

# Costs Agreement



Mailing Address: PO Box 7015 Reservoir VIC 3073

M: 0425 754 299 P: (03) 9478 0223  
E: [serene.teffaha@advocateme.com.au](mailto:serene.teffaha@advocateme.com.au)  
W: [www.advocateme.com.au](http://www.advocateme.com.au)

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## BETWEEN

<b>Law Practice:</b>	Advocate Me
<b>Client/s:</b>	
<b>Matter:</b>	Class Action: Judicial Review/Constitutional Challenge- National State of Emergency Lockdown and Victorian State of Disaster

## PREAMBLE:

Division 4 of Part 4.3 of the Legal Profession Uniform Law (Victoria) ("**Uniform Law**") allows a law practice (us) and you (the client) to agree on how the law practice's charges are to be calculated and paid. It is called a "Costs Agreement", and it may be enforced in the same way as any other contract.

This document is an offer to enter into a Costs Agreement in accordance with the information contained in the Disclosure Statement given to you in compliance with Division 3 of Part 4.3 of the Uniform Law.

## Accepting Terms

If you accept these terms, the Disclosure Statement and this document will make up the complete Costs Agreement between us for this matter.

You may accept the Costs Agreement by doing one of the following:-

- by replying to our email stating full names of all people you wish to include in this class action stating "I have read, understood and accept the terms of your agreement and wish to proceed with the class action".
- writing to us indicating your acceptance, by returning a signed copy of this document as provided at pages 7 and 8 of this document, or
- by continuing to give us instructions in this matter

As this is a class action, we have also provided you information setting out our legal strategy and the steps involved in a class action. We have reproduced a copy of this at the end of this Costs Agreement.

### **Class Action Members and Applicant Representative**

At the commonwealth level, the usual name given for a group member of a class action is a class member and the name given to the lead representative plaintiff is the applicant representative (we will use these terms for the purposes of this agreement).

The class action is open to all residents of Victoria, New South Wales, Queensland, Tasmania, South Australia, Northern Territory, Australian Capital Territory and Western Australia who have been impacted by the directives and laws made by the respective States and Territories in relation to the National State of Emergency response to SARS-COV-2 (COVID 19) and the Victorian State of Disaster.

### **Definitions**

costs agreement:	means any fee and retainer agreement and costs disclosure entered into between the applicant's lawyers and the applicant and/or any class members, whether in standard form or otherwise
legal costs:	means any legal costs and disbursements (including those estimated) to be charged to class members
class member:	each participating applicant in the class will be called a class member
applicant representative	class actions ordinarily involve a single applicant (known as the 'applicant representative') pursuing a claim on behalf of a larger group that has been similarly affected. They are the only person assuming the risk and cost of the litigation, and they are running their claim in the interests of all affected parties within the group they define, meaning even people who don't know about a class action can still benefit from them
litigation funding agreement:	means any agreement by which a litigation funder is to pay or contribute to the costs of the proceeding, any security for costs or any adverse costs order and/or to receive payment of commission, costs or charges of any type in relation to the proceeding, whether by way of third-party or commercial litigation funding or by way of litigation funding provided by some of the class members

litigious matter: a matter that will commence through the institution of proceedings of any Court or Tribunal of competent jurisdiction on behalf of the applicants

### **Strategy**

Courts require that the applicants be identified within sub-classes under their specific characteristics. We have identified the following sub-classes of the class action but the sub-classes will not be restricted to these:

1. People impacted by all detention issues such as returning travellers, cross-border travellers and other forms of detention where they are healthy.
2. People impacted by being required to take the influenza vaccination to access loved ones at Residential Aged Care Facilities and/or to retain their employment.
3. People impacted by proposed mandatory COVID-19 vaccination and/or threats to deny essential benefits if the COVID-19 vaccination is not taken.
4. People impacted by all inconsistent business-related closures and restrictions including unreasonable restrictions on self-employment and small business operations.
5. People impacted, particularly the elderly, by extended detention and isolation at Residential Aged Care Facilities and/or Hospitals leading to elderly abuse in some instances.
6. People impacted by denial of access to their elderly family member and/or other vulnerable family member or loved one at Residential Aged Cared Facilities, Hospitals and/or any other Facilities.
7. People impacted by testing requirements which include requiring body samples such as compulsory testing, punitive outcomes for not testing such as extended detention, denial of return to work or denial of benefit such as access to medical services when the person is healthy.
8. People impacted by unreasonable cross border rules by being denied travel to funerals and/or being reunited with families.
9. People impacted by inappropriate self-isolation requirements when they are healthy.
10. People impacted by inappropriate contact tracing rules including failure to be provided with prescribed contact information and classification of suspect COVID-19 case with no clinical diagnosis or presentation.
11. People impacted by inappropriate classification of cause of death as COVID-19.
12. People impacted by inappropriate requirements to undergo medical examinations or treatment of any kind without their full and informed consent.

