

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS14484/24

First Plaintiff **DELLA MERRETT**

AND

Second Plaintiff **SHANE ALLEN ANDREW BRENT POKAI**

AND

Third Plaintiff **DEBORAH POKAI**

AND

First Defendant **STATE OF QUEENSLAND (QUEENSLAND
POLICE SERVICE)**

AND

Second Defendant **KATARINA RUHZ CARROLL**

NOTICE OF INTENTION TO DEFEND

TAKE NOTICE that the First and Second Defendants intend to defend this proceeding.

The facts relied on by the First and Second Defendants are set out in the attached defence.

Filed in the Brisbane Registry on: **28 JAN 2025**

Registrar



Notice of intention to defend

Filed on behalf of the First and Second
Defendants
Form 6 R. 139
Per Paul Lack
LT5/POL048/5552/LAP

Document No: 17553066

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PARTICULARS OF THE FIRST AND SECOND DEFENDANTS

Name: **STATE OF QUEENSLAND (QUEENSLAND
POLICE SERVICE) and KATARINA RUHZ
CARROLL**

Business address: C/- Crown Solicitor

Solicitor's name: Paul Lack

Firm name: CE Christensen
Crown Solicitor

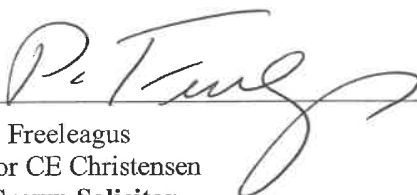
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Signed:

Description:


P Freeleagus
for CE Christensen
Crown Solicitor

Solicitor for the First and Second Defendants

Dated:

28 January 2025

This notice of intention to
defend is to be served on:The Plaintiffs
c/- their solicitors
Alexander Law
4 Princess Street
PADDINGTON QLD 4064

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS 14484/24

First Plaintiff: **DELLA MERRETT**

AND

Second Plaintiff: **SHANE ALLEN ANDREW BRENT POKAI**

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Third Plaintiff: **DEBORAH POKAI**

First Defendant: **STATE OF QUEENSLAND
(QUEENSLAND POLICE SERVICE)**

AND

Second Defendant: **KATARINA RUZH CARROLL**

DEFENCE

The defendants rely on the following facts in defence of the claim:

A. THE PARTIES***Group Members***

1. The Defendants admit paragraph 1 of the Statement of Claim filed 25 October 2024.
2. The Defendants admit paragraph 2 of the Statement of Claim.
3. As to paragraph 3 of the Statement of Claim, the Defendants:
 - a. do not plead to the allegations because they do not call for a response;
 - b. adopt in this Defence the definitions used by the Plaintiffs (unless otherwise indicated).

DEFENCE

Filed on behalf of the Defendants

Form 17, Version 2, UCPR r 146

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4. The Defendants do not plead to paragraph 4 of the Statement of Claim because it does not call for a response.
5. The Defendants do not plead to paragraph 5 of the Statement of Claim because it does not call for a response.
6. The Defendants do not plead to paragraph 6 of the Statement of Claim because it does not call for a response.

Respondents

7. As to paragraph 7 of the Statement of Claim, the Defendants:
 - a. deny any tortious conduct of the Second Defendant for the reasons pleaded herein;
 - b. otherwise admit the allegations..

8. The Defendants admit paragraph 8 of the Statement of Claim.

B. THE COVID-19 DIRECTIONS

Powers of the Commissioner of Police

9. The Defendants admit paragraph 9 of the Statement of Claim.
10. The Defendants admit paragraph 10 of the Statement of Claim.
11. As to paragraph 11 of the Statement of Claim, the Defendants:
 - a. admit the allegations;
 - b. say that s 4.9(1) of the *Police Service Administration Act* 1990 (Qld) (**PSAA**) vests a discretionary power in the Police Commissioner.
12. As to paragraph 12 of the Statement of Claim, the Defendants:
 - a. admit the allegations in sub-paragraphs (a) and (b);
 - b. admit that the *Human Rights Act* 2019 (Qld) (**HRA**), in the context of decision making under PSAA ss 4.8(4)(b) and 4.9(2), requires that a public entity (which includes the Second Defendant) act compatibly with human rights and properly consider such rights;
 - c. otherwise deny the allegations, as the effect of a failure to adhere to the requirements of the HRA is a question of lawfulness as against that Act and does not derogate from the power to issue a direction on the terms of s 4.9 of the PSAA.

Direction No 12

13. The Defendants admit paragraph 13 of the Statement of Claim.

14. The Defendants admit paragraph 14 of the Statement of Claim.

Direction No 14

15. The Defendants admit paragraph 15 of the Statement of Claim.

16. As to paragraph 16 of the Statement of Claim, the Defendants:

- a. admit the allegations;
- b. say that Direction No 14 was issued in reliance upon:
 - (i) a foreshadowed easing of restrictions on business and the border with New South Wales;
 - (ii) with the easing of such restrictions, an expectation that the transmission of COVID-19 would circulate within Queensland and communities within the State;
 - (iii) the Chief Health Office (**CHO**) having issued directions requiring people to be vaccinated against COVID-19 as a requirement in order to enter certain places, including places that employees of the QPS would be likely to attend as part of their duties.

Particulars

The CHO directions included, 'Workers in a healthcare setting (COVID-19) Vaccination Requirements) Direction' and 'COVID-19 Vaccination Requirements for Workers in a high risk setting Direction'.

- c. say further that, by the time Direction No. 14 issued, Direction No. 12 had withstood a challenge to its lawfulness in the Queensland Industrial Relations Commission (by a Full Bench).

