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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
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File Title: PLAINTIFF M83A/2019 & ANOR v SCOTT MORRISON & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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A handwritten signature in blue ink that reads 'Warwick Soden'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Further Amended Statement of Claim

(Filed pursuant to Order 2 of the Orders of Justice Mortimer dated 7 November 2019r 16.59 of the Federal Court Rules 2011 (Cth))

No. VID 816 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

Plaintiff M83A/2019

First Applicant

Plaintiff M83B/2019 (by his litigation representative, Plaintiff M83C/2019)

Second Applicant

Scott Morrison & ORS (in accordance with the attached schedule)

Respondents

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**J. MIPO #2: VISA APPLICATIONS AND REQUESTS WERE BEYOND POWER – CAUSE
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Guide to Claims

This summary is provided as a shorthand guide to the case. It is not part of the pleading and is not intended to replace or modify what is pleaded below.

MIPO	Central claim to being beyond power	Applicant	Respondent	Relevant legal instruments
1	Each person was denied procedural fairness before each application or request for a visa was made by a Australian officer	1, 2	Morrison Dutton Burke Bowles Pezzullo Australia	S 198AHA or s 198AD <i>Migration Act 1958</i> (Cth)
2	There was no power to apply for or request an RPC visa	1, 2	Morrison Dutton Burke Bowles Pezzullo Australia	S 61 Constitution, s 198AD and 198AHA <i>Migration Act 1958</i> (Cth), MOU, Administrative Arrangements
3	Relevant human rights were breached	1, 2	Morrison Dutton Bowles Pezzullo Australia	S 61 Constitution, s 198AHA <i>Migration Act 1958</i> (Cth), MOU, ICCPR, Convention Against Torture
4	Children's relevant human rights were breached	2	Morrison Dutton Bowles Pezzullo Australia	S 61 Constitution, s 198AHA <i>Migration Act 1958</i> (Cth), MOU, Convention on Rights of the Child

A. REPRESENTATIVE PROCEEDING

1. The Applicants bring this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth), each representing themselves and every other person who is a Group Member as defined in [3].
2. There are more than seven Group Members as at the commencement of this proceeding.
3. Each Applicant brings the proceeding on behalf of himself and every other person (**Group Members**) who:
 - (a) was taken to the Republic of Nauru (**Nauru**) from the Commonwealth of Australia (**Australia**) after 3 August 2013; and
 - (b) on or about the date of his or her first arrival on Nauru (the **Arrival Date on Nauru**), was the subject of a regional processing centre visa in or including his or her name (**RPC Visa**) purportedly pursuant to:
 - (i) if the Group Member's Arrival Date on Nauru was on or before 28 January 2014, regulation 9 of the *Immigration Regulations 2013* (Nr) made under s 19 of the *Immigration Act 1999* (Nr); or
 - (ii) if the Group Member's Arrival Date on Nauru was on or after 30 January 2014, regulation 9 of the *Immigration Regulations 2014* (Nr) made under s 33 of the *Immigration Act 2014* (Nr),
 (the **First Visa**); and
 - (c) up to three (3) months after the grant of the First Visa and thereafter approximately every 3 months until:
 - (i) the sooner of the date a refugee determination record was issued under the *Refugees Convention Act 2012* (Nr) for that person or the most recent departure from Nauru of that person; or
 - (ii) if neither event in (i) occurred, the last date of the last RPC Visa in or including the name of that person (together with (i), **Last RPC Visa Date**),
 was the subject of an RPC Visa in or including his or her name purportedly pursuant to:

(iii) until 28 January 2014, regulation 9 of the *Immigration Regulations 2013* (Nr) made under s 19 of the *Immigration Act 1999* (Nr); or

(iv) since 30 January 2014, regulation 9 of the *Immigration Regulations 2014* (Nr) made under s 33 of the *Immigration Act 2014* (Nr),

(the **Subsequent Visa/s**).

4. Further to [1], the First Applicant brings this Representative Proceeding representing himself and each Group Member who first arrived in Australia at a place other than at:

(a) the Territory of Christmas Island;

(b) the Territory of Ashmore and Cartier Islands, excluding those places covered by the purported appointment of a port as a proclaimed port, being an area of waters within the Territory of Ashmore and Cartier Islands, by notice published in the Commonwealth Gazette No GN 3 on 23 January 2002;

(c) the Territory of Cocos (Keeling) Islands;

(d) any other external Territory that was prescribed by the regulations as at 31 May 2013 for the purposes of s 5 of the *Migration Act 1958* (Cth) (the **Migration Act**);

(e) any island that formed part of a State or Territory and was prescribed by the regulations as at 31 May 2013 for the purposes of s 5 of the Migration Act;

(f) an Australian sea installation; or

(g) an Australian resources installation,

(the **Non-Excised Offshore Place Group Members**).

Particulars

A. Each Non-Excised Offshore Place Group Member did not come within the definition of “offshore entry person” in s 5 of the Migration Act by reason of the definition of “excised offshore place”.

B. The definitions of “offshore entry person” and “excised offshore place” in s 5 of the Migration Act were operative until they were repealed by the *Migration Amendment (Unauthorised Maritime*

Arrivals and Other Measures) Act 2013 (Cth), which commenced on 1 June 2013: s 2, Item 2 and Sch 1, Item 3.

5. Further to [1], the First Applicant and/or the Second Applicant brings this Representative Proceeding representing himself and each Group Member who arrived in Australia by sea on or after 1 June 2013 (the **Unauthorised Maritime Arrival Group Members**).
6. Further to [1], the First Applicant and/or the Second Applicant brings this Representative Proceeding representing himself and each Group Member in respect of whom an RPC Visa was granted in or including his or her name at any time from 3 August 2013 to 10 April 2014 (the **Pre Administrative Arrangements Group Members**).

Particulars

The period of time in which the Pre Administrative Arrangements Group Members were granted RPC Visas:

- A. commenced on 3 August 2013, being the day on which Nauru and Australia entered into the MOU (as defined in [56] below); and
 - B. ended on 10 April 2014, being the date before Nauru and Australia entered into the Administrative Arrangements (as defined in [57] below).
7. Further to [1], the First Applicant and/or the Second Applicant brings this Representative Proceeding representing himself and each Group Member in respect of whom an RPC Visa was granted in or including his or her name at any time from 11 April 2014 (the **Post Administrative Arrangements Group Members**).

Particulars

The period of time in which the Post Administrative Arrangements Group Members were granted RPC Visas commenced on 11 April 2014, being the date on which Nauru and Australia entered into the Administrative Arrangements (as defined in [57] below) and is ongoing.

8. Further to [1], the Second Applicant brings this Representative Proceeding representing himself and each Group Member in respect of whom an RPC Visa was granted in or including his or her name prior to his or her 18th birthday (the **Child Group Members**).

B. THE FIRST APPLICANT

9. The First Applicant is a citizen of [REDACTED], having been born there on [REDACTED].
10. On [REDACTED], the First Applicant was granted a maritime crew visa of subclass ZM 988 under the Migration Act.

Particulars

Maritime crew visas were provided for by Migration Act s 43 and *Migration Regulations 1994* (Cth) r 2.06AAA.

11. On [REDACTED], the First Applicant boarded a ship:
- (a) called [REDACTED]; and
- (b) operated by [REDACTED],
- at [REDACTED] bound for Australia.
12. On [REDACTED], the First Applicant's visa referred to in [10] was declared to cease pursuant to s 38B(3) of the Migration Act.

Particulars

The "Declaration to cease a maritime crew visa under subsection 38B(3)" is in writing dated [REDACTED] signed by [REDACTED], position number [REDACTED] as delegate of the Minister for Immigration and Citizenship.

13. On [REDACTED], the First Applicant arrived on the ship referred to in [11] and entered Australia by sea at Darwin, Australia.
14. From [REDACTED] until on or about [REDACTED], the First Applicant was detained in Australia pursuant, or purportedly pursuant, to s 189 of the Migration Act.
15. At the date of his arrival in Australia, the First Applicant:
- (a) was a professional [REDACTED] who was working in the [REDACTED]; and
- (b) held a re-entry permit for [REDACTED], which was due to expire on [REDACTED]; and

(c) was the subject of a 12 month work permit in [REDACTED].

16. On or about [REDACTED]:

(a) the First Applicant requested to an officer of Australia that he be returned to [REDACTED]; and

(b) the First Applicant's request was refused.

Particulars

The First Applicant's request was oral and was made near the port of Darwin to an officer of Australia. The First Applicant said he could pay for his return ticket to [REDACTED]. The refusal of the requests by an officer of Australia was also oral.

17. On or soon before [REDACTED], being the Arrival Date on Nauru for this Applicant, the First Applicant was taken from Australia to Nauru pursuant to s 198AD of the Migration Act.

18. On or soon before the First Applicant's Arrival Date on Nauru, an officer of Australia applied for an RPC Visa (an **Applying Commonwealth Officer**) under ~~regulation 9 of the *Immigration Regulations 2013* (Nr)~~ a law of Nauru in the name of the First Applicant.

Particulars

The Applying Commonwealth Officer was [REDACTED] who signed a form titled 'Application – Australian Regional Processing Visa (Offshore Entry Person)' in the name of the First Applicant.

19. On or around the First Applicant's Arrival Date on Nauru, the First Applicant was the subject of an RPC Visa pursuant or purportedly pursuant to regulation 9 of the *Immigration Regulations 2013* (Nr), being the First Applicant's First Visa.

20. On or about three months after the First Applicant's Arrival Date on Nauru and approximately every three months following until his Last RPC Visa Date, Subsequent Visas were granted in the First Applicant's name pursuant or purportedly pursuant to:

(a) regulation 9 of the *Immigration Regulations 2013* (Nr) until 28 January 2014; and

- (b) regulation 9 of the *Immigration Regulations 2014* (Nr) since 30 January 2014.
21. On [REDACTED], a refugee determination record under the *Refugees Convention Act 2012* (Nr) was issued in respect of the First Applicant, being the Last RPC Visa Date for the First Applicant.
22. From the First Applicant's Arrival Date on Nauru until [REDACTED], being the First Applicant's Last Tent Date (defined below at [47]) the First Applicant resided at the place known as "Regional Processing Centre 2", ~~being the First Applicant's Last Tent Date (defined below at [47]).~~
23. The First Applicant held a valid passport from [REDACTED] from [REDACTED] until [REDACTED].
24. The First Applicant:
- (a) does not hold a valid passport from [REDACTED] or any other country; and
- (b) is not entitled to any travel document from Nauru.

Particulars

The First Applicant has been the subject of a temporary settlement visa only since [REDACTED], at which date he gained derivative status under ss 3, 5 and 6 of the *Refugees Convention Act 2012* (Nr) by reason of being dependent on a person recognised as a refugee under that Act. As such, he does not meet the conditions of a person entitled to a refugee travel document under s 13(2)(b) of the *Passports Act 2011* (Nr).

25. The First Applicant was brought to Australia on or around [REDACTED].
26. The First Applicant has not had a valid travel document by which to depart Nauru since [REDACTED].

C. THE SECOND APPLICANT

27. The Second Applicant sues by his litigation representative, who is his [REDACTED], Plaintiff M83C.
28. The Second Applicant is a citizen of [REDACTED], having been born there on [REDACTED].

29. On [REDACTED], the Second Applicant was issued with an [REDACTED] passport.
30. On or about [REDACTED], the Second Applicant boarded a boat bound for Australia with his [REDACTED].
31. On or about [REDACTED], the boat carrying the Second Applicant was intercepted by Australian officers.
32. On or about [REDACTED], the Applicant arrived in Australia by sea at Christmas Island, with his [REDACTED].
33. From on or about [REDACTED] until on or about [REDACTED], the Second Applicant was detained in Australia pursuant, or purportedly pursuant, to s 189 of the Migration Act.
34. On or soon before [REDACTED], being the Arrival Date on Nauru for this Applicant, the Second Applicant was taken from Australia to Nauru pursuant to s 198AD of the Migration Act, with his [REDACTED].
35. ~~On or soon before the Second Applicant's Arrival Date on Nauru~~ about [REDACTED] [REDACTED], an Applying Commonwealth Officer applied for an RPC Visa under regulation 9 of the *Immigration Regulations 2013* (Nr) in ~~or including~~ the name of the Second Applicant.

Particulars

The Applying Commonwealth Officer was [REDACTED] who signed a form titled 'Form 4 – Applicant for Regional Processing Centre Visa' dated [REDACTED] in the name of the Second Applicant.

36. On or around the Second Applicant's Arrival Date on Nauru, an RPC Visa pursuant or purportedly pursuant to regulation 9 of the *Immigration Regulations 2013* (Nr) was granted in or included the name of the Second Applicant, being the Second Applicant's First Visa.
37. On or about three months after the Second Applicant's Arrival Date on Nauru and approximately every three months following, until his Last RPC Visa Date, Subsequent Visas were granted in or included the name of the Second Applicant pursuant or purportedly pursuant to:

- (a) regulation 9 and/or 13 of the *Immigration Regulations 2013* (Nr) until 28 January 2014; and
 - (b) regulations 9 and/or 13 of the *Immigration Regulations 2014* (Nr) since 30 January 2014.
38. On or about [REDACTED], a refugee determination record under the *Refugees Convention Act 2012* (Nr) was issued in respect of the Second Applicant, being the Last RPC Visa Date for the Second Applicant.

