defendants admit the allegation in paragraph 73.
- 74. The defendants admit the allegation in paragraph 74.
- 75. The defendants admit the allegation in paragraph 75.
- 76. The defendants admit the allegations in paragraph 76.

Genomic links to Rydges

- 77. The defendants admit the allegation in paragraph 77.
- 78. The defendants admit the allegation in paragraph 78.

Workers at Rydges test positive for COVID-19

79. As to the allegations in paragraph 79, the defendants:

- (a) admit that:
 - (i) before 25 May 2020, each member of the family of four was diagnosed with COVID-19;
 - (ii) between 26 May 2020 and 8 June 2020, the six private security guards and one hotel worker identified in FASOC paragraphs 70, 71, 72, 73 and 75 were also diagnosed with COVID-19; and
 - (iii) these cases were epidemiologically linked; and
- (b) otherwise deny the allegations in paragraph 79, and say further that ~~the tasks performed by the Rydges guards and Rydges staff pleaded at ASOC paragraphs 56 and 57 do not~~ either on their own or in combination with the epidemiological and genomic data pleaded in FASOC paragraphs 70 to 78 do not permit the drawing of the inference particularised ~~at paragraphs (1)(A) and (B) of the particulars to ASOC paragraph 79.~~ in Schedule 1 in respect of FASOC paragraph 79 at (2), namely that transmission was by direct contact, droplets, short-range aerosols or indirect contact (through fomites).

79A As to the allegations in paragraph 79A, the defendants:

- (a) admit that the genomic data is consistent with transmission between Rydges workers of a strain of SARS-CoV-2 and otherwise deny the allegations in paragraph 79A; and
- (b) say further that the epidemiological and genomic data pleaded in FASOC paragraphs 70 to 78 do not permit the drawing of the inference particularised in Schedule 1 in respect of FASOC paragraph 79A at (2), namely that transmission was by direct contact, droplets, short-range aerosols or indirect contact (through fomites).

Alleged tasks performed at Stamford Plaza by private security guards

80. As to the allegations in paragraph 80:

- (a) the defendants admit the allegation in subparagraph 80(a), and say further that:
 - (i) the agreement for the provision of services referred to in paragraph 47 above required MSS Security to provide services which included supporting fresh air breaks for returned travellers;
 - (ii) fresh air breaks required the permission of an authorised officer;
 - (iii) the defendants deny that either of the returned traveller couple (the subject of the allegations in paragraphs 91 and 92) took a fresh air break while staying at Stamford Plaza; and
 - (iv) the defendants deny that any of the security guards (the subject of the allegations in paragraph 95(a)) escorted the returned traveller (the subject of the allegations in paragraph 90) on a fresh air break;
- (b) the defendants admit the allegations in subparagraph 80(b) and say that:
 - (i) the agreement for the provision of services referred to in paragraph 47 above required MSS Security to supply services, including to respond to routine and emergency incidents;
 - (ii) private security guards engaged by MSS Security (or engaged by the subcontractors engaged by MSS Security) to work at Stamford Plaza (**Stamford guards**) performed that service at Stamford Plaza, at least once; and
 - (iii) the defendants deny that any of the returned travellers (the subject of allegations in paragraphs 90 and 91) created a disturbance in their rooms to which any response was required while staying at Stamford Plaza;
- (c) the defendants admit the allegations in subparagraph 80(c) and say that:
 - (i) the agreement for the provision of services referred to in paragraph 47 above required that the security services MSS Security was to supply included assisting with luggage if returned travellers required that assistance; and

- (ii) from time to time, Stamford guards performed that service at Stamford Plaza;
and
- (d) say further that while Stamford guards did from time to time perform tasks of the kind alleged at subparagraphs 80(a) to 80(c) inclusive, it is denied that any of the transmission events alleged at FASOC paragraph 99 were caused by any of the security guards (referred to in subparagraph 95(a) below) doing any of the things alleged at paragraph 80.

Alleged IPC standards at Stamford Plaza prior to the outbreaks at that hotel

Training

81. As to the allegations in paragraph 81, the defendants:

- (a) say that the paragraph is embarrassing because of the rolled up nature of the allegations made in relation to numerous Stamford guards in the period prior to 18 June 2020;

Particulars

An average of almost 70 guards employed by MSS Security worked at Stamford Plaza each day during the plaintiff's relevant period.

- (b) refer to and repeat paragraphs 27, 27AA and 27A above, and say further that the training alleged in FASOC subparagraphs 27(a), ~~and~~ 27(b) and 27(j5) was not necessary to be implemented as part of the content of the standard of care applicable to the establishment and operation of a hotel quarantine program with the features pleaded in paragraphs 27AA and 27A above; and
- (c) say further, subject to the matters pleaded in subparagraph 83(c) below, that before 18 June 2020 steps were taken in relation to the training of Stamford guards, including the following:
 - (i) MSS Security guards received some training as recommended, or provided, by MSS Security for MSS Security guards working at events before the start of

hotel quarantine;

- (ii) MSS Security was informed by DJPR that the private security guards engaged by it to work at Stamford Plaza were required to complete the Commonwealth's COVID-19 Online Training Course; and

Particulars

The Commonwealth's COVID-19 Online Training Course was entitled "How to protect yourself and the people you are caring for from infection with COVID-19" and covered four topics: COVID-19 – what is it?; signs and symptoms; keeping safe – protecting yourself and others; and myth busting.

- (iii) Stamford guards also received "on-the-job" training and guidance:
 - (1) from nurses onsite;
 - (2) in the course of daily site meetings onsite, by the attendees of those meetings; and
 - (3) other written advice, such as posters; and
- (iv) MSS Security sent out weekly text message updates on safety to its employees, providing links to government websites with safety information on COVID-19 and its prevention; and

(d) otherwise deny the allegations in paragraph 81.

82. As to the allegations in paragraph 82, the defendants:

- (a) do not know and cannot say what the Stamford guards (or some or all of them) did or did not understand; and
- (b) otherwise deny the allegations in paragraph 82.

PPE usage

83. As to the allegations in paragraph 83, the defendants:

- (a) say that the paragraph is embarrassing because of the rolled up nature of the allegations made in relation to numerous Stamford guards in the period prior to 18 June 2020;

Particulars

The defendants refer to and repeat the particulars to subparagraph 81(a) above.

- (b) refer to and repeat paragraphs 27, 27AA and 27A above, and say further that the manner of PPE usage alleged in EASOC subparagraphs 27(c) to 27(h) inclusive was not necessary to be implemented as part of the content of the standard of care applicable to the establishment and operation of a hotel quarantine program with the features pleaded in paragraphs 27AA and 27A above;
- (c) say further that PPE supply to, and training of, Stamford guards was not the responsibility of the defendants:
 - (i) as a term of the agreement with MSS Security, the State required that the company:
 - (1) provide all necessary PPE to be worn by guards in accordance with the relevant public health standards, including in relation to COVID-19; and
 - (2) ensure that all personnel were suitably trained to use it and steps were taken to provide that training; and

Particulars

- (1) *Clause 3.12 and Schedule 14 of the Purchase Order Contract for the Provision of Services between the State and MSS Security.*
 - (2) *The defendants refer to and repeat subparagraph 47 and subparagraph 81(c) above.*
 - (d) otherwise deny the allegations in paragraph 83.
84. As to the allegations in paragraph 84, the defendants:
- (a) say that the paragraph 84 is embarrassing because of the rolled up nature of the allegations made in respect of the conduct of numerous Stamford guards on each of their shifts on each day of hotel quarantine prior to 18 June 2020;

- (b) say that the meaning of the term “often” as pleaded in subparagraph 84(a) is unclear and incapable of being understood; and
- (c) otherwise deny the allegations in paragraph 84.

Hand hygiene

85. As to the allegations in paragraph 85, the defendants:

- (a) refer to and repeat subparagraph 27AAA(i) above, and say further that paragraph 85 is embarrassing because of the rolled up nature of the allegations made in respect of the conduct of numerous Stamford guards on each of their shifts on each day of hotel quarantine prior to 18 June 2020 and the meaning of the term “regularly” is unclear and incapable of being understood;
- (b) refer to and repeat paragraphs 27, 27AA and 27A above, and say further that the manner of hand hygiene alleged in EASOC subparagraph 27(i) was not necessary to be implemented as part of the content of the standard of care applicable to the establishment and operation of a hotel quarantine program with the features pleaded in paragraphs 27AA and 27A above;
- (c) refer to and repeat subparagraphs 81(c) and 83(c) above; and
- (d) otherwise deny the allegations in paragraph 85.