Exemptions

17. The Defendants admit paragraph 17 of the Statement of Claim.

Coercive statements re enforcement of the COVID-19 Directions

- 18. The Defendants admit paragraph 18 of the Statement of Claim and will rely upon the email of 2 September 2021 for its full effect at trial.
- 19. The Defendants admit paragraph 19 of the Statement of Claim and will rely upon the email of 7 September 2021 for its full effect at trial.
- 20. The Defendants admit paragraph 20 of the Statement of Claim and will rely upon the email of 21 September 2021 for its full effect at trial.

21. As to paragraph 21 of the Statement of Claim, the Defendants:
 - a. do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them;
 - b. say that a copy of the Vaccine Exception Guidelines was annexed to the email dated 21 September 2021 referred to at paragraph 20 of the Statement of Claim.
22. The Defendants admit paragraph 22 of the Statement of Claim and will rely upon the email of 31 December 2021 for its full effect at trial.
23. The Defendants admit paragraph 23 of the Statement of Claim and will rely upon the email of 21 July 2022 for its full effect at trial.
24. The Defendants admit paragraph 24 of the Statement of Claim and will rely upon the email of 25 July 2022 for its full effect at trial.

C. THE FIRST PLAINTIFF – VACCINE REFUSAL

25. As to paragraph 25 of the Statement of Claim, the Defendants:
 - a. admit the allegations;
 - b. say that:
 - (i) the First Plaintiff was re-employed within the QPS on 10 August 1998 (having resigned from the QPS in 1984 as alleged);
 - (ii) such re-employment was as an Operational Officer OO4, on a temporary basis;
 - (iii) on 5 October 1998, such position was made permanent;
 - (iv) in such position, the First Plaintiff was a Communications Room Operator, Cairns District Communications, Far Northern Region;
 - (v) on or about 5 June 2010, the First Plaintiff's position was converted to Administrative Officer AO3(3) 'Communications Operator' under the *Public Service Act*;
 - (vi) the First Plaintiff continued to hold such position until being dismissed from the QPS on or about 17 January 2023.
26. The Defendants admit paragraph 26 of the Statement of Claim.
27. As to paragraph 27 of the Statement of Claim, the Defendants:
 - a. do not admit the allegations in sub-paragraphs (a) to (d), having made reasonable inquiries but remaining uncertain as to the truth of them, including

because it is not stated in what respect the pleaded matters had the alleged effect upon the First Plaintiff;

- b. do not admit the allegations in sub-paragraph (e), having made reasonable inquiries but remaining uncertain as to the truth of them, including because the 'wishes' of the First Plaintiff are not matters to which the Defendants are alleged to have been privy.
- 28. As to paragraph 28 of the Statement of Claim, the Defendants do not admit the allegations having made reasonable inquiries but remaining uncertain as to the truth of them because:
 - a. of the matters in the preceding paragraph;
 - b. they concern an action of the First Plaintiff and her alleged motivations it;
 - c. interlocutory steps (including discovery) have not yet taken place.
- 29. As to paragraph 29 of the Statement of Claim, the Defendants do not admit the allegations having made reasonable inquiries but remaining uncertain as to the truth of them given:
 - a. the allegations concern alleged dealings between the First Plaintiff and staff at the Cairns Convention Centre COVID Vaccination Hub on 24 September 2021;
 - b. interlocutory steps (including discovery) have not yet taken place.
- 30. As to paragraph 30 of the Statement of Claim, the Defendants do not admit the allegations having made reasonable inquiries but remaining uncertain as to the truth of them, including because interlocutory steps (including discovery) have not yet taken place.
- 31. The Defendants admit paragraph 31 of the Statement of Claim.
- 32. The Defendants admit paragraph 32 of the Statement of Claim.
- 33. The Defendants admit paragraph 33 of the Statement of Claim, but say the First Plaintiff's Suspension Notice was served on 1 December 2021.
- 34. The Defendants admit paragraph 34 of the Statement of Claim.
- 35. The Defendants admit paragraph 35 of the Statement of Claim, save that the date of the email was 4 March 2022 (not 3 March 2022).
- 36. The Defendants admit paragraph 36 of the Statement of Claim.
- 37. As to paragraph 37 of the Statement of Claim, the Defendants:
 - a. admit the allegations in subparagraph (a);

- b. otherwise deny the allegations and believe them to be untrue because the email was in fact dated 4 May 2022 (not 5 May) and does not contain the words alleged (or words to that effect).

38. The Defendants admit paragraph 38 of the Statement of Claim.

39. The Defendants admit paragraph 39 of the Statement of Claim.

40. The Defendants admit paragraph 40 of the Statement of Claim.

41. The Defendants admit paragraph 41 of the Statement of Claim.

42. The Defendants admit paragraph 42 of the Statement of Claim.

43. The Defendants admit paragraph 43 of the Statement of Claim.

D. THE SECOND PLAINTIFF – ALLEGED VACCINE COERCION

44. As to paragraph 44 of the Statement of Claim, the Defendants:

- a. admit the allegations;
- b. say the Second Plaintiff:
 - (i) commenced as a police officer with the QPS on 28 June 2010;
 - (ii) achieved the rank of Senior Constable on 9 April 2016;
 - (iii) resigned from the QPS on 14 October 2022.

45. The Defendants admit paragraph 45 of the Statement of Claim.

46. As to paragraph 46 of the Statement of Claim, the Defendants do not admit the allegations having made reasonable inquiries but remaining uncertain as to the truth of them, given that:

- a. the allegations concern an alleged telephone conversation between the Second Plaintiff and the Administration Sergeant from the Surfers Paradise Police Station on date unspecified;
- b. interlocutory steps (including discovery) have not yet taken place.

