IN THE MAGISTRATES
COURT OF VICTORIA
CASES Nos: L12182685 & L12090647

DATE: 21 June 2022

R v SOLIHIN MILLIN
SPECIAL MENTION ON DISCLOSURE ISSUES
SUBMISSIONS FOR THE ACCUSED

1. The remaining charges in this matter are:

   A. Contravene Condition of Bail – section 30A(1) *Bail Act 1977*; and

   B. Publish Record of Interview – section 464JA.7 *Crimes Act 1958*.

2. The police case on both charges rests upon, inter alia, the alleged legality of the *Stay at Home Directions (SAHDs)* in question. The legality of the said *SAHDs* rest upon, inter alia, the legality of the *Declaration of Emergency* (and its relevant extensions). However, neither instrument is an Act of parliament. Both are subordinate instruments. The prosecution relies upon the Presumption of Validity of subordinate instruments. However, the accused does not concede the legality of both instruments, submitting that:

   (i) The Presumption of Validity does not apply in this case; therefore

   (ii) The prosecution must prove the legality of the *SAHDs* beyond reasonable doubt (which requires it to prove, inter alia, the legality of the *Declaration of Emergency*); and

   (iii) Must disclose the evidence upon which the prosecution relies upon as the alleged proof of the legality of the said instruments as part of its duty of disclosure in criminal proceedings.

Relevant Public Health Act Provisions

3. At the relevant times, section 198 of the *PHWA* stated (emphasis mine):

> (1) The Minister may, on the advice of the Chief Health Officer and after consultation with the Minister and the Emergency Management Commissioner under the Emergency Management Act 2013, declare a state of emergency arising out of any circumstances causing a **serious risk to public health**.
>
> (2) Subject to subsection (3), the Minister may at any time revoke or vary a declaration under this section.

(3) The Minister must consult with the Minister and the Emergency Management Commissioner under the Emergency Management Act 2013 before varying a declaration under this section to extend the emergency area.

(4) Immediately upon the making, revocation or variation of a declaration under this section, a state of emergency exists, ceases to exist or exists as so varied for the purposes of this Part.

(5) As soon as practicable after the making, revocation or variation of a declaration under this section, the Minister must cause notice of the making, revocation or variation of the declaration to be—

(a) broadcast from a broadcasting station in Victoria; and

(b) in the case of the making or variation of a declaration, published with a copy of the declaration in the Government Gazette; and

(c) in the case of the revocation of a declaration, published in the Government Gazette.

(6) Production of a Government Gazette purporting to contain—

(a) notice of the making, revocation or variation of a declaration under this section is evidence of that making, revocation or variation; and

(b) a copy of the declaration under this section is evidence of the terms of the declaration.

(7) A declaration under this section—

(a) must specify the emergency area in which the state of emergency exists being throughout Victoria or in specified areas of Victoria;

(b) continues in force for the period not exceeding 4 weeks specified in the declaration;

(c) may be extended by another declaration for further periods not exceeding 4 weeks but the total period that the declaration continues in force cannot exceed 6 months.

(8) If a state of emergency is declared under this section, the Minister must report on the state of the emergency and the public health risk powers and emergency powers exercised to both Houses of Parliament—

(a) if Parliament is then sitting, as soon as practicable after the declaration is made or varied; and

(b) if Parliament is not then sitting, as soon as practicable after the next meeting of the Parliament.

(9) A declaration under this section does not derogate from or limit any provisions relating to the declaration of an emergency under any other Act

4. At the relevant times, section 199 of the *PHWA* stated (emphasis mine):

(1) This section applies if—

(a) a **state of emergency** exists under section 198; and

(b) the Chief Health Officer believes that it is necessary to grant an authorisation under this section to eliminate or reduce **a serious risk to public health**.

(2) If this section applies, the Chief Health Officer may, for the purpose of eliminating or reducing the **serious risk to public health**, authorise—

(a) authorised officers appointed by the Secretary to exercise any of the public health risk powers and emergency powers; and

(b) if specified in the authorisation, a specified class or classes of authorised officers appointed by a specified Council or Councils to exercise any of the public health risk powers and emergency powers.

(3) The Chief Health Officer may at any time revoke or vary an authorisation given under this section.

5. Furthermore, at all relevant times section 5 of the *PHWA* stated:

Decisions as to—

(a) the most effective use of resources to promote and protect public health and wellbeing; and

(b) the most effective and efficient public health and wellbeing interventions—

should be based on **evidence** available in the circumstances that is **relevant** and **reliable**. (emphasis mine)

6. The *SAHDs* in question are not, therefore, an act of legislation passed by both houses of parliament. Instead, they are subordinate instruments that may be lawfully made by individual office holders **ONLY IF** the criteria for the exercise of that power is first satisfied. In this case, that criteria includes:

(i) that at all relevant times;

(ii) the relevant officers of the State of Victoria determined;

(iii) by reference to evidence that was relevant and reliable;

(iv) that Novel Coronavirus Sars-Cov-2 (SC2) was a "**serious risk to public health**".

