Victorian Civil and Administrative Tribunal
Administrative Decision
Review and Regulation List

VCAT reference: Z778/2020

815 Truemans Cabin Hire Pty Ltd Applicant

The Secretary, Department of Health and Human Services Respondent

Final Submissions of 815 Truemans Cabin Hire Pty Ltd

Introduction

1. By an application made 31 August 2020 (the **Applicant**), pursuant to s 204(1) of the *Public Health and Wellbeing Act 2008 (Vic)* (the **PHW Act**), the Applicant applied to the Secretary to the Department of Health and Human Services (the **Secretary** and the **Department**) for compensation

2. Pursuant to s 204(4) of the PHW Act, the Secretary is taken to have refused the Application (**Refusal**)

3. The Applicant now applies to the Tribunal for a review of the Refusal, pursuant to s. 204(7) of the PHW Act

4. The Tribunal must determine whether the Chief Health Officer (the **CHO**) had sufficient grounds for authorising the use of emergency and public health risk powers under the PHW Act and, if not, to pay just and reasonable compensation

TRIBUNAL'S POSITION

5. For the purpose of this hearing, the Tribunal sits in the position of the Secretary

6. The Tribunal need not consider whether the Secretary acted correctly, rather, would the Tribunal come to the same decision

7. In determining whether there were sufficient grounds for making the authorisations pursuant to s 204(2) of the PHW Act, the Tribunal ought to consider;

    a) Does the PHW Act have any basis in law
    b) If the PHW Act has a basis in law, was a proper state of emergency declared in accordance with s 198 Declaration of a state of emergency
    c) If a proper state of emergency was declared in accordance with s 198, did the CHO comply with his obligations under Part 2 objective, principles and application, s 5 principles of evidence based decision making, s 6 precautionary principle, s 7 principle of primacy of prevention, s 8 principle of accountability, s 9 principle of proportionality, s 10 principle of collaboration
    d) If the CHO did comply with the guiding principles under the Act, did he give proper regard to the *Charter of Human Rights and Responsibilities Act 2006* ("**Charter**")

8. If the Tribunal finds there were insufficient grounds due to the failure of any of the points in 7, the Tribunal can find in favour of the Applicant

9. It is the Applicant's submissions that the Secretary failed on all four points mention in 7, and therefore there were insufficient grounds for making the authorisations

10. If the Tribunal finds there were insufficient grounds on any of the points mentioned in 7, the Tribunal can make any order it sees fit

11. In these proceedings, the Respondent carries the burden of establishing to the standards set by the Tribunal that there were sufficient grounds for the making of the authorisations

12. The Applicant submits that the Respondent has failed on each of the points referred to in 7 and now provide reasons in detail

PHW Act has no proper basis in law

13. In order for the CHO to rely on the PHW Act and to give force to any of his actions, orders, or directives, the Act itself must be enacted and enlivened in accordance with the *Commonwealth of Australia Constitution Act*

14. An essential part of enlivening any Act is to receive Royal assent pursuant to *Commonwealth of Australia Constitution Act (the "**Constitution**")*

> ***58 Royal assent to Bills***
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> *When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.*
>
> ***60 Signification of Queen's pleasure on Bills reserved***
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> *A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the Queen's assent.*

15. No evidence has been presented to the Tribunal of the PHW Act being assented to either by the Governor General appointed by Her Majesty Queen Elizabeth II, nor by Her Majesty Queen Elizabeth II herself.

16. PHW Act Part 1 s 2 *Commencement* does not make any reference to an assent of the Crown, which is inconsistent with the Constitution

Part 1 s. 2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision referred to in subsection (1) does not come into operation before 1 January 2010, it comes into operation on that day.

17. Further, the PHW Act Part 2 *Objective, principles and application* s 13 reads **Act binds the Crown**; with s 2 referring to the Crown being a body corporate – which is a completely different entity to the Crown referred to in the Constitution

Act binds the Crown

(1) This Act binds the Crown—

(a) in right of the State of Victoria; and

(b) to the extent that the legislative power of the Parliament permits, in all its other capacities.

(2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

18. The Constitution binds the courts, judges and people of every State and is absolute ;

An Act to constitute the Commonwealth of Australia

[9th July 1900]

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1 Short title

This Act may be cited as the Commonwealth of Australia Constitution Act.

2 Act to extend to the Queen's successors

The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom.

19. The Queen – a real person – as defined by the Constitution, may appoint a Governor General as Her Majesty's representative in the Commonwealth vested with the authority to assent to a law or act or bill on behalf of Her Majesty

Part I – General

2 Governor-General

A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

20. Any reference to the Crown, the Queen, assent, or Governor General, contained in or pertaining to the PHW Act, refers to a body corporate (strawman); an illegitimate entity impersonating Her Majesty Queen Elizabeth II. An entity that has no basis in law to bind the people of Australia and/ or to validate any Act or law

21. The absence of evidence of Royal assent to the PHW Act, together with the comments referred to above is sufficient basis for the Tribunal to conclude that the there is no reliable evidence to substantiate any claim that the PHW Act has been enacted in accordance with the *Commonwealth Constitution of Australia 1900*, which makes the Act void

22. Royal assent to PHW Act has never been given. Absent any definitive evidence (which if existed would be readily obtainable) the Tribunal is compelled to accept the fact there

is no reliable evidence upon which they can form the view the PHW Act has any proper basis in law

23. Accordingly, the Respondent has no proper basis upon which to rely to prove authority

No proper and/ or lawful declaration of a state of emergency

24. The Minister invalidated the declaration of a state of emergency under s 198 of the PHW Act by omitting to insert the word 'causing' and thus altering the meaning of the declaration.

25. On 16 March 2020, a Declaration of a state of emergency was allegedly made by Jenny Mikakos MP under s 198(1) of the PHW Act, however, in preparing the Declaration, the Minister failed to comply with the strict wording as set out in the PHW Act.

> *(1) The Minister may, on the advice of the Chief Health Officer and after consultation with the Minister and the Emergency Management Commissioner under the Emergency Management Act 2013, declare a state of emergency arising out of any circumstances causing a serious risk to public health*

26. There is no other justification permissible under the Act to declare a state of emergency other than as set out in s 198(1). The wording is precise and the intention is clear. Whatever the emergency is, it must actually be *causing* a serious risk to public health. Without causation there is no demonstrable emergency

27. In order for the declaration to be compliant with the Act, each and every word the Act requires to be inserted must be inserted. It is not open for the Minister to create her own wording, she is compelled by the Act to comply with the strict intention and direction of the Act. In failing to include the word ***causing*** in her declaration, she has failed to meet the minimum standards required. It is insufficient for a Declaration to be declared unless there is a cause. It cannot be for an imaginary threat or a computer-generated threat, or any other ephemeral threat. An emergency requires there be a real, tangible, immediate and readily identifiable threat capable of remedy. The

omission nullifies the veracity of the declaration, the same as if any other word was excluded such as *emergency* or *risk* or *public* or *health*. The effect of the omission is the same: the declaration is inadequate, insufficient and incorrect and cannot be relied upon in its present form.