Particulars

As recorded in [REDACTED]
[REDACTED], which concerns the Second Applicant and his [REDACTED].

39. The Second Applicant resided at the place known as:
- (a) “Regional Processing Centre 3” from the Second Applicant’s Arrival Date on Nauru until [REDACTED], being the Second Applicant’s Last Tent Date (defined below at [47]) other than for the period from [REDACTED] until [REDACTED] and from around [REDACTED] to shortly after [REDACTED];
 - (b) “Regional Processing Centre 1” from [REDACTED] until shortly after [REDACTED].
40. During his time on Nauru, the Second Applicant developed:
- (a) Major depressive disorder; and/or
 - (b) Post-Traumatic Stress Disorder; and/or
 - (c) Suicidal ideation.

Particulars

The Second Applicant’s symptoms included and include nightmares, sleep disturbance, panic attacks, significant weight loss, stress, social withdrawal, hopelessness, impulsivity, head-banging, increased anxiety and protectiveness towards his [REDACTED], anger, numerous threats of self-harm by [REDACTED], significant suicidal preoccupation and at least three suicide attempts in about [REDACTED].

41. The Second Applicant was brought to Australia as a result of and soon after orders of the Federal Court of Australia made on [REDACTED].

Particulars

As recorded in [REDACTED], which concerns the Second Applicant.

42. The Second Applicant held a valid passport from [REDACTED] from [REDACTED] until [REDACTED].
43. The Second Applicant does not hold a valid passport from [REDACTED] or any other country.

Particulars

The Second Applicant has been the subject of a temporary settlement visa only from [REDACTED], at which date he was the subject of a refugee determination record under ss 3, 5 and 6 of the *Refugees Convention Act 2012* (Nr). He meets the conditions of a person entitled to a refugee travel document under s 13(2)(b) of the *Passports Act 2011* (Nr), but has not been issued with a travel document by Nauru.

44. The Second Applicant has not had a valid travel document by which to depart Nauru since [REDACTED].

D. THE REGIONAL PROCESSING CENTRE VISAS

45. From his or her Arrival Date on Nauru until his or her Last RPC Visa Date, the First Applicant, Second Applicant and each Group Member was required by a condition on each of the First Visa and Subsequent Visas granted in or including his or her name to reside at a Regional Processing Centre on Nauru (the **Residence Condition**).

Particulars

- A. The Residence Condition applied to the First Applicant, Second Applicant and each Group Member by operation of rr 5(8) and 9(6)(a) of the *Immigration Regulations 2013* (Nr) and/or the *Immigration Regulations 2014* (Nr).
- B. Each RPC Visa in or including the name of the First Applicant, Second Applicant and each Group Member specified an address which is known as a Regional Processing Centre on Nauru as the premises where that person was required to reside.

46. By reason of the Residence Condition, from his or her Arrival Date on Nauru until his or her Last RPC Visa Date, the First Applicant, Second Applicant and each Group Member was required while on Nauru to reside in a tent or marquee approximately 10 metres wide and approximately 12 metres long that had one or more of the following features, it:
- (a) was exposed to direct, equatorial sunlight approximately 12 hours each day; ~~and/or~~
 - (b) was surrounded by exposed, pale rocks, which reflected the sunlight; ~~and/or~~
 - (c) was exposed to outside temperatures ranging from 24°C to 34°C through the day and night, with average humidity of 80%; ~~and/or~~
 - (d) often reached over 40°C inside the tent or marquee during the day; ~~and/or~~
 - (e) did not have any air conditioning; ~~and/or~~
 - (f) was shared with between 7 and 50 people from time to time; ~~and/or~~
 - (g) lacked privacy for sleeping and changing clothes; ~~and/or~~
 - (h) had recurring, persistent, severe and extensive mould on the inside walls and ceiling; ~~and/or~~
 - (i) had mould that contaminated the air inside with pathogenic bacteria, including hemolytic pathogens; ~~and/or~~
 - (j) had black-yeast-like fungi; ~~and/or~~
 - (k) usually had one or more of rats, mice, ants and cockroaches also resident in and/or regularly moving through the tent or marquee,
- (together, separately or in combination, the **Tent Conditions**).
47. The First Applicant, Second Applicant and some Group Members resided in a tent or marquee at the place known as “Regional Processing Centre 2” or “Regional Processing Centre 3” to a date after the Last RPC Visa Date for that person (excluding any time that person was resident in the place known as “Regional

Processing Centre 1”) by reason that no alternative accommodation on Nauru was made available to that person (the **Last Tent Date**).

48. From his or her Arrival Date on Nauru until his or her Last RPC Visa Date, the First Applicant, the Second Applicant and each Group Member was required by a condition on each of the Visas to which each was subject not to:
- (a) work;
 - (b) conduct a business (together with (a), the **No Work Condition**); nor
 - (c) engage in education on Nauru (the **No Education Condition**).

Particulars

The No Work Condition and No Education Condition applied to the First Applicant, the Second Applicant and each Group Member by operation of rr 5(8) and 9(6)(e), read with rr 6(2) and 8(2), of the *Immigration Regulations 2013* (Nr) and then the *Immigration Regulations 2014* (Nr).

49. An RPC Visa was not required by the First Applicant, the Second Applicant and the Group Members to access:
- (a) protection from removal from Nauru; or
 - (b) the process for determination of whether each of them was owed protection from removal from Nauru,
- given to refugees and those owed complementary protection under Nauruan law.

Particulars

The process for protection for persons in Nauru set out in the *Refugees Convention Act 2012* (Nr) did not require, nor refer to, any particular visa.

50. From his or her Arrival Date on Nauru until his or her Last RPC Visa Date, the only legal instrument which authorised, or purportedly authorised, restrictions on where the First Applicant, the Second Applicant and each Group Member could reside on Nauru was the Residence Condition on each of the Visas in or including the name of that person.
51. From his or her arrival date on Nauru until his or her Last RPC Visa Date, the Residence Condition required that the First Applicant, the Second Applicant and each Group Member reside at a Regional Processing Centre in Nauru which:

- (a) was surrounded by a perimeter metal fence; and
- (b) had all exit points guarded at all times.

Particulars

Contract between Australia and Transfield Services (Australia) Pty Ltd dated 24 March 2014 entitled "Contract in relation to the Provision of Garrison and Welfare Services at Regional Processing Countries". Further particulars will be provided following discovery.

52. ~~Until the earlier of~~ For the First Applicant, the Second Applicant and each Group Member until the earlier of:

- (a) on or around 5 October 2015; or
- (b) his or her Last RPC Visa Date,

(the **Detention End Date**),

the First Applicant, the Second Applicant and each Group Member was prohibited from departing the Regional Processing Centre at which he or she resided other than in the company of officers or contractors of ~~the Sixth Respondent (Australia)~~ and/or Nauru.

53. From 21 May 2014 until 23 October 2015, it was a criminal offence in Nauru for the First Applicant, the Second Applicant and each Group Member until his or her Detention End Date to leave, or attempt to leave, the Regional Processing Centre at which he or she was required by the Residence Condition on each of their Visas to reside without prior approval of an officer of Australia and/or Nauru.

Particulars

- A. The offence was provided for by s 18C of the *Asylum Seekers (Regional Processing Centre) Act 2012* (Nr) which was inserted into that Act by item 7 in the Schedule to the *Asylum Seekers (Regional Processing Centre) (Amendment) Act 2014* (Nr) commencing on 21 May 2014.
- B. The authorised officers covered by s 18C were officers of Australia and/or Nauru.
- C. The offence was repealed by s 8 of the *Asylum Seekers (Regional Processing Centre) (Amendment) Act 2015* (Nr) commencing on 23 October 2015.

54. By reason of the Residence Condition and those facts and matters at [51] to [53], from his or her Arrival Date on Nauru until his or her Detention End Date, the First Applicant, the Second Applicant and each Group Member was detained at a Regional Processing Centre on Nauru.
55. Had the First Applicant, the Second Applicant or each Group Member arrived or remained on Nauru without first being the subject of an RPC Visa:
- (a) each of them:
- (i) could have, up until his or her passport had only three months remaining validity, applied for, and
- (ii) was eligible to be granted,
- a visa different from an RPC Visa which:
- (iii) did not have the Residence Condition; and
- (iv) did not have the No Work Condition or the No Education Condition; or

Particulars

The relevant visas were provided by rr 6 and 8, to be read with r 5(9) (as compared with r 5(8)), of the *Immigration Regulations 2013 (Nr)* and *Immigration Regulations 2014 (Nr)*.

“Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues”, clause 16.

- (b) the Group Member could have, at any time, applied for a special purpose visa if he or she arrived on Nauru without a passport, which he or she was eligible to be granted.

Particulars

The relevant special purpose visa was provided for by r 11(2)(e) of the *Immigration Regulations 2013 (Nr)* and the *Immigration Regulations 2014 (Nr)*.

“Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues” clause 16.

E. THE MOU AND ADMINISTRATIVE ARRANGEMENTS

56. On 3 August 2013, Nauru and Australia entered into the “Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues” (the **MOU**).

Particulars

The MOU is in writing and dated 3 August 2013 and signed by:

- A. His Excellency Baron Waqa MP, President of Nauru for Nauru; and
- B. The Honourable Kevin Rudd MP, Prime Minister of Australia for Australia.

57. On 11 April 2014, Nauru and Australia entered into the “Administrative Arrangements for Regional Processing and Settlement Arrangements in Nauru” (the **Administrative Arrangements**).

Particulars

The Administrative Arrangements is in writing and dated 11 April 2014 and signed by:

- A. Minister for Justice, David ~~Adeng~~Adeang, on behalf of the Government of Nauru; and
- B. The Fourth Respondent (**Mr Bowles**) on behalf of the Government of Australia.

58. The MOU and the Administrative Arrangements is each an “arrangement” within the meaning of s 198AHA of the Migration Act.
59. The MOU and the Administrative Arrangements is and was, from the time each became operative, a condition for the lawful exercise of power by Australia and its officers under s 198AHA of the Migration Act.

F. THE RESPONDENTS

60. ~~The First Respondent (Mr Morrison)~~Mr Morrison, ~~the~~ Second Respondent (Mr Dutton) and Third Respondent (**Mr Burke**) were each a Minister of the Crown in right of the Commonwealth (**relevant Minister**) responsible for the administration of Part 2, Division 8 of the Migration Act and the Australian Department responsible for Part 2, Division 8 of the Migration Act (**Australian Department**).

- 60A. At all material times, the Australian Department was responsible for the implementation of Australia’s obligations under:

- (a) the MOU; and
- (b) after 11 April 2014, the Administrative Arrangements.

61. Mr Burke:

- (a) was the relevant Minister from 1 July 2013 to 18 September 2013; and
- (b) as the relevant Minister, was the holder of a public office during this time period; and
- (c) during the period as the relevant Minister:
 - (i) was appointed by the Governor-General of Australia pursuant to s 64 of the Constitution to administer, and did administer, the Australian Department;
 - (ii) by an Administrative Arrangements Order dated 16 May 2013 was responsible for the administration of, and did administer, the Migration Act; and
 - (iii) was responsible for the implementation by the Australian Department of Australia's obligations under the MOU.

62. Mr Morrison:

- (a) was the relevant Minister from 18 September 2013 to 23 December 2014 and again from 21 August 2018 to 28 August 2018; and
- (b) as the relevant Minister, was the holder of a public office during this time period; and
- (c) during the period as the relevant Minister:
 - (i) was appointed by the Governor-General of Australia pursuant to s 64 of the Constitution to administer, and did administer, the Australian Department;

- (ii) by Administrative Arrangements Orders dated 18 September 2013, 12 December 2013 and 19 April 2018 was responsible for the administration of, and did administer, the Migration Act;
- (iii) was, from April 2014 to December 2014, a joint leader of the Joint Ministerial Forum to oversee implementation of the regional processing and resettlement partnership between Australia and Nauru;
- (iv) was responsible for the implementation by the Australian Department of Australia's obligations under the MOU; and
- (v) was, following the entry into the Administrative Arrangements, responsible for the implementation by the Australian Department of Australia's obligations under the Administrative Arrangements.

63. Mr Dutton:

- (a) was the relevant Minister from 23 December 2014 to 21 August 2018 and, has been the relevant Minister from 28 August 2018; and
- (b) as the relevant Minister:
 - (i) was has been and is the holder of a public office ~~during this time period~~from 23 December 2014;
 - (ii) was appointed by the Governor-General of Australia pursuant to s 64 of the Constitution to administer, and did and does administer, the Australian Department;
 - (iii) by Administrative Arrangements Orders dated 23 December 2014, 9 July 2015, 30 September 2015, 1 September 2016, 19 April 2018 and 4 April 2019 and 29 May 2019 has been and is responsible for the administration of, and does administer, the Migration Act;
 - (iv) jointly leads the Joint Ministerial Forum to oversee implementation of the regional processing and resettlement partnership between Australia and Nauru;

- (v) has been and is responsible for the implementation by the Australian Department of Australia's obligations under the MOU; and
- (vi) has been and is responsible for the implementation by the Australian Department of Australia's obligations under the Administrative Arrangements.

