

DEFENCE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2022/00214157

TITLE OF PROCEEDINGS

Plaintiff	RAYA MEREDITH
Defendant	STATE OF NEW SOUTH WALES

FILING DETAILS

Filed for	State of New South Wales , defendant
Legal representative	Nicholas Scott Regener Makinson d'Apice Lawyers
Legal representative reference	PCN: 51528 NSW Ref: 224209:NSR:RTH Court User No: 84
Contact name and telephone	Rachelle Harrington Tel. 02 9233 7788
Contact email	rharrington@makdap.com.au

PLEADING AND PARTICULARS

In response to the statement of claim filed 21 July 2022 (**SOC**), the Defendant pleads as follows:

PARTIES

1. In response to paragraph 1 of the SOC, the Defendant:
 - (a) admits, in respect of the Plaintiff's claim, that Senior Constable Danielle George (**SC George**), Senior Constable David Jarnet (**SC Jarnet**) and Senior Constable Todd Petrie (**SC Petrie**) were members of the NSW Police Force as at 20 July 2018; and
 - (b) otherwise does not admit the paragraph.
2. In response to paragraph 2 of the SOC, the Defendant:
 - (a) admits, in respect of the Plaintiff's claim, that SC George, SC Jarnet and SC Petrie were, as at 20 July 2018, deemed to be persons in the service of the Crown pursuant to s 6 of the *Law Reform (Vicarious Liability) Act 1983* (NSW); and
 - (b) otherwise does not admit the paragraph.
3. In response to paragraph 3 of the SOC, the Defendant:
 - (a) says, without any admission as to liability with respect to any cause of action pleaded, that it admits vicarious liability for the conduct of SC George, SC Jarnet and SC Petrie for the purpose of the provisions of Part 4 of the *Law Reform (Vicarious Liability) Act 1983* (NSW) should the torts alleged in these proceedings be proved and for the purposes of these proceedings only;
 - (b) otherwise does not admit the paragraph.
4. The Defendant admits paragraph 4 of the SOC.

THE PLAINTIFF AND GROUP MEMBERS

5. The Defendant admits paragraph 5 of the SOC.
6. The Defendant admits paragraph 6 of the SOC.
7. In response to paragraph 7 of the SOC, the Defendant:
 - (a) admits the Plaintiff brings these proceedings on behalf of herself and group members;
 - (b) says that paragraph 7.3.4 of the SOC is embarrassing and liable to be struck out on that basis;
 - (c) otherwise does not admit the characteristics of "Group Members" pleaded in paragraphs 7.1, 7.2, 7.3.1, 7.3.2, 7.3.3 and 7.4;

- (d) says that the lawfulness of the alleged searches of group members described in paragraph 7.3 will turn on the specific facts of each individual group member's case; and
- (e) says further that where the Defendant uses the term "strip search" in this defence it is not using the defined term "strip search" that appears in paragraph 7 of the SOC.

8. The Defendant does not admit paragraph 8 of the SOC.

9. The Defendant does not admit paragraph 9 of the SOC.

GROUP MEMBERS ALLEGED TO BE "VULNERABLE PEOPLE"

10. The Defendant does not admit paragraph 10 of the SOC.

ALLEGED FACTS

11. In response to paragraph 11 of the SOC, the Defendant:

- (a) admits the Plaintiff attended Splendour in the Grass on 20 July 2018; and
- (b) does not admit the paragraph in respect of group members.

12. The Defendant admits paragraph 12 of the SOC.

13. In response to paragraph 13 of the SOC, the Defendant:

- (a) says that the solicitors for the Plaintiff have indicated in correspondence that the chapeau of paragraph 13 of the SOC should read "The Plaintiff and ~~some or all of the~~ Group Members", and so the Defendant pleads to this paragraph on that basis;

Particulars of (a)

- i. Letter from Slater + Gordon to Makinson d'Apice dated 26 August 2022 at [5].
 - (b) refers to and repeats paragraphs 19 – 68 of this defence below in respect of allegations made by the Plaintiff; and
 - (c) otherwise does not admit the paragraph.
14. In response to paragraph 14 of the SOC, the Defendant:
- (a) refers to and repeats paragraph 7(b)-(d) of this defence above;
 - (b) refers to and repeats paragraphs 19 – 68 of this defence below in relation to the specific allegations made by the Plaintiff; and
 - (c) otherwise does not admit the paragraph.

