



FORM 5A

Rule 5.02(1)

WRIT

Case: S ECI 2020 03402

Filed on: 21/08/2020 06:21 PM

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

No.

BETWEEN

5 BOROUGHS NY PTY LTD (ACN 632 508 304)

Plaintiff

AND

STATE OF VICTORIA

& OTHERS ACCORDING TO THE SCHEDULE

Defendants

Date of document: 21 August 2020

Solicitors' code: 24875

Filed on behalf of: the plaintiff

Telephone: (02) 9146 3888

Prepared by:

Ref: 00811-99800

Quinn Emanuel Urquhart & Sullivan

Email: damianscattini@quinnemanuel.com

Level 15, 111 Elizabeth Street

Sydney NSW 2000

TO THE DEFENDANT

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

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

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

- (a) filing a “Notice of Appearance” in the Prothonotary’s office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff’s address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.
THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the *Trans-Tasman Proceedings Act 2010* of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

FILED 21 August 2020

Prothonotary

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

INDORSEMENT OF CLAIM PURSUANT TO RULE 5.04(2)(b)

The plaintiff and group members

1. The plaintiff brings this proceeding as a group proceeding pursuant to Part IVA of the *Supreme Court Act* 1986 (Vic) on its own behalf and on behalf of all other persons:
 - (a) who as at 1 July 2020 carried on a business involving the supply of goods or services to members of the general public from one or more premises physically located within Victoria;
 - (b) whose ability to supply goods or services to members of the general public from their premises was adversely affected by one or more of:
 - (i) the “**stage 3**” **restrictions** put in place in certain postcodes of Melbourne from 2 July 2020, and in Melbourne and the Mitchell Shire local government area from 9 July 2020;
 - (ii) the “**stage 4**” **restrictions** put in place in Melbourne from 2 August 2020, including the **workplace closures** put in place from 6 August 2020; and
 - (iii) the **regional “stage 3” restrictions** put in place in Victoria outside of Melbourne from 6 August 2020;
 - (c) who have suffered economic loss by reason of one or more of the matters in sub-paragraph (b); and
 - (d) who are not any of the persons mentioned in s 33E(2) of the *Supreme Court Act* 1986 (Vic)
(Group Members), where:
 - (e) “**stage 3**” **restrictions** means the restrictions imposed by one or more of the following directions given pursuant to s 200 of the *Public Health and Wellbeing Act* 2008 (Vic) (the **PHW Act**):
 - (i) the *Stay at Home Directions (Restricted Postcodes)* given on 1 July 2020;

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

- (ii) the *Stay at Home Directions (Restricted Areas) (No 7)* given on 2 August 2020;
 - (iii) the *Restricted Activity Directions (Restricted Areas) (No 4)* given on 2 August 2020;
 - (iv) the *Restricted Activity Directions (Restricted Areas) (No 5)* given on 2 August 2020;
 - (v) clause 5(2)(e) of the *Stay Safe Directions (No 9)* given on 2 August 2020;
 - (vi) the *Stay at Home Directions (Restricted Areas) (No 8)* given on 5 August 2020;
 - (vii) the *Restricted Activity Directions (Restricted Areas) (No 6)* given on 5 August 2020;
 - (viii) the *Stay at Home Directions (Restricted Areas) (No 9)* given on 6 August 2020;
 - (ix) the *Stay at Home Directions (Restricted Areas) (No 10)* given on 8 August 2020;
 - (x) the *Stay at Home Directions (Restricted Areas) (No 11)* given on 13 August 2020;
 - (xi) the *Restricted Activity Directions (Restricted Areas) (No 7)* given on 13 August 2020;
 - (xii) the *Stay at Home Directions (Restricted Areas) (No 12)* given on 16 August 2020; and
 - (xiii) the *Restricted Activity Directions (Restricted Areas) (No 8)* given on 16 August 2020;
- (g) **workplace closures** means the forced closure of certain workplaces pursuant to the directions referred to at sub-paragraphs (f)(vii), (f)(xi) and (f)(xiii) above; and
- (h) **regional “stage 3” restrictions** means the restrictions imposed by one or more of the following directions given pursuant to s 200 of the PHW Act:

- (i) the *Stay at Home Directions (Non-Melbourne)* given on 5 August 2020;
- (ii) the *Restricted Activity Directions (Non-Melbourne)* given on 5 August 2020;
- (iii) the *Stay at Home Directions (Non-Melbourne) (No 2)* given on 13 August 2020;
- (iv) the *Restricted Activity Directions (Non-Melbourne) (No 2)* given on 13 August 2020;
- (v) the *Stay at Home Directions (Non-Melbourne) (No 3)* given on 16 August 2020; and
- (vi) the *Restricted Activity Directions (Non-Melbourne) (No 3)* given on 16 August 2020.

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

The defendants

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

Particulars

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

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

Particulars

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

6. The fourth defendant (the **Secretary of DHSS**) is and was at all material times the “Department Head”, within the meaning of the *Public Administration Act 2004* (Vic), of DHSS.
7. The fifth defendant (the **Secretary of DJPR**) is and was at all material times the “Department Head”, within the meaning of the *Public Administration Act 2004* (Vic), of DJPR.

The COVID-19 pandemic in Victoria

8. The first case of novel coronavirus 2019 (**COVID-19**) in Victoria was detected on 25 January 2020.
9. COVID-19:
 - (a) is a highly infectious disease;
 - (b) causes death in some infected persons;
 - (c) is transmissible primarily through face-to-face contact and contact with surfaces with which an infected person has been in contact, through droplet and airborne transmission; and

- (d) is infectious even while an infected person may be asymptomatic.
10. On 11 March 2020, the World Health Organisation declared the outbreak of COVID-19 to be a pandemic.

Particulars

WHO Director-General’s opening remarks at the media briefing on COVID-19 on 11 March 2020.

11. By 12 March 2020:
- (a) a total of 36 cases of COVID-19 in Victoria had been detected; and
- (b) Victoria’s first case of community transmission of COVID-19 had been recorded.

Particulars

Data published by the Department of Health and Human Services.

12. On 16 March 2020, the Minister for Health declared a state of emergency throughout Victoria pursuant to s 198(1) of the PHW Act.

Particulars

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

13. On 23 March 2020, “stage 1” business closure restrictions were put in place in Victoria, requiring the closure of certain businesses, including pubs, clubs, gyms, cinemas, nightclubs, restaurants, and cafes.

Particulars

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

14. On 28 March 2020, the Premier of Victoria announced that “stage 3” restrictions would be put in place in Victoria from 30 March 2020, which, *inter alia*, prohibited persons from leaving their homes except for certain purposes, and restricted the operation of certain businesses, including pubs, clubs, entertainment, and retail businesses.

Particulars

Statement from the Premier on 28 March 2020.

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

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

The hotel quarantine program

15. By 27 March 2020:

- (a) there was a total of 574 confirmed cases of COVID-19 in Victoria; and
- (b) there were 16 confirmed cases of COVID-19 in Victoria that may have been acquired through community transmission.

Particulars

Data published by the Department of Health and Human Services.

16. On 27 March 2020, the Prime Minister announced that the National Cabinet had agreed, *inter alia*, that:

- (a) travellers returning to Australia would be required to undertake 14-day isolation at designated quarantine facilities (such as hotels) to be determined by the relevant State or Territory government; and
- (b) this would be implemented using State and Territory legislation and would be enforced by State and Territory governments, with the support of the Australian Defence Force (ADF) and the Australian Border Force where necessary.

Particulars

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

17. In accordance with that agreement of National Cabinet, from 28 March 2020, international travellers arriving in Victoria were required (pursuant to s 200 of the PHW Act) to undertake a 14-day quarantine at certain hotels (**quarantine hotels**), including:

- (a) Stamford Plaza Melbourne;
- (b) Rydges on Swanston;

- (c) Travel Lodge Hotel Melbourne;
 - (d) ParkRoyal Hotel;
 - (e) Holiday Inn Melbourne; and
 - (f) Four Points by Sheraton Melbourne Docklands.
18. Such travellers were given a document entitled “Direction and Detention Notice”, which stated, *inter alia*, that the recipient:
- (a) was not to leave his or her allocated hotel room save in limited circumstances; and
 - (b) was not to permit any other person to enter his or her allocated hotel room save in limited circumstances.