Physical distancing

86. As to the allegations in paragraph 86, the defendants:

- (a) say that the paragraph is embarrassing because of the rolled up nature of the allegations made in respect of the conduct of numerous Stamford guards on each of their shifts on each day of hotel quarantine prior to 18 June 2020 and the meaning of the term “regularly” is unclear and incapable of being understood;
- (b) refer to and repeat paragraphs 27, 27AA and 27A above, and say further that the manner of physical distancing alleged in EASOC subparagraph 27(j) was not necessary to be

implemented as part of the content of the standard of care applicable to the establishment and operation of a hotel quarantine program with the features pleaded in paragraphs 27AA and 27A above;

- (c) say further that there were tasks and functions required to be performed by the Stamford guards which did not permit the maintenance of physical distancing; and

Particulars

The defendants refer to and repeat the particulars to subparagraph 27AAA(ja) above.

- (d) otherwise deny the allegations in paragraph 86.

Supervision and auditing

87. As to the allegations in paragraph 87, the defendants deny the allegations and:

- (a) refer to and repeat paragraphs 27, 27AAA, 27AA and 27A above, and say further that each of the:
 - (i) supervision measure alleged at FASOC subparagraph 27(k);
 - (ii) auditing measure alleged at FASOC subparagraph 27(l); and
 - (iii) rectification measure alleged at FASOC subparagraph 27(m),
 were not necessary to be implemented as part of the content of the standard of care applicable to the establishment and operation of a hotel quarantine program with the features pleaded in paragraphs 27AA and 27A above;
- (b) say further that prior to 18 June 2020, supervision and auditing of the implementation of IPC measures was carried out at Stamford Plaza; and

Particulars

Before 18 June 2020:

- (1) *the security guards engaged by MSS Security were supervised by persons engaged by MSS Security;*
- (2) *further supervision of workers at Stamford Plaza was provided by nurses onsite at Stamford Plaza; and*
- (3) *guidance and reminders as to IPC measures were provided by*

other workers onsite at Stamford Plaza, including in the course of site meetings by participants in those meetings.

- (c) say further that prior to 18 June 2020 there were insufficient resources in the form of doctors, nurses and persons with IPC expertise available to be stationed at each quarantine hotel to supervise the implementation of IPC measures at all times.

Advice as to IPC measures

88. As to the allegations in paragraph 88, the defendants:

- (a) admit that the May 2020 PPE Guidelines were provided to MSS Security on 29 May 2020;
- (b) admit that the June PPE document referred to in EASOC paragraph 88(b) was provided to MSS Security on 11 June 2020;
- (c) otherwise deny the allegations in paragraph 88; and
- (d) say further, subject to the matters pleaded in subparagraph 83(c) above, that Stamford guards also received “on-the-job” training and guidance:
 - (i) from nurses onsite;
 - (ii) from other workers onsite, including in the course of daily site meetings; and
 - (iii) other written advice, such as posters.

89. As to the allegations in paragraph 89, the defendants:

- (a) admit the allegations in subparagraph 89(a), but say further that the content of the May 2020 PPE Guidelines and the June PPE document must be assessed by having regard to the state of knowledge reasonably available to the defendants as at May 2020 and as at June 2020 in respect of the matters set out in subparagraph 27A(f) above; and
- (b) otherwise deny the allegations in paragraph 89.

89A. The defendants say further that if the defendants owed the plaintiff and/or Group Members the purported duty of care to avoid economic loss (which is denied), then the steps set out at

paragraphs 81 to 89 above were sufficient to discharge the applicable standard of care (which was not the standard of care for the implementation of IPC measures alleged by the plaintiff at FASOC paragraph 27).

Outbreaks at Stamford Plaza

Single returned traveller at Stamford Plaza starts showing symptoms of COVID-19

90. The defendants admit the allegations in paragraph 90.

Couple at Stamford Plaza start showing symptoms of COVID-19

91. The defendants admit the allegation in paragraph 91.

92. The defendants admit the allegation in paragraph 92.

Epidemiological links to Stamford Plaza

93. The defendants admit the allegation in paragraph 93.

94. The defendants admit the allegation in paragraph 94.

95. As to the allegations in paragraph 95, the defendants admit that:

- (a) 24 Stamford guards, an authorised officer and a returned traveller (not being the returned travellers the subject of the allegations in FASOC paragraphs 90 to 92);
- (b) one nurse who worked at Stamford Plaza; and
- (c) social or household contacts of the persons referred to in subparagraphs 95(a) and 95(b) above;

had, by 13 July 2020, been epidemiologically linked to the persons referred to in FASOC paragraphs 90 to 92, and otherwise deny the allegation in subparagraph 95(c).

Genomic links to Stamford Plaza

96. The defendants admit the allegations in paragraph 96.

97. The defendants admit the allegations in paragraph 97.

98. The defendants admit the allegation in paragraph 98, and say further that subsequent genomic sequencing indicated that 37 of the cases referred to in FASOC paragraph 96 were

genomically linked with one or the other of the two transmission networks referred to in FASOC paragraph 97.

Workers at Stamford Plaza test positive for COVID-19

99. As to the allegations in paragraph 99, the defendants:

- (a) admit that:
 - (i) on 4 June 2020, the returned traveller identified in FASOC paragraph 90 was diagnosed with COVID-19;
 - (ii) on 15 June 2020 and then on 16 June 2020, one and then the other of the returned traveller couple identified in FASOC paragraph 91 was diagnosed with COVID-19;
 - (iii) between 14 June 2020 and 3 July 2020, the Stamford guards identified in subparagraph 95(a) were also diagnosed with COVID-19;
 - (iv) these cases were epidemiologically linked; and
- (b) otherwise deny allegations in subparagraphs 99(a) and 99(b), and say further that ~~the tasks performed by the Stamford guards pleaded at ASOC paragraph 80 do not either on their own or in combination with~~ the epidemiological and genomic data pleaded in FASOC paragraphs 93 to 98 do not permit the drawing of the inference particularised in Schedule 1 in respect of FASOC paragraph 99 at paragraphs 1(b) and 2(b), namely that transmission was by direct contact, droplets, short-range aerosols or indirect contact (through fomites). at paragraphs 1(A) and (B) of the particulars to ASOC paragraph 99.

99A As to the allegations in paragraph 99A, the defendants:

- (a) admit the genomic data is consistent with transmission between Stamford Plaza workers of one or more strains of SARS-CoV-2 and otherwise deny the allegations in paragraph 99A;

- (b) say further that the epidemiological and genomic data pleaded in FASOC paragraphs 93 to 98 do not permit the drawing of the inference particularised in Schedule 1 in respect of FASOC paragraph 99A at:
- (i) paragraph 4(a), 8(a), 9(a), 9(b), 10(a), 11(a), 11(b), that transmission was through direct contact, droplets or short-range aerosols;
 - (ii) paragraph 4(b), 8(b), 9(c), 10(b), 11(c), that transmission occurred through indirect contact (fomites);
 - (iii) paragraph 6, that transmission was through close contact; and
 - (iv) paragraph 13, that transmission was otherwise through direct contact, droplets or short-range aerosols or indirect contact (fomites).
- (c) say further that to the extent that transmission of the virus between Stamford Plaza workers occurred, such transmission was not limited to transmission which took place on the premises or “at Stamford Plaza”, and is likely to have included transmission which occurred in other places.

Community transmission

100. The defendants admit the allegation in paragraph 100.

101. As to the allegations in paragraph 101, the defendants:

- (a) refer to and rely on the full terms of the statement of the Premier of Victoria made on 30 June 2020; and
- (b) otherwise deny the allegations in paragraph 101.