64. Mr Bowles and the Fifth Respondent (**Mr Pezzullo**) were each Secretary of the Australian Department (**relevant Australian Secretary**).

Particulars

Each relevant Australian Secretary ~~were~~was appointed to public office under Part 7 of the *Public Service Act 1999* (Cth).

65. Mr Bowles:

- (a) was the relevant Australian Secretary from March 2012 until on or about 12 October 2014; ~~and~~
- (b) as the relevant Australian Secretary, was the holder of a public office during this time period;
- (c) during the period as the relevant Australian Secretary:
 - (i) was required to advise the relevant Minister about matters relating to the Australian Department;

Particulars

Public Service Act 1999 (Cth), s 57(2)(b).

- (ii) by reason of the matters alleged in [65(c)(i)], was required to advise the relevant Minister in respect of the implementation of Australia's obligations under the MOU and the Administrative Arrangements;
- (iii) was responsible for implementing measures directed at ensuring that the Australian Department complied with the law, including in respect of the Migration Act and the implementation of Australia's obligations under the MOU and the Administrative Arrangements; and

Particulars

Public Service Act 1999 (Cth), s 57(2)(c).

- (d) was, during the period he was the relevant Australian Secretary, required to assist the relevant Minister to fulfil the relevant Minister's accountability obligations to the Parliament to provide factual information, as required by the Parliament, in relation to the operation and administration of the Australian Department, including in respect of the implementation of Australia's obligations under the MOU and the Administrative Arrangements.

Particulars

Public Service Act 1999 (Cth), s 57(2)(i).

66. Mr Pezzullo:

- (a) is and ~~was~~has been the relevant Australian Secretary since on or about 13 October 2014; ~~and~~
- (b) as the relevant Australian Secretary, has been the holder of a public office from on or about 13 October 2014 to the present;
- (c) since becoming the relevant Australian Secretary:
- (i) is and has been required to advise the relevant Minister about matters relating to the Australian Department;

Particulars

Public Service Act 1999 (Cth), s 57(2)(b).

- (ii) by reason of the matters alleged in [66(c)(i)] has been and is required to advise the relevant Minister in respect of the implementation of Australia's obligations under the MOU and the Administrative Arrangements;
- (iii) has been and is responsible for implementing measures directed at ensuring that the Australian Department complied with the law, including in respect of the Migration Act and the implementation of

Australia's obligations under the MOU and the Administrative Arrangements; and

Particulars

Public Service Act 1999 (Cth) s 57(2)(c).

- (d) has been and is required to assist the relevant Minister to fulfil the relevant Minister's accountability obligations to the Parliament to provide factual information, as required by the Parliament, in relation to the operation and administration of the Australian Department, including in respect of the implementation of Australia's obligations under the MOU and the Administrative Arrangements.

Particulars

Public Service Act 1999 (Cth), s 57(2)(i).

67. Australia is capable of being sued by reason of ss 56 and/or 64 of the *Judiciary Act 1903* (Cth).

G. THE FIRST RPC VISA AND THE SUBSEQUENT RPC VISAS

The First RPC Visa

68. On or around the Arrival Date on Nauru of the First Applicant, the Second Applicant and each Group Member:

- (a) an Applying Commonwealth Officer applied for; and
 (b) an officer of the Nauruan Department granted,

the First Visa in or including the name of each of the First Applicant, the Second Applicant and each Group Member.

Particulars

The First Applicant refers to and repeats the allegations in [18] and [19] for himself.

The Second Applicant refers to and repeats the allegations in [35] and [36] for himself.

- 68A. Each Applying Commonwealth Officer, in applying for each First Visa:

- (a) was acting in the course of that officer's employment as a public service officer of the Australian Department;
- (b) was implementing the instructions and acting on the directions, directly or indirectly, of the relevant Minister and/or the relevant Australian Secretary;
and
- (c) was discharging the responsibilities and functions of the relevant Minister, the relevant Australian Secretary or both the relevant Minister and the relevant Australian Secretary in respect of the Migration Act and/or implementation of Australia's obligations under:
 - (i) the MOU; and/or
 - (ii) following the entry into the Administrative Arrangements, the Administrative Arrangements.

69. On or about the Arrival Date on Nauru of the Second Applicant and each Group Member who arrived on Nauru before 18 September 2013:

- (a) Mr Burke; ~~and/or~~
- (b) Mr Bowles-; or
- (c) both Mr Burke and Mr Bowles-

either:

- (i) authorised or directed or caused an Applying Commonwealth Officer to apply for the First Visa; or
- (ii) failed to prevent an Applying Commonwealth Officer from applying for the First Visa.

Particulars

For Mr Burke, this is to be inferred from the matters alleged in paragraphs [60], [61], and [68A].

For Mr Bowles, this is to be inferred from the matters alleged in paragraphs [64] and [65] and the particulars subjoined thereto, and [68A].

Further particulars will be provided following the completion of discovery.

70. When authorising or directing or causing or failing to prevent the application by the Applying Commonwealth Officer for the First Visa of the Second Applicant and each Group Member who arrived on Nauru before 18 September 2013:
- (a) Mr Burke was ~~exercising~~purporting to exercise a power that was an incident of his public office as the relevant Minister; and/or
 - (b) Mr Bowles was ~~exercising~~purporting to exercise a power that was an incident of his public office as the relevant Australian Secretary.
71. On or about the Arrival Date on Nauru of the First Applicant and each Group Member who arrived on Nauru after 18 September 2013:
- (a) Mr Morrison; ~~and/or~~
 - (b) Mr Bowles-; or
 - (c) both Mr Morrison and Mr Bowles-
- either:
- (i) authorised or directed or caused an Applying Commonwealth Officer to apply for the First Visa; or
 - (ii) failed to prevent an Applying Commonwealth Officer from applying for the First Visa.

Particulars

For Mr Morrison, this is to be inferred from the matters alleged in paragraphs [60], [62] and [68A].

For Mr Bowles, this is to be inferred from the matters alleged in paragraphs [64] and [65] and the particulars subjoined thereto, and [68A].

Further particulars will be provided following the completion of discovery.

72. When authorising or directing or causing or failing to prevent the application by the Applying Commonwealth Officer for the First Visa of the First Applicant and each Group Member who arrived on Nauru after 18 September 2013:

- (a) Mr Morrison was ~~exercising~~purporting to exercise a power that was an incident of his public office as the relevant Minister; and/or
- (b) Mr Bowles was ~~exercising~~purporting to exercise a power that was an incident of his public office as the relevant Australian Secretary.

The Subsequent RPC Visas

73. At most, every three months after the First Visa of the First Applicant, the Second Applicant and each Group Member:

- (a) an officer of the Australian Department requested (a **Requesting Commonwealth Officer**); and
- (b) an officer of the Nauruan Department granted,

each of the Subsequent Visas for the First Applicant, the Second Applicant and each Group Member:

- (i) pursuant to regulation 9 of the *Immigration Regulations 2013* (Nr) from 15 March 2013 until 28 January 2014; and
- (ii) pursuant to regulation 9 of the *Immigration Regulations 2014* (Nr) from 30 January 2014 until the Last RPC Visa Date of each of the First Applicant, the Second Applicant and each Group Member.

73A. Each Requesting Commonwealth Officer, in requesting each Subsequent Visa:

- (a) was acting in the course of that officer's employment as a public service officer of the Australian Department;
- (b) was implementing the instructions and acting on the directions, directly or indirectly, of the relevant Minister and/or the relevant Australian Secretary;
and

(c) was discharging the responsibilities and functions of the relevant Minister, the relevant Australian Secretary or both the relevant Minister and the relevant Australian Secretary in respect of Migration Act and/or the implementation of Australia's obligations under:

(i) the MOU; and/or

(ii) following the entry into the Administrative Arrangements, the Administrative Arrangements.

74. From the first of the Subsequent Visas of the First Applicant, the Second Applicant and each Group Member to 12 October 2014:

(a) Mr Morrison; ~~and/or~~

(b) Mr Bowles; or

(c) both Mr Morrison and Mr Bowles-

either:

(i) authorised or directed or caused a Requesting Commonwealth Officer to request; or

(ii) failed to prevent a Requesting Commonwealth Officer from requesting:

each or any of the Subsequent Visas in or including the name of the First Applicant, the Second Applicant and each Group Member granted in this time period.

Particulars

For Mr Morrison, this is to be inferred from the matters alleged in paragraphs [60], [62] and [73A].

For Mr Bowles, this is to be inferred from the matters alleged in paragraphs [64] and [65] and the particulars subjoined thereto, and [73A].

Further particulars will be provided following the completion of discovery.

75. From 13 October 2014 to 23 December 2014:

- (a) Mr Morrison; ~~and/or~~
- (b) Mr Pezzullo-; or
- (c) both Mr Morrison and Mr Pezzullo-

either:

- (i) authorised or directed or caused a Requesting Commonwealth Officer to request; or
- (ii) failed to prevent a Requesting Commonwealth Officer from requesting:

each or any of the Subsequent Visas in or including the name of the First Applicant, the Second Applicant and each Group Member granted in this time period.

Particulars

For Mr Morrison this is to be inferred from the matters alleged in paragraphs [60], [62] and [73A].

For Mr Pezzullo this is to be inferred from the matters alleged in paragraphs [64] and [66] and the particulars subjoined thereto, and [73A].

Further particulars will be provided following the completion of discovery.

76. From 23 December 2014 to the earlier for each Group Member of (i) the Last RPC Visa Date of the First Applicant, the Second Applicant and each Group Member or (ii) 21 August 2018:

- (a) Mr Dutton; ~~and/or~~
- (b) Mr Pezzullo-; or
- (c) both Mr Dutton and Mr Pezzullo-

either:

- (i) authorised or directed or caused a Requesting Commonwealth Officer to request; or

- (ii) failed to prevent a Requesting Commonwealth Officer from requesting:
each or any of the Subsequent Visas in or including the name of the First Applicant,
the Second Applicant and each Group Member granted in this time period.

Particulars

For Mr Dutton this is to be inferred from the matters alleged in paragraphs [60], [63] and [73A].

For Mr Pezzullo this is to be inferred from the matters alleged in paragraphs [64] and [66] and the particulars subjoined thereto, and [73A].

Further particulars will be provided following the completion of discovery.

77. From 21 August 2018 to 28 August 2018:

- (a) Mr Morrison; ~~and/or~~
(b) Mr Pezzullo-; or
(c) both Mr Morrison and Mr Pezzullo-

either:

- (i) authorised or directed or caused a Requesting Commonwealth Officer to request; or
(ii) failed to prevent a Requesting Commonwealth Officer from requesting:
each or any of the Subsequent Visas in or including the name of each Group Member granted in this time period.

Particulars

For Mr Morrison this is to be inferred from the matters alleged in paragraphs [60], [62] and [73A].

For Mr Pezzullo this is to be inferred from the matters alleged in paragraphs [64] and [66] and the particulars subjoined thereto, and [73A].

Further particulars will be provided following the completion of discovery.

78. Since 28 August 2018, ~~Mr Pezzullo~~ either:

- (a) Mr Dutton;
- (b) Mr Pezzullo; or
- (c) both Mr Dutton and Mr Pezzullo-

either;

- (i) authorised or directed or caused a Requesting Commonwealth Officer to request; or
- (ii) failed to prevent a Requesting Commonwealth Officer from requesting:

each or any of the Subsequent Visas in or including the name of each Group Member granted ~~in this~~ since that time period.

Particulars

For Mr Dutton this is to be inferred from the matters alleged in paragraphs [60], [63] and [73A].

For Mr Pezzullo this is to be inferred from the matters alleged in paragraphs [64] and [66] and the particulars subjoined thereto, and [73A].

Further particulars will be provided following the completion of discovery.

79. When either:

- (a) authorising or directing or causing a Requesting Commonwealth Officer to request; or
- (b) failing to prevent a Requesting Commonwealth Officer from requesting –

each or any of the Subsequent Visas of the First Applicant, the Second Applicant and/or each Group Member:

- (i) Mr Morrison was ~~exercising~~ purporting to exercise a power that was an incident of his public office as the relevant Minister;

- (ii) Mr Dutton was ~~exercising~~ and has been purporting to exercise a power that ~~was~~ is an incident of his public office as the relevant Minister;
- (iii) Mr Bowles was ~~exercising~~ purporting to exercise a power that was an incident of his public office of the relevant Australian Secretary; and
- (iv) Mr Pezzullo was ~~exercising~~ and has been purporting to exercise a power that ~~was~~ is an incident of his public office of the relevant Australian Secretary.

79A. Every application by an Applying Commonwealth Officer for a First Visa in or including the name of a Group Member was bound to and did result in the grant by Nauru of that First Visa.

Particulars

MOU clauses 7-9, 16; Administrative Arrangements clauses 2.1, 2.2.6, 2.2.9.

79B. Any request by a Requesting Commonwealth Officer for a Subsequent Visa in or including the name of a Group Member was bound to and did result in the grant by Nauru of that Subsequent Visa.

Particulars

MOU clauses 7-9, 16; Administrative Arrangements clauses 2.1, 2.2.6, 2.2.9.