Implementation of the hotel quarantine program

19. At all material times, there was in place a State Emergency Response Plan prepared pursuant to Part 5 of the *Emergency Management Act 2013 (Vic)*.
20. Under the State Emergency Response Plan, DHHS is and was at all material times the “control agency” (defined as the “agency with the primary responsibility for responding to the emergency”) for emergencies falling into the “human disease” category.

Particulars

State Emergency Response Plan, page 7-3.

21. On 27 March 2020:
- (a) DJPR assumed responsibility for procuring the provision of the service of guarding those detained in quarantine hotels (**guarding service**); and
 - (b) DHSS assumed responsibility for providing infection-control training to those who were to provide the guarding service.
22. DJPR procured the following eight private security companies to provide the guarding service:
- (a) United Risk Management Pty Ltd;
 - (b) Wilson Security Pty Ltd;

- (c) Unified Security Group Australia Pty Ltd;
 - (d) Ultimate Protection Services Pty Ltd;
 - (e) MSS Security Pty Ltd;
 - (f) Elite Protection Services (Australia) Pty Ltd;
 - (g) Australian Protection Group Pty Ltd; and
 - (h) Security Hub Pty Ltd.
23. Only two of these eight private security companies were on panels of Victorian Government approved service providers.
24. At least some of these eight private security companies subcontracted out the provision of the guarding service.
25. Officers of DHHS were placed at each of the quarantine hotels to oversee operations.
26. All other States of Australia, and all Territories, used police officers or ADF personnel, or both, to provide the guarding service at designated quarantine facilities.
27. On or about 28 March 2020, a senior bureaucrat at DJPR sent an email to senior bureaucrats at DHSS raising concerns about quarantine hotels and stating: “We request that Victoria Police is present 24/7 at each hotel starting from this evening. We ask that DHHS urgently make that request as the control agency”.

Particulars

Article published in *The Age* online on 13 July 2020 entitled “Leaked emails revealed government knew of problems on day one of hotel quarantine”. The plaintiff is not presently in possession of a copy of the email.

28. On 30 March 2020, the same senior bureaucrat at DJPR sent an email to senior bureaucrats at DHHS demanding that DHHS request police support, and indicating that private security companies were “not adequate” to guard the quarantine hotels.

Particulars

Article published in *The Age* online on 13 July 2020 entitled “Leaked emails revealed government knew of problems on day one of hotel quarantine”. The plaintiff is not presently in possession of a copy of the email.

29. Despite these matters, no police or ADF personnel were used to provide the guarding service at quarantine hotels.

Restrictions are eased in Victoria

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

Particulars

Data published by the Department of Health and Human Services.

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

Particulars

Statement from the Premier on 11 May 2020.

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

Particulars

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

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

Particulars

Announcement entitled “Victoria’s Restriction Levels” as at 24 May 2020.

34. From 1 June 2020:
- (a) restrictions on the permissible purposes for which Victorians could leave their homes were no longer imposed; and

- (b) certain dine in services for food and drink facilities, and limited operation of other entertainment and other retail facilities was permitted.

Particulars

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

35. From 22 June 2020, a greater extent of operation of retail businesses, including restaurants, cafes, licensed premises, entertainment and retail facilities, was permitted.

Particulars

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

The hotel quarantine program is breached

36. In April 2020, frontline health workers involved in the care of COVID-19 patients in hotel quarantine raised concerns with the Australian Medical Association (AMA) about how the hotel quarantine system was being managed in terms of resourcing and also in terms of the protocols being used.

Particulars

Article published by *ABC News* online on 17 August 2020 entitled “Doctors warned Victoria’s health department about hotel infection control dangers before coronavirus spread”.

37. On 15 April 2020, the AMA wrote to DHHS recommending a range of infection control measures to stop returned international travellers transmitting COVID-19 to workers at quarantine hotels and members of the public.