102. As to the allegations in paragraph 102, the defendants:

- (a) admit that the *Stay at Home Directions (Restricted Postcodes)* were made on 1 July 2020 to address the serious public health risk posed to Victoria by COVID-19;
- (b) admit that the *Restricted Activity Directions (Restricted Postcodes)* were made on 1 July 2020 to restrict the operation of certain businesses and undertakings in certain

specified postcodes in order to limit the spread of COVID-19;

- (c) refer to and rely on the full terms and effect of each of those instruments;
- (d) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 3” restrictions; and
- (e) otherwise deny the allegation in paragraph 102.

Particulars

*Victoria Government Gazette, No. S 339, 2 July 2020, pages 3-10;
pages 11-22.*

103. As to the allegations in paragraph 103, the defendants:

- (a) refer to and rely on the full terms and effect of the *Restricted Activity Directions (Restricted Postcodes)* and otherwise deny the allegations in subparagraph 103(a);
- (b) the defendants refer to and rely on the full terms and effect of the *Stay at Home Directions (Restricted Postcodes)*; and
- (c) otherwise deny the allegations in subparagraph 103(b).

104. As to the allegations in paragraph 104, the defendants:

- (a) refer to and rely on the full terms and effect of the instrument referred to in subparagraph 103(a) above and otherwise deny the allegations in subparagraph 104(a);
- (b) refer to and rely on the full terms and effect of the instrument referred to in subparagraph 103(a) above and otherwise deny the allegations in subparagraph 104(b);
- (c) refer to and rely on the full terms and effect of the instruments referred to in subparagraph 103(b) above and otherwise deny the allegations in subparagraph 104(c);
and
- (d) deny the allegation in subparagraph 104(d).

Particulars

*Whether or not the plaintiff and/or Group Members suffered economic
loss as a consequence of the imposition of the directions referred to in*

paragraph 102 above depends upon a number of matters including:

- (1) *decisions made by the plaintiff and/or Group Members about the operation of their business during the plaintiff's relevant period and after the directions were made, including in relation to offering online and delivery services to customers;*
- (2) *access to State and Commonwealth government financial support packages including, for example, the State's Business Support Fund (round 1), the State's payroll tax relief for small and medium businesses for the 2019-20 financial year, and the Commonwealth's JobKeeper payments; and*
- (3) *the operation of any applicable insurance policies, to the extent that the policies permitted recovery for business interruption losses caused by the restrictions imposed in response to the COVID-19 pandemic.*

Further particulars will be provided following discovery and expert evidence.

Restrictions imposed to address serious risk to public health

105. The defendants admit the allegations in paragraph 105, but say that the daily new case numbers were 61 on 2 July 2020 and not 62 as alleged.

106. The defendants:

- (a) admit the allegation in paragraph 106 to the extent that the Premier of Victoria issued a written statement on 7 July 2020 which included the statement that "based on the advice of the Chief Health Officer, Stage 3 "Stay at Home" restrictions will be reinstated across metropolitan Melbourne and Mitchell Shire from 11:59pm on Wednesday 8 July";
- (b) refer to rely on the full terms of that statement; and
- (c) otherwise deny the allegations in paragraph 106.

107. The defendants:

- (a) admit the allegation in paragraph 107, and say further that:
 - (i) the *Stay at Home Directions (Restricted Areas)* were made on 8 July 2020 to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) the *Restricted Activity Directions (Restricted Areas)* were made on 8 July 2020

to restrict the operation of certain businesses in the restricted area in order to limit the spread of COVID-19; and

(iii) the *Area Directions (No. 3)* were made on 8 July 2020 to address the serious public health risk posed to Victoria by COVID-19 and defined the restricted area;

- (b) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 3” restrictions; and
- (c) refer to and rely on the full terms and effect of those instruments.

Particulars

*Victoria Government Gazette, No. S 346, 9 July 2020, pages 1-4;
pages 5-13; pages 14-26.*

108. As to the allegations in paragraph 108, the defendants:

- (a) refer to and rely on the full terms and effect of the directions referred to in paragraph 107 above;
- (b) otherwise deny the allegations in subparagraph 108(a);
- (c) refer to and rely on the full terms and effect of the directions referred to in paragraph 107 above; and
- (d) otherwise deny the allegations in subparagraph 108(b).

109. As to the allegations in paragraph 109, the defendants:

- (a) refer to and rely on the full terms and effect of the instruments referred to in paragraph 107 above;
- (b) otherwise deny the allegations in subparagraphs 109(a), 109(b) and 109(c); and
- (c) deny the allegation in subparagraph 109(d).

Particulars

Whether or not the plaintiff and/or Group Members suffered economic loss as a consequence of the imposition of the directions referred to in

paragraph 107 above will depend upon a number of matters including those described at the particulars to subparagraph 104(d) above.

“Stage 3” and “stage 4” restrictions imposed to address serious risk to public health

110. The defendants admit the allegation in paragraph 110, but say that the daily new case numbers were 148 on 8 July 2020 (not 149), were 166 on 12 July 2020 (not 167), were 247 on 13 July 2020 (not 248), were 435 on 21 July 2020 (not 436), were 289 on 23 July 2020 (not 287), were 406 on 25 July 2020 (not 408), were 359 on 27 July (not 358), were 276 on 28 July 2020 (not 274), were 623 on 29 July 2020 (not 626), were 548 on 30 July 2020 (not 549), and were 369 on 31 July 2020 (not 368).
111. The defendants admit the allegation in paragraph 111, and say further that the state of disaster was declared on the basis that the COVID-19 pandemic constituted or was likely to constitute a significant and widespread danger to life or property in Victoria.
112. The defendants admit the allegation in paragraph 112 and:
 - (a) say further that:
 - (i) on 2 August 2020:
 - (1) the *Stay at Home Directions (Restricted Areas) (No 6)* were made to address the serious public health risk posed to Victoria by COVID-19;
 - (2) the *Restricted Activity Directions (Restricted Areas) (No 4)* were made to restrict the operation of certain businesses in the restricted areas in order to limit the spread of COVID-19;
 - (3) the *Stay Safe Directions (No 9)* were made to address the serious public health risk posed to Victoria by COVID-19; and
 - (4) the *Area Directions (No. 5)* were made on 31 July 2020 to address the serious health risk posed to Victoria by COVID-19 and defined the restricted areas; and

- (ii) also on 2 August 2020, and replacing the directions referred to in subparagraphs 112(a)(1) and 112(a)(2) above:
 - (1) the *Stay at Home Directions (Restricted Areas) (No 7)* were made to address the serious public health risk posed to Victoria by COVID-19; and
 - (2) the *Restricted Activity Directions (Restricted Areas) (No 5)* were made to restrict the operation of certain businesses in certain areas in order to limit the spread of COVID-19;
- (b) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 4” restrictions; and
- (c) refer to and rely on the full terms and effect of those instruments.

Particulars

- (1) *Victoria Government Gazette, No. S 384, 3 August 2020, pages 1-13; pages 14-22; pages 47-60; pages 74-87.*
 - (2) *Victoria Government Gazette, No. S 382, 31 July 2020, pages 11-13.*
113. As to the allegations in paragraph 113, the defendants:
- (a) admit that the directions referred to in paragraph 112 above operated according to their terms;
 - (b) refer to and rely on the full terms and effect of those instruments; and
 - (c) otherwise deny the allegations in paragraph 113.
114. As to the allegations in paragraph 114, the defendants:
- (a) refer to and rely on the full terms and effect of the instruments referred to in paragraph 112 above;
 - (b) otherwise deny the allegations in subparagraphs 114(a) to 114(d) inclusive; and
 - (c) deny the allegation in subparagraph 114(e).

Particulars

Whether or not the plaintiff and/or Group Members suffered economic loss as a consequence of the imposition of the directions referred to in paragraph 114 above will depend upon a number of matters including those described at the particulars to subparagraph 104(d) above.

115. The defendants admit the allegation in paragraph 115 and say further that the daily new case numbers were 354 on 2 August 2020 (not 352) and 686 on 4 August 2020 (not 687).