H. MIPO #1: THE VISAS VISA APPLICATIONS AND REQUESTS WERE INVALID AND BEYOND POWER BECAUSE THEY WERE ~~APPLIED FOR OR REQUESTED~~ MADE WITHOUT AFFORDING PROCEDURAL FAIRNESS TO THE FIRST APPLICANT, THE SECOND APPLICANT AND GROUP MEMBERS - CAUSE IN OF ACTION AGAINST MESSRS MORRISON, DUTTON, BURKE, BOWLES AND PEZZULLO

80. At no time was:

- (a) the First Applicant;
- (b) the Second Applicant and/or the Second Applicant's [REDACTED];
- (c) any Child Group Member and/or that Child Group Member's accompanying parent or guardian;
- (d) any Group Member who was not a Child Group Member

provided with any:

- (e) notice that an officer of Australia would; and/or
- (f) opportunity to be heard on the question of whether an officer of Australia should:

either or both:

- (g) apply for the First Visa in or including each of their names; or
- (h) request any of the Subsequent Visas in or including each of their names.

81. Each of:

- (a) the application for the First Visa; and
- (b) the request for each of the Subsequent Visas;

was apt to affect the rights or interests of the person in or including the name of the First Applicant, Second Applicant and/or each Group Member because of one or more of the following:

- (i) the Residence Condition; ~~and/or~~
- (ii) the Tent Conditions; ~~and/or~~

(iii) the No Work Condition; ~~and/or~~

(iv) the No Education Condition.

82. At all times from the Arrival Date on Nauru for the Second Applicant and each Group Member from 3 August 2013 until 18 September 2013, Mr Burke, ~~and/or~~ Mr Bowles or both:

- (a) directed or authorised or caused an Applying Commonwealth Officer or a Requesting Commonwealth Officer (a **Relevant Commonwealth Officer**) who applied for the First Visa not to afford procedural fairness to the Second Applicant and each Group Member in relation to whether to apply for the First Visa for that person before applying for the Visa; or
- (b) failed to direct or cause the Relevant Commonwealth Officer who applied for the First Visa to afford procedural fairness to the Second Applicant and each Group Member in relation to whether to apply for the First Visa for that person before applying for the Visa.

Particulars

For Mr Burke this is to be inferred from the matters alleged in paragraphs [60], [61], [68A], [73A] and [80].

For Mr Bowles this is to be inferred from the matters alleged in paragraphs [64] and [65] and the particulars subjoined thereto, [68A], [73A] and [80].

Further particulars will be provided following the completion of discovery.

83. By acting or failing to act as alleged in [82], and by reason of the facts and matters in [80] to [81], Mr Burke, ~~and/or~~ Mr Bowles or both acted beyond power.

Particulars

Mr Burke, ~~and/or~~ Mr Bowles or both acted beyond power by reason of the denial of procedural fairness to the Second Applicant and each Group Member.

84. At all times from the Arrival Date on Nauru for the First Applicant, the Second Applicant and each Group Member from 18 September 2013 until 12 October 2014, Mr Morrison, ~~and/or~~ Mr Bowles or both:

(a) directed or authorised or caused a Relevant Commonwealth Officer who:

- (i) applied for the First Visa; or
- (ii) requested each of the Subsequent Visas,

not to afford procedural fairness to the First Applicant, the Second Applicant and each Group Member in relation to whether to apply for the First Visa or request each of the Subsequent Visas for that person before applying for or requesting each Visa; or

(b) failed to direct or cause the Relevant Commonwealth Officer who:

- (i) applied for the First Visa; or
- (ii) requested each of the Subsequent Visas,

to afford procedural fairness to the First Applicant, the Second Applicant and each Group Member in relation to whether to apply for the First Visa or request each of the Subsequent Visas for that person before applying for or requesting each Visa.

Particulars

For Mr Morrison this is to be inferred from the matters alleged in paragraphs [60], [62], [68A], [73A] and [80].

For Mr Bowles this is to be inferred from the matters alleged in paragraphs [64] and [65] and the particulars subjoined thereto, [68A], [73A] and [80].

Further particulars will be provided following the completion of discovery.

85. By acting or failing to act as alleged in [84], and by reason of the facts and matters in [80] to [81], Mr Morrison, ~~and/or~~ Mr Bowles or both acted beyond power.

Particulars

Mr Morrison, ~~and/or~~ Mr Bowles or both acted beyond power by reason of the denial of procedural fairness to the First Applicant, the Second Applicant and each Group Member.

86. At all times from:

- (a) 13 October 2014 to 23 December 2014, and
- (b) again from 21 August 2018 to 28 August 2018 for those Group Members whose Last RPC Visa Date was after 28 August 2018,

Mr Morrison, ~~and/or~~ Mr Pezzullo or both:

- (c) directed or authorised or caused the Relevant Commonwealth Officer who requested each of the Subsequent Visas, not to afford procedural fairness to the First Applicant, the Second Applicant and each Group Member in relation to whether to request each of the Subsequent Visas for that person before applying for or requesting each Subsequent Visa; or
- (d) failed to direct or cause the Relevant Commonwealth Officer who requested each of the Subsequent Visas, to afford procedural fairness to the First Applicant, the Second Applicant and each Group Member in relation to whether to request each of the Subsequent Visas for that person before requesting each Subsequent Visa.

Particulars

For Mr Morrison this is to be inferred from the matters alleged in paragraphs [60], [62], [68A], [73A] and [80].

For Mr Pezzullo this is to be inferred from the matters alleged in paragraphs [64] and [66] and the particulars subjoined thereto, [68A], [73A] and [80].

Further particulars will be provided following the completion of discovery.

87. By acting or failing to act as alleged in [86], and by reason of the facts and matters in [80] to [81], Mr Morrison, ~~and/or~~ Mr Pezzullo or both acted beyond power.

Particulars

Mr Morrison, ~~and/or~~ Mr Pezzullo or both acted beyond power by reason of the denial of procedural fairness to the First Applicant, the Second Applicant and each Group Member.

88. ~~From 23 December 2014 to the earlier of Last RPC Visa Date and 21 August 2018 of the First Applicant, the Second Applicant and each Group Member, Mr Dutton, and/or Mr Pezzullo~~ At all times from:

- (a) 23 December 2014 to 21 August 2018; and
- (b) 28 August 2018 for those group members whose Last RPC Visa Date was after 28 August 2018.

Mr Dutton, Mr Pezzullo or both:

- (c) directed or authorised or caused the Relevant Commonwealth Officer who requested each of the Subsequent Visas, not to afford procedural fairness to the First Applicant, the Second Applicant and each Group Member in relation to whether to request each of the Subsequent Visas for that person before applying for or requesting each Subsequent Visa; or
- (d) failed to direct or cause the Relevant Commonwealth Officer who requested each of the Subsequent Visas, to afford procedural fairness to the First Applicant, the Second Applicant and each Group Member in relation to whether to request each of the Subsequent Visas for that person before requesting each Subsequent Visa.

Particulars

For Mr Dutton this is to be inferred from the matters alleged in paragraphs [60], [63], [68A], [73A] and [80].

For Mr Pezzullo this is to be inferred from the matters alleged in paragraphs [64] and [66] and the particulars subjoined thereto, [68A], [73A] and [80].

Further particulars will be provided following the completion of discovery.

89. By acting or failing to act as alleged in [88], and by reason of the facts and matters in [80] to [81], Mr Dutton, ~~and/or~~ Mr Pezzullo or both acted beyond power.

Particulars

Mr Dutton, ~~and/or~~ Mr Pezzullo or both acted beyond power by reason of the denial of procedural fairness to the First Applicant, the Second Applicant and each Group Member, whose Last RPC Visa Date was after 28 August 2018.

90. [Deleted] At all times from 28 August 2018, Mr Pezzullo:

- (a) ~~has directed or authorised or caused the Relevant Commonwealth Officer who requested each of the Subsequent Visas, not to afford procedural fairness to each Group Member whose Last RPC Visa Date was after 28 August 2018 in relation to whether to request each of the Subsequent Visas for that person before applying for or requesting each Subsequent Visa; or~~
- (b) ~~has failed to direct or cause the Relevant Commonwealth Officer who requested each of the Subsequent Visas, to afford procedural fairness to each Group Member whose Last RPC Visa Date was after 28 August 2018 in relation to whether to request each of the Subsequent Visas for that person before requesting each Subsequent Visa.~~

Particulars

This is to be inferred from the matters alleged in paragraphs [64] and [66] and the particulars subjoined thereto, [63A], [73A] and [80].

Further particulars will be provided following the completion of discovery.

91. ~~[Deleted] By acting or failing to act as alleged in [90], and by reason of the facts and matters in [80] to [81], Mr Pezzullo acted beyond power.~~

Particulars

~~Mr Pezzullo acted beyond power by reason of the denial of procedural fairness to each Group Member whose Last RPC Visa Date was or is after 28 August 2018.~~

92. Each of:
- (a) Mr Morrison;
 - (b) Mr Dutton;
 - (c) Mr Burke;
 - (d) Mr Bowles; and
 - (e) Mr Pezzullo,

recklessly disregarded the means of ascertaining the extent of his power to direct or authorise or cause or not prevent each Relevant Commonwealth Officer to apply for the First Visa or request the Subsequent Visas of the First Applicant and/or the Second Applicant and each Group Member in whose name an RPC Visa was granted during that Respondent's term holding the public office pleaded above without affording procedural fairness to him or her.

Particulars

It is be inferred from the following that Mr Morrison, Mr Dutton, Mr Burke, Mr Bowles and Mr Pezzullo considered and disregarded the obligation to afford procedural fairness:

- (a) the obligation to afford procedural fairness to a person whose rights or interests are apt to be affected in the exercise of public power is fundamental and well known amongst those who are responsible for the administration of Commonwealth laws. As stated by Mr Dutton in a public interview with Ray Hadley of Radio 2GB on 22 June 2017, "we need to afford people natural justice.";
- (b) the applications for the First Visa and the requests for the Subsequent Visas were, by reason of one or more of the Residence Condition, the Tent Conditions, the No Work Condition and the No Education Condition, plainly affect the rights or interests of the persons the subject of the applications and requests;
- (c) for Mr Burke, Mr Dutton and Mr Morrison, during the period when each was the relevant Minister, each was responsible for administering, and did administer, the Australian Department, including with respect to the implementation of Australia's obligations under the MOU and, in the case of Mr Morrison and Mr Dutton, also the implementation of Australia's obligations under the Administrative Arrangements, which necessarily included giving consideration to and taking legal advice and briefings on matters concerning the proper implementation of those obligations in accordance with law;
- (d) for Mr Bowles and Mr Pezzullo, during the period when each was the relevant Australian Secretary, each was responsible for implementing measures directed at ensuring that the Australian Department complied with the law, including with respect to the implementation of Australia's obligations under the MOU and the Administrative Arrangements, which necessarily included giving consideration to and taking legal advice and briefings on matters concerning the proper implementation of those obligations in accordance with law; and
- (e) the Australian Department was at relevant times the subject of numerous Court proceedings involving allegations of denials of procedural fairness in connection with administrative action taken or purported to be taken under the Migration Act (including *Plaintiff*

M68/2015 v Minister for Immigration and Border Protection [2016] HCA 1; 257 CLR 42 and Minister for Immigration and Border Protection v SZSSJ Minister for Immigration and Border Protection v SZTZI [2016] HCA 29; 259 CLR 180); the relevant Ministers and the relevant Australian Secretaries were ultimately responsible for giving instructions and necessarily required legal briefings in relation to such Court proceedings and thereby may be taken to have had an awareness of the requirements of procedural fairness. Submissions filed by the relevant Minister to the High Court of Australia in SZSSJ on 15 August 2016 included an acknowledgment that the 'common law principle [of procedural fairness] operated only in the absence of contrary legislative intent'.

Further particulars will be provided following the completion of discovery.

93. There was a foreseeable risk of harm to the First Applicant, the Second Applicant and all Group Members by:
- (a) the application for the First Visa in or including the name of him or her; and
 - (b) the request for each of the Subsequent Visas in or including the name of him or her.

Particulars

The foreseeable risk of harm to the First Applicant, the Second Applicant and the relevant Group Members was:

- A. deprivation of liberty from his or her Arrival Date on Nauru for a period of time or indefinitely by reason of the Residence Condition;
- B. personal injury including injury resulting from one or more of the Tent Conditions; and
- C. for Group Members when they were over 18 years old, loss of income by reason of the Residence Condition and the No Work Condition.

~~In relation to the First Applicant, the loss of income was under his contract of employment as a [REDACTED] in [REDACTED], which contract was current at the time of his transfer to Nauru, as well as a loss of opportunity of further or other income under that or another contract of employment since that time and until he gained employment on Nauru in [REDACTED].~~

94. Alternatively, each of:
- (a) Mr Morrison;
 - (b) Mr Dutton;

- (c) Mr Burke;
- (d) Mr Bowles; and
- (e) Mr Pezzullo,

was recklessly indifferent to the harm that was likely to ensue to the First Applicant and/or the Second Applicant and each Group Members in whose name an RPC Visa was granted during that Respondent's term holding the public office pleaded above by:

- (i) the application for the First Visa in or including the name of him or her; or
- (ii) the request for each of the Subsequent Visas in or including the name of him or her.