28. The CHO adduced evidence that he had never seen the actual declaration and that he was informed by someone that a declaration was made, but could not identify who or when or how he was notified, and suggested it may have been by email but produced no copy

29. The CHO having never received formal written notification from the Minister, relied on nothing more than hearsay

30. PHW Act Part 10 Protection and enforcement provisions s 199 Chief Health Officer may authorise exercise of certain powers (1)(a) states; *This section applies if –*
A state of emergency exists under section 198

31. Having no evidence upon which to rely, the CHO could not satisfy himself that a declaration for a state of emergency had been issued, and no basis to conclude that a declaration of a state of emergency was properly and lawfully declared, that it contained the relevant wording requirements under the Act, nor could he say from direct evidence that it was executed by the authorised person being the Minister.

CHO failed to comply with obligations as set out in PHW Act Part 2 objective, principles, application

S 5 Principles of evidence based decision making

32. The CHO has not produced any evidence to substantiate the isolation of novel coronavirus nCov-2 in human cells obtained from a Victorian patient

33. The CHO adduced evidence that he relied completely on reports he received from persons he could not identify by means he could not identify allegedly informing him there were 48 confirmed positive infections
34. In cross examination, the CHO admitted he had not viewed any patient medical records, did not have any patient details, nor did he make any enquiries to ascertain further information, that he simply accepted the reports provided to him as being true and accurate.
35. In cross examination, the CHO gave evidence that the positive identifications of alleged infections prior to 15 March 2020 came via an approved PCR Test and that no blood test was ordered to support the PCR result
36. The CHO later acknowledged that no approved PCR test was in existence prior to 18 March 2020 and therefore the alleged positive results could not have come from any approved PCR test
37. Furthermore, having admitted he had no first hand knowledge of the details surrounding the confirmation of infection, he could not say with any degree of certainty how any positive identification was made
38. The CHO was unable to provide evidence how the positive readings were obtained and therefore based his entire assessment on unsubstantiated unsupported hearsay.
39. The CHO did not produce any evidence to the Tribunal about the alleged 38 infections

40. Therefore, the Secretary did not have any reliable evidence upon which to conclude that there had been an isolation of novel coronavirus nCoV-2 in human cells nor a fully mapped genome

41. The Tribunal should conclude that there was no evidence available on 15 March 2020 to substantiate that a novel coronavirus had infected 38 Victorians

42. In this instant, it is incumbent upon the authorised officers reporting to the Secretary to provide definitive, irrefutable, and quantifiable proof of a pathogen. This evidence would need to meet strict standards. It is insufficient and unacceptable for the Secretary to rely on unsubstantiated third-party information.

43. Kalotihos produced evidence that under an FOI request the authority confirmed they did not have material to evidence the isolation of a virus in human tissue taken from a patient in Victoria. This is definitive proof that no evidence exists of nCoV-2

Proof of entry in Victoria

The Secretary had insufficient evidence to establish that the alleged pathogen 'novel coronavirus nCoV-2' had actually established itself in Victoria.

44. In addition to the requirement of producing a physical specimen of the alleged pathogen, it is incumbent on the Secretary to identify precisely where in Victoria that pathogen resides.
45. It is woefully insufficient for the Secretary to take the easy way out and say 'somewhere' or, worse still, 'everywhere' but this is precisely what they did.

46. If the pathogen does not inhabit an area or goods or premises, but instead resides within a carrier (human being), then identify the carrier, which of course defeats the purpose of a 'state of emergency'. If you have identified the location of the alleged pathogen you can quarantine it and thus protect the health and wellbeing of all of the people of Victoria with minimum disruption to their economy, social and psychological wellbeing.

47. The Tribunal should find there was no evidence upon which to rely that the alleged pathogen was in any specific place in Victoria nor was it everywhere in Victoria.

Proof of causing serious risk to public health

The Secretary had no proof that the alleged pathogen was *causing* a serious risk to the public health and wellbeing of Victorians

48. The Secretary failed to demonstrate the disruptive effect the alleged pathogen had caused to the community as it relates to s 3 of the PHW Act[1].

"serious risk to public health" means a material risk that substantial injury or prejudice to the health of human beings has or may occur having regard to—

(a) the number of persons likely to be affected;

(b) the location, immediacy and seriousness of the threat to the health of persons;

(c) the nature, scale and effects of the harm, illness or injury that may develop;

(d) the availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce the risk to the health of human beings;

49. To establish 'causing' the Secretary must have knowledge of the affect. Therefore, in order for a pathogen to be actually causing a serious risk to public health, there needs to be evidence of the effects of the pathogen on the community. It is incumbent upon the Secretary to definitively demonstrate what impact the pathogen had at the time of request for a declaration of a state of emergency.

50. Computer modelling by its very nature is speculative and provides a vast number of hypothetical scenarios, none of which are accurate by any degree. Nowhere in the evidence of the CHO did he indicate what impact the alleged pathogen had caused to the community at the time of the declaration request.

51. Kalotihos pointed out in the 2019 influenza season 300,000 Victorians presented to medical centres with influenza.[2] These figures were reported by physicians and not as a result of mass screening of people. They represented only the percentage of the community that had symptoms of sufficient severity to warrant a visit to the doctor.

[1] http://classic.austlii.edu.au/au/legis/vic/consol_act/phawa2008222/s3.html
[2] Kalotihos witness statement paragraph 136

The true figure of infections would undoubtedly be higher had the Secretary conducted mass screenings akin to COVID-19 screenings. Despite the huge number of those infected, the 2019 flu season was not declared an epidemic nor was it deemed to be causing a serious risk to public health and wellbeing, nor did the Secretary implement any mitigating directives to protect or prevent the spread of infection.

52. The CHO adduced evidence that as at 15 March 2020 there were no persons in immediate danger anywhere in Victoria

53. The CHO further admitted there were no persons in immediate and urgent need of medical attention, nor was there any specific area or location where action could be taken immediately to remedy a serious risk to the health and wellbeing of anyone

54.

55. The Tribunal should find that the Secretary failed to provide quantifiable evidence that the alleged pathogen was causing a serious risk to the health and wellbeing of Victorians.

Number of persons likely to be affected

56. The requirement here is for the Secretary to consider the number of persons likely to be *affected* – not *infected*. The difference goes back to the issue of *causing*. If 1000 people are infected and all are asymptomatic there is no affect on the community.
57. The affects are not necessarily limited to physical illness, but could include the economy or the social fabric of society. Therefore, in considering the number of persons likely to be affected, one has to ensure the actions are proportionate and do not in themselves create a more devastating affect than the alleged pathogen.

58. The World Health Organisation announced prior to 16 March 2020 in over 85% of all infections there would be little to no affect on the individual, 10% of those infected may exhibit some of the symptoms, but only 5% may need medical intervention. None of the symptoms in themselves were life threatening, nor would a combination of those

symptoms cause more than a mild disruption to a healthy individual. CHO agreed during cross examination.

59. The World Health Organisation announced those who were most at risk; the elderly, those with comorbidities (of breathing difficulties), and those with a compromised immune system. These people comprise a small percentage of the population. CHO agreed during cross examination.

60. The CHO gave evidence that 95% will not require hospitalisation, that substantial cohorts of population were not at risk of dying, and 80-90% of people infected had access to symptomatic treatment and management at home. The majority of Victorians who became infected would have little to no adverse reaction to the infection as described by the World Health Organisation and therefore were not in any serious risk

61. The alleged pathogen in itself would have no direct affect on the economy and even less on the social fabric of society. The same cannot be said for the Secretary's interventions.