116. As to the allegations in paragraph 116, the defendants:

(a) say that on 5 August 2020:

- (i) the *Restricted Activity Directions (Restricted Areas) (No. 6)* were made to restrict the operation of certain businesses and undertakings in restricted areas in order to limit the spread of COVID-19;
- (ii) the *Stay at Home Directions (Restricted Areas) (No 8)* were made to address the serious public health risk posed to Victoria by COVID-19;
- (iii) the *Area Directions (No. 6)* were made to address the serious public health risk posed to Victoria by COVID-19 and defined the restricted areas;
- (iv) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 4” restrictions;
- (v) refer to and rely on the full terms and effect of those instruments; and
- (vi) otherwise deny the allegation in subparagraph 116(a); and

(b)

- (i) admit that on 5 August 2020 *Restricted Activity Directions (Non-Melbourne)* were made to restrict the operation of certain businesses and undertakings in the area of Victoria outside the restricted area in order to limit the spread of COVID-19;
- (ii) admit that on 5 August 2020 *Stay at Home Directions (Non-Melbourne)* were

- made to address the serious public health risk posed to Victoria by COVID-19;
- (iii) admit that *Area Directions (No. 6)* were made to address the serious public health risk posed to Victoria by COVID-19 and defined the restricted area;
 - (iv) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 3” restrictions;
 - (v) refer to and rely on the full terms and effect of those instruments; and
 - (vi) otherwise deny the allegation in subparagraph 116(b).

Particulars

Victoria Government Gazette, No. S 397, 6 August 2020, pages 1-5; 6-18; pages 19-32; pages 33-45; pages 66-68.

117. As to the allegations in paragraph 117, the defendants:
- (a) refer to and repeat paragraph 116 above;
 - (b) admit that the instruments referred to in paragraph 116 operated according to their terms; and
 - (c) otherwise deny the allegations in paragraph 117.
118. As to the allegations in paragraph 118, the defendants:
- (a)
 - (i) refer to and repeat paragraph 116 above;
 - (ii) admit that the instruments referred to in paragraph 116 operated according to their terms; and
 - (iii) otherwise deny the allegations in subparagraphs 118(a) to 118(e) inclusive; and
 - (b) deny the allegation in subparagraph 118(f).

Particulars

Whether or not the plaintiff and/or Group Members suffered economic loss as a consequence of the imposition of the directions referred to in paragraph 116 above will depend upon a number of matters including those described at the particulars to subparagraph 104(d) above.

119. The defendants admit the allegation in paragraph 119, and say further that the daily new case numbers were 320 on 10 August 2020 (not 321).
120. As to the allegations in paragraph 120, the defendants:
- (a) admit that on 16 August 2020:
 - (i) the *Restricted Activity Directions (Restricted Areas) (No 8)* were made to restrict the operation of certain businesses and undertakings in the restricted area in order to limit the spread of COVID-19;
 - (ii) the *Restricted Activity Directions (Non-Melbourne) (No 3)* were made to restrict the operation of were made to restrict the operation of certain businesses and undertakings in the area of Victoria outside the restricted area to address the serious public health risk posed to Victoria by COVID-19;
 - (iii) the *Stay at Home Directions (Restricted Areas) (No 12)* were made to address the serious public health risk posed to Victoria by COVID-19 and imposed certain requirements on persons who ordinarily resided in the restricted area for a specified period, referred to as the stay at home period;
 - (iv) the *Stay at Home Directions (Non-Melbourne) (No 3)* were made to address the serious public health risk posed to Victoria by COVID-19 and imposed certain requirements on persons who ordinarily resided in the area of Victoria outside the restricted area for the stay at home period; and
 - (v) the *Area Directions (No. 7)* were made to address the serious public health risk posed to Victoria by COVID-19 and defined the restricted area;
 - (b) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 4” restrictions;
 - (c) refer to and rely on the full terms and effect of the instruments referred to in subparagraph 120(a) above; and

- (d) otherwise deny the allegation in paragraph 120.

Particulars

*Victoria Government Gazette, No. S 417, 17 August 2020, pages 2-4;
pages 5-10; pages 11-24; pages 25-39; pages 40-52.*

121. As to the allegations in paragraph 121, the defendants:
- (a) admit the allegation in subparagraph 121(a);
 - (b) admit the allegation in subparagraph 121(b); and
 - (c) admit that from 19 September 2020 to 13 October 2020 the daily new case numbers were in double-digit figures for 17 days and were in single-digit figures for ~~6~~8 days, but otherwise deny the allegation in subparagraph 121(c).
122. The defendants admit the allegations in paragraph 122, and say further that they:
- (a) admit that the *Stay at Home Directions (Restricted Areas) (No 13)* were made on 20 August 2020 to address the serious public health risk posed to Victoria by COVID-19;
 - (b) admit that the *Stay at Home Directions (Restricted Areas) (No 13)* replaced the *Stay at Home Directions (Restricted Areas) (No. 12)* and provided clarification regarding exercise;
 - (c) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 4” restrictions; and
 - (d) refer to and rely on the full terms and effect of the instrument referred to in subparagraph 122(a) above.

Particulars

Victoria Government Gazette, No. S 427, 21 August 2020, pages 1-16.

123. As to the allegations in paragraph 123:
- (a) the defendants:

- (i) admit that the *Stay at Home Directions (Restricted Areas) (No 14)* were made on 27 August 2020 to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 3” restrictions;
 - (iii) admit that the instrument replaced the *Stay at Home Directions (Restricted Areas) (No. 13)* and provided clarification regarding access to funerals;
 - (iv) refer to and rely on the full terms and effect of the instrument; and
 - (v) otherwise deny the allegations in subparagraph 123(a); and
- (b) the defendants:
- (i) admit that the *Stay at Home Directions (Non-Melbourne) (No 4)* were made on 27 August 2020 to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 3” restrictions;
 - (iii) admit that the instrument replaced the *Stay at Home Directions (Non-Melbourne) (No. 3)* and provided clarification regarding access to funerals;
 - (iv) refer to and rely on the full terms and effect of the instrument; and
 - (v) otherwise deny the allegations in subparagraph 123(b).

Particulars

*Victoria Government Gazette, No. S 439, 28 August 2020,
pages 1-16; pages 17-29.*

124. As to the allegations in paragraph 124, the defendants:

- (a) admit that on 13 September 2020:

- (i) the *Restricted Activity Directions (Restricted Areas) (No 9)* were made to restrict the operation of certain businesses and undertakings in the restricted area in order to limit the spread of COVID-19;
 - (ii) the *Stay at Home Directions (Restricted Areas) (No. 15)* were made to address the serious public health risk posed to Victoria by COVID-19; and
 - (iii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 4” restrictions;
- (b) admit that on 13 September 2020:
- (i) the *Restricted Activity Directions (Non-Melbourne) (No 4)* were made to restrict the operation of certain businesses and undertakings in the area of Victoria outside the restricted area to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) the *Stay at Home Directions (Non-Melbourne) (No 5)* were made to address the serious public health risk posed to Victoria by COVID-19; and
 - (iii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 3” restrictions;
- (c) refer to and rely on the full terms and effect of those instruments; and
- (d) otherwise deny the allegations in paragraph 124.

Particulars

Victoria Government Gazette, No. S 464, 14 September 2020, pages 5-10; pages 11-26; pages 27-43; pages 44-58.

125. As to the allegations in paragraph 125:

- (a) the defendants:
 - (i) admit that the *Stay Safe Directions (Non-Melbourne)* were made on 16 September 2020 to address the serious public health risk posed to Victoria

by COVID-19;

- (ii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 3” restrictions;
 - (iii) refer to and rely on the full terms and effect of the instrument; and
 - (iv) otherwise deny the allegations in subparagraph 125(a); and
- (b) the defendants:
- (i) admit that the *Restricted Activity Directions (Non-Melbourne) (No 5)* were made on 16 September 2020 to restrict the operation of certain businesses and undertakings in the area of Victoria outside the restricted area to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 3” restrictions;
 - (iii) refer to and rely on the full terms and effect of the instrument; and
 - (iv) otherwise deny the allegations in subparagraph 125(b).