Particulars

The Applicants refer to and repeat the particulars subjoined to [93].

It is to be inferred from the following that Mr Morrison, Mr Dutton, Mr Burke, Mr Bowles and Mr Pezzullo knew, and were recklessly indifferent to, the likely harm:

- (a) Mr Morrison, Mr Dutton, Mr Burke, Mr Bowles and/or Mr Pezzullo authorised, directed, caused and/or failed to prevent the RPC Visa applications and requests in circumstances where the RPC Visas had the Residence Condition, the Tent Condition, the No Work Condition and/or the No Education Condition; and
- (b) Mr Morrison, Mr Dutton, Mr Burke, Mr Bowles and Mr Pezzullo visited and observed the conditions on Nauru for those subject to RPC visas at least as follows:
 - (i) Mr Burke on about 26 July 2013;
 - (ii) Mr Bowles on about 26 July 2013;
 - (iii) Mr Morrison in early October 2013;
 - (iv) Mr Dutton on about 19 February 2015;
 - (v) Mr Pezzullo in early October 2016.

During the relevant times, the Australian Department provided a significant amount of support including very substantial funding to the Nauruan government in the running of the RPCs. It is to be inferred that the relevant Ministers and relevant Australian Secretaries were

therefore aware of the conditions in the RPCs including the Tent Conditions.

Further particulars will be provided following the completion of discovery.

95. Each of:

- (a) the First Applicant; and
- (b) the Second Applicant; and
- (c) each of the Group Members,

suffered, and continues to suffer, loss and damage caused by:

- (i) the application for the First Visa in or including the name of him or her; and
- (ii) the request for each of the Subsequent Visas in or including the name of him or her.

Particulars

- A. The First Applicant, the Second Applicant and the relevant Group Members were deprived of his or her liberty from his or her Arrival Date on Nauru until 5 October 2015 or his or her Last RPC Visa Date, whichever was earlier and excluding any time when that person was outside Nauru.
- B. The First Applicant, the Second Applicant and the relevant Group Members suffered personal injury, including a psychiatric condition and/or mental disability, caused by the Tent Conditions. Further and better particulars concerning the personal injury of the First Applicant, the Second Applicant and the relevant Group Members will be provided following discovery, including discovery of his or her medical records.
- C. The First Applicant and the relevant Group Members when they were over 18 years old suffered loss of income by reason of the Residence Condition and the No Work Condition. In relation to the First Applicant, the loss of income was under his contract of employment as a [REDACTED] in [REDACTED], which contract was current at the time of his transfer to Nauru, as well as a loss of opportunity of further or other income under that or another contract of employment since that time and until he gained employment on Nauru shortly after his Last RPC Visa Date in [REDACTED].

J. MIPO #2: VISA APPLICATIONS AND REQUESTS WERE BEYOND POWER – CAUSE INOF ACTION AGAINST MESSRS MORRISON, DUTTON, BURKE, BOWLES AND PEZZULLO

96. From 3 August 2013 to 10 April 2014:

- (a) each Applying Commonwealth Officer lacked lawful authority to apply for:
 - (i) the First Visa for the First Applicant; ~~and~~
 - (ii) the First Visa for the Second Applicant; and
 - (iii) each First Visa for each Pre-Administrative Arrangement Group Member; and
- (b) each Requesting Commonwealth Officer lacked lawful authority to request:
 - (i) each Subsequent Visa for the First Applicant; ~~and~~
 - (ii) each Subsequent Visa for the Second Applicant; and
 - (iii) each Subsequent Visa for each Pre-Administrative Arrangement Group Member,

by reason of the following:
- (c) there was no prerogative or non-statutory executive power for any Relevant Commonwealth Officer/s to apply for or request any of the Visas at any time;
- (d) each Relevant Commonwealth Officer was not the officer specified by s 198AD of the Migration Act in respect of the First Applicant, the Second Applicant and each Visa for each Pre-Administrative Arrangement Group Member; and
- (e) alternatively to (d) above, s 198AD(2) of the Migration Act did not authorise the making of an application or request for the Visas by any Relevant Commonwealth Officer/s;
- (f) the application or request was not pursuant to s 198AHA of the Migration Act, which provision did not exist until amending legislation dated 30 June 2015;

Particulars

Section 198AHA was an amendment to the Migration Act by the *Migration Amendment (Regional Processing Arrangements) Act 2015* (Cth) which received Royal Assent on 30 June 2015 and purported to operate retrospectively to 18 August 2012.

- (g) if the MOU alone was a source of legal power to an officer of Australia, the MOU did not require nor authorise any Relevant Commonwealth Officer/s to apply for or request any RPC Visa;
- (h) the application or request was not pursuant to the Administrative Arrangement because it was not in existence during this time period;

Particulars

The Applicants refer to and repeat the particulars subjoined to [56] and [57].

- (i) the First Plaintiff and/or the Second Plaintiff and/or each Pre Administrative Arrangement Group Member who was also an Unauthorised Maritime Arrival Group Member and/or a Non-Excised Offshore Place Group Member was not an “offshore entry person” and was never a person who was eligible to be granted an RPC Visa by reason of the facts and matters in [13] and [31] and by reason of the following:
 - (i) the First Applicant arrived in Australia at a place other than one that was at any time a place within the meaning of an “excised offshore place” referred to in the definition of “offshore entry person” in the Migration Act; and/or

Particulars

- A. “Offshore entry person” under Nauruan law had the meaning from Australian law prior to its repeal on 1 June 2013 in accordance with the principles derived from *Interpretation Act 2011* (Nr) s 37 and *R v Smith* (1873) LR 8 QB 146 at 149 (applicable by operation of *Custom and Adopted Laws Act 1971* (Nr) s 4).
- B. The *Immigration Regulations 2014* (Nr) refer to “offshore entry person”, not “unauthorised maritime arrival”, and only came into operation on 30 January 2014, after the term “offshore entry person” was repealed from the Migration Act on 1 June 2013; see *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013* (Cth), s 2 Item 2 and Schedule 1 Item 3.

- (ii) the First Applicant and/or Second Applicant arrived in Australia after the term “offshore entry person” had been repealed from the Migration Act on 1 June 2013 and so was and/or were not “brought to Nauru” as “an offshore entry person within the meaning of the *Migration Act 1958*”.

Particulars

Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013 (Cth), s 2 Item 2 and Schedule 1 Item 3.

- (iii) none of the Non-Excised Offshore Place Group Members was, at any time, “an offshore entry person within the meaning of the *Migration Act 1958* of the Commonwealth of Australia” because each arrived in Australia at a place which was not at any time a place within the meaning of an “excised offshore place” referred to in the definition of “offshore entry person” in the Migration Act;
- (iv) none of the Unauthorised Maritime Arrival Group Members was, at any time, “an offshore entry person within the meaning of the *Migration Act 1958* of the Commonwealth of Australia” because each arrived in Australia after the term “offshore entry person” had been repealed from the Migration Act on 1 June 2013 and so was not “brought to Nauru” as “an offshore entry person within the meaning of the *Migration Act 1958*”;

and/or

- (j) there was no other legislative or other power for any Relevant Commonwealth Officer to apply for or request any of the Visas at any time.

97. From 11 April 2014 until 29 June 2015:

- (a) each Applying Commonwealth Officer lacked lawful authority to apply for each First Visa for each Post-Administrative Arrangement Group Member who arrived on Nauru after 10 April 2014; and
- (b) each Requesting Commonwealth Officer lacked lawful authority to request:
 - (i) each Subsequent Visa for the First Applicant; and

- (ii) each Subsequent Visa for the Second Applicant; and
- (iii) each Subsequent Visa for each Post-Administrative Arrangement Group Member,

by reason of the following:

- (c) there was no prerogative or non-statutory executive power for any Relevant Commonwealth Officer/s to apply for or request any of the Visas at any time;
- (d) each Relevant Commonwealth Officer was not the officer specified by s 198AD of the Migration Act in respect of the First Applicant, the Second Applicant and each Post-Administrative Arrangement Group Member;
- (e) alternatively to (d) above, s 198AD(2) of the Migration Act did not authorise the making of an application or request for the Visas by any Relevant Commonwealth Officer/s;
- (f) the application or request was not pursuant to s 198AHA of the Migration Act, which provision did not exist until amending legislation dated 30 June 2015;

Particulars

The Applicants refer to and repeat the particulars subjoined to [96(f)].

- (g) if the MOU alone was a source of legal power to an officer of Australia, the MOU did not require nor authorise any Relevant Commonwealth Officer/s to apply for or request any RPC Visa;
- (h) if the Administrative Arrangement alone or in conjunction with the MOU was a source of legal power to an officer of Australia, the Administrative Arrangement did not require nor authorise a request for any Subsequent Visa because each Requesting Commonwealth Officer was only empowered to “lodge applications” for RPC Visas:
 - (i) but not to “request” such visas; and
 - (ii) under the “*Immigration Regulations 2013*” (Nr) made under the *Immigration Act 1999* (Nr) but not under the *Immigration Regulations 2014* (Nr) made under the *Immigration Act 2014* (Nr);

Particulars

Clause 2.2.6 of the Administrative Arrangement, read with the *Immigration Regulations 2014* (Nr) r 9(3).

- (i) the First Applicant and/or the Second Applicant and/or each Post Administrative Arrangement Group Member who was also an Unauthorised Maritime Arrival Group Member and/or a Non-Excised Offshore Place Group Member was not an “offshore entry person” and was never a person who was eligible to be granted an RPC Visa and the Applicants refer to and repeat [96(i)]; and/or
 - (j) there was no other legislative or other power for any Relevant Commonwealth Officer to apply for or request any of the Visas at any time.
98. Since 30 June 2015, each Requesting Commonwealth Officer lacked lawful authority to request each Subsequent Visa for:
- (a) the First Applicant; and
 - (b) the Second Applicant; and
 - (c) each Post-Administrative Arrangement Group Member,
- by reason of the following:
- (d) there was no prerogative or non-statutory executive power for any Requesting Commonwealth Officer/s to request any of the Visas at any time;
 - (e) each Requesting Commonwealth Officer was not the officer specified by s 198AD of the Migration Act in respect of the First Applicant, the Second Applicant and each Post-Administrative Arrangement Group Member;
 - (f) alternatively to (d) above, s 198AD(2) of the Migration Act did not and does not authorise the making of a request for an RPC Visa by any Requesting Commonwealth Officer;
 - (g) each request was not pursuant to an “arrangement” for the purposes of s 198AHA of the Migration Act because:

- (i) the MOU did not require nor authorise the Requesting Commonwealth Officer/s to request any of the Subsequent Visas;
- (ii) each Requesting Commonwealth Officer was only empowered to “lodge applications” for RPC Visas:
 1. but not to “request” such visas; and
 2. under the “*Immigration Regulations 2013*” (Nr) made under the *Immigration Act 1999* (Nr) but not under the *Immigration Regulations 2014* (Nr) made under the *Immigration Act 2014* (Nr).

Particulars

Clause 2.2.6 of the Administrative Arrangement, read with the *Immigration Regulations 2014* (Nr) r 9(3).

- (iii) the First Applicant, the Second Applicant and each Post-Administrative Arrangement Group Member was not an “offshore entry person” and was never a person who was eligible to be granted an RPC Visa and the Applicants refer to and repeat [96(i)] ;
- (h) each request was not in relation to any “regional processing functions” for the purposes of s 198AHA of the Migration Act because the relevant “regional processing functions” were set out in the law of Nauru, namely:
 - (i) *Refugees Convention Act 2012* (Nr);
 - (ii) *Asylum Seekers (Regional Processing Centre) Act 2012* (Nr);
 - (iii) *Immigration Act 2014* (Nr); and
 - (iv) the regulations made under the Acts referred to in (i) to (iii),

and the First Applicant and/or the Second Applicant and/or each Group Member who was also an Unauthorised Maritime Arrival Group Member and/or a Non-Excised Offshore Place Group Member was not an “offshore entry person” and was never a person who was eligible to be granted an RPC Visa and the Applicants refer to and repeat [96(i)]; and/or

- (i) there was no other legislative or other power for any Relevant Commonwealth Officer to apply for or request any of the Visas at any time.

99. Each of:

- (a) Mr Morrison by reason of his acts or omissions alleged in [71], [74], [75], [77];
- (b) Mr Dutton by reason of his acts or omissions alleged in [76] and [78];
- (c) Mr Burke by reason of his acts or omissions alleged in [69];
- (d) Mr Bowles by reason of his acts or omissions alleged in [69], [71] and [74]; and/or
- (e) Mr Pezzullo by reason of his acts or omissions alleged in [75], [76], [77] and [78];

recklessly disregarded the means of ascertaining the extent of his power to perform that act or omission in relation to each of the Visas of:

- (f) the First Applicant; ~~and~~
- (g) the Second Applicant; and
- (h) each of the Group Members or one or more of:
 - (i) each Non-Excised Offshore Place Group Member; ~~or~~
 - (ii) each Pre Administrative Arrangement Group Member; or
 - (iii) each Post Administrative Arrangement Group Member.