62. For the Secretary to rely on hypothetical scenarios supported by nothing more than computer generated modelling falls far short of the minimum requirement. It is not enough for an authorised officer to declare that a pathogen could have a negative affect on the community based on speculative modelling.

63. Neither is it sufficient to present a case of 'causing a serious risk to public health' without presenting the balance case of the serious risk to public health the interventions would cause. Balance and proportionality cannot be achieved from a one-sided argument.

64. The CHO relied on scenario modelling to support his request for a declaration of a SOE but failed to inform the minister that his department was involved in producing the report. The departments' interference in an objective and independent assessment corrupted the evidence.

65. In cross examination the CHO was taken to the diagrams produced in the computer modelling report and it was put to him that the graphs indicated that if there were no interventions taken and the infection allowed to run its course, that a zero infection rate would be achieved within 30 weeks in a worst case scenario
66. The CHO could not explain why every scenario -from mild to severe- still produced the same number of infections. The CHO's modelling predicted no change to the number of infections, the severity of infections, nor the number of deaths. The only change between a mild scenario and severe scenario was the speed with which it occurred.
67. Therefore the Tribunal could find that potential interventions conceived by the CHO would only have the effect of slowing the transmission and no effect on the total number of infections or the ramifications flowing from that

The location, immediacy and seriousness of the threat to the health of persons

The Secretary failed to establish the precise location, the seriousness of the alleged threat and the immediacy of a response to a sufficient standard to justify a 'state of emergency'

68. The requirement to establish a location is intrinsic to the Act. If there is no specific location, then how can actions be directed? Where will the ambulance go? Which roads will the Police block off? In which direction will the fire brigade travel? There can be no 'material risk' without a location. Absent a location, the need for immediate action cannot be established.

69. The CHO failed to identify which specific location in Victoria was under immediate threat.

70. The CHO ignored information provided by WHO identifying the group of persons most at risk, in particular, elderly, immunocompromised and those with underlying respiratory illnesses. The CHO should have considered the location of the people most at risk and targeted his actions towards those who were actually 'at risk'

71. The Secretary failed establish there was a ‘material risk’ that posed an immediate and serious threat to the health and wellbeing of persons.

72. The Secretary failed to identify which persons were in immediate danger on 15 March 2020. In cross examination, the CHO could not identify any person who was in immediate need of medical assistance as at 15 March 2020, nor could he identify a specific location where interventions could be directed.

73. In suggesting that individuals could or might at some future date be infected by an alleged pathogen fails to meet the requirements under this section of the Act.

74. The Tribunal should find the Secretary failed to establish the precise location of the alleged infection and/or failed to demonstrate the seriousness of the threat and/or failed to establish the need for immediacy in action.

The nature, scale and effects of the harm, illness or injury that may develop

The Secretary failed to establish to a satisfactory level the precise nature of the threat, the scale and effects of the harm, illness or injury that may develop to persons and/or the economy and/or the social fabric of society

75. In determining the ‘nature’ of the alleged pathogen, the Secretary relied on reports from international agencies such as W.H.O. In determining the ‘scale’ of the alleged threat, the Secretary relied partly on reports from international agencies and partly on hypothetical computer modelling, and similarly for determining the ‘effects of the harm, illness or injury that may develop’.

76. Whilst it is open for the Secretary to draw upon information from any source in making their decisions, best evidence would surely be from accredited local practitioners with firsthand knowledge and/or detailed investigations by authorised officers of actual cases.

77. The Tribunal should find the Secretary assumed the nature, scale and effects of the harm, illness or injury that may develop and did not rely on actual local evidence and

reports. Furthermore, the Tribunal should find that the DHHS' involvement in producing the hypothetical scenarios catastrophically prejudiced the report. The CHO admitted his department was involved in the production of the report, although he would not go into any detail of the extent of their involvement but it is enough to say a document upon which he relied to make his case to the Minister was self serving.

The availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce the risk to the health of human beings

The Secretary failed to consider the mitigating effects of precautions, safeguards and treatments that were available to eliminate or reduce the risk caused to the health and wellbeing of Victorians

78. There is a clear requirement for the Secretary to consider all and any precaution, safeguard, treatment or other measure that is available to either eliminate or reduce a risk. On this occasion, the CHO represented to the Minister that there were none.
79. However, in cross examination the CHO agreed the symptoms of COVID19 were similar and "relatively hard to distinguish" from seasonal influenza and there were a variety of treatments available for each of the symptoms as at 15 March 2020
80. The CHO's representation to the Minister on 15 March 2020 failed to acknowledge this
81. The CHO knew or ought to have known that a state of medical emergency could only be declared if he could establish there was no reliable treatment

82. All of these available treatments and measures had the effect of reducing the risk to an individual and therefore satisfies the requirement under this section of the Act. There is no requirement under the Act for there to be a vaccine, nor any other pharmaceutical remedy. The CHO omitted disclosing these readily available options to the Minister and in doing so deprived the Minister of vital information necessary to make an informed and educated decision.

83. The symptoms of the alleged infection in themselves did not pose a serious risk to healthy people any more or less than the common flu.

84. The Tribunal should find the Secretary failed to take into consideration the mitigating effects of the human immune system, pre-existing treatment and/or therapies.

Proof of Location

The Secretary failed to identify a precise location where the alleged pathogen was situated

85. In failing to identify a precise location, the CHO fails to identify the emergency area. Without an emergency area, there can be no emergency response. The implementation of any mitigating actions absent a location cannot be correctly described as 'emergency procedures' but rather precautionary.

86. The absolute necessity for there to be a location is reflected in the requirement to identify precisely who is at risk and what is the affect, and the use of the word 'location' peppered throughout the Act.

87. It is an essential part of the Act for an authorised officer to identify a premises and/or actual goods and/or a clearly defined area where it can be established by evidence that a harmful pathogen resides. No such determination was made.

88. Absent a location, the Secretary fails to meet the minimum requirement.

89. The CHO asserted to the Minister that the emergency area needed to be declared over the whole of Victoria, which could not be justified by demonstrable evidence.

90. The evidence available to the CHO at 15 March 2020 was that the alleged pathogen infected people and was transmitted from person to person. It did not inhabit buildings or goods. It could not be contained, except within the infected individual.

91. The Tribunal should find the Secretary failed to identify a precise location of the alleged pathogen and the CHO's assertions that an emergency existed across the whole of Victoria is not supported by any evidence presented to the Tribunal

Proof of who was at risk

The Secretary had definitive, reliable and relevant information to identify precisely which members of the community were most at risk if infected by the alleged pathogen

92. The CHO reported to the Minister that potentially, the entire Victorian population (6.6million) is vulnerable to infection 2019-nCoV2 · In making this statement, he is relying completely on a hypothetical scenario from a computer modelling. At no time did he refer to the current real situation but focuses his remarks on possible scenarios. In addition to being unsubstantiated statements, it falls short of the requirement under the PHW Act.

93. The Act requires the precise identification of who is at risk immediately, not some potential, hypothetical, perceived risk reliant on a contingent event. An emergency is immediate and there needs to be a demonstrable and specific person or group of people who are at material risk in order that an immediate and specific response can be enacted to address what is causing serious risk to the health and wellbeing of those specific individuals.