Particulars

*Victoria Government Gazette, No. S 474, 17 September 2020,
pages 1-25; pages 26-36.*

126. As to the allegations in paragraph 126:

- (a) the defendants:
 - (i) admit that the *Stay at Home Directions (Restricted Areas) (No 16)* were made on 27 September 2020 to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 4” restrictions;
 - (iii) refer to and rely on the full terms and effect of the instrument; and

- (iv) otherwise deny the allegations in subparagraph 126(a);
- (b) the defendants:
 - (i) admit that the *Restricted Activity Directions (Restricted Areas) (No 10)* were made on 27 September 2020 to restrict the operation of certain businesses and undertakings in the restricted area to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 4” restrictions;
 - (iii) refer to and rely on the full terms and effect of the instrument; and
 - (iv) otherwise deny the allegations in subparagraph 126(b);
- (c) the defendants:
 - (i) admit that the *Stay Safe Directions (Non-Melbourne) (No 2)* were made on 27 September 2020 to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 3” restrictions;
 - (iii) refer to and rely on the full terms and effect of the instrument; and
 - (iv) otherwise deny the allegations in subparagraph 126(c); and
- (d) the defendants:
 - (i) admit that the *Restricted Activity Directions (Non-Melbourne) (No 6)* were made on 27 September 2020 to restrict the operation of certain businesses and undertakings in the area of Victoria outside the restricted area to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) refer to and repeat subparagraph 19(a) above and admit that the restrictions effected by each of those instruments were referred to as “stage 3” restrictions;

- (iii) refer to and rely on the full terms and effect of the instrument; and
- (iv) otherwise deny the allegations in subparagraph 126(d).

Particulars

*Victoria Government Gazette, No. S 492, 28 September 2020,
pages 1-17; pages 18-28; pages 29-27; pages 38-62.*

127. As to the allegations in paragraph 127:

- (a) the defendants:
 - (i) admit that the *Stay at Home Directions (Restricted Areas) (No 17)* were made on 4 October 2020 to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) refer to and rely on the full terms and effect of the instrument; and
 - (iii) otherwise deny the allegations in subparagraph 127(a);
- (b) the defendants:
 - (i) admit that the *Restricted Activity Directions (Restricted Areas) (No 11)* were made on 4 October 2020 to restrict the operation of certain businesses and undertakings in the restricted area to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) refer to and rely on the full terms and effect of the instrument; and
 - (iii) otherwise deny the allegations in subparagraph 127(b); and
- (c) the defendants:
 - (i) admit that the *Stay Safe Directions (Non-Melbourne) (No 3)* were made on 4 October 2020 to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) refer to and rely on the full terms and effect of the instrument; and
 - (iii) otherwise deny the allegations in subparagraph 127(c).

Particulars

Victoria Government Gazette, No. S 501, 5 October 2020, pages 1-16; pages 17-25; pages 44-54.

128. As to the allegations in paragraph 128, the defendants:

- (a) admit that on 11 October 2020:
 - (i) the *Restricted Activity Directions (Restricted Areas) (No. 12)* were made to restrict the operation of certain businesses and undertakings in the restricted area to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) the *Restricted Activity Directions (Non-Melbourne) (No 7)* were made to restrict the operation of certain businesses and undertakings in the area of Victoria outside the restricted area to address the serious public health risk posed to Victoria;
 - (iii) the *Stay at Home Directions (Restricted Areas) (No 18)* were made to address the serious public health risk posed to Victoria by COVID-19; and
 - (iv) the *Stay Safe Directions (Non-Melbourne) (No 4)* were made to address the serious public health risk posed to Victoria by COVID-19;
- (b) refer to and rely on the full terms and effect of those instruments; and
- (c) otherwise deny the allegations in paragraph 128.

Particulars

Victoria Government Gazette, No. S 515, 12 October 2020, pages 5-13; pages 14-39; pages 40-55; pages 56-66.

129. As to the allegations in paragraph 129, the defendants:

- (a) admit that on 18 October 2020:
 - (i) the *Restricted Activity Directions (Restricted Areas) (No. 13)* were made to restrict the operation of certain businesses and undertakings in the restricted area to address the serious public health risk posed to Victoria by COVID-19;

- (ii) the *Stay at Home Directions (Restricted Areas) (No 19)* were made to address the serious public health risk posed to Victoria by COVID-19;
- (iii) the *Restricted Activity Directions (Non-Melbourne) (No 8)* were made to restrict the operation of certain businesses and undertakings in the area of Victoria outside the restricted area to address the serious public health risk posed to Victoria by COVID-19; and
- (iv) the *Stay Safe Directions (Non-Melbourne) (No 5)* were made to address the serious public health risk posed to Victoria by COVID-19;
- (b) refer to and rely on the full terms and effect of those instruments; and
- (c) otherwise deny the allegations in paragraph 129.

Particulars

*Victoria Government Gazette, No. S 531, 19 October 2020, pages 1-17;
pages 18-28; pages 29-40; pages 41-68.*

130. As to the allegations in paragraph 130, the defendants:

- (a) admit that the *Restricted Activity Directions (Non-Melbourne) (No 9)* were made on 25 October 2020 to restrict the operation of certain businesses and undertakings in the area of Victoria outside the restricted area to address the serious public health risk posed to Victoria by COVID-19;
- (b) refer to and rely on the full terms and effect of the instrument; and
- (c) otherwise deny the allegations in paragraph 130.

Particulars

Victoria Government Gazette, No. S 543, 26 October 2020, pages 1-28.

131. As to the allegations in paragraph 131, the defendants:

- (a) admit that the *Restricted Activity Directions (Restricted Areas) (No 14)* were made on 26 October 2020 to restrict the operation of certain businesses and undertakings in the

restricted area to address the serious public health risk posed to Victoria by COVID-19;

- (b) refer to and rely on the full terms and effect of the instrument; and
- (c) otherwise deny the allegations in paragraph 131.

Particulars

Victoria Government Gazette, No. S 548, 27 October 2020, pages 1-13.

132. As to the allegations in paragraph 132:

- (a) the defendants:
 - (i) admit that the *Stay Safe Directions (Melbourne)* were made on 27 October 2020 to address the serious public health risk posed to Victoria by COVID-19; and
 - (ii) refer to and rely on the full terms and effect of the instrument;
- (b) the defendants:
 - (i) admit that the *Restricted Activity Directions (Melbourne)* were made on 27 October 2020 to restrict the operation of certain businesses and undertakings in the restricted area to address the serious public health risk posed to Victoria by COVID-19;
 - (ii) admit that this instrument operated according to their terms;
 - (iii) refer to and rely on the full terms and effect of the instrument; and
- (c) the defendants otherwise deny the allegations in paragraph 132.

Particulars

Victoria Government Gazette, No. S 552, 28 October 2020, pages 12-27; pages 28-53.

133. The defendants deny the allegations in paragraph 133.

Particulars

Whether or not the plaintiff and/or Group Members suffered economic loss as a consequence of the matters referred to in paragraph 133 will depend upon a number of matters including those described at the particulars to subparagraph 104(d) above.

The defendants were not negligent

134. The defendants deny the allegations in paragraph 134 and:

- (a) refer to and repeat paragraphs 39 and 40 above, and say further that the purported duty of care to avoid economic loss was not owed by the defendants;
- (b) refer to and repeat paragraphs 48 to 49, 58 to 66 and 81 to 89 above, and say further that the matters alleged at EASOC paragraphs 58 to 66 and 81 to 89 did not constitute a breach of the applicable standard of care even had the purported duty of care to avoid economic loss been owed by the defendants (which is denied); and
- (c) refer to and repeat paragraphs 27, 27AA and 27A above, and say further that the IPC measures of the kind alleged at EASOC paragraph 27 were not necessary to be implemented as part of the content of the standard of care applicable to the establishment and operation of a hotel quarantine program with the features pleaded in paragraphs 27AA and 27A above even had the purported duty of care to avoid economic loss been owed by the defendants (which is denied).

