

STATEMENT OF CLAIM

COURT DETAILS

Court	SUPREME COURT OF NEW SOUTH WALES
Division	EQUITY
Registry	SYDNEY
Case number	2021/249601

TITLE OF PROCEEDINGS

First Plaintiff	AL-MUNIR KASSAM
Number of Plaintiffs (if more than two)	4
First Defendant	THE HON BRADLEY RONALD HAZZARD MLA
Number of Defendants (if more than two)	4

FILING DETAILS

Filed for	AL-MUNIR KASSAM & ORS
Legal representative	Tony Mark Nikolic, Ashley, Francina, Leonard & Associates
Legal representative reference	70426
Contact name and telephone	Matthew Hopkins Ph: 02 8277 4556
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TYPE OF CLAIM

General Declaratory and Injunctive Relief

This document was eFiled
on 31 Aug 2021 . Final
acceptance has been
given.



Principal Registrar &
Chief Executive Officer



RELIEF CLAIMED

1. Declaration that the following Directions and Orders made by the First Defendant are invalid and of no effect:

[1] Order dated 20 August 2021, as amended on 21 to 28 August 2021 [the Order];

[2] The Prior Orders referred to in clause 7.4 of the Order.

2. Declaration that *Public Health Act 2010* (NSW) section 7 is invalid to the extent that it authorises and thereby impairs the constitutional guarantee against a civil conscription under Constitution section 51(xxiiiA) and or is inconsistent with a law of the Commonwealth namely *Australian Immunisation Register Act 2015* (Cth) and is invalid to the extent of the inconsistency.
3. Declaration that the Order is invalid as an instrument made for the purpose of and to give effect to a joint scheme of civil conscription between the Third and Fourth Defendants in the purported exercise of executive power which was not authorised by law under *Biosecurity Act 2015* (Cth) or *Public Health Act 2010* (NSW) or otherwise.
4. Declaration that the Order is invalid to the extent that it authorises the making of an order or direction inconsistent with the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)
5. Order restraining the Defendants from making any further Order under *Public Health Act 2010* (NSW) s 7 to the same or similar effect as the Order.
6. Further or other injunctive relief restraining each of the Defendants from taking any further steps by directions or otherwise to give effect to the Order.
7. Further or other directions, including reference of questions of law under UCPR R.1.21 to the Court of Appeal and expedition under UCPR R.2.1.
8. Costs

PLEADINGS AND PARTICULARS

This claim is made in reliance on the following facts:

STATEMENT OF CLAIM

1. At all material times
 - a. The First Plaintiff is a worker in the construction industry of NSW;
 - b. The Second Plaintiff is the director of Feature Stone Pty Ltd (ACN 613 608 281) which supplies and installs stone products in commercial, retail and residential construction sites in NSW;
 - c. The Third Plaintiff is a healthcare worker in NSW, employed by Laverty Pathology, and is 15 weeks pregnant;
 - d. The Fourth Plaintiff is a health worker in NSW, a Private Patient Officer, employed at Bankstown Hospital.
2. At all material times:
 - a. The First Defendant has been the Minister administering the *Public Health Act 2010* (NSW) [the Public Health Act].
 - b. The Second Defendant has been the Chief Health Officer of NSW;
 - c. The Third Defendant comprises the State of New South Wales which by its servants and agents administers the Public Health Act and the laws of NSW;
 - d. The Fourth Defendant is the Commonwealth under the *Commonwealth of Australia Constitution Act 1901*.
3. By an instrument made on 20 August 2021, and amended on 21, 25, 27 and 28 August 2021, purportedly pursuant to the Public Health Act section 7 the First Defendant made *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021* [the Order] in the terms as if set out herein.
4. Each of the Plaintiffs were and remain immediately and adversely affected by the making of the Order:
 - a. The First Plaintiff is immediately and adversely affected by the Order, as he is required to have at least one dose of a Covid-19 vaccine and show evidence of having received at least one dose, as directed by the Defendants failing which he will lose gainful