13. People impacted by compulsory requirements for masking.
14. People impacted by denial of overseas travel.
15. People impacted by unreasonable complications to return home as a resident from overseas.
16. People impacted by inappropriate imposition of fines and/or summonses.
17. People impacted by the unreasonable imposition of directives restricting their movements.
18. People impacted by removal of their children and/or other dependants by authority.
19. People impacted by denial of access to medical treatments such as Hydroxychloroquine and Ivermectin.
20. People impacted by denial of PPE at hospitals and other care facilities for our frontline workers.

These issues could have resulted in a number of impacts including, but not limited to, police and/or other official brutality, suicide, family violence, child abuse, increase in mental illness and loss of income, opportunity and finances and preventable exposure to COVID-19 and denial of necessary treatment for COVID-19.

At least one applicant representative will be selected from each State and Territory, for each sub-class, in order to represent a cross selection of the circumstances affecting all class members.

### **Selection of Applicant Representative**

Once you have read our information regarding legal strategy and class actions, and selected on our online form your interest in being an applicant representative, we will contact you to discuss your case in greater detail. Your costs contribution will be limited to \$100, if you are selected as an applicant representative.

### **Class Action Costs for other Class Members**

We have had thousands of people express interest in our class action. However, we are aware that there will be some who will not proceed. We also note that for the benefit of all class members we have offered a sliding scale of costs contribution depending on class members' liquidity.

We are aware that these are difficult times and our main goal is to ensure that this class action represents the interests of all class members impacted by the unlawful and/or unreasonable promulgation of the directives and laws made by the States and Territories.

Our sliding scale of costs contributions will be a figure nominated, by the class member, and/or their family, from a minimum costs' contribution of \$250 to a maximum of \$2,000.

These costs will be strictly capped to ensure that all members of the community can participate in this class action. This will provide pensioners and people who have very limited finances and

business people alike the opportunity to participate in the class action depending on their means.

If you have been provided this Costs Agreement and there are a number of members within the family that are impacted by the same or similar circumstances, we will cap the costs contribution to one amount per family depending on their means. This means that if there are 2 or more members of the same family impacted by the same or similar circumstances then the costs contribution will be capped per family and you would not be required to provide any further costs contribution.

We would appreciate upon returning a copy of this Costs Agreement, that all members of the family have noted their names in full on the Costs Agreement

You have agreed as a class member to contribute towards the costs of the class action. You are also aware that we are unlikely to get a litigation funder for this matter, however, we have had a number of third-party donors interested in assisting with this matter and should we require their support we will canvass their donations.

You have also been made aware that as part of pursuing judicial review/constitutional challenge, there are limits on the financial compensation that can be claimed. This class action is about reclaiming our basic rights and ensuring that our States and Territories including the Federal Government, do the right thing and cease from their current interpretation and application of the laws.

### **Statement of Claim**

The statement of claim that we will prepare, which will be filed with the Court, will aim to resolve all common questions, raised by the applicant representative's personal claims. This will also aim to resolve the claim of any sub-class applicant and, depending on the circumstances, sample class member issues and "issues of commonality".

For this reason, there may be various categories of legal costs that may arise in a class action:

- Common benefit costs, being costs incurred in connection with managing and prosecuting the proceedings for the benefit of the class overall;
- Sub-group costs, being costs incurred for the common benefit of the sub-group whose claims raise sub-group questions;
- Individual costs, being costs incurred in connection with issues which are individual to particular class members (e.g. Individual damages assessments).

The costs incurred will be incurred as the collective group of class members. Any liability, charges and payments due, will be due as the collective group of class members.

### **Costs Capped**

We have capped your costs contribution to an amount nominated between \$250 and \$2,000 per family and/or individual impacted by the same circumstance.