Particulars

Article published by *ABC News* online on 17 August 2020 entitled “Doctors warned Victoria’s health department about hotel infection control dangers before coronavirus spread”. The plaintiff is not presently in possession of a copy of the email.

38. By no later than 26 May 2020, the Minister for Health was aware of infection control problems within quarantine hotels.

39. On 25 May 2020, three members of staff at one of the quarantine hotels, the Rydges on Swanston, became symptomatic and were subsequently diagnosed with COVID-19.

Particulars

Witness statement of Dr Charles Alpren to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 86.

40. On 27 May 2020, a security guard at the Rydges on Swanston tested positive for COVID-19, followed by four more security guards at that hotel.
41. By 18 June 2020, a total of 17 COVID-19 cases in Victoria had been epidemiologically linked to the Rydges on Swanston.

Particulars

Witness statement of Dr Charles Alpren to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 87.

42. On 10 June 2020, a member of staff at another quarantine hotel, the Stamford Plaza, became symptomatic. That staff member was diagnosed with COVID-19 on 14 June 2020.

Particulars

Witness statement of Dr Charles Alpren to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 97.

43. On 17 June 2020, a security guard at the Stamford Plaza tested positive for COVID-19.
44. On 19 June 2020, five more security guards at the Stamford Plaza tested positive for COVID-19.
45. On 19 June 2020, the Deputy Chief Health Officer stated that it appeared there had been some breaches of physical-distancing measures at the Stamford Plaza, with “closer mingling of these guards than we would like in the workplace”.

Particulars

Article published by *ABC News* online on 1 July 2020 entitled “Victoria’s coronavirus quarantine program to get a ‘reset’ after breaches”.

46. On 24 June 2020, by email, the Emergency Services Commissioner, Mr Andrew Crisp, requested that the Commonwealth provide up to 850 ADF personnel to provide compliance and monitoring support to DHHS at quarantine hotels because it had been identified that there was a “lack of access to skilled resources to undertake specific functions”.

Particulars

Article published by *The Australian* on 17 August 2020 entitled “ADF ‘high priority’ one day, dismissed the next”. The plaintiff is not presently in possession of a copy of the email.

47. On 25 June 2020, by email, the Emergency Services Commissioner withdrew that request.

Particulars

Article published by *The Australian* on 17 August 2020 entitled “ADF ‘high priority’ one day, dismissed the next”. The plaintiff is not presently in possession of a copy of the email.

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

Particulars

Witness statement of Dr Charles Alpren to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 98.

The start of the second wave

49. Between 22 June 2020 and 30 June 2020, new daily confirmed case of COVID-19 in Victoria rose in an upward trend.

Particulars

Data published by the Department of Health and Human Services. New daily confirmed cases of COVID-19 were:

- 16 on 22 June 2020
- 17 on 23 June 2020
- 20 on 24 June 2020
- 33 on 25 June 2020
- 30 on 26 June 2020
- 41 on 27 June 2020
- 49 on 28 June 2020

- 75 on 29 June 2020
- 64 on 30 June 2020.

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

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

Particulars

Statement from the Premier made on 30 June 2020.

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

Particulars

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

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

Melbourne goes back into lockdown

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

Particulars

Data published by the Department of Health and Human Services. New daily confirmed cases of COVID-19 were:

- 73 on 1 July 2020
- 77 on 2 July 2020
- 66 on 3 July 2020
- 108 on 4 July 2020
- 74 on 5 July 2020
- 127 on 6 July 2020
- 191 on 7 July 2020.

53. On 7 July 2020, the Premier of Victoria announced that “stage 3” restrictions would be reinstated across metropolitan Melbourne and Mitchell Shire from 9 July 2020.

Particulars

Statement from the Premier made on 7 July 2020.

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

Particulars

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

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

The use of private security guards at quarantine hotels ends

55. From about mid-June 2020, the hotel quarantine program underwent substantial changes including:
- (a) staff from The Alfred Hospital taking on clinical and non-clinical roles at quarantine hotels;
 - (b) the involvement of Corrections Victoria staff, including new employees from backgrounds including airline staff, as residential support officers to supervise those in quarantine;
 - (c) the ending of the use of private security guards; and
 - (d) from 8 July 2020, the transfer of responsibility for functions relating to detention of overseas travellers to the Attorney General, so that the Department of Justice and Community Safety assumed operational responsibility for the hotel quarantine program.

