

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

S CI 2014 4423

BETWEEN

A.S. BY HER LITIGATION GUARDIAN MARIE THERESA ARTHUR

Plaintiff

and

MINISTER FOR IMMIGRATION AND BORDER PROTECTION

First Defendant

and

COMMONWEALTH OF AUSTRALIA

Second Defendant

**FURTHER AMENDED STATEMENT OF CLAIM
FILED PURSUANT TO THE ORDERS OF
THE HONOURABLE JUSTICE DIXON DATED 8 OCTOBER 2014
THE HONOURABLE JUSTICE KAYE DATED 28 NOVEMBER 2014**

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PART A. PRELIMINARY

1. A.S. is a minor and sues by her litigation guardian Marie Theresa Arthur (aka Sister Brigid Arthur).
2. A.S. is currently detained, purportedly pursuant to section 189(3) of the *Migration Act 1958* (Cth) (**detention**).
3. A.S.:
 - a. at the commencement of this proceeding and until about 19 August 2014 was detained on Christmas Island at the 'Construction Camp alternative place of detention';
 - b. from about 21 August to 23 August 2014 detained at the Wickham Point alternative place of detention in the Northern Territory; and
 - c. since about 23 August 2014, has been detained at the Bladin alternative place of detention in the Northern Territory.
4. A.S. brings the proceedings pursuant to Part IV of the *Supreme Court Act 1986* (Vic) on behalf of herself and every person who:
 - a. has been put in detention on Christmas Island in the period between 27 August 2011 and 26 August 2014 inclusive (the **relevant period**) whether or not they have since been released from detention;
 - b. was injured and/or pregnant, during the relevant period, while in detention; and
 - c. has, during the relevant period, suffered an injury or an exacerbation of an injury which is alleged to be as a result of the defendants' failure to provide him, her or his or her parents with reasonable health care;

(collectively, **group members**).
5. There are more than seven group members as at the commencement of this proceeding.

6. The Minister for Immigration and Border Protection (**the Minister**) is the minister responsible for the administration of the *Migration Act*.

[There is no paragraph 7 in this statement of claim.]

8. In this statement of claim, **injury** includes illness, whether physical or psychological or psychiatric.

PART B. NEGLIGENCE AND BREACH OF STATUTORY DUTIES

Duty

Common law duty to take reasonable care in detention

9. The detention of A.S. and the group members on Christmas Island was and/or is purportedly pursuant to section 189(3) of the *Migration Act*.
10. The duration of detention was or is for the period that allows for the following be carried into effect as soon as reasonably practicable:
- (i) removal from Australia;
 - (ii) receiving, investigating and determining an application for a visa permitting the detained person to enter and remain in Australia; or
 - (iii) determining whether to permit a valid application for a visa.
11. While in detention, A.S. and the group members were or will be kept on Christmas Island or mainland Australia, for so long as the Minister determined or determines, unless they received or receive a visa₁ or were or are removed from Australia.

12. While in detention, A.S. and the group members were or are unable to leave detention of their own accord.

Particulars

- (i) The group members were or are detained in facilities:
- (a) with perimeter fences;
 - (b) with constant supervision of security guards preventing their escape or voluntary egress;
 - (c) where they were or are subject to application of force by the defendants and their servants and agents.
- (ii) If the detention of A.S. or any of the group members was or is 'immigration detention' within the meaning of the *Migration Act* (the lawfulness of which is not admitted), section 197A of that Act made or makes it an offence to escape from such detention.
13. While in detention, A.S. and the group members were or are prevented from accessing any medical and health services other than those that the defendants chose or choose to make available to them.
14. While in detention, A.S. and the group members were or are prevented from accessing any educational and recreation facilities, other than those that the defendants chose or choose to make available to them.
15. The conditions of the detention of A.S. and the group members was or is subject of the exclusive control of the defendants together, and together with their servants and agents.