7. "***Serious risk to public health***" is defined in section 3 of the *PHWA* to mean *"a material risk that substantial injury or prejudice to the health of human beings has or may occur having regard to—*

(a) the number of persons likely to be affected;

(b) the location, immediacy and seriousness of the threat to the health of persons;

(c) the nature, scale and effects of the harm, illness or injury that may develop;

(d) *the availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce the risk to the health of human beings".*

8. Presumably then, at all relevant times the relevant officers of the government of Victoria determined that "*Novel Coronavirus 2019 (2019-nCoV*)" was a "***serious risk to public health*"** for the purpose of the *SAHDs* in question. However, and contrary to the principles of transparency and accountability enunciated in section 8 of the *PHWA*, the government of Victoria persistently refused to disclose the basis upon which it allegedly determined that "*Novel Coronavirus 2019 (2019-nCoV*)" was a "***serious risk to public health***", even to another member of parliament: *Davis v Department of Health (Review and Regulation) [2021] VCAT 1490 (9 December 2021); and*

   (i) *https://www.theaustralian.com.au/breaking-news/andrews-government-ordered-to-reveal-secret-documents-that-justify-victorian-lockdown/news-story/4954176823fbf13b4e3e2c6ae1d56d98*, in which the Honourary David Davis MP is said to have called it a "scandal"; and

   (ii) https://www.news.com.au/national/victoria/politics/daniel-andrews-government-fighting-release-of-covid-documents-liberal-mp-david-davis-says/news-story/b1a77799f39cdeb30e636ef6208941ce, in which the Honourary David Davis MP is said to have called it a "cover up, pure and simple".

   (copies of both articles are attached hereto for convenience).

9. There was also persistent government refusal to make similar disclosure at the Federal level: *Davis v Department of Premier and Cabinet (Review and Regulation) [2022] VCAT 254*.

The Scientific Contention

10. Additionally, at all relevant times (and continuing until the present) there appeared to be an inescapable consensus amongst many leading scientific and medical experts to the effect that the government got it wrong! Their reasons include:

    (a) the validity/invalidity of the purported in-silico isolation of "*Novel Coronavirus 2019 (2019-nCoV)"* (hereafter referred to as "SC2") process vis-à-vis the actual physical isolation of a virus to the traditional standard postulated by Mr Robert Koch or even those postulated by Mr Thomas M. River:

    - https://www.samueleckert.net/isolate-truth-fund/?fbclid=IwAR0_25HuiMlA3Al8AGVbg1-KQ_6iRmFZcH9O9XBcZmF_sdQIYJ6ZHqMdNUE
    - https://thefreedomarticles.com/10-reasons-sars-cov-2-imaginary-digital-theoretical-virus/

(b) the adequacy/inadequacy of the Reverse Transcriptase Polymerase Chain Reaction Test Protocol established by the Corman Drosten Paper (hereafter referred to as "the RT-PCR Test") for detecting SC2 vis-a-vis the Corman Drosten Review Report, in which the esteemed circa 22 co-authors clearly state, "*In light of our re-examination of the test protocol to identify SARS-CoV-2 described in the Corman-Drosten paper we have identified concerning errors and inherent fallacies which render the SARS-CoV-2 PCR test useless*": https://cormandrostenreview.com/report/

(c) C19 "cases" in Australia based on RT-PCR Test Cycle Thresholds above 40: eg, https://www.pathology.health.nsw.gov.au/covid-19-info/sars-cov2-nat?fbclid=IwAR08rJFcAj94oZcSFkQxOOmcV_50X80jHw2tB5vM_uOBBUVVsiM1jB-J3HI which, according to the Review Report mentioned in paragraph 11(b) above and too many other sources, including even the infamous Dr Anthony Fauci himself, renders the results useless: https://principia-scientific.com/dr-fauci-admits-covid-test-picks-up-harmless-dead-virus/

(d) the ability/inability of the RT-PCR Test to distinguish between "*Novel Coronavirus 2019 (2019-nCoV)*" and Influenza:

- https://www.cdc.gov/csels/dls/locs/2021/07-21-2021-lab-alert-Changes_CDC_RT-PCR_SARS-CoV-2_Testing_1.html
- https://www.bgi.com/global/molecular-genetics/3-in-1-test/