15. In response to paragraph 15 of the SOC, the Defendant:
 - (a) refers to and repeats paragraph 7(b)-(d) of this defence above;
 - (b) denies the paragraph in respect of the Plaintiff; and
 - (c) does not admit the paragraph in respect of group members.
16. In response to paragraph 16 of the SOC, the Defendant:
 - (a) refers to and repeats paragraph 7(b)-(d) of this defence above;
 - (b) says that police are only required to comply with s 34A in the event of a consensual search;
 - (c) admits the Plaintiff did not consent to the strip search;
 - (d) says that s 34A of LEPR is therefore of no application to the Plaintiff's claim; and
 - (e) does not admit the paragraph in respect of group members.
17. In response to paragraph 17 of the SOC, the Defendant:
 - (a) refers to and repeats paragraph 7(b)-(d) of this defence above;
 - (b) refers to and repeats paragraphs 19 – 68 of this defence below in relation to the specific allegations made by the Plaintiff;
 - (c) denies that SC George's strip search of the Plaintiff did not comply with ss 32 and 202 of LEPR; and
 - (d) does not admit the paragraph in respect of group members.
18. In response to paragraph 18 of the SOC, the Defendant:
 - (a) refers to and repeats paragraph 7(b)-(d) of this defence above;
 - (b) refers to and repeats paragraphs 19 – 60 of this defence below in relation to the specific allegations made by the Plaintiff;
 - (c) denies that SC George's strip search of the Plaintiff did not comply with s 33 of LEPR; and
 - (d) does not admit the paragraph in respect of group members.

ALLEGED CONDUCT IN RESPECT OF THE PLAINTIFF

19. The Defendant admits paragraph 19 of the SOC.
20. The Defendant admits paragraph 20 of the SOC.
21. The Defendant admits paragraph 21 of the SOC.
22. The Defendant admits paragraph 22 of the SOC.

23. The Defendant admits paragraph 23 of the SOC.
24. The Defendant admits paragraph 24 of the SOC.
25. In response to paragraph 25 of the SOC, the Defendant:
 - (a) admits the Plaintiff was approached by SC Jarnet handling a drug detection dog named Seeby;
 - (b) says that the Plaintiff was seeking to enter a public place at which a concert or other artistic performance, dance party or other entertainment was being held, within the meaning of s 148(1)(b) of LEPRAs;
 - (c) in the alternative, says that the Plaintiff was seeking to enter part of a premises being used for the consumption of liquor that was sold at the premises (where the premises were not being used primarily as a restaurant or other dining place) within the meaning of s 148(1)(a) of LEPRAs;
 - (d) in the further alternative, says that a warrant was sought and obtained for the drug dog operation under s 149 of LEPRAs;
 - (e) says further that, in the premises, SC Jarnet was authorised pursuant to ss 147, 148(1) and/or 149 of LEPRAs to use Seeby to carry out "general drug detection" within the meaning of s 145 of LEPRAs; and
 - (f) otherwise does not admit the paragraph.
26. In response to paragraph 26 of the SOC, the Defendant:
 - (a) says that Seeby gave a positive indication that there was a prohibited substance in the airspace around the Plaintiff; and
 - (b) otherwise does not admit the paragraph.
27. In response to paragraph 27 of the SOC, the Defendant:
 - (a) admits that SC Jarnet spoke to the Plaintiff;
 - (b) says that SC Jarnet told the Plaintiff his name and place of duty;
 - (c) admits that the Plaintiff stopped walking towards the entrance;
 - (d) says that SC Jarnet was lawfully authorised to stop and detain the Plaintiff pursuant to s 21 of LEPRAs because SC Jarnet suspected on reasonable grounds that the Plaintiff had in her possession or under her control, in contravention of the *Drug Misuse and Trafficking Act 1985*, a prohibited plant or prohibited drug;
 - (e) says that SC Petrie also spoke to the Plaintiff;