47. As to paragraph 47 of the Statement of Claim, the Defendants:

- a. do not admit the allegations in sub-paragraphs (a) to (d), having made reasonable inquiries but remaining uncertain as to the truth of them, including because it is not stated in what respect the pleaded matters had the alleged effect upon the Second Plaintiff;

- b. do not admit the allegations in sub-paragraph (e), having made reasonable inquiries but remaining uncertain as to the truth of them, including because the 'wishes' of the Second Plaintiff are not matters to which the Defendants are alleged to have been privy.

48. As to paragraph 48 of the Statement of Claim, the Defendants:

- a. do not admit that the Second Plaintiff attended a Terry White Chemist on or about 5 October 2021, having made reasonable inquiries but remaining uncertain as to the truth of the allegation including because:
 - (i) it concerns dealings between the Second Plaintiff and a third party to which the Defendants were not privy;
 - (ii) interlocutory steps (including discovery) have not yet taken place;
- b. otherwise deny the allegations, and believe them to be untrue because, had the Second Plaintiff protested or not consented to being vaccinated, the person administering the vaccine would not have proceeded to do so, and been obliged so to act.

49. As to paragraph 49 of the Statement of Claim, the Defendants do not admit the allegations having made reasonable inquiries but remaining uncertain as to the truth of them given:

- a. they concern alleged health conditions of the Second Plaintiff;
- b. interlocutory steps (including discovery) have not yet taken place.

50. As to paragraph 50 of the Statement of Claim, the Defendants:

- a. do not admit the allegations in subparagraph (e) having made reasonable inquiries but remaining uncertain as to the truth of them, as they concern an alleged telephone conversation between the Second Plaintiff and the Administration Sergeant from the Surfers Paradise Police Station on an unspecified date;
- b. otherwise admit the allegations.

51. As to paragraph 51 of the Statement of Claim, the Defendants:

- a. do not admit the allegations in sub-paragraphs (a) to (d), having made reasonable inquiries but remaining uncertain as to the truth of them, including because it is not stated in what respect the pleaded matters had the alleged effect upon the Second Plaintiff;
- b. do not admit the allegations in sub-paragraph (e), having made reasonable inquiries but remaining uncertain as to the truth of them, including because the 'wishes' of the Second Plaintiff are not matters to which the Defendants are alleged to have been privy.

52. As to paragraph 52 of the Statement of Claim, the Defendants:
- a. do not admit that the Second Plaintiff attended a General Practice at Amtan Medical Pacific Pines having made reasonable inquiries but remaining uncertain as to the truth of the allegation including because:
 - (i) it concerns dealings between the Second Plaintiff and a third party to which the Defendants were not privy;
 - (ii) interlocutory steps (including discovery) have not yet taken place;
 - b. otherwise deny the allegations, and believe them to be untrue because, had the Second Plaintiff protested or not consented to being vaccinated, the person administering the vaccine would not have proceeded to do so, and been obliged so to act.
53. As to paragraph 53 of the Statement of Claim, the Defendants do not admit the allegations having made reasonable inquiries but remaining uncertain as to the truth of them given:
- a. they concern alleged health conditions of the Second Plaintiff;
 - b. interlocutory steps (including discovery) have not yet taken place.
54. As to paragraph 54 of the Statement of Claim, the Defendants do not admit the allegations having made reasonable inquiries but remaining uncertain as to the truth of them.
55. As to paragraph 55 of the Statement of Claim, the Defendants:
- a. do not admit the allegations in subparagraph (e) having made reasonable inquiries but remaining uncertain as to the truth of them, as they concern an alleged telephone conversation between the Second Plaintiff and the Administration Sergeant from the Surfers Paradise Police Station on a date unspecified;
 - b. do not admit the allegations in subparagraph (h) having made reasonable inquiries but remaining uncertain as to the truth of them;
 - c. otherwise admit the allegations.
56. As to paragraph 56 of the Statement of Claim, the Defendants:
- a. do not admit the allegations in sub-paragraphs (a) to (d) inclusive having made reasonable inquiries but remaining uncertain as to the truth of them, including because it is not stated in what respect the pleaded matters had the effect upon the Second Plaintiff;
 - b. do not admit the allegations in sub-paragraph (e), having made reasonable inquiries but remaining uncertain as to the truth of them, including because the

‘wishes’ of the Second Plaintiff are not matters to which the Defendants are alleged to have been privy.

57. As to paragraph 57 of the Statement of Claim, the Defendants:
 - a. do not admit the allegation that the Second Plaintiff attended an (unidentified) general practitioner at Amtan Medical Pacific Pines having made reasonable inquiries but remaining uncertain as to the truth of them, including because:
 - (i) they concern dealings between the Second Plaintiff and a third party to which the Defendants were not privy;
 - (ii) interlocutory steps (including discovery) have not yet taken place;
 - b. otherwise deny the allegations, and believe them to be untrue because, had the Second Plaintiff protested or not consented to being vaccinated, the person administering the vaccine would not have proceeded to do so, and been obliged so to act.
58. As to paragraph 58 of the Statement of Claim, the Defendants do not admit the allegations having made reasonable inquiries but remaining uncertain as to the truth of them, including because:
 - a. they concern alleged health conditions of the Second Plaintiff;
 - b. interlocutory steps (including discovery) have not yet taken place.
59. The Defendants admit paragraph 59 of the Statement of Claim, but say the email was dated 18 August 2022.
60. As to paragraph 60 of the Statement of Claim, the Defendants do not admit the allegations having made reasonable inquiries but remaining uncertain as to the truth of them.
61. As to paragraph 61 of the Statement of Claim, the Defendants:
 - a. do not admit the allegations in subparagraphs (e) and (h) having made reasonable inquiries but remaining uncertain as to the truth of them, and because interlocutory steps (including discovery) have not yet taken place;
 - b. otherwise admit the allegations, subject to paragraph 59 above.
62. As to paragraph 62 of the Statement of Claim, the Defendants:
 - a. do not admit the allegations in sub-paragraphs (a) to (d) inclusive having made reasonable inquiries but remaining uncertain as to the truth of them, including because it is not stated in what respect the pleaded matters had the effect upon the Second Plaintiff;