Particulars

- (i) The defendants controlled or control who may have contact with A.S. and ~~with~~ the group members.
- (ii) So much as is known by A.S. prior to discovery, one or more of the defendants have entered into a contract or contracts with Serco

Australia Pty Limited for the operation of places of immigration detention on Christmas Island.

- (iii) So much as is known by A.S. prior to discovery, one or more of the defendants have entered into a contract or contracts with International Health and Medical Services Pty Limited for the provision of certain health services at places of immigration detention on Christmas Island.

16. By reason of the matters in paragraphs 9 to 15, A.S. and the group members were or are dependent on either one or both of the defendants for their physical and psychological health and wellbeing, and in respect of minors, their day to day care, welfare and development.

17. At all material times it was reasonably foreseeable to each defendant that:

- a. a person in detention in the conditions set out in paragraphs 10 to 14 could suffer injury or exacerbation of existing injury;
- b. ~~such injuries include physical and psychological injury.~~

Particulars

Particulars will be provided following discovery.

~~Common law duty to take reasonable care in detention~~

18. ~~In the circumstances set out in paragraphs 9 to 17, the~~The defendants each owed and owe separately a duty to A.S. and each of the group members:

- a. to:
 - i. take reasonable care to ensure that their detention did not or does not cause injury, in the circumstances set out in paragraphs 9 to 17, and in the case of minors, that duty is informed by the principle that minors are only detained as a measure of last resort, and further informed by the matters in paragraph 24A - 26;

- ii. provide reasonable health care in the event that they are injured or pregnant while in detention in the circumstances set out in paragraphs 9 to 17; and
 - iii. exercise due care and skill in providing such care in the circumstances set out in paragraphs 9 to 17; and
- b. ~~who were or are minors, to put them in detention only as a measure of last resort; and~~

~~[There is no sub-paragraph 18c.]~~

- d. ~~who are children of 'compulsory school age' to enrol them in an 'educational programme' for their 'compulsory education period' within the meaning of the *School Education Act 1999* (WA);~~

(the **common law duty to take reasonable care**).

19. The common law duty to take reasonable care was not and is not delegable.

Statutory duty to detain minors only as measure of last resort

19A. A.S. is a minor and the group members include persons who are minors (together, the **minor group members**).

20. In addition to the ~~duties~~ common law duty to take reasonable care set out in the paragraphs above, and in the circumstances set out in paragraph 9 to 17, the defendants each owed and owe separate duties to each of the minor group members ~~who were or are minors~~ to put them in detention only as a measure of last resort (the **statutory duty to detain minors only as a measure of last resort**).

Particulars

Section 4AA of the *Migration Act*.

21. The statutory duty of each of the defendants to detain minors only as a measure of last resort was not and is not delegable.

[There are no paragraphs 22-24 in this statement of claim.]

Statutory duty to enrol children in school

24A. A.S. is and the minor group members include children who are 'a child of compulsory school age' (together, the **child group members**).

24B. The Minister has or had responsibility for the day to day care, welfare and development of the child group members.

Particulars of 24A and 24B

Section 4 of the *School Education Act 1999 (WA)* (which applies to the child group members by operation of Part III Division I of the *Christmas Island Act 1958 (Cth)* and the relevant register tabled in the Commonwealth parliament on 16 March 2000).

In addition to those matters set out in paragraphs 12 to 16, the Minister's responsibility is demonstrated by his capacity to provide or withhold access to goods and services to the child group members necessary for their day to day care, welfare and development, including providing or withholding access to educational programmes.

25. ~~In addition to the duties set out in the paragraphs above, and in the circumstances in paragraphs 24A to 24C, each defendant~~ the premises, the Minister had and has a duty to ~~the child group members who are children of 'compulsory school age' to enrol them in an 'educational programme' for their 'compulsory education period' within the meaning of the *School Education Act* (the **statutory duty to enrol children in school**).~~

Particulars

Sections 9 and 10 of the *School Education Act*.

