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Document Lodged: Defence - Form 33 - Rule 16.32
Court of Filing FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 16/12/2025 1:57:02 PM ACST
Date Accepted for Filing: 16/12/2025 2:22:45 PM ACST
File Number: NTD26/2024
File Title: FREDDIE JACKSON & ANOR v NORTHERN TERRITORY OF AUSTRALIA
Registry: NORTHERN TERRITORY REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

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FORM 33

Rule 16.32

Defence

No. NTD26 of 2024

Federal Court of Australia

District Registry: Northern Territory

Division: General

Freddie Jackson

First Applicant

Patrice Koorabubba

Second Applicant

Northern Territory of Australia

Respondent

Filed on behalf of (name & role of party) Northern Territory of Australia, Respondent
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In answer to the Further Amended Statement of Claim dated 22 September 2025 (**3SOC**):

A. PRELIMINARY

Representative proceedings

1. The Respondent admits that the Applicants bring this claim as a representative action on behalf of **False Imprisonment Group Members** and on behalf of **Racial Discrimination Group Members** as defined.
2. The Respondent admits paragraph 2 of the 3SOC.

The Applicants

3. The Respondent admits paragraph 3 of the 3SOC and says further:
 - (a) The First Applicant was ordinarily residing in House 43, Robinson River which was a three-bedroom one-bathroom house occupied by 11 people.
 - (b) The Second Applicant was ordinarily residing in House 42, Robinson River which was a three-bedroom one-bathroom house occupied by between 6 to 10 people.
- 3A The Respondent admits paragraph 3A of the 3SOC.

The Respondent

4. The Respondent admits paragraph 4 of the 3SOC.
- 4A The Respondent admits that it is vicariously liable:
 - (a) as to the claims under the *Racial Discrimination Act 1975* (Cth) (**RDA**), for any unlawful acts and omissions of employees, officers and agents in connection with their duties; and
 - (b) as to the claims of false imprisonment, for any unlawful acts or omissions of employees, officers and agents committed in the course or scope of the employment or agency; and
 - (c) otherwise denies the allegations.

B. FALSE IMPRISONMENT – CLAIMS OF THE APPLICANTS AND FALSE IMPRISONMENT GROUP MEMBERS

5. The Respondent admits paragraph 5 of the 3SOC and says further that the Respondent's servants, officers and agents arrived in Robinson River:
- (a) in response to the matters pleaded at paragraphs 5A to 5O and 10D to 10G of this Defence; and
 - (b) for purposes including: assessing the Robinson River COVID-19 Outbreak as defined in paragraph 5K of this Defence, establishing and maintaining a COVID-19 free green zone, conducting contact tracing, testing essential workers and community members, providing medical and quarantine advice and services to essential workers and community members, providing food and emergency assistance as required, ensuring continuity of essential services, and coordinating and assisting the evacuation for isolation and quarantine of vulnerable persons, positive cases and close contacts.

Particulars

- (i) *An eight-member Rapid Assessment Team (RAT) including health and emergency services staff arrived in Robinson River on 15 November 2021.*
- (ii) *A further four-member RAT including additional health staff arrived in Robinson River on 17 November 2021.*

A global pandemic and the Robinson River COVID-19 Outbreak

- 5A SARS-CoV-2 is a virus which causes COVID-19.
- 5B SARS-CoV-2 was first identified in humans in approximately December 2019.
- 5C COVID-19 is a highly infectious and potentially life-threatening respiratory illness in humans which, between December 2019 and 15 November 2021:
- (c) caused the death of more than 5 million people globally; and
 - (d) was detected in more than 250 million positive cases.
- 5D On 30 January 2020 the World Health Organization (**WHO**) declared the international outbreak of COVID-19 to be a Public Health Emergency of International Concern.

- 5E On 11 March 2020 the WHO declared the outbreak of COVID-19 to be a Global Pandemic.
- 5F COVID-19 was first detected in Australia in January 2020.
- 5G On 2 March 2020 the first case of local transmission was detected in Australia.
- 5H On 18 March 2020 the Commonwealth Governor-General declared COVID-19 a human biosecurity emergency under section 475 of the *Biosecurity Act 2015* (Cth).
- 5I On 4 March 2020 COVID-19 was first detected in the Northern Territory.
- 5J On 4 November 2021 the first case of local transmission was detected in the Northern Territory.
- 5K On 15 November 2021 the Northern Territory detected its first positive case of COVID-19 in a remote community in the community of Robinson River (**Robinson River COVID-19 Outbreak**).
- 5L By 15 November 2021 the WHO had identified four variants of SARS-CoV-2, including the Delta variant.
- 5M By 15 November 2021 the Delta variant was the dominant variant in Australia.
- 5N By 15 November 2021 the Delta variant was known to have higher rates of infection, morbidity and death than other known variants of SARS-CoV-2.
- 5O The Robinson River COVID-19 Outbreak was identified as the Delta variant of SARS-CoV-2.