135. The defendants deny the allegations in paragraph 135 and:

- (a) refer to and repeat paragraphs 66A and 89A above, and say further that in the absence of any allegation in the EASOC of any particular event or occasion constituting the transmission events pleaded in EASOC paragraphs 79 and 99, a breach of the standard of care applicable to the establishment and operation of a hotel quarantine program with the features pleaded in paragraphs 27AA and 27A above cannot be established;
- (b) refer to and repeat subparagraphs 9(e)(ii) and 27(b) above, and say further that by reason of the inherent risk of virus transmission, the alleged lack of IPC measures of the kind pleaded at EASOC paragraph 27 cannot be said to have either:
 - (i) “substantially increased the risk of transmission of SARS-CoV-2 from returned travellers to workers”; or

- (ii) “led to the actual transmission” pleaded at FASOC paragraphs 79 and 99; and
- (c) deny the allegations in FASOC paragraph 135 and the particulars thereto, and:
 - (i) deny that if the defendants had procured the implementation by DHHS or DJPR of IPC measures of the kind pleaded at FASOC paragraph 27 at Rydges and Stamford Plaza, the transmission of SARS-CoV-2 from returned travellers to workers at Rydges and Stamford Plaza “would not have occurred”; and
 - (ii) deny that the lack of IPC measures of the kind pleaded at FASOC paragraph 27 at Rydges and Stamford Plaza “led to the actual transmission” pleaded at FASOC paragraphs 79 and 99.

Particulars

- (1) *The IPC measures alleged in FASOC paragraph 27 are premised upon a number of assumptions, including an assumption that physical distancing (namely maintaining a distance of greater than 1.5 metres from returned travellers) was effective to prevent or minimise the likelihood and/or risk of transmission of SARS-CoV-2 from returned travellers to workers at Rydges and Stamford Plaza.*
- (2) *But the FASOC does not allege any occasion on which the six security guards and one hotel worker at Rydges (the subject of the alleged transmission pleaded at FASOC paragraph 79) or any occasion on which the 26 security guards at Stamford Plaza (the subject of the alleged transmission pleaded at FASOC paragraph 99) are alleged to have come within 1.5 metres of any returned traveller.*
- (3) *In any event, to the extent that the allegations in the FASOC are premised upon assumptions that:*
 - (i) *the performance by Rydges guards, Rydges staff and Stamford guards of the tasks pleaded at FASOC paragraphs 56, 57 and 80 necessarily entailed the security guards and Rydges staff failing to maintain a distance of greater than 1.5 metres from returned travellers; and*
 - (ii) *the six security guards and one hotel worker at Rydges (the subject of the alleged transmission pleaded at FASOC paragraph 79) and the 26 security guards at Stamford Plaza (the subject*

of the alleged transmission pleaded at EASOC paragraph 99) came within 1.5 metres of the returned travellers at a time when those returned travellers infected with SARS-CoV-2,

this is denied, and the defendants refer to and repeat subparagraphs 56(a)(ii), 56(b)(iii), 56(c)(iii), 56(e), 57(a)(ii), 57(c) and 57(d) (in relation to Rydges) and subparagraphs 80(a)(iii) and (iv), 80(b)(iii) and 80(d) (in relation to Stamford Plaza).

- 135A. The defendants refer to and repeat subparagraphs 9(e)(ii) and paragraphs 27, 27AA, 27A, 39, 40, 79A, 99A, 134 and 135 above and otherwise deny the allegations in paragraph 135A.
136. The defendants refer to and repeat subparagraphs 9(e)(ii) and paragraphs 27, 27AA, 27A, 39, 40, 79A, 99A, 134, 135 and 135A above and otherwise deny the allegations in paragraph 136.

Transmission from some workers at Rydges and Stamford Plaza to other members of the Victorian community

137. As to the allegations in paragraph 137, the defendants:
- (a) admit that at least some of the workers at Rydges and some of the workers at Stamford Plaza who contracted SARS-CoV-2 from returned travellers or from other workers subsequently transmitted the virus to other persons in the Victorian community outside those hotels;
 - (b) say further that the genomic sequencing pleaded at EASOC paragraph 141 does no more than inform the epidemiological links between strains of the virus and does not indicate how, when and where any such transmission occurred or from whom;
 - (c) say further that the transmission of the virus from the Rydges workers and the Stamford Plaza workers to uninfected persons in the Victorian community was affected by a number of factors including:
 - (i) the requirements of any directions that applied to infected persons or to close contacts of such persons and whether they were adhered to (e.g. whether workers isolated in accordance with directions or continued to work while

infectious);

(ii) the living arrangements of the workers (e.g. whether they resided in shared, crowded households); and

(iii) the other working arrangements of the Rydges workers and the Stamford Plaza workers (e.g. whether they had other employment outside the hotel quarantine program hotels and whether they continued to work in those jobs whilst infectious).

(d) otherwise deny the allegations in paragraph 137, and say further that the epidemiological and genomic data do not permit the drawing of the inference particularised in Schedule 1 in respect of FASOC paragraph 137 at (4), namely that transmission was by direct contact, droplets, short-range aerosols or indirect contact (through fomites).

138. The defendants deny the allegation in paragraph 138, and say further that:

(a) even if the transmissions pleaded at FASOC paragraph 79 (at Rydges) and FASOC paragraph 99 (at Stamford Plaza) had not occurred;

(b) even if the IPC measures as alleged at FASOC paragraph 27 had been implemented at Rydges and Stamford Plaza; and

(c) even if the workers at Rydges and the workers at Stamford Plaza referred to at FASOC paragraphs 70, 71, 72, 73, 75 and subparagraph 95(a) had not contracted SARS-CoV-2,

it would not have been possible to prevent the transmission of SARS-CoV-2 from returned travellers at quarantine hotels to other workers and as a result it is probable that transmission of the virus to other members of the Victorian community would have occurred in any event.

138A. The defendants deny the allegations in paragraph 138A.

138B. Further to paragraph 138A above, the defendants deny the allegations in paragraph 138B and refer to and repeat subparagraphs 9(e)(ii) and paragraphs 27, 27AA, 27A, 39, 40, 79A, 99A,

134, 135, 135A, 136 and 138A.

139. The defendants deny the allegation in paragraph 139 and:

- (a) refer to and repeat paragraphs 39 and 40 above, and say further that neither the Minister for Health, the Minister for Jobs, the Secretary of DHHS nor the Secretary of DJPR owed any such purported duty of care;
- (b) refer to and repeat paragraph 136, 138, 138A and 138B above; and
- (c) between 28 March 2020 and ~~17 July~~ 18 June 2020, ~~234~~ 183 cases of COVID-19 were detected in hotel quarantine among approximately ~~20,000~~ 17,535 returned travellers (1.2%), and had those returned travellers not been detained pursuant to the hotel quarantine program at least some of those returned travellers would have transmitted the virus to members of the Victorian community in any event, which would have given rise to community transmission.

Particulars

~~The defendants refer to and repeat the particulars to paragraph 27A(j) above.~~

Transmission within the Victorian community

140. As to the allegations in paragraph 140, the defendants:

- (a) admit that at least some of the workers at Rydges and some of the workers at Stamford Plaza who contracted SARS-CoV-2 from returned travellers, or from other workers, subsequently transmitted the virus to uninfected persons in the Victorian community who in turn transmitted the virus to other uninfected persons in the Victorian community;
- (b) say further that the genomic sequencing pleaded at EASOC paragraph 141 does no more than inform the epidemiological links between strains of the virus and does not indicate how, when and where any such transmission occurred or from whom;

- (c) say further that community transmission of the virus was affected by a number of factors including the requirements of any directions that applied to infected persons or to close contacts of such persons;
 - (d) say further that:
 - (i) the purpose of the hotel quarantine policy decision was to delay and/or slow the spread of the SARS-CoV-2 virus and to delay and/or reduce the community transmission of the SARS-CoV-2 virus; and
 - (ii) in the absence of the implementation of the hotel quarantine policy, and the detention pursuant to that program of returned travellers potentially with the SARS-CoV-2 virus, the spread of the SARS-CoV-2 virus and the community transmission of the SARS-CoV-2 virus during 2020 would likely have been both earlier and more rapid than was in fact the case, leading to the potential for more severe Victoria-wide public health and economic impacts, including:
 - (1) an overwhelmed public hospital system;
 - (2) a larger number of deaths and serious illnesses; and
 - (3) the need to impose isolation requirements and directions to stay at home and directions restricting activities including the operation of retail and hospitality businesses; and
 - (e) otherwise deny the allegations in paragraph 140.
141. The defendants admit the allegations in paragraph 141, but say further that the genomic sequencing pleaded at FASOC paragraph 141 does no more than inform the epidemiological links between strains of the virus and does not indicate how, when and where the transmission of the virus occurred or from whom.
142. As to the allegations in paragraph 142, the defendants:
- (a) admit that the four cases referred to at subparagraphs 142(a) and 142(b) were the only

known (being diagnosed and confirmed) instances of community transmission unconnected (by genomic links) to the outbreaks at Rydges and Stamford Plaza;

- (b) admit that, as far as the defendants are aware, those four cases did not transmit SARS-CoV-2 to an uninfected person; and
- (c) otherwise deny the allegations in paragraph 142.