## **TERMS:**

### **1. The basis on which our charges will be calculated**

Class Members will be liable to pay our charges which will be calculated in accordance with hourly rates detailed in the Disclosure Statement given to you.

### **2. Billed charges and interest**

To maintain transparency and for you to understand what is being spent, how, and when as we proceed, interim Bills of Costs will be given to all class members at suitable breaks and a final Bill of Costs will be given to you at the conclusion of the matter.

*Please note that the bill of costs will be covered by the capped cost contributions already paid by class members into the trust account.*

We will be flexible in relation to the requirements of the class action, making sure that we are as fair and as reasonable as possible keeping our costs to an absolute minimum and being completely transparent about the process at every step.

### **3. Payment of disbursements**

We will charge Class Members at cost for any disbursements we incur on your behalf.

Please note that payment for disbursements will be covered by the capped cost contributions already paid by class members in the trust account.

Class Members must pay disbursements, including Goods and Services Tax (**GST**), incurred by us on your behalf as they become due and payable. The priority will be towards barristers' costs and experts.

Class Members cost contributions are held in our trust account until payment of the disbursement is required which we will notify you of.

### **4. Trust money**

If we receive money into our trust account on your behalf, Class Members authorise us to draw on that money to pay any amount due from you to us in accordance with the provisions of the Uniform Law and Rule 42 of the *Legal Profession Uniform General Rules 2015* relating to the withdrawal of trust money for legal costs. A trust statement will be forwarded to you upon completion of the matter. Your capped costs contributions are being held in our trust account and will only be released upon your collective authorisation.

### **5. Bills**

We may give bills to Class Members in any way specified in Rule 73 of the *Legal Profession Uniform General Rules 2015*. For the purposes of Rule 73, you consent to receiving bills:

- by fax to the number specified by you;

- by email address or mobile phone number to the address or number specified by you; or
- by any other means of electronic transmission agreed to by you and us.

## **6. Your obligations**

We require you to, and you agree to:

- provide full and honest instructions relevant to your matter and any material change in your circumstances that might impact on your matter while we continue to act for you;
- co-operate in the matter and do all that we reasonably request of you in a timely manner;
- accept and follow our reasonable legal advice; and
- provide funds in advance in accordance with this Costs Agreement, being the capped costs contribution, or some later arrangement.

If you fail to comply with any of these conditions, we have the option to terminate this Costs Agreement by advising you of termination in writing. We will give you at least 14 days' notice of our intention to terminate our agreement, and of the grounds on which the notice is based.

## **7. If we cease to act for you or you stop using this law practice**

Circumstances may arise (such as a conflict of interest) that make it impossible for us to continue to act for you. We may also cease acting for you if you breach your obligations as set out above.

We will notify you immediately if any of the above matters arise.

If we cease to act for you:

- you will have your name removed as a Class Member;
- you will receive a final account capped to your costs contributions; and
- we may retain your file and keep your documents until we are paid, subject to any other statutory requirements.

## **8. Acknowledgment**

I/We, [insert name/names of client/s]

ACKNOWLEDGE that I have:

- received a Disclosure Statement pursuant to Division 3 of Part 4.3 of the Uniform Law; and
- read, understood and approved this Costs Agreement, including the Disclosure Statement; and
- understand and acknowledge that the Disclosure Statement and this document make up the complete Costs Agreement; and

- agreed that I may sign and return this Costs Agreement in any of the following ways:
  - (i) sign the Costs Agreement and return it to the law practice by hand, post, electronically or other method;
  - (ii) reply electronically to the law practice stating that I agree to the terms and acknowledgements set out in the Costs Agreement received and for the email which contains my printed name or signature to be my signature in the Costs Agreement;
  - (iii) type my name into the Costs Agreement and confirm by email to the law practice that it should stand as my signature in the Costs Agreement; or
  - (iv) any other method in writing that would identify me as the client and my intention that I wish for my signature to be noted as being applied in the Costs Agreement; or
- agreed and understand that I may also accept this Costs Agreement by continuing to give instructions to the law practice in the matter.

