



FORM 5A

Rule 5.02(1)

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

Case: S ECI 2026 05439

Filed on: 13/08/2026 04:22 PM

No. S ECI

BETWEEN:

ALISTAIR OGILVY

Plaintiff

and

STATE OF VICTORIA

Defendant

WRIT

Date of document: 11 August 2026

Filed on behalf of: Plaintiff

Solicitor's Code: CR011111

Prepared by:

Bevan-Rhys James, Solicitor

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Heidelberg Vic 3084

Ref: BRJ:260380

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" with the Prothonotary by submitting the Notice of Appearance for filing electronically. See www.supremecourt.vic.gov.au; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

THE PROPER TIME TO FILE AN APPEARANCE is as follows—

(a) where you are served with the writ –

(i) in Victoria, within 10 days after service; or

(ii) out of Victoria and in another part of Australia, within 21 days after service;

(b) subject to paragraph (c), where you are served with the writ out of Australia, within 42 days after service;

(c) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED [*insert date*]

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

1. Place of trial— Melbourne
2. Mode of trial— Judge alone
3. This writ was filed for the plaintiff by Bevan-Rhys James, solicitor, of Suite 2, 164 Burgundy Street, Heidelberg VIC 3084
4. The address of the plaintiff is—
5. The address for service of the plaintiff is— Suite 2, 164 Burgundy Street (PO Box 486), Heidelberg VIC 3084
6. The email address for service of the plaintiff is— info@brjames.com.au
7. The address of the defendant is— State of Victoria c/- Victorian Government Solicitor's Office, Level 25, 121 Exhibition Street, Melbourne VIC 3000

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

No. S ECI

BETWEEN:

ALISTAIR OGILVY

Plaintiff

and

STATE OF VICTORIA

Defendant

STATEMENT OF CLAIM

Date of document: 11 August 2026

Filed on behalf of: Plaintiff

Solicitor's Code: CR011111

Prepared by:

Bevan-Rhys James, Solicitor

Tel 03 9458 3711

Suite 2, 164 Burgundy Street (PO Box 486)

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PARTIES

1. The Plaintiff is and was at all material times a resident of Victoria and capable of suing.
2. The Defendant is the State of Victoria.

NATURE OF PROCEEDING

3. This proceeding concerns the imposition of a curfew upon persons ordinarily residing in Greater Melbourne between 8:00 pm and 5:00 am from 2 and 16 August 2020 inclusive, by clause 5(1AG) of the *Stay at Home Directions (Restricted Areas) (No 7)*.
4. The curfew required the Plaintiff and Group Members to remain at their residences during curfew hours, subject to limited exceptions, and was enforced by the threat of legal sanction in the event of non-compliance.
5. The Plaintiff alleges that the curfew was imposed without lawful authority.
6. In particular, the curfew was implemented following a decision formed at Cabinet level and publicly announced by then Victorian Premier Daniel Andrews MP, and was thereafter given effect through the Directions.
7. The authorised officer who made the Directions did not exercise the statutory power conferred by s 200 of the *Public Health and Wellbeing Act 2008* (Vic) as required by that Act.

8. As a consequence, the curfew did not provide lawful authority for the restraint of the Plaintiff and Group Members, who were thereby subjected to false imprisonment.

GROUP MEMBERS

9. This proceeding is brought pursuant to Part 4A of the *Supreme Court Act 1986* (Vic).
10. Group Members are persons who, during the Curfew Period:
 - (a) ordinarily resided within the Restricted Area; and
 - (b) were living at their ordinary place of residence.
11. There are seven or more persons who fall within the definition of Group Members.
12. The claims of the Plaintiff and Group Members arise out of the same, similar or related circumstances within the meaning of s 33C of the *Supreme Court Act 1986* (Vic).
13. The claims of the Plaintiff and Group Members give rise to substantial common issues of law and fact.

STATE OF EMERGENCY

14. On 15 March 2020, a State of Emergency was declared under the *Public Health and Wellbeing Act 2008* (Vic) (**PHW Act**).
15. During the State of Emergency, authorised officers appointed under the PHW Act were authorised to exercise emergency powers pursuant to s 200 of the PHW Act.
16. Section 200 relevantly authorised the exercise of emergency powers where the authorised officer formed the belief required by that section.
17. The State of Emergency remained in force throughout the Curfew Period.