94. The CHO was quoted, "Let me be perfectly clear, spread of coronavirus occurs through close contact with an infected person, mostly face to face or within a household. It cannot jump across a room or be carried for long distances in the air so we should all go about our lives as normal"[3] and "…if you are well and free of symptoms you can continue catching the train if it is essential, going to work, sending your kids to school and going to your local shops."[4]

[3] SK42 paragraph 6,7
[4] SK41 paragraph 9

95. The CHO gave evidence coronaviruses are one of many viruses which cause the common cold. The CHO gave evidence the symptoms between coronaviruses and influenza and other viruses causing the common cold are relatively hard to distinguish.

96. That the positive cases reported to him were from PCR tests yet it was established that no approved PCR test was available prior to 19 March 2020.

97. The CHO gave evidence that 100% of the population could not be infected at the same time and the bulk of infected would suffer little to no symptoms. This is inconsistent with the CHO advice to the Minister that 6.6million Victorians were at serious risk without immediate intervention.

98. If the Secretary could not establish the site of the alleged infection, or the goods that were allegedly infected, or the individuals that would be affected, they failed to meet the minimum standard to establish who was at risk. In the alternative, the Secretary identified who was at risk (elderly, immunocompromised, those with underlying respiratory illnesses) and chose not to adopt least restrictive measures, or to target their response to those at risk.

99. The CHO gave evidence that the purpose for his requesting the declaration of a state of emergency was to avail himself of the power to control an 'emergency area' under s 200 rather than being restricted to a 'premises' and the Public Health Order obligations conferred to him under s 190.

100. The mere infection of an individual does not satisfy the requirement of 'risk'. It is essential the affect the infection has on an individual be taken into consideration.

101. The only affect a pathogen could have is on an infected individual with compromised immunity or with comorbidities, which excludes the bulk of the Victorian population.

102. Similarly, even if persons at risk could be identified, the risk must be immediate. It cannot be theoretical or hypothetical. It must be demonstrable. E.G which

immunocompromised person was at immediate risk? Which aged care facility was at immediate risk?

103. The Tribunal should find the Secretary failed to identify who was at immediate risk

Proof of disruption to economy

The Secretary failed to establish the alleged pathogen would cause a serious disruption to the Victorian economy

104. In authorising powers under the Act, the CHO must consider the effect of the pathogen on the economy and the costs to the economy of his measures (proportionality).

105. The CHO attempts to cover this point in his letter to the Minister by suggesting there will be an overwhelming of the hospital systems. This is the only mention of the affect to the economy.

106. The CHO's intention in seeking emergency powers was to dramatically interfere with the economy. He sought to "… include social distancing, targeted closures of events/premises/business, heightened enforcement capability…"[5] and "The power to regulate public gatherings…"[6] and "The emergency powers under the Act are required in order to best achieve these objectives."[7] He fails to report to the Minister that the National Partnership on COVID-19 Response and National Partnership on Disaster Risk had already been signed and monies allocated. Accordingly, the issue concerning the hospitals had been resolved.

[5] ibid paragraph 45
[6] ibid paragraph 46
[7] ibid paragraph 48

107. The CHO gave evidence that 100% of population could not be infected at the same time and the bulk of the population [if infected] would suffer little to no symptoms.

108. The CHO gave evidence that his request for a declaration of a SOE was due to the serious risk to all 6.6million Victorians, yet gave evidence that 95% of the population would not experience severe affects if they became infected. However, by obtaining the declaration and making his directions, he guaranteed 100% of all Victorians would be affected.

109. The Secretary knew or ought to have known that the measures they intended to implement (lawful or otherwise) would have a catastrophic and irreversible affect on the Victorian economy and would directly affect the health and wellbeing of all Victorians; 6.6 million of them 'regardless of their location'

110. The CHO knew he was going to arbitrarily close businesses down before the declaration of a state of emergency and that the results of his decision to arbitrarily close businesses would have a significant negative impact on the Victorian economy. He ought to have known tens of thousands of businesses would close permanently, of which the economic effects would never be recovered. The CHO knew he would permit select businesses to remain open, which would be a financial windfall for them at the expense of those he arbitrarily closed.

111. The CHO knew the borders would be closed, including the airports, that tourism would cease, and any business hoping to stay afloat with just the Victorian population as customers would soon discover curfews and lockdowns wiped out any hope of that.

112. Whilst the CHO alluded to a possible disruption to the economy from the affects of the alleged pathogen, he failed to point out to the Minister that the interventions he sought to impose under a SOE would definitely disrupt the economy

113. The Tribunal should find that the Secretary failed to provide any evidence to establish a serious risk would be caused to the economy of Victoria by the alleged pathogen.

Proof of disruption to fabric of society

The Secretary failed to establish that the day to day lives of Victorians would be adversely affected by the alleged pathogen and cause a significant disruption to society and that this alleged disruption was immediate

114. The Secretary is charged with the responsibility of monitoring all threats to the health and wellbeing of the people of Victoria. Whilst it could be argued some threats may be more serious than others, there is no allowance in the Act for the Secretary to select one above all others. It is not open for the Secretary to play God and decide which disease will be dealt with first, which illness takes priority, which member of the community shall be granted access to medical care (inequality).

115. The objective of the Act compels the Secretary to consider s. 4(1)(c);

> *(c) public health interventions are one of the ways in which the public health and wellbeing can be improved and inequalities reduced*[8]

and ss. 4(2)(b) and (c)

> *(b) promoting conditions in which persons can be healthy;*
>
> *(c) reducing inequalities in the state of public health and wellbeing.*[9]

116. In making their decisions, the Secretary is bound by the Act to ensure no decision is made that has a negative affect on the health and wellbeing of the community. This a fundamental and intrinsic principle within the Act. The cure cannot be worse than the disease.

[8] s. 4 Objectives 1(c) http://classic.austlii.edu.au/au/legis/vic/consol_act/phawa2008222/s4.html
[9] ibid ss. 4(2)(b)(c)

117. Putting aside the lack of evidence of an actual pathogen and therefore the evidence of its affects, the CHO relied on hypothetical computer modelling and unsubstantiated reports from overseas in coming to his opinions. He says on the first page of his witness statement, "I set out the assumptions on which my opinions are based."[10](evidence-based)

118. The Secretary ought to have considered what disruptive influence any measure would cause on the social fabric of our society, as this is an integral part of health and wellbeing. The pursuit of happiness, the quiet enjoyment of assets, the freedom of movement, assembly and interaction with others, the right to pursue religious beliefs and traditions, are all crucial to a feeling of wellbeing. To suggest the threat of contracting a flu-like illness justifies impinging on the rest of a person's life is contrary to the spirit and intentions of the Act.

119. The Secretary knowingly, wilfully and intentionally pushed for a state of emergency primarily to obtain additional powers and not for the purpose for which a state of emergency ought to be declared. The purpose of a state of emergency is to deal with an actual situation, threatening either life, or the economy, or the social wellbeing of the community.

120. The primary objective of the Act is to promote and protect public health and wellbeing in Victoria, to achieve the highest attainable standard of public health and wellbeing by *promoting conditions in which persons can be healthy* [and] *reducing inequalities in the state of public health and wellbeing*[11], which implies a holistic approach. It is not intended to be used to direct a specific individual, rather to protect and guide the community as a whole.

121. Prior to the declaration of a state of emergency by the Minister for Health, the CHO was fully aware of his obligations to;

(i) use proportionality in all his decision making

(ii) apply the minimum restrictions necessary to achieve the goal

[10] Witness statement of Brett Sutton, page 1 paragraph 4
[11] ibid PHW Act ss. 4(2)(b)(c)

(iii) create the least possible disruption to the lives of Victorians

The CHO completely abandoned his obligations on each and every point.