Evacuation of positive cases of COVID-19 and close contacts

6. The Respondent admits paragraph 6 of the 3SOC and says as follows:
- (a) The First Applicant was offered and accepted advice and assistance from the Respondent's servants, officers and agents to travel to the Centre for National Resilience (**CNR**).
 - (b) On 17 November 2021 a Robinson River clinic nurse drove the First Applicant to the Robinson River airstrip.
 - (c) The First Applicant travelled by plane operated by **CareFlight** Limited from the Robinson River airstrip to Darwin Airport.

- (d) The Second Applicant was offered and accepted advice and assistance from the Respondent's servants, officers and agents to travel to the CNR.
- (e) On 16 November 2021 a Robinson River clinic nurse drove the Second Applicant to the Robinson River airstrip.
- (f) The Second Applicant travelled by plane operated by CareFlight from Robinson River airstrip to Darwin Airport.

6A The Applicants and False Imprisonment Group Members were selected by the Respondent's servants, officers and agents for transport to the CNR:

- (a) for isolation or quarantining because:
 - i. they were identified as infected or potentially infected with COVID-19;
 - ii. they were medically assessed as suitable for isolation or quarantining at the CNR;
 - iii. on receipt of public health advice, they agreed to travel to the CNR for isolation or quarantining; and
 - iv. safe and effective isolation or quarantining in the community was not possible.
- (b) for other medical reasons because:
 - i. they had pre-existing health conditions;
 - ii. they were medically assessed as particularly vulnerable to the Robinson River COVID-19 Outbreak;
 - iii. they were medically assessed as suitable for isolation or quarantining at the CNR; and
 - iv. on receipt of public health advice, they agreed to travel to the CNR; or
- (c) as family members to voluntarily accompany persons in (a) or (b).

7. The Respondent admits paragraph 7 of the 3SOC and says:

- (a) The First Applicant was at the CNR from 17 November 2021 to 12 December 2021.

- (b) The Second Applicant was at the CNR from 16 November 2021 to 12 December 2021.

8. The Respondent denies paragraph 8 of the 3SOC and says further:

First Applicant

- (a) The First Applicant voluntarily travelled to the CNR on 17 November 2021 on receiving advice that he was at risk of infection with COVID-19, and of transmitting that infection to others.
- (b) The First Applicant voluntarily remained in medical quarantine at the CNR between 17 November 2021 to 12 December 2021.
- (c) The First Applicant's travel to and quarantining at the CNR was reasonable and necessary to maintain the health and safety of members of the Robinson River community, including the First Applicant, in the context of the Robinson River COVID-19 Outbreak.
- (d) The Respondent's servants, officers and agents considered that the First Applicant's travel to and quarantining at the CNR was reasonable and necessary to maintain the health and safety of members of the Robinson River community in response to the Robinson River COVID-19 Outbreak.

Particulars

- (i) *On 17 November 2021, the First Applicant was identified by the Respondent's servants, officers and agents as a person potentially infected with COVID-19.*
- (ii) *On 17 November 2021, the First Applicant was advised by the Respondent's servants, officers and agents that he was potentially infected with COVID-19 and provided public health advice, including advice to travel to the CNR to quarantine for a period of 14 days.*
- (iii) *The First Applicant agreed to travel to, and undergo quarantine at, the CNR for the recommended period.*
- (iv) *The First Applicant voluntarily travelled from Robinson River to the CNR on 17 November 2021 to undergo quarantine for the recommended period.*

- (v) *During the period of travel by road, the First Applicant was subject to the same restrictions imposed for road safety on all motor vehicle passengers, and he voluntarily submitted to those restrictions.*
- (vi) *During the period of travel by air, the First Applicant was subject to the same restrictions imposed for flight safety on all other aircraft passengers, and he voluntarily submitted to those restrictions.*
- (vii) *The First Applicant did not withdraw his consent to quarantining at CNR during the recommended period, or at all.*
- (viii) *On 28 November 2021, while at the CNR, the First Applicant was again identified by the Respondent's servants, officers and agents as a person potentially infected with COVID-19.*
- (ix) *The First Applicant was advised by the Respondent's servants, officers and agents that he was potentially infected with COVID-19 and provided with public health advice, including advice that he remain in quarantine for a further period of 14 days.*
- (x) *The First Applicant agreed to remain in quarantine at the CNR for the further recommended period.*
- (xi) *The First Applicant did not withdraw his consent to quarantining at the CNR during the further recommended period, or at all.*

Second Applicant

- (e) The Second Applicant voluntarily travelled from Robinson River to the CNR on 16 November 2021.
- (f) The Second Applicant voluntarily remained in medical quarantine at the CNR between 16 November 2021 to 12 December 2021.
- (g) The Second Applicant's travel to and quarantining at the CNR was reasonable and necessary to maintain the health and safety of members of the Robinson River community, including the Second Applicant, in the context of the Robinson River COVID-19 Outbreak.
- (h) The Respondent's servants, officers and agents considered that the Second Applicant's travel to and quarantining at the CNR was reasonable and

necessary to maintain the health and safety of members of the Robinson River community in response to the Robinson River COVID-19 Outbreak.