26. At all material times it was reasonably foreseeable to each defendant that in respect of children of compulsory school age:
- a. a failure to enrol them in an educational programme for their compulsory education period within the meaning of the *School Education Act* could cause them to develop injury or exacerbate existing injury;
 - b. ~~such injuries include physical and psychological injury.~~
27. The statutory duty to enrol children in school was not and is not delegable.

Breach

Common law duty to take reasonable care in detention

28. The Minister failed and continues to fail to take reasonable care to prevent the detention of A.S. and the group members from causing them injury ~~ensure that the detention to which the group members have been subject did not and does not cause injury.~~

Particulars of A.S.'s claim

- (i) Failing to exercise his power to make a 'residence determination' under section 197AB of the *Migration Act* at all or in a timely manner by which A.S. and any other group member could live outside of an immigration detention centre. Alternatively, failing to refuse to make a 'residence determination' or failing to inform A.S. or any of the group members of a refusal ~~make a residence determination within the meaning of the *Migration Act*. Any of these failures contributed to or caused injuries of the nature particularised at paragraph 35 by virtue of causing uncertainty about the future, and the period and location of continued detention of A.S. and the group members.~~
- (ii) Failing to exercise his power to exempt A.S. or any group member from regional processing under section 198AE of the *Migration Act*.

Alternatively, failing to refuse to make an exemption or failing to inform A.S. or the group members of a refusal make a determination under section 198AE of the *Migration Act* that section 198AD not apply to the group members. Any of these failures contributed to or caused injuries of the nature particularised at paragraph 35 by virtue of causing uncertainty about the future, and the period and location of continued detention of A.S. and the group members.

~~(iii) Failing to make the determinations particularised above in a manner that would have been consistent with discharging his duty to take reasonable care, notwithstanding that the *Migration Act* in and of itself does not create a duty for him to do so.~~

~~(iv) Failing to ensure that his servants or agents would not tell A.S. that she and her immediate family are liable to be removed to either Nauru or Manus Island at any time despite having given an undertaking to her lawyers Maurice Blackburn in a letter dated 16 April 2014 that she would not be so removed.~~

[There are no sub-paragraphs (iii) and (iv).]

(v) In respect of A.S. only, fFailing to ensure that his servants or agents would did not separate A.S. from her mother when her mother was moved to Darwin to give birth to A.S.'s brother.

~~Particulars of the group members' claims~~

(vi) In respect of the group members, further pParticulars of the group members' claims will be provided after the trial of A.S.'s claim.

29. Each of the defendants failed and continues to fail to take reasonable care to ensure that the detention to which A.S. and the group members ~~hasve~~ been and ~~is~~ are subject did not and does not cause injury.

~~Particulars of A.S.'s claim~~

Failures relating to nature of detention

- (i) Keeping A.S. and the group members in detention:
- (a) other than on mainland Australia, where the standard of care could be more readily met than on Christmas Island because, on mainland Australia, there is access or better access to:
- i) multidisciplinary and specialist service providers, including paediatricians, speech pathologists and perinatal/infant, child and family psychiatrists, such providers available other than only on a visiting basis;
- ii) medical, psychological or psychiatric professionals and care independent of and not paid by the Minister;
alternatively
- (b) on Christmas Island without also causing actions to be taken so that the access detailed above ~~the standard of care~~ can be met there.
- (ii) Failing to inform A.S. and the group members of when ~~she~~ each of them will be removed from detention.
- (iii) Failing to act upon the recommendations of the Minister's Council on Asylum Seekers and Detention that families, children and complex cases ought to be managed by detention on mainland Australia or community detention.

Medical failures

- (iv) Failing to stay apprised of the medical needs of A.S. and the group members by *inter alia*:
 - (a) dissolving the Immigration Health Advisory Group (**IHAG**); and
 - (b) failing to replace IHAG with any other mechanism capable of providing similarly expert advice on the medical needs of A.S. and the group members.
- (v) Failing to act upon the recommendations of IHAG.
- (vi) Failing to act in response to the 'Letter of Concern' written in or around November 2013 by certain agents or former agents of IHMS.
- (vii) Failing to ensure that adequate medication was and is available to A.S. and the group members.