- employment and his livelihood as set out in his Affidavit sworn 29 August 2021;
- b. The Second Plaintiff is immediately and adversely affected by the Order, as he has been unable to continue to operate his business, as he has been unable to enter construction sites in Greater Sydney in consequence of the Order, as set out in his Affidavit sworn xxx29 August 2021;
 - c. The Third Plaintiff is immediately and adversely affected by the Order as she is required to have at least one dose of a Covid-19 vaccine and show evidence of having received at least one dose, as directed by the Defendants failing which she will lose gainful employment and her livelihood as set out in her Affidavit sworn 29 August 2021;
 - d. The Fourth Plaintiff is immediately and adversely affected by the Order as she is required to have at least one dose of a Covid-19 vaccine and show evidence of having received at least one dose, as directed by the Defendants failing which she will lose gainful employment and her livelihood as set out in her Affidavit sworn 30 August 2021.
5. The Order is invalid on the ground that it purports to authorise a civil conscription and/or directions restricting or limiting or imposing a requirement on citizens of the State of NSW, including the Plaintiffs, in relation to obtaining or retaining gainful employment and their livelihood unless first vaccinated or immunised, whereas the Public Health Act section 7 does not authorise a civil conscription or any such direction with respect to the people of NSW, and in particular the Plaintiffs, in any part of the State.

Particulars

Clauses 4.3, 4.24 and 5.8 of the Order require as a condition of its operation a civil conscription directly or indirectly with respect to taking medical services and/ or make the directions complained of.

6. Further, the Order and/or clauses 4.3, 4.24 and 5.8 are invalid on the ground that section 7 of the Public Health Act, read consistently with the principle of legality, does not authorise the Minister to make directions which would

have the effect of mandating a medical procedure, as such directions would interfere with the assumption that Parliament does not intend to infringe fundamental rights, freedoms or immunities.

Particulars

- a. impairing and interfering with the right to bodily integrity by mandating that a particular sub-group undertake a medical procedure;
 - b. impugning personal liberty;
 - c. affected sub-groups include but are not limited to construction workers whose place of residence is located in an area of concern, healthcare workers and workers in an early education or care facility.
7. Further, the Order is invalid on the ground that it purports to authorise measures or make directions relating generally to the State without declaring any part of the State a public health risk area, which is a condition of making directions with respect to any such area, being measures not authorised by Public Health Act section 7.

Particulars

No part of the State is declared by the Order to be a public health risk area and no directions are given which conform to the limited power under law granted by the Parliament to the Minister.

8. Further, the Order is invalid on the ground that it purports to authorise measures or directions in general or in gross or that are provided for by the Second Defendant under section 62 of the Public Health Act, being measures and directions not authorised by the Public Health Act section 7.

Particulars

- a. The whole of the Order is relied as to measures outside the directions power in section 7 and in particular but not limited to clauses 3.3 to 3.7; 3.11; 3.12; 3.16 to 3.18; 4.4 to 4.8; 4.12; 4.13; 5.2; 6.4; 6.5 and 7.
- b. As to specific directions that fall within section 62 the Plaintiffs rely on the balance of the clauses not referred to in this particular.

9. Further, the Order is invalid on the ground that it purports to extend or amend prior Orders beyond the self-expiring date which measure is not authorised by Public Health Act section 7(5).

Particulars

- a. Clause 7.4 picks up and continues repealed Orders.
- b. The repealed Orders were made on:
 - i. 26 June 2021 at 7:08pm
 - ii. 28 June 2021 at 7:36pm
 - iii. 7 July 2021
 - iv. 8 July 2021
 - v. 9 July 2021
 - vi. 10 July 2021
 - vii. 13 July 2021
 - viii. 16 July 2021
 - ix. 17 July 2021
 - x. 18 July 2021 at 6:10pm
 - xi. 20 July 2021 at 10:44am
 - xii. 21 July 2021 at the beginning of the day and at 9:47am
 - xiii. 22 July 2021 at 7:18pm
 - xiv. 23 July 2021
 - xv. 27 July 2021 at 1pm
 - xvi. 28 July 2021
 - xvii. 29 July 2021
 - xviii. 5 August 2021 at 5pm
 - xix. 7 August 2021 at 5pm
 - xx. 8 August 2021 at 5pm
 - xxi. 9 August 2021 at 5pm and at 6pm

- xxii. 10 August 2021
- xxiii. 11 August 2021 at 1pm and at 8:05pm
- xxiv. 12 August 2021
- xxv. 14 August 2021,
- xxvi. 20 August 2021,
- xxvii. 21 August 2021,
- xxviii. 25 August 2021 at 4:53pm, and
- xxix. 27 August 2021.