Particulars

- (i) *On 16 November 2021, the Second Applicant was identified by the Respondent's servants, officers and agents as a person potentially infected with COVID-19.*
- (ii) *On 16 November 2021, the Second Applicant was advised by the Respondent's servants, officers and agents that she was potentially infected with COVID-19 and provided public health advice, including advice to travel to the CNR to quarantine for a period of 14 days.*
- (iii) *The Second Applicant agreed to travel, and undergo quarantine at, the CNR for the recommended period.*
- (iv) *The Second Applicant voluntarily travelled from Robinson River to the CNR on 16 November 2021 to undergo quarantine for the recommended period.*
- (v) *During the period of travel by road, the Second Applicant was subject to the same restrictions imposed for road safety on all motor vehicle passengers, and she voluntarily submitted to those restrictions.*
- (vi) *During the period of travel by air, the Second Applicant was subject to the same restrictions imposed for flight safety on all other aircraft passengers, and she voluntarily submitted to those restrictions.*
- (vii) *The Second Applicant travelled to, and entered quarantine at, the CNR with her immediate family, including Alana Kingsley (infant daughter), Jakelyn Kingsley (4-year-old son), and Jake Kingsley (partner).*
- (viii) *The Second Applicant did not withdraw her consent to quarantining at CNR during the recommended period, or at all.*
- (ix) *On 17 November 2021, the Second Applicant was identified by the Respondent's servants, officers and agents as a person infected with COVID-19. Alana Kingsley was also identified as a person infected with COVID-19.*

- (x) *On 17 November 2021, the Second Applicant was advised by the Respondent's servants, officers and agents that she had been identified as a person infected with COVID-19 and provided public health advice, including advice to isolate for a period of 14 days at the CNR.*
- (xi) *The Second Applicant agreed to undergo isolation at the CNR for the recommended period.*
- (xii) *The Second Applicant entered isolation at the CNR with her immediate family.*
- (xiii) *The Second Applicant did not withdraw her consent to isolating at the CNR during the recommended period, or at all.*
- (xiv) *Following her infection, the Second Applicant first returned a negative COVID-19 test on 28 November 2019. Alana Kingsley first returned a negative COVID-19 test on 29 November 2019.*
- (xv) *As a result of their exposure to Alana Kingsley, Jake and Jakelyn Kingsley were advised by the Respondent's servants, officers and agents that they had been identified as persons potentially infected with COVID-19 and provided with public health advice, including advice to quarantine for a further period of 14 days from 29 November 2019.*
- (xvi) *Despite having the same exposure to Alana Kingsley, the Second Applicant was not considered by the Respondent's servants, officers and agents to be a person potentially infected with COVID-19, because she had recently been infected with COVID-19 and the likelihood of her becoming re-infected was low.*
- (xvii) *On 30 November 2019, the Second Applicant's recommended period of isolation concluded. From that time, there was no public health recommendation by the Respondent's servants, officers and agents for the Second Applicant to remain at the CNR to quarantine or isolate, or at all.*
- (xviii) *From 30 November 2019, the Second Applicant elected and was permitted by the Respondent's servants, officers and agents to*

remain at the CNR with her immediate family while Jake and Jakelyn Kingsley completed their recommended further quarantine period.

- (xix) *On 12 December 2021, the Second Applicant elected to leave the CNR to return to Robinson River with her immediate family. The Second Applicant did not withdraw her consent to remaining at the CNR from 30 November 2021 to 12 December 2021, or at all.*

9. The Respondent denies paragraph 9 of the 3SOC and says further that in the premise of paragraphs 5 to 8 of this Defence:

- (a) the Applicants and False Imprisonment Group Members were not detained while they were being transported from Robinson River to the CNR or while quarantining or otherwise remaining at the CNR; and
- (b) alternatively, the conduct of the Respondent's servants, officers and agents to facilitate or enforce the travel and quarantining or isolation of the Applicants and False Imprisonment Group Members at the CNR was authorised and/or justified:
- i. by the consent of the Applicants and False Imprisonment Group Members;
 - ii. by the necessity to protect the Robinson River community from the risk of death or serious harm arising from the Robinson River COVID-19 Outbreak;
 - iii. in self-defence or in defence of another to protect the community members of Robinson River from the Robinson River COVID-19 Outbreak; and/or
 - iv. under s 52 of the *Public and Environmental Health Act 2011* (NT) (**PEHA**);

Particulars for s 52 of the PEHA

- (i) *The Respondent relies on paragraphs 10A to 10G of this Defence.*
- (ii) *Prior to 15 November 2021 the Chief Health Officer (CHO) Hugh Heggie and the Deputy CHO Charles Pain approved of and authorised the Remote Community COVID-19*

Framework, including the Contain and Test Strategy as defined in paragraph 10D of this Defence.

- (iii) *The conduct of the Respondent's servants, officers and agents was in accordance with the Remote Community COVID-19 Framework.*
- (iv) *On 15 November 2021 the Acting CHO Charles Pain approved of and authorised the execution of the Remote Community COVID-19 Framework, including the Contain and Test Strategy in relation to the Robinson River COVID-19 Outbreak.*
- (v) *Alternatively to particulars (i) – (iv), the Respondent relies on: COVID-19 Directions (No. 7) of 2020: Directions for Infected Persons, COVID-19 Directions (No. 21) of 2020: Directions for Potentially Infected Persons, COVID-19 Directions (No. 52) of 2021: Directions for Quarantine Facilities, COVID-19 Directions (No. 86) of 2021: Directions to lock down Robinson River and homelands, and COVID-19 Directions (No. 91) of 2021: Amendment of COVID-19 Directions (No. 86) 2021.*

10. The Respondent denies paragraph 10 of the 3SOC in the premise of paragraph 9 of this Defence.

BA RACIAL DISCRIMINATION – CLAIMS OF APPLICANTS AND RACIAL DISCRIMINATION GROUP MEMBERS

10A The Respondent admits paragraph 10A of the 3SOC.

10B The Respondent admits paragraph 10B of the 3SOC.

10C The Respondent admits paragraph 10C of the 3SOC.

Remote Outbreak Management Plan and the Contain and Test Strategy

10D The Respondent admits paragraph 10D of the 3SOC and says further:

- (a) By 15 November 2021 the Respondent considered that COVID-19 posed a substantially greater public health risk in remote Indigenous communities of

the Northern Territory than in the general population of Australia as a consequence of:

- (i) the limited healthcare services available in remote communities;
- (ii) prevalent social factors including overcrowding and unsanitary housing conditions;
- (iii) higher rates of comorbidities and serious pre-existing health conditions than in the general population;
- (iv) population mobility within and outside of communities;
- (v) the increased difficulty of effective contact tracing as a result of language, social and economic barriers; and
- (vi) the reduced prevalence of vaccinations.

(collectively, **Heightened Risks**)

- (b) In recognition of the Heightened Risks, the Respondent developed and implemented a policy framework for the management of an outbreak of COVID-19 in a remote community of the Northern Territory (**Remote Community COVID-19 Framework**).
- (c) The Remote Community COVID-19 Framework included the **ROMP** as defined and additionally included:
 - (i) the Northern Region COVID-19 Close Contact Evacuation and Transport of COVID-19 Pathology from Remote Health Centres Guideline (**Evacuation and Transport Guideline**);
 - (ii) the COVID-19 Outbreak Management Plan Remote Community Health Sub Plan (**Health Sub Plan**); and
 - (iii) local community plans.

ROMP

- (d) The ROMP was updated and modified from time to time to reflect the changing conditions of the pandemic, including infection and vaccination rates, and developments in the Respondent's knowledge and understanding of COVID-19 and the likely impact of an outbreak of COVID-19 in a remote community.

- (e) In November 2021 v2.0 of the ROMP was in force (**ROMP 2.0**).
- (f) A central component of the ROMP was the **Contain and Test Strategy** comprising:
 - (i) rapid deployment of resources in the event of the detection of a positive case and cluster of positive cases of COVID-19;
 - (ii) relocation and isolation of positive cases at a supervised medical facility;
 - (iii) relocation and quarantining of close contacts at a supervised quarantine facility; and
 - (iv) community quarantining and increased testing for all other community members.

Particulars

- (i) *ROMP 2.0, sections 2 and 10.2*
- (g) The ROMP and the Contain and Test Strategy were developed:
 - (i) by healthcare clinicians aware of and giving effect to the Heightened Risks;
 - (ii) in consultation with the Aboriginal Medical Services Alliance Northern Territory (**AMSANT**) and local Aboriginal Community Controlled Health Organisations (**ACCHOs**) including the Central Australian Aboriginal Congress (**Congress**);
- (h) The Contain and Test Strategy was devised by AMSANT and Congress.
- (i) The ROMP and the Contain and Test Strategy were communicated to remote communities before their implementation.

Particulars

- (i) *On 28 September 2020 the Respondent held a ROMP roadshow in Borroloola during which the Heightened Risks, the ROMP and the Contain and Test Strategy were explained to community members.*

- (j) The ROMP and the Contain and Test Strategy were approved and endorsed by the CHO, Hugh Heggie and the Deputy CHO Charles Pain.

Particulars

- (i) *Between 26 July 2020 and 3 August 2020 CHO, Hugh Heggie and Deputy CHO, Charles Pain were provided with and reviewed the final draft of the ROMP before its authorisation by the Incident Controller.*
- (ii) *Between 12 August 2021 and 6 October 2021 CHO, Hugh Heggie and Deputy CHO, Charles Pain were provided with and reviewed the proposed amendments constituting ROMP 2.0 before its authorisation by the Incident Controller.*
- (iii) *On 23 August 2021, CHO, Hugh Heggie approved and authorised the Outbreak Management Framework, being the overarching policy document for responding to an outbreak of COVID-19.*
- (iv) *The Outbreak Management Framework referred to and was intended to support the ROMP.*
- (k) The first implementation of the ROMP and the Contain and Test Strategy was in response to the Robinson River COVID-19 Outbreak.

Evacuation and Transport Guideline

- (l) On 22 May 2020 the Respondent adopted the Evacuation and Transport Guideline.

Particulars

- (i) *Northern Region COVID-19 Close Contact Evacuation and Transport of COVID-19 Pathology from Remote Health Centres Guideline version 2 approved 22 May 2020.*
- (m) The Evacuation and Transport Guideline recorded the Contain and Test Strategy and identified the CNR, then called the Howard Springs Quarantine Facility, as an appropriate facility for medical isolation and quarantine purposes.

Health Sub Plan

- (n) On 25 August 2020 the Respondent adopted the Health Sub Plan.

Particulars

- (i) *COVID-19 Outbreak Management Plan Remote Community Health Sub Plan version 4.0 approved 25 August 2020.*
- (o) The Health Sub Plan recorded the Contain and Test Strategy.

Particulars

- (i) *Health Sub Plan, sections 2.4 and 10.2*
- (p) The Health Sub Plan was approved and authorised by the CHO, Hugh Heggie.

Borroloola Local Pandemic Action Plan

10E The Respondent admits paragraph 10E of the 3SOC and says further that the Borroloola Local Pandemic Action Plan was prepared:

- (a) in consultation with the Mungoorbada Aboriginal Corporation of Robinson River; and
- (b) on advice from the Robinson River health clinic.

10F The Respondent admits paragraph 10F of the 3SOC.

10G The Respondent denies paragraph 10G of the 3SOC and says further that the Borroloola Local Pandemic Action Plan was in accordance with the Contain and Test Strategy, recognising:

- (a) no or only very limited capacity for isolation or quarantine in the community;
- (b) communication network and road access issues; and
- (c) limited healthcare services available in the community.

NHMRC COVID Care Guidelines

10H The Respondent admits paragraph 10H of the 3SOC and says further that the **NHMRC COVID Care Guidelines** as defined were concerned only with the individual clinical management of patients with COVID-19 and not with the public health response to a community outbreak of COVID-19.

10I The Respondent denies paragraph 10I of the 3SOC, including in the premise of paragraph 10H of this Defence, and says further that:

- (a) in determining that positive cases and close contacts identified in Robinson River would be advised and assisted to travel to the CNR to isolate or quarantine, the Respondent applied the Remote Community COVID-19 Framework;
- (b) in determining which persons in Robinson River satisfied the definitions of positive cases and close contacts, the Respondent applied the COVID-19 Communicable Disease Network Australia Series of National Guidelines (**SoNG**) for Public Health Units; but nevertheless; and
- (c) in the premise of paragraphs 6 to 8 and 10D to 10G of this Defence, the Respondent's conduct was consistent with the NHMRC COVID Care Guideline Intentions notwithstanding that the Respondent was not required to apply them.

NT Health Aboriginal Health Plan 2021-2031 and the NT Health Aboriginal Cultural Security Framework 2016-2026

10J As to paragraph 10J of the 3SOC, the Respondent:

- (a) says that by 14 May 2021 the Respondent had adopted the NT Health, Aboriginal Health Plan 2021 – 2031 (**Aboriginal Health Plan**);
- (b) says that the Aboriginal Health Plan acknowledges the **Contextual Matters** as defined as components *inter alia* of the social and cultural determinants of health;
- (c) says that the Aboriginal Health Plan identifies the **Cultural Health Intentions** as defined at i – vi as factors that enable wellbeing and health;

Particulars

- (i) *NT Health, Aboriginal Health Plan 2021 – 2031: Strategic Direction 3: actions 3.2, 3.3, 3.7, 3.10, 3.11, 3.12*
- (d) says that by May 2021 the Respondent had adopted the NT Health, Aboriginal Cultural Security Framework 2016-2026 (**Cultural Security Framework**);
- (e) says that the Cultural Security Framework acknowledges the Cultural Health Intentions at vii – ix;
- (f) otherwise does not admit the allegations.

10K The Respondent admits paragraph 10K of the 3SOC in the premise of paragraph 10I of this Defence.

COVID-19 response in Robinson River

10L The Respondent admits paragraph 10L of the 3SOC.

Particulars

- (i) *The 2021 Census indicates approximately 90% of residents of Robinson River were Indigenous.*

Implementation of the ROMP in Robinson River

10M The Respondent admits paragraph 10M of the 3SOC.

10N As to paragraph 10N of the 3SOC, the Respondent:

- (a) admits that by 9 November 2021, the Respondent was aware that increased vaccination coverage was one factor which reduced COVID-19 transmission rates;
- (b) says that by 15 November 2021, the Respondent was aware of modelling undertaken by the Peter Doherty Institute for Infection and Immunity which indicated that, while 80% vaccination coverage of all persons over the age of 12 would reduce transmission rates in remote communities, optimal test, trace, isolate and quarantine strategies and additional public health and social measures would be necessary in the event of a community outbreak;

Particulars

- (i) *Doherty Modelling – Final Report to National Cabinet (5 November 2021) p8.*
- (c) says that by 15 November 2021, the Respondent was aware of modelling which indicated that prompt case detection with quarantining of extended-household contacts and a 14-day lockdown for all other community residents combined with exit testing was the most effective strategy to contain a remote community outbreak;

Particulars

- (i) *Hui et al, 'Modelling testing and response strategies for COVID-19 outbreaks in remote Australian Aboriginal communities' BMC Infectious Diseases (2021) 21:929.*
 - (d) says that the ROMP adopted on 23 December 2021 was not in force or applied on 15 November 2021; and
 - (e) otherwise denies the allegations.
- 100 The Respondent denies paragraph 10O of the 3SOC and says further that:
- (a) Robinson River was assessed as unsuitable for isolation of positive cases and quarantining of close contacts in the Borroloola Local Pandemic Action Plan; and
 - (b) Robinson River was unsuitable for isolation of positive cases and quarantining of close contacts identified in the Robinson River COVID-19 Outbreak because of the matters identified at paragraph 10G of this Defence.
- 10P The Respondent denies paragraph 10P and says further that Robinson River was not a **High Vaccinated Community** as defined in the 3SOC or as defined in the ROMP which definition first came into force on 23 December 2021.

Particulars

- (i) *On 15 November 2021, 73% of the population of Robinson River who were able to receive vaccinations were fully vaccinated, being less than 80% of the population.*
 - (ii) *On 15 November 2021 and at all times until 10 January 2022, vaccinations were not available to children under the age of 12.*
 - (iii) *According to the ROMP which came into force on 23 December 2021, in the premise of (ii), a High Vaccinated Community required 90% of the population to be fully vaccinated.*
- 10Q The Respondent admits paragraph 10Q of the 3SOC.
- 10R The Respondent admits paragraph 10R of the 3SOC in the premise of paragraph 5 of this Defence.
- 10S The Respondent admits paragraph 10S of the 3SOC save to say that, generally throughout the COVID-19 pandemic and prior to 16 November 2021, COVID-19 testing

was performed by the Respondent at the clinic from time to time on suspicion of infection.

10T As to paragraph 10T of the 3SOC, the Respondent:

- (a) admits subparagraph (a) in the premise of paragraph 6A of this Defence; and
- (b) denies subparagraphs (b) – (e);

in the premise of paragraphs 6 to 8 of this Defence.

10U Save to admit that the Respondent's conduct in facilitating the transport of the Applicants and Group Members to the CNR and their isolation or quarantining at the CNR was in accordance with the ROMP, the Respondent denies paragraph 10U of the 3SOC.

10V The Respondent denies paragraph 10V of the 3SOC.

Allegations concerning the ROMP

10W The Respondent admits paragraph 10W of the 3SOC.

10X The Respondent denies paragraph 10X of the 3SOC.

Alleged RDA Breach

10Y The Respondent denies paragraph 10Y of the 3SOC and says further and alternatively that, if the conduct of the Respondent involved a distinction, exclusion, restriction or preference based on the Applicants' and the Racial Discrimination Group Members' Aboriginality, then in the premises of this Defence, it was a special measure within the meaning of s 8 of the *Racial Discrimination Act 1975* (Cth) (**RDA**).

10Z The Respondent denies paragraph 10Z of the 3SOC

10AA The Respondent denies paragraph 10AA of the 3SOC.

10BB The Respondent denies paragraph 10BB of the 3SOC and says further and alternatively that:

- (a) if the Respondent refused to allow access and use of the areas of Robinson River and the facilities therein or required the Applicants and Racial Discrimination Group Members to leave or cease their use, then this was a special measure within the meaning of s 8 of the RDA;

- (b) if the Respondent refused to permit the Applicants and Racial Discrimination Group Members to occupy their land and residential accommodation in Robinson River, then this was a special measure within the meaning of s 8 of the RDA; and
- (c) if the Respondent refused to supply health services to the Applicants and Racial Discrimination Group Members except if they relocated to the CNR, then this was a special measure within the meaning of s 8 of the RDA.

Care systems at the CNR

10CC As to paragraph 10CC, the Respondent:

- (a) says that the Respondent provided to Racial Discrimination Group Members at the CNR the services pleaded at subparagraphs (a) to (e) (**Non-COVID-19 Services**);
- (b) says that the Respondent also provided the Non-COVID-19 Services to other persons at the CNR, including under agreement with the Commonwealth of Australia; and

Particulars

- (i) *From March 2020 some domestic arrivals to the Northern Territory whose tested positive or had complex health needs were accommodated at the Howard Springs Accommodation Village, subsequently known as the CNR, and provided the Non-COVID-19 Services.*
- (ii) *From June 2020 all domestic arrivals to the northern region of the Northern Territory were accommodated at the Howard Springs Accommodation Village, subsequently known as the CNR, and provided the Non-COVID-19 Services.*
- (iii) *From May 2021 all international arrivals to the Northern Territory were accommodated at the CNR and provided the Non-COVID-19 Services pursuant to an agreement with the Commonwealth entitled "Provision of COVID-19 Quarantine Arrangements at the Northern Territory Centre for National Resilience for Organised National Repatriation of Australians" signed 15 and 16 March 2021.*

(c) otherwise denies the allegations.

10DD The Respondent denies paragraph 10DD, repeats paragraph 10H of this Defence, and says further that the NHMRC COVID Care Guidelines do not provide guidance in relation to the Non-COVID-19 Services.

10EE The Respondent denies paragraph 10EE and says further:

- (a) the Applicants and Racial Discrimination Group Members were medically assessed in Robinson River as suitable for the CNR before their transfer to the CNR;
- (b) residents of Robinson River who were medically assessed as not suitable for the CNR were not transferred to the CNR;
- (c) prior to their arrival at the CNR, the medical files of some of the Applicants and Racial Discrimination Group Members were proactively reviewed by staff at the CNR;
- (d) on arrival at the CNR, the Applicants and Racial Discrimination Group Members were screened by nursing staff for COVID-19 symptoms and any other apparent health conditions and provided an introduction to the CNR;
- (e) during their stay in isolation or quarantine at the CNR, the Applicants and Racial Discrimination Group Members were screened for COVID-19 symptoms and any other apparent health conditions by nursing staff twice daily;
- (f) during their stay in isolation or quarantine at the CNR, the Applicants and Racial Discrimination Group Members had access to a General Practitioner during ordinary business hours, and to an on-call General Practitioner after hours as well as to the Emergency Department at Royal Darwin Hospital if required;
- (g) during their stay in isolation or quarantine at the CNR, the Applicants and Racial Discrimination Group Members were provided access to outpatient services at Royal Darwin Hospital if required during the isolation or quarantine period;
- (h) during their stay in isolation or quarantine at the CNR, the Applicants and Racial Discrimination Group Members had access to an allied health team

comprising a social worker, occupational therapist, mental health nurse and physiotherapist on referral by nursing staff;

- (i) the Applicants and Racial Discrimination Group Members were referred to the allied health team as required;
- (j) during their stay in isolation or quarantine at the CNR, the Applicants and Racial Discrimination Group Members were under the care of nursing staff, including Domestic Nursing Manager, Tammy-Allyn Fernandes who is an Indigenous woman;
- (k) staff at the CNR received cultural awareness training during their orientation and/or in the course of their substantive employment in the Department of Health;
- (l) many staff and contractors at the CNR had experience working with Indigenous people in remote communities;
- (m) from 28 November 2021, an Aboriginal liaison team was established at the CNR during ordinary business hours to facilitate culturally appropriate engagement with the Applicants and Racial Discrimination Group Members;
- (n) after the passing of Ms Dick, the Aboriginal liaison team, Tammy-Allyn Fernandes, and the social worker at the CNR engaged with family members in relation to what they wished to be done or what supports they might require; and
- (o) at the request of Ms Dick's family, Ms Dick's family were given access to her body before its removal and a smoking ceremony was held at the CNR.

10FF The Respondent denies paragraph 10FF of the 3SOC.

10GG The Respondent denies paragraph 10GG of the 3SOC and says further and alternatively that, if the conduct of the Respondent involved a distinction, exclusion, restriction or preference based on the Applicants' and the Racial Discrimination Group Members' Aboriginality, then in the premises of this Defence, it was a special measure within the meaning of s 8 of the RDA.

10HH The Respondent denies paragraph 10HH of the 3SOC.

10II The Respondent denies paragraph 10II of the 3SOC.

C. WRONGFUL DEATH – CLAIM OF APPLICANTS FOR THE BENEFIT OF DECEASED’S FAMILY MEMBERS

Raylene Dick and her family

11. The Respondent admits paragraph 11 of the 3SOC.
12. The Respondent admits paragraph 12 of the 3SOC.
13. The Respondent does not know and cannot admit paragraph 13 of the 3SOC.
14. The Respondent admits that the Applicants bring the action for wrongful death pursuant to the **CFI Act** as defined.

False imprisonment as basis for wrongful death

15. The Respondent admits paragraph 15 of the 3SOC.

Particulars

- (i) *Ms Dick was offered and accepted advice and assistance from the Respondent’s servants, officers and agents to travel to the CNR.*
 - (ii) *On 17 November 2021 a Robinson River clinic nurse drove Ms Dick to the Robinson River airstrip.*
 - (iii) *Ms Dick travelled by plane operated by CareFlight from the Robinson River airstrip to Darwin Airport.*
16. The Respondent denies paragraph 16 of the 3SOC and says further:
 - (a) Ms Dick voluntarily travelled to the CNR on 17 November 2021 on receiving advice that she was potentially infected with COVID-19 and was at risk of transmitting that infection to others.
 - (b) Ms Dick voluntarily remained in medical isolation or quarantine at the CNR between 17 November 2021 and 7 December 2021.
 - (c) Ms Dick’s travel to and quarantining at the CNR was reasonable and necessary to maintain the health and safety of members of the Robinson River community, including Ms Dick, in the context of the Robinson River COVID-19 Outbreak.

- (d) The Respondent's servants, officers and agents considered that Ms Dick's travel to and quarantining at the CNR was reasonable and necessary to maintain the health and safety of members of the Robinson River community in response to the Robinson River COVID-19 Outbreak.

Particulars

- (i) *On 17 November 2021, Ms Dick was identified by the Respondent's servants, officers and agents as a person potentially infected with COVID-19 and she was provided public health advice, including advice to travel to the CNR to isolate or quarantine for a period of 14 days.*
- (ii) *Ms Dick agreed to travel to, and undergo isolation or quarantine at the CNR for the recommended period.*
- (iii) *Ms Dick voluntarily travelled from Robinson River to the CNR on 17 November 2021 to undergo isolation or quarantining for the recommended period.*
- (iv) *During the period of travel by road, Ms Dick was subject to the same restrictions imposed for road safety on all motor vehicle passengers, and she voluntarily submitted to those restrictions.*
- (v) *During the period of travel by air, Ms Dick was subject to the same restrictions imposed for flight safety on all other aircraft passengers, and she voluntarily submitted to those restrictions.*
- (vi) *Ms Dick did not withdraw her consent to quarantining at the CNR during the recommended period, or at all.*
- (vii) *On 28 November 2021, while at the CNR, Ms Dick was again identified by the Respondent's servants, officers and agents as a person potentially infected with COVID-19.*
- (viii) *Ms Dick was advised by the Respondent's servants, officers and agents that she was potentially infected with COVID-19 and provided with public health advice, including advice that she remain in quarantine for a further period of 14 days.*

- (ix) *Ms Dick agreed to remain in quarantine at the CNR for the further recommended period.*
- (x) *Ms Dick did not withdraw her consent to quarantining at the CNR during the further recommended period, or at all.*

17. The Respondent denies paragraph 17 of the 3SOC and relies on paragraph 9 of this Defence.

Wrongful death

18. As to paragraph 18 of the 3SOC, the Respondent:
- (a) admits that on or around 7 December 2021, Ms Dick developed symptomatic melioidosis;
 - (b) says that melioidosis is caused by the environmental bacterium *Burkholderia pseudomallei*;
 - (c) says that *Burkholderia pseudomallei* is endemic to northern Australia;
 - (d) says that melioidosis is typically acquired through skin abrasions, inhalation, or ingestion of *Burkholderia pseudomallei* from contaminated soil or water;
 - (e) does not know and cannot admit whether Ms Dick was infected with *Burkholderia pseudomallei* bacteria while at the CNR; and
 - (f) otherwise denies the allegations.
19. As to paragraph 19 of the 3SOC, the Respondent:
- (a) admits that Ms Dick died on 7 December 2021 at the CNR;
 - (b) says that the CNR was staffed and operated by the Respondent's servants, officers and agents;
 - (c) says that Ms Dick was at the CNR voluntarily and not in custody; and
 - (d) otherwise denies the allegations.
20. As to paragraph 20 of the 3SOC, the Respondent says that the cause of Ms Dick's death was symptomatic melioidosis (with suppurative necrotizing pneumonia and sepsis), in the context of poorly controlled type 2 diabetes mellitus, chronic kidney disease, and ischemic heart disease.

21. The Respondent denies paragraph 21 of the 3SOC and says further that, for the purpose of s 7(1) of the CFI Act:

- (a) Ms Dick's death was not caused by any wrongful act, neglect or default of the Respondent's servants, officers and agents; and
- (b) if Ms Dick had not died of symptomatic melioidosis (with suppurative necrotizing pneumonia and sepsis), in the context of poorly controlled type 2 diabetes mellitus, chronic kidney disease, and ischemic heart disease, she would not have been entitled to maintain an action and recover damages in respect of that injury against the Respondent, through its servants, officers and agents, or at all.

D. REMEDIES

The claims of the Applicants and the False Imprisonment Group Members

22. As to paragraph 22 of the 3SOC, the Respondent:

- (a) denies the allegations of false imprisonment in the premises of this defence;
- (b) denies that the Applicants and False Imprisonment Group Members suffered injury, loss or damage; and
- (c) denies that the Applicants and False Imprisonment Group Members are entitled to the relief sought in the 3SOC or at all.

The claims of the Applicants and the Racial Discrimination Group Members

22A As to paragraph 22A to 22F of the 3SOC, the Respondent:

- (a) denies the allegations of unlawful discrimination in the premises of this defence;
- (b) denies that the Applicants and Racial Discrimination Group Members suffered loss or damage; and
- (c) denies that the Applicants and Racial Discrimination Group Members are entitled to the relief sought in the 3SOC or at all.

Damages under the *Compensation (Fatal Injuries) Act 1974 (NT)* – the claims of the Applicants for the benefit of the deceased’s family members

23. As to paragraph 23 of the 3SOC, the Respondent:
- (a) denies the allegations of wrongful death in the premises of this defence; and
 - (b) does not admit that the Applicants and the family members suffered injury, loss and damage; and
 - (c) denies that the Applicants and the family members are entitled to the relief sought in the 3SOC, or at all.

Date: 16 December 2025



Signed by Michael McCarthy

Lawyer for the Respondent

This pleading was prepared by Michael McCarthy, Lawyer

Certificate of lawyer

I Michael McCarthy certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 16 December 2025

A handwritten signature in black ink, appearing to be 'M. McCarthy', written in a cursive style.

Signed by Michael McCarthy

Lawyer for the Respondent