56. By 8 July 2020, private security guards were no longer being utilised to guard residents at quarantine hotels.

“Stage 4” lockdown in Melbourne, business closures, and “stage 3” lockdown for the rest of Victoria

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

Particulars

Data published by the Department of Health and Human Services. New daily confirmed cases of COVID-19 were:

- 134 on 8 July 2020
- 165 on 9 July 2020
- 288 on 10 July 2020
- 216 on 11 July 2020
- 273 on 12 July 2020
- 177 on 13 July 2020
- 270 on 14 July 2020
- 238 on 15 July 2020
- 317 on 16 July 2020
- 428 on 17 July 2020
- 217 on 18 July 2020
- 363 on 19 July 2020
- 275 on 20 July 2020
- 374 on 21 July 2020
- 484 on 22 July 2020
- 403 on 23 July 2020
- 300 on 24 July 2020
- 357 on 25 July 2020
- 459 on 26 July 2020
- 532 on 27 July 2020
- 384 on 28 July 2020
- 295 on 29 July 2020
- 723 on 30 July 2020
- 627 on 31 July 2020
- 397 on 1 August 2020.

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

Particulars

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

59. From 2 August 2020, “stage four” restrictions were imposed on metropolitan Melbourne.

Particulars

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

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

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

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

60. The “stage 4” restrictions placed additional, tighter restrictions on the ability of persons to leave their homes, including a curfew from 8:00pm to 5:00am, and continued to restrict the operation of certain businesses, including pubs, clubs, entertainment, and retail businesses.
61. From 2 August 2020 to 5 August 2020, new daily confirmed COVID-19 cases in Victoria continued to be in triple-digit figures.

Particulars

Data published by the Department of Health and Human Services. New daily confirmed cases of COVID-19 were:

- 671 on 2 August 2020
- 429 on 3 August 2020
- 439 on 4 August 2020
- 725 on 5 August 2020.

62. From 6 August 2020:
- (a) workplace closures were imposed on businesses operating in Melbourne as part of the “stage 4” restrictions, resulting in the forced closure of a range of businesses; and
- (b) “stage 3” restrictions were re-imposed on all of Victoria outside Melbourne.

Particulars

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

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

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

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

Particulars

Data published by the Department of Health and Human Services. New daily confirmed cases of COVID-19 were:

- 471 on 6 August 2020
- 450 on 7 August 2020
- 466 on 8 August 2020
- 394 on 9 August 2020
- 322 on 10 August 2020
- 331 on 11 August 2020
- 410 on 12 August 2020
- 278 on 13 August 2020
- 372 on 14 August 2020
- 303 on 15 August 2020
- 297 on 16 August 2020.

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

Particulars

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

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

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

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

65. Each of:
- (a) the “stage 3” restrictions imposed in certain postcodes from 1 July 2020;
 - (b) the “stage 3” restrictions imposed in Melbourne and Mitchell Shire from 9 July 2020;
 - (c) the “stage 4” restrictions imposed in Melbourne from 2 August 2020;
 - (d) the workplace closures imposed on businesses in Melbourne from 6 August 2020; and
 - (e) the “stage 3” restrictions imposed in Victoria outside Melbourne from 6 August 2020;

was substantially caused by the trend of increasing new daily cases of COVID-19 in Victoria that arose from about 22 June 2020 (the **second wave**).

66. The second wave was substantially caused by the breaches of the hotel quarantine program articulated in paragraphs 39 to 44 above.

Particulars

Evidence given by Dr Charles Alpren, epidemiologist at DHHS, to the Hotel Quarantine Inquiry on 18 August 2020, to the effect that approximately 99 per cent of current cases of COVID-19 in Victoria, have arisen from the outbreaks at the Rydges on Swanston or Stamford Plaza hotels. See also the witness statement of Dr Alpren to the Hotel Quarantine Inquiry dated 4 August 2020 at paragraph 130.