- c. On 20 August 2021 the Third Defendant, by its Premier the Hon Gladys Berejiklian MLA, announced that the Order would remain in place in the State until 30 September 2021, a period of 95 days after the commencement of the first of the repealed Orders as defined in clause 7.4(3) of the Order, which are picked up and continued by clause 7.4(1).

10. Further, the Order is invalid on the ground that it purports to contain measures which are inconsistent with other laws of the State made by the Parliament with respect to disclosure of identity, disclosure of personal information, arrest and detention and which the Public Health Act section 7 does not authorise.

Particulars

- a. Clause 2.8 of the Order purports to grant to a NSW police officer powers which exceed the functions or powers of a police officer as provided for in the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) [LEPRA] as to disclosure of identity, disclosure of personal information, detention and arrest.
- b. To the extent that clause 2.8 or any other part of the Order is inconsistent with LEPRA, LEPRA section 6(2) provides that LEPRA prevails.
- c. In the premises, clause 2.8 or any other part of the Order that is inconsistent with LEPRA is invalid or of no force or effect.

- d. Further, to the extent that the Public Health Act section 7 authorises or purports to authorise the making of an order or direction inconsistent with LEPR, section 7 is invalid or of no force or effect.
11. Further, the Order is legally unreasonable and on that ground invalid in that:
- a. The First Defendant has failed to exercise his power which power is confined by the usual implication of reasonableness under Public Health Act section 7 to make directions that are reasonable in light of the statutory purpose of dealing with public health risks generally;
 - b. The measure is discriminatory in effect, disproportionate in its reach in comparison to the risk, causes unnecessary suffering and loss, is unduly costly, and is unreasonable in its terms, operation and effect;
 - a. The Order is a general emergency measure more appropriate under section 8 of the Public Health Act and fails to contain specific directions to particular persons with an identified risk profile with respect to specific public health risk areas of the State;
 - b. The Order is disproportionate in its reach compared to the risk in that it is a blanket measure, draconian and capricious in its impact on 99.9% of the inhabitants of NSW for whom there is no demonstrated health risk;
 - c. More inhabitants of the State are in hospitals from adverse reactions to the mandated vaccines than from the risk itself;
 - d. The directions make no provision for inhabitants of an area whose health is at risk from the measures imposed by the Order, including but not limited to pregnant women, those who work from home, and those with religious/ conscientious objection;
 - e. The Order adopts a one size fits all approach with respect to risk areas and directions which means other illnesses are not being treated which has resulted in the Third Defendant shutting down NSW Breast Screening Clinics, that adverse impacts on mental health of inhabitants are being exacerbated or disregarded, and that other health complaints of NSW citizens that are more urgent and /or lethal are untreated;
 - f. There is no end in sight such that a temporary measure has become permanent or indeterminate on the ground that 80% vaccination rates

announced by the Defendants as necessary before terminating the measure are not practicably achievable, nor have been achieved anywhere else on the planet;

- g. There is significant scientific doubt as to whether the principal vaccines being mandated by the Defendants, being AstraZeneca and Pfizer, are true vaccines but are rather a form of gene technology or gene manipulators the precise characteristics of which have not been revealed to the Australian people nor are known to the Defendants on the insubstantial ground of commercial-in-confidence;
- h. No area of the State has been made safe nor the public health risk in the area prevented or removed by the measures under the Order but instead the Defendants have admitted that the measures have failed;
- i. COVID 19 is not being contained or prevented by the measures across the State.

12. Further, the Order is invalid as an instrument made for the purpose of and to give effect to a joint scheme of civil conscription between the Third and Fourth Defendants in the purported exercise of executive power which was not authorised by law under *Biosecurity Act 2015* (Cth) [the Biosecurity Act] or the Public Health Act or otherwise.

Particulars

- a. By a political arrangement resolved or agreed at or through the National Cabinet, full particulars of which will be provided after discovery but include joint media releases made by National Statements dated 28 06 2021, 02 08 2021 and 06 08 2021 and the National Plan to which the Third and Fourth Defendants are parties made between the Third and Fourth Defendants, the Fourth Defendant agreed to make and maintain an order under the Biosecurity Act and to record and certify vaccination of the people of NSW under *Australian Immunisation Register Act 2015* (Cth) [the AIR Act], the quid pro quo for which is that the Third Defendant will impose a civil conscription by the vaccination of its population with vaccines obtained and recommended by the Commonwealth;

- b. The National Cabinet is not authorised by any law of the Commonwealth nor by the Constitution of the Commonwealth;
 - c. The arrangement is a joint scheme or joint venture to vaccinate the Australian population contrary to the constitutional guarantee in Constitution section 51(xxiiiA).
13. Further or alternatively, to the extent that it authorises or purports to authorise the making of a direction that is inconsistent with the AIR Act, the Public Health Act section 7 is invalid under Constitution section 109 to the extent of the inconsistency.