- b. do not admit the allegations in subparagraph (e), having made reasonable inquiries but remaining uncertain as to the truth of them, including because the 'wishes' of the Second Plaintiff are not matters to which the Defendants are alleged to have been privy.

63. As to paragraph 63 of the Statement of Claim, the Defendants:

- a. admit that on 14 October 2022 the Second Plaintiff resigned from the QPS;
- b. otherwise do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them, including because they concern what the Second Plaintiff is said to have 'felt'.

E. THE THIRD PLAINTIFF – REFUSED MEDICAL EXEMPTION

64. The Defendants admit paragraph 64 of the Statement of Claim.

65. The Defendants admit paragraph 65 of the Statement of Claim.

66. As to paragraph 66 of the Statement of Claim, the Defendants:

- a. do not admit the allegations in sub-paragraphs (a) to (d) inclusive having made reasonable inquiries but remaining uncertain as to the truth of them, including because it is not stated in what respect the pleaded matters had the effect upon the Third Plaintiff;
- b. do not admit the allegations in subparagraph (e), having made reasonable inquiries but remaining uncertain as to the truth of them, including because the 'wishes' of the Third Plaintiff are not matters to which the Defendants are alleged to have been privy.

67. As to paragraph 67 of the Statement of Claim, the Defendants:

- a. do not admit the allegation that, on or about 4 October 2021, the Third Plaintiff attended the Broadbeach Vaccination Hub, including because interlocutory steps (including discovery) have not yet taken place;
- b. otherwise deny the allegations and believe them to be untrue because, had the Third Plaintiff protested or not consented to being vaccinated, the person administering the vaccine would not have proceeded to do so, and been obliged so to act.

68. As to paragraph 68 of the Statement of Claim, the Defendants do not admit the allegations having made reasonable inquiries but remaining uncertain as to the truth of them, including because:

- a. they concern alleged health conditions of the Third Plaintiff;
- b. interlocutory steps (including discovery) have not yet taken place.

69. The Defendants admit paragraph 69 of the Statement of Claim.

70. As to paragraph 70 of the Statement of Claim, the Defendants:

- a. do not admit the allegations in sub-paragraphs (a) to (d) inclusive having made reasonable inquiries but remaining uncertain as to the truth of them, including because it is not stated in what respect the pleaded matters had the effect upon the Third Plaintiff;
- b. do not admit the allegations in subparagraph (e), having made reasonable inquiries but remaining uncertain as to the truth of them, including because the 'wishes' of the Third Plaintiff are not matters to which the Defendants are alleged to have been privy.

71. As to paragraph 71 of the Statement of Claim, the Defendants:

- a. do not admit the allegation that on or about 22 November 2021 the Third Plaintiff attended a chemist at Broadbeach including because interlocutory steps (including discovery) have not yet taken place;
- b. otherwise deny the allegations and believe them to be untrue because, had the Third Plaintiff protested or not consented to being vaccinated, the person administering the vaccine would not have proceeded to do so, and been obliged so to act.

72. As to paragraph 72 of the Statement of Claim, the Defendants do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them given:

- a. they concern alleged health conditions of the Third Plaintiff;
- b. interlocutory steps (including discovery) have not yet taken place.

73. As to paragraph 73 of the Statement of Claim, the Defendants:

- a. do not admit the allegations in sub-paragraph (a) that the Third Plaintiff on or about 2 March 2022 attended an (unnamed) general practitioner, having made reasonable inquiries but remaining uncertain as to the truth of them;
- b. admit the allegations in sub-paragraph (b);
- c. say that the certificate stated that the Third Plaintiff was eligible for an exemption because she had been infected with COVID-19 and that such exemption would be operative for 4 months.

74. The Defendants admit paragraph 74 of the Statement of Claim.

75. The Defendants admit paragraph 75 of the Statement of Claim.

76. The Defendants admit paragraph 76 of the Statement of Claim.

77. As to paragraph 77 of the Statement of Claim, the Defendants:
- a. admit the allegations;
 - b. say that the exemption was refused on the grounds that the medical specialist advising the Vaccination Exemption Committee had expressed the opinion that there was no medical reason to delay the booster.
78. The Defendants admit paragraph 78 of the Statement of Claim.
79. The Defendants admit paragraph 79 of the Statement of Claim, but say the email in subparagraph (j) is dated 17 March 2022 (not 18 March).
80. As to paragraph 80 of the Statement of Claim, the Defendants:
- a. do not admit the allegations in sub-paragraphs (a) to (d) inclusive having made reasonable inquiries but remaining uncertain as to the truth of them, including because it is not stated in what respect the pleaded matters had the effect upon the Third Plaintiff;
 - b. do not admit the allegations in subparagraph (e), having made reasonable inquiries but remaining uncertain as to the truth of them, including because the 'wishes' of the Third Plaintiff are not matters to which the Defendants are alleged to have been privy.
81. As to paragraph 81 of the Statement of Claim, the Defendants:
- a. do not admit the allegation that on or about 23 March 2022, the Third Plaintiff attended the Pacific Pines Medical Centre and was administered a vaccine at chemist at Broadbeach (by an unidentified person) having made reasonable inquiries but remaining uncertain as to the truth of them, including because interlocutory steps (including discovery) have not yet taken place;
 - b. otherwise deny the allegations and believe them to be untrue because, had the Third Plaintiff protested or not consented to being vaccinated, the person administering the vaccine would not have proceeded to do so, and been obliged so to act.
82. As to paragraph 82 of the Statement of Claim, the Defendants do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them given:
- a. they concern alleged health conditions of the Third Plaintiff;
 - b. interlocutory steps (including discovery) have not yet taken place.
83. The Defendants admit paragraph 83 of the Statement of Claim.
84. The Defendants admit paragraph 84 of the Statement of Claim.

