

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
GROUP PROCEEDINGS LIST

S ECI 2020 03402

**BETWEEN:**

**5 Boroughs NY Pty Ltd (ACN 632 508 304)**

Plaintiff

- and -

**State of Victoria (and Ors according to the attached  
Schedule)**

Defendant

**ORDER**

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JUDGE The Honourable Justice Keogh

DATE MADE: 26 March 2024

ORIGINATING PROCESS: Amended Writ filed 22 April 2022

HOW OBTAINED: By summons filed 12 October 2023; at case management conference

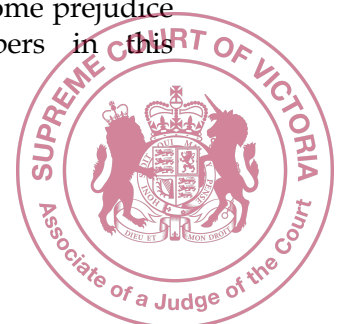
ATTENDANCE: A Hochroth with H Whitwell, counsel for the plaintiff  
D Neal SC and L Brown SC with R O'Neill and M McLay, counsel for the first defendant

OTHER MATTERS: A. The first defendant seeks its costs of the confidentiality of the Amended Proposed Defence served on 1 September 2023 ('Amended Proposed Defence') and the summons filed on 12 October 2023.

B. For the following reasons I accept the plaintiff's submission that costs be in the proceeding.

C. The purpose of the orders is to prevent prejudice to the accused in the criminal trial in County Court proceeding CR-23-00421 ('Criminal Proceeding').

D. An effect of the orders is to cause some prejudice to the plaintiff and group members in this proceeding.



E. The confidentiality and summons issues were not divisible.

F. The plaintiff enjoyed some success on the confidentiality issues.

**THE COURT ORDERS THAT:**

**Confidentiality - Amended Proposed Defence**

1. Subject to further order, paragraphs 9, 27-28, 33-34, 37, 56-58, 59-62, 63-64, 65, 66, 79, 80-81, 82-86, 87-88, 89, 95, 99, 134, 135, 137-139, 141-143, 145, 152, 155 and 155A ('Confidential Paragraphs') of the Amended Proposed Defence are not to be published or otherwise disclosed to any person or entity other than:
  - a. those persons authorised by the orders of John Dixon J dated 23 February 2023 as amended on 9 May 2023; and
  - b. Keogh J and any staff of the court authorised by his Honour;until the return of the jury verdict in the Criminal Proceeding.
2. Within 10 business days of the making of these orders, the defendants file and serve the defence with the Confidential Paragraphs redacted.

**Confidentiality - other documents**

3. Disclosure, whether by publication or otherwise, of the following documents is prohibited prior to the return of the jury verdict in the Criminal Proceeding, save that disclosure may be made to those persons authorised by the orders of John Dixon J dated 23 February 2023 (as amended on 9 May 2023), Keogh J and any staff of the court authorised by his Honour:
  - a. the Proposed Defence served by the defendants on 5 May 2023;
  - b. the first defendant's notice of contentions served on 26 May 2023;
  - c. the plaintiff's reply contentions served on 1 August 2023;
  - d. the first defendant's summons dated 12 October 2023,
  - e. the first defendant's further notice of contentions served on 15 November 2023;
  - f. the plaintiff's further reply contentions (submissions) served on 20 November 2023;



- g. the first defendant's submissions dated 22 November 2023 and 23 November 2023; and
  - h. the transcript from the case management conference on 24 November 2023.
4. There be no publication or other disclosure of paragraphs 27, 28, 47-65, 83-85, 91-113, 122 and 123 of, and Schedule 1 to, the ruling of Keogh J in this proceeding dated 23 February 2024, except to the parties and their legal representatives, until the return of the jury verdict in the Criminal Proceeding or further order of the court.

#### **Proofing of lay witnesses**

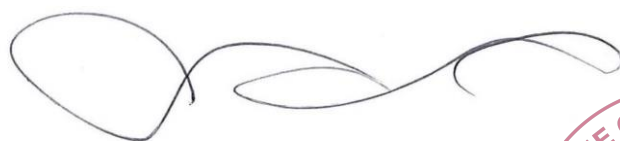
5. Subject to further order, until the return of the jury verdict in the Criminal Proceeding, the plaintiff and its legal representatives must not:
- a. proof or otherwise discuss the matters the subject of the proceeding with any person who is a lay witness or potential lay witness in the Criminal Proceeding (a potential lay witness is a person who is likely to be in a position to provide relevant information as to the initiation, conduct, or administration of quarantine detention or quarantine hotels, as defined in the Amended Statement of Claim, or as to any events at any quarantine hotel between 28 March 2020 and 9 July 2020);
  - b. discuss the matters the subject of the proceeding with any employee, agent or representative of the Victorian Workcover Authority, the Director of Public Prosecutions or the Office of Public Prosecutions.

#### **Costs**

6. The costs related to determination of confidentiality of the Amended Proposed Defence and the summons dated 12 October 2023 are in the proceeding.

DATE AUTHENTICATED:

**26 MARCH 2024**



**THE HONOURABLE JUSTICE KEOGH**



**SCHEDULE OF PARTIES**

**S ECI 2020 03402**

**BETWEEN:**

5 BOROUGHES NY PTY LTD (ACN 632 508 304)

Plaintiff

**-and-**

STATE OF VICTORIA

First Defendant

THE HONOURABLE JENNY MIKAKOS (IN HER CAPACITY AS THE FORMER MINISTER FOR HEALTH AND MINISTER FOR THE COORDINATION OF HEALTH AND HUMAN SERVICES: COVID-19)

Second Defendant

THE HONOURABLE MARTIN PAKULA (IN HIS CAPACITY AS THE FORMER MINISTER FOR THE COORDINATION OF JOBS, PRECINCTS AND REGIONS: COVID-19)

Third Defendant

KYM LEE-ANNE PEAKE (IN HER CAPACITY AS THE FORMER SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES)

Fourth Defendant

SIMON GRANT PHEMISTER (IN HIS CAPACITY AS THE SECRETARY, DEPARTMENT OF JOBS, PRECINCTS AND REGIONS)

Fifth Defendant

