

## NOTICE OF FILING

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*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 17  
Rule 8.05(1)(a)

**S Further Amended statement of claim**

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

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## A. PRELIMINARY

### Representative proceeding

1. The Applicants brings this proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on their own behalf and that of all persons who:
  - a. were transported from Robinson River to the Centre for National Resilience (**CNR**) at Howard Springs, in the Northern Territory (**NT**), on or around 16, 17 or 18 November 2021; and
  - b. were subsequently at the CNR for one or more days;

**(False Imprisonment Group Members)**;

and that of all persons who:

- c. are Aboriginal and/or Torres Strait Islander persons;
- d. were subject to the Transfer Actions or the Care Failures (as defined in this pleading) of the Respondent, including by its servants, officers and agents, between 18 March 2021 and 31 January 2022 (the **Racial Discrimination Claim Period**); and
- e. at any time during the Racial Discrimination Claim Period, were residing, temporarily or otherwise, in Robinson River, and during such time relocated, voluntarily or otherwise, to the CNR;

**(Racial Discrimination Group Members)**.

2. As at the date of this statement of claim, there are more than seven persons in each of the Groups~~Group Members~~.

### The Applicants

3. At all material times, the Applicants were ordinarily residents of the community of Robinson River.

3A. The Applicants are Aboriginal persons.

## The Respondent

4. The Respondent is capable of being sued by reason of s 5 of the *Crown Proceedings Act 1993* (NT).

4A. The Respondent is liable for the acts and omissions of its servants, officers and agents that are pleaded in this statement of claim:

a. vicariously, as their employer; or

b. as principal, by reason of the principal-agent relationship with them.

### Particulars

The principal-agent relationship is inferred from the acts and omissions of the servants, officers and agents being in purported furtherance of the Respondent's implementation of its COVID-19 policies, as pleaded in this statement of claim.

The Applicants also refer to s 18A of the *Racial Discrimination Act 1975* (Cth).

Further particulars may be provided after discovery.

## **B. FALSE IMPRISONMENT – CLAIMS OF APPLICANTS AND FALSE IMPRISONMENT GROUP MEMBERS**

5. On ~~or~~ around 15 November 2021, servants, officers and agents of the Respondent arrived in Robinson River.

### **Particulars**

The Respondent's servants, officers and agents included members of the Northern Territory Police Force, the Northern Territory Department of Health and the Northern Territory Fire and Rescue Service.

Further particulars may be provided after discovery.

6. On around 16, 17 and 18 November 2021, servants, officers and agents of the Respondent transported the Applicants and False Imprisonment Group Members from Robinson River to the CNR.

**Particulars**

The Applicants were ~~was~~ transported from Robinson River to the CNR on or around 17 November 2021.

The Applicants were transported by plane.

Particulars of the claims of the False Imprisonment Group Members will be provided after the initial trial of the Applicants' claims.

7. Thereafter, the Applicants and False Imprisonment Group members were at the CNR for one or more days.

**Particulars**

The Applicants were at the CNR for approximately one month. Further particulars may be provided after discovery.

Particulars of the claims of the False Imprisonment Group Members will be provided after the initial trial of the Applicants' claims.

8. The Applicants and False Imprisonment Group Members were detained by the Respondent's servants, officers and agents while they were being transported from Robinson River to the CNR, and while they were at the CNR.

**Particulars**

The Respondent's servants, officers and agents escorted the Applicants and False Imprisonment Group Members from Robinson River to the CNR.

The Respondent's servants, officers and agents caused the Applicants and the False Imprisonment Group Members to believe that they were not free to leave when they were being transported to, and when they were at, the CNR. The conduct of the Respondent's servants, officers and agents that is relied upon in this regard includes: (i) the Applicants were told they had to go to the CNR; (ii) the Applicants were not given a choice as to whether to go to or where to go to the CNR; (iii) the Applicants were told they had to stay at the CNR; (iv) the Applicants were told how long they had to stay at the CNR.

Further particulars may be provided after discovery.

9. The Respondent, including by the servants, officers and agents referred to in paragraphs 5 to 8 above, did not have any statutory or other power to detain the Applicants and False Imprisonment Group Members while they were being transported from Robinson River to the CNR, nor while they were at the CNR.
10. By reason of the matters in paragraph 9, the detention of the Applicants and False Imprisonment Group Members was unlawful.