[There are no particulars (viii)-(xi) to this paragraph.]

- (xii) Failing to make and keep available medical facilities that were and are fit for purpose and adequately stocked.

[There is no particular (xiii) to this paragraph.]

- (xiv) Failing to keep accurate records of A.S.'s and the group members' health.

[There are no particulars (xv)-(xix) to this paragraph.]

- (xx) Allowing health care decisions to be made other than by reference to the best interests of A.S. and the group members.

[There are no particulars (xxi)-(xxiii) to this paragraph.]

Personal safety failures

- (xxiv) In respect of A.S. only, fFailing to take reasonable steps to prevent ~~A.S.~~ her from being indecently assaulted.

[There is no particular (xxv) to this paragraph.]

Human rights failures

- (xxvi) Acting in a manner inconsistent with human rights within the meaning of the *Australian Human Rights Commission Act 1986* (Cth) by:

~~(a) — not having reasonable regard to Article 7 of Schedule 2 to the *Australian Human Rights Commission Act 1986* (Cth) (the International Covenant on Civil and Political Rights).~~

~~(b) — not having reasonable regard to Principles 2, 4, 5, 6, 8, 9 of Schedule 3 to the *Australian Human Rights Commission Act 1986* (Cth) (the United Nations Declaration on the Rights of the Child).~~

(a) detaining A.S. and the group members in a manner which is cruel, inhuman or degrading by:

i) failing to provide adequate, qualified and timely medical services and recreational facilities;

ii) taking actions and making announcements including that described at particular (iii) subjoined to paragraph 37 through officers and agents to arouse feelings of fear and anxiety of imminent removal to Nauru; and

iii) threatening to removal A.S. and group members to Nauru where the treatment reasonably necessary for their injuries cannot be provided;

[Article 7 of the International Covenant on Civil and Political Rights at Schedule 2 to the Australian Human Rights Commission Act];

- (b) failing to act in the minor group members' best interests by detaining each of them for a prolonged period without any or any adequate medical, psychological, psychiatric, recreational and educational facilities and programmes [Principle 2, 4, 7 and 9 of the United Nations Declaration on the Rights of the Child (UNDRC) at Schedule 3 to the Australian Human Rights Commission Act];
- (c) failing to provide the special treatment, education and care required by A.S.'s mental condition [Principle 5, UNDRC];
- (d) separating A.S. from her mother when there were no exceptional circumstances justifying such separation [Principle 6, UNDRC];

Detention of minors

- (xxvii) Detaining A.S. the minor group members other than as a measure of last resort in that the Minister failed to consider or refused to exercise his power under section 197AB or alternatively, sections 46A and 195A of the Migration Act in respect of each of them. This failure caused injury from continued exposure to the conditions of detention and deprivation of access to any or any adequate medical, social, recreational and educational goods and services to alleviate injury.

Education failures

- (xxviii) Failing to provide the child group members with adequate or any education and recreation facilities in order to cater for each of their physical and mental health and well-being. And further, failing to enrol the child group members A.S. in an educational programme.

[There is no particular (xxix) to this paragraph.]

Particulars of the group members' claims

(xxx) Further pParticulars of the group members' claims will be provided after the trial of A.S.'s claims.

30. Each of the defendants failed and continues to fail to provide reasonable health care:

- a. to A.S. once she was injured; and
- b. ~~the group members who have been or are injured, or were or are pregnant while in detention~~ once they were injured or became pregnant.

Particulars of A.S.'s claim

Failures relating to the nature of detention

- (i) Keeping A.S. and the group members in detention:
 - (a) other than on mainland Australia, where the standard of care could be more readily met than on Christmas Island because, on mainland Australia, there is access or better access to:
 - i) multidisciplinary and specialist service providers, including paediatricians, speech pathologists and perinatal/infant, child and family psychiatrists, such providers available other than only on a visiting basis;
 - ii) medical, psychological or psychiatric professionals and care independent of and not paid by the Minister;
alternatively
 - (b) on Christmas Island without also causing actions to be taken so that the access detailed above ~~the standard of care~~ can be met there.