(e) the availability, safety and effectiveness of off-label treatments like Ivermectin and Hydroxychloroquine when used in conjunction with other medications to prevent, treat and/or cure C19; eg, https://covexit.com/we-know-its-curable-its-easier-than-treating-the-flu-professor-thomas-borody/?fbclid=IwAR1RpIuIMiS-_ZsMHvv3O_cJGyis-DOV99QRlb--FhZGICyKIP6yCSQY1-I ; https://www.francesoir.fr/sites/francesoir/files/media-icons/bird-proceedings-02-03-2021-v151.pdf and https://drive.google.com/file/d/1-gsn_Ye2EYDDkV_79Ag1tgUqZLNCMSt-/view

(f) the absence of evidence of SC2 being a "***serious risk to public health***" in the objective data of the relevant time. For example,

- the main risk category were the old, sick and immune compromised, akin to a mild flu; https://www.health.gov.au/sites/default/files/documents/2020/08/coronavirus-covid-19-at-a-glance-16-august-2020.pdf

- the role played by comorbidities in artificially inflating C19 death statistics; https://www.abs.gov.au/articles/covid-19-mortality-0

- influenza and pneumonia were mistaken for C19, noting:

i. symptoms are mostly identical and it's difficult if not impossible to distinguish between influenza and C19 using the RT-PCR Test; https://www.cdc.gov/csels/dls/locs/2021/07-21-2021-lab-alert-Changes_CDC_RT-PCR_SARS-CoV-2_Testing_1.html & https://www.bgi.com/global/molecular-genetics/3-in-1-test/

ii. significant drop in Influenza cases in Australia during the relevant period: https://www1.health.gov.au/internet/main/publishing.nsf/Content/9900391582DCDF64CA2585D100805DC5/$File/flu-10-2020.pdf

- low infection fatality rates of C19, akin to a mild flu; https://www.health.gov.au/sites/default/files/documents/2020/08/coronavirus-covid-19-at-a-glance-16-august-2020.pdf

- asymptomatic transmission was likely very rare to non-existent; https://www.youtube.com/watch?v=NQTBlbx1Xjs https://www.nature.com/articles/s41467-020-19802-w

- most "cases" that triggered the giving of the Directions were probably asymptomatic false positives (sub-paragraphs 10(b)-(d) above);

- no significant variation in death rate from pre-C19 years averages (nationally and globally); https://www.macrotrends.net/countries/AUS/australia/death-rate

- hospital admissions data not reflective of a pandemic: https://covidlive.com.au/report/daily-hospitalised/aus?fbclid=IwAR3DImqoeOGiSMGeADk_RbwEWKmJGf-YZjdA9o3lGiwedjIv_ZnqmC9qkv8

The Legal Contention

11. Some successful legal challenges are worth noting here:

(a) In Portugal, it appears that at first instance and again on appeal before 2 judges, the quarantine of persons based on a positive RT-PCR Test alone is unlawful because the test is too unreliable at high cycle thresholds: https://www.manilatimes.net/2021/02/27/opinion/columnists/topanalysis/historic-portuguese-ruling-on-pcr-test-germans-holding-an-inquiry/845714

(b) There appears to be a similar precedent in Austria, and possibly Brussels: https://www.italy24news.com/world/5443.html?fbclid=IwAR3AcwAjz60BBu2JE8eCfNlZLPQNcy0dGPS0PoceO2acCDFAt1RmHcoWBt8

(c) In Manitoba, expert testimony adduced by the government of Manitoba raises legitimate concerns about the utility of testing for C19 using the RT-PCR Test: https://www.jccf.ca/manitoba-chief-microbiologist-and-laboratory-specialist-56-of-positive-cases-are-not-infectious/?fbclid=IwAR2tNbyaa4dCffJz9pOsq9V4KmW-LFmR5_T3Cv4k_aXhSWYCkA5hCErC6ZU

12. Therefore, the matters stated at paragraphs 8 to 12 above raise legitimate doubts as to the legality of the *SAHDs* in question.

Collateral Challenge

13. The prosecution submission expressed to date appears to be that the prosecution is not required to prove the legality of the *SAHDs* in question and, therefore, it is not required to disclose the evidence upon which their legality is alleged. Further, if the accused requires that evidence then he may subpoena it. Additionally, any challenge to the legality of the *SAHDs* should be made via judicial review proceedings in the appropriate forum – not in criminal charges in criminal courts.

