

**PROCESSED**

No: S CI 2014 4423

**IN THE SUPREME COURT  
OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
MAJOR TORTS LIST**

**B E T W E E N**

**AS BY HER LITIGATION GUARDIAN MARIE THERESA ARTHUR** *Plaintiff*

*and*

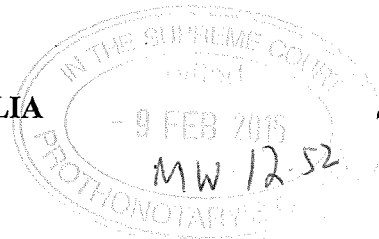
**MINISTER FOR IMMIGRATION AND BORDER  
PROTECTION**

*First Defendant*

*and*

**COMMONWEALTH OF AUSTRALIA**

*Second Defendant*



**DEFENDANTS' DEFENCE TO FURTHER AMENDED  
STATEMENT OF CLAIM**

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Date of Document:	9 February 2015	
Filed on behalf of:	First and Second Defendants	
Prepared by:	Australian Government Solicitor Level 21 200 Queen Street, Melbourne Vic 3000 DX 50 Melbourne	Solicitor's Code: 9342 Tel No: 03 9242 1429 Fax No: 03 9242 1278 Ref No: 14153136 Ref: Peta Heffernan

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The Defendants by way of their defence to the Plaintiff's Further Amended Statement of Claim dated 19 December 2014 say as follows:

1. The Defendants admit the allegations contained in paragraph 1.
2. The Defendants admit AS was detained pursuant to section 189 of the *Migration Act 1958* (Cth) (the **Migration Act**) between 26 July 2013 and 15 January 2015 but otherwise do not admit paragraph 2.

3. Save that AS was released from detention on 15 January 2015 the Defendants say in respect to the allegations in paragraph 3 that AS was detained at the following locations:

- 26/07/2013 to 12/08/2013 – Phosphate Hill Alternative Place of Detention (Christmas Island)
- 12/08/2013 to 16/08/2013 – Lilac/Aqua Alternative Place of Detention (Christmas Island)
- 16/08/2013 to 18/10/2013 – Darwin Airport Lodge Alternative Place of Detention
- 18/10/2013 to 19/08/2014 – Construction Camp Alternative Place of Detention (Christmas Island)
- 19/08/2014 to 21/08/2014 – Perth Immigration Residential Housing
- 21/08/2014 to 23/08/2014 – Wickham Point
- 23/08/2014 to 15/01/2014 – Bladin Alternative Place of Detention.

4. The Defendants do not plead to the allegations contained in paragraph 4 as it does not contain any allegations against them.
5. The Defendants do not plead to the allegations contained in paragraph 5 as it does not contain any allegations against them.
6. The Defendants admit the allegations contained in paragraph 6.
7. There is no paragraph 7 in the Further Amended Statement of Claim.
8. The Defendants do not plead to the allegations contained in paragraph 8 as it does not contain any allegations against them.

9. The Defendants refer to and repeat paragraph 2 herein and otherwise do not admit the allegations in paragraph 9.
10. The Defendants admit the allegations contained in paragraph 10 insofar as they relate to AS.
11. Save that the Defendants admit the allegations insofar as they relate to AS, they do not admit the allegations in paragraph 11.
12. Save that the Defendants admit that AS was unable to leave detention of her own accord while in detention, the Defendants do not admit the allegations contained in paragraph 12.
13. The Defendants do not admit the allegations in paragraph 13 and say further, that it is and was the function and responsibility of International Health and Medical Services Pty Limited (ABN 40 073 811 131) (**IHMS**) to ensure that persons in detention have and had access to reasonable medical and health services.

### **Particulars**

On 29 September 2006 the Second Defendant entered into a contract with IHMS for the provision of health care to people held in detention (the **2006 IHMS Contract**). The 2006 IHMS Contract sets out the nature and content of IHMS's obligation to provide that health care and applied to persons detained on Christmas Island up to 29 November 2011.