122. In particular, the CHO wilfully and knowingly imposed restrictions on the social activities enjoyed by Victorians without having any regard to the detrimental effect it had on the psychological and social wellbeing of the community. The CHO had always intended to close social events such as concerts, sporting events, and theatres and mentioned such in his letter to the Minister.

123. The CHO forced segregation of people (with 1.5m distancing directives), isolation of people (lockdowns and banned visitations), and fostered paranoia and fear in the community (by requiring everyone to assume they were diseased and assume everyone they met was diseased)

124. The CHO imposed the wearing of face masks further damaging the psyche of the community by preventing people from expressing themselves using facial interaction, and prohibiting them from breathing fresh air, instead creating a situation where carbon dioxide would be recirculated through their body with every breath. The CHO planned the arbitrary closure of businesses, the banning of religious worship, cancellation of wedding receptions, etc. all of which had a compounding negative effect on the wellbeing of individuals and whole communities

125. The CHO took away the moments of pleasure essential for the emotional wellbeing of humans, he took away the innate need in all humans to socialise and interact with others on a face to face basis, he robbed the community of the ability touch one another, even encouraging husbands and wives to remain apart and imposing upon parents the concept they must not embrace their own children

126. Through the use of fear and intimidation reinforced by the Victorian Police and others, the Chief Health Officer undermined the community's social need to celebrate, congregate, and communicate, by placing restrictions on parties, functions, visitations and all manner of social interaction and exercise

127. The Chief Health Officer turned grandchildren away from their grandparents ('for their own protection'), he turned neighbour against neighbour with slogans like "staying apart keeps us together" and other nonsensical propaganda, and soullessly and callously prevented bereaved loved ones from spending their final moments with their dying relatives condemning the individuals to die alone – an unfathomably horrific and cruel act

128. The CHO arbitrarily created a social stigma known as 'non-essential workers' who, according to him, performed duties that he did not deem essential. CHO has not disclosed how he arrived at his determination to conclude that one man's profession was worthier than another's and is a bigoted, callous and discriminatory display towards the community.

129. Every one of these actions and more deteriorated the health and wellbeing of all 6.6m Victorians 'regardless of their location' - a complete derogation of the objectives of the PHW Act. The CHO appears to have ignored 50% of the reasons for the existence of the PHW Act, in particular the portion referred to 'wellbeing'

130. With the advantage of hindsight, the impact of the authorisations reveals unprecedented increase in depression, suicide, family violence, and unnecessary deaths due to missed surgeries; all of which were brought about solely by the authorisations of the CHO and all of which were in direct derogation of the objectives and ideals of the Act

131. The Tribunal should find the CHO failed to adopt a precautionary approach and take proportionate actions, and failed to establish the alleged pathogen alone would cause a significant disruption to the social fabric of society.

Part 8 Management and control of infectious diseases, micro-organisms and medical conditions

The Secretary overreached their authority by ignoring the implicit and implied provisions contained in Part 8 of the PHW Act

132. Part 8 of the Act specifically defines the extent to which the Act pertains to individuals and it is clear from this section there is no interference in the lives of individuals; the Act limits its authority to premises and/or goods. However, in a state of emergency that can be extended to include emergency area. When it comes to individuals, only a contagious person or person exposed to a contagion falls under the auspices of the Act. The Act does not replace the individual's right to choose their own physician and obtain their own medical advice.

133. The Act recognises the concept of wellbeing goes beyond biological wellbeing and includes psychological, emotional and spiritual, as these all form part of the overall feeling of wellbeing. It is impermissible under the Act for the Secretary to interfere in any way with a healthy person, or clean and healthy business, or clean and healthy goods. Any authority or power granted to an authorised officer is limited to dealing with infected people and/or goods and or premises. In a state of emergency, you can include infected areas. Impinging on the rights of healthy people or shutting down premises with no infection or confiscating or destroying clean goods is impermissible under the Act.

134. The Secretary ought to have known that interfering with a healthy person was impermissible, and ought to have known that any restrictions imposed on healthy people would negatively affect their health and wellbeing

135. The Tribunal should find that the Secretary overreached their authority by conceiving and imposing restrictions on individuals which is a breach of Part 8 of the PHW Act and contrary to the principles of proportionality and precaution.

Prove public health and wellbeing would be improved

The measures proposed by the Secretary were not aimed at improving the health and wellbeing of all Victorians

136. In making decisions and taking actions, the Secretary must be satisfied their actions would not only improve the health and wellbeing of all Victorians but also prove their actions would not deteriorate the health or wellbeing of any person in Victoria. Any decision made or action taken by the Secretary that damages the health or wellbeing of even one single person is not only inadmissible under the Act but potentially a criminal offence.

137. There is ample irrefutable evidence of the deterioration of the health and wellbeing of all Victorians as a direct result of the authorisations made and actions taken by the Secretary, politicians and public servants. People are protesting in the streets, businesses are closed forever, suicide rates have increased, depression rates have increased, people live in fear not only of potential infection but equally of their elected representatives and civil servants. Australia is achieving international prominence for all the wrong reasons. Prior to the declaration of a state of emergency, Melbourne was voted the most liveable city in the world. That reputation has been destroyed. We are now considered by the global community as a fascist dictatorship. The physical, social, and economic of Victoria is in tatters directly caused by the actions of the Secretary and complicit civil servants.

138. The Tribunal should find that the Secretary's measures failed to improve the health and wellbeing of Victorians.

Justify emergency

The CHO did not have sufficient evidence to petition the Minister for Health to declare a state of emergency

139. To justify calling a 'state of emergency', the CHO must establish a number of key points;

(i) there is an actual identifiable isolated pathogen

(ii) establish the pathogen is causing a serious risk to public health in accordance with s 3 of the Act;

"serious risk to public health" means a material risk that substantial injury or prejudice to the health of human beings has or may occur having regard to—

(a) the number of persons likely to be affected;

(b) the location, immediacy and seriousness of the threat to the health of persons;

(c) the nature, scale and effects of the harm, illness or injury that may develop;

(d) the availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce the risk to the health of human beings;

(iii) that the pathogen is uncontained, uncontrolled and untreatable

(iv) the pathogen has been located within a specific area (emergency area)

It is insufficient for an emergency to be declared simply because some pathogen has been detected. E.G. the pathogen may be under control, or capable of being controlled, or only present in minute quantities, or only present in isolated places.

140. The Secretary fails to provide sufficient evidence (evidence-based) to establish any of the minimum requirements. There is no reliable material in the evidence provided by the Secretary that definitively identifies the isolated pathogen 'novel coronavirus nCoV-2' in human tissue. The Secretary accepted unsubstantiated reports without conducting their own thorough investigation. This is a derogation of their duty under the Act. Indeed, the protocol requires that only an authorised officer is permitted to conduct an inspection (investigation) into any alleged incident and report findings. Upon consideration of evidence (evidence-based) the Secretary could determine the appropriate course of action, such as issuing an order or some less intrusive measure (least restrictive measures). This did not happen. The minimum protocols and

procedures that have been in place since 2008 and were available to the Secretary were not followed.