14. However, the law in Australia is clear: in the absence of clear statutory intention to the contrary, the accused may collaterally challenge the validity of the *Declaration of Emergency/SAHDs* in these proceedings: Ousely v R [1997] HCA 49; Widgee Shire Council v Bonne [1907] HCA 11; *Dignan v Australian Steamships Pty Ltd [1931] HCA 19; Federal Airports Corporation v Aerolineas Argentinas& Ors [1997] FCA 723.* In fact, the Anti-fragmentation principle strongly inclines the courts towards permitting the accused to collaterally challenge the legality of the *Declaration of Emergency/SAHDs* in these proceedings**:** *Stenner v Crime and Corruption Commission & Ors [2019]* as per Ryan J at [107].

The Presumption of Validity/Onus of Proof

15. At its highest, the accused need only point to facts or circumstances that raise a doubt as to the validity of the *Declaration of Emergency/SAHD*s to rebut any presumption of their validity, after which the State must prove their validity beyond reasonable doubt in accordance with the standard principles of the criminal law: *Selby v Pennings (1998) 19 WAR 520,* which followed *Bolton v Dance [1968] VR 631* and *Boddington v British Transport Police [1998] 2 WLR 639,* particularly Lords Irvine and Steyn.

16. Selby was decided by reference to the words stipulated in s43(3) of the Interpretation Act (WA) – "It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of subsidiary legislation have been complied with and performed." However, IPP J made the following observations:

- "On any examination of the authorities it is apparent that the application of the presumption is not dependent on some readily defined principle, but on the peculiar circumstances of each particular case.": IPP J p16;
- "The words "evidence to the contrary" are not apt to impose any burden of proof on a defendant, **even on the balance of probabilities**. It is enough if the defendant can point to evidence to the contrary, either in the evidence for the prosecution or in the evidence for the defence or in both", adopting Cooke J's judgment in *Machirus v Police* [1983] NZLR 764 on the meaning of the words "evidence to the contrary": IPP J p16 (emphasis mine);
- "There are diverging lines of authority as to whether the common law presumption of regularity applies **at all** in criminal proceedings": IPP J p19 (emphasis mine) (endorsed by Owen J at p5);
- "In *Schlieske v Federal Republic of Germany* (1987) 14 FCR 424 the Full Court of the Federal Court said at 432: "There is no room for presumptions in favour of the executive where the liberty of the subject is concerned: see *Dillon v The Queen* [1982] AC 484 at 487."": IPP J p 20;
- "the application of the presumption of regularity is a flexible concept, and its application in criminal cases **is restricted**.": IPP J p21 (emphasis mine);
- "It seems to me that the authorities as a whole establish, generally, that where, in a criminal case, a challenge is made to the due performance of a condition essential to the validity of an administrative act on which the offence depends, there is a reluctance on the part of the courts to apply the presumption of regularity. In my opinion, if the presumption is indeed to be applied in these circumstances, it would readily be rebutted by evidence that raises a doubt as to whether the condition has been duly performed. A court would not take a stringent view as to the weight of evidence required.": IPP J p21

17. Owen J made the following comments in Selby:

- "Like Ipp J, I think it is an open question (and one that it is not necessary to decide in this case) whether the presumption (either at common law or under the statute) applies **at all** in a criminal case. Clearly, the fact that it arises in the context of a criminal prosecution will be one of the factors to be taken into account in determining its applicability.": Owen J p5 (emphasis mine);
- "I also think the presumption does not shift the burden of proof. In the absence of a clear statutory statement to the contrary the burden of proof in a criminal case remains on the Crown.": Owen J p5;
- "I think it is sufficient to say that the defendant must point to evidence that raises in the mind of the tribunal of fact a doubt (going beyond mere trivia or speculation) as to the validity of the impugned act. Once that has happened the focus of attention reverts to the Crown in accordance with standard principles of the criminal law.": Owen J p5 in reference to the phrase "in the absence of evidence to the contrary" stipulated in the s43(3) in question therein.

Conclusion

18. Therefore, the accused legitimately points to the matters referred to in paragraphs 5 to 12 above to rebut any presumption of validity of the *SAHDs* in question, in accordance with his right as an accused to put the prosecution to proof on all disputed issues. The prosecution must, therefore, prove the legality of the *SAHDs* beyond reasonable doubt. The interests of justice require the prosecution to disclose (as part of its brief) the evidence upon which it alleges that the *SAHD's* in question are valid so that the accused may know the case that he must answer **before** he is required to answer it, as per standard criminal law practice and procedure.

19. Further, the prosecutor is unable to avoid its duty of disclosure by asserting that it's not in possession of the evidence upon which the relevant officers of the State determined that at all relevant times SC2 was a serious risk to public health. The evidence, if any, must be in the possession of another department of the State of Victoria and can readily be gathered, compiled and served by way of full brief disclosure. The duty to make enquiries as an extension of the prosecutor's duty of disclosure is accepted law in New South Wales: *Marwan v DPP [2019] NSWCCA 161* and in the Australian Capital Territory: Eastman v DPP (NO.13) [2016] ACTCA 65. Therefore, it is not inappropriate to apply it in this case.