85. As to paragraph 85 of the Statement of Claim, the Defendants:
- a. do not admit the allegations in subparagraph (a) having made reasonable inquiries but remaining uncertain as to the truth of them;
 - b. admit the allegations in subparagraph (b).
86. The Defendants admit paragraph 86 of the Statement of Claim, but say that the application was submitted on 5 October 2022.
87. As to paragraph 87 of the Statement of Claim, the Defendants admit the allegations save that the expiry date of the temporary medical exemption was 18 April 2023 not January 2023.
88. The Defendants admit paragraph 88 of the Statement of Claim.

F. *ALLEGED MISFEASANCE IN PUBLIC OFFICE*

General Pleading

89. As to paragraph 89 of the Statement of Claim, the Defendants:
- a. admit the allegations;
 - b. say that the Second Defendant at all times believed herself to be acting lawfully and reasonably in exercising the Directions Power.
90. As to paragraph 90 of the Statement of Claim, the Defendants:
- a. deny the allegations in subparagraphs (a) to (c) and (e) to (g) and believe them to be untrue because:
 - (i) the Health Minister, on 18 August 2021, had declared a public health emergency under s 319 of the *Public Health Act 2005* (Qld);
 - (ii) the Second Defendant at all times acted on advice from, among others, Mr Doug Smith, Deputy Commissioner, Strategy and Corporate Services;
 - (iii) such advice provided a reasoned basis to issue the COVID-19 Directions and gave consideration to human rights;
 - (iv) when the COVID-19 Directions were issued, they were considered:
 - (A) reasonably necessary to preserve the ability of the QPS to discharge its responsibilities required by s 2.3 of the PSAA;
 - (B) necessary to maintain a safe workplace so officers and staff members could come to work and be secure that their health and safety requirements were being met;

- (C) necessary to maintain a workforce capable of delivering police services to the community (including the additional services required in a public health emergency);
 - (D) necessary to maintain the confidence of the community of Queensland (and communities within it) in the workforce that does not put them at risk when dealing with members of the QPS;
 - (v) so far as action taken after 22 October 2021, a Full Bench of the Queensland Industrial Relations Commission had dismissed challenges to the lawfulness of Second Defendant's Direction No 12 dated 7 September 2021;
 - (vi) other decisions of judicial bodies had decided the mandatory vaccine orders were not unlawful, namely:
 - (A) Justice Beech-Jones in *Kassam v Hazzard* [2021] NSWSC 1320 (delivered 15 October 2021);
 - (B) Commissioner McKenna, in *Kimber v Sapphire Coast Community Aged Care Ltd* [2021] FWCFCB 6015 (delivered 29 April 2021)
 - (vii) the giving of the COVID-19 Directions was reasonably required to preserve the ability of the QPS to continue to discharge its responsibilities in s 2.3 of the PSAA;
 - (viii) as to the allegations in subparagraph (c) (Particulars (i), (ii) and (iv) to (vii) only) the COVID-19 Directions were not incompatible with human rights because the rights identified were not limited by the COVID-19 Directions;
 - (ix) as to the allegations in subparagraph (c) (Particular (iii) only), the human right to freedom from being subjected to medical treatment without full, free and informed consent, although limited, was limited in a way that was reasonable and demonstrably justified.
- b. as to subparagraph (d) :
- (i) admit the allegations;
 - (ii) say that, notwithstanding the admission in (b)(i) above:
 - A. the COVID-19 Directions were given in a time of emergency;
 - B. the COVID-19 Directions were given at a time when knowledge available about the COVID-19 virus, its variants, its virulence, and its transmissibility was limited and being added to on an almost daily basis;

- C. the COVID-19 Directions were not invalid (and have never been declared as such);
- D. the COVID-19 Directions were not declared unlawful until 27 February 2024 (and prospectively only) by which time such Directions had been rescinded or otherwise ceased to have effect;
- E. until such declaration, the COVID-19 Directions remained lawfully effective;
- F. such declaration of unlawfulness, in any event, does not of itself entitle the Plaintiffs to damages, by reason of s 59(3) of the HRA ;
- G. the Plaintiffs have no cause of action that would entitle them to the relief sought.