141. There was no evidence that the alleged pathogen was uncontained because it was clearly contained in an infected individual and that is the only place it could potentially cause harm. No evidence that it was uncontrolled because each individual who was allegedly contagious was in control of their body and therefore the pathogen. No evidence that it was untreatable; the human immune system knew exactly how to treat it and did so in 99% of all infections, and no evidence the pathogen was in an area as there has been no test or method by which to identify the alleged pathogen on a surface or in the ground as the alleged pathogen is only allegedly harmful once it enters a human cell.

142. For the reasons stated above, the Act does not concern itself with naturally occurring influenza-type infections, which is precisely what this alleged pathogen is. It presents identical symptoms as influenza, but is allegedly caused by a coronavirus. There is no symptomatic difference between influenza and coronavirus. Therefore, the Act cannot apply. To suggest it does, leaves the door open for the Secretary to declare a state of emergency every single influenza season, hay fever season, heavy smog days, etc.

143. The Act insists that a pathogen exists in premises

144. The Act insists the pathogen exists on goods

145. The Act insists that an emergency area must be specific and defined

146. An intrinsic component of the declaration of a ‘state of emergency’ is to identify a location and the number of people likely to be affected. Whilst it is open under the Act to declare all of Victoria a ‘state of emergency’, this should only be done if there is evidence (evidence based) that the threat is real, imminent, likely to affect a number of people and everywhere at the same time. E.G. a black-out across the entire state.

147. The Chief Health Officer would have the Tribunal believe he was responding to serendipitous events unfurling on a daily basis and he was simply reacting to the circumstances, which is not the case. CHO gave considerable evidence in cross examination about being aware and monitoring the day to day events concerning the pathogen and admitted to having numerous meetings with other committees to discuss potential strategy with dealing with any serious risk to public health

148. Mr. Kalotihos identifies various documents that were prepared prior to the 16 March 2020 by Australian Politicians which provide irrefutable evidence of an awareness that the declaration of a national state of emergency was anticipated[12]

149. The executing of documents allowing the Commonwealth to provide the states with hundreds of millions of dollars anticipated that the CHO to pursue a 'state of emergency'. The monies that were received by the states needed to be spent and the states could only spend it at the speed at which it was arriving if they created a circumstance that allowed for extraordinary activity. It is not open for the CHO absent a state of emergency to request a hospital close, or employ thousands of people overnight to perform testing procedures, or call in the military to enforce actions, nor acquire experimental drugs for dissemination to the public. Absent a 'state of emergency' it is inconceivable how Victorian politicians would spend $100,000,000 in a month, as a miniscule fraction of that money would easily cover the medical expenses of the actual affected people.

150. Absent a 'state of emergency' the Secretary and politicians could not give away money to people for staying home, or financially reward major corporate retail entities for complying with directives, nor reward media outlets for promoting or advertising the political agenda, or any of the other bribes and payoffs masquerading as stimuli and economic incentives the politicians and Secretary did to disseminate the money. Hundreds of millions of dollars were borrowed and spent with little to show for it. There has been little improvement in the number of hospitals and beds, the number of doctors and nurses, no increase in the number of operations performed, no improvement in the level of care to Victorians; in fact, the complete opposite. Despite hundreds of millions

[12] Kalotihos witness statement attachments SK55, SK56, SK57

of dollars available, the level of health care since the declaration of a 'state of emergency' for the average Victorian has plummeted.

151. The Tribunal should find that the actions of the Secretary were planned and not a response to a real emergency causing a serious risk the health and wellbeing of Victorians.

Guiding principles and procedures

The Secretary failed to adhere to the guiding principles as set out in the PHW Act

152. It is the intention of Parliament that in the administration of this Act and in seeking to achieve the objective of this Act, regard should be given to the guiding principles set out in sections 5 to 11A. Which are;

5. Principle of evidence based decision-making
6. Precautionary principle
7. Principle of primacy of prevention
8. Principle of accountability
9. Principle of proportionality
10. Principle of collaboration
11. Principles applying to Part 8
11A. Principles applying to Part 9A

We now discuss these principles in detail.

153. Principle of evidence based decision-making (s 5)

Decisions as to—

(a) the most effective use of resources to promote and protect public health and wellbeing; and

The Secretary failed to consider the health and wellbeing of all Victorians in making their authorisations. The Secretary ought to have known there is more to the public health and wellbeing than simply one potential disease and in focusing all their resources on one alleged pathogen at the expense of all others, they failed to meet the minimum standard of this section.

The Secretary chose to allocate hundreds of millions of dollars to achieve the impossible and unwarranted goal of eradicating (to zero) the existence of an alleged pathogen.

The Secretary spent millions of dollars on erecting plastic shields on reception desks and stickers for floors and pavements and areas where people gathered, and erecting and maintaining hundreds of thousands of signs, not to mention the millions of hours of advertising on mainstream media.

The Secretary directed money towards hiring part time and full time untrained personnel for the purpose of walking the streets and spraying telephone poles, benches, bins, and any other surface with questionable solvents with the goal of 'killing the virus'.

The same resources, if applied to the health sector could have dramatically improved the health and wellbeing of all Victorians. Hundreds of millions of dollars could have gone towards improving the state of all medical facilities, increasing the capacity of ambulances, the acquisition of machines and technologies to deal with ailments across the entire medical spectrum such as diabetes, Alzheimer's, etc. all of which cause serious harm to the health and wellbeing of Victorians.

It is incumbent on the Secretary that all resources at their disposal, including funding, is applied in the most effective and efficient manner with the minimum intrusion to the public.

(b) the most effective and efficient public health and wellbeing interventions—

should be based on evidence available in the circumstances that is relevant and reliable.

In considering their interventions, the Secretary was inefficient and ineffective in that rather than concentrating on vulnerable members of the community with minimum intrusion on the lives of Victorians, they elected to concentrate on a goal to eliminate an alleged virus rather than preserve the health and wellbeing of the community. The Secretary squandered hundreds of millions of dollars testing people who were not infected, the Secretary costs Victoria billions of dollars by arbitrarily closing unaffected and totally healthy businesses, the Secretary diminished the mental, emotional and physical wellbeing of the community by imposing draconian restrictions including the forced vaccination of millions of Victorian's under duress and without informed consent endangering the lives of all recipients exposing them all to the possibility of adverse reaction. The Secretary caused the unnecessary premature death of people who were denied free and unrestricted access to medical care due to their authorisations and arbitrary restrictions.

The Secretary held no relevant and reliable evidence of a novel pathogen and based all decisions on hearsay, questionable hypothetical computer modelling and assumptions.

154. The Tribunal should find the Secretary failed to comply with s 5 of the PHW Act.

Precautionary principle (s 6)

If a public health risk poses a serious threat, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk.

Even if it can be established the alleged pathogen did exist and was causing a serious risk to the public's health and wellbeing, the Secretary's decisions and authorisations failed to meet the standard of s (6) as they did not prevent nor control the alleged public health risk. Their own evidence admits that some 20 months later, we are still in a 'state of emergency', 'infections' are still in the community, and none of their

actions have successfully prevented or controlled anything, except to control and prevent the lives of innocent healthy people.

If the Secretary seeks to rely on this section to excuse their lack of hard evidence, we submit that the section allows for the absence of 'scientific certainty' but not the lack of evidence period. The Secretary is required to provide hard evidence capable of satisfying a court, not hearsay, speculation, assumptions or predictions.