Signed by client/s: \_\_\_\_\_

Print name/s: \_\_\_\_\_

Dated:

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# Disclosure Statement

<b>Law Practice:</b>	Advocate Me
<b>Client:</b>	
<b>Matter:</b>	Class Action: Judicial Review/Constitutional Challenge- National State of Emergency Lockdown and Victorian State of Disaster

Under Division 3 of Part 4.3 of the Legal Profession Uniform Law (Vic) ("**Uniform Law**"), we must disclose to you the following information relating to legal costs.

## 1. The basis on which our legal costs will be calculated – section 174(1)(a)

### Hourly Rates

Subject to you entering into a Costs Agreement with us, our charges are determined by hourly rates charged in 6-minute units. For example, the time charged for an attendance of up to 6 minutes will be rounded up to 6 minutes and the time charged for an attendance between 6 and 12 minutes will be rounded up to 12 minutes.

Our lawyers record the time they spend when they work on your matter and each lawyer has an hourly charge rate which reflects that lawyer's skills and experience.

The lawyer primarily responsible for your matter is Serene Teffaha- Principal Lawyer. Her rate is \$175 (incl GST). However Serene Teffaha will be significantly discounting her rate to ensure the matter proceeds successfully through the Court.

### Disbursements

In providing legal services to you as Class Members, it may also be necessary for us to incur other reasonable fees, expenses and charges, including Court filing and issue fees, Barristers' fees, experts' fees, administration and research charges, bank charges, travel expenses, stamp duty, courier fees, long distance telephone charges, photocopying fees, and company and other search fees.

Please note that our firm has engaged the services of Sandy Barrett to have carriage of the exhaustive administration and systems management for the Class Action and Melissa Bruce to have carriage of research and para-legal support. Their work will be covered by the disbursements.

Melissa Bruce has over 14 years' experience in business management, and has been

extensively involved in pharmaceutical, health, and legislative research for the past 4 years.

Sandy Barrett has 30 years' experience working closely with the legal profession in his software business. Software he created specifically for Mercantile Law, which is the most widely used software of its kind in the country. Having sold his business, Sandy has now turned his attention to assisting with this cause by handling all systems management for this class action.

From time to time we will also be engaging the consulting services of other lawyers to assist on the matter where necessary. We will advise you of their services as and when they are engaged.

These fees, expenses and other charges which we may incur on your behalf are referred to as "disbursements".

We will charge Class Members at cost for any disbursements we incur on your behalf. Class Members must pay reasonable disbursements, including Goods and Services Tax (GST), incurred by us on your behalf either on demand or at the conclusion of this matter.

These disbursements will be covered by your capped costs contributions in our trust account. We will not be requesting any further contributions.

These funds will be held in our trust account until payment of the disbursement is required.

If there are disbursements to be incurred that we reasonably believe are unusual, we will seek your instructions before incurring the expense.

## **2. Our estimated total legal costs – section 174(1)(a)**

Because of the nature of the class action, we estimate that total legal costs, including our charges and disbursements, for this matter will be about \$1,200,000 (incl GST) shared by all Class Members in this class action.

We have provided you a summary of our legal strategy in our strategy paper/email at the end of this Costs Agreement.

However, the scope of the work will include the following tasks:

1. Preparing a comprehensive brief to the barrister in relation to our legal strategy and draft statement of claim (including potentially a draft statement of claim in relation to each State and Territory should it be necessary).
2. Settling with the barrister our strategy and settling the statement of claim for circulation to our Class Members.
3. Enlisting the relevant experts in relation to the proceedings.
4. Filing the matter with either the Federal Court of Australia and/or High Court of Australia or

alternatively filing in each State and Territory (only if necessary).

5. Attendances at all Case Management Hearings (initial and subsequent).
6. Attendances at all Mediations or Alternative Dispute Resolution.
7. Ensuring continuous communication with all class members and applicant representatives.
8. Representation at the trial and dealing with all settlement procedures.

This estimate is made up as follows:

Our charges: \$150,000 ..... (incl GST)

Disbursements: \$1,050,000 ..... (incl GST)

**TOTAL LEGAL COSTS: \$1,200,000 ..... (incl GST)**

This estimate of total legal costs is NOT BINDING on us, as the work required may change, but is our best advice at this point in time. The estimate is based on our current understanding of the present circumstances of this matter. If the scope of this matter or your instructions to us change in a way that results in a significant change to anything we have previously disclosed, including this estimate, we will revise the estimate as soon as practicable. However, please note that your costs contributions have been capped and you will not be charged anything further irrespective of our revised estimate. As stated, we will be seeking the contributions of third-party donors for any further assistance should that be necessary.