91. As to paragraph 91 of the Statement of Claim, the Defendants deny the allegations and believe them to be untrue because:

- a. the Second Defendant did not have the knowledge alleged;
- b. at all times, the Second Defendant believed herself to be acting lawfully and reasonably;
- c. the Second Defendant acted on advice from, among others, Mr Doug Smith, Deputy Commissioner, Strategy and Corporate Services;
- d. such advice provided a reasoned basis to issue the COVID-19 Directions and gave consideration to human rights;
- e. when the COVID-19 Directions were issued, they were considered reasonably necessary to preserve the ability of the QPS to discharge its responsibilities required by s 2.3 of the PSAA;
- f. so far as action taken after 22 October 2021, a Full Bench of the Queensland Industrial Relations Commission had dismissed challenges to Direction No 12;
- g. other decisions of judicial bodies had decided the mandatory vaccine orders were not unlawful, namely:
 - (i) Justice Beech-Jones in *Kassam v Hazzard* [2021] NSWSC 1320 (delivered 15 October 2021);
 - (ii) Commissioner McKenna, in *Kimber v Sapphire Coast Community Aged Care Ltd* [2021] FWCFB 6015 (delivered 29 April 2021);
- h. the Second Defendant proceeded on the basis (erroneously or otherwise) that human rights had been properly considered in the formulation of the COVID-19 Directions.

92. As to paragraph 92 of the Statement of Claim, the Defendants deny the allegations and believe them to be untrue because:
- a. the Second Defendant was not indifferent to the risk posed to individuals;
 - b. the Second Defendant did not act recklessly in connection with the COVID-19 Directions;
 - c. the Second Defendant acted on advice from, among others, Mr Doug Smith, Deputy Commissioner, Strategy and Corporate Services;
 - d. such advice provided a reasoned basis to issue the COVID-19 Directions and gave consideration to human rights;
 - e. when the COVID-19 Directions were issued, they were considered reasonably necessary to preserve the ability of the QPS to discharge its responsibilities required by s 2.3 of the PSAA;
 - f. so far as action taken after 22 October 2021, a Full Bench of the Queensland Industrial Relations Commission had dismissed challenges to Direction No 12;
 - g. other decisions of judicial bodies had decided the mandatory vaccine orders were not unlawful, namely:
 - (i) Justice Beech-Jones in *Kassam v Hazzard* [2021] NSWSC 1320 (delivered 15 October 2021);
 - (ii) Commissioner McKenna, in *Kimber v Sapphire Coast Community Aged Care Ltd* [2021] FWCFB 6015 (delivered 29 April 2021).
93. As to paragraph 93 of the Statement of Claim, the Defendants:
- a. denies the allegations in subparagraph (a) and believes them to be untrue because the Second Defendant did not consider loss and/or damage to the Plaintiffs and Group Members to be 'likely', but instead considered such to be possible only if individuals did not comply with the COVID-19 Directions (insofar as they were not granted exemptions);
 - b. say that the COVID-19 Directions were both reasonable and lawful in the circumstances that then operated;
 - c. as to the allegations in subparagraph (b), deny the allegations, and believe them to be untrue for the reasons stated at paragraph 92 above.
94. As to paragraph 94 of the Statement of Claim, the Defendants:
- a. deny the Second Defendant's pleaded conduct constituted misfeasance in public office, for the reasons pleaded herein;

- b. admit that, to have been dismissed from the QPS and to have to resign by reason of being unwilling to receive the COVID-19 Vaccination, is to suffer loss and damage;
- c. otherwise do not admit the allegations having made reasonable inquiries but remaining uncertain as to the truth of them, including because particulars of loss and damage are yet to be furnished.

95. As to paragraph 95 of the Statement of Claim, the Defendants:

- a. deny the Second Defendant's pleaded conduct constituted misfeasance in public office, for the reasons pleaded herein;
- b. admit the First Defendant is vicariously liable for any liability of the Second Defendant by reason of any misfeasance in public office (which conduct is denied);
- c. deny any liability to pay damages to the Plaintiffs or Group Members, for the reasons pleaded herein.

Misfeasance claim by the First Plaintiff

96. As to paragraph 96 of the Statement of Claim, the Defendants repeat in response to the allegations, the responses pleaded in response in paragraphs 25 to 43 and 88 to 94 above.

97. As to paragraph 97 of the Statement of Claim, the Defendants:

- a. deny, for the reasons pleaded herein, that the Second Defendant engaged in misfeasance in public office as pleaded or at all;
- b. deny the First Plaintiff suffered loss or damage as a consequence of such conduct because the Second Defendant did not engage in misfeasance in public office.

98. As to paragraph 98 of the Statement of Claim, the Defendants:

- a. deny the Second Defendant committed the tort of misfeasance in public office and believe that allegation to be untrue for the reasons stated in paragraphs 89 and 90 above;
- b. admit the First Defendant is vicariously liable for any tort of misfeasance in public office committed by the Second Defendant in the nature of that pleaded (the commission of which tort is denied);
- c. deny any liability to pay damages to the Plaintiffs or Group Members, for the reasons pleaded herein.

Misfeasance claim by the Second Plaintiff

99. As to paragraph 99 of the Statement of Claim, the Defendants repeat in response to the allegations, the matters pleaded in paragraphs 44 to 63 and 88 to 94 above.

100. As to paragraph 100 of the Statement of Claim, the Defendants:

- a. deny, for the reasons pleaded herein, that the Second Defendant engaged in misfeasance in public office as pleaded or at all;
- b. deny the Second Plaintiff suffered loss or damage as a consequence of such conduct because the Second Defendant did not engage in misfeasance in public office.

101. As to paragraph 101 of the Statement of Claim, the Defendants:

- a. deny the Second Defendant committed the tort of misfeasance in public office and believe that allegation to be untrue for the reasons stated in paragraphs 89 and 90 above;
- b. admit the First Defendant is vicariously liable for any tort of misfeasance in public office committed by the Second Defendant in the nature of that pleaded (the commission of which tort is denied);
- c. deny any liability to pay damages to the Plaintiffs or Group Members, for the reasons pleaded herein.

Misfeasance claim by the Third Plaintiff

102. As to paragraph 102 of the Statement of Claim, the Defendants repeat in response to the allegations, the matters stated in paragraphs 64 to 88 and 88 to 94 above.