Particulars

It is to be inferred from the following that Mr Burke, Mr Dutton, Mr Morrison, Mr Bowles and Mr Pezzullo considered and disregarded whether the RPC Visa applications and requests were made without power:

- (a) for Mr Burke, Mr Dutton and Mr Morrison, during the period when each was the relevant Minister, each was responsible for administering, and did administer, the Australian Department, including with respect to the implementation of Australia's obligations under the MOU and, in the case of Mr Morrison and Mr

- Dutton, also the implementation of Australia's obligations under the Administrative Arrangements, which necessarily involved giving consideration to and taking legal advice and briefings on matters concerning the proper implementation of those obligations in accordance with law;
- (b) for Mr Bowles and Mr Pezzullo, during the period when each was the relevant Secretary, each was responsible for implementing measures directed at ensuring that the Australian Department complied with the law, including with respect to the implementation of Australia's obligations under the MOU and the Administrative Arrangements, which necessarily involved giving consideration to and taking legal advice and briefings on matters concerning the proper implementation of those obligations in accordance with law;
- (c) in circumstances where the transfer of asylum seekers from Australia to Nauru pursuant to the regional processing and resettlement partnership was a matter of substantial public interest and debate and involved a substantial expenditure of public money, it may be inferred that each of Mr Burke, Mr Morrison, Mr Dutton, Mr Bowles and Mr Pezzullo scrutinised the details of the RPC Visa application and request system;
- (d) for Mr Burke and Mr Bowles, in particular, the fact that each of their time as the relevant Minister and Australian Secretary respectively was during the negotiation and finalisation by the governments of Australia and Nauru of the MOU and it may be inferred that each scrutinised the details of the scheme the subject of the MOU;
- (e) for Mr Morrison and Mr Bowles, in particular, the fact that each of their time as the relevant Minister and Australian Secretary respectively was during the negotiation and finalisation by the governments of Australia and Nauru of the Administrative Arrangement (including clause 2.2.6 which provided for the lodging of RPC Visa applications pursuant to s 9(3) of the Nauruan *Immigration Regulations 2013*), and it may be inferred that each scrutinised the details of the scheme the subject of the Administrative Arrangement. Mr Bowles was the signatory on behalf of Australia to the Administrative Arrangement. According to a joint statement of Mr Morrison and Mr Adeang dated 11 April 2014, Mr Morrison met with Mr Adeang, the signatory for Nauru on the Administrative Arrangement, on the day prior to the signing for the purposes of the Joint Ministerial Forum to oversee implementation of the regional partnership between Australia and Nauru, which body provided 'oversight of the implementation of the Nauru arrangement';
- (f) for Mr Burke and Mr Morrison, in particular, the directions made under s 198AD(5) of the Migration Act dated 29 July 2013 by Mr Burke (which revoked the previous direction relating only to 'offshore entry persons') and dated 29 May 2014 and 15 July 2014 by Mr Morrison. It is to be inferred that each of Mr Burke and Mr Morrison knew that unauthorised maritime arrivals were to be taken to Nauru, where the "offshore entry person" was not the criterion for being granted an RPC Visa, as the application for a

Nauruan visa for the First Applicant stated in terms on eight occasions;

(g) for Mr Dutton and Mr Pezzullo, the fact that the Australian Department was at the relevant time the subject of a Court proceeding in *Plaintiff M68/2015 v Minister for Immigration and Border Protection & Ors*, which concerned the extent of the power to administer the arrangements with Nauru; the proceeding involved submissions by the Australian Department concerning the process relating to RPC visas.

Further particulars will be provided following the completion of discovery.

100. There was a foreseeable risk of harm to:

- (a) the First Applicant; and
- (b) the Second Applicant; and
- (c) all Group Members or one or more of:
 - (i) each Non-Excised Offshore Place Group Member; or
 - (ii) each Unauthorised Maritime Arrival Group Member; or
 - (iii) each Pre Administrative Arrangement Group Member; and/or
 - (iv) each Post Administrative Arrangement Group Member, and/or,

by the application and request for each of the RPC Visas in or including the name of that person.

Particulars

The Applicants refer to and repeat the particulars subjoined to [93].

101. Alternatively, each of the respondents referred to in [99] was recklessly indifferent to the harm that was likely to ensue to:

- (a) the First Applicant; and
- (b) the Second Applicant; and
- (c) all Group Members or one or more of:
 - (i) each Non-Excised Offshore Place Group Member; or

- (ii) each Pre Administrative Arrangement Group Member;
- (iii) each Post Administrative Arrangement Group Member,

by the application and request for each of the Visas in or including the name of that person.

Particulars

The Applicants refer to and repeat the particulars subjoined to [93] and [94].

102. Each of:

- (a) the First Applicant; and
- (b) the Second Applicant; and
- (c) the Group Members or one or more of:
 - (i) each Non-Excised Offshore Place Group Member; or
 - (ii) each Pre Administrative Arrangement Group Member;
 - (iii) each Post Administrative Arrangement Group Member,

suffered, and continues to suffer, loss and damage caused by the application and request for each of the Visas in or including the name of that person.

Particulars

The Applicants refer to and repeat the particulars subjoined to [95].

K. MIPO #3: HUMAN RIGHTS WERE BREACHED – CAUSE INOF ACTION AGAINST MESSRS MORRISON, DUTTON, BOWLES AND PEZZULLO

103. Each of:

- (a) the First Applicant; and/or
- (b) the Second Applicant; and/or
- (c) each Group Member:

was or is a “Transferee” as defined under the MOU:

- (i) while he or she was on Nauru; and
- (ii) if he or she is still on Nauru.

Particulars

Each of (a) – (c) was a “transferee” within the definition of the MOU, having been transferred from Australia to Nauru in fact under the MOU.

104. As “the Participants” pursuant to and as defined in the MOU, Australia and Nauru are and were since 3 August 2013 under the legal obligations to “Transferees” under the subheading “Commitments” in the MOU.

Particulars

The “Commitments” are set out in Articles 17 to 19 of the MOU.

105. At all times since 3 August 2013, the legal obligations under the MOU upon:

- (a) Australia; and
- (b) Nauru,

has included an obligation to treat the First Applicant, the Second Applicant and each Group Member “with dignity and respect and in accordance with relevant human rights standards”.

Particulars

The obligation is in writing and expressly stated in Article 17 of the MOU which applies to the First Applicant, the Second Applicant and all Group Members as they are each “Transferees” as defined in, and for the purposes of, the MOU.

106. At all times since 3 August 2013, the “relevant human rights standards” for the purposes of the MOU has included the following:

- (a) a prohibition on cruel, inhuman or degrading treatment;

Particulars

This prohibition was applicable by reason of s 4(c) of the *Asylum Seekers (Regional Processing Centres) Act 2012* (Nr) and Article 16 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which Australia ratified on 8 August 1989 and which Nauru ratified on 26 September 2012. The interpretation of that Article is informed by the *UN Standard Minimum Rules for the Treatment of Prisoners*, rules 10, 14 and 20 (**UN Minimum Rules**).

In addition, for the Child Group Members only, the prohibition was applicable by reason of Articles 37(a) and 39 of the *Convention on the Rights of the Child (CRC)*. Australia ratified this treaty on 17 December 1990. Nauru acceded to this treaty on 27 July 1994.

- (b) a prohibition on arbitrary detention and/or deprivation of liberty except in accordance with such procedure as is established by law; and

Particulars

This prohibition was applicable by reason of:

- A. s 4(a) of the *Asylum Seekers (Regional Processing Centres) Act 2012* (Nr) and Article 26 of the *Convention relating to the Status of Refugees* which Australia ratified on 22 January 1954 and which Nauru ratified on 28 June 2011; see also UN High Commissioner for Refugees (UNHCR), *UNHCR monitoring visit to the Republic of Nauru*, 26 November 2013 especially at paragraphs 62, 63 and 90; and/or
- B. s 4(c) of the *Asylum Seekers (Regional Processing Centres) Act 2012* (Nr) and Article 9(1) of the *International Covenant on Civil and Political Rights (ICCPR)*, Article 9(1) which Australia ratified on 13 August 1980 and to which Nauru has “expressed an intention to be bound”; United Nations Human Rights Council Working Group on the Universal Periodic Review, *National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1*, 10th sess, UN Doc A/HRC/WG.6/10/NRU/1 (5 November 2010) at [32].

- (c) an obligation to treat those deprived of their liberty with humanity and with respect for the inherent dignity of the human person.

Particulars

This prohibition was applicable by reason of s 4(c) of the *Asylum Seekers (Regional Processing Centres) Act 2012* (Nr) and Article 10(1)

of the ICCPR. The interpretation of that Article is informed by the UN Minimum Rules.

107. By the operation of the Residence Condition on each RPC Visa in or including the name of the First Applicant, the Second Applicant and each Group Member, each of:
- (a) Mr Morrison by reason of his acts or omissions alleged in [71], [74], [75], [77];
 - (b) Mr Dutton by reason of his acts or omissions alleged in [76] and [78];
 - (c) Mr Bowles by reason of his acts or omissions alleged in [69], [71] and [74];
 - (d) Mr Pezzullo by reason of his acts or omissions alleged in [75], [76], [77] and [78]-

caused, for the duration of each RPC Visa in respect of which that Respondent authorised or directed or caused, or failed to prevent an application, request or grant for that RPC Visa (as the case may be), the First Applicant and/or the Second Applicant and each Group Member to be detained from his or her Arrival Date on Nauru until the earlier of his or her Last RPC Visa Date and 5 October 2015, and that detention was contrary to law for all or any of the reasons alleged at [80] and/or [96] to [98] (**the Unlawful Detention**).

Particulars

For Mr Morrison this is to be inferred from the matters alleged in [60], [62], [68A] and [73A].

For Mr Dutton this is to be inferred from the matters alleged in [60], [63], [68A] and [73A].

For Mr Bowles this is to be inferred from the matters alleged in [64] and [65] and the particulars subjoined thereto, [68A] and [73A].

For Mr Pezzullo this is to be inferred from the matters alleged in [64] and [66] and the particulars subjoined thereto, [68A] and [73A].

Further particulars will be provided following the completion of discovery.

108. By the operation of the Residence Condition on each RPC Visa in or including the name of the First Applicant, the Second Applicant and each Group Member, each of:

- (a) Mr Morrison by reason of his acts or omissions alleged in [71], [74], [75], [77];
- (b) Mr Dutton by reason of his acts or omissions alleged in [76] and [78];
- (c) Mr Bowles by reason of his acts or omissions alleged in [69], [71] and [74];
- (d) Mr Pezzullo by reason of his acts or omissions alleged in [75], [76], [77] and [78]-

caused, for the duration of each RPC Visa in respect of which that Respondent authorised or directed or caused, or failed to prevent an application, request or grant for that RPC Visa (as the case may be), the First Applicant and/or the Second Applicant and each Group Member to be detained from his or her Arrival Date on Nauru until the earlier of his or her Last RPC Visa Date and 5 October 2015.

Particulars

The Applicants refer to and repeat the allegations at [50] to [54] and the particulars subjoined to [107].

109. By the operation of the Residence Condition on each RPC Visa in or including the name of the First Applicant, the Second Applicant and each Group Member, each of:

- (a) Mr Morrison by reason of his acts or omissions alleged in [71], [74], [75], [77];
- (b) Mr Dutton by reason of his acts or omissions alleged in [76] and [78];
- (c) Mr Bowles by reason of his acts or omissions alleged in [69], [71] and [74];
- (d) Mr Pezzullo by reason of his acts or omissions alleged in [75], [76], [77] and [78]-

caused, for the duration of each RPC Visa in respect of which that Respondent authorised or directed or caused, or failed to prevent an application, request or

grant for that RPC Visa (as the case may be), the First Applicant and/or the Second Applicant and each Group Member to be, from his or her Arrival Date on Nauru until his or her Last RPC Visa Date, required to reside at a place where the only accommodation available to that person had one or more of the Tent Conditions.

Particulars

For Mr Morrison this is to be inferred from the matters alleged in [60], [62], [68A] and [73A].

For Mr Dutton this is to be inferred from the matters alleged in [60], [63], [68A] and [73A].

For Mr Bowles this is to be inferred from the matters alleged in [64] and [65] and the particulars subjoined thereto, [68A] and [73A].

For Mr Pezzullo this is to be inferred from the matters alleged in [64] and [66] and the particulars subjoined thereto, [68A] and [73A].

Further particulars will be provided following the completion of discovery.

110. The Unlawful Detention was in breach of:
- (a) the relevant human rights standard alleged in [106(a)]; and
 - (b) the relevant human rights standard alleged in [106(b)].
111. Each of the Tent Conditions, alternatively one or more of the Tent Conditions together, was in breach of:
- (a) the relevant human rights standard alleged in [106(a)]; and/or
 - (b) the relevant human rights standard alleged in [106(b)] until whichever is sooner of 5 October 2015 and the last RPC Visa date for each of the First Applicant, the Second Applicant and each Group Member; and/or
 - (c) the relevant human rights standard alleged in [106(c)] until whichever is sooner of 5 October 2015 and the last RPC Visa date for each of the First Applicant, the Second Applicant and each Group Member.

Particulars

The Applicants refer to and repeat the allegations at [50] to [54].