### **Recovery of costs from another party in litigious matters**

If your matter is a litigious matter, and if Class Members are successful, it is likely that the Court or other Tribunal will order the States and Territories to pay some of the Class Action legal costs. These costs are usually calculated by applying the relevant Court or other scale of costs applicable to the matter.

An order for costs in the Class Members favour does not affect the Class Members' liability to pay all our charges and all disbursements. The costs you may recover from another party are unlikely to cover the whole of the legal costs that the Class Members must pay us. If the Class Members cannot recover legal costs from the other party (if for example the party goes into liquidation or becomes bankrupt), the Class Members will still be liable to pay our legal costs capped to your individual costs contributions.

### **Your liability for the costs of another party in litigious matters**

If your matter is a litigious matter, and if the Class Members are unsuccessful, it is likely that the Court or other Tribunal will order the lead representative plaintiffs to pay some of the States and Territories legal costs pursuant to section 43(1A) of the Federal Court of Australia Act. The other class members will not be exposed to any legal costs. The lead representative plaintiffs have been made aware that they may be pursued for legal costs. Advocate Me will

do all that it can to appeal such orders or negotiate the non-pursuit of the orders given the financial position of the applicant representatives. These costs are usually calculated by applying the relevant Court or other scale of costs applicable to the matter. We will also ensure that any costs contributions that are in excess of our needs will be applied towards an adverse costs orders.

### 3. Your rights – section 174(2)

- You have a right to negotiate a Costs Agreement with us.
- You have a right to negotiate the billing method with us.
- You have a right to receive a Bill of Costs from us.
- You have a right to request an itemised Bill of Costs within 30 days after the date on which the legal costs become payable if you receive a **lump sum** bill from us that is not itemised, or is only partially itemised. You are entitled to receive a lump sum bill and to have it fully itemised bill if requested within 30 days of the lump sum bill becoming payable.
- You have a right to be notified of any significant change to the basis on which legal costs will be calculated or any significant change to the estimate of total legal costs.
- You have the right to seek the assistance of the designated local regulatory authority (Victorian Legal Services Commissioner) in the event of a dispute about legal costs. Further details will be included in or with our bills of costs.
- You may seek independent legal advice before agreeing to the costs agreement proposed.
- You are entitled, upon reasonable request, to progress reports of your matter and the current costs incurred in your matter, and to be notified of any significant changes affecting costs.
- If there is a dispute or you are unhappy with the costs you can require mediation, apply for independent assessment before the Supreme Court Costs Court within 12 months after the bill was provided or request for payment was made or after the costs were paid, or seek to have the costs agreement set aside. You may also seek the assistance of the Legal Services Commissioner in your State or Territory within 60 days after the legal costs have become payable, or where you have asked for an itemised bill within 30 days after the itemised bill was provided. The time limits specified above may be waived if the complaint is made within 4 months after the required period in circumstances where the delay and reasons for the delay make it just and fair to do so, provided we have not commenced legal proceedings in respect of the legal costs. In the first instance we suggest that you raise any issues with us.

#### **4. Our bill of costs**

We will send Class Members a bill at the end of each month and at the end of this matter. Upon sending this bill to you, the amount will be deducted from your capped costs contributions from our trust account within seven (7) business days.

#### **5. Interest on unpaid accounts – section 195(1)**

If a bill remains wholly or partly unpaid 30 days after we gave it to you, we may charge you interest on the unpaid amount at a rate not exceeding the Cash Rate Target, as fixed by the Reserve Bank of Australia, plus 2 per cent, at the date the bill is issued.

As your capped costs contributions should have already been made into our trust account, this is not likely to happen.

#### **6. Your right to request a written progress report on legal costs – section 190(1)**

You have a right to request a written progress report of the legal costs incurred to date or since our last bill (if any), and we must provide such a report within a reasonable period and without charge.

#### **7. If you have a concern about our legal costs – section 174(3)**

If you have any concerns about our legal costs, please do not hesitate to contact Serene Teffaha on [accounts@advocateme.com.au](mailto:accounts@advocateme.com.au). This is because it is important to us that, in consenting to the proposed course of action for the conduct of your matter (in particular the proposed costs) you are informed and understand the issues involved.