20. Finally, requiring the accused to subpoena the material in question misplaces the onus of proof on the accused, whom would have to shoot blindly at the case that he must answer in the absence of fair and proper disclosure on the issue. That would likely lead to an unfair trial, making basis for an application for a stay of these proceedings pending full and proper disclosure of the prosecution case and, ultimately, unnecessarily increasing the costs upon all parties – particularly the accused! In that regard please note the comments of Hodgson JA in the case of R v Reardon (No2) (2004) 60 NSWLR 454 at [58], wherein his Honour said, -

> "It was accepted for the Crown that there is no onus on the defence to demonstrate a forensic purpose in relation to material said to be subject to the Crown's duty of disclosure. This is clearly correct: **the defence is simply not in a position to know what this material is**. It seems to me that the correct view is that a decision by the Crown concerning what to disclose should take a **broad view of relevance <u>and of what are the issues</u>** in the case. The Crown has all the material available to it, and one basis of the rule about disclosure is that it is to **ameliorate the inequality of resources as between the Crown and the accused**. In those circumstances, it would seem inappropriate for the prosecution authorities to take a narrow view as to what the defence might be or as to what might prove useful to the defence, as to what might open up useful lines of enquiry to the defence. See generally the article "Unused Material and the Prosecutor's Duty of Disclosure" by Martin Hinton in (2001) 25 (3) Criminal Law Journal 121." (emphasis mine).

21. Therefore, to avoid subjecting the accused to an unfair trial or the unnecessary additional costs of a stay application, the accused seeks appropriate directions for the prosecution to disclose the evidence upon which the State claims validity of the *Declaration of Emergency/SAHD*s in question (itemised in the Notice of Full Brief Disclosure dated 17 August 2022 and annexed to these submissions).

Suabe Nayel
Solicitor for the accused

theaustralian.com.au

Andrews government ordered to reveal secret documents that justify Victorian lockdown

Anthony Piovesan

5-6 minutes

The Andrew government must release secret documents, a state privacy watchdog has ruled. Picture: NCA NewsWire / Andrew Henshaw

Secret documents that informed the Andrews government's controversial decision to plunge Victoria into lockdown must be released, a state privacy watchdog has ruled.

In a bombshell decision, the Office of the Victorian Information

Commissioner (OVIC) ordered the release of 176 Department of Health documents that guided the government's decision to enforce stage 4 lockdown restrictions across the state on February 12.

At the time, chief health officer Brett Sutton and Premier Daniel Andrews enforced the five-day "circuit-breaker" shutdown to try to suppress the UK variant of Covid-19.

It would be the first time such sensitive briefing material has been made publicly available.

Victorian Premier Daniel Andrews is under pressure to release documents that guided his government's decision to enforce lockdown. Picture: NCA NewsWire / Andrew Henshaw

Victorian Premier Daniel Andrews is under pressure to release documents that guided his government's decision to enforce lockdown. Picture: NCA NewsWire / Andrew Henshaw

The Department of Health tried to block the release of the material, saying the files revealed "high-level deliberative processes of

government” and risked jeopardising trust between public officials and a Minister.

It also argued releasing the material “could mislead members of the public”.

But in a ruling seen by NCA NewsWire, OVIC deputy commissioner Joanne Kummrow disagreed, saying: “I consider members of the public are capable of understanding the role and powers of the chief health officer to make decisions and issue directions under the public health and wellbeing act.”

She also ruled that details in the documents “contained a substantial amount of publicly available information”.

Ms Kummrow said one document held important information about the Victorian government’s Covid-19 response, including a rationale for public health orders.

A five-day shutdown in February was enforced to try to suppress the UK variant of Covid-19. Picture: NCA NewsWire / Andrew Henshaw

A five-day shutdown in February was enforced to try to suppress the UK variant of Covid-19. Picture: NCA NewsWire / Andrew Henshaw

“I consider there is significant public interest in providing members of the community the ability to participate in such processes and to hold governments to account for the decisions it has made,” she said.

“The documents describe the reasons for placing restrictions on the movements of members of the community, including in relation to sensitive matters, such as hospital visits. These decisions have a profound effect on the lives of Victorians.

“In these circumstances, members of the community have a right to access documents that describe the background information considered, the reasons, the legal basis for, and documents that record those decisions.”

The Department of Health has 14 days to appeal against the decision with the Victorian Civil and Administrative Tribunal.