112. The Residence Condition with each of the Tent Conditions, alternatively one or more of the Tent Conditions together, was in breach of the relevant human rights standard alleged in [106(a)].
113. By reason of the facts and matters alleged in [107] to [112] or each or any of those allegations, each of Mr Morrison, Mr Dutton, Mr Bowles and/or Mr Pezzullo acted contrary to law.

Particulars

The Applicants refer to and repeat the allegations at [58] to [59].

114. Each of:
- (a) Mr Morrison; ~~and/or~~
 - (b) Mr Dutton; or
 - (c) both Mr Morrison and Mr Dutton;
- further or alternatively,
- (d) Mr Bowles; ~~and/or~~
 - (e) Mr Pezzullo-; or
 - (f) both Mr Bowles and Mr Pezzullo-

recklessly disregarded the means of ascertaining the extent of his power during the time each acted as alleged in [108]:

- A. to direct or authorise or cause each of the Visas to be applied for or requested in the name of each of the First Applicant, the Second Applicant and each Group Member;
- B. to prevent each of the Visas to be applied for or requested for each of the First Applicant, the Second Applicant and each Group Member,

so as to avoid the First Applicant and/or the Second Applicant and each Group Member being exposed to the Unlawful Detention and/or the detention and/or each of the Tent Conditions.

Particulars

~~A. The empowering law referred to is either or a combination of the MOU and s 198AHA of the Migration Act and executive power under s 61 of the Constitution.~~

~~B. In respect of Mr Bowles and Mr Pezzullo only, the empowering law includes *Public Service Act 1999 (Cth)* s 57, especially subsection (2)(c).~~

Compliance with the law required the implementation of measures directed at ensuring that the First Applicant, the Second Applicant and each Group Member not be exposed to:

- a. the Unlawful Detention; and/or
- b. the Residence Condition; and/or
- c. each of the Tent Conditions alternatively one or more the Tent Conditions,

insofar as those conditions do not treat the First Applicant, the Second Applicant and each Group Member “with dignity and respect and in accordance with relevant human rights standards”.

It is be inferred from the following that Mr Dutton, Mr Morrison, Mr Bowles and/or Mr Pezzullo were aware of the obligation in cl 17 of the MOU to treat the First Applicant, the Second Applicant and each Group Member “with dignity and respect and in accordance with relevant human rights standards”:

- (a) for Mr Morrison, he recited part of this clause when discussing the situation for asylum seekers on Nauru in public comments at a press conference on 1 November 2013;
- (b) for Mr Dutton, he recited part of this clause in an interview with ABC’s 7.30 Report on 11 August 2016 and NPR on 14 September 2016;
- (c) part of this clause was referred to in a submission from the Australian Department administered by Mr Morrison dated 27 October 2014 to the Australian Human Rights Commission’s inquiry entitled ‘The Forgotten Children: National Inquiry into Children in Immigration Detention’ delivered in November 2014, as recited at p 46 of the resulting report;
- (d) part of this clause was referred to in an official statement in ‘response to Amnesty International report on Nauru’ from the Australian Department administered by Mr Dutton dated 17 October 2016;
- (e) for Mr Morrison and Mr Dutton, during the period when each was the relevant Minister, they were each responsible for administering, and did administer, the Australian Department, including with respect to the implementation of the MOU, which necessarily involved giving consideration to, and taking legal advice and briefings, on matters concerning the obligations arising from the MOU including cl 17;

- (f) for Mr Bowles and Mr Pezzullo, during the period when each was the relevant Secretary, they were each responsible for implementing measures directed at ensuring that the Australian Department complied with the law, including with respect to the implementation of the MOU, which necessarily involved giving consideration to, and taking legal advice and briefings concerning the obligations arising from the MOU including cl 17;
- (g) for Mr Bowles, in particular, the fact that his time as the relevant Australian Secretary was during the negotiation and finalisation by the governments of Australia and Nauru of the MOU including cl 17;
- (h) for Mr Morrison and Mr Bowles, the fact that each of their time as the relevant Minister and Australian Secretary respectively was during the negotiation and finalisation by the governments of Australia and Nauru of the Administrative Arrangement under the MOU. Mr Bowles was the signatory on behalf of Australia to the Administrative Arrangement. According to a joint statement of Mr Morrison and Mr Adeang dated 11 April 2014, Mr Morrison met with Mr Adeang, the signatory for Nauru on the Administrative Arrangement, on the day prior to the signing for the purposes of the Joint Ministerial Forum to oversee implementation of the regional partnership between Australia and Nauru, which body provided 'oversight of the implementation of the Nauru arrangement';
- (i) for Mr Dutton and Mr Pezzullo, the fact that the Australian Department was at the relevant time the subject of a court proceeding in *Plaintiff M68/2015 v Minister for Immigration and Border Protection & Ors*, which concerned the extent of the power to administer the arrangements with Nauru. The proceeding involved submissions by the Australian Department concerning the process relating to RPC visas;

Further, it is to be inferred from the following that Mr Dutton, Mr Morrison, Mr Bowles and/or Mr Pezzullo recklessly disregarded whether the obligation to treat the First Applicant, the Second Applicant and each Group Member "with dignity and respect and in accordance with relevant human rights standards" was being complied with during their respective time as relevant Minister or relevant Australian Secretary:

- (j) the participation by each of Mr Morrison and Mr Dutton jointly leading regular meetings of the Joint Ministerial Forum to oversee implementation of regional partnership between Australia and Nauru, at which conditions at the RPCs were discussed. The role of this Forum was described by Mr Morrison in a press release issued on 11 April 2014, being the date on which the Administrative Arrangement was signed by Mr Bowles;
- (k) the fact that the failure to treat persons detained at the relevant times in the RPCs in accordance with relevant human rights

standards was the subject of consistent monitoring and widespread reporting by various human rights organisations and other bodies, including as set out in the particulars below:

- (l) in respect of Mr Bowles and Mr Morrison, the matters set out in the report of the Australian office of the UN High Commissioner for Refugees from its monitoring visit to Nauru dated 26 November 2013 which concluded that, viewed as a whole, UNHCR considers that the conditions at the RPC, coupled with the protracted period spent there by some asylum-seekers, raise serious issues about their compatibility with international human rights law, including the prohibition against torture and cruel, inhuman or degrading treatment (article 7, ICCPR), the right to humane conditions in detention (article 10, ICCPR) and the right to family life and privacy (article 17, ICCPR). Mr Morrison gave a response to the report at a press conference on 29 November 2013 and 13 December 2013 on the basis that he had 'reviewed' it;
- (m) for Mr Morrison, Mr Dutton and Mr Pezzullo:
 - (i) the Australian Human Rights Commission's report entitled 'The Forgotten Children: National Inquiry into Children in Immigration Detention' delivered in November 2014 following an inquiry conducted by the Australian Human Rights Commission Part 1.4 and chapter 5, in particular, identified breaches of the Convention on the Rights of the Child; p 36 and chapter 12 concerned relevant child human rights being breached on Nauru. Mr Morrison referred to the inquiry in February 2014 in a radio interview with Ray Hadley, 2GB The Ray Hadley Morning Show "Asylum seeker allegations, Operation Sovereign Borders, children in immigration detention, Australians fighting in Syria" Mr Morrison relevantly said: "they will make recommendations in relation to the various international conventions how they see that applying and that's their view and that has to be treated with respect and considered". Mr Pezzullo wrote a lengthy letter in response to the draft report to the Human Rights Commissioner on 27 October and 10 November 2014, including in respect of domestic and international law breaches;
 - (ii) the progress report delivered on 28 November 2014 and the final report delivered on 9 February 2015 of the 'Moss Review into recent allegations relating to conditions and circumstances at the RPC in Nauru'. Mr Dutton acknowledged detailed knowledge of the content of the report in a press release dated 9 May 2015 and 16 December 2016 as well as the joint media conference between Mr Dutton and Mr Pezzullo on 20 March 2015;

- (n) for Mr Dutton and Mr Pezzullo:
- (i) the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (Addendum) dated 5 March 2015 in which at [19] that ‘the Rapporteur concludes that there is substance in the allegations presented in the initial communication, reiterated above, and thus, that the Government of Australia, by failing to provide adequate detention conditions; end the practice of detention of children; and put a stop to the escalating violence and tension at the Regional Processing Centre, has violated the right of the asylum seekers, including children, to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 1 and 16 of the CAT.’;
 - (ii) the Amnesty International and Human Rights Watch ‘joint press release’ titled ‘Australia: Appalling abuse, neglect of refugees on Nauru’ published on 3 August 2016, which concluded that ‘By forcibly transferring refugees and people seeking asylum to Nauru, detaining them for prolonged periods in inhuman conditions, denying them appropriate medical care, and in other ways structuring its operations so that many experience a serious degradation of their mental health, the Australian government has violated the rights to be free from torture and other ill-treatment, and from arbitrary detention, as well as other fundamental protections.’ Page 98 of the document released by the Department of Home Affairs under the Freedom of Information Act 1982 shows that the press release was received by the Australian Department on 4 August 2016 and was subsequently the subject of an annotation “1. COO / DepSec” and an annotation “Urgent advice on allegations – are any news to us?” by Mr Pezzullo.

Further particulars will be provided following the completion of discovery.

115. There was a foreseeable risk of harm to the First Applicant, the Second Applicant and each Group Member by one or more of the following:
- (a) the Unlawful Detention; ~~and/or~~
 - (b) the detention; ~~and/or~~
 - (c) the Residence Condition; ~~and/or~~
 - (d) extended exposure to the Tent Conditions, or a combination of the Tent Conditions.

Particulars

The harm that was likely to ensue to the First Applicant, the Second Applicant and each Group Member was personal injury, including a psychiatric condition and/or mental disability.

Further and better particulars concerning the personal injury of the First Applicant, the Second Applicant and the Group Members will be provided following discovery, including discovery of his or her medical records from Nauru.

- (a) The risk of harm was foreseeable by each of Mr Morrison, Mr Dutton, Mr Bowles and Mr Pezzullo by reason of:
- (i) regular briefings on the situation for asylum seekers on Nauru that must have been prepared for and read by them;
 - (ii) prominent and regular media coverage and reports of human rights monitoring bodies (see for example, the report of the Australian Human Rights Commission titled 'The health and well-being of children in immigration detention' released on 4 February 2016) concerning the denial of relevant human rights to asylum seekers on Nauru;
 - (iii) their own observations of those conditions on visits to Nauru. Those visits included:
 1. Mr Morrison's visit in early October 2013, in respect of which Mr Morrison made public comments about the 'standard of care' and the services given to asylum seekers on 18 October 2013;
 2. Mr Burke on about 26 July 2013;
 3. Mr Bowles on about 26 July 2013;
 4. Mr Dutton on about 19 February 2015, in respect of which Mr Dutton made public comments about his visit 'within the regional processing centre' on 20 March 2015;
 5. Mr Pezzullo in early October 2016.

Further particulars will be provided following the completion of discovery.

116. Alternatively, each of:

- (a) Mr Morrison;
- (b) Mr Dutton; or
- (c) both Mr Morrison and Mr Dutton;

and further or alternatively,

- (d) Mr Bowles; ~~and~~
- (e) Mr Pezzullo; or
- (f) both Mr Bowles and Mr Pezzullo-

was recklessly indifferent to the harm that was likely to ensue to the First Applicant, the Second Applicant and each Group Member by reason of one or more of the following:

- (i) the Unlawful Detention; ~~and/or~~
- (ii) the detention; ~~and/or~~
- (iii) the Residence Condition; ~~and/or~~
- (iv) extended exposure to the Tent Conditions, or a combination of the Tent Conditions.

Particulars

The Applicant refers to and repeats the matters alleged at [93], [94] and [115].

~~The harm that was likely to ensue to the First Applicant, the Second Applicant and each Group Member was personal injury, including a psychiatric condition and/or mental disability. Further and better particulars concerning the personal injury of the First Applicant, the Second Applicant and the Group Members will be provided following discovery, including discovery of his or her medical records from Nauru.~~

117. Each of:

- (a) the First Applicant; ~~and~~
- (b) the Second Applicant; and
- (c) the Group Members,

suffered, and continues to suffer, loss and damage caused by reason of one or more of the following:

- (i) the Unlawful Detention; ~~and/or~~
- (ii) the detention; ~~and/or~~
- (iii) the Residence Condition; ~~and/or~~
- (iv) extended exposure to a combination of the Tent Conditions, ~~or a combination of the Tent Conditions.~~

Particulars

The loss and damage to the First Applicant, the Second Applicant and each Group Member was personal injury, including a psychiatric condition and/or mental disability.

Further and better particulars concerning the personal injury of the First Applicant, the Second Applicant and the Group Members will be provided following discovery, including discovery of his or her medical records from Nauru.

L. MIPO #4: CHILD RIGHTS WERE BREACHED – CAUSE INOF ACTION AGAINST MESSRS MORRISON, DUTTON, BOWLES, PEZZULLO

118. The Second Applicant and the Child Group Members refer to and repeat [103] to [105].

119. At all times since 3 August 2013, the “relevant human rights standards” for the purposes of the MOU included the right of each child to:

- (a) only be detained as a measure of last resort; and/or
- (b) when deprived of his or her liberty, be treated in a manner which takes into account the needs of persons of his or her age; and/or

Particulars

CRC Articles 22(1) and 37(b) and Migration Act s 4AA.