142A. The defendants deny the allegations in paragraph 142A, and say further that of the COVID-19 cases in Victoria as at 18 August 2020 for which genomic sequencing had been obtained (9,766 sequences):

- (a) approximately 96.6% were genomically linked to the outbreak at Rydges (9,435);
- (b) approximately 1.4% were genomically linked to the outbreaks at Stamford Plaza (135);
and
- (c) approximately 2% were not genomically linked to either the outbreaks at Rydges or Stamford Plaza (196).

143. The defendants deny the allegation in paragraph 143, and say further that:

- (a) there existed many circumstances in which community transmission at a similar rate and to a similar level as that which occurred during the plaintiff's relevant period could have occurred whether or not the IPC measures alleged at FASOC paragraph 27 had been implemented; and
- (b) as a result it cannot be said that the second wave alleged in FASOC paragraph 143 would not have occurred but for the transmission by workers at Rydges and Stamford Plaza to other members of the Victorian community in the manner alleged.

144. The defendants deny the allegation in paragraph 144 and refer to and repeat paragraphs 136, 139 and 143 above.

The “second wave” and the COVID-19 restrictions

145. As to the allegations in paragraph 145, the defendants:

- (a) say that the paragraph is embarrassing because:
 - (i) it alleges a link between:
 - (1) daily new case numbers over the period from 22 June 2020 to 27 August 2020 (or to 18 September 2020 or to 13 October 2020); and
 - (2) each of the impugned directions that effected the restrictions referred to in subparagraphs 145(a) to 145(e) inclusive (the **impugned directions**) which were made between 9 July 2020 and 26 October 2020; but
 - (ii) the community spread of COVID-19 said to have constituted the “second wave” is alleged to have taken place between 22 June 2020 and 27 August 2020 (or 18 September 2020 or 13 October 2020) and the end of the “second wave” is neither pleaded nor particularised at FASOC paragraph 143;
- (b) refer to and repeat subparagraph 140(d) above and paragraph 143 above, and say further that:
 - (i) there existed many circumstances in which community transmission at a similar rate and to a similar level as that which occurred during the plaintiff’s relevant period could have occurred whether or not the second wave as alleged in FASOC paragraph 143 had occurred;
 - (ii) by reason of the fact that the impugned directions were made by four authorised officers in the exercise of the independent discretionary powers conferred on each of those authorised officers under that the *Public Health Act*, there was a break in the causal chain between the matters alleged in FASOC paragraph 143 and the imposition of the restrictions; and
 - (iii) the making of each of the impugned directions was not an inevitable consequence of the specified daily new case numbers that preceded each impugned direction; ~~and~~

Particulars

As to the impugned directions, the defendants refer to and repeat paragraphs 102, 107, 112, 120, 122, 123, 124, 125, 126, 127, 128, 129, 130 and 131 above.

- (c) refer to and repeat subparagraph 145(b)(iii) above, and say further that:
 - (i) to the extent that the making of a particular impugned direction was informed by matters including the number of COVID-19 cases in Victoria preceding the making of such direction, the number of such cases genomically linked to the outbreaks at Stamford Plaza (**Stamford linked cases**) was negligible;
 - (ii) the number of Stamford linked cases was significantly lower than the number of cases which were genomically linked to the outbreak at Rydges and also lower than the number of cases which were not genomically linked to either the outbreak at Rydges or at Stamford Plaza;
 - (iii) the Stamford linked cases were not causative of the making of any of the impugned directions;
 - (iv) the Stamford linked cases did not cause the imposition of the restrictions alleged in paragraph 145; and
 - (v) the Stamford linked cases did not cause the plaintiff and Group Members' alleged economic loss; and

Particulars

The defendants refer to and repeat paragraph 142A above.

- (d) otherwise deny the allegations in paragraph 145.
146. The defendants deny the allegations in paragraph 146 and refer to and repeat paragraphs 39 and 40, 136, 139, 144 and 145 above.

The plaintiff and Group Members' alleged loss as a result of impugned directions

147. The defendants deny the allegations in paragraph 147.

Particulars

Whether or not the plaintiff and/or Group Members suffered economic loss as a consequence of the imposition of the directions referred to in paragraph 145 above will depend upon a number of matters including those described at the particulars to subparagraph 104(d) above.

148. The defendants deny the allegations in paragraph 148, and refer to and repeat paragraphs 136, 139, 144, 146 and 147 above.

Causation pursuant to s 51 of the *Wrongs Act 1958* (Vic)

149. The defendants deny the allegations in paragraph 149, and refer to and repeat paragraphs 79A, 99A, 135A, 138B, 136, 139, 144, 146, 147 and 148 above.
150. The defendants deny the allegations in paragraph 150, and say further that factual causation within the meaning of s 51(1)(a) of the *Wrongs Act 1958* (Vic) cannot be established, because:
- (a) the alleged breaches of the purported duty of care to avoid economic loss alleged at paragraphs 48 and 49 were not a necessary condition of the economic loss alleged to have been suffered by the plaintiff and/or Group Members; and
 - (b) the cause of the economic loss alleged in the EASOC to have been suffered by the plaintiff and/or Group Members (which loss is denied) was the imposition of restrictions referred to as “stage 3” and “stage 4” restrictions contained in a number of directions made by a number of officers authorised under the *Public Health Act*, who independently exercised those discretionary powers conferred on them by the *Public Health Act*.
151. The defendants deny the allegations in paragraph 151, and say further that:
- (a) the matters alleged at EASOC subparagraphs 151(a) and 151(b) do not constitute an “appropriate case” within the meaning of s 51(2) of the *Wrongs Act 1958* (Vic) in which the negligence alleged by the plaintiff (which is denied) should be taken to establish factual causation;

- (b) the principles in *Fairchild v Glenhaven Funeral Services* [2003] 1 AC 32 and *Bonnington Castings Ltd v Wardlaw* [1956] AC 613 are not applicable to the circumstances alleged by the plaintiff;
- (c) section 51(2) of the *Wrongs Act 1958* (Vic) cannot be relied on in order for the plaintiff to avoid the need to prove factual causation in relation to the transmission events alleged at FASOC paragraphs 79, 79A, and 99 and 99A and the plaintiff is required to prove the mode and occasion of transmission of SARS-CoV-2 from returned travellers to workers;
- (d) the failure by the plaintiff to allege (or prove) the transmission events pleaded at FASOC paragraphs 79, 79A, and 99 and 99A is not the result of any inadequacy or uncertainty in relation to the “current state of scientific knowledge”, but rather the result of the failure by the plaintiff to identify any event or occasion on which it is alleged that there was a failure to discharge the alleged applicable standard of care which in fact caused the transmission of SARS-CoV-2 from a returned traveller to a worker, or between workers, which is a question of fact and not of scientific knowledge;
- (e) the transmission of SARS-CoV-2 from a returned traveller to a worker, or between workers, on a particular occasion is not the result of relative contribution by two or more separate factors and the FASOC does not otherwise allege that SARS-CoV-2 can be (or was for the purposes of the alleged transmission events pleaded at FASOC paragraphs 79, 79A, and 99 and 99A) transmitted by reason of concurrent or consecutive exposures to the virus;
- (f) the transmission of SARS-CoV-2 from a returned traveller to a worker on a particular occasion is not the result of a material increase in risk of transmission of the virus arising from consecutive or cumulative failures to discharge the alleged applicable

standard of care, and the FASOC does not otherwise allege that SARS-CoV-2 can be (or was for the purposes of the alleged transmission events pleaded at FASOC paragraphs 79, 79A, 99 and 99A) transmitted by reason of concurrent or consecutive exposures to the virus;

- (g) section 51(2) of the *Wrongs Act 1958* (Vic) cannot be relied on in order for the plaintiff to avoid the need to prove factual causation in relation to the on transmission to the Victorian community and community transmission as alleged at FASOC paragraphs 149 and 154;
- (h) section 51(2) of the *Wrongs Act 1958* (Vic) does not invite consideration of an alleged material increase in the risk of the plaintiff and/or Group Members suffering economic loss, and the only relevant inquiry is whether there was a material increase in the risk of the transmission of SARS-CoV-2 because of a failure to discharge the applicable standard of care; and
- (i) the responsibility for the harm in the nature of the economic loss alleged to have been suffered by the plaintiff and/or Group Members should not be imposed on the defendants.