#### **8. Electronic communication**

- (a) We are able to communicate electronically with clients and other parties using electronic mail, both direct and via the Internet, and using data storage devices. If we communicate electronically with or for you, you acknowledge and agree as follows:
  - (i) There are some delivery risks in using electronic mail and you accept the risk of interception of the email by third parties or of non-receipt or delayed receipt of the message; and
  - (ii) Computer viruses and similar damaging items can be transmitted through emails and by introducing data storage devices into your system. We use virus-scanning software to reduce these risks and ask that you do the same. However, it is not possible to completely eliminate the risk of introducing viruses.
- (b) If we communicate electronically with or for you, you release us from all claims, losses, expenses and liabilities caused by any of the risks referred to above and arising directly or indirectly out of that communication.

#### **9. Your documents**

Your documents may be destroyed after seven years from the date of our final bill and issuance of your trust statement unless you write to us requesting retention for a longer period. At the end of the matter, and provided our invoices are paid in full, we will release your file and documents to you directly.

#### **10. Jurisdiction**

The Uniform Law as applied in Victoria is applicable to legal costs in this matter.

#### **11. Engagement of another lawyer or law practice – section 175**

In providing legal services for you, it may be necessary to engage another law practice (including Barristers) to provide specialist advice or services.

We will consult you about the terms of these engagements before incurring the expense. We will provide you with a statement setting out the rates and estimated costs of any other law practice we propose to engage as soon as the retained law practice provides this information to us.

#### **12. Trust Account Deposit Receipt**

Our Trust Account details are:

Account name: Serene Teffaha T/A Advocate Me Law Practice Trust Account

Bank: Commonwealth Bank

BSB: 063-234

Acc/No: 1110-5153

Please tag your Surname and Initial plus the code LK to the payment made to our Trust Account e.g. TeffahaSLK. Please email to us at [accounts@advocateme.com.au](mailto:accounts@advocateme.com.au) to let us know that you have transferred a payment so that we can issue you a Trust Account Deposit Receipt. Please note that the costs contributions made at this stage should be sufficient to conduct the proceedings. Should there be any issues in relation to costs during the carriage of the proceedings you will be notified and we will seeking third party donations and/or funding. Your costs contributions have been capped for this class action to your nominated deposited amount.

## **Legal Strategy with National Class Action Lockdown & Victorian State of Disaster**

We started our Class Action with a focus to seek a declaration and prohibition order, through judicial review, that the directives issued by the States and Territories, to require influenza vaccines on visitors of aged care facilities and employees affected by the directives, be declared unlawful and unreasonable and prohibition be granted, so that these directives cannot occur in the future, in the same manner.

As we progressed, we realised that the issues impacting our clients now extend beyond the vaccine issue and involve unlawful detention, testing (including false positives), contact tracing, masks, denial of cross border travel, denial of overseas travel, problems with returning Australians home, failures of diagnosis and recording of deaths, police brutality, fines and Court summonses, unreasonable business closures and restricting freedom of movement.

We also recognised that there's an urgent need to stop the Declaration of a State of Disaster in Victoria because it's not supported by the data and statistics.

We felt the best approach would be to launch a judicial review process in relation to all the directives that are impacting Australians across all States and Territories.

Judicial review means to review a matter to ensure that the power exercised was properly exercised, in accordance with the statute or legislation. Another way of putting this is to determine if the decision was lawful. This can mean a number of things. For example, it could mean that a decision was made ultra vires, or outside the decision maker's scope of power or authority. Or it could mean that the decision maker took into account irrelevant factors, or failed to take into consideration relevant factors. In determining whether a decision maker exercised his or her power within the law, the first place to look is the legislation which grants that decision maker the power to make the decision.

A decision may also be made unlawfully if the decision maker was biased, acted unreasonably, was dishonest or did not give someone the ability to be heard, or to give evidence before making the decision (denial of natural justice). Finally, it could just mean the decision maker misunderstood the law.

We examined comprehensively all the legislative frameworks applicable including the Biosecurity Act 2015 (Commonwealth), the Constitution and the extensive human rights legislative frameworks. We also examined closely all the respective public health and emergency frameworks that exist within the States and Territories.