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

**Public health emergency**

- 10A. On 18 March 2020, the Respondent's then Minister for Health made a declaration of a public health emergency for the whole of the Northern Territory (Declaration) pursuant to s 48 of the Public and Environmental Health Act 2011 (NT) (PEHA).
- 10B. From the date of the Declaration, and while the Declaration remained in force, the Chief Health Officer of the Northern Territory was empowered to exercise the powers in s 52 of the PEHA.
- 10C. The Declaration was extended from time to time until 15 June 2022.

**Particulars**

Insofar as the Applicants can say prior to discovery, the Declaration was extended on 20 March 2020, 27 March 2020, 23 June 2020, 23 September 2020, 11 December 2020, 10 March 2021, 16 June 2021, 8 September 2021, 18 November 2021 and 15 March 2022.

### **The Remote Outbreak Management Plan**

10D. On 3 August 2020, the Respondent adopted a “Remote Outbreak Management Plan” (ROMP), the purpose of which was to provide “a concept of operations for the management of an outbreak of COVID-19 in a remote setting in the Northern Territory (NT)”.

#### **Particulars**

The purpose of the ROMP was described in its “Introduction” section.

### **The Borroloola Local Pandemic Action Plan**

10E. By 30 November 2020, the Respondent had adopted a “Borroloola Local Pandemic Action Plan”, the purpose of which was to “provide the specific details to how the community [including Robinson River] will respond to a pandemic situation”.

#### **Particulars**

The purpose of the Borroloola Local Pandemic Action Plan was described in its “Introduction” section.

10F. The Borroloola Local Pandemic Action Plan was to be read in conjunction with the ROMP and the Northern Territory Pandemic Plan.

#### **Particulars**

The hierarchy of the Borroloola Local Pandemic Action Plan, the ROMP and the Northern Territory Health Plan is briefly described in the “Introduction” section of the Borroloola Local Pandemic Action Plan.

Further particulars may be provided after discovery.

10G. The Borroloola Local Pandemic Action Plan contemplated that:

- a. “[l]ocal emergency management committees will coordinate the planning in collaboration with the local health professionals”;
- b. the persons who would be considered for evacuation were those who were “suspect case[s]” who had “[n]o capacity for isolation and/or chronic

comorbidities and/or [due to] illness severity needs to be close to higher level of medical car[e]”.

**Particulars**

The matters are set out at sections 2 and 5 of the Borroloola Local Pandemic Action Plan.

Further particulars may be provided after discovery.

**The NHMRC COVID Care Guidelines**

10H. By 15 November 2021, the National Health and Medical Research Council’s “Australian guidelines for the clinical care of people with COVID-19” (NHMRC COVID Care Guidelines) contemplated that:

- a. “[i]n the context of COVID-19, we need to acknowledge the barriers and inequities experienced by consumers. Groups who will face greater barriers and inequities than others include, but are not limited to people with: ... people from culturally or linguistically diverse backgrounds”;
- b. “[f]or ethical decision-making, decisions about whether care is provided and in what form must be informed by the preferences of patients as well as clinical judgement”;
- c. “[a]ll consumers should be actively involved in decisions about their treatment and care to the extent they wish to be, and they should be supported to do so”;

**(NHMRC COVID Care Guideline Intentions).**

**Particulars**

The Applicants refer to section 2 of the NHMRC COVID Care Guidelines.

Further particulars may be provided after discovery.

10I. In identifying which persons to transfer to the CNR, the Respondent purported to apply or ought to have applied the NHMRC COVID Care Guideline Intentions.

### **Particulars**

The NHMRC COVID Care Guidelines are referred to in the “Series of National Guidelines”, which according to the witness statement of Dr Vicki Krause in the Inquest at paragraphs 36-37 and 48 were purportedly applied in respect of the identification of persons to transfer to the CNR.

Further particulars may be provided after discovery.