- (f) says that SC Petrie was lawfully authorised to stop and detain the Plaintiff pursuant to s 21 of LEPRA because SC Petrie suspected on reasonable grounds that the Plaintiff had in her possession or under her control, in contravention of the *Drug Misuse and Trafficking Act 1985*, a prohibited plant or prohibited drug;
 - (g) says that, at some point, the Plaintiff said words to SC Jarnet and/or SC Petrie to the effect of “I had a smoke with a joint this morning”; and
 - (h) otherwise denies the paragraph.
28. In response to paragraph 28 of the SOC, the Defendant:
- (a) denies that SC Jarnet directed the Plaintiff to the Police Inspection Area;
 - (b) says that SC Petrie directed the Plaintiff to the Police Inspection Area;
 - (c) says that police had erected a fence, that was approximately 2m high and covered with hessian sacking, around an area off to the side of the entrance to the Splendour Grounds (**Police Search Area**);
 - (d) says that the Police Search Area contained tents (**Tents**);
 - (e) says that the Tents were made of a thick and heavy tarpaulin-like material;
 - (f) says that the top and sides of Tents were enclosed;
 - (g) says that at one side of each Tent there was an opening or doorway that was capable of being opened and closed (**Entry Points**);
 - (h) says that the Entry Points of each Tent faced the inside of the Police Search Area; and
 - (i) otherwise denies the paragraph.
29. The Defendant denies paragraph 29 of the SOC.
30. In response to paragraph 30 of the SOC, the Defendant:
- (a) refers to and repeats paragraphs 28(c)-(i) and 29 of this defence above; and
 - (b) otherwise denies the paragraph.
31. In response to paragraph 31 of the SOC, the Defendant:
- (a) refers to and repeats paragraph 28(c)-(i) of this defence above;
 - (b) admits that the Plaintiff went into the Police Search Area and, from there, was directed by SC George to go inside a Tent;
 - (c) says that, before the Plaintiff went into a Tent, she spoke with SC George;

- (d) says that SC George told the Plaintiff her name, place of duty, and reasons for the exercise of the search power;
 - (e) says that SC George was lawfully authorised to stop, search and detain the Plaintiff pursuant to s 21 of LEPRa because SC George suspected on reasonable grounds that the Plaintiff had in her possession or under her control, in contravention of the *Drug Misuse and Trafficking Act 1985*, a prohibited plant or prohibited drug; and
 - (f) otherwise denies the paragraph.
32. In response to paragraph 32 of the SOC, the Defendant:
- (a) does not admit the Plaintiff was directed to hand over her bag to a Police Officer; and
 - (b) otherwise denies the paragraph.
33. In response to paragraph 33 of the SOC, the Defendant:
- (a) refers to and repeats paragraph 31(b), (c) and (d) above;
 - (b) denies (to the extent it may be alleged in this paragraph) that the Plaintiff's first interaction with SC George was inside the Tent; and
 - (c) otherwise admits the paragraph.
34. The Defendant admits paragraph 34 of the SOC, save that it says these words were spoken earlier and outside the Tent, rather than inside the Tent.
35. The Defendant does not admit paragraph 35 of the SOC.
36. The Defendant admits paragraph 36 of the SOC.
37. In response to paragraph 37 of the SOC, the Defendant:
- (a) says that, in conducting an ordinary search of the Plaintiff, SC George quickly ran her hands over the Plaintiff's outer clothing in accordance with s 30(a) of LEPRa; and
 - (b) denies that SC George ran her hands over the Plaintiff's skin.
38. In response to paragraph 38 of the SOC, the Defendant:
- (a) says that SC George was lawfully authorised to ask the Plaintiff to remove her shoes pursuant to s 30(b) of LEPRa; and
 - (b) otherwise does not admit the paragraph.
39. In response to paragraphs 39 to 53 of the SOC, the Defendant:

- (a) says that SC George was lawfully authorised to carry out a strip search of the Plaintiff pursuant to s 31(b) of LEPR because SC George suspected on reasonable grounds that a strip search was necessary for the purposes of the search and that the seriousness and urgency of the circumstances made the strip search necessary;
 - (b) does not admit paragraph 39; and
 - (c) responds specifically to paragraphs 40 to 53 as follows below.
- 40. The Defendant does not admit paragraph 40 of the SOC.
 - 41. The Defendant does not admit paragraph 41 of the SOC.
 - 42. The Defendant does not admit paragraph 42 of the SOC.
 - 43. The Defendant does not admit paragraph 43 of the SOC.
 - 44. The Defendant denies paragraph 44 of the SOC.
 - 45. The Defendant does not admit paragraph 45 of the SOC.
 - 46. The Defendant does not admit paragraph 46 of the SOC.
 - 47. The Defendant denies paragraph 47 of the SOC.
 - 48. The Defendant denies paragraph 48 of the SOC.
 - 49. The Defendant denies paragraph 49 of the SOC.
 - 50. The Defendant denies paragraph 50 of the SOC.
 - 51. The Defendant denies paragraph 51 of the SOC.
 - 52. The Defendant denies paragraph 52 of the SOC.
 - 53. The Defendant does not admit paragraph 53 of the SOC.
 - 54. The Defendant does not admit paragraph 54 of the SOC.
 - 55. The Defendant denies paragraph 55 of the SOC.
 - 56. In response to paragraph 56 of the SOC, the Defendant:
 - (a) refers to and repeats paragraph 28(c)-(i) of this defence above;
 - (b) denies that the Plaintiff was directed to provide her drivers' license to police;
 - (c) says that the Plaintiff was asked to provide, and voluntarily provided her name, address, date of birth and phone number to SC Petrie;
 - (d) otherwise does not admit the paragraph.
 - 57. The Defendant does not admit paragraph 57 of the SOC.

58. The Defendant does not admit paragraph 58 of the SOC.
59. In response to paragraph 59 of the SOC, the Defendant:
- (a) says that whether or not any drugs or other prohibited items were found on the Plaintiff as a result of the strip search is not relevant because it does not go towards establishing any pleaded cause of action;
 - (b) says the paragraph is therefore embarrassing and liable to be struck out; and
 - (c) under cover of that objection, otherwise admits the paragraph.
60. In response to paragraph 60 of the SOC, the Defendant:
- (a) refers to and repeats paragraph 32 of this defence above;
 - (b) says that whether or not any drugs or other prohibited items were found in the Plaintiff's bag is not relevant because it does not go towards establishing any pleaded cause of action;
 - (c) says the paragraph is therefore embarrassing and liable to be struck out; and
 - (d) under cover of that objection, otherwise admits the paragraph.

ALLEGED ASSAULT AND BATTERY

61. In response to paragraph 61 of the SOC, the Defendant:
- (a) denies that, if SC Jarnet is found to have tapped the Plaintiff on the shoulder, this constituted a battery;
 - (b) says that tapping someone on the shoulder to get that person's attention is a form of physical contact "utterly without fault" as part of the ordinary conduct of daily life;
 - (c) denies that the ordinary search performed by SC George constituted a battery on the basis that the touching was lawfully justified by s 21 of LEPR; and
 - (d) says that SC George used such force as was reasonably necessary to carry out the function of conducting an ordinary search in accordance with s 230 of LEPR.
62. The Defendant denies paragraph 62 of the SOC.
63. In response to paragraph 63 of the SOC, the Defendant:
- (a) refers to and repeats paragraph 62 of this defence above; and
 - (b) otherwise does not admit whether the Plaintiff felt imminent fear.

ALLEGED FALSE IMPRISONMENT

64. The Defendant denies paragraph 64 of the SOC.

- 65. The Defendant denies paragraph 65 of the SOC.
- 66. The Defendant denies paragraph 66 of the SOC.
- 67. The Defendant does not admit paragraph 67 of the SOC.
- 68. The Defendant denies paragraph 68 of the SOC.