OVIC upheld a decision not to release five documents due to legal privilege.

David Davis has been calling for the release of the documents since the February lockdown was enforced. Picture: NCA NewsWire / Ian Currie

David Davis has been calling for the release of the documents since the February lockdown was enforced. Picture: NCA NewsWire / Ian Currie

Victorian upper house opposition leader David Davis has been calling for the release of the documents since the February lockdown was enforced.

He said Victorians deserved to know the reasons why they were locked down.

“The Andrews Labor government through its health officers has clamped down families, school kids and businesses on the basis of ‘health advice’ it says, yet it has never once released the formal written briefs relied on by the chief health officer or delegate,” he said.

Mr Davis called on Mr Andrews “to come clean” and provide the documents in full.

“The failure to release this critical advice can only result in further reduction in the credibility of him and his government,” he said.

“It’s a scandal these documents have been kept secret all the way through the pandemic.”

Mr Andrews was absent at Wednesday’s Covid-19 briefing, but Creative Industries Minister Danny Pearson appeared instead and was questioned about the documents.

He refused to explicitly say if the documents would be released publicly.

“These documents are not my documents,” he said.

“As I understand it, the Department of Health will consider this.”

In a statement, a Department of Health spokesman said: “The Department of Health will take the appropriate time to properly review OVIC’s decision before any further action is considered.”

Melbourne

Anthony Piovesan reports on state politics and general news for the NCA NewsWire's Victorian bureau. He previously worked at the Stawell Times, and then for Leader newspapers where he won a Melbourne Press Club... Read more

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Document Dan wants to keep secret

Rhiannon Tuffield2 min readMay 5, 2021 - 8:22PMNCA NewsWire95 comments

3-4 minutes

The Victorian opposition has slammed the Daniel Andrews government for fighting the release of important documents.

The Victorian opposition has claimed the Daniel Andrews government is fighting the release of important documents outlining the state's pandemic plan that could hold the key to health orders that forced Victorians into lockdown last year.

Upper house opposition leader David Davis is pushing for the government to release last year's draft pandemic plan, including private emails between the state's chief health officer Brett Sutton, Victorian Premier Daniel Andrews and ex-health minister Jenny Mikakos.

The MP has sought the documents under Freedom of Information for a year, requesting copies of any written communications relating to the health emergency.

Mr Davis said he wanted access to the documents to understand the justification behind the extreme public health orders imposed from March last year.

"Daniel Andrews and his cronies have simply ignored repeated

calls by the upper house of the Victorian parliament to provide the briefings and background documents that accompanied and justified all the public health orders that so savagely restricted the rights of Victorians," Mr Davis said.

"(There has been) not a single document ordered by the parliament provided to date."

Victoria imposed a state of emergency on March 14 last year and at the same time placed restrictions around leaving home, outdoor activities and work arrangements.

By the end of the year, Melbourne had endured 112 days of lockdown sparked by a second wave, which authorities argued was necessary for avoiding further spread of the virus.

In July last year, Mr Davis made an application to VCAT for review of the department's deemed refusal to process his request, but a decision notice was not provided.

Mr Davis said the Department of Health had told him it was "not in a position" to provide the documents.

"Victorians are entitled to see all the drafts of Labor's failed COVID-19 pandemic management plan. On what grounds can the Andrews Labor government possibly argue that these documents should be kept secret from Victorians? The health of Victorians is too important to allow Daniel Andrews and his failed ministers to keep the plan secret," he said.

"Labor's management of the COVID-19 crisis in Victoria is simply a farce and clearly won't stand up to public scrutiny. Why else fight tooth and nail to keep it all a secret? It is a cover-up, pure and simple."

Mr Davis said the secrecy was keeping the Victorian public in the dark over the state's "failed response" to the COVID crisis.

"Labor's shambolic mismanagement of hotel quarantine and woefully inadequate contract tracing took the lives of 801 Victorians, destroyed hundreds of thousands of jobs and thousands of businesses. Yet, they refuse to justify their actions and refuse to publicly release the critical documents."

rhiannon.tuffield@news.com.au

NAYEL lawyers

Date: 17 August 2022

To: Detective Senior Constable Vincent Rizzo
Victoria Police
4/313 Spencer Street
DOCKLANDS VIC 3008
BY EMAIL TO: Vincent.Rizzo@police.vic.gov.au

RE: POLICE v SOLIHIN MILLIN
CHARGED WITH CONTRAVENE CONDITION OF BAIL AND OR
NOTICE FOR FULL BRIEF DISCLOSURE

The charges that remain against our client are:

A. Contravene Condition of Bail – section 30A(1) *Bail Act 1977*; and

B. Publish Record of Interview – section 464JA.7 *Crimes Act 1958*.

We note that A above is referred to as "Charge 3" in "Brief 2" of the Hand Up Brief (HUB) served to date, on page 10 of which the charge is particularised as:

> *"The accused at Windsor between the 30th of August 2020 and 31st of August 2020 having been granted bail did without reasonable excuse contravened a condition of bail, namely "not to post on the internet, social media outlets or any other public forum with respect to inciting persons to breach any State or Commonwealth Law" by posting on Facebook the Freedom Day protest on the 5th of September 2020 thus inciting others to breach State Law."*

However, paragraphs 54 to 56 of the HUB refer to 3 apparently separate allegations of the accused posting "on his Facebook account in breach of his bail conditions promoting the 5 September 2020 protest".

To avoid confusion and unnecessary costs to the accused, please particularise the actus reus of the alleged Contravene Condition of Bail offence with clarity and precision.

Additionally, the accused maintains his right to put the prosecution to proof on the legality of the *Stay at Home Directions* (SAHDs) in question, noting that:

- In relation to A above, the prosecution must prove that the alleged offending posts were with respect to "inciting" persons to breach any State or Commonwealth "Law"; and

- In relation to B above, the Magistrate had no jurisdiction to issue the search and arrest warrants unless the *SAHDs* were valid, the corollary of which renders the record of interview and items seized from the premises of the accused unlawfully obtained and, hence, inadmissible as evidence on a defended hearing of these charges.

For now, you may refer to the submissions of the writer dated 8 June 2022 and filed in the now withdrawn incitement charges for the case law and reasoning in support of the right of the accused to challenge the legality of the SAHDs in these proceedings and the prosecutor's duty of disclosure in that regard.

Therefore, we hereby refine our **notice pursuant to section 39 of the *Criminal Procedure Act 2009*** dated 22 September 2021 to the charges that remain with a request under **section 43(1) of the *Criminal Procedure Act 2009*** to disclosure of the following –

(a) any and all documentation relating to the making under section 198(1) of the *Public Health and Wellbeing Act 2008* (hereafter referred to as "PHA") of the *Declaration of a State of Emergency* in Victoria and its continued operation at the relevant time of the charges in question including but not limited to:

    a. the advice(s) from the Chief Health Officer; and

    b. the consultation(s) with the Minister and Emergency Management Commissioner under the Emergency Management Act 2013;

    c. the relevant broadcasts and publications referred to in sub-sections 198(5) and 198(6) of the PHA;

    d. the reports to both houses of parliament referred to in sub-sections 198(8) and 198(8A) of the PHA and the advice of the Chief Health Officer referred to in sub-section 198(8A)(a) of the PHA;

(b) the instrument(s) of authorization(s) referred to in section 30(1) of the PHA appointing the person(s) whom gave the SAHDs to be an authorised officer for the purpose of the PHA and any specifics, conditions and directions imposed thereto (eg, sections 30(3), 30(6) or 30(7) of PHA);

(c) the documentary basis upon which the Secretary was at all relevant times satisfied that the person(s) referred to in the preceding sub-paragraph was suitably qualified or trained to be an authorised officer for the purpose the of the PHA (required by section 30(2) of the PHA);

(d) the identity card issued at all relevant times to the person(s) referred to in the preceding two sub-paragraphs (sections 30(4) and 30(5) of the PHA);

(e) documents that prove that at all relevant times the person(s) referred to in the preceding 3 sub-paragraphs was employed under Part 3 of the Public Administration Act 2004 (required by section 30(1) of the PHA);

(f) the authorisation(s) granted by the Chief Health Officer under section 199 of the PHA to the relevant authorised officer(s) whom gave the SAHDs and the documentary basis upon which the Chief Health Officer believed that at all relevant times it was reasonably necessary to grant the said authorisation(s) to eliminate or reduce a serious risk to public health (section 199(1)(b) PHA);

(g) any and all records of explanations given under sub-sections 200(2) and 200(3) of the PHA;

(h) any and all records of warnings given under sub-section 200(4) of the PHA;

(i) any and all records of reviews under sub-section 200(6) of the PHA;

(j) any and all notices to the Chief Health Officer under sub-section 200(7) of the PHA;

(k) any and all advices to the Minister under sub-sections 200(9) and 200(10) of the PHA;

(l) any and all forms given or records of information provided under section 200A(1) of the PHA;

(m) any and all documentation relating to making and extensions of the *Declaration of a State of Emergency* referred to in (a) above and the SAHDs including but not limited to:

(ii) information, statistics, analysis, discussions, conferences, emails, communications, assessments, advices, recommendations, policy papers, Outbreak Summaries Reports, Covid-19 Intelligence Briefings, draft covering briefs, covering briefs, epidemiology and Public Health Intelligence Data of the Department of Health and Human Services of Victoria and/or its Public Health Unit;

(iii) the methodology and procedure via which at the relevant time the purported virus now commonly known as Novel Coronavirus 2019 (2019-nCoV) was isolated (proven to exist);

(iv) proof (and the methodology and procedure via which it was proven) that at the relevant time the purported virus now known as Novel Coronavirus 2019 (2019-nCoV) was the cause of the disease now known as Covid-19;

(v) proof (and the methodology and procedure via which it was proven) that at the relevant time the disease now commonly known as Covid-19 was not typical pneumonia;

(vi) the methodology and procedure via which the State ensured that at the relevant time the Influenza virus and the disease of Influenza was not mistaken for Novel Coronavirus 2019 (2019-nCoV) and Covid-19;

(vii) any and all evidence that the State relied upon as proof that the virus now known as Novel Coronavirus 2019 (2019-nCoV) was at all relevant times a "serious risk to public" ("serious risk to public health" is defined in section 3 of the PHA);

(viii) the methodology and procedure via which the State determined that at all relevant times there was not available any effective precaution, safeguard, treatment or other measures to eliminate or reduce the risk to the health of human beings that the State asserts that the said Novel Coronavirus 2019 (2019-nCoV) was;

(ix) the methodology and procedures via which at all relevant times the State tested for Novel Coronavirus 2019 (2019-nCoV) amongst its population and the results of all testing, diagnosis and determination of infectivity rates including but not limited to the manner of testing, the details of the manufacturers of the testing devices, the standards that were applied to the testing, the skills and qualifications of the persons engaged in the testing, the laboratories engaged, the primers and probes and/or other materials used and the details

of the manufacturers of the materials used, the results obtained including but not limited to the Cycle Threshold at which those results were obtained (where the Reverse Transcription-Polymerase Chain Reaction (RT-PCR) protocol was used), the manner in which the results were confirmed, if any (e.g. clinical observations, patient history, virus from a patient sample grown in cell culture or not, epidemiological information etc), and the contracts for their sale and distribution to the laboratories, government bodies and/or testing facilities that used them;

(x) the methodology and procedure via which the Reverse Transcription-Polymerase Chain Reaction (RT-PCR) protocol was determined by the State to be suitable/fit for the purpose of testing for Novel Coronavirus 2019 (2019-nCoV) amongst the population of Victoria at the relevant times including but not limited to:

a. full details of the primers and probes that were used in all tests conducted;

b. full details of the temperatures at which the reactions took place;

c. full details of the cycle thresholds of all tests that returned a positive result;

d. full details of molecular biological validations of the RT-PCR products;

e. full details of the positive and negative controls that were used to confirm/refute specific virus detections;

f. the standard operating procedures that were applied;

g. the contracts for their sale and distribution to the laboratories, government bodies and/or testing facilities that used them;

(xi) any and all Covid-19 Notification Forms submitted to the Department of Health and Human Services;

(xii) any and all investigations and interviews conducted with persons whom tested positive for Novel Coronavirus 2019 (2019-nCoV) by the Department of Public Health and Human Services;

(xiii) where cell lines were used to confirm positive tests results, full details of the specifications of the cell lines used including but not limited to their developers/manufacturers details and the contracts for their sale and distribution to the laboratories that used them for testing for Novel Coronavirus 2019 (2019-nCoV);

(xiv) the methodology and procedure via which the State ensured that deaths relating to Covid-19 were not at all relevant times actually caused by comorbidities/other causes in those whom died;

(xv) the manner and procedure via which the State determined that asymptomatic transmission of Novel Coronavirus 2019 (2019-nCoV) was a serious risk to public health;

(xvi) the infection fatality rates upon which the State determined that Novel Coronavirus 2019 (2019-nCoV) was a serious risk to public health;

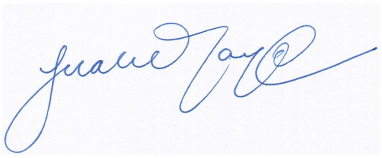
(xvii) the medical, scientific and epidemiological information upon which the State determined that Coronavirus 2019 (2019-nCoV) was at all relevant times a serious risk to public health.

To avoid any further unfairness to the accused, please give this matter your urgent and immediate attention.

You may contact the writer directly on mobile telephone number 0425 311 848.

Thanking you.

Yours faithfully,



Suabe Nayel
Principal
Mobile: +61 425 311 848
Email: suabe@nayellawyers.com