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

10J. Further, by around May 2021:

- a. the Respondent recognised that:
  - i. historical practices had led to the “result [that] many Aboriginal people and communities are strongly reluctant to engage with government agencies, including NT Health”;
  - ii. “structural or systemic racism is a key social determinant of health for Aboriginal people”;
  - iii. “[t]he legacy of colonisation as well as racism and discrimination contribute to poor health outcomes for Aboriginal people. These factors mean that Aboriginal people are less likely to seek out health services when necessary. Negative stereotypes and assumptions about Aboriginal people in Australian culture are also present in our health services, and this can result in people feeling disrespected or not receiving the best care possible”;
  - iv. “there are links between culture, safety and quality of health services and patient outcomes”;

#### **(Contextual Matters);**

- b. as a result of the Contextual Matters, the Respondent said that it would:

- i. “[d]evelop and provide access to cultural competence training programs, in partnership with education and training providers, to support progression of the cultural learning journey beyond awareness”;
- ii. “[b]uild capacity of the NT Health workforce in applying cultural security when working and communicating with Aboriginal consumers”;
- iii. “[c]ontinue to embed and implement the NT Aboriginal Cultural Security Framework and toolkit and ensure it is reported against”;
- iv. “[u]ndertake systemic racism audits to determine the impact of existing policies and programs on Aboriginal people”;
- v. “[s]upport the health workforce to understand the impacts of inter-generational trauma and how to deliver services within a trauma informed model of care”;
- vi. “[p]romote awareness and understanding of cultural determinants and their impact on Aboriginal health and wellbeing”;
- vii. develop “accessible and effective health care systems for Aboriginal people based on the right of Aboriginal self-determination and access to health care”;
- viii. “[e]nsure NT Health staff are trained and culturally responsive”;
- ix. “[e]nsure informed consent and enable patient centred care”;

**(Cultural Health Intentions).**

**Particulars to subparagraphs a and b**

The Applicants refer to the Respondent’s: “NT Health Aboriginal Health Plan 2021-2031” at pp 13 and 22; and at “NT Health Aboriginal Cultural Security Framework 2016-2026” at pp 8, 26 and 27.

Further particulars may be provided after discovery.

### The definition of “close contact” at the time

10K. By and from no later than 15 November 2021, in determining whether a person was a “close contact”, the Respondent contemplated that it would take into account, amongst other things, “the vaccination status of both the case and contact”.

#### Particulars

The matters are set out in the witness statement of Dr Vicki Krause in the Inquest at paragraph 48.

Further particulars may be provided after discovery.

### The COVID-19 response in Robinson River

10L. Robinson River was at all relevant times a community whose residents are overwhelmingly Aboriginal.

*The ROMP was implemented in a racially discriminatory way*

10M. By 6 October 2021, the ROMP contemplated that:

- a. the “evacuation of vulnerable persons will be considered as part of the immediate response” to a COVID-19 outbreak in a remote setting; however
- b. “[r]esponding to an outbreak in an Aboriginal community demands careful consideration including ... vaccine rates ... cultural sensitivities and language barriers”.

#### Particulars

The matters are set out in section 7.2 of the version of the ROMP adopted by the Respondent on around 6 October 2021.

10N. Further, by 9 November 2021, the Respondent was aware that 80% COVID-19 vaccination coverage within a remote community (**High Vaccinated Community**) reduced the risk of COVID-19 transmission in that community.

**Particulars**

- (i) The awareness is identified in a document published by the Respondent dated 9 November 2021 and entitled "Protecting our remote communities".
- (ii) The awareness is also identified in section 10.2 of the version of the ROMP adopted on around 23 December 2021. Notwithstanding that this version was formally adopted on around that later date, the Respondent, according to a witness statement of Dr Ruth Derkenne in the Northern Territory Coroner's inquest D0240-2021 (Inquest) at paragraph 49, had been considering such matters prior to that date.
- (iii) Further particulars may be provided after discovery.

100. According to the ROMP, by 15 November 2021:

- a. it was not necessarily the case that in a High Vaccinated Community, all persons designated by the Respondent as close contacts were to be transferred to a remote quarantine facility;

**Particulars**

- (i) The matters are referred to in section 10.2 ("close contacts could be evacuated") and in Appendix Q of the version of the ROMP adopted on around 23 December 2021. Notwithstanding that this version was formally adopted on around that later date, the Respondent, according to a witness statement of Dr Ruth Derkenne in the Inquest at paragraph 49, had been considering such matters prior to that date.
  - (ii) The Applicants also refer to paragraph 64 of the witness statement of Dr Charles Pain in the Inquest.
  - (iii) Further particulars may be provided after discovery.
- b. in deciding who to transfer from a High Vaccinated Community, the matters the Respondent said it would consider included:
    - i. "limiting loss of culture";
    - ii. "community engagement and self-determination";

- iii. “risk assessment of close contacts undertaken to determine evacuation vs supported quarantine in the community”.