Particulars

- Clause 5.8 of the Order purportedly made under the Public Health Act section 7 provides for the use of the Australian Immunisation Register in a manner not authorised by and/ or without regard to the confidentiality provisions of the AIR Act.
14. The Defendants by their servants or agents have given effect to the Order including the repealed Order dated 26 June 2021 as amended.
15. The First and Third Defendant threaten that unless prevented by law they will continue to give directions and make a further Order either before or upon the expiry of the Order.
16. In the premises on each of the grounds set out herein, or cumulatively, or one or more of them, the Order is invalid and of no effect and unless restrained by this honourable Court the loss, damage and injury to the Plaintiffs will continue.
17. In the premises, the Plaintiffs claim the orders herein by way of declaratory and injunctive relief, and such further or other orders as to the Court seem just.

SIGNATURE

I acknowledge that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

A handwritten signature in black ink, consisting of stylized, overlapping loops and lines, positioned to the right of the 'Signature' label.

Capacity

Solicitor for the Plaintiffs

Date of signature

31 August 2021

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim,** by filing a defence and/or making a cross-claim.
- 2 If money is claimed, and you believe you owe the money claimed,** by:
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 If money is claimed, and you believe you owe part of the money claimed,** by:
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address	Level 5, 184 Phillip Street, Law Courts Building, Queens Square, Sydney
Postal address	GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name Al-Munir Kassam
Address Level 25, Tower 3, 300 Barangaroo Ave Sydney NSW 2000
Occupation Project Manager and OH&S Officer
Date 31 August 2021

I say on oath:


- 1 I am the first plaintiff and am authorised to depose this affidavit on behalf of the other plaintiffs.
- 2 I believe that the allegations of fact in the statement of claim are true.

SWORN at Wetherill Park NSW 2154 Driver Licence
by the deponent: Al-Munir Kassam 14641574

Name of Witness: Matthew Hopkins
Address of Witness: Lvl 25, Tower 3, 300 Barangaroo Ave Syd. N.S.W 2000
Capacity of Witness: Solicitor 99665

And as a witness, I certify the following matters concerning the person who made this Affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 ~~I have known the deponent for at least 12 months.~~ OR [delete whichever option is inapplicable]
I have confirmed the deponent's identity using the following identification document

 NSW Drivers Licence 14641574
Identification document relied on (may be original or certified copy)

[on separate page]

PARTY DETAILS**PARTIES TO THE PROCEEDINGS****Plaintiffs**

Al-Munir Kassam First Plaintiff
 George Nohra Second Plaintiff
 Alexandra Goundoulas Third Plaintiff
 Jelena Zmiric Fourth Plaintiff

Defendants

The Hon B Hazzard First Defendant
 Dr Kerry Gai Chant Second Defendant
 The State of NSW Third Defendant
 The Commonwealth of Australia
 Fourth Defendant

FURTHER DETAILS ABOUT PLAINTIFFS**First Plaintiff**

Name Al-Munir Kassam
 Address Level 25, Tower 3, 300 Barangaroo Ave Sydney NSW
 2000

Second Plaintiff

Name George Nohra
 Address Level 25, Tower 3, 300 Barangaroo Ave Sydney NSW
 2000

Third Plaintiff

Name Alexandra Goundoulas
 Address Level 25, Tower 3, 300 Barangaroo Ave Sydney NSW
 2000

Fourth Plaintiff

Name Jelena Zmiric
 Address Level 25, Tower 3, 300 Barangaroo Ave Sydney NSW
 2000

DETAILS ABOUT DEFENDANTS**First defendant**

Name The Hon Bradley Ronald Hazzard
Address Parliament House Macquarie Street SYDNEY NSW 2000

Second defendant

Name Dr Kerry Gai Chant
Address Parliament House Macquarie Street SYDNEY NSW 2000

Third defendant

Name State of NSW
Address Parliament House Macquarie Street SYDNEY NSW 2000

Fourth defendant

Name Commonwealth of Australia
Address Parliament House Canberra ACT 2600