Particulars

- (1) *Wrongs Act 1958* (Vic), ss 51(2) and 55.
- (2) *The defendants refer to and repeat paragraphs 9, 27AA, 27A, 27, 39, 40 above and 155 and 155A below.*

152. The defendants deny the allegation in paragraph 152, and say further that it is not appropriate (within the meaning of s 51(1)(b) of the *Wrongs Act 1958* (Vic)) for the scope of the defendants' liability (which is denied) to extend to the harm in the nature of the economic loss alleged to have been suffered by the plaintiff and/or Group Members because:

- (a) the hotel quarantine program was established in the circumstances described in paragraph 27AA above;

- (b) the standard of care applicable to the establishment of the hotel quarantine program was affected by the matters described in paragraph 27A above; ~~and~~
- (c) of the inherent risk of virus transmission;
- (d) the making of the impugned directions in the exercise of independent discretionary powers conferred on authorised officers under the *Public Health Act*, as alleged at paragraph 145(b)(ii) above, constituted new intervening acts which broke the chain of causation and negated legal causation (and this is so whether or not factual causation under s 51(1)(a) of the *Wrongs Act* is established, which is in any event denied); and
- (e) the failure of one or more workers and/or their close contacts to:
 - (i) isolate if symptomatic and / or obtain a test for SARS-CoV-2 if symptomatic; and/or
 - (ii) adhere to the requirements of directions made under the *Public Health Act*; constituted new intervening acts which broke the chain of causation and negated legal causation (and this is so whether or not factual causation under s 51(1)(a) of the *Wrongs Act* is established, which is in any event denied).

Particulars

- (1) The defendants refer to and repeat paragraphs 137(a) and (c) above and paragraph 151(g) above.
- (2) See, for example:
 - (A) the Diagnosed Persons and Close Contacts Directions made on 11 May 2020 (Victoria Government Gazette, No. S 231, 12 May 2020, pages 23-29);
 - (B) the Diagnosed Persons and Close Contacts Directions (No 2) made on 31 May 2020 (Victoria Government Gazette, No. S 267, 1 June 2020, pages 11-17); and
 - (C) the Diagnosed Persons and Close Contacts Directions (No. 3) made on 21 June 2020 (Victoria Government Gazette, No. S 297, 22 June 2020, pages 2-8).

153. The defendants deny the allegations in paragraph 153, and say further that:

- (a) none of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, or the

Secretary of DJPR was negligent; and

- (b) the cause of the economic loss alleged in the FASOC to have been suffered by the plaintiff and/or Group Members (which loss is denied) was the imposition of the impugned directions and not any action or omission of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, or the Secretary of DJPR.

154. The defendants deny the allegations in paragraph 154, and say further that:

- (a) the cause of the economic loss alleged in the FASOC to have been suffered by the plaintiff and/or Group Members (which loss is denied) was the imposition of restrictions referred to as “stage 3” and “stage 4” restrictions imposed by a number of directions made by a number of officers authorised under the *Public Health Act*, who independently exercised those discretionary powers conferred on them by the *Public Health Act*; and
- (b) the plaintiff cannot establish factual causation because the alleged breach of the purported duty of care is not a necessary condition of the economic loss alleged to have been suffered by the plaintiff and/or Group Members.

155. The defendants deny the allegation in paragraph 155, and say further that even if the defendants owed the purported duty of care to avoid economic loss (which is denied) the defendants were not negligent in failing to take the steps alleged in FASOC paragraphs 39 to 40 inclusive and 48 to 49 inclusive because:

- (a) the matters alleged in FASOC paragraphs 39 to 40 inclusive and 48 to 49 inclusive are not precautions which a reasonable person in the position of the defendants would have taken in all the circumstances having regard to the burden of taking those precautions to avoid the risk of harm;
- (b) the matters alleged in FASOC paragraphs 39 to 40 inclusive and 48 to 49 inclusive are not precautions which a reasonable person in the position of the defendants would have

taken in all the circumstances having regard to the social utility of the establishment and operation of the hotel quarantine program in accordance with the public health imperative; and

Particulars to 155(a) and 155(b)

- (1) *Wrongs Act 1958 (Vic), ss 48(2)(c) and 48(2)(d).*
 - (2) *The defendants refer to and repeat paragraphs 27AA and 27A(g) above.*
- (c) the significant burden of taking precautions to avoid the risk of harm, in a context where each of those defendants is a public authority and the functions required to be exercised by them for the purposes of the hotel quarantine program were limited by the financial and other resources that were reasonably available to them for the purpose of exercising those functions in the context of the broader public health imperative.

Particulars

- (1) *Wrongs Act 1958 (Vic), s 83.*
- (2) *The defendants refer to and repeat paragraphs 27AA and 27A(g) above.*

155A. The defendants say further that they are not liable in negligence for the loss (if any) suffered by the plaintiff and/or Group Members because to the extent that the plaintiff's and/or a Group Member's loss could be said to be the result of any breach of the applicable standard of care (which is denied by the defendants), that loss was the result of the materialisation of the inherent risk of virus transmission.

Particulars

Wrongs Act 1958 (Vic), s 55.

155 B. The defendants say further that, if the defendants or any of them owed the alleged duty of care and if they breached that duty of care and the plaintiff and/or Group Members have suffered loss resulting from that breach (all of which is denied by the defendants), the plaintiff and one or more Group Members failed to act reasonably to mitigate that loss.

Particulars

The plaintiff failed to act reasonably to mitigate its loss by failing to make a claim under its insurance, which included coverage for business interruption which entitled it to recover to the loss alleged by the plaintiff in this proceeding.

Insofar as other Group Members had insurance which included coverage for business interruption which entitled them to recover the loss alleged by them in this proceeding and they also failed to make a claim under that insurance, those other Group Members failed to act reasonably to mitigate their loss.

Further particulars may be provided following discovery and expert evidence.

G. VICARIOUS LIABILITY OF THE STATE

156. The defendants admit the allegation in paragraph 156.

157. The defendants deny the allegations in paragraph 157 and say further that neither the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR committed the torts alleged in the EASOC in the course of the scope of their employment or otherwise.

158. The defendants deny the allegations in paragraph 158.

H. COMMON QUESTIONS

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

159. The defendants admit the allegations in paragraph 159.

Dated ~~13 May 2024~~ 3 September 2025

R DOYLE

L BROWN

R AMAMOO

E BRUMBY

A handwritten signature in blue ink, appearing to be 'H. Smith', located above the printed name.

Herbert Smith Freehills Kramer
Solicitors for the defendants

SCHEDULE OF PARTIES

5 BOROUGHES NY PTY LTD (ACN 632 508 304)

Plaintiff

–and–

STATE OF VICTORIA

First Defendant

**THE HONOURABLE JENNY MIKAKOS (IN HER CAPACITY
AS THE FORMER MINISTER FOR HEALTH AND
THE FORMER MINISTER FOR THE COORDINATION OF
HEALTH AND HUMAN SERVICES: COVID-19)**

Second Defendant

**THE HONOURABLE MARTIN PAKULA (IN HIS CAPACITY
AS THE FORMER MINISTER FOR JOBS, INNOVATION AND
TRADE AND THE FORMER MINISTER FOR THE COORDINATION
OF JOBS, PRECINCTS AND REGIONS: COVID-19)**

Third Defendant

**KYM LEE-ANNE PEAKE (IN HER CAPACITY AS
THE FORMER SECRETARY,
DEPARTMENT OF HEALTH AND HUMAN SERVICES)**

Fourth Defendant

**SIMON GRANT PHEMISTER (IN HIS CAPACITY AS
THE SECRETARY,
DEPARTMENT OF JOBS, PRECINCTS AND REGIONS)**

Fifth Defendant