155. The Tribunal should find the Secretary failed to comply with s 7 of the PHW Act.

156. Principle of primacy of prevention (s 7)

(1) The prevention of disease, illness, injury, disability or premature death is preferable to remedial measures.

The Secretary fails to explain how identifying people with an alleged infection prevents them from catching it. Similarly, how did closing businesses prevent individual people from being infected, how the prioritisation of directing resources to the prevention of one alleged pathogen improve the health and wellbeing of the community and not have adverse effects on other conditions that are equally important? How would the health and wellbeing of all Victorian's improve by the giving of authorisations? Any proposed action by the Secretary must show that it will have an immediate effect on preventing illness or injury or premature death, but none of the authorisations or directives were capable of achieving that goal. An airborne virus like a coronavirus or influenza cannot be prevented any more than thunderstorms or fog. They are a natural part of the environment and exist always. Any suggestion by the Secretary to the contrary is nonsense and cannot be supported. The Secretary failed to provide evidence of how any of their measures would prevent infection without causing adverse effects.

(2) For that purpose, capacity building and other health-promotion activities are central to reducing differences in health status and promoting the health and wellbeing of the people of Victoria.

The Secretary fails to explain how the authorisations promoted the health and wellbeing of the people of Victoria. It seems the primary purpose of the authorisations was to control the movement of Victorians.

In addition, their measures created worse problems than they sought to fix.

Preventing religious worship deteriorated the emotional and spiritual health and wellbeing of Victorians.

Cancelling all sporting and physical events deteriorated the physical and social health and wellbeing of Victorians.
Restricting medical access for the majority in favour of the potential minority caused injury and death.

Restricting and cancelling marriages, funerals, and social celebration deteriorated the health and wellbeing of society.

Arbitrarily closing small businesses and locking up healthy communities drastically diminished the health and wellbeing of Victorians.

157. The Tribunal should find the Secretary failed to give due consideration to their obligations under s 7.

158. Principles of accountability (s 8)

(1) Persons who are engaged in the administration of this Act should as far as is practicable ensure that decisions are transparent, systematic and appropriate.

The Secretary is obliged to be transparent and should have told the Victorian public they hadn't isolated the alleged pathogen, the PCR tests were calibrated almost double the recommended cycle rate, the PCR tests were not evidence of an infection, that they paid the hospitals to close, that the hundreds of millions of dollars they were borrowing would eventually have to be paid by the public by decreased services or increased taxes or both, failed to provide the medical, legal and general community of hard evidence upon which their decisions were made.

The Secretary failed to comply with the rules and regulations governing the Act and made their decisions without substantive evidence and arbitrarily.

(2) Members of the public should therefore be given—

(a) access to reliable information in appropriate forms to facilitate a good understanding of public health issues; and

The Secretary denied the public access to freely available information by censoring any person or entity that contradicted their narrative. The Secretary prevented peaceful gatherings for the purpose of sharing information, they silenced any contradictory view, ignored the pleas of tens of thousands of members of the public and dissuaded through coercion and violence any free and peaceful exchange of ideas and information if it contradicted their narrative. The Secretary was dishonest by only providing select information to the public by exaggerating the severity, exaggerating the potential benefits of their interventions, by exaggerating the necessity and efficacy of injections masquerading as 'vaccines'. The Secretary played down the lack of impact the alleged pathogen would cause 95% of the population, they bombarded the senses of the public with constant announcements of doom and gloom with the conscious misuse of provocative statements such as; 'surges in numbers', 'spikes in deaths', 'second wave', 'deadly variants', 'trust the science', etc.

(b) opportunities to participate in policy and program development.

The Secretary failed to create free and open discourse with the public to elicit the participation in policy and program development. Instead, made their decisions arbitrarily and the few business entities that were consulted were essentially bribed to

elicit their corporation through thinly veiled funding agreements in support, which were nothing more than political payoffs.

In a desperate attempt to communicate with the Secretary, the public turned to demonstrations and marches as their correspondence and passive attempts to converse were ignored or censored. Nurses, police officers and doctors resigned in frustration at being forced to comply with illogical and dangerous directives. There was no open communication on the issue of forming policy and program development with the general public. The Secretary made their decisions arbitrarily.

159. The Tribunal should find the Secretary failed to give due consideration to s 8 of the Act.

160. Principle of proportionality (S 9)

Decisions made and actions taken in the administration of this Act—

(a) should be proportionate to the public health risk sought to be prevented, minimised or controlled; and

161. By 16 March 2020, there was no demonstrable effect on the health and wellbeing of all Victorians arising from the alleged 40 or so infections of an influenza-type pathogen. No overwhelming of hospitals and no curve that needed to be flattened. Whatever the pathogen was had no more impact on the infected persons that the common flu. Except for the various hypothetical computer modelling scenarios, and the machinations and exaggerations of the CHO and other politicians, no actual risk or quantifiable impact existed that was *causing* a detrimental affect on the health and wellbeing of Victorians.

162. The risks sought to be averted were ostensibly hypothetical. Therefore, the objectives set were a matter for conjecture. Common sense, logic, and the Act requires an actual physical, tangible, and quantifiable object that is *causing* a risk, not

threatening or simply a risk. Any physical action taken to mitigate an imaginary risk cannot be proportionate, it will always be an over-reaction based on subjective views.

163. The administrative management of the hospital systems and their capacity to deal with patients is a matter for their management and does not fall under the auspices of the Act. Therefore, any actions taken to lessen the perceived potential overwhelming of the hospital systems was not disproportionate, subjective and impermissible.

164. Similarly, any actions directed towards healthy unaffected persons was disproportionate.

165. Any actions taken directed to healthy businesses was disproportionate.

166. Any actions taken towards activities conducted by healthy persons was disproportionate.

167. The rights of every healthy individual needed to be preserved in any action conceived by the Secretary.

(b) should not be made or taken in an arbitrary manner.

168. The *Public Health and Wellbeing Act 2008 (Vic)* prohibits arbitrary decisions from being made, and in an effort to ensure all decisions are properly arrived at, the Act requires authorised officers to behave in accordance with a strict code of practise and any deviation from it is unauthorised. Every decision made by the Secretary and/or authorised officers was done so arbitrarily, contrary to the strict wording of the

Act. The Secretary was compelled to behave in accordance with the rules and regulations and guiding principles. In particular, orders should be in writing supported by evidence, served on an alleged offender, and due process be offered to the individual before any action is taken. This is the minimum legal, moral, and human right afforded to everyone.

169. The declaration of a state of emergency does not set aside the obligations of authorised officers to behave in accordance with the pre-existing protocols. There is no allowance for authorised officers to behave in an arbitrary manner regardless whether an emergency is declared.

170. In making their decisions, the secretary derogated from their responsibilities.

171. The Tribunal should find the Secretary failed to comply with s 9

172. Principles of collaboration s 10

Public health and wellbeing, in Victoria and at a national and international level, can be enhanced through collaboration between all levels of Government and industry, business, communities and individuals.

The Secretary did not provide sufficient opportunity for small businesses, communities and individuals to participate in the forming of strategies and polices for dealing with the alleged pathogen. The public were not asked to contribute to the process but were forced to comply. No community based communication took place between the Secretary and the people being affected by their decisions.

173. The Tribunal should find the Secretary failed to comply with s 10

174. Principles applying to Part 8 (s 11)

Section 111 specifies the principles that are to apply for the purposes of the application, operation and interpretation of Part 8.