Duty of care

67. At all material times, each of the Minister for Health, the Minister for Jobs, the Secretary of DHHS, and the Secretary of DJPR, knew, or alternatively ought to have known, that:
- (a) the effective implementation of the hotel quarantine program was critical to reducing the risk of high rates of community transmission of COVID-19 in Victoria;
 - (b) if the hotel quarantine program was not implemented effectively, it was likely that COVID-19 restrictions would continue to be imposed, or to the extent that they had been eased, would be re-imposed, which would materially curtail the

ability of the plaintiff and Group Members to carry on their business and materially curtail the demand for goods and services supplied by means of those businesses; and

- (c) the plaintiff and Group Members were likely to suffer economic loss in the event that such restrictions were imposed.

68. The plaintiff and Group Members were unable to protect themselves from the consequences of COVID-19 restrictions that materially curtailed their ability to carry on their business and materially curtailed the demand for goods and services supplied by means of those businesses, and were thus vulnerable to any want of care leading to the continued imposition or re-imposition of those restrictions.

69. In the premises, and having regard to the matters set out in this indorsement of claim:

- (a) the Minister for Jobs and the Secretary of DJPR owed the plaintiff and Group Members a duty to take reasonable care, in procuring and monitoring the provision of the guarding service, to avoid foreseeable economic loss; and
- (b) the Minister for Health and the Secretary of DHSS owed the plaintiff and Group Members a duty to take reasonable care, in providing and monitoring the adequacy of infection-control training, to avoid foreseeable economic loss.

70. This duty required, *inter alia*, each of the Minister for Jobs, the Secretary of DJPR, the Minister for Health, and the Secretary of DHSS to ensure that the Departments for which they were responsible took all reasonable steps to ensure that personnel employed or engaged by the private security firms procured to provide the guarding service were:

- (a) adequately trained in infection control techniques and protocols, including techniques and protocols for using, donning, doffing and disposing of personal protective equipment (**PPE**);
- (b) provided with appropriate PPE; and
- (c) capable of providing the guarding service in a manner which would adequately protect against the risk of community transmission of COVID-19 from returned travellers in quarantine.

Breach of duty

71. Each of the Minister for Health, the Minister for Jobs, the Secretary of DHSS, and the Secretary of DJPR breached the duty of care owed to the plaintiff and Group Members, including by failing to ensure that the Departments for which they were responsible took all reasonable steps to ensure that personnel employed or engaged by the private security firms procured to provide the guarding service were:
- (a) adequately trained in infection control techniques and protocols, including techniques and protocols for using, donning, doffing and disposing of PPE;
 - (b) provided with appropriate PPE; and
 - (c) capable of providing the guarding service in a manner which would adequately protect against the risk of community transmission of COVID-19 from returned travellers in quarantine.

Causation and loss

72. Personnel employed or engaged by the private security firms procured to provide the guarding service were not:
- (a) adequately trained in infection control techniques and protocols, including in techniques and protocols for using, donning, doffing and disposing of PPE;
 - (b) provided with appropriate PPE; or
 - (c) capable of providing the guarding service in a manner which would adequately protect against the risk of community transmission of COVID-19 from returned travellers in quarantine.
73. The breach of duty by each of the Minister for Jobs, the Minister for Health, the Secretary of DJPR, and the Secretary of DHSS:
- (a) was a necessary condition of;
 - (b) in the alternative, materially contributed to; or
 - (c) in the further alternative, materially increased the risk of, the second wave.

74. In the premises, the breach of duty by each of the Minister for Jobs, the Minister for Health, the Secretary of DJPR, and the Secretary of DHSS:
- (a) was a necessary condition of;
 - (b) in the alternative, materially contributed to; or
 - (c) in the further alternative, materially increased the risk of,
- each of:
- (d) the “stage 3” restrictions imposed in certain postcodes from 1 July 2020;
 - (e) the “stage 3” restrictions imposed in Melbourne and Mitchell Shire from 9 July 2020;
 - (f) the “stage 4” restrictions imposed in Melbourne from 2 August 2020;
 - (g) the workplace closures imposed on businesses in Melbourne from 6 August 2020; and
 - (h) the “stage 3” restrictions imposed in Victoria outside Melbourne from 6 August 2020.
75. By reason of the breach of duty by each of the Minister for Jobs, the Minister for Health, the Secretary of DJPR, and the Secretary of DHSS, the plaintiff and Group Members have suffered loss.