STATE OF DISASTER

18. On 2 August 2020, a State of Disaster was declared pursuant to s 23 of the *Emergency Management Act 1986* (Vic) (**EM Act**).
19. The declared State of Disaster commenced at 6:00 pm on 2 August 2020 and remained in force throughout the Curfew Period.

THE DIRECTIONS

20. On 2 August 2020, Dr Finn Romanes purported to make the *Stay at Home Directions (Restricted Areas) (No 7)*. (**Directions**)
21. The Directions commenced at 7:59 pm on 2 August 2020 and remained in force until 11:59 pm on 16 August 2020.

22. The period between 7:59 pm on 2 August 2020 and 11:59 pm on 16 August 2020 is referred to herein as the "Curfew Period".

CURFEW PERIOD

23. Clause 5(1AG) of the Directions provided that a person who ordinarily resides in the Restricted Area must not leave their residence between 8:00 pm and 5:00 am, subject to specified exceptions.
24. Contravention of the Directions exposed a person to legal sanction.
25. The Directions stated that the curfew provisions reflected curfew provisions under the State of Disaster, without identifying the provisions said to be reflected.

RESTRICTED AREA

26. By operation of the *Area Directions (No 5)* dated 30 July 2020 and clause 5(1AF) of the Directions, the area to which the curfew imposed by clause 5(1AG) applied comprised Greater Melbourne (**Restricted Area**).

PLAINTIFF AND GROUP MEMBERS

27. During the Curfew Period, the Plaintiff was subject to the curfew imposed under clause 5(1AG) of the Directions.
28. During the Curfew Period, Group Members were subject to the curfew imposed under clause 5(1AG) of the Directions.

CIRCUMSTANCES ATTENDING THE MAKING OF THE DIRECTIONS

29. At or about 1:43 pm on 2 August 2020, a State of Disaster was declared pursuant to s 23 of the EM Act.
30. At or about 2:30 pm on 2 August 2020, following a decision formed at Cabinet level, the Premier publicly announced that a curfew would be imposed in respect of the Restricted Area.
31. The announcement of the curfew did not identify any Direction, instrument, statutory power, statutory process or other legal authority under the EM Act, the PHW Act, or any other law, as the source of the curfew.
32. At or about 5:05 pm on 2 August 2020, Dr Romanes sent an email to the Chief Health Officer concerning the proposed imposition of a curfew.
33. In that email, Dr Romanes:
- (a) stated that he had been on leave and had not been involved in any preceding discussions or consideration giving rise to the imposition of a curfew;

- (b) noted that Cabinet had formed a view that a curfew should be imposed and had announced that view;
- (c) stated that the idea of a curfew had not arisen from public health advice in the first instance;
- (d) described his role as issuing Directions for a curfew at the direction of Brett Sutton, Chief Health Officer;
- (e) stated that he had not seen any specific written assessment identifying a requirement for a curfew prior to making the Directions; and
- (f) described the curfew to be imposed by the Directions as a mirror of the curfew under the State of Disaster.

34. Following that email, Dr Romanes proceeded to sign the Directions, which included the imposition of the curfew.

RESTRAINT OF LIBERTY

- 35. During the curfew, clause 5(1AG) of the Directions prohibited the Plaintiff and Group Members from leaving their ordinary place of residence except in limited specified circumstances.
- 36. The prohibition applied irrespective of the wishes or consent of the person subject to it.
- 37. A person who contravened clause 5(1AG) was exposed to legal consequences, including the commission of an offence, financial penalties and enforcement action under the PHW Act.
- 38. By reason of that prohibition and those legal consequences, the Plaintiff and Group Members were not free to leave their place of residence during curfew hours otherwise than in accordance with the specified exceptions.
- 39. Any compliance with clause 5(1AG) was submission to that prohibition and those legal consequences.
- 40. In the circumstances pleaded above, the Plaintiff and Group Members were confined to their ordinary place of residence.
- 41. That confinement constituted a restraint upon their liberty during the curfew.
- 42. The Plaintiff and Group Members were so confined against their will.

INVALIDITY

43. To the extent that the Directions imposed a curfew by clause 5(1AG), that restriction was invalid and of no legal effect, in that it was not authorised by s 200 of the PHW Act, by reason of the matters pleaded below.

Ground 1 – Dictation / acting under direction

44. The Directions were made by Dr Romanes under dictation, or pursuant to the direction or effective control of others, including Cabinet, the Premier and/or the Chief Health Officer, and not as an exercise of his own independent judgment under s 200 of the PHW Act.