On 14 January 2009 the Second Defendant entered into a new contract with IHMS for the provision of health care to people in detention (the **2009 IHMS Contract**). The 2009 IHMS Contract sets out the nature and content of IHMS's obligation to provide that health care and by deed of variation applied to persons detained on Christmas Island from 29 November 2011.

14. The Defendants do not admit the allegations in paragraph 14 and say further, that it is and was the responsibility of Serco Australia Pty Limited (ABN 44 003 677 352) (**Serco**) to ensure that persons held in detention have and had access to recreational opportunities.

### **Particulars**

On 29 June 2009 the Second Defendant entered into a contract with Serco for the provision of detention services (the **Serco Contract**). The Serco Contract sets out the nature and content of Serco's obligations to provide the detention services.

15. Save that the Defendants say that the conditions of the detention of AS were subject to the management of the Second Defendant's contractors, Serco and IHMS, they do not admit the allegations in paragraph 15.
16. The Defendants do not admit the allegations contained in paragraph 16 and they refer to and repeat the matters set out at paragraphs 9-15 herein.
17. The Defendants do not admit the allegations contained in paragraph 17.
18. Save that the Defendants admit that the Second Defendant owed AS and people in detention a non-delegable duty of care to ensure that reasonable care is taken of them, the Defendants do not admit the allegations contained in paragraph 18.
19. Save that the Defendants admit the Second Defendant owed AS the duty set out at paragraph 18 herein, the Defendants do not admit the allegation contained in paragraph 19.
- 19A. Save that the Defendants admit that AS is a minor, the Defendants do not admit the allegations contained in paragraph 19A.
20. The Defendants deny the allegations contained in paragraph 20 and say further that as a matter of law no duty of the kind described exists.

21. The Defendants deny the allegations contained in paragraph 21 and refer to and repeat paragraph 20 herein.
- 22-24. There are no paragraphs 22 – 24 in the Further Amended Statement of Claim.
- 24A. The Defendants deny the allegations contained in paragraph 24A and refer to and repeat paragraph 19A herein.
- 24B. The Defendants refer to and repeat paragraphs 13 and 14 herein and otherwise deny the allegations contained in paragraph 24B.
25. The Defendants deny the allegations contained in paragraph 25 and say further that as a matter of law no duty of the kind described exists.
26. The Defendants deny the allegations contained in paragraph 26.
27. The Defendants deny the allegations contained in paragraph 27.
28. The Defendants deny the allegations contained in paragraph 28 and say further that insofar as the Plaintiff alleges a breach of duty or the occasioning of injury based upon allegations:
  - (a) that AS or any person was detained;
  - (b) concerning the location of any such detention;
  - (c) concerning the making or omission to make any decision under the Migration Act;the Defendants' conduct was lawful and they deny the capacity of any such conduct or circumstances to found or support a finding of any breach of duty so alleged.
29. The Defendants deny the allegations contained in paragraph 29.
30. The Defendants deny the allegations contained in paragraph 30.

31. The Defendants deny the allegations contained in paragraph 31.
32. The Defendants deny the allegations contained in paragraph 32.
33. There is no paragraph 33 in the Further Amended Statement of Claim.
34. The Defendants deny the allegations contained in paragraph 34.
35. The Defendants deny the allegations contained in paragraph 35.
36. The Defendants deny the allegations contained in paragraph 36.
37. The Defendants deny the allegations contained in paragraph 37.
38. The Defendants deny the allegations contained in paragraph 38.
- 39-40. There are no paragraphs 39-40 in the Further Amended Statement of Claim.
41. The Defendants admit the allegation contained in paragraph 41.
42. The Defendants do not admit the allegations contained in paragraph 42.

Dated: 9 February 2015

R.J. STANLEY

GARRY LIVERMORE



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Peta Heffernan, a solicitor employed by  
Australian Government Solicitor  
Solicitor for the Defendants