175. Of all the principles that have been derogated by the Secretary, s 111 is the most significant. This section sets out in verse the most fundamental principle of managing and controlling infectious diseases, microorganisms and medical conditions.
In this section, the Act puts the responsibility on the shoulders of the individual alone. There is no authority or justification for the Secretary to intervene or interfere with the treatment of an infected person or a person who has come into contact with an infected person or pathogen. It's unauthorised and an overreach of their authority because of the inalienable right of every individual to control their own body. No power has been given to the Secretary to arbitrarily dictate what an individual can and cannot do in the management and control of any personal medical condition. That power is vested in the judiciary.

Part 8 Principles

The following principles apply to the management and control of infectious diseases—

(a) the spread of an infectious disease should be prevented or minimised with the minimum restriction on the rights of any person;

(b) a person at risk of contracting an infectious disease should take all reasonable precautions to avoid contracting the infectious disease;

(c) a person who has, or suspects that they may have, an infectious disease should—

(i) ascertain whether he or she has an infectious disease and what precautions he or she should take to prevent any other person from contracting the infectious disease; and

(ii) take all reasonable steps to eliminate or reduce the risk of any other person contracting the infectious disease;

(c) a person who is at risk of contracting, has or suspects he or she may have,

an infectious disease is entitled—

(i) to receive information about the infectious disease and any appropriate available treatment;

(ii) to have access to any appropriate available treatment.

176. The Tribunal should find the Secretary derogated from their responsibilities in failing to give due consideration to s 111 of the Act.

Charter of Human Rights and Responsibilities Act 2006 ("Charter")

177. In making their authorisations, the Secretary is compelled to give due consideration to the effect the authorisations might have on human rights.

178. Part 2 s 7 (2) of The Charter [13] reads;

(2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

(a) the nature of the right; and

(b) the importance of the purpose of the limitation; and

(c) the nature and extent of the limitation; and

(d) the relationship between the limitation and its purpose; and

(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

[13] https://www.legislation.vic.gov.au/in-force/acts/charter-human-rights-and-responsibilities-act-2006/014

Whilst there are permissible instances where human rights can be impinged, there are some that cannot be derogated even in a 'state of emergency'.

179. Indeed, Part 2 s 7 (3) of The Charter[14] reads;

(3) Nothing in this Charter gives a person, entity or public authority a right to limit (to a greater extent than is provided for in this Charter) or destroy the human rights of any person.

180. Further, Part 2 s 8 (2) of The Charter[15] reads;

(2) Every person has the right to enjoy his or her human rights without discrimination.

181. In addition, Part 2 s 10 of The Charter[16] reads;

Protection from torture and cruel, inhuman or degrading treatment

A person must not be—

(a) subjected to torture; or

(b) treated or punished in a cruel, inhuman or degrading way; or

(c) subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.

In petitioning the 'state of emergency' and exercising powers the Secretary knew the way would be clear to procure and disseminate experimental drugs under the guise of 'emergency use treatments'. The Secretary knew or ought to have known that coercion, undue pressure, and/or force would be used on Victorians to compel them into receiving

[14] ibid
[15] ibid
[16] ibid

these experimental injections and this behaviour caused not only a potential risk to the health and wellbeing of Victorians, but derogated s 10 of The Charter

182. Part 2 s 12 of The Charter[17] reads;

Freedom of movement

Every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

The Secretary knew or ought to have known that in exercising their powers to limit or restrict the movement of Victorians, gatherings, curfews, lockdowns, etc. derogated s 12 of The Charter

183. Further, s 13 of The Charter[18] reads;

Privacy and reputation

A person has the right—

(a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and

(b) not to have his or her reputation unlawfully attacked.

The Secretary knew or ought to have known that in exercising their powers by censoring free speech, monitoring private communications and publically arresting or fining innocent people derogated s 13 of The Charter.

184. S 14 (1)(c) of The Charter[19] reads;

Freedom of thought, conscience, religion and belief

[17] ibid

[18] ibid

[19] ibid

(1) Every person has the right to freedom of thought, conscience, religion and belief, including—

(b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.

The Secretary knew or ought to have known that in preventing peaceful gatherings in places of worship, restricting weddings, funerals, and celebrations, the Secretary would derogate s 14(1)(b) of The Charter

185. s 14(2) of The Charter[20] reads;

(2) A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

The Secretary knew or ought to have known that in preventing peaceful gatherings in places of worship, restricting weddings, funerals, and celebrations, the Secretary would derogate s 14(2) of The Charter

186. s 15 of The Charter[21] reads;

Freedom of expression

(1) Every person has the right to hold an opinion without interference.

(2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether—

(a) orally; or

(b) in writing; or

[20] ibid

[21] ibid

(c) in print; or

(d) by way of art; or

(e) in another medium chosen by him or her.

The Secretary knew or ought to have known that censoring free speech and freedom of expression, and gatherings derogated s 15 of The Charter.

187. S 16 of The Charter[22] reads;

Peaceful assembly and freedom of association

(1) Every person has the right of peaceful assembly.

(2) Every person has the right to freedom of association with others, including the right to form and join trade unions.

The Secretary knew or ought to have known that in planning to limit or restrict peaceful assembly and freedom of association would derogated s 16 of The Charter.

188. S 17 of The Charter[23] reads;

Protection of families and children

(1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.

(2) Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

The Secretary knew or ought to have known that in planning to interfere with the day to day lives of children and families by imposing social distancing, forced wearing of breathing encumbrances, closure of schools, restrictions on visiting family members, closing children's sporting and community activities, etc. derogated s 17 of The Charter.

[22] ibid

[23] ibid

189. S 121 (1), (2), (3)[24] of The Charter reads;

Right to liberty and security of person

(1) Every person has the right to liberty and security.

(2) A person must not be subjected to arbitrary arrest or detention.

(3) A person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.

The Secretary knew or ought to have known that the plan to impose lock down and curfews derogated s 21 of The Charter.

Siracusa principles on the limitation and derogation provisions in the international covenant on civil and political rights

Non-derogable rights

190. Section D paragraph 58[25] reads;

No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant's guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion. These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation.

The Secretary knew or ought to have known that imposing curfews, lockdowns, forced wearing of restrictive breathing apparatus, coercion to comply with medical experimentation, censoring

[24] ibid

[25] page 12 section D paragraph 58 https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf

freedom of thought and expression, and restricting freedom of religion, were all actions prohibited from derogation and failed to give proper consideration.

Summary

191. The Secretary failed to provide evidence that the Act upon which they relied had any basis in law, in that they failed to produce evidence of Royal assent and therefore a commencement date. Having impinged on the Constitution, the Act is void and does not bind the people of Australia.

192. The CHO erred in relying on hearsay to assume a state of emergency was declared and in failing to obtain an actual declaration from the Minister that was consistent with the Act, he failed to comply with the Act.

193. The CHO failed to give due consideration to the guiding principles of the Act, and/or failed to give due consideration to The Charter, and for those reasons had insufficient grounds to give the authorisations to the relevant authorised officers under s 199(2)(a) of the PHW Act and the Tribunal should set aside the refusal and find in favour of the Applicant and award just compensation.

Spiros Kalotihos
Director, 815 Truemans Cabin Hire Pty Ltd
Applicant
10 May 2022