[There is no particular (ii) to this paragraph.]

- (iii) Failing to act upon the recommendations of the Minister's Council on Asylum Seekers and Detention that families, children and complex cases ought to be managed by detention on mainland Australia or community detention.

Medical failures

- (iv) Failing to stay apprised of the medical needs of A.S. and the group members by inter alia:
 - (a) dissolving the Immigration Health Advisory Group (**IHAG**); and
 - (b) failing to replace IHAG with any other mechanism capable of providing similarly expert advice on the medical needs of A.S. and the group members..
- (v) Failing to act upon the recommendations of IHAG.
- (vi) Failing to act in response to the 'Letter of Concern' written in or around November 2013 by certain agents or former agents of IHMS.
- (vii) Failing to ensure that adequate medication was and is available to A.S. and the group members.

[There are no particulars (viii)-(ix) to this paragraph.]

- (x) Failing to prescribe necessary medication, or make available in a timely way medication that had been prescribed or was or is required.
- (xi) Failing to ensure that medical facilities available to A.S. and the group members met Royal Australian College of General Practitioners' Standards for General Practice, or alternatively, Standards for Immigration Detention Centres.
- (xii) Failing to make and keep available medical facilities that were and are fit for purpose and adequately stocked.

[There is no particular (xiii) to this paragraph.]

- (xiv) Failing to keep accurate records of A.S. and the group members' health.

[There is no particular (xv) to this paragraph.]

- (xvi) Failing to ensure adequate numbers of appropriately-qualified general practitioners were and are available to A.S. and the group members as their circumstances required and require.

- (xvii) Failing to ensure adequate numbers of appropriately-qualified psychologists and other mental health practitioners were and are available to A.S. and the group members as their circumstances required and require.

- (xviii) Failing to ensure that A.S. and the group members consulted with and were attended to by medical practitioner specialists in appropriate facilities as their symptoms required and require.

- (xix) Failing to act on the recommendations of medical practitioners.

- (xx) Allowing health care decisions to be made other than by reference to the best interests of A.S. and the group members.

- (xxi) Failing to diagnose and treat the conditions particularised in paragraph 35.

[There are no particulars (xxii)-(xxv) to this paragraph.]

Human rights failures

- (xxvi) Acting in a manner inconsistent with human rights within the meaning of the *Australian Human Rights Commission Act 1986* (Cth) by:

(a) ~~not having reasonable regard to Article 7 of Schedule 2 to the *Australian Human Rights Commission Act 1986* (Cth) (the International Covenant on Civil and Political Rights).~~

(b) ~~not having reasonable regard to Principles 2, 4, 5, 6, 8, 9 of Schedule 3 to the *Australian Human Rights Commission Act*~~

~~1986 (Cth) (the United Nations Declaration on the Rights of the Child).~~

- (a) detaining A.S. and the group members in a manner which is cruel, inhuman or degrading by:
- i) failing to provide adequate, qualified and timely medical services and recreational facilities;
 - ii) taking actions and making announcements including that described at particular (iii) subjoined to paragraph 37 through officers and agents to arouse feelings of fear and anxiety of imminent removal to Nauru; and
 - iii) threatening to remove A.S. and group members to Nauru where the treatment reasonably necessary for their injuries cannot be provided;
- [Article 7 of the International Covenant on Civil and Political Rights at Schedule 2 to the Australian Human Rights Commission Act];
- (b) failing to act in the minor group members' best interests by detaining each of them for a prolonged period without any or any adequate medical, psychological, psychiatric, recreational and educational facilities and programmes [Principle 2, 4, 7 and 9 of the United Nations Declaration on the Rights of the Child (UNDRC) at Schedule 3 to the Australian Human Rights Commission Act];
- (c) failing to provide the special treatment, education and care required by A.S.'s mental condition [Principle 5, UNDRC];
- (d) separating A.S. from her mother when there were no exceptional circumstances justifying such separation [Principle 6, UNDRC];