We decided that the best way forward is to approach the process through judicial review and in part, a Constitutional challenge on the following basis:

1. In relation to all States and Territories, a challenge will be made to all these directives and other obligations imposed under the respective public health and/or emergency powers by seeking a declaration or declarations that the directives made in so far as they relate to the management and containment of a human biosecurity risk are inconsistent with the Biosecurity Act 2015 (Cth) and contravene section 109 of the Constitution.
2. In relation to all States and Territories, a challenge would be made to specific laws that have been passed under some of the States and Territories legislation, including challenge to removal of children from their parents and removal of clothing such as underwear when forcibly detaining individuals for vaccination and/or treatment that go beyond the ambit of both the Biosecurity Act 2015 (Cth) and the Constitution.
3. Specifically, for Victoria, we will be launching an urgent injunction to stop the current Declaration of a State of Disaster. If you select your state as Victoria, we will automatically put you towards our Injunctive Relief Claim in Victoria against the State of Disaster as well as the National Class Action in relation to the State of Emergency- you will not be required to fill in any further forms.
4. Consideration will also be given to taking action against the Commonwealth of Australia, for their failure to utilise the Biosecurity Act 2015 (Cth) and act on their quarantine powers, despite principal decisions being made at the Federal level through the Australian Health Protection Principal Committee.

The case will also raise a number of issues with regards to human rights and our medical right for freedom of choice, liberty and self-determination.



Each State and Territory has its own unique judicial review process. We aim to place the matter either before the Federal Court of Australia or the High Court of Australia under what is called its original jurisdiction. Usually such a case will be placed in the respective States and Territories Supreme Courts, however, because the matter is affected by all the States and Territories, we have the ability to consolidate it before the High Court of Australia where the Court provides such approval.

The process of judicial review does not typically have a compensation component, as what we are seeking to do is declare the decision and/or directive invalid and stop the decision-maker from making the same decision and/or directive again. Once we achieve this outcome, then I could look specifically at each individual case with regards to the unique aspects that may invoke compensatory considerations. However, the purpose of the court case will not be to seek compensatory relief, but rather a reaffirmation of our rights and liberties and to stop the States and Territories from continuing with their course of conduct.

In effect, the main purpose of this action is to stop our administrators from taking away our basic rights not to be treated or labelled as sick and having to prove our health. Our administrators do not have the right to restrict our movements in the manner that they have and impose on us restrictions that are unreasonable and disproportionate to the risks. They also cannot medicate, treat, test, examine, detain and vaccinate us without ensuring that the strict processes of the Biosecurity Act 2015 are applied.

## **CLASS ACTION PROCESSES**

### **Everything you need to know about class actions**

A class action is a type of legal proceeding in which one person (the plaintiff or applicant) brings a claim on behalf of a wider group of people who have been affected in a similar way, or by the same conduct. By grouping claims together and pursuing them collectively, the overall value of the claim goes up, while the cost to each member goes down.

Because our class action is in relation to a judicial review the same usual considerations regarding the value of the claim will not be present. Our main goal is not to obtain compensation but rather to stop the current course of action taken by the States and Territories.

### **There are many different kinds of class action**

Class actions don't cover any one specific area of law in the way that areas like workers compensation or motor vehicle accident claims do, for example. They are simply a mechanism for organising large numbers of claims together for people who have been affected by similar circumstances - in many areas of the law.

The novel aspect about our class action is that we are not seeking monetary compensation but we are seeking the restoration of our human rights for liberty and the restoration of the rigorous processes that must be applied first to ensure that the States and Territories don't direct a group of people to carry out a Biosecurity measure in the absence of any identifiable risk and in the absence of any evidence that such a request is warranted.

### **How to start a class action**

Formally, there are only a few requirements in the relevant legislation to be able to commence a class action:

- There must be seven or more persons with claims against the same defendant;
- The group's claims must all be in respect of, or arise out of, the same, similar or related circumstances; and
- The group's claims must give rise to a substantial common issue of law or fact.

Despite the apparent simplicity of these criteria, it's important not to underestimate the complexity involved in constructing a class action correctly.

### **Who is the 'applicant representative'?**

Class actions ordinarily involve a single applicant (known as the ‘applicant representative’) pursuing a claim on behalf of a larger group that has been similarly affected. They are the only person assuming the risk and cost of the litigation, and they are running their claim in the interests of all affected parties within the group they define, meaning even people who don’t know about a class action can still benefit from them.