LOSS AND DAMAGE

- 69. In response to paragraph 69 of the SOC, the Defendant:
 - (a) says that the paragraph makes no allegations against the Defendant; and
 - (b) otherwise does not admit the paragraph.
- 70. In response to paragraph 70 of the SOC, the Defendant:
 - (a) denies the paragraph in respect of the Plaintiff; and
 - (b) does not admit the paragraph in respect of group members.
- 71. In response to paragraph 71 of the SOC, the Defendant:
 - (a) admits the Plaintiff makes these claims;
 - (b) denies the Plaintiff is entitled to the relief sought or at all; and
 - (c) does not admit the paragraph in respect of group members.
- 72. In response to paragraph 72 of the SOC, the Defendant:
 - (a) denies paragraphs 72.1, 72.2, 72.3 and 72.5 in respect of the Plaintiff;
 - (b) does not admit paragraph 72.4 in respect of the Plaintiff; and
 - (c) does not admit the paragraph in respect of group members.
- 73. In response to paragraph 73 of the SOC, the Defendant:
 - (a) denies the paragraph in respect of the Plaintiff; and
 - (b) does not admit the paragraph in respect of group members.
- 74. In response to paragraph 74 of the SOC, the Defendant:
 - (a) denies the paragraph in respect of the Plaintiff; and
 - (b) does not admit the paragraph in respect of group members.

LIMITATION DEFENCE

Satisfaction of s 50A(1)

- 75. By the SOC, the Plaintiff brings causes of action for damages in tort.

76. By the SOC, the Plaintiff seeks general and aggravated damages for, amongst other things, allegedly suffering embarrassment, fear, loss of dignity, and humiliation (**Hurt Feelings**).

Particulars

- i. SOC at [70], [72], [73], [73.3], [73.5], [73.8].
77. In the premises, to the extent the Plaintiff seeks damages for Hurt Feelings, the Plaintiff seeks damages that “relate to the ... personal injury of a person” within the meaning of s 11(1) of the *Limitation Act 1969* (NSW) (**Limitation Act**).
78. In the premises of paragraphs 75 to 77 above, to the extent the Plaintiff seeks damages for Hurt Feelings, s 50A(1) of the *Limitation Act* is satisfied.

Satisfaction of s 50A(2)

79. By the SOC, the Plaintiff alleges that the acts of police allegedly resulted in injury in the form of Hurt Feelings.

Particulars

- i. SOC at [70], [72], [73.3], [73.5], [73.8].
80. In the premises, to the extent the Plaintiff alleges injury in the form of Hurt Feelings, the Plaintiff alleges “injury” within the meaning of s 50A(2) of the *Limitation Act*.
81. Division 6 of Part 2 of the *Limitation Act* commenced on 6 December 2002.

Particulars

- i. *Civil Liability (Amendment) Personal Responsibility Act 2002* (NSW), Sch 4.6 [5].
82. The alleged acts or omissions said to have resulted in injury in the form of Hurt Feelings occurred after the commencement of Division 6 of Part 2 of the *Limitation Act*.
83. In the premises of paragraphs 79 to 82 above, by operation of s 50A(2) of the *Limitation Act*, Division 6 of Part 2 of the *Limitation Act* applies to the Plaintiff’s claim.

Satisfaction of s 50C(1)(a)

84. On 20 July 2018, the Plaintiff knew or ought to have known the fact that the alleged injury in the form of Hurt Feelings had occurred.
85. On 20 July 2018, the Plaintiff knew or ought to have known the fact that the alleged injury in the form of Hurt Feelings was caused by the fault of the Defendant.

86. On 20 July 2018, the Plaintiff knew or ought to have known the fact that the alleged injury in the form of Hurt Feelings was sufficiently serious to justify the bringing of an action on the cause of action.
87. The Plaintiff's action was brought by way of statement of claim filed on 21 July 2022.
88. In the premises, the Plaintiff's action on causes of action alleged to have resulted in injury in the form of Hurt Feelings was brought after the period of 3 years running from and including the date on which the causes of action were "discoverable" by the Plaintiff within the meaning of ss 50C and 50D of the *Limitation Act*.
89. In the premises, due to the operation of s 50C(1) of the *Limitation Act*, to the extent the Plaintiff seeks damages for injury in the form of Hurt Feelings, those actions are not maintainable.

In respect of group members

90. The Defendant says further that it relies on ss 50A, 50C and 50D of the *Limitation Act* in respect of other group members who have brought their claim more than 3 years running from and including the date on which their causes of action were "discoverable" within the meaning of ss 50C and 50D of the *Limitation Act*.