Particulars

- i. Prior to the making of the Directions, Cabinet had formed a decision that a curfew would be imposed in respect of the Restricted Area and that decision was publicly announced by the Premier.
- ii. The curfew imposed by the Directions was described by Dr Romanes as mirroring the curfew determined under the State of Disaster.
- iii. Dr Romanes understood that the imposition of a curfew was Premier and Cabinet's clear intention.
- iv. Dr Romanes described his role as issuing Directions, including for a curfew, at the direction of the Chief Health Officer.
- v. Dr Romanes sought confirmation from the Chief Health Officer that a Direction could be issued on that basis.
- vi. The Chief Health Officer indicated that Dr Romanes' assessment was correct and supported the issuing of a Direction reflecting the curfew already decided.
- vii. In making the Directions, Dr Romanes gave effect to the curfew that had already been determined and announced.

Ground 2 – Failure to exercise discretion

45. In those circumstances, in making the Directions Dr Romanes did not exercise the discretion conferred by s 200 of the PHW Act.

Particulars

- i. Dr Romanes proceeded on the basis that the imposition of a curfew had already been decided and announced prior to the making of the Directions.
- ii. Dr Romanes had been off duty for a period immediately prior to the making of the Directions and had not been involved in discussions or consideration leading to the imposition of a curfew.
- iii. At the time of making the Directions, Dr Romanes had not seen any specific written assessment identifying a requirement for a curfew.
- iv. No written briefing, memorandum or assessment addressing whether a curfew was necessary as a public health measure was identified to or relied upon by Dr Romanes.
- v. The imposition of a curfew had not arisen from public health advice.

- vi. Dr Romanes signed the Directions to give effect to the curfew that had already been determined and announced.
- vii. No source of advice, recommendation or assessment supporting the imposition of a curfew was identified to Dr Romanes from any of:
 - (a) the Victorian public health process, including the Chief Health Officer or the Department of Health and Human Services;
 - (b) the Australian Health Protection Principal Committee or any Commonwealth advisory process;
 - (c) any instrument, direction or process under the EM Act, including the State of Disaster;
 - (d) any Cabinet briefing, submission or other documented consideration;
 - (e) any international process, advice, assessment or precedent.

Ground 3 – No formation of the statutory state of satisfaction

- 46. By reason of the matters pleaded, Dr Romanes did not form the state of satisfaction required by s 200 of the PHW Act, namely that the exercise of the power to make the Directions, including the imposition of a curfew, was reasonably necessary to eliminate or reduce a serious risk to public health.

Particulars

- i. Prior to making the Directions, Dr Romanes had not seen any specific written assessment addressing the necessity of a curfew.
- ii. The imposition of a curfew had not originated from public health advice.
- iii. Dr Romanes had not participated in any process of consideration directed to whether a curfew should be imposed as a distinct public health measure.
- iv. The curfew implemented in the Directions reflected the curfew that had already been determined and announced.
- v. In those circumstances, no material was identified to Dr Romanes from any advisory, Cabinet or emergency management process directed to the necessity of a curfew as a distinct measure.
- vi. No material was identified to Dr Romanes directed to the matters relevant to the impact of the curfew on rights and freedoms to be assessed under the *Charter of Human Rights and Responsibilities Act 2006* (Vic), including:
 - (a) identifying the rights and freedoms engaged by the curfew;
 - (b) assessing the impact of the curfew upon those rights and freedoms;
 - (c) identifying any countervailing public interests said to justify the curfew; or
 - (d) balancing those matters in determining whether the curfew was necessary.
- vii. No assessment addressing the matters referred to in paragraph 46(vi) was identified to Dr Romanes.

Ground 4 – Not reasonably open to be satisfied

47. Further or alternatively, on the material available at the time, it was not reasonably open to Dr Romanes to be satisfied that the exercise of the power to make the Directions, including the imposition of a curfew, was reasonably necessary to eliminate or reduce a serious risk to public health.

Particulars

- i. The imposition of a curfew had not originated from public health advice.
- ii. There was no material before Dr Romanes addressing the necessity of a curfew as a distinct public health measure.
- iii. No material was identified before Dr Romanes analysing whether a curfew, as a distinct measure, was reasonably necessary to eliminate or reduce a serious risk to public health.
- iv. There was no consideration of whether other measures were available to address the relevant risk.
- v. There was no material addressing the proportionality or necessity of a curfew as a measure separate from other restrictions.
- vi. The curfew implemented in the Directions reflected the curfew that had already been determined and announced.
- vii. In the absence of any identified material addressing the matters referred to in paragraph 46(vi), it was not reasonably open for Dr Romanes to be satisfied that the curfew was reasonably necessary to eliminate or reduce a serious risk to public health.
- viii. No assessment was identified to Dr Romanes analysing whether the public health objective said to be served by the curfew could be achieved by less restrictive means.