103. As to paragraph 103 of the Statement of Claim, the Defendants:

- a. deny the Second Defendant committed the tort of misfeasance in public office and believe that allegation to be untrue for the reasons stated in paragraphs 89 and 90 above;
- b. admit the First Defendant is vicariously liable for any tort of misfeasance in public office committed by the Second Defendant in the nature of that pleaded (the commission of which tort is denied);
- c. deny any liability to pay damages to the Third Plaintiff for the reasons pleaded herein.

104. As to paragraph 104 of the Statement of Claim, the Defendants:

- a. deny the Second Defendant committed the tort of misfeasance in public office and believe that allegation to be untrue for the reasons stated in paragraphs 89 and 90 above;

- b. admit the First Defendant is vicariously liable for any tort of misfeasance in public office committed by the Second Defendant in the nature of that pleaded (the commission of which tort is denied);
- c. deny any liability to pay damages to the Third Plaintiff for the reasons pleaded herein.

G. CLAIM IN NEGLIGENCE

General pleading

105. As to paragraph 105 of the Statement of Claim, the Defendants deny the allegations and believe them to be untrue because:

- a. in the exercise of the powers under the PSAA to decide whether to make the COVID-19 Directions, the Second Defendant had to consider not only the risk of harm to the Plaintiffs and Group Members, but also:
 - (i) the interests of employees within the QPS not, so far as reasonably possible, being exposed to the transmission of the COVID-19 Virus, whether from colleagues or members of the public with whom they might come into contact in the discharge of their responsibilities within the QPS;
 - (ii) minimising absenteeism within the QPS so that its members remained available to assist, so far as reasonably required, with the continuing public health emergency;
 - (iii) ensuring QPS functioned, and would continue to function despite the declared health emergency, to discharge its responsibilities in s 2.3 of the PSAA and to serve the people of Queensland;
- b. the existence of the alleged duty is inconsistent with the statutory right to have a dispute arbitrated by the Queensland Industrial Relations Commission as to the lawfulness of the COVID-19 Directions;
- c. the statutory regime of the PSAA does not erect or facilitate a relationship between the Second Defendant on the one hand and the Plaintiffs and Group Members on the other hand that displays sufficient characteristics answering the criteria for intervention by the tort of negligence;
- d. the duty alleged is not consistent with the terms, scope and purpose of the PSAA, and in particular ss 2.3, 2.4, 2.5 and 4.8.

106. As to paragraph 106 of the Statement of Claim, the Defendants deny the allegations and believe them to be untrue because:

- a. there was no such duty, and therefore no breach of it;
- b. pursuant to s 36 of the *Civil Liability Act* 2003 (Qld), the alleged acts or omissions of the Second Defendant did not constitute a wrongful exercise or

failure on her part, because such were not, in the circumstances, so unreasonable that no public or other authority having the functions of the Second Defendant could properly consider the act or omission to be a reasonable exercise of her functions.

107. As to paragraph 107 of the Statement of Claim, the Defendants:

- a. deny any loss and damage was 'by reason' of a breach of duty of care, and believe the allegation to be untrue because there was no such duty, for the reasons pleaded herein;
- b. otherwise do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them.

108. As to paragraph 108 of the Statement of Claim, the Defendants:

- a. admit that the First Defendant is vicariously liable for any tortious conduct of the Second Defendant, but denies any such conduct for the reasons pleaded herein;
- b. otherwise deny the allegations and believe them to be untrue by reason of the matters stated in paragraphs 105 to 107 above.

Negligence claim by the First Plaintiff

109. As to paragraph 109 of the Statement of Claim, the Defendants rely upon the matters pleaded herein in response to paragraphs 25 to 43 and 105 to 108 of the Statement of Claim.

110. As to paragraph 110 of the Statement of Claim, the Defendants:

- a. deny any loss and damage was 'by reason' of a breach of duty of care, and believe the allegation to be untrue because there was no such duty, for the reasons pleaded herein;
- b. otherwise do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them.

111. As to paragraph 111 of the Statement of Claim, the Defendants:

- a. admit that the First Defendant is vicariously liable for any tortious conduct of the Second Defendant, but denies any such conduct for the reasons pleaded herein;
- b. otherwise deny the allegations and believe them to be untrue by reason of the matters stated in paragraphs 105 to 110 above.

Negligence claim by the Second Plaintiff

112. As to paragraph 112 of the Statement of Claim, the Defendants rely upon the matters pleaded herein in response to paragraphs 44 to 63 and 105 to 108 of the Statement of Claim.

113. As to paragraph 113 of the Statement of Claim, the Defendants

- a. deny any loss and damage was 'by reason' of a breach of duty of care, and believe the allegation to be untrue because there was no such duty, for the reasons pleaded herein;
- b. otherwise do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them.

114. As to paragraph 114 of the Statement of Claim, the Defendants:

- a. admit that the First Defendant is vicariously liable for any tortious conduct of the Second Defendant, but denies any such conduct for the reasons pleaded herein;
- b. otherwise deny the allegations and believe them to be untrue by reason of the matters stated in paragraphs 105 to 113 above.

Negligence claim by the Third Plaintiff

115. As to paragraph 115 of the Statement of Claim, the Defendants rely upon the matters stated above in paragraphs 64 to 88 and 105 to 108.

116. As to paragraph 116 of the Statement of Claim, the Defendants

- a. deny any loss and damage was 'by reason' of a breach of duty of care, and believe the allegation to be untrue because there was no such duty, for the reasons pleaded herein;
- b. otherwise do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them.