Particulars

From 2 July 2020, 5 Districts NY closed its dine-in operations entirely and there was a dramatic decrease in the number of customers using its takeaway service. Further particulars will be furnished by way of statement of claim.

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

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

Vicarious liability of the State of Victoria

77. Each of the Minister for Health, the Minister for Jobs, the Secretary of DHSS, and the Secretary of DJPR is and was at all material times a “servant or agent” of the State of Victoria within the meaning of s 23(1)(b) of the *Crown Proceedings Act 1958* (Vic).
78. Each of the torts of those defendants alleged herein was committed in the course or scope of their employment or agency.
79. In the premises, pursuant to s 23(1)(b) of the *Crown Proceedings Act 1958* (Vic), the State of Victoria is liable for the torts, constituted by the matters set out above, of the Minister for Health, the Minister for Jobs, the Secretary of DHSS, and the Secretary of DJPR.

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

80. The questions of law or fact common to the claims of the Group Members are as follows:
 - (a) whether the facts concerning the implementation of the hotel quarantine program and the breach of quarantine are as articulated in paragraphs 8 to 66 above;
 - (b) whether one or more of the Minister of Health, the Minister for Jobs, the Secretary of DHSS, and the Secretary of DJPR, owed a duty to take reasonable care to avoid foreseeable loss to the Group Members;
 - (c) whether one or more of the Minister for Health, the Minister for Jobs, the Secretary of DHSS, and the Secretary of DJPR, breached any such duty of care;
 - (d) whether any such breach caused loss to the Group Members within the meaning of s 51 of the *Wrongs Act 1958* (Vic); and
 - (e) whether the State of Victoria is vicariously liable for the negligence of the Minister for Health, the Minister for Jobs, the Secretary of DHSS, and the Secretary of DJPR.

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

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

A. M. HOCHROTH

H. C. WHITWELL

.....

Quinn Emanuel Urquhart & Sullivan

Solicitors for the plaintiff

SCHEDULE OF PARTIES

5 BOROUGHES NY PTY LTD (ACN 632 508 304)

Plaintiff

STATE OF VICTORIA

First defendant

**MINISTER FOR HEALTH AND MINISTER FOR THE COORDINATION OF
HEALTH AND HUMAN SERVICES: COVID-19**

Second defendant

**MINISTER FOR THE COORDINATION OF JOBS, PRECINCTS AND REGIONS:
COVID-19**

Third defendant

SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Fourth defendant

SECRETARY, DEPARTMENT OF JOBS, PRECINCTS AND REGIONS

Fifth defendant

1. Place of trial—
Melbourne.
2. Mode of trial—
Trial will be before a Judge of the Court sitting alone.
3. This writ was filed—
For the plaintiff by Damian Scattini of Quinn Emanuel Urquhart & Sullivan, solicitor,
of Level 15, 111 Elizabeth Street, Sydney, New South Wales, 2000.
4. The address of the plaintiff is—
19 Fifer Rise, Bundoora Victoria 3083, Australia
5. The address for service of the plaintiff is—
c/o Alex King of KING & COLLINS, Level 4, Rialto South Tower, 525 Collins St
Melbourne VIC 3000
6. The email address for service of the plaintiff is—
damianscattini@quinnemanuel.com
7. The addresses of the defendants are—
First defendant: Level 25, 121 Exhibition Street, Melbourne, Victoria 3000 c/o the
Victorian Government Solicitor
Second defendant: Level 22, 50 Lonsdale Street, Melbourne, Victoria 3000
Third defendant: Level 36, Exhibition Street, Melbourne, Victoria 3000
Fourth defendant: 50 Lonsdale Street, Melbourne, Victoria 3000
Fifth defendant: 1 Spring Street, Melbourne, Victoria 3000