DEFENCE BASED ON SECTION 43A OF CIVIL LIABILITY ACT 2002 (NSW)

SC George

91. At all material times on 20 July 2018, SC George was working as a police officer with public official functions or was acting in a public official capacity.
92. In the premises, at all material times, SC George was a "public or other authority" within the meaning of ss 41(e1) and 43A(1) of the CLA.
93. SC George's powers to stop, search, strip search and detain the Plaintiff were powers conferred by or under LEPRA, within the meaning of s 43A(2)(a) of the CLA.
94. SC George's powers to stop, search, strip search and detain the Plaintiff were powers of a kind that persons generally are not authorised to exercise without specific statutory authority, within the meaning of s 43A(2)(b) of the CLA.
95. In the premises, SC George's powers to stop, search, strip search and detain the Plaintiff were a "special statutory power" conferred on SC George within the meaning of ss 43A(1) and (2) of the CLA.
96. SC George's stop, search, strip search and detention of the Plaintiff were not so unreasonable that no authority having the special statutory power in question could

properly consider the stop, search, strip search and detention to have been a reasonable exercise of those powers.

97. In the premises, to the extent that the alleged liability of the Defendant is based upon SC George's alleged exercise of, or failure to exercise, a special statutory power conferred on her, that does not give rise to civil liability by operation of s 43A(3) of the CLA.

SC Jarnet

98. At all material times on 20 July 2018, SC Jarnet was working as a police officer with public official functions or was acting in a public official capacity.
99. In the premises, at all material times, SC Jarnet was a "public or other authority" within the meaning of ss 41(e1) and 43A(1) of the CLA.
100. SC Jarnet's powers to use a dog to carry out general drug detection, and to stop and detain the Plaintiff, were powers conferred by or under LEPR, within the meaning of s 43A(2)(a) of the CLA.
101. SC Jarnet's powers to use a dog to carry out general drug detection, and to stop and detain the Plaintiff, were powers of a kind that persons generally are not authorised to exercise without specific statutory authority, within the meaning of s 43A(2)(b) of the CLA.
102. In the premises, SC Jarnet's powers to use a dog to carry out general drug detection, and to stop and detain the Plaintiff, were "special statutory powers" conferred on SC Jarnet within the meaning of ss 43A(1) and (2) of the CLA.
103. SC Jarnet's use of a dog to carry out general drug detection, and his stop and detention of the Plaintiff, were not so unreasonable that no authority having the special statutory power in question could properly consider his use of the dog to carry out general drug detection, or his stop and detention of the Plaintiff, to have been a reasonable exercise of those powers.
104. In the premises, to the extent that the alleged liability of the Defendant is based upon SC Jarnet's alleged exercise of, or failure to exercise, a special statutory power conferred on him, that does not give rise to civil liability by operation of s 43A(3) of the CLA.

SC Petrie

105. At all material times on 20 July 2018, SC Petrie was working as a police officer with public official functions or was acting in a public official capacity.
106. In the premises, at all material times, SC Petrie was a "public or other authority" within the meaning of ss 41(e1) and 43A(1) of the CLA.

107. SC Petrie's powers to stop and detain the Plaintiff were powers conferred by or under LEPRA, within the meaning of s 43A(2)(a) of the CLA.
108. SC Petrie's powers to stop and detain the Plaintiff were powers of a kind that persons generally are not authorised to exercise without specific statutory authority, within the meaning of s 43A(2)(b) of the CLA.
109. In the premises, SC Petrie's powers to stop and detain the Plaintiff were "special statutory powers" conferred on SC Petrie within the meaning of ss 43A(1) and (2) of the CLA.
110. SC Petrie's stop and detention of the Plaintiff were not so unreasonable that no authority having the special statutory power in question could properly consider the stop and detention to have been a reasonable exercise of those powers.
111. In the premises, to the extent that the alleged liability of the Defendant is based upon SC Petrie's alleged exercise of, or failure to exercise, a special statutory power conferred on him, that does not give rise to civil liability by operation of s 43A(3) of the CLA.

In respect of group members

112. The Defendant says further that it relies on s 43A of the CLA in respect of other group members to the extent that those group members allege that the liability of the Defendant is based upon a police officer's exercise of, or failure to exercise, a special statutory power conferred on that officer.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 of the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.



Signature

Capacity

Date of signature

Solicitor on record

28/09/2022