117. As to paragraph 117 of the Statement of Claim, the Defendants:

- a. admit that the First Defendant is vicariously liable for any tortious conduct of the Second Defendant, but denies any such conduct for the reasons pleaded herein;
- b. otherwise deny the allegations and believe them to be untrue by reason of the matters stated in paragraphs 105 to 116 above.

H. CLAIM FOR THE TORT OF BREACH OF STATUTORY DUTY

General pleading

118. As to paragraph 118 of the Statement of Claim, the Defendants:

- a. admit the Second Defendant had duties vested in her by s 4.8 of the PSAA;
- b. otherwise deny the allegations and believe them to be untrue because:

- (i) the alleged duties are not duties at all, but statutory powers or discretions conferred in order for the Second Defendant to discharge her responsibilities as Commissioner under the PSAA;
- (ii) the alleged duties are not ones for the benefit of the Plaintiffs or Group Members, but for the people of Queensland in the preservation of peace and good order in all areas of the State and the protection of all communities in the State and all members thereof;
- (iii) the PSAA does not (including for the duties admitted in subparagraph (a) above) evince a legislative intention to confer a private civil cause of action for breach of any duty the PSAA may be found to contain;
- (iv) neither the Plaintiffs nor the Group Members are a within a class of persons for whose benefit any duty was imposed (being instead a duty to be exercised in the public interest).

119. As to paragraph 119 of the Statement of Claim, the Defendants deny the allegations and believe them to be untrue:

- a. for the reasons in the preceding paragraph;
- b. because the Defendants at all times acted in accordance with the responsibilities imposed by the PSAA;
- c. because, pursuant to s 36 of the *Civil Liability Act* 2003 (Qld), the acts or omissions of the Second Defendant did not constitute a wrongful exercise or failure on her part, because such were not, in the circumstances, so unreasonable that no public or other authority having the functions of the Second Defendant could properly consider the act or omission to be a reasonable exercise of her functions.

120. As to paragraph 120 of the Statement of Claim, the Defendants:

- a. deny any loss and damage was 'by reason' of a breach of statutory duty, and believe the allegation to be untrue because there was no such duty, for the reasons pleaded herein;
- b. otherwise do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them.

121. As to paragraph 121 of the Statement of Claim, the Defendants:

- a. admit that the First Defendant is vicariously liable for any tortious conduct of the Second Defendant, but denies any such conduct for the reasons pleaded herein;
- b. otherwise deny the allegations and believe them to be untrue by reason of the matters stated in paragraph 118 above.

Breach of Statutory Duty claim by the First Plaintiff

122. As to paragraph 122 of the Statement of Claim, the Defendants repeat and rely upon the matters stated in paragraphs 25 to 43 and 118 and 121 above.

123. As to paragraph 123 of the Statement of Claim, the Defendants:

- a. deny any loss and damage was 'by reason' of a breach of statutory duty, and believe the allegation to be untrue because there was no such duty, for the reasons pleaded herein;
- b. otherwise do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them.

124. As to paragraph 124 of the Statement of Claim, the Defendants:

- a. admit that the First Defendant is vicariously liable for any tortious conduct of the Second Defendant, but denies any such conduct for the reasons pleaded herein;
- b. otherwise deny the allegations and believe them to be untrue for the reasons stated in paragraph 118 above.

Breach of Statutory Duty claim by the Second Plaintiff

125. As to paragraph 125 of the Statement of Claim, the Defendants repeat and rely upon the matters stated in paragraphs 44 to 63 and 118 and 121 above.

126. As to paragraph 126 of the Statement of Claim, the Defendants:

- a. deny any loss and damage was 'by reason' of a breach of statutory duty, and believe the allegation to be untrue because there was no such duty, for the reasons pleaded herein;
- b. otherwise do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them.

127. As to paragraph 127 of the Statement of Claim, the Defendants:

- a. admit that the First Defendant is vicariously liable for any tortious conduct of the Second Defendant, but denies any such conduct for the reasons pleaded herein;
- b. otherwise deny the allegations and believe them to be untrue for the reasons stated in paragraph 118 above.

Breach of Statutory Duty claim by the Third Plaintiff

128. As to paragraph 128 of the Statement of Claim, the Defendants repeat and rely upon the matters in paragraphs 64 to 88 and 118 and 121 above.

129. As to paragraph 129 of the Statement of Claim, the Defendants:

- a. deny any loss and damage was 'by reason' of a breach of statutory duty, and believe the allegation to be untrue because there was no such duty, for the reasons pleaded herein;
- b. otherwise do not admit the allegations, having made reasonable inquiries but remaining uncertain as to the truth of them.

130. As to paragraph 130 of the Statement of Claim, the Defendants:

- a. admit that the First Defendant is vicariously liable for any tortious conduct of the Second Defendant, but denies any such conduct for the reasons pleaded herein;
- b. otherwise deny the allegations and believe them to be untrue for the reasons stated in paragraph 118 above.

I. COMMON QUESTIONS

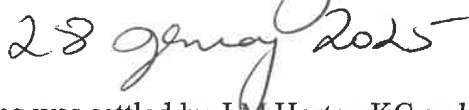
131. As to paragraphs 131 to 166, the Defendants do not admit the allegations, having made reasonable inquiries as to the appropriateness of the proposed common questions, but remaining uncertain thereto until completion of further interlocutory steps.

Signed:



Description: Solicitor for the Defendants

Dated:



This pleading was settled by J M Horton KC and D M Favell of Counsel.

NOTICE AS TO REPLY

You have fourteen days within which to file and serve a reply to this defence. If you do not do so, you may be prevented from adducing evidence in relation to allegations of fact made in this defence.