Detention of minors

(xxvii) Detaining A.S. the minor group members other than as a measure of last resort in that the Minister failed to consider or refused to exercise his power under section 197AB or alternatively, sections 46A and 195A of the *Migration Act* in respect of each of them. This failure caused injury from continued exposure to the conditions of detention and deprivation of access to any or any adequate medical, social, recreational and educational goods and services to alleviate injury.

Education failures

(xxviii) Failing to provide the child group members with proper and adequate education and recreation facilities in order to cater for each of their physical and mental health and well-being. And further, failing to enrol the child group members A.S. in an educational programme.

~~(xxix) Failing to diagnose and treat the conditions particularised in paragraph 35.~~

[There is no particular (xxix) to this paragraph.]

Particulars of the group members' claims

(xxx) Further pParticulars of the group members' claims will be provided after the trial of A.S.'s claim.

31. Each of the defendants failed and is continuing to fail to exercise due care and skill in providing the health care that it did or does provide.

Particulars

A.S. repeats the particulars to paragraph 30.

Statutory duty to detain minors only as measure of last resort

32. ~~Further and in the alternative to paragraphs 29 to 0, each~~Each of the defendants detained ~~A.S. and the minor group members who were or are minors~~ other than as a measure of last resort.

Particulars

- (i) The transcript of the press conference and subsequent 'clarification' media release from the Minister of 8 November 2013, in which he stated that the defendants operate a 'no exceptions policy' in relation to detention of group members as part of their 'offshore processing' policy.
- (ii) Further particulars will be provided after discovery.

[There is no paragraph 33 in this statement of claim.]

Statutory duty to enrol children in school

34. Each of the defendants failed and continues to fail to enrol the child group members ~~children of compulsory school age~~ in an educational programme for their compulsory education period.

Injury

35. As a result of the negligence of each of the defendants, A.S. has suffered injuries.

Particulars

Physical injuries

- (i) recurrent dental abscesses; and

- (ii) recurrent allergic reactions.

Psychological injuries

- (iii) post-traumatic stress disorder;
- (iv) separation anxiety disorder;
- (v) secondary nocturnal enuresis;
- (vi) childhood onset fluency disorder (stuttering); and further or in the alternative to the above
- (vii) major depression with anxiety.

36. As a result of the negligence of each of the defendants, A.S. will require ongoing medical, dental and psychiatric treatment.

Particulars

Particulars will be provided prior to trial.

37. Each of the defendants has acted and continues to act in a manner exhibiting a contumelious disregard of A.S.'s rights.

Particulars

Prolonged continuing breach

- (i) Each defendants' breach of their duties is continuing, and A.S. refers to paragraph 30 and the particulars to that paragraph.
- (ii) The defendants' breaches have been continuing since about 26 July 2013.

Defendants' conduct

- (iii) The Minister by his servants and agents told A.S.'s parents on at least one occasion on or about 7 July 2014 that she and her immediate family are liable to be removed to either Nauru or Manus Island at any

time despite having ~~giving~~ an undertaking to her lawyers Maurice Blackburn in a letter dated 16 April 2014 that she would not be so removed, such conduct carried out knowing that or without regard as to whether it would cause and/or exacerbate ~~psychological~~ injury.

- (iv) The defendants on 23 July 2014 and again on 24 July 2014 either limited or denied the lawyers for A.S. and the group members, and the medical advisors which the lawyers considered necessary, access to A.S. and the group members to advise and obtain instructions on their rights, such limitation or denial being:
- (a) unreasonable; and or alternatively
 - (b) unlawful.