Every class action is different and proceeds in its own way, but in general they will be run using the applicant representative individual claim as a vehicle to allow a Court to resolve as many of the factual and legal issues that they have in common with the rest of the group as possible. This process allows those issues to be determined just once, in the applicant representative’s claim, and means that class members don’t need to establish those matters again in their own claims – the more common issues that can be resolved in this way, the fewer individual issues remain in each group member’s claim following that.

A application representative has the same obligations as any plaintiff in a typical piece of ‘individual’ litigation, however they also have a number of additional obligations that are specific to class actions.

Most importantly, they have obligations to the class members that they represent – they need to ensure that the claim they run serves the interests of the group members in the case, and that it is not pursued solely for their own personal benefit. The applicant representative is the party who provides instructions to their lawyers about the way that the claim is run, and they are the party who can make decisions when it comes to making settlement offers or negotiating to resolve a claim.

This process doesn’t expose any class member other than the applicant representative to financial cost or risk. Compared to the costs, time and risk involved in bringing large numbers of individual claims, the advantages of class actions are very significant.

Given this requirement we are requesting each of you to complete the enclosed form and give consideration as to whether you would like to be a lead applicant representative. The

preference is that you elect to be a applicant representative if you do not own any properties and have limited cash. This means that any adverse costs order will be easily mitigated and avoided as we can negotiate your release from that and it will ensure that the rest of the group will not be exposed to any risk at all. This means that if we lose for any reason, and we most certainly do not plan to do so, then we will negotiate a release of those costs on the fact that you do not have any liquid assets or cash. The other class members will NOT be targeted.

If you elect to be a applicant representative the only expectation is that you only pay \$100. costs associated with this action.

### **Are class actions 'opt-in' or 'opt-out'?**

Class actions in Australia are run on what is known as an “opt-out” basis. This means that claims are commenced and initially pursued on behalf of a defined group, regardless of whether all of the members of the group know about the claim when it is commenced. This means that even people who are out of contact or who do not have ready access to lawyers will still have their rights protected by the claim.

Once the class action has reached a stage where the issues in dispute are well-defined, the Court will make orders requiring an “opt-out notice” to be publicised and brought to the attention of all group members, to the extent this is possible. This notice will provide class members with the ability to remove themselves from the claim if they do not want to be a part of it, by 'opting out'.

The usual reason for an “opt-out notice” is that those people that remain within the group will get the benefit of compensation. However, given that this class action is peculiar in that we are seeking to have a declaration and prohibition order for the States and Territories to stop doing what they are doing and we are not necessarily seeking a compensation amount, it may be that the Court will need to waive the requirement to opt out as any positive outcome from our case will positively impact all the class of people affected by the decision whether they opt out or not.

### **How long does a class action take?**

Generally, most class actions tend to take between one and three years to resolve, although this can vary depending on the circumstances of individual claims.

Each class action is different, and the time required for a claim depends on a variety of factors, such as the complexity of the issues involved, the amount of evidence to be considered, and the tactics adopted by the defendants in defending the claim.

We anticipate that our matter will take one year.

### **What happens when a class action is successful?**

In Australia, class action settlements require the approval of the Court before they can take effect. The application representative will make an application to the Court to approve a proposed settlement, in which they will need to provide the Court with a significant amount of information about the settlement, how it was reached, and what it will mean for class members.

As stated before, given the peculiar nature of our class action, it is unlikely that there will be any settlement distribution scheme or assessment of compensation. I will deal with you on a case by case basis to ascertain what communications would be required with your aged care facility provider or employer with regards to restoring your rights and liberties.

### **Does the "loser pays" rule apply?**

The "loser pays" rule generally does apply but successful respondents can only obtain costs orders against the applicant representative. The Court is not permitted to make an adverse costs order against the remaining class members. Also, the identities of the remaining class action participants will not be revealed.

### **The process of funding**

Third party litigation funders have become an entrenched and accepted part of the class action landscape. However, in our case the funding will come from a subset of the group of claimants who are happy to proceed to sign the costs agreement and disclosure statement as well as generous community donations.

Information provided regarding class actions, has been taken from Slater & Gordon, who have consented to using this content from their website. <https://www.slatergordon.com.au/class-actions/class-actions-101>