- (c) education and/or access to education.

Particulars

CRC Articles 22(1) and 28, *Education Act 2011* (Nr) ss 7(a) and 73(2).

120. By operation of the Residence Condition on each RPC Visa in or including the name of the Second Applicant and each Child Group Member, each of:

- (a) Mr Morrison by reason of his acts or omissions alleged in [71], [74], [75], [77];
- (b) Mr Dutton by reason of his acts or omissions alleged in [76] and [78];
- (c) Mr Bowles by reason of his acts or omissions alleged in [69], [71] and [74];
- (d) Mr Pezzullo by reason of his acts or omissions alleged in [75], [76], [77] and [78]-

caused, for the duration of each RPC Visa in respect of which that Respondent authorised or directed or caused, or failed to prevent an application, request or grant for that RPC Visa (as the case may be), the Second Applicant and each Child Group Member to be deprived of his or her liberty as a first and only resort until the earlier for that person of:

- (e) 5 October 2015; or

- (f) on or about the Last RPC Visa Date; or
- (g) the date each last departed Nauru (the **First Resort Detention**).

Particulars

For Mr Morrison this is to be inferred from the matters alleged in [60], [62], [68A] and [73A].

For Mr Dutton this is to be inferred from the matters alleged in [60], [63], [68A] and [73A].

For Mr Bowles this is to be inferred from the matters alleged in [64] and [65] and the particulars subjoined thereto, [68A] and [73A].

For Mr Pezzullo this is to be inferred from the matters alleged in [64] and [66] and the particulars subjoined thereto, [68A] and [73A].

Further particulars will be provided following the completion of discovery.

The First Resort Detention was in breach of the relevant human rights standard in [119(a)].

121. By operation of the No Education Condition on each RPC visa in or including the name of the Second Applicant and each Child Group Member, each of:
- (a) Mr Morrison by reason of his acts or omissions alleged in [71], [74], [75], [77];
 - (b) Mr Dutton by reason of his acts or omissions alleged in [76] and [78];
 - (c) Mr Bowles by reason of his acts or omissions alleged in [69], [71] and [74];
 - (d) Mr Pezzullo by reason of his acts or omissions alleged in [75], [76], [77] and [78]-

caused, for the duration of each RPC Visa in respect of which that Respondent authorised or directed or caused, or failed to prevent an application, request or grant for that RPC Visa (as the case may be), the Second Applicant and each Child Group Member to be deprived of his or her:

- (e) right to be treated in a manner which takes into account the needs of persons of his or her age;

(f) education and/or access to education (the **Education Prohibition**),

for the period each Respondent held the relevant public office for each of them:

(g) for the Second Applicant, from the Nauru Arrival Date until the Last RPC Visa Date; and

(h) for each Child Group Member:

(i) from the first day after the first 1 January when each was more than four years old;

(ii) until:

1. the Last RPC Visa Date; or

2. the date that Child Group Member reached the age of eighteen,

whichever is sooner, if ever (the **Education Right End Date**).

Particulars

CRC Article 1, *Education Act 2011* (Nr) s 6 definition of 'school-age child'.

For Mr Morrison this is to be inferred from the matters alleged in [60], [62], [68A] and [73A].

For Mr Dutton this is to be inferred from the matters alleged in [60], [63], [68A] and [73A].

For Mr Bowles this is to be inferred from the matters alleged in [64] and [65] and the particulars subjoined thereto, [68A] and [73A].

For Mr Pezzullo this is to be inferred from the matters alleged in [64] and [66] and the particulars subjoined thereto, [68A] and [73A].

Further particulars will be provided following the completion of discovery.

122. The Education Prohibition was in breach of:

(a) the relevant human rights standard in [119(b)]; and

(b) the relevant human rights standard in [119(c)].

Particulars

For Mr Morrison this is to be inferred from the matters alleged in [60], [62], [68A] and [73A].

For Mr Dutton this is to be inferred from the matters alleged in [60], [63], [68A] and [73A].

For Mr Bowles this is to be inferred from the matters alleged in [64] and [65] and the particulars subjoined thereto, [68A] and [73A].

For Mr Pezzullo this is to be inferred from the matters alleged in [64] and [66] and the particulars subjoined thereto, [68A] and [73A].

Further particulars will be provided following the completion of discovery.

123. By reason of the facts and matters alleged in [107] to [111], including the paragraphs referred to therein, each of Mr Morrison, Mr Dutton, Mr Bowles and Mr Pezzullo acted contrary to law.

124. Each of:

- (a) Mr Morrison; ~~and/or~~
- (b) Mr Dutton; or
- (c) both Mr Morrison and Mr Dutton;

further or alternatively,

- (d) Mr Bowles; ~~and/or~~
- (e) Mr Pezzullo-; or
- (f) both Mr Bowles and Mr Pezzullo-

recklessly disregarded the means of ascertaining the extent of his power to direct or authorise or cause the implementation of measures directed at ensuring compliance with the law, specifically s 198AHA of the Migration Act and/or the executive power under s 61 of the Constitution, so as to prevent the Second Applicant and each Child Group Member from the First Resort Detention and/or the Education Prohibition.

Particulars

~~A. The empowering law referred to is either or a combination of the MOU and s 198AHA of the Migration Act and executive power under s 61 of the Constitution.~~

~~B. In respect of Mr Bowles and Mr Pezzullo only, the empowering law includes *Public Service Act 1999* (Cth) s 57, especially subsection (2)(c).~~

C. Compliance with the law required the implementation of measures directed at ensuring that the Second Applicant and each Group Member not be exposed to:

- a. the First Resort Detention; and/or
- b. the Education Prohibition;

insofar as they do not treat the Second Applicant and all Child Group Members “with dignity and respect and in accordance with relevant human rights standards”.

D. Such measures included:

- a. not directing or authorising or causing each the RPC Visas to be applied for or requested for each of the Second Applicant and each Child Group Member;
- b. not preventing each the RPC Visas to be applied for or requested for each of the Second Applicant and each Child Group Member.

The Applicants refer to and repeats the particulars subjoined to [114] above.

125. There was a foreseeable risk of harm to the Second Applicant and each Child Group Member by:

- (a) the First Resort Detention; and/or
- (b) the Education Prohibition.

Particulars

The harm that was likely to ensue to the Second Applicant and each Child Group Member was deprivation of liberty (in respect of a. only) and/or personal injury, including a psychiatric condition and/or mental disability.

The Applicants refer to and repeats the particulars to [115] above.

Further and better particulars concerning the personal injury of the Second Applicant will be provided following discovery, including discovery of his medical records from Nauru.

126. Alternatively, each of:

- (a) Mr Morrison;
- (b) Mr Dutton;
- (c) Mr Bowles; and
- (d) Mr Pezzullo-

was recklessly indifferent to the harm that was likely to ensue to the Second Applicant and each Child Group Member by reason of:

- (i) the First Resort Detention; and/or
- (ii) the Education Prohibition.

Particulars

The Second Applicant refers to and repeats the particulars subjoined to [93], [94] and [125].

127. Each of:

- (a) the Second Applicant; and
- (b) each Child Group Member,

suffered, and continues to suffer, loss and damage caused by reason of:

- (c) the First Resort Detention; and/or
- (d) the Education Prohibition.

Particulars

The loss and damage for the Second Applicant and each Child Group Member was:

- (a) deprivation of liberty from each of their Arrival Date on Nauru or their date of birth on Nauru, whichever is applicable; and
- (b) personal injury including a psychiatric condition, mental disability and injury resulting from detention and/or deprivation of education.

Further and better particulars concerning the Second Applicant personal injury will be provided following discovery, including discovery of his medical records from Nauru.

M. DIRECT AND VICARIOUS LIABILITY

Direct liability of Mr Morrison and direct or vicarious liability of Australia for Mr Morrison's misfeasance

128. Mr Morrison is liable for the tort of misfeasance of public office by reason of each of the allegations against him under the heading identified as:

- (a) MIPO #1; and/or
- (b) MIPO #2; and/or
- (c) MIPO #3; and/or
- (d) MIPO #4.

129. Mr Morrison's:

- (a) acts and omissions done or omitted to be done (**Conduct**); and
- (b) state of mind-

alleged in this statement of claim was the Conduct and state of mind of Australia.

Particulars

Mr Morrison was acting as Australia, and was its "the hands and brains", for Mr Morrison's Conduct and state of mind.

130. In the premises, Australia is directly liable for the Conduct of Mr Morrison and the tort referred to in [128].

131. Alternatively to [129] and [130], Australia is vicariously liable for the Conduct of Mr Morrison done or omitted to be done and the tort referred to in [128].

Particulars

Mr Morrison was acting within the de facto authority of Australia.

Direct liability of Mr Dutton and direct or vicarious liability of Australia for Mr Dutton's misfeasance

132. Mr Dutton is liable for the tort of misfeasance of public office by reason of each of the allegations against him under the heading identified as:

- (a) MIPO #1; and/or

- (b) MIPO #2; and/or
- (c) MIPO #3; and/or
- (d) MIPO #4.

133. Mr Dutton's:

- (a) Conduct; and
- (b) state of mind-

alleged in this statement of claim was the Conduct and state of mind of Australia.

Particulars

Mr Dutton was acting as Australia, and was its "the hands and brains", for Mr Dutton's Conduct and state of mind.

134. In the premises, Australia is directly liable for the Conduct of Mr Dutton and the tort referred to in [132].
135. Alternatively to [133] and [134], Australia is vicariously liable for the Conduct of Mr Dutton done or omitted to be done and the tort referred to in [132].

Particulars

Mr Dutton was acting within the de facto authority of Australia.

Direct liability of Mr Burke and direct or vicarious liability of Australia for Mr Burke's misfeasance

136. Mr Burke is liable for the tort of misfeasance of public office by reason of each of the allegations against him under the heading identified as:
- (a) MIPO #1; and/or
 - (b) MIPO #2.
137. Mr Burke's:
- (a) Conduct; and
 - (b) state of mind-

alleged in this statement of claim was the Conduct and state of mind of Australia.

Particulars

Mr Burke was acting as Australia, and was its “the hands and brains”, for Mr Burke’s Conduct and state of mind.

138. In the premises, Australia is directly liable for the Conduct of Mr Burke and the tort referred to in [136].
139. Alternatively to [137] and [138], Australia is vicariously liable for the Conduct of Mr Burke done or omitted to be done and the tort referred to in [136].

Particulars

Mr Burke was acting within the de facto authority of Australia.

Direct liability of Mr Bowles and direct or vicarious liability of Australia for Mr Bowles’ misfeasance

140. Mr Bowles is liable for the tort of misfeasance of public office by reason of each of the allegations against him under the heading identified as:
- (a) MIPO #1; and/or
 - (b) MIPO #2; and/or
 - (c) MIPO #3; and/or
 - (d) MIPO #4.
141. Mr Bowles’:
- (a) Conduct; and
 - (b) state of mind-

alleged in this statement of claim was the Conduct and state of mind of Australia.

Particulars

Mr Bowles was acting as Australia, and was its “the hands and brains”, for Mr Bowles’ Conduct and state of mind.

142. In the premises, Australia is directly liable for the Conduct of Mr Bowles and the tort referred to in [140].
143. Alternatively to [141] and [142], Australia is vicariously liable for the Conduct of Mr Bowles done or omitted to be done and the tort referred to in [140].

Particulars

Mr Bowles was acting within the de facto authority Australia.

Direct liability of Mr Pezzullo and direct or vicarious liability of Australia for Mr Pezzullo's misfeasance

144. Mr Pezzullo is liable for the tort of misfeasance of public office by reason of each of the allegations against him under the heading identified as:

- (a) MIPO #1; and/or
- (b) MIPO #2; and/or
- (c) MIPO #3; and/or
- (d) MIPO #4.

145. Mr Pezzullo's:

- (a) Conduct; and
- (b) state of mind-

alleged in this statement of claim was the Conduct and state of mind of Australia.

Particulars

Mr Pezzullo was acting as Australia, and was its "the hands and brains", for Mr Pezzullo's Conduct and state of mind.

146. Australia is directly liable for the Conduct of Mr Pezzullo and the tort referred to in [144].

147. Alternatively to [145] and [146], Australia is vicariously liable for the Conduct of Mr Pezzullo done or omitted to be done and the tort referred to in [144].

Particulars

Mr Pezzullo was acting within the de facto authority of Australia.

And the First Applicant, the Second Applicant and each Group Member claim:

A. The relief set out in the Amended Originating Application filed 27 August 2019.

Date: ~~27 August 2019~~ 8 November 2019



Signed by Paul Zawa
Lawyer for the Applicants

This pleading was prepared by B F Quinn of Her Majesty's Counsel and M Albert and E Levine of Counsel.

Certificate of lawyer

I, Paul Edward Zawa, certify to the Court that, in relation to the further amended statement of claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 8 November 2019



Signed by Paul Zawa
Lawyer for the Applicants

Schedule

No. VID 816 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

First Respondent:	Scott Morrison
Second Respondent:	Peter Dutton
Third Respondent:	Tony Burke
Fourth Respondent:	Martin Bowles
Fifth Respondent:	Michael Pezzullo
Sixth Respondent:	Commonwealth of Australia