

GERNER & ANOR v. THE STATE OF VICTORIA (M104/2020)

Date writ of summons filed: 12 October 2020

Date demurrer referred to Full Court: 20 October 2020

On 16 March 2020, in the face of the COVID-19 pandemic, a state of emergency was declared in Victoria under s 198(1) of the *Public Health and Wellbeing Act 2008* (Vic) ("the Act"). Acting under s 198(7)(c) of the Act, the Minister for Health extended the state of emergency declaration on multiple occasions to operate between April and November 2020. Under section 200 of the Act, various Directions were issued to restrict the movement of Victorian residents (both at home and at work) and to designate restricted areas. Collectively, these Directions are colloquially known as the 'lockdown laws'.

The first plaintiff is a resident of, and conducts a business in, a restricted area. As a result of the lockdown laws: the first plaintiff is prohibited from moving freely within Victoria; residents are prohibited from moving to the first plaintiff's business to purchase its goods and services; and employees of the business are prohibited from moving to and working on the premises of the business. As a result, the business has been and continues to suffer detriment in that it cannot earn income from its usual conduct.

The first plaintiff claims that the lockdown laws are constitutionally invalid because:

- their terms, operation or effect, impose an effective burden on the implied Freedom of Movement;
- they have no legitimate purpose that is compatible with the constitutionally prescribed system of federation, or with the system of representative and responsible government;
- they are not reasonably appropriate or adapted to serve any legitimate purpose in a manner that is compatible with the maintenance of the constitutionally prescribed system of federation or the system of representative and responsible government.

On 20 October 2020 Justice Keane referred the demurrer for consideration by the Full Court. The plaintiffs claim:

- A declaration that s 200(1)(b) and (d) of the Act are invalid by reason of an implied freedom of movement in the Constitution.
- Alternatively, a declaration that the lockdown laws made under s 200 of the Act are invalid by reason of an implied freedom of movement in the Constitution.
- Costs.

A Notice of a Constitutional Matter was filed by the Plaintiffs. The Attorneys - General of Western Australia, Queensland, South Australia, Tasmania and the Northern Territory are intervening in the proceeding