FALSE IMPRISONMENT

48. During the curfew, the Plaintiff and Group Members were subjected to the restraint of liberty and confinement pleaded above.
49. That restraint and confinement were imposed and maintained by the operation and enforcement of clause 5(1AG) of the Directions.
50. Clause 5(1AG) did not provide lawful justification for that restraint and confinement, by reason of its invalidity.
51. In the absence of lawful justification, the restraint and confinement of the Plaintiff and Group Members constituted false imprisonment.
52. The false imprisonment occurred during the curfew while the curfew imposed by clause 5(1AG) remained in force.

LOSS AND DAMAGE

53. As a direct result of the restraint of liberty during curfew hours arising from clause 5(1AG) of the Directions, the Plaintiff and Group Members suffered loss and damage.

Particulars

- i. Loss of liberty.
- ii. Interference with freedom of movement.
- iii. Injury to dignity.
- iv. Humiliation.
- v. Injury to feelings.
- vi. Mental suffering.
- vii. Distress.
- viii. The sudden imposition of the curfew with limited time to adjust to the resulting restraint of liberty.
- ix. Further loss and damage to be particularised.

54. By reason of the matters pleaded, the Defendant caused the Plaintiff and Group Members to suffer loss and damage.

55. Further, the Plaintiff and Group Members claim aggravated and/or exemplary damages.

Particulars

The aggravated and/or exemplary damages are claimed by reason of:

- i. the imposition of a measure involving a substantial restraint of liberty affecting the Plaintiff and Group Members;
- ii. the implementation and enforcement of that measure without lawful authority;
- iii. the implementation of that measure in circumstances where the statutory power under s 200 of the PHW Act was not exercised independently;
- iv. the implementation of that measure in circumstances where the decision to impose it had been determined and publicly announced at Cabinet level prior to the purported exercise of the statutory power;
- v. the implementation of that measure in circumstances where no identified public health assessment had addressed the necessity of a curfew as a distinct public health measure;
- vi. the implementation of that measure in circumstances where no identified assessment, advice, recommendation or documented consideration had addressed its proportionality, impact upon rights and freedoms, or the availability of less restrictive measures;
- vii. the implementation of that measure in circumstances where no identified public health, statutory, administrative or other decision-making foundation had been identified as supporting the imposition of a curfew;
- viii. the sudden imposition of a compulsory curfew affecting the Plaintiff and Group Members with limited time to adjust to the resulting restraint of liberty;
- ix. Further aggravated and/or exemplary loss and damage to be particularised.

COMMON QUESTIONS

56. The claims of the Plaintiff and Group Members give rise to common questions of law and fact, including:

- (a) whether clause 5(1AG) of the Directions was made within power under s 200 of the PHW Act;
- (b) whether, in making the Directions including the imposition of the curfew, the authorised officer exercised the statutory power conferred by s 200 of the PHW Act;
- (c) whether the authorised officer exercised the discretion conferred by s 200 of the PHW Act independently;
- (d) whether the Directions, including the imposition of the curfew, were made pursuant to dictation or effective control by another person or body;
- (e) whether the authorised officer formed the state of satisfaction required by s 200 that the curfew was reasonably necessary to eliminate or reduce a serious risk to public health;
- (f) whether, on the material available at the time, it was reasonably open to the authorised officer to be so satisfied;
- (g) whether clause 5(1AG) provided lawful authority for the restraint of the Plaintiff and Group Members;
- (h) whether the Plaintiff and Group Members were falsely imprisoned;
- (i) whether, by reason of the matters pleaded, the Plaintiff and Group Members are entitled to damages; and
- (j) whether, by reason of the matters pleaded, the Plaintiff and Group Members are entitled to aggravated and/or exemplary damages.

AND THE PLAINTIFF CLAIMS:

1. Damages.
2. Aggravated Damages.
3. Exemplary Damages.
4. Interest pursuant to the *Supreme Court Act 1986*.
5. Costs.
6. Such further or other relief as the Court deems fit.