Causation

38. Each or either defendant's breach of the:

- a. common law duty to take reasonable care in detention; ~~and~~
- b. statutory duty to detain minors only as measure of last resort; and
- c. statutory duty to enrol children in school;

caused or made a material contribution to A.S.'s injuries.

~~39. The Minister's breach of his statutory duty of guardianship caused or made a material contribution to A.S.'s injuries.~~

~~40. The Minister's breach of the statutory duty to enrol children in school caused or made a material contribution to A.S.'s injuries.~~

[There are no paragraphs 39-40 in this statement of claim.]

Vicarious liability of the Commonwealth

41. The Minister is an officer of the Commonwealth.
42. In the circumstances, the Commonwealth is vicariously liable for each of the Minister's:
 - a. breaches of his duties to A.S. and the group members; and
 - b. actions which exhibited or exhibit a contumelious disregard of A.S.'s rights.

PART C. RELIEF SOUGHT

A.S. claims on behalf of herself:

1. Damages against the Commonwealth.
2. Exemplary damages against the Commonwealth.
3. Interest.
4. An order that each defendant, including by their servants and agents, be restrained from detaining A.S. on Christmas Island.
5. Costs.
6. Such other orders as the Court thinks fit.

A.S. further claims, on behalf of the group members:

7. Damages against the Commonwealth.
8. Interest.
9. An order that each defendant, including by their servants and agents, be restrained from detaining any of the group members on Christmas Island.
10. Costs.
11. Such other orders as the Court thinks fit.

PART D. QUESTIONS COMMON TO CLAIMS OF GROUP MEMBERS

Common law duty

1. Which of the defendants owe duties at common law to:
 - a. take reasonable care to ensure that the group members' detention does not cause injury?
 - b. provide reasonable health care in the event that group members are injured or pregnant while in detention?
 - c. exercise due care and skill in providing such care?
2. If any of the defendants owe any of the duties referred to in question 1, which of those are non-delegable?

Breach of common law duty

Breaches pleaded against Minister personally

3. If the Minister owes a duty to take reasonable care to ensure that the detention of A.S. and the group members does not cause injury, did his failure to:
 - a. failure either to exercise his power to make a 'residence determination' under s 197AB of the Migration Act at all or in a timely manner, or alternatively, failure to refuse to make a 'residence determination' or failure to inform of a refusal make a residence determination within the meaning of the Migration Act, further or alternatively
 - b. failure to exercise his power to exempt from regional processing under s 198AE of the Migration Act, or alternatively, failure to refuse to make

~~an exemption or failure to inform of a refusal make a determination under section 198AE of the Migration Act that section 198AD not apply;~~

amount to a breach of that duty?

4. If the answer to question 1 is 'yes', it is appropriate for the scope of the Minister's liability to extend to the harm caused?

Breaches relating to nature of group members' detention

5. If any of the defendants owe any of the duties referred to in question 1, did their detention of group members on Christmas Island amount to a breach of those duties [particulars (i)-(iii)]?

Breaches relating to medical failures

6. If any of the defendants owe any of the duties referred to in question 1, did their conduct in relation to medical care breach those duties [particulars (iv)-(xx)]?

Breaches relating to human rights failures

- 7A. If any of the defendants owe any of the duties referred to in question 1, did their conduct breach Article 7 of the International Covenant on Civil and Political Rights [sub-particular (xxvi)(a)]? ~~did: they act in a manner inconsistent with human rights by:~~

a. ~~not having reasonable regard to Article 7 of Schedule 2 to the Australian Human Rights Commission Act 1986 (Cth) (the International Covenant on Civil and Political Rights)?~~

b. ~~not having reasonable regard to Principles 2, 4, 5, 6, 8, 9 of Schedule 3 to the Australian Human Rights Commission Act 1986 (Cth) (the United Nations Declaration on the Rights of the Child) [particular (xxvi)]?~~

- 7B. If the answer to 7A 5A is 'yes', did such acts conduct amount to a breach those duties referred to in question 1?

Dated 19 December 2014~~10 October 2014~~

M B J Lee

M Albert

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