**Particulars**

- (i) The matters are referred to in Appendix Q of the version of the ROMP adopted on around 23 December 2021. Notwithstanding that this version was formally adopted on around that later date, the Respondent, according to a witness statement of Dr Ruth Derkenne in the Inquest at paragraph 49, had been considering such matters prior to that date.
- (ii) The Applicants also refer to paragraph 64 of the witness statement of Dr Charles Pain in the Inquest.
- (iii) Further particulars may be provided after discovery.

10P. By 15 November 2021, the Respondent was aware or ought reasonably to have been aware that Robinson River was a High Vaccinated Community or, alternatively, had high vaccination rates compared to other communities in the Northern Territory.

**Particulars**

- (i) The status of Robinson River as a High Vaccinated Community is referred to in the covering memorandum to the Inquest’s brief to the coroner.
- (ii) A briefing document of the Respondent dated 15 November 2021 and entitled “RAT Deployment Robinson River” stated “Good vaccination rates – 87% for first dose and 77% for double dose”.
- (iii) The Respondent had access to data about the vaccination status of the Robinson River community because the Respondent was, through its Department of Health, a “prescribed body” for the purposes of the *Australian Immunisation Register Rule 2015 (Cth)* and the *Australian Immunisation Register Act 2015 (Cth)*, and therefore entitled to access that data.
- (iv) Further particulars may be provided after discovery.

10Q. On 15 November 2021, the then Chief Health Officer made a direction in respect of Robinson River and its associated homelands (**Direction 86**).

**Particulars**

The direction is known as “COVID-19 Directions (No. 86) 2021: Directions to lock down Robinson River and homelands”. It was extended by “COVID-19 Directions (No. 91) 2021: Amendment of COVID-19 Directions (No. 86) 2021”.

10R. In purported furtherance of Direction 86, on or around 15 November 2021, the Respondent’s servants, officers and agents travelled to Robinson River, arriving that evening.

**Particulars**

The Applicants repeat the particulars to paragraph 5.

10S. From around 16 November 2021, the Respondent’s servants, officers and agents began testing people in the Robinson River community for COVID-19.

10T. At some time thereabouts but not presently known more specifically to the Applicants, in respect of the Applicants and those of the Racial Discrimination Group Members who the Respondent had designated to be close contacts, the Respondent:

- a. decided to transfer them from Robinson River to the CNR;
- b. detained them en route to and at the CNR;
- c. told them that they had to go to the CNR;
- d. did not give them a realistic choice as to whether to go to the CNR;
- e. told them that they had to stay at the CNR, and for how long;

**(Transfer Actions).**

10U. The Respondent engaged in the Transfer Actions, in purported implementation of the ROMP, without any or any meaningful consideration of:

- a. Robinson River’s status as a High Vaccinated Community or alternatively as a community that had high vaccination rates compared to other communities in the Northern Territory;

- b. the matters identified in paragraph 10K relating to the Respondent's understanding of who was a "close contact";
- c. the matters identified in subparagraph 10O.b relating to the ROMP;
- d. the matters identified in paragraph 10G relating to the Borroloola Local Pandemic Action Plan.

**Particulars**

- (i) There was no collaboration with local health professionals at Robinson River.
- (ii) Decisions that there were no suitable places for isolation were made by the Respondent without asking the Applicants and the Racial Discrimination Group Members where they could isolate.
- (iii) Further particulars may be provided after discovery.

10V. The Transfer Actions occurred:

- a. despite the Contextual Matters; and
- b. in circumstances where the Respondent failed to implement in the ROMP or otherwise, and had no system by which it purported to implement, the NHMRC COVID Care Guideline Intentions and the Cultural Health Intentions.

*The ROMP itself was racially discriminatory*

10W. In the alternative to paragraphs 10M-10V, as at 15 November 2021, the ROMP contemplated that all close contacts were to be transferred to a remote quarantine facility.

**Particulars**

The matters are referred to in section 10.2 of the version of the ROMP adopted by the Respondent on around 6 October 2021, which relevantly states "close contacts will be evacuated".

Further particulars may be provided after discovery.

10X. The Respondent engaged in the Transfer Actions, in implementation of the ROMP:

- a. despite the Contextual Matters; and
- b. in circumstances where the Respondent failed to implement, in the ROMP or otherwise, and had no system by which it purported to implement, the NHMRC COVID Care Guideline Intentions and the Cultural Health Intentions.

*Breaches of the RDA*

10Y. In the circumstances of the matters in paragraphs 10L, 10U and 10V, alternatively 10W-10X, the Transfer Actions involved a distinction, exclusion, restriction or preference based on the Applicants' and the Racial Discrimination Group Members' Aboriginality.

10Z. The Transfer Actions had the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of the following human rights and fundamental freedoms of the Applicants and the Racial Discrimination Group Members:

- a. their right to liberty;

**Particulars**

The nullification or impairment occurred when en route to and at the CNR from which the Applicants and the Racial Discrimination Group Members were not free to leave.

- b. their rights not to be forcibly removed from Robinson River, or relocated therefrom without free, prior and informed consent;

**Particulars**

This right is recognised in Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**).

The nullification or impairment occurred when the Applicants and the Racial Discrimination Group Members were not given any realistic choice as to whether to go to the CNR.

- c. their rights to public health, medical care, social security and social services;

**Particulars**

This right is recognised in Article 5(d)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The nullification or impairment took the form of the Applicants and the Racial Discrimination Group Members being discouraged from accessing, not supported to access, and not being given an informed choice as to whether to access, health, medical and social services in their home place of Robinson River.

- d. their rights to access public services;

**Particulars**

This right is recognised in Article 5(f) of the ICERD.

The Applicants otherwise repeat the particulars to subparagraph c.

- e. their rights not to be subjected to inhuman or degrading treatment;

**Particulars**

This right is recognised in Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

The nullification or impairment occurred because the Applicants' and the Racial Discrimination Group Members' informed consent was not sought before they were subjected to a medical regime of transfer, quarantine and testing for COVID-19.

- f. their rights to the enjoyment of the highest attainable standard of physical and mental health;

**Particulars**

This right is recognised in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 24(2) of the UNDRIP.

The nullification or impairment took the form of the Applicants and the Racial Discrimination Group Members being subjected

to a medical regime of transfer, quarantine and testing for COVID-19 that was not predicated on informed consent, was not implemented having regard to cultural sensitivities and language barriers and was not tailored to their vaccination status.

- g. their rights to a standard of living adequate for health and wellbeing, including medical care;

**Particulars**

This right is recognised in Article 25(1) of the Universal Declaration of Human Rights (UNDHR).

The Applicants otherwise repeat the particulars to subparagraph f.

- h. their rights to self-determination.

**Particulars**

This right is recognised in Articles 3 and 18-19 of the UNDRIP.

The Applicants and the Racial Discrimination Group Members had no or no meaningful participation and were not or were not meaningfully consulted in the carrying out of the Transfer Actions.

10AA. By reason of the matters in paragraphs 10V and 10Z, the Respondent contravened s 9(1) of the *Racial Discrimination Act 1975* (Cth) (RDA) (Transfer Actions Section 9 Contraventions).

10BB. Further, in the circumstances of the matters in paragraphs 10L and 10U, in engaging in the Transfer Actions toward the Applicants and the Racial Discrimination Group Members, the Respondent:

- a. contravened s 11 of the RDA, because in so engaging, the Respondent:
- i. refused to allow the Applicants and the Racial Discrimination Group Members access to and use of the areas of Robinson River and the facilities therein, to which members or sections of the public were entitled or allowed to use; and/or

- ii. required the Applicants and the Racial Discrimination Group Members to leave or cease to use the areas of Robinson River and the facilities therein;
- b. contravened s 12(1)(d) of the RDA, because in so engaging, the Respondent refused to permit the Applicants and the Racial Discrimination Group Members to occupy their land and residential accommodation in Robinson River;
- c. contravened s 13(b) of the RDA, because in so engaging, the Respondent refused to supply health services to the Applicants and the Racial Discrimination Group Members except if they relocated to the CNR, being a term or condition that was less favourable to them than terms or conditions subject to which the Respondent would otherwise supply health services;

in each case, by reason of the Applicants' and the Racial Discrimination Group Members' Aboriginality (**Transfer Actions Sections 11-13 Contraventions**).

### **The care systems at the CNR**

10CC. By 15 November 2021, the Respondent had assumed responsibility for the following matters at the CNR:

- a. provision of accommodation, meals, health facilities and amenities;
- b. provision of access to health services for non-COVID-19 related issues;
- c. provision of access to hospital services for any issues which required immediate action;
- d. provision of access to mental health support;
- e. provision of personal medicines and other medical supplies to residents where self-administration is allowed under normal directions;

**(Assumed Responsibilities).**

**Particulars**

The Applicants refer to the agreement between the Commonwealth of Australia and the Respondent entitled “Provision of COVID-19 Quarantine Arrangements at the Northern Territory Centre for National Resilience for Organised National Repatriation of Australians” dated 15 and 16 March 2021.

Further particulars may be provided after discovery.

10DD. In fulfilling the Assumed Responsibilities in respect of persons at the CNR, the Respondent purported to apply, or ought to have applied, the NHMRC COVID Care Guidelines.

**Particulars**

The NHMRC COVID Care Guidelines are referred to in the “Series of National Guidelines”, which according to the witness statement of Dr Vicki Krause in the Inquest at paragraphs 36-37 and 48 were purportedly applied in respect of the operation of the CNR.

Further particulars may be provided after discovery.

10EE. Throughout the Racial Discrimination Claim Period, in delivering the Assumed Responsibilities to the Applicants and the Racial Discrimination Group Members at the CNR, the Respondent failed to implement, and had no system by which it purported to implement:

- a. any practices reasonably designed to overcome the identified reluctance of Aboriginal people, which included the Applicants and the Racial Discrimination Group Members, to engage with healthcare providers;
- b. any practices reasonably designed to ensure that the Applicants’ and the Racial Discrimination Group Members’ concerns about their health and their healthcare were considered and responded to in a genuine and timely way, rather than dismissed or delayed;
- c. the provision of information and support, including mental health support, to the Applicants and the Racial Discrimination Group Members, after

the passing of Ms Dick, a member of the Robinson River community, at the CNR;

**(Care Failures).**

10FF. The Care Failures occurred:

- a. despite the Contextual Matters; and
- b. in circumstances where the Respondent failed to implement, and had no system by which it purported to implement, the NHMRC Covid Care Guideline Intentions and the Cultural Health Intentions.

10GG. In the circumstances of the matters in paragraphs 10L and 10FF, the Respondent's Care Failures involved a distinction, exclusion, restriction or preference based on the Applicants' and the Racial Discrimination Group Members' Aboriginality.

10HH. The Care Failures had the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of the following human rights and fundamental freedoms of the Applicants and the Racial Discrimination Group Members:

- a. their rights to public health, medical care, social security and social services;

**Particulars**

This right is recognised in Article 5(d)(iv) of the ICERD.

The nullification or impairment took the form of the Applicants and the Racial Discrimination Group Members not being provided with culturally competent or secure healthcare, that is to say healthcare that reflected and responded to the Contextual Matters.

- b. their rights to access public services;

**Particulars**

This right is recognised in Article 5(f) of the ICERD.

The Applicants otherwise repeat the particulars to subparagraph a.

- c. their rights not to be subjected to inhuman or degrading treatment;

**Particulars**

This right is recognised in Article 7 of the ICCPR.

The nullification or impairment occurred because the Applicants' and Racial Discrimination Group Members' informed consent was not sought before they were subjected to a medical regime of transfer, quarantine and testing for COVID-19.

- d. their rights to the enjoyment of the highest attainable standard of physical and mental health;

**Particulars**

This right is recognised in Article 12(1) of the ICESCR and Article 24(2) of the UNDRIP.

The Applicants otherwise repeat the particulars to subparagraph a.

- e. their rights to a standard of living adequate for health and wellbeing, including medical care;

**Particulars**

This right is recognised in Article 25(1) of the UNDHR.

The Applicants otherwise repeat the particulars to subparagraph a.

- f. their rights to self-determination.

**Particulars**

This right is recognised in Articles 3 and 18-19 of the UNDRIP.

The Applicants and the Racial Discrimination Group Members had no or no meaningful participation and were not or were not meaningfully consulted in the fulfilment (or otherwise) of the Assumed Responsibilities and the resulting Care Failures.

10II. By reason of the matters in paragraphs 10GG and 10HH, the Respondent contravened s 9(1) of the RDA (Care Failure Contraventions).

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

**Raylene Dick and her family**

11. Raylene Dick was born on 2 October 1971.
12. Ms Dick ordinarily resided in Robinson River.
13. Each of the following persons is, for the purposes of the *Compensation (Fatal Injuries) Act 1974* (NT) (**CFI Act**), a member of Ms Dick’s family:
  - a. Henry Barry Dick, who is Ms Dick’s biological father;
  - b. The First Applicant, who is Ms Dick’s husband;
  - c. Nicole Jackson, who is Ms Dick’s biological daughter;
  - d. Farron Jackson, who is Ms Dick’s biological son;
  - e. Shandel Jackson, who is Ms Dick’s biological daughter;
  - f. The Second Applicant, who is Ms Dick’s adopted daughter;
  - g. Mikayla Koorabubba, who is Ms Dick’s adopted daughter;
  - h. Loralie Koorabubba, who is Ms Dick’s adopted daughter;
  - i. Kiahn Koorabubba, who is Ms Dick’s adopted ~~daughter~~ son ;
  - j. David George, who is Ms Dick’s adopted son;
  - k. Sheremiah George, who is Ms Dick’s adopted ~~daughter~~ son;
  - l. Kavena Bob, who is Ms Dick’s adopted daughter;

- m. Lucasta O'Keefe, who is Ms Dick's adopted granddaughter;
- n. Daniella Campbell, who is Nicole Jackson's biological daughter and thus Ms Dick's biological granddaughter;
- o. Malania Campbell, who is Nicole Jackson's biological daughter and thus Ms Dick's biological granddaughter;
- p. Mehala Campbell, who is Nicole Jackson's biological son and thus Ms Dick's biological grandson;
- q. Kasiano Dick, who is Chantelle Jackson's biological son and thus Ms Dick's biological grandson;
- r. Jharal Dick, who is Chantelle Jackson's biological son and thus Ms Dick's biological grandson;
- s. Kyeewan Dick, who is Chantelle Jackson's biological son and thus Ms Dick's biological grandson;
- t. Alana Kingsley, who is the Second Applicant's biological daughter and thus Ms Dick's ~~biological~~ adopted granddaughter;
- u. Jakelyn Kingsley, who is the Second Applicant's biological son and thus Ms Dick's ~~biological~~ adopted grandson;
- v. Kerrilee ~~Simon~~ O'Keefe, who is Lorelee Koorabubba's biological daughter and thus Ms Dick's adopted granddaughter;
- w. Levy Simon, who is Lorelee Koorabubba's biological son and thus Ms Dick's adopted grandson;
- x. Wayne ~~Simon~~ O'Keefe, who is Lorelee Koorabubba's biological son and thus Ms Dick's adopted grandson;
- y. ~~Jeremy~~ imiah George, who is David George's biological son and thus Ms Dick's adopted grandson;

- z. Rehani Lansen, who is Kavena Bob's biological son and thus Ms Dick's adopted grandson;
  - aa. Rayniesha Lansen, who is Kavena Bob's biological ~~son~~ daughter and thus Ms Dick's adopted grandson;
  - bb. Bernard Bob, who is Kavena Bob's biological son and thus Ms Dick's adopted grandson;
  - cc. Madison Bob, who is Kavena Bob's biological son and thus Ms Dick's adopted grandson;
  - dd. Lawrence Koorabubba, who is Mikayla Koorabubba's biological son and thus Ms Dick's adopted grandson.
14. The Applicants bring the action for wrongful death pursuant to section 13 of the CFI Act.

**False imprisonment as basis for wrongful death**

15. On or around 17 November 2021, servants, officers and agents of the Respondent transported Ms Dick from Robinson River to the CNR.

**Particulars**

Ms Dick was transported by plane.

Particulars of the identities of the servants, officers and agents may be provided after discovery.

16. From around 17 November 2021 until 7 December 2021, Ms Dick was detained at the CNR.

**Particulars**

The Respondent's servants, officers and agents escorted Ms Dick from Robinson River to the CNR.

The Respondent's servants, officers and agents caused Ms Dick to believe that she was not free to leave when she was being transported to, and when she was at, the CNR. The conduct of the Respondent's servants, officers and agents that is relied upon in this regard includes: (i) Ms Dick was told she had to go

to the CNR; (ii) Ms Dick was not given a choice as to whether to go to or where to go to the CNR; (iii) Ms Dick was told she had to stay at the CNR; (iv) Ms Dick was told how long she had to stay at the CNR.

Further particulars may be provided after discovery.

17. The Respondent, including by its servants, officers and agents referred to in paragraphs 15 to 16 above, did not have any statutory or other power to detain Ms Dick while she was being transported from Robinson River to the CNR, nor while she was at the CNR.

### **Wrongful death**

18. While she was at the CNR, Ms Dick contracted acute melioidosis.
19. Ms Dick died on 7 December 2021, while in the custody of the Respondent's servants, officers and agents.
20. The immediate cause of Ms Dick's death was acute melioidosis.
21. But for the conduct of the Respondent, by its servants, officers and agents in taking her from Robinson River to the CNR and/or detaining her there, Ms Dick would not have contracted acute melioidosis and would not have died.

## **D. REMEDIES**

### **DAMAGES**

#### **The claims of the Applicants and the False Imprisonment Group Members**

#### **~~General damages — the claims of the Applicants and the Group Members~~**

22. As a consequence of the false imprisonment referred to at paragraph 10 above, the Applicants and the False Imprisonment Group Members suffered injury, loss and damage.

#### **Particulars**

The Applicants were unlawfully detained for approximately one month. In addition to the loss of their liberty, the false

imprisonment caused them distress, anxiety and concern for their family members.

Further particulars of the Applicants' loss and damage may be provided after expert evidence.

Particulars of the claims of the False Imprisonment Group Members will be provided after the initial trial of the Applicants' claims.

## **The claims of the Applicants and the Racial Discrimination Group Members**

### **Transfer Actions**

22A. Pursuant to s 46PO(4) of the Australian Human Rights Commission Act 1986 (Cth) (AHRC Act), the Applicants and Racial Discrimination Group Members are entitled to an order for damages for the infringements of their rights the subject of the Transfer Actions Section 9 Contraventions and the Transfer Actions Sections 11-13 Contraventions.

#### **Particulars**

On the proper construction of s 46PO, the infringements are compensable per se.

22B. Further, the Applicants and Racial Discrimination Group Members have suffered loss and damage because of the Transfer Actions.

#### **Particulars**

- (i) The Applicants were detained for approximately one month.
- (ii) The Applicants suffered distress, anxiety and concern for themselves and their family members.
- (iii) Further particulars of the Applicants' loss and damage may be provided after expert evidence.
- (iv) Particulars of the claims of the Racial Discrimination Group Members will be provided after the initial trial of the Applicants' claims.

22C. Pursuant to s 46PO(4) of the AHRC Act, the Applicants and Racial Discrimination Group Members are entitled to an order for damages by way of

compensation for the loss and damage they have suffered because of the Transfer Actions.

### Care Failures

22D. Pursuant to s 46PO(4) of the AHRC Act, the Applicants and Racial Discrimination Group Members are entitled to an order for damages for the infringements of their rights the subject of the Care Failure Contraventions.

#### **Particulars**

On the proper construction of s 46PO, the infringements are compensable per se.

22E. Further, the Applicants and Racial Discrimination Group Members have suffered loss and damage because of the Care Failures.

#### **Particulars**

The Applicants repeat the particulars to paragraph 22B.

22F. Pursuant to s 46PO(4) of the AHRC Act, the Applicants and Racial Discrimination Group Members are entitled to an order for damages by way of compensation for the loss and damage they have suffered because of the Care Failures.

### **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 a consequence of Ms Dick’s wrongful death referred to at paragraph 21 above, the Applicants and the family members identified in paragraph 13 suffered injury, loss and damage.

#### **Particulars**

- (i) Distress, hurt, and devastation.
- (ii) Reasonable expenses of burial and disposal of the remains of Ms Dick.
- (iii) Damages for loss or impairment of consortium.
- (iv) Reasonable expenses that would be incurred in respect of the hire of help to perform household services customarily

performed by Ms Dick, including cooking, cleaning and caring for small children.

- (v) Solatium.
- (vi) Lost earnings of the First Applicant.

Further particulars of the Applicants' loss and damage, and that of the persons for whose benefit the action is brought, may be provided after expert evidence.

22 September 2025



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Signed by Clancy Dane  
Lawyer for the Applicants

This pleading was prepared by Min Guo and Julian R Murphy and settled by Min Guo of counsel.

**Certificate of lawyer**

I Clancy Dane certify to the Court that, in relation to the statement of claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 22 September 2025 ~~18 August 2025~~ ~~18 November 2024~~



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Signed by Clancy Dane